



EMPLOYMENT TRIBUNALS

Claimant: Mr Andrew Jarvis

Respondents: (1) Charnwood Borough Council
(2) Capita Business Services Ltd

On: 16, 17 and 18 February 2026

Before: Employment Judge Ahmed (sitting alone)

At: Leicester

Representation

Claimant: Mr Connor Wright of counsel
Respondent: Mr Anthony Johnston of counsel

RESERVED JUDGMENT

The decision of the Tribunal is that:

1. The claim against the Second Respondent is dismissed upon withdrawal;
2. The complaint of breach of contract is dismissed upon withdrawal;
3. The complaint of automatic unfair dismissal pursuant to regulation 7(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 is dismissed
4. The complaint of 'ordinary' unfair dismissal is dismissed.

REASONS

1. In these proceedings the Claimant brings complaints of automatic unfair dismissal pursuant to Regulation 7(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and 'ordinary' unfair dismissal.
2. The claim against the Second Respondent was withdrawn earlier on 21 May 2025. However there does not appear to be any formal judgment dismissing the Claim against the Second Respondent and therefore I take this opportunity to do so now.

3. The complaint of breach of contract was withdrawn at the commencement of this hearing.
4. In coming to my decision on the remaining complaints I have taken into consideration the oral evidence of the witnesses, the documents in the agreed bundle, the written skeleton arguments and oral submissions from counsel on both sides, to whom I am grateful.
5. I heard oral evidence from the following:
 - 5.1 Mr Andrew Jarvis, the Claimant;
 - 5.2 Ms Judith Keech, formerly Operations Director and latterly Account Director of Capita Business Services (“Capita”);
 - 5.3 Mr Craig Lucas, HR Business Partner of Capita;
 - 5.4 Ms Karey Summers, Director of Customer Experience at Charnwood Borough Council (“Charnwood BC”);
 - 5.5 Ms Anna Cairns, HR Manager with Charnwood BC;
 - 5.6 Mr Robert Mitchell, Chief Executive of Charnwood BC.

THE FACTS

6. The facts of the case are not unless otherwise indicated in dispute.
7. This is a rather unusual case where the Claimant’s employment began and ended on the same day, 1 November 2024. There is no dispute that there was a transfer of employment from the Second to the First Respondent by virtue of TUPE . The primary issues are whether the dismissal was for an economic, technical or organisational reason entailing changes in the workforce (“ETO reason”), and if not whether automatically unfair, or whether the dismissal was unfair on ordinary principles. The reason relied on for the dismissal is ‘Redundancy’ or in the alternative ‘for some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held’ (“SOSR”). The remaining issues flow from those primary areas of dispute.
8. Mr Jarvis began his employment with Capita as a Contract Manager on 1 April 1994. He was assigned the role of Group and Benefits Manager. This was a fairly senior role attracting a salary, at the time of termination, of approximately £51,600 per annum.
9. Since 2010 Charnwood BC had outsourced its Revenue and Benefits Service to Capita. The Claimant managed Capita’s contractual obligations with Charnwood BC liaising with officers of the Council. There were regular meetings to review the performance of the service contract and to ensure Capita met agreed performance levels.
10. In 2023 following local elections a decision was made by the new leadership to bring the Revenues and Benefits Service in-house. This was part of a manifesto commitment to bring outsourced services back in-house where practicable.
11. Ms Summers was assigned to take the lead in transitioning the Service back to Charnwood BC. In that task she was assisted in particular by Ms Anna Cairns, an

HR Manager. Ms Summers' opposite number at Capita was Ms Keech. There were several conversations and meetings over the transition period between the two. There is an allegation that in one of these conversations or meetings Ms Summers is alleged to have said to Ms Keech that the Council did not want the Claimant transferred as his salary was too high. I do not find that such a conversation took place firstly because the cost of bringing services in-house would not have been known at that stage and secondly, as it ultimately proved the cost was higher.

12. However, I do accept that in a later discussion Ms Summers did say to Ms Keech that she did not think that the Contract Manager role (the role being undertaken by the Claimant) should transfer as there would be no contract to manage. On the facts known at the time it was an understandable position to take.

13. In due course, Charnwood BC advertised for the role of a Revenue and Benefits Manager. On 10 October 2023 Ms Keech told Ms Summers that the advertisement was not appropriate at that stage as she expected the Claimant to be TUPE transferred. Ms Summers decided to put the advertisement on hold pending discussions with Capita as to the Claimant's specific duties so as to compare them with the services the Council required.

14. In pursuance of those enquiries Ms Summers asked Capita for a job description or person specification for the Contract Manager role. What Capita provided instead was a role-mapping document which, as later became clear, was a document prepared by the Claimant himself.

15. On 13 October 2023, the Respondent received a document purporting to be a job description. There was no date on the document. Ms Summers had doubts about it being a contemporaneous document in the sense that it appeared to have been created as a result of the recent discussions rather than having existed at the outset of the Claimant's employment. I am satisfied after hearing the evidence that this document was created around the time of the enquiries which was reason for the delay in providing it.

16. In November 2023 there were discussions around the Claimant being seconded to Charnwood BC but these did not materialise into anything productive. To secure expertise during the transition period Charnwood BC appointed a Consultant, Mr Robert Fox, as an Interim Revenues and Benefits Manager. In due course Mr Fox advised Charnwood BC that the role could not realistically be performed by one manager but required two full time staff.

17. It was also identified that another employee of Capita, Ms Lowe, acted as a Benefits Manager providing support to the Claimant during the currency of the contract. Ms Lowe would not however be among those employees who were transferring.

18. At a meeting with Ms Keech on 10 July 2024, Ms Summers made it clear that the Claimant's current role was not one which would be part of the Council's structure and that there would be consultations with the Claimant to discuss his position.

19. On 31 July 2024 Charnwood BC's Chief Executive Officer obtained internal authority to establish two permanent posts to fulfil the responsibilities of bringing the

service in-house. These were the roles of a Benefits Manager and a Revenue Manager. The salary bands for the posts were £41,418.00 - £44,428.00 each.

20. On 3 September 2024 Charnwood BC held the first redundancy consultation meeting with the Claimant. There is no note of the meeting. There is nothing to suggest however that the Claimant expressed any interest in either of the two new roles or seek to challenge the assessment made by Charnwood BC as to the comparability of the advertised roles to his. Had he done so I would expect there to have been some follow-up.

21. On 24 September 2024, a second consultation meeting took place. There are only very brief notes of the meeting but they do suggest that the Claimant's primary concern was the calculation of his financial entitlement on redundancy rather than the comparability of the new roles to his existing role. The Claimant was keen to become a Charnwood BC employee prior to any dismissal as that would mean a significantly enhanced redundancy payment on Charnwood BC terms rather than Capita's terms.

22. On 18 October 2024 Charnwood BC held the third and final consultation meeting with the Claimant. The Claimant's focus again appears to have been on the amount of the redundancy payment rather than comparability of roles.

23. On 21 October 2024 the Claimant was issued with a notice of redundancy to take effect on 1 November 2024. As mentioned earlier that was also the date of the Claimant's transfer of employment.

24. Although the Claimant appealed against his dismissal on 22 October he was informed, correctly, that the appeal could not be processed until after the transfer. The appeal hearing was arranged for 11 November but was postponed at the Claimant's request and rescheduled for 7 January 2025.

25. At the appeal hearing the Claimant relied on new information not in the pre-prepared pack. The appeal hearing was postponed to consider this new information. The hearing was adjourned to 29 January 2025.

26. The focus at the adjourned appeal hearing was again largely on whether the Claimant should receive his redundancy pay based on him being a Council employee. Mr Mitchell, who heard the appeal, decided that as the Claimant had transferred under Capita terms and conditions, his entitlement to the redundancy payment was on Capita terms and not those of Charnwood BC. That issue was essentially the basis of the breach of contract complaint in these proceedings, and as that has been withdrawn, I do not propose to say anything more about it. The appeal against dismissal for redundancy was dismissed.

THE LAW

27. Section 94(1) of the Employment Rights Act 1996 ("ERA 1996") gives an employee a right not to be unfairly dismissed.

28. Section 98 of the ERA1996 states (insofar as is relevant):

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it –
- (c) is that the employee was redundant...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case."

29. Section 139(1)(b) of ERA 1996 provides :

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish."

30. Regulation 4 of TUPE provides (insofar as is material for present purposes):

"(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to paragraph (1), ... on the completion of a relevant transfer –

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; ...

(4) Subject to regulation 9, any purported variation of a contract of employment that is, or will be , transferred by paragraph (1), is void if the sole or principal reason for the variation is the transfer.

(5) Paragraph (4) does not prevent a variation of the contract of employment if –

(a) the sole or principal reason for the variation is an economic, technical or organisational reason entailing changes in the workforce, provided that the employer and employee agree that variation; or

(b) the terms of that contract permit the employer to make such a variation.

(5C) Paragraphs (5) ... do not affect any rule of law as to whether a contract of employment is effectively varied.

(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee."

31. Regulation 7(1) TUPE provides:

"(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 Act (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) 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.”

32. The onus on establishing an ETO reason is on the dismissing employer: see **Forth Estuary Engineering Ltd v Litster and others** (1986) IRLR 59, EAT.

33. In one of the leading cases on the subject, **Berriman v Delabole Slate Ltd** (1985) ICR 546 (CA), Browne-Wilkinson LJ said this:

“Changes in the identity of the individuals who make up the workforce do not constitute changes in the workforce itself so long as the overall numbers and functions of the employees looked at as a whole remain unchanged.”

34. It is well established that an ETO reason entailing changes in the business must relate to the conduct of the business going forward: see **Wheeler v Patel** (1987) IRLR 211 EAT). However, the changes need not entail the entire workforce. It is enough that a section of employees are affected - see **Nationwide Building Society v Benn** (2010) IRLR 922 EAT.

35. In **Crawford v Swinton Insurance Brokers Ltd** (1990) IRLR 42, the EAT confirmed that there did not always have to be a change in the identity of the workforce for (what is now) Regulation 7(2) of TUPE to apply. A change in job function is capable of amounting to the same thing:

“What, in our judgment, has to be looked at, is the workforce as an entity, that is to say, as a whole, separate from the individuals who made it up and it then has to be seen whether the reason in question is one which involves a change in that workforce, strength or establishment and we are satisfied that there can well be a change in a workforce if the same people are kept on but they are given entirely different jobs to do. We would regard a workforce that was engaged in a different occupation as being, for the purpose of regulation 8(2) changed if that happened as a result of an organisational change on a relevant transfer...”

36. In the paradigm case of **Williams v Compair Maxam Ltd** (1982) IRLR 83, the EAT gave the following guidance on redundancy procedure:

“... there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

1. The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.
2. The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.
3. Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.
4. The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.
5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.”

THE ISSUES

37. It is agreed that there was a relevant transfer. It is further agreed that the reason for Claimant's dismissal was the transfer such that, in the absence of an ETO reason, the Claimant's dismissal would be automatically unfair by virtue of Regulation 7(1).

38. The following are the issues to be determined in these proceedings:

38.1 Does the Respondent establish that the reason or principal reason for Claimant's dismissal was an organisational reason entailing changes in the workforce of Respondent after the relevant transfer – the ETO reason issue?

39. The organisational reason relied upon by the Respondent is:

39.1 there was no longer a need for an employee to manage the contractual relationship between Capita and Respondent in circumstances where that contractual relationship had ceased to exist; and

39.2 the introduction by Respondent of two new roles of Benefits Manager and Contracts Manager to manage the two separate parts of the transferred service.

40. If Respondent establishes that the reason or principal reason for the dismissal was an ETO reason, was the dismissal for redundancy within the meaning of section 98(2)(c) ERA 1996. In particular, was there a redundancy situation within the meaning of section 139(1)(b)(i) ERA 1996?

41. If not, was the dismissal for SOSR?

42. Having regard to the reason for dismissal did the Respondent act reasonably in the circumstances, including a consideration of its size and administrative resources, in treating redundancy (or alternatively SOSR) as a sufficient reason for the

Claimant's dismissal? In particular did the Respondent undertake such consultation with Claimant as was reasonable in all the circumstances?

43. Did the Respondent make reasonable efforts to redeploy the Claimant? Did Respondent follow a fair procedure?

CONCLUSIONS

44. The first issue is whether the Respondent has been able to establish that the proposed change in structure amounted to an ETO reason, in particular an organisational reason.

45. The Claimant's primary argument is that the decision to dismiss him was a sham. Charnwood BC had decided early on that they did not want him either because he was too expensive or for some other reason.

46. I do not accept the Claimant's argument that the dismissal was a sham. There was no reason for the Respondent not to want the Claimant, if he was able to undertake the role in-house. Charnwood BC and Capita had worked well together for some years and there was no animus between the two or between the Claimant and Charnwood BC. It was not a performance or cost issue. On the contrary it would have saved a considerable amount of unnecessary work and expense if the Claimant could undertake the in-house role.

47. The rather obvious difficulty for the Claimant in these proceedings, which he has not been able to deal with satisfactorily, is that his role was primarily if not exclusively in managing contractual obligations between Charnwood BC and Capita. That role would no longer exist once the service was brought in-house. A contract manager was not required because there was no longer any contract.

48. The question then is to what extent was the Claimant's existing role matched with what was required going forward. The answer to that is that it was not very much, if at all. I place little weight on job mapping exercise. This was a self-serving document created by the Claimant himself. Naturally it would seek to bolster the Claimant's position. However, the document does acknowledge that Ms Lowe provided the '*Off-site Benefits Expertise*'. In other words, the technical knowledge on benefits, a crucial element in the new structure, came not from the Claimant but from someone who was not transferring.

49. The Claimant made no effort at any stage of the consultation process to put forward arguments on comparability. Charnwood BC were entitled to take that into account.

50. There was now no need to have a Contract Manager to manage the contractual relationship (as there was no longer any contractual relationship). The new structure required two individuals managing two sides of the service.

51. The loss of Ms Lowe was significant going forward. Charnwood BC would lose her skills and expertise. That was a significant organisational change.

52. I am therefore satisfied that the new structure going forward did amount to an organisational change which involved changes in the workforce pursuant to Regulation 7(2) of TUPE. The Claimant was therefore not automatically unfairly dismissed.

53. I now turn to the complaint of 'ordinary' unfair dismissal.

54. I am satisfied that the reason for the dismissal was redundancy. That is a potentially fair reason for dismissal under section 98 ERA 1996. There was a redundancy situation within the meaning of section 139(1)(b)(i) ERA 1996. The need for employees to carry out work of a particular kind – that is the management of the contract between the Respondent and Capita – had ceased or were expected to cease. The fact that two people would now be required is irrelevant.

55. I have gone on to consider whether the dismissal was fair or unfair having regard to the provisions of section 98(4) ERA 1996.

56. The arguments relied on by the Claimant in respect of unfairness are firstly, a lack of proper consultation, secondly, a failure to offer suitable alternative employment and thirdly, being excluded from the same measures and procedures that were imposed on other transferring employees.

57. As regards consultation I am satisfied that there was timely and meaningful consultation applying the **Williams v Compair Maxam** guidelines. The only difficulty was the Claimant's lack of engagement. Understandably the Claimant was concerned about the size of the redundancy payment but this should not have been to the exclusion of a meaningful dialogue on other matters. The Claimant not only failed to apply for the new roles but also failed to even enquire as to what they would entail.

58. As for the criticism that the roles were advertised before consultation began, the fact is that the Respondent was subject to tight deadlines. The service was returning in-house on 1 November 2024 and to delay consultation beyond that date would have meant the absence of staff to provide the service. Had the Claimant expressed any interest in the roles I am satisfied the recruitment process would have been put on hold. The Respondent had worked well with the Claimant for many years and had no aversion to employing him.

59. There is nothing to suggest that any other suitable alternative employment existed at the time which could have been offered to the Claimant.

60. The third procedural defect is a somewhat difficult argument to follow. It does not appear specifically in the list of issues but only in skeleton arguments and submissions. It suggests that Charnwood BC failed to follow Capita's redundancy policy whereas other employees who transferred had the Charnwood policy applied to them. Insofar as the Respondent did so I find no procedural defect rendering the dismissal unfair. There is no evidence as to how others were treated. Charnwood BC's redundancy policy could not apply to the Claimant as he was not their employee at the time.

61. For the reasons given I am satisfied that the Claimant was not unfairly dismissed.

Approved by:

Employment Judge Ahmed

Date: 17 April 2026

JUDGMENT SENT TO THE PARTIES ON

07/05/2026

J. Woolley
FOR THE TRIBUNAL OFFICE

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