EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Goshen Multiservice Limited	v	Accuro Environmental Limited

Heard at: London (South) (via CVP) **On:** 22 April 2025

Before: Employment Judge Fredericks-Bowyer

Appearances
For the claimant: Mr M Isaiah (Operations Managing Director of the claimant)
For the respondent: Ms L Fitzmaurice (HR Director of the respondent)

JUDGMENT

The claimant's claim for a declaration and compensation under *Regulation 12 TUPE Regulations 2006* following breach of *Regulation 11 TUPE Regulations 2006* is dismissed because there was no breach of *Regulation 11* by the respondent.

REASONS

Background

1. This claim is about an alleged failure by the respondent to provide the employment liability information ("ELI") required by *Regulation 11 TUPE Regulations 2006*. It seems to me that there are not many claims arising from such alleged breaches, so this judgment may be a useful summary of the principles behind the requirement to provide ELIs in, as in this case, a transfer of service provision.

2. These are written reasons for the judgment delivered orally in the hearing this morning. The reasons are written at the respondent's request. I have been asked to complete my analysis of remedy in the alternative (about which I set out core findings) by Ms Fitzmaurice for her own reference. The claimant intends to appeal this judgment, so it may assist the claimant to provide that analysis for two reasons:

(1) so that my analysis can be fully understood, and (2) so that the claimant can see that even if my primary decision is overturned, there is still some way to go to unlock the compensation to which Mr Isaiah considers the respondent is entitled.

The hearing

3. I was provided with a bundle which ran to 50 pages. Two of those pages were a witness statement from Mr Isaiah. The respondent did not provide any witness evidence; Mr Isaiah was the only witness I heard from. The parties agreed that the respondent had provided some commentary alongside the ELI by letter which was sent at the same time. A copy was provided to me in the hearing because it was not in the bundle. Neither party had properly complied with their disclosure obligations, although it seemed to me that the respondent had made a decision not to engage with hearing preparation. No application was put before me about that and it seemed to me that I had everything I needed aside from that one letter.

4. I did query why there was no tender information, or contract, or much remedy documentation in the bundle. In response, it became apparent that the parties agree any area of potential dispute arising from those documents and so I did not need to see them either.

Relevant facts

5. These are the facts which are relevant to this *TUPE* dispute. The claimant seeks to begin the narrative at procurement phase, arguing that it was given inaccurate information during the tender exercise about staff costs. I was not shown, as outlined above, those documents. In any event, the transfer to which this claim relates was not in contemplation then, as the contract was not awarded, and so those issues are not relevant to this dispute. This dispute before me is only about *Regulation 11* and the contents of the ELI in the context of the known transfer. In other words, on the facts of this case, matters post-dating contract award.

6. The respondent was responsible for providing cleaning services across two 'lots' ('housing' and 'corporate') for Luton Borough Council. The two individuals whose information triggered this claim worked across both lots under one consolidated contract of employment. In this judgment, I call these individuals 'Supervisor' and 'Cleaner'. The parties know who I mean. I do not consider it necessary to disclose the identity of the employees, who no longer work for the claimant. Following a competitive tender process, the claimant was awarded the contract for the 'housing' lot. Another organisation was awarded the 'corporate' lot.

7. The contract was awarded on 9 January 2024. The parties agree that the amount the claimant was to be paid under the contract was set by Luton Borough Council prior to this stage. Both representatives agreed with this when I asked in the hearing this morning. On 12 January 2024, the claimant contracted the respondent to make enquiries about the ELI. I therefore find as a fact that the respondent did not know about the entire ELI exposure at the time the contract was awarded. There was no opportunity to negotiate the contract price.

8. The respondent provided the ELI on 22 January 2024. There was a letter attached which explained the basis of employment for all of the employees. It sets out the benefits applicable to all. The letter also says, relevantly:-

> *"[the respondent] currently carries out the cleaning services for both the Corporate and Housing areas of Luton Borough Council. Our staff members currently hold terms and conditions which consolidate work across these two sections and do not distinguish between the two. We understand that these two areas have been awarded separately to two different service providers.*
>
> *On the [ELI] we have broken down the activities of the team to sites and identified whether this is Corporate or Housing.*
>
> *To give context to the weekly contracted hours each staff member has, where this is currently split across Corporate and Housing areas, we have provided you with information on both. While we appreciate you not need the information on the sites which you will not service, this is likely to cause concern to our staff member, who will now potentially have their employment split across two different companies to maintain their TUPE rights."*

9. The ELI schedule itself identified all of the information required by ***Regulation 11***. The dispute arises from the pay information provided for the Supervisor and the Cleaner. The Supervisor is identified to earn £33,995 per year in salary, which was paid monthly. They are also identified to work 40 hours per week at the site to be transferred to the claimant. The Cleaner is identified to earn £28,340 per year in salary, which was paid monthly. They are also identified to work 40 hours per week at the site to be transferred to the claimant. The ELI, read with the letter, communicates that the salary figure given is the figure they are paid according to their terms and conditions consolidated across both sites. The hours information is provided to help understand the split across sites.

10. Unfortunately, the ELI schedule also includes an 'hourly rate' figure for each individual, which the parties agree does not reflect the cost to the claimant. The Supervisor's hourly rate was shown to be £12.45 per hour when the correct rate was £13.00. The Cleaner's hourly rate was shown to be £10.90 per hour when the correct rate was £11.00 per hour. The reason for the discrepancy is explained by the split across sites. The individuals were paid at a higher hourly rate at the lot the claimant was taking over, and a lower rate at the other lot. The figure given in the ELI was the combined hourly rate paid to the individuals, reflecting both rates of pay, and is the average hourly rate for their salary.

11. Both employees transferred on 1 March 2024. Both employees queried their rates of pay and the respondent agreed that the employees were right to do so when the claimant asked for clarification. The respondent increased the individuals' hourly rates to reflect the pay they were earning per hour in the 'housing' lot. The respondent had assumed the hourly rate in the ELI was the correct lot for the site, and so it was as a matter of fact paying more for the salary of these two than it had anticipated from the ELI.

12. In April 2024, one month after the employees transferred, the living wage that the claimant was obliged to pay the Cleaner was raised to £13.00 per hour. I find that this was the minimum the respondent would be required to pay. The respondent chose instead to increase all salaries by a %, and so further inflated the Cleaner's salary. Mr Isaiah sought to persuade me that this was in line with a requirement of the contract. The contract was not provided to me, and so I do not find this fact.

13. In September 2024, the Supervisor left the claimant's employment. Their replacement earns 50p per hour more than the Supervisor did. Mr Isaiah told me that this was because of the commercial pressure to get a replacement at short notice, the Supervisor having left without giving notice. The Cleaner has also since left the respondent's employment and has been replaced by someone also being paid the living wage of £13.00 per hour. I do not find that either of the two employees subject of this dispute left because of any actions of the respondent.

14. The claimant also asserted that the respondent should pay it the sum of £3,000 to cover management costs, and £5,000 in respect of legal and administration costs. There was no evidence in the bundle supporting Mr Isaiah's assertion that these costs were losses caused to the claimant by the respondent.

15. Since the dispute arose, the claimant has sought to fix the responsibility to cover the cost of the hourly rate discrepancy for the full five years of the contract regardless of the living wage rise or the fact that the individuals left employment. I find that the respondent has taken no steps to mitigate its potential losses because it chose to replace the staff, including a higher supervisor cost, and I have been shown no evidence that the claimant considered a restructure to close the gap between what it is paying out in transferred staff costs and what it expected to pay out in transferred staff costs.

Relevant law

16. This case centres on whether the ELI meets the definition found at *Regulation 11(2) Transfer of Undertakings (Protection of Employment) Regulations 2006*. That definition requires the transferor to send the transferee the following information:-

    16.1. The identity and age of the employee (*Reg 11(2)(a)*);

    16.2. *"those particulars of employment that an employer is obliged to give to an employee pursuant to section 1 of the 1996 Act"* [ie. *Employment Rights Act 1996*] (*Reg 11(2)(b)*);

    16.3. Disciplinary or grievance processes involving the employee over the previous 2 years (*Reg 11(2)(c)*);

    16.4. Information about any relevant Employment Tribunal proceedings (*Reg 11(2)(d)*); and

    16.5. Information about any relevant collective agreement (*Reg 11(2)(e)*).

17. The claimant considers the respondent provided all of the information save for it failed to give accurate particulars of employment stipulated by *Reg 11(2)(b)*. That

references the definition found at *s1 Employment Rights Act 1996*, which requires an employer to give the employee a statement setting out the following points which were argued before me in this claim:-

17.1. *"the scale or rate of remuneration of the method of calculating remuneration" (s1(4)(a))*, and

17.2. *"the intervals at which remuneration is paid…" (s1(4)(b))*.

18. If the Tribunal finds breach of *Regulation 11*, then *Regulation 12* outlines the remedies available. These are a mandatory declaration of breach (*Reg 12(3)(a)*) and a discretionary award of compensation (*Reg 12(3)(b)*). In terms of amount of award, *Reg 12(3)(4)* and *(5)* provide:-

> *"(4) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances, subject to paragraph (5), having particular regard to –*
>
> *(a) Any loss sustained by the [claimant] which is attributable to the matters complained of; and*
>
> *(b) … [not relevant]*
>
> *(5) … the amount of compensation awarded under paragraph (3) shall not be less than £500 per employee in respect of whom the transferor has failed to comply with provision of regulation 11, unless the Tribunal considers it just and equitable, in all the circumstances, to award a lesser sum."*

19. There is not much case law authority available applying these principles. The claimant sought to persuade me there was applicable authority from *Allen v Amalgamated Construction Co. Ltd [1999] CJEU C-234/98*. That case concerns intra-group transfers and does not appear to me to be relevant on the question of losses in terms of making precedent. The claimant also directed me to *Capita Hartshead Ltd v Byard UKEAT/445/11/RN*, but that case is about redundancy and does not concern *TUPE* at all. After submissions, Mr Isaiah sent me a link to commentary the Scottish law case *Hynd v Armstrong*. That case concerns unfair dismissal around *TUPE*, which this case is not about.

20. I was most concerned by apparent reliance on the unreferenced case of "*CAPITA v Christou*", which was said to be authority for the proposition that legal and other consequential losses can be awarded under the just and equitable remedy. Mr Isaiah was unable to send me that case in any form, despite telling me he had tried to do so. I cannot find such a case, and I am left wondering whether this case is an invention by the claimant or perhaps an artificial intelligence platform. As I explained in the hearing, I cannot apply authority which I have not seen.

21. The Employment Tribunal dealt with a similar case to this in *G4S Secure Solutions (UK) Ltd v Carlisle Security Services Ltd [3400150/14]*. In that case, the claimant sought to recover wages shortfall from an error for the entirety of the contract. The

Tribunal declined to make an award because the contract price had been set by the relevant local authority, who had also provided the financial information about the cost of the contract. The Tribunal considered that there was no loss attributable to the actions of the respondent in that case because the price was the price and it was fixed before the ELI in that case was sent. The Tribunal did award the minimum award of £500 per affected employee on the basis there was an administrative cost arising from the error. This is not binding authority on me, but it applies the regulations to well settled principles of compensation and so I consider it is persuasive.

22. The Employment Tribunal also considered the minimum award in *Eville and Jones (UK) Limited v Grants Vetinary Services Limited (in Liquidation) [1803989/12]*. There, the Tribunal found losses had been caused by the respondent in the sum of £42,000. It awarded £500 per affected employee, which in that case amounted to £65,000. It did so on the basis that the minimum award is intended to have a punitive effect for not complying with the *TUPE* regulations. Again, this is not binding, but it is persuasive to see how colleagues have applied their minds to these regulations.

23. Another source of guidance about how the regulations were expected to be enforced is the relevant BIS Guide (*Employment Rights on the Transfer of an Undertaking, June 2009*), which says at page 33 that the Tribunal may decide to award less than the minimum sum for breaches which are *"trivial or unwitting breaches of the duty"*.

Discussion and conclusions

Primary finding of no breach

24. The claimant has pursued an aggressive case in respect of this litigation, arguing that it should be awarded compensation on bases that appear at first glance to be not properly arguable. In truth, in my view, the misinterpretation about application of legal principles extends to the basis of the claim itself. The claimant simply considers that the ELI has inaccurate data in it which it relied on, and which has meant it has had to pay a higher salary to two employees than it was expecting when compared to its interpretation of that data.

25. There are a few problems with this approach to the dispute. The first is that *Regulation 11* does not require a transferor to give information in a form which the transferee can simply lift into its own processes and interpret correctly. The requirement is to send particulars of employment of the employees as it is required to give those employees by *s1 Employment Rights Act 1996*. The respondent paid those employees a salary on a monthly basis on the basis of consolidated work across both sites. The respondent gave that salary information accurately, because the terms and conditions between the respondent and those employees was precisely as was put across. There was a salary and total hours, which broke down to the hourly rate disclosed.

26. In my judgment, the fact that the claimant was taking over part of the work at a differing rate compared to the other part is not caught by the requirements of *Regulation 11*. Those requirements were fulfilled by the respondent. It provided the information it was required to. The rate itself, which I referred to as 'inaccurate' in the

hearing, was not inaccurate at all. It was the contractual rate which the respondent paid those individuals overall.

27. It follows that there is no breach of *Regulation 11*. The regulation simply does not require the respondent to give the claimant the broken down and accurate information in respect of pay for those employees for the part of the job the claimant was taking over. Against that analysis, the respondent has in fact assisted the claimant by providing an explanation for the ELI information in the accompanying letter. That letter made clear that the contract information provided was a consolidated set of information (as is required), and so it follows that the precise pay information would need to be calculated as part of an onboarding process.

28. Consequently, where there is no breach, there can be no remedy. This means the claim is dismissed.

Requested analysis of remedy in the alternative

29. For completeness, having heard the evidence and considered the submissions and understanding that the claimant intends to appeal the primary finding, I remark as follows about remedy:-

    29.1. The contract price was fixed prior to the ELI being shared. There is therefore no scenario where the respondent has caused the claimant losses by providing inaccurate information, even if the information was inaccurate. The price is the price. The employee cost is the employee cost. There can be no evidence that the claimant would have acted differently if the correct liability was known because the liability was not known at all under the *TUPE* ELI process when the claimant agreed to perform the contract; and so -

        29.1.1. Even if there was initial loss attributable to the respondent in March 2024 (which there is not), then the Cleaner's wage would have increased to £13.00 per hour by legislation anyway in April 2024. There would be a shortfall for March 2024 of about £17, but the respondent would have been forced to increase its wage to the Cleaner from then on. In my judgment, it would not be just and equitable for the respondent to pay any further uplift where the claimant chose to further increase pay;

        29.1.2. The total 'loss' in relation to the cleaner is therefore fixed at around £17;

        29.1.3. The Supervisor left employment in September 2024, and the claimant chose to recruit a replacement on enhanced terms for reasons which are not caused by the respondent. In my judgment, it would not be just and equitable for the respondent to pay any further uplift where the claimant chose to replace that individual on enhanced terms;

        29.1.4. The total 'loss' in relation to the cleaner is therefore around £570.

    29.2. If there had been a technical breach of *Regulation 11* caused by partially inaccurate information (which there was not), and that caused no loss as I have outlined would be the case, then the question is whether it is not just and equitable to award £1,000 as a minimum compensation. Here, I consider that

the breach would be unintentional and trivial. I also accept there is a punitive element to ensure ELIs are accurate. I consider that it would not be just and equitable to award the minimum amount in this case, and a reduction would be applied. I would award an amount more than nil but less than the approximately £590 loss that I consider would have been caused. It would seem sensible to award an amount which might cover the claimant's cost of the initial conversation to clarify the correct pay amount. I have no evidence about that but would assess the just and equitable compensation for that step to be £250.

30. My judgment does not consider compensation for costs specifically. Where there is no compensation awarded, it cannot be considered. I am not persuaded by the claimant I could have considered costs as part of the award. Any costs consideration must follow a specific application as is outlined in the *Employment Tribunal Procedure Rule 2024*.

31. The claimant of course has a right to appeal. I do urge the claimant to consider proportionality when doing so. Even if there was found to be a breach of *Regulation 11* on appeal, then there is still a very significant difficulty in establishing loss caused by the respondent in circumstances where the price was fixed prior to the transfer being known which gave rise to the ELI process this claim is about. Is it proportionate to pursue an appeal at expense of further time and cost to parties, and the state, for the outside possibility of recovering an amount no more than £1,000?

Employment Judge Fredericks-Bowyer

22 April 2025

Judgment sent to the parties on
29 April 2025