EMPLOYMENT TRIBUNALS

Claimant:	Mr J Mattis	
Respondent:	Cleaners Clean	**R1**
	Ashley Cleaning Services Ltd	**R2**
	Albion & East Limited t/a Martello Hall	**R3**
	CC Commercial Cleaners Limited	**R4**

Heard at: Watford Employment Tribunal (in public; in person)

On: **30 May 2025**

Before: Employment Judge Quill (sitting alone)

Appearances

For the claimant:	Mrs J Mattis (family member)
For R1:	No appearance or representation
For R2:	Mr J Brotherton, non-practising solicitor
For R3:	Mr D Flood, counsel
For R4:	No appearance or representation

JUDGMENT

(1) The claim against R2 is not struck out.

(2) The claim against R3 is not struck out.

(3) R3's application for what it referred to as a "default judgment" is refused.

REASONS

Introduction

1. This public hearing was attended by three of the parties (the Claimant, R2 and R3) only).

2. R1 and R4 had previously been sent the claim form, and the respective time limits in which to submit a response to the claim had expired. They were notified of this hearing, but did not attend.

3. R5 had not previously been part of the litigation. R5 had not been sent a copy of the claim form or a notice of hearing. R5 was added as a respondent during the course of this hearing after R2's and R3's applications had been decided.

The Claims and Issues

4. A separate document with case management summary and case management orders has been sent. That identifies the procedural history and the parties' respective positions in relation to the claims that have been presented.

5. As noted in that document, the Claimant has brought claims which allege unfair dismissal and entitlement to redundancy payment (and, arguably, failure to give notice of dismissal). He has not presented claims which allege breach of the TUPE inform/consult obligations.

The Hearing and the Documents

6. The parties provided me with a hearing bundle of 196 pages. Within it there were documents described as witness statements. There was also a copy of the orders from the 20 February 2025 hearing which had scheduled this public preliminary hearing.

7. Those orders had mentioned:

> 3. The hearing will consider the application of;
>
> 3.1. R2 to be removed from the case (Application dated 12 August 2024)
>
> 3.2. R3 to be removed from the case (Application dated 8 July 2024)
>
> 3.3. Any further case management orders.

8. The applications mentioned were at [Bundle 76] and [Bundle 66 to 67].

9. R2 made its oral submissions first, followed by R3, followed by the Claimant.

10. During their submissions, I asked each of R2 and R3 if they were making an application that the claim against it should be struck out under Rule 38 (on the basis that the claim against it had no reasonable prospects of success) or for anything else.

10.1 R2 confirmed that it was making that application only.

10.2 R3 confirmed that it was making that application, but also that it relied on Rule 35.

11. In other words, neither of those parties suggested that I should be deciding a preliminary issue. It would therefore have been inappropriate to hear witness evidence, and I did not do so (though all three parties had brought the witnesses whose statements appeared in the bundle).

12. I informed the parties that if I did not strike out the claims against R2 and/or R3, then I would, of my own initiative, consider whether to make a deposit order instead. For that reason, I asked the Claimant and his representative about the Claimant's ability to pay, and invited submissions generally on the point.

13. After I had given my oral decisions with reasons (which were to decline to strike out any part of the claim, and to decline to make any deposit order), R3 made a further application, which is discussed below. That was refused.

14. Written reasons were requested, and this document contains those reasons.

The Law on Strike Out / Deposit Orders

15. Rule 38 deals with strike out.

> **38.— Striking out**
>
> (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;
>
> (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
>
> (d) that it has not been actively pursued;
>
> (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
>
> (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

16. Strike out is a "[Draconian] power, not to be too readily exercised." (Blockbuster Entertainment v James [2006] IRLR 630).

17. Rule 38(1)(a) covers situations which relate to the substantive merits of the claim itself. The other 4 sub-paragraphs do not deal with the merits of the underlying claim, but rather with the way in which the litigation (for the specific claim or claims in question) has been pursued.

18. Rule 38(1)(e) is a freestanding ground for strike out, and can potentially apply even if none of the conditions in Rules 38(1)(b) to (d) are met. Where, however, the conditions in any of the Rules 38(1)(b) to (d) are met, the issue of whether there could, nonetheless, still be a fair trial is likely to be a relevant consideration.

19. Similarly, Rule 38(1)(d) is a freestanding ground for strike out, and can potentially apply even if none of the conditions in Rules 38(1)(b) to (c) are met.

20. Striking out a claim of discrimination is a step which should only be taken in the clearest of cases: see Anyanwu & Another v South Bank University and South Bank Student Union [2001] ICR 391. The applicable principles were summarised in Mechkarov v Citibank N.A [2016] ICR 1121:

    20.1 only in the clearest case should a discrimination claim be struck out;

    20.2 where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;

    20.3 the Claimant's case must ordinarily be taken at its highest;

    20.4 if the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and

    20.5 a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.

21. As made clear in Mechkarov, while the general rule is to proceed on the assumption that – for each disputed fact – the Claimant will succeed in proving that fact, the other parties might be able to show that there is no reasonable prospect of one or more of the facts necessary to find liability being established. The court of appeal pointed out in Ahir v British Airways [2017] EWCA Civ 1392 that, in such circumstances, a decision to strike out might be made, provided that the tribunal is keenly aware of the danger of deciding there is no reasonable prospect of a particular fact being established in circumstances where the full evidence has not been explored.

22. While Tribunals must take extra care before striking an Equality Act complaint, that does not imply either that such a case can never be struck out, or that striking out other types of complaint can be done lightly.

22.1 In Community Law Clinics Solicitors Ltd & Ors v Methuen UKEAT/0024/11, it was stated that in appropriate cases, claims should be struck out and that "*the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail*."

22.2 In ABN Amro Management Services Ltd v Hogben UKEAT/0266/09, it was stated, "*If a case has indeed no reasonable prospect of success, it ought to be struck out*."

23. In Cox v Adecco UKEAT/0339/19/AT, the Employment Appeal Tribunal reviewed the case law and gave some important guidance. It is always necessary for the judge/tribunal to be sure that they understand the party's case properly, before deciding whether to strike out. It is always necessary to take account of the overriding objective; ensuring that parties are on an equal footing may require active consideration of the principles in the Equal Treatment Bench Book, and any other appropriate guidance. In Cox, the following principles were suggested:

(1) No-one gains by truly hopeless cases being pursued to a hearing;

(2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;

(3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;

(4) The Claimant's case must ordinarily be taken at its highest;

(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;

(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;

(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;

(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents

> in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;
>
> (9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

24. Rule 40(1) of the Employment Tribunal Rules of Procedure 2024 deals with deposit orders.

> (1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").

25. In summary, that means that where the tribunal considers that any specific allegation or argument in a claim has little reasonable prospects of success, it may make an order requiring the party to pay a deposit not exceeding £1000 as a condition of continuing to advance that allegation or argument.

26. If the criteria set out in Rule 40(1) are not met, then no deposit order can be made. However, if the criteria are met, then it does not follow that a deposit order necessarily should be made. A judge should decide whether or not a deposit order is appropriate taking account of all relevant factors (and ignoring irrelevant ones). In an appropriate case, the consideration can include an assessment of how likely it is that a claimant will be able to prove disputed facts, but only where there is a proper basis for doubting the likelihood of the claimant being able to establish such essential facts.

27. The rule also requires that the tribunal shall make reasonable inquiries into the paying party's ability to pay the deposit and have regard to that when deciding the amount of the deposit.

28. The making of deposit orders, in appropriate cases can be in the interests of justice, because claims or defences which have little prospects of success cause costs to be incurred and time to be spent by the opposing party, when it is likely that this is unnecessary.

29. If the Tribunal's assessment is that a complaint will fail even if all the facts alleged by the Claimant are proven, then it follows that that particular complaint will have little reasonable prospects of success.

30. However, the tribunal can also take into account the likelihood of the Claimant proving facts which are in dispute. The assessment of whether there are "little reasonable prospects of success" can take into account both the factual and legal matters which the tribunal will have to determine at the final hearing. There would

have to have a proper basis for doubting the likelihood of the Claimant being able to establish the facts essential to the claim. However, the tribunal is not obliged to make an assumption, in the Claimant's favour, that the Claimant will be able to prove every factual assertion. The requirement to show that there are "little reasonable prospect of success" is not as exacting as the requirement to show "no reasonable prospect".

31. A tribunal can order a deposit in circumstances where strike out – under Rule 37(1)(a) - would be inappropriate.

The Law on unfair dismissal, redundancy payments and TUPE

32. The right not to be unfairly dismissed is set out in Part X the Employment Rights Act 1996 ("ERA") and in Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

33. The right is one which applies to an "employee".

33.1 As per section 230 ERA:

> (1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
>
> (4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

33.2 As per Regulation 2 of TUPE:

> "employee" means any individual who works for another person whether under a contract of service or apprenticeship or otherwise but does not include anyone who provides services under a contract for services and references to a person's employer shall be construed accordingly;

34. A complaint of unfair dismissal can only succeed against the "employer". In other words, if there is a dispute about the identity of the employer then that dispute has to be resolved as part and parcel of deciding whether the complaint of unfair dismissal succeeds.

35. The effective date of termination also has to be established for two reasons:

35.1 If there has been no dismissal, then the complaint cannot succeed.

35.2 The complaint has to be presented within the relevant time limits, which are defined by reference to the effective date of termination.

36. Regulation 3 of TUPE defines a "relevant transfer". When there is a relevant transfer then, an employee's contract of employment can transfer from one

employer (the Transferor) to another (the Transferee). The employee can prevent the automatic transfer of their contract of employment by objecting. However, when the relevant criteria are met, neither the Transferor or Transferee has the right to opt out of the consequences of TUPE.

37. Regulation 3 defines two different types of "relevant transfer". The definitions are not mutually exclusive:

> **3.— A relevant transfer**
>
> (1) These Regulations apply to—
>
> (a) a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;
>
> (b) a service provision change, that is a situation in which—
>
> (i) activities cease to be carried out by a person ("a client") on his own behalf and are carried out instead by another person on the client's behalf ("a contractor");
>
> (ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf; or
>
> (iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf, and in which the conditions set out in paragraph (3) are satisfied.
>
> (2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.
>
> (2A) References in paragraph (1)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.
>
> (3) The conditions referred to in paragraph (1)(b) are that—
>
> (a) immediately before the service provision change—
>
> (i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;
>
> (ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and
>
> (b) the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.

38. The conditions for the first type of “relevant transfer” are that an economic entity retains its identity before and after the transaction (or series of transactions) that effect the transfer of the entity to another person. The employees who transfer are those who were assigned to that economic entity immediately before the transfer [Regulation 4(1) TUPE].

39. The conditions for the second type of “relevant transfer” (a “service provision change”) are that:

39.1 There are some “activities” which are the same, or fundamentally the same, before and after the transfer

39.2 Immediately before the transfer, there was an organised grouping of employees

39.3 The principal purpose of that organised grouping was to carry out the “activities”

39.4 The activities were on behalf of a client, and the effect of transaction (or series of transactions) was such that:

39.4.1 The client (the Transferor) had been performing the activities, and ceased doing so, and had them carried out by a contractor (the Transferee) on its behalf.

39.4.2 The client (the Transferee) had been using a contractor (the Transferor) to perform the activities, and ceased doing so, and carried out the activities itself on its own behalf.

39.4.3 The client (which is neither Transferor nor Transferee in this scenario) had been using an existing contractor (the Transferor) to perform the activities, and ceased doing so, and had the activities carried out by a “subsequent contractor” (the Transferee) on its behalf instead.

40. For a service provision change type transfer, the employees who transfer are those who were assigned to the organised grouping of employees immediately before the transfer.

41. After the transfer, by virtue of Regulation 4(2) TUPE:

> (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and
>
> (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

42. Regulation 7 specifies

> **7.— Dismissal of employee because of relevant transfer**
>
> (1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee is to be treated for the purposes of Part 10 of the 1996 Act2 (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.
>
> (2) This paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.
>
> (3) Where paragraph (2) applies—
>
> (a) paragraph (1) does not apply;
>
> (b) without prejudice to the application of section 98(4)3 of the 1996 Act (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal)—
>
> (i) the dismissal is regarded as having been for redundancy where section 98(2)(c) of that Act applies; or
>
> (ii) in any other case, the dismissal is regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.
>
> (3A) In paragraph (2), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).
>
> (4) The provisions of this regulation apply irrespective of whether the employee in question is assigned to the organised grouping of resources or employees that is, or will be, transferred.

43. Part XI of ERA sets out the circumstances in which an employee is entitled to receive a statutory redundancy payment. Apart from the specific circumstances in which the Secretary of State makes the payment, only the employer is liable to make the payment. Thus any decisions made by a Tribunal (under sections 163 and 164 ERA) require the Tribunal to identify the employer.

Respondent's failure to present a response to a claim

44. When no response has been submitted/accepted, decisions affecting that respondent can be made in accordance with Rule 22.

45. A decision might be made without a hearing, in which case the claimant(s) and the respondent(s) will each receive a copy of the decision. If (but only if) a hearing is arranged, the Tribunal will provide the respondent with notice of the hearing but the respondent may only participate in any hearing to the extent permitted by the Tribunal

46. Rule 22(2) specifies:

> (2) The Tribunal must decide whether on the available material (which may include any further information which the parties are required by the Tribunal to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Tribunal must issue a judgment accordingly, otherwise, a hearing must be fixed. Where the Tribunal has directed that a preliminary issue should be determined at a hearing, a judgment may be issued by the Tribunal under this rule after that issue has been determined without a further hearing.

47. It is an error of law for a judge to enter judgment simply because the claim is undefended: Limoine v Sharma UKEAT/0094/19. The Tribunal must give appropriate consideration to the matter. The Tribunal is not obliged to seek to challenge the factual assertions made by the claimant. However, it is required to apply the law in order to decide whether the factual assertions made by the claimant entitle the claimant to the remedy sought.

The Relevant Background and the Parties' Submissions

48. The separate case management summary / case management orders document summarises the parties' positions as follows:

48.1 For several years, up to 30 August 2023, the Claimant was employed by R2. R2 had a contract to do cleaning for R3.

48.2 It does not seem to be in dispute that the Claimant was the only employee of R2's who carried out cleaning on behalf of R3.

48.3 The Claimant alleges (and R2 and R3 seem to agree) that, on 31 August 2023 or thereabouts, the Claimant attended R3's premises to perform his shift, but met someone there who said that he was the Claimant's replacement.

48.4 R2 alleges (and the Claimant seems to accept) that R2 had informed the Claimant previously that R2 had lost the contract, and that R2 anticipated that TUPE would apply, and that R2 believed that the Claimant's contract of employment would transfer to a new provider.

48.5 It does not appear to be alleged by R2 or by R3 that the Claimant was actually notified of the identity of the new provider (if any) before around September 2023.

48.6 There may or may not be a dispute between the Claimant and R2 and R3 about exactly what "activities" were performed by R2 on behalf of R3 up to 30 August 2023. In general terms, it is agreed as "cleaning", but the parties may need to focus on the type of cleaning, and the specific requirements of the contract. The number of hours per day/per week may or may not be important. Who purchased equipment and supplies may or may not be important. However, if

there is a dispute about whether TUPE applied to the cessation of the contract between R2 and R3 then there will need to be an assessment of whether the "activities" were the same before and after the transfer.

48.7 On R3's case, it did not bring the cleaning in-house. It engaged a "subsequent contractor". R3 has struggled to identify the alleged contractor.

48.8 R3's case is that, for several years, it had contracted with Cleaners Clean Ltd, Company number 07237525 to clean some of its other premises. That company was dissolved on 16 October 2018.

48.9 The point of contact for Cleaners Clean Ltd (according to R3) was Quinn Williams, whose business card is shown at [Bundle 43] and whose email address was the same at all relevant times (including May to September 2023).

48.10 The business card mentioned Cleaners Clean (Commercial) Ltd. No company number was on the card, but the name matches that of company number 11672118, which was dissolved in 2021.

48.11 R3's position is that R3 had correspondence with Quinn Williams which led to R3 terminating its contract with R2 on the basis that someone else (not R3) would start doing the cleaning instead of R2. No company name was mentioned and no written contract was agreed. R3's case is that it thought it would be contracting with the company that already provided services to it (though that cannot have been Cleaners Clean Ltd, since it no longer existed).

48.12 Much of the correspondence simply referred to a business name of Cleaners Clean. Whether this is a trading name for an individual, a partnership or a company will remain to be determined. However, because the Claimant was told (by R2 in September 2023) that he had TUPE transferred to "Cleaners Clean" (on 31 August 2023), he named "Cleaners Clean" as R1. No formal decision has been made about the identity of "Cleaners Clean" / R1. It cannot be Cleaners Clean Ltd, Company number 07237525, or any other company that had been dissolved prior to the date on which (according to R3's position) R3 entered into a contract for a contractor to perform cleaning at the Martello Hall site.

48.13 R3 relies on invoices referring to "Company Registration Number: 11673238" as showing that the "subsequent contractor", immediately after 30 August 2023, was CCS Window Cleaners Ltd. That company name does not appear to have been mentioned in any correspondence or documents (including the invoices). It was dissolved in around April 2024.

48.14 R3 also relies on invoices that it alleges were from R4. Whether that is factually accurate and whether it has any legal significance are matters that will be decided in due course. However, in any event, R4 was incorporated on 1 June

2024, so many months after the end of the Claimant's employment and the end of the contract between R2 and R3. Any party who seeks to establish that R4 is liable to the Claimant will have to explain the legal theory on which the argument is based.

49. R2's position is that there is no reasonable prospect of a tribunal deciding that it is liable to the Claimant for either unfair dismissal or statutory redundancy payment (or for breach of contract, if that is one of the claims). The argument is that there are no reasonable prospects of a tribunal failing to decide that there was a relevant transfer such that R2 ceased to be the Claimant's employer and that the Transferee became the Claimant's employer. Thus, on R2's case, any and all liability that it might otherwise have had transfers to the Transferee, and the fact that the Transferee (whoever it might be) did not actually give work to the Claimant, or pay the Claimant, or acknowledge that it had become the Claimant's employer is irrelevant.

50. R2 does not positively seek to prove that R3 was the Transferee. However, it does not consent to R3's application. If the claim against R2 is not struck out, R2 argues that R3 should also remain as a party.

51. R3's position is that there is no reasonable prospect of a tribunal deciding that it is liable to the Claimant for either unfair dismissal or statutory redundancy payment (or for breach of contract, if that is one of the claims). The argument is that there are no reasonable prospects of a tribunal deciding that it became the Claimant's employer. Its primary position is similar to R2's, namely that the Claimant's contract of employment transferred – by operation of TUPE – from R2 to a another contractor. However, R3 argues that if, for any reason, TUPE did not have that particular effect, then TUPE certainly did not have the effect of transferring the Claimant's employment contract to R3. In particular, R3 argues that the contemporaneous documents (i) show that there is no reasonable prospect of a tribunal deciding that it brought cleaning in-house, and (ii) show that R3 was paying an outside contractor to do the work.

52. R3 does not positively seek to prove that R2 is liable to the Claimant. However, it does not consent to R2's application. If the claim against R3 is not struck out, R3 argues that R2 should also remain as a party.

53. The Claimant's position is that he is aware that R2 states that TUPE applies and that, therefore, R2 has no liability to him. He is aware that R2 has given him some information about the alleged Transferee, and that is the information he relied on when inserting details into sections 2.1 to 2.3 of the claim form. However, he has no way of verifying the identity of the alleged Transferee, and he does not claim to be familiar with the operation of TUPE. What he knows is that his employment has ceased, and no-one is accepting that they dismissed him or that they have any

liability to him even for (notice pay or) statutory redundancy payment, let alone for alleged unfair dismissal.

54. On 31 August 2023, he met someone who was doing his job. He does not know who that person was. He does not know what Quinn Williams looks like, and has no way of knowing whether the person doing his job was Quinn Williams. (For the avoidance of doubt, the Claimant has not sought to positively assert that the individual was Quinn Williams, and did not even raise it as a possibility; it was me who asked him if he knew the name of the person that he spoke to and if he knew what Quinn Williams looked like.)

Analysis and conclusions

55. I make no formal findings of fact that are binding at any later stage of the proceedings. I have taken into account the contents of the witness statements, and of the contemporaneous documents in the bundle, when analysing what each party is seeking to prove, and assessing their chances of doing so. However, I have not conducted a mini-trial over any issue.

56. The Claimant has better than little reasonable prospects of success of showing each of the following.

    56.1 That the claim was in time.

    56.2 That he had been an employee of R2 for more than 2 years.

    56.3 That he was dismissed by his employer (whoever that was).

    56.4 That the dismissal was unfair because of Regulation 7 of TUPE

    56.5 That the dismissal was unfair because of sections 94 and 98 ERA

    56.6 That he was entitled to a redundancy payment and did not receive it

    56.7 That he was entitled to notice of dismissal (or else to payment in lieu of notice, if it is shown that there was such a clause in his contract) and did not it.

57. In terms of the latter two:

    57.1 If it transpires that, in fact, the Claimant was directly replaced by one other employee doing the same job as he was, then that might mean that there was no redundancy. However, at the final hearing, the Tribunal will take into account any evidence on such matters, as well as the requirements of section 163(2) ERA.

    57.2 I have made no formal decision as to whether the claim form does, or does not, include a complaint of breach of contract.

58. None of the parties argue before me that the claimant's employment was still continuing as of the date the claim form was presented. There has been no suggestion that the claimant voluntarily resigned. There has been no suggestion that the claimant "objected" [as defined in Regulation 4(7) TUPE] to a transfer of his employment.

59. More generally, R2 and R3 did not rely on assertions that the Claimant was not unfairly dismissed by his employer (or not entitled to statutory redundancy payment, or to notice, from his employer) but rather asserted that there were no reasonable prospects of success of the Tribunal deciding that R2 (according to R2's submissions) or R3 (according to R3's submissions) was the employer.

60. R2's and R3's arguments are not identical to each other, though in each case their primary argument is that there was a "relevant transfer" (being a transfer which meets the definition of "service provision change", they each argue, though without conceding that there was no "economic entity" transfer) to another contractor.

61. So the hypothetical possibilities include:

    61.1 There was no TUPE transfer, and so R2 was the employer, and so the Tribunal would need to decide whether R2 unfairly dismissed the Claimant and whether R2 is liable to make a statutory redundancy payment to the Claimant (and/or pay damages for breach of contract).

    61.2 There was a TUPE transfer to one of R1, R3, R4. It follows that that respondent was the employer, and so the Tribunal will need to decide whether that respondent unfairly dismissed the Claimant and whether it is liable to make a statutory redundancy payment to the Claimant (and/or pay damages for breach of contract).

    61.3 There was a TUPE transfer, but not to R1, R3, or R4.

62. In terms of any argument that there was an "economic entity" that retained its identity after the (alleged) transfer, it would not be possible for me to conclude, at this stage, that a party relying on that argument has no reasonable prospects of success of persuading the Tribunal. It is certainly conceivable that that happened, but none of the three parties present – taking the facts which they allege at their highest – are in a position to know that. It is also conceivable that there was no "economic entity" that retained its identity after 30 August 2023, and so it would not be possible for me to conclude, at this stage, that a party relying on *that* argument has no reasonable prospects of succeeding in it.

63. In this case, what the parties focused on today (not surprisingly, perhaps) is the second type of relevant transfer which is a "service provision change" and that is defined as set out in the Law section above. Notably, there has to be "activities" that are done on a client's behalf. None of the three parties present argues that

R3 was doing the “activities” in-house up to 30 August 2023 and that it outsourced them on that date. Thus, if there was a “service provision change” type transfer at all, then it would have had to be either:

63.1 Current contractor to “subsequent contractor” type transfer, or else

63.2 Current contractor to client (insourcing) type transfer

64. The word “activities” is important to the definition within Regulation 3(1)(b) TUPE. As per Regulation 3(2A), references to the word “activities” are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.

65. So for contractor to contractor transfer or for bringing the activities back in house transfer, the activities done on the client's behalf, both before and after the transfer, would have to be fundamentally the same before and after.

66. That is not the only requirement. It is also necessary that - immediately before the transfer - there was an organised grouping of employees (situated in Great Britain, but that is not a disputed issue in this case), which has, as its principal purpose, the performance of the activities in question.

67. An organised grouping of employees can consist of just one person.

68. The wording of what is now Rule 38 of the 2024 rules has not changed in comparison to Rule 37 of the 2013 rules. Previous case law on strike out is still applicable and relevant.

69. Strike out is a Draconian power and it is not to be too readily exercised. While the Tribunal must not be overly reluctant to strike out when there is a proper basis for doing so, it is also important to remember that it is a discretionary measure, and the mere fact alone that one or more of the grounds in Rule 38(1) is met does not automatically and inevitably lead to the decision that the claim is struck out.

70. While I make no formal findings of fact, it is not in disputed by any of the three parties present that the Claimant worked as a cleaner, employed by R2, working at the premises of R3 for several years up to around 30 or 31 August 2023. None of the parties present dispute that the Claimant was the only operative employed by R2 for that particular purpose. The undisputed facts (that is, the facts not disputed between the parties who attended this hearing) seem to show that, immediately before 31 August 2023, there was an organised grouping of employees - which consisted one employee, namely the claimant - whose principal purpose was to carry out certain activities and that those activities were done by R2 on behalf of R3.

71. For present purposes, I am satisfied that there is no reasonable prospect of anyone showing otherwise. Further, for present purposes, I am satisfied that there are no reasonable prospects of anybody being able to show that R2 continued to perform those activities (on behalf of R3) from 31 August 2023 onwards.

72. If, from 31 August 2023 onwards, someone was performing "activities" that were fundamentally the same as the activities which R2 had been performing (on behalf of R3) up to 30 August 2023, then that might mean that there was a relevant transfer. It could be a relevant transfer to R3 if R3 was doing those same activities itself. It could be a relevant transfer to somebody else if somebody else was doing those activities on behalf of R3. That latter situation would be where there been a transfer of those same activities to a "subsequent contractor".

73. I will call the hypothetical "subsequent contractor" X for present purposes.

74. R2 will potentially be liable to the Claimant for the claims that he has presented (that is, R2 will be the Claimant's employer) if there was no TUPE transfer. It follows from what I have said above that R2 will potentially be liable if either

    74.1 The "activities" ceased completely (they were not done at all, by anybody) from 31 August 2023 or, alternatively,

    74.2 From 31 August 2023, the cleaning at R3's Martello Hall premises was performed such that the "activities" were not "fundamentally the same" as when R2 performed them.

75. If neither of those things are true (that is, if R2 is not liable to the Claimant because there was a TUPE transfer), it does not follow that R3 is liable. For R3 to be liable to the Claimant, it would not only have to be established that the cleaning activities at its premises were fundamentally the same from 31 August 2023 onwards. It would also have to be true that R3 was performing those activities on its own behalf. Put another way, even if the activities were fundamentally the same, R3 would not be liable to the Claimant (that is, R3 would not have become the Claimant's employer by operation of TUPE) if X was doing those activities on behalf of R3.

76. The mere fact alone that there was a contract between R3 and another party in relation to cleaning would not establish that a "subsequent contractor" had taken over the activities. If R3 had a contract with an individual for that individual to perform cleaning services on behalf of R3, then that would still leave open the possibility that that was a contract of employment. I reject R3's submission that the only way that the Tribunal could fail to decide that it engaged a "subsequent contractor" is if the Tribunal decides that the invoices in the bundle are some sort of forgery produced to try to deceive the Claimant and/or the Tribunal. (For the avoidance of doubt, the Claimant made no suggestion that the items were forgeries, and nor did he formally concede that they were "genuine". Entirely

reasonably, his stance is that he does not know what arrangements R3 had in place from 31 August 2023.) Employment status is a legal determination to be made by a court or tribunal. Neither the arrangements that the (alleged) contractor has with HMRC, nor the fact that the (alleged) contractor submitted invoices would prevent a decision that the individual was an "employee" of R3's if other factors, of sufficient weight, led to such a conclusion.

77. Some evidence has been produced by R3 and put in the bundle for today's hearing. Neither the Claimant nor R2 invited me to proceed on the basis that the authenticity of the documents is in dispute. According to the documents, R3 liaised by email with someone whose full email address is in the bundle, and which starts "Q.williams" and which includes "cleanersclean.com".

78. R3 had previously had an agreement with a company called Cleaners Clean Ltd. The hearing bundle (for example [Bundle 122 & 123]) gives some information about that arrangement from 2018. In particular, a quote was provided by a managing director of that company named Quinn Williams, whose telephone number and other details were given in the document.

79. On the face of the documents, R3 was liaising with the person with the email address Q.Williams during May to August 2023. There is no reasonable prospect of it being established that that individual was acting on behalf of Cleaners Clean Ltd at that stage because that company no longer existed. Although it will be a matter for legal argument at the final hearing, for present purposes my assessment is that there is no reasonable prospects of R3 showing that the Claimant's employer became Cleaners Clean Ltd, on or around 31 August 2023, given that the company ceased to exist around 5 years prior to that.

80. According to the written statement of Darren Rumbelow (which was not evidence given on oath), R3 alleges

> The new contractor – Cleaners Clean – commenced on 1 September 2023. (paragraph 8)
>
> It was understood between us and Mr Williams that this would be a continuation of the existing contracts we had with Cleaners Clean. (paragraph 11).

81. These assertions (especially that in paragraph 11) refer to [Bundle 119-125] as alleged supporting evidence. The facts (if true) that R3 had an arrangement with Cleaners Clean Ltd in 2018, and received a certificate of employer's liability insurance dated 11 October 2018, will not help R3 to show there was a "continuation" of existing contracts in circumstances in which that company was dissolved on 16 October 2018.

82. Further, the assertion that:

> Quinn Williams is the Managing Director of the organization that we know as "Cleaners Clean"

in the first part of paragraph 10 of Darren Rumbelow's statement has to be seen in light of the comments immediately after that, namely:

> – we provided his business card to the Employment Tribunal [page 41-43]. I note that Cleaners Clean (Commercial) Ltd, as named on the business card is dissolved.

83. In fact, that company was dissolved in 2021, and so there is no reasonable prospect, in my opinion, of R3 showing that there was a TUPE transfer to Cleaners Clean (Commercial) Ltd in 2023.

84. R3's argument for the identity of the Transferee includes, as written by Darren Rumbelow (and argued orally by its representative):

> 13. We have received monthly invoices from Cleaners Clean page 108-118. These are headed Cleaners Clean. The company registration numbers are for two limited companies – see the information obtained from Companies House at pages 126-134:
>
> a. 11673238 – CCS Window Cleaners Ltd (dissolved 23 April 2024)
>
> b. 15753849 – CC Commercial Cleaners Ltd (incorporated 1 June 2024)
>
> 14. ... If there are any issues with our cleaning at any units these are almost always communicated via WhatsApp as Mr Williams works throughout the night, making calls or in person meetings difficult.
>
> 15. To date, Quinn Williams remains the provider of our cleaning services under the trading name Cleaners Clean – at the sites that we continue to operate. Beyond the above information, I cannot clarify further the precise legal entity that provide our services. We have a longstanding relationship with Quinn Williams and his companies and employees have always provided a good service to us, we have had no reason to return to the contracts with him and as such the status quo remains. We continue to receive monthly invoices for the work done and these are paid.

85. In other words, R3's primary argument is that there was a TUPE transfer to a particular company, named CCS Window Cleaners Ltd. It has not produced any documents showing that that name was used in any of the correspondence it had about cleaning arrangements for Martello Hall. It is not a name which appears on the invoices. To the extent that R3 will be arguing, at the final hearing, that the mere fact alone that a company number (though not its name) appears on invoices shows that R3 entered into a contract with that particular company (as opposed to with an individual, or with a different company), I do not need to comment on the prospects of success. If the Tribunal decides that there was a relevant transfer, then it will need to decide the identity of the Transferee. However, deciding that there was a relevant transfer does not solely depend on the analysis of whether R3 contracted with a company, with an individual, or with nobody.

86. The business card on [Bundle 43] does show the same email address that was used between May and August 2023 for discussions about cleaning at Martello Hall. One possibility (as well as that put forward by R3, as mentioned above) is that Q Williams was negotiating a contract on behalf of himself as an individual, rather than on behalf of a company. R3 does not claim to have had a formal written contract (other than as shown by the emails and other documents in the bundle).

87. Arguments about whether or not there was any relevant transfer in around April, May or June 2024 (because of the assertion that one company was dissolved, and another company started sending invoices) does not help me to decide what happened on or around 31 August 2023. It is circular. If there was indeed a relevant transfer to CCS Window Cleaners Ltd on 31 August 2023, then there might have been a further relevant transfer (albeit not one which transferred the Claimant's contract of employment) when that company was dissolved. However, if there was no relevant transfer to CCS Window Cleaners Ltd on 31 August 2023 then the assertion that a different company started invoicing 10 months later is irrelevant to anything I have to consider today.

88. It is not the case that R3 has no reasonable prospects of showing at the R3 entered into a contract with CCS Window Cleaners Ltd - some time between May and August 2023 - for CCS Window Cleaners Ltd to start doing cleaning at R3's Martello Hall premises. However, just because R3 has reasonable prospects of showing that, it does not follow that the Claimant and/or R2 have no reasonable prospects of showing the contrary; there appears to have been no contemporaneous suggestion by R3, to either the Claimant to R2, that it had contracted with CCS Window Cleaners Ltd.

89. In any event, regardless of whether there was a contract with CCS Window Cleaners Ltd, or with another company, or with Quinn Williams as an individual, at the final hearing, the Tribunal will need to decide whether that contract was for "activities" which were fundamentally the same as those previously performed by R2.

90. If, hypothetically, there was a contract with Quinn Williams as an individual human being then it does not follow that R3 has no reasonable prospects of showing that Quinn Williams was a "subsequent contractor". R3 might be able to show that or it might not. Certainly, I take into account that the documents appear to show R3 was paying for cleaning services by invoice and that the correspondence that has been provided shows that Quinn Williams (who was not in attendance at the hearing, and who has not commented on the documents in the bundle) apparently provided a quote for cleaning services. These documents do tend to favour R3's assertion that Quinn Williams was not their employee. However, in all the circumstances, I am not satisfied that there are no reasonable prospects of it eventually being shown that Quinn Williams was an employee of R3's.

91. In any event, strike out is a discretionary remedy. The other parties before me today, the claimant and R2, do not know Quinn Williams. They have had no dealings with Quinn Williams. [I do not ignore the emails sent to Quinn Williams by R2 in September 2023, but there was no reply to those.] They have no knowledge of whether Quinn Williams does any work for any clients other than R3, or of any other facts that might be directly relevant to the Tribunal's decision about whether or not Quinn Williams was an employee of R3's or an independent contractor performing services for R3. (These are not the only two possibilities, of course; I am simply commenting on the further decision-making that will be required if it is established that R3 had a contract with Quinn Williams as an individual). My decision is that there are factual matters that need to be decided by evidence. The Tribunal will want to hear from witnesses, and listen to cross-examination, and ask its own questions. The Tribunal will weigh up all the relevant facts and arguments that any party (allowed to participate in the hearing) wishes to bring to bear in relation to points about any relevant matters, which might include:

    91.1 What work, if any, was performed by Quinn Williams for R3

    91.2 What work, if any, was performed by people paid by Quinn Williams

    91.3 What work, if any, was performed for R3 by a person paid by a company with which Quinn Williams is connected

    91.4 What work, if any, was performed by Quinn Williams for anyone other than R3

92. It is not the case that the claimant and/or R2 have no reasonable prospects of being able to show that there was a relevant transfer from R2 to R3 on 31 August 2023 and for that reason I do not strike out the claim against R3.

93. If I were to consider ordering any deposits in connection with that argument, then I would have to make a decision about whether the claimant pay a deposit and/or whether R2 pay a deposit. Deposits are discretionary. I do not think it is appropriate in the circumstances of this particular case to make an order that the claimant pay a deposit and nor do I think it is necessary or appropriate order that R2 pay a deposit in connection with the argument that there was a transfer to R3. Neither the Claimant nor R3 is in a strong position to know exactly what activities were performed, or in what manner, or by which person or persons, from 31 August 2023. These are questions that will need to be addressed at the final hearing in any event. If I made deposit orders, and they were not paid, the Tribunal would still have to analyse what actually happened. If the activities were not fundamentally the same, then the consequence would be that there was no relevant transfer, meaning that R2 would be potentially be liable to the Claimant for unfair dismissal and redundancy payments. However, even if the activities were fundamentally the same, the Tribunal will still have to identify the Transferee.

94. In my assessment, it is not the case that there are no reasonable prospects of the Tribunal deciding that there was no TUPE transfer (whether to R3 or anyone else). R3 is not seeking to rely on such an argument. However, of all the parties present at this hearing, R3 is in the best position to know what happened to the cleaning at Martello Hall from 31 August 2023 onwards. The documents in the bundle (many of which appear to be incomplete copies of the originals) do not persuade me that the only plausible outcome is that the Tribunal will decide that the "activities" for R3 (apparently) sought quotes from alternative contractors were identical to the "activities" which R2 was performing.

95. If there is a decision that that there was no relevant transfer then that potentially benefits R3 just as much (or more than) it benefits the Claimant. It is not appropriate to strike out the claim against R2 and nor do I think it appropriate to order any of the other parties to pay a deposit in relation to the argument that there was no TUPE transfer.

"Default judgment"

96. After the above decisions and reasons were announced, R3 asked for what it referred to as a "default judgment" against R4. The application was for a judgment that decided liability, and for orders to be made so that remedy could be decided in due course.

97. I mentioned that the phrase "default judgment" did not appear in the rules and that, in any event, I was not prepared to issue a judgment that R4 was liable to the Claimant for unfair dismissal and/or statutory redundancy payment, and that this was for the same reasons that I had already given when refusing to strike out the claim against R2 and refusing to strike out the claim against R3.

98. R3 suggested that it disagreed with this decision and/or that it thought it was highly unusual. It also suggested that my decision to decline to issue the requested judgment meant that R4 was suffering no consequences from its failure to submit a response.

99. A judgment that R4 was liable to the Claimant could only be given if I decided that R4 was the Claimant's employer at the relevant time. The consequences of such a decision would be that I was therefore deciding that neither R2 nor R3 (nor R1 nor anyone else) was the Claimant's employer at the relevant time. Even on the assumption that the procedural requirements were met for me to make such a decision (under Rule 22) at this hearing, I am not satisfied that a decision that R4 was the Claimant's employer should be made without a hearing at which there is evidence from witnesses, and at which R3 supplies documents which are full copies of the originals, or else provides an explanation for why it cannot do so.

100. It is R3's contention (rather than the Claimant's or R2's) that R4 is the appropriate respondent. Though I am making no formal the findings of fact, on the basis of the

documents shown to me and discussed during this hearing, it appears that R4 was incorporated several months after the date on which the Claimant was dismissed by his employer. R3's arguments that R4 should be liable to the Claimant can be dealt with on the merits in due course. However, it is not obvious on the papers that the fact (assuming it to be true, for present purposes) that R4 started to pay invoices bearing the company number (though not name) of a company incorporated around 1 June 2024 means that that company unfairly dismissed the Claimant, or dismissed him by reason of redundancy, or that it has acquired liability (by operation of TUPE or otherwise) for any matters arising out of the Claimant's dismissal.

101. Subject to Rule 21, Rule 22 will govern R1's and R4's participation (if any) in the litigation as it continues. I therefore do not necessarily agree with R3's characterisation that the decision to refuse to issue a "default judgment" means that R4 suffers no consequences from failing to submit a response on time (or at all). However, even if I believed that R3's characterisation was correct, then, as per Limoine, it would be an error of law to issue a judgment against a particular party simply because that party had failed to submit a response which complied with the rules.

Employment Judge Quill

Date: 15 June 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

27/6/2025

FOR EMPLOYMENT TRIBUNALS