



EMPLOYMENT TRIBUNALS

Claimant: Mr R Kissick
Mr J Morgan
Mr R Stables
Mrs C Easun

Respondent: Department for Education

Heard at: London Central

On: 12,13,14,15,18,19,
20 September 2023
(21, 22 September & 13
November 2023, in
Chambers)

Before: Employment Judge Akhtar
Ms H Craik
Mr I Mclaughlin

REPRESENTATION:

Claimants: Mr S Gill (Counsel)
Respondent: Ms J Williams (Counsel)

RESERVED JUDGMENT ON LIABILITY

The unanimous Judgment of the Tribunal is that:

1. The complaints of automatic unfair dismissal, under Regulation 7 TUPE, are well-founded and succeed.

2. The complaints of failure to consult under Regulation 13, TUPE, are not well-founded and are dismissed.
3. The complaints of wrongful dismissal and holiday pay are well founded and succeed.

CLAIMS AND ISSUES

1. The Claimants bring claims of unfair dismissal including automatic unfair dismissal under Regulation 7 TUPE, wrongful dismissal, holiday pay, redundancy pay and failure to inform and consult under Regulation 13 TUPE. At a preliminary hearing on 25 October 2022, Employment Judge Snelson ordered the parties to agree a list of issues for determination at the final hearing. The agreed list of issues is dated 3 November 2022 and the parties confirmed these were the issues to be determined by the Tribunal at the start of this hearing.

LIST OF ISSUES

Unfair dismissal

1. Were the Claimants, or any of them, employed by the Respondent?
 - a. The Claimants will say that their employment transferred to the Respondent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
 - b. The Respondent will say that:
 - i. The Claimants' employment did not transfer to the Respondent pursuant to TUPE. They remained throughout in the employment of 2buy2.com Limited. The Claimants were not at any time employed by the Respondent.

- ii. There was no transfer of any undertaking, business or part of any undertaking or business from 2buy2.com Limited to the Respondent within regulation 3(1)(a) of TUPE.
- iii. The Claimants' employment by 2buy2.com Limited has continued in any event.

c. Were the Claimants assigned to any relevant organised grouping of employees or resources as required by regulations 3(3)(a)(i) and 4(1) of TUPE?

i. The Claimants will say that, up to and including 31st January 2022, they were assigned to an organised grouping of employees of 2buy2.com Ltd which had as its principal purpose the carrying out of those activities carried out by 2buy2.com Ltd on behalf of the Respondent.

ii. The Respondent will say that the Claimants were not at any material time assigned to (nor did they comprise) any relevant organised grouping of employees or resources as required by regulations 3(3)(a)(i) and 4(1) of TUPE.

2. If the Claimants' employment did transfer to the Respondent, did the Respondent dismiss any of the Claimants and, if so, what was the reason for dismissal?

a. Was the alleged transfer the sole or principal reason for dismissal, such that the dismissal was automatically unfair by virtue of regulation 7(1) of TUPE?

i. The Respondent will say that the reason for dismissal was a potentially fair reason under section 98(2) of the Employment Rights Act 1996, namely redundancy.

ii. Alternatively, the Respondent will say that there was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimants held, within section 98(1)(b) of the Employment Rights Act 1996.

iii. Consequently, the Respondent will say that any dismissal was not automatically unfair by virtue of regulation 7(1) of TUPE.

3. If any dismissal was not automatically unfair, was the dismissal unfair within the meaning of section 98(4) of the Employment Rights Act 1996?

Wrongful dismissal: notice pay.

4. If the Respondent did dismiss any of the Claimants:
- a. Was the dismissal wrongful (i.e. in breach of contract)?
 - b. If the dismissal was wrongful, what were the Claimants' notice periods?
 - c. Were the Claimants entitled to be paid for those notice periods?

Holiday pay

5. If any of the Claimants were employed by the Respondent:
- a. What was their entitlement to holiday pay?
 - b. What, if any, sums are due from the Respondent to the Claimants in that regard?

Redundancy payments

6. If any of the Claimants were dismissed by the Respondent:
- a. Were the Claimants entitled to redundancy payments?
 - b. If so, what, if any, sums are due from the Respondent to the Claimants in that regard?

Transfer of Undertakings (Protection of Employment) Regulations 2006

7. Was the Respondent under any duty to inform or consult with the Claimants about the transfer pursuant to regulation 13 of TUPE?
- a. The Respondent will say that, as the transferee, it was not under any such duty to the Claimants.

b. If the Respondent was under any such duty, did the Respondent comply with that duty?

PROCEDURE, DOCUMENTS AND EVIDENCE HEARD

12. The Tribunal heard evidence from the 4 Claimants and the evidence of the following witnesses on their behalf:

Mrs Liz Stables - Senior Manager, People & Learning Department, 2buy2;
Ms Kate Matthews - HR Consultant, EST HR Ltd.

13. The Tribunal also heard the evidence of the following witnesses on behalf of the Respondent:

Ms Carolyn Greenwood – Contract Manager, DfE,
Ms Rachel Cammiss – Head of Schools commercial sustainability, DfE,
Ms Cath Sparkes – Acting Deputy Director, Pay & Reward, DfE,
Ms Catherine Hill – Head of Pay & Reward, DfE,
Mr Garry Allanson – Contract Manager, DfE

14. There was a tribunal bundle of approximately 1451 pages. Limited additional documents were handed up during the hearing. These pages were numbered and added to the bundle. The Tribunal informed the parties that unless we were taken to a document in the bundle, we would not read it. Both parties provided written closing submission as well as making oral submissions.

15. At the start of the hearing, the Tribunal dealt with a preliminary matter raised by Ms Williams seeking to limit the hearing to a decision on TUPE and holding a separate hearing, if required on the fairness of any dismissal.

16. In summary Ms Williams submitted that the Respondent has only prepared its case on the TUPE transfer issues and has not prepared its case to deal with the issue of the fairness of any dismissal. In light of this, Ms Williams requested that

the issue of fairness of any dismissal, should the Tribunal get to that point, be dealt with separately at another hearing.

17. Mr Gill strongly objected, in summary, he advised that despite the lengthy history of this case this was the first time the Respondent had raised or sought to discuss this matter with the Claimants and those advising them. Mr Gill submitted that the Claimants have prepared their case addressing all issues of liability, this was a lengthy 9-day listing, which the Claimants always understood took into account issues relating to the fairness of any dismissal. It would be unfair to allow the Respondents to effectively have a second bite of the cherry because they have not adequately prepared their case.
18. The Tribunal took the opportunity to complete the pre-reading from the bundle and witness statements before reaching a decision on the Respondent's application. We noted in particular, the following documents:
 - a) The Respondent's response dated 24 June 2022. Within that response, specifically paragraphs 5a and 5b, which set out its position in the alternative in terms of the fairness of dismissal.
 - b) An email from the Respondent's legal representatives dated 13 September 2022, in relation to a postponement request of the final hearing listed in October 2022. Within that email, the Respondent's legal reps state the following: *"This is a case in which an agreed List of Issues would be of great assistance both to the Tribunal at the Final Hearing and also to the parties themselves, in guiding the ambit and scope of the documentary disclosure and witness evidence required."*
 - c) *EJ Snelson's case management order of 25.10.22, which states, "A remote hearing of all issues of liability only shall be held at 10.00 a.m. on 12 September 2023, with nine consecutive sitting days allocated on the basis that the evidence and submissions must be completed by the end of day seven at the very latest". "I shared counsel's view that a 'liability-only' hearing was appropriate. In this context, I took that to exclude any Polkey-*

type points. If my assumption is mistaken, it should be corrected without delay.”

- d) The agreed List of Issues. Whilst it is not dated, in accordance with the CMO of 25 October 2022, the list of issues appears to have been agreed in or around 4 November 2022. In paragraphs 2 and 3, issues relating to the fairness of any dismissal are clearly set out to be determined.
19. We found it abundantly clear from all that we read that this hearing, listed almost 11 months ago was to include all issues relating to liability, naturally one of those issues being unfair dismissal. We have seen nothing in any of the documents indicating that the Respondents disagreed with this mutual understanding of both the Tribunal and the Claimants. We also note Mr Gill’s assertion that this matter had not been raised with the Claimants prior to yesterday, when the application was made by the Respondent.
20. We conclude that for reasons that are not entirely clear, the Respondent has chosen to litigate and present its case in this way, and we agree with Mr Gill’s submission, that the Claimants should not be penalised in the form of potential further delay and cost. We say potential, as moving on to consider the fairness of the dismissal will of course be dependent on the Tribunal’s decision in relation to TUPE transfer and assignment.
21. Considering all these factors and in furtherance of the overriding objective to deal with cases fairly and justly, we declined the Respondent’s application. The parties were advised that this hearing will deal with all liability issues including the fairness of dismissal, should we reach that point and the parties will be expected to address the Tribunal on all such matters. Should the Claimants be successful in respect of any elements of their claims, remedy including Polkey issues will be dealt with at a separate hearing.

FINDINGS OF FACT

22. Having considered all the evidence, both oral and documentary, The Tribunal made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

Background/Contract

23. At all material times, all 4 Claimants were employed by 2buy2.com Limited '2buy2' as follows:

- i) Robert Kissick was employed by 2buy2 as Chief Executive Officer 'CEO'; his employment commenced on 3 May 2011. In addition, Mr Kissick was also a Statutory Director for 2buy2.
- ii) Jonathan Morgan was employed as Director of Procurement; his employment commenced on 17 October 2011. Mr Morgan was not a Statutory Director for 2buy2.
- iii) Russell Stables was employed as Director of Operations; his employment commenced on 7 April 2011. In addition, Mr Stables was also a Statutory Director for 2buy2.
- iv) Claire Easun was employed as Director of Finance; her employment commenced on 4 March 2019. In addition, Mrs Easun was also the Company Secretary for 2buy2.

24. On 24 November 2017, the Department for Education 'DfE' entered into a contract for services with 2buy2. The service provided was a pilot scheme known as Schools Buying Hubs 'SBH' and it was geographically spread across two separate hubs; 2buy2 were contracted to provide services in the North-West 'SBHNW'.

25. The initial contract was for 2buy2 to provide procurement advice and guidance to schools in the North-West region as part of the pilot stage. The main aim of the service was to provide expert commercial advice and support with complex procurements and contract management to schools.
26. Following the pilot stage, DfE extended its contract with 2buy2 to include the post pilot stage, this commenced on 1 November 2019 for a period of 27 months ending on 31 January 2022. The post pilot stage involved setting targets for the Hubs around procuring engagement with schools as well as achieving monetary savings for schools.
27. The key specifications of the contract are set out in Schedule 2.1 of the agreement and includes 2buy2 providing a customer relationship management Solution (CRM), multichannel contact centre systems and functionality as well as a programme for ensuring high levels of engagement of schools and uptake of the hub service.
28. From 1 February 2022, the DfE, brought the SBH contract in-house creating the Get Help Buying For Schools Service 'GHBS'.

Key Personnel

29. The contract specifies a number of key personnel and roles. In Schedule 6.1 of the Contract, the "Key Personnel" and key roles for the purposes of the contract are noted and include all 4 Claimants as follows:
 - i) Robert Kissick: CEO of 2buy2;
 - ii) Russell Stables: Director of Operations;
 - iii) Claire Easun: Finance Director (Company Secretary from May 2020);
 - iv) Jonathan Morgan: Director of Procurement.
30. Clause 13 of the contract contains several provisions relating to key personnel, relevant extracts are as follows:

- i) Clause 13.3 states that 2buy2 *“shall ensure that the Key Personnel fulfil the Key Roles at all times”*.
- ii) Clause 13.4 states that *“The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Provider, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel”*.
- iii) Clause 13.5 states that *“2buy2 shall not remove or replace any Key Personnel (including when carrying out Exit Management)”*
- iv) Clause 13.6 states that 2buy2 must:
 - (a) *notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Provider shall ensure appropriate temporary cover for that Key Role);*
 - (b) *where reasonably practicable and using best endeavours, ensure that any Key Role is not vacant for any longer than 10 Working Days;*
 - (c) *give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel’s employment contract, this will mean at least 60 Working Days’ notice;*
 - (d) *ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services”*.

31. The Respondent’s evidence was that 2buy2 had selected the key personnel and that DfE were not involved in the decision making in relation to this. No

documentary evidence was presented to the Tribunal in relation to this. The position of the Claimants was that whilst they may have put forward the names of individuals, ultimately, the key personnel were agreed by the DfE. The inclusion of named key personnel and roles in the contract which was signed by both parties supports the Claimants' contention and we find that these names and roles were agreed by the parties.

32. On 12 March 2020, Mr Kissick sent an email to the DfE to advise them of a change in Key Personnel in that Mrs Easun would be replacing Adrian Lewis as Finance Director.
33. On the same date, Zara Carter, Head of National Schools buying hub at the DfE wrote to Mr Kissick expressing the DfE's concern that they had not been notified in advance of the replacement of a key role as per clause 13 of the contract. Mr Kissick responded on 13 March advising that 2buy2 were giving 60 days notice of the replacement as although Mrs Easun had been appointed, there was to be a 60-day transition period before she took over the DfE key personnel role from Mr Lewis.
34. On 14 March 2020, Ms Carter responded to Mr Kissick seeking an explanation as to the reason behind Mr Lewis' move to another role within the Company.
35. On 18 March 2020, Mr Kissick responded to Ms Carter, advising that the appointment of Mrs Easun as Finance Director was to ensure that there was sufficient resource to effectively carry out all necessary roles and responsibilities going forward on the DfE contract. Mr Lewis' role which covered Finance, IT and legal was becoming too broad and the removal of him from the DfE contract would allow him to focus on strategic growth and compliance of 2buy2.
36. On 3 April, Ms Carter responded to Mr Kissick seeking further explanation as to why Mr Lewis was felt better suited to his new role and confirming that consent to replace the key role was not provided at that stage.
37. Mr Kissick responded on 8 May 2020 advising that *"In regard to the wider 2buy2 business, it was recognised that as we grew, Adrian's remit was too wide for one*

individual resulting in conflicting internal and external business pressures. Adrian's experience and background means that he is well suited to undertake all of the roles and his performance in those roles has shown this to be true. It was therefore an issue in regard to capacity rather than capability that we identified the need to split the role. Having reviewed the role and some of the key challenges we had over the last 6 months that needed to be resolved, it was felt that moving the finance function to a dedicated Finance Director would be the most appropriate solution and would enable us to build greater resilience within the business".

38. Mrs Easun was subsequently added to key personnel in the role of Finance Director, this was effective from 2 September 2020.
39. We prefer the evidence of the Claimants in this regard and find that those named as key personnel were identified as individuals who were seen as critical to the service delivery. These were not just senior personnel named as nominal individuals, for example, as signatories with little involvement in contract delivery. The stringent conditions set out under clause 13 of the contract, relating to key personnel evidences the importance of these roles in terms of delivery of the contract. We find that the Respondent considered these roles vital to contract delivery, this is evidenced by the requirement to report more than 10 days absence of key personnel and the extent to which the Respondents wanted to be consulted regarding the change of Finance Director.
40. This came in to sharp focus when Mrs Easun was appointed as Finance Director replacing Mr Lewis in or around June 2019. The communications between Mr Kissick and Ms Carter evidence the significant control that the DfE sought to exercise on internal movements within 2buy2 of Key Personnel. We find that this would not have been the case had the DfE considered these roles as merely oversight and supervisory in nature.

Post Pilot phase

41. On 12 March 2020, Ms Carter wrote to Mr Kissick to formally notify him of the Department's concerns regarding the level of marketing activity. Within the letter, she stated *"The Department are concerned at the low level of marketing activity advised as part of the NW Hub plan, including the apparent low level of activity in attracting new schools to into the Hub service..... The Department notes that you launched your 'Education Buying' service during the period mentioned in 3) and we have serious concerns that your resources were redirected to this launch rather than focussing efforts on driving the Hub services"*.
42. On 16 March 2020, Mr Kissick responded to Ms Carter stating that *"outside of our activity with the Department, we work with a number of large organisations involved in the education space including the Catholic Church, the Church of England, the Church in Wales and a range of Multi-Academy Trusts identifying areas where school procurement could be improved and developing solutions to support this.....Education Buying is a rebranding of the service we have operated since 2015 (2 years before the original PIN for the Hubs contract was released) which was previously called 2buy2 Schools. We have used the knowledge, information and insight we have gained through those non-DfE relationships over the years to shape the Education Buying service.....Outside of the delivery of the NW Hub, 2buy2 provide procurement support to a wide number of organisations"*.
43. On 7 August 2020, following a Senior Management Board meeting, 2buy2's Business Priorities were confirmed, citing the DfE contract as the number one priority for the business.
44. On 14 August 2020 Mr Stables sent the DfE a document setting out the roles and responsibilities of staff working in the DfE hub. The document set out the roles of all 4 Claimants in relation to the hub and all had set out a time allocation of 80 percent dedicated to the hub activity.

45. On 21 August 2020, Mr Garry Allanson, Contract Manager, DfE, responded to Mr Stables stating that *“a review of the roles and responsibilities document that you provided 14/8 has resulted in several questions about the allocation of 2buy2 resources to the NW Hub service”*. Mr Allanson raised several questions relating to the allocation of resources, which included querying the 80 percent time, the Directors were working on the DfE project.
46. On 25 August 2020, Mr Stables responded answering the questions and specifically in relation to the Directors’ time allocations stating *“In a small business, roles tend to be broader than they would be in a larger business. The reality is in a small business, Directors are more involved in the day-to-day delivery than they would be in a larger business. They are not merely oversight roles”*.
47. Mr Allanson responded on 26 August 2020 thanking Mr Stables for his response and advising that matters would be discussed with Senior Management. We were not taken to any further documentary evidence in the bundle relating to further communications regarding this matter. In his oral evidence, Mr Allanson confirmed that no further correspondence was sent by DfE and whilst his concern in respect of Directors’ time allocations to the project was raised with senior management, no further action was taken in this regard.

TUPE discussions

48. It is common ground between the parties that there was a relevant transfer on 1 February 2022, within the meaning of Regulation 3(b)(iii) by way of a service provision change, in that the activities of 2buy2 under the amended version of the contract of November 2019, were insourced to the Respondent.
49. Around July 2020, the DfE began to look more closely at the evidence from the pilot schemes and to analyse options for the future delivery of an in-house service for schools. In or around February 2021, the DfE entered into a full public consultation where it sought stakeholder views about the future delivery of a service for schools. Around the same time, 2buy2 were notified of the

consultation and advised that the Exit plan under the terms of the contract would be implemented in due course. 2buy2 were asked to complete relevant TUPE forms and to provide requested information relevant to considerations around the application of TUPE.

50. In or around 11 March 2021, 2buy2 provided the requested information for all employees who they stated spent 50% of their working time equivalent on the DfE contract; this included all 4 Claimants who were listed on the accompanying spreadsheet as spending 80% of their time on the DfE contract. The information provided at that time by 2buy2 stated that there were 52 staff working on the DfE contract with 36 staff spending 50% or more of their time on the DfE contract.
51. On 8 July 2021, Carolyn Greenwood, Contract Manager DfE, wrote to Mr Kissick to advise him of the DfE decision to terminate its contract with 2buy2 on its natural expiry date of 31 January 2022. Ms Greenwood stated that the DfE had explored the possibility of a transition/extension period of the contract but had decided not to pursue that route.
52. On 23 July 2021, Ms Greenwood sent an email to Mr Kissick requesting further information on new staff that had been added to the TUPE information spreadsheet but who were understood to be working less than 50% of their time on the DfE contract, as well as a breakdown of the work of those working 50% or more of their time on the DfE contract. Ms Greenwood also requested clarification in relation to senior management staff, as to whether they would continue to run 2buy2 after the termination of the DfE contract.
53. On 23 August 2021, Mr Kissick, provided a detailed response to Mr Allanson, as well as an organogram and an updated spreadsheet detailing information in relation to staff that 2buy2 considered to be in scope to transfer. In response to the position on senior managers, Mr Kissick confirmed there was no intention that 2buy2 would be taking any steps in relation to winding up. At this stage, Mr Kissick did not explicitly clarify the position of the senior managers in continuing to be involved with running the company post transfer.

54. On 7 October 2021, Ms Greenwood wrote to 2buy2 regarding the scope of the anticipated TUPE transfer. The letter stated that *“the employees shown in green on the attached spreadsheet are those the DfE accepts were in scope”*. All 4 Claimants were accepted as being in scope at that time. Notably, there was no indication from DfE that they took issue with the 80% time the Claimants had indicated they were spending on the DfE contract.
55. The letter also set out the DfE’s position on employees considered to be out of scope to transfer, stating that *“We suggest however that we continue the dialogue leading up to the contract termination date and invite 2buy2 to provide any further information it considers relevant in respect of these employees. We note that the assessment of employees in scope to transfer will need to be reviewed throughout the consultation process and that the current analysis is a snapshot in time”*.
56. On 13 October 2021, Mr Kissick responded to Ms Greenwood in respect of those employees the DfE considered not to be in scope, stating *“we note however that in each case your rationale is based on your observation that “work carried out for DfE closely mirrors general work for 2Buy2”. In the spirit of your offer to continue discussing these employees if we disagree with your observations, we will send you a further analysis of the work performed by each of these individuals in practice as we firmly believe that when viewed on a day to day level from 2Buy2’s viewpoint, the importance of the work carried out is in fact heavily geared towards the DfE contract activities”*.
57. On 22 October 2021, Ms Greenwood sent a letter to Mr Kissick setting out proposed dates for sharing information to support effective consultation. Ms Greenwood also requested further information on 2buy2’s employment Terms and Conditions.
58. DfE started the TUPE transfer consultation in or around November 2021. The DfE included all four Claimants in the TUPE transfer consultation meetings.

59. On 3 November 2021, Mr Kissick responded to Ms Greenwood clarifying 2buy2's employment Terms and Conditions. Mr Kissick also provided an updated TUPE information spreadsheet, detailing information for all staff that were in scope, which included all 4 Claimants, as well as those that 2buy2 considered to be in scope but the DfE position at that time was they were not. Mr Kissick explained that the disputed employees would be included in the consultation process subject to DfE advising otherwise but they would be informed that their transfer was subject to ongoing discussions with the DfE.
60. On 12 November and 16 November 2021 TUPE Proposed Measures were sent to 2buy2 by the DfE. Amongst other changes, the measures set out that it was envisaged that there would be a cessation of work at the locations where most of the staff were currently based and that the DfE would discuss locations as part of the consultation meetings.
61. On 19 November 2021, 2buy2 sent the DfE a number of questions in response to the proposed measures. A significant number of these questions related to relocation. On 22 November 2021, Liz Stables, People and Learning Manager 2buy2, sent a further follow up question to Cath Sparkes, Acting Deputy Director, Pay & Reward, DfE, regarding company directors and whether they could continue with these roles once employed by the DfE.
62. On 1 December 2021 Ms Sparkes responded to Mrs Stables advising *"In terms of the Director roles, there is no exclusion stating that Civil Servants may not hold a position with an external company (although, as with other employers, this should be discussed and approved by the line manager). However, as we touched on previously all civil servants are bound by the Civil Service Management Code (CSMC) so it's not wholly straightforward".....so there would have to be a discussion during 1:1 consultation to understand what this would mean – a discussion about the facts, rather than a hypothetical, as that will be what's relevant"*. Ms Sparkes concluded her email by asking for details of the current role and responsibilities of the Director role.

63. On 9 December 2021, Ms Greenwood wrote to Mr Kissick regarding 2buy2 employees being in scope. Ms Greenwood advised that *“In our letter of 7th October 2021, we proposed that both parties continue the dialogue on who is in scope leading up to the contract termination date and we invited 2Buy2 to provide any further information it considers relevant in respect of these employees. We noted that the assessment of employees in scope to transfer will need to be reviewed throughout the consultation process and that the analysis is a snapshot in time”*. Ms Greenwood went on to clarify the position in respect of disputed employees.
64. Between 1 and 22 December 2021 a number of emails were exchanged between Mrs Stables, Ms Sparkes and Ms Catherine Hill, Head of Pay & Reward, DfE relating to the location of employees to be transferred and whether redundancy options were to be considered for those where travelling distance was not considered to be reasonable. It was clarified by the DfE that the majority of roles would be based in Sheffield and Darlington as a result of which the indication from 2buy2 was that this would be an unreasonable distance to travel for the majority of the staff and redundancy options would need to be considered.
65. On 9 December Ms Sparkes sent an email to Mrs Stables chasing further details regarding the Company Director role. Mrs Stables replied on 16 December stating that *“Just to clarify, the Company Director/Secretary roles are different and separate to the operational roles of CEO, Director of Operations and Finance Director. I’ll try and get something over to you by the end of the week regarding the operational activities of these roles”*.
66. On 16 December 2021, Mrs Stables sent an email to Ms Sparkes, attaching a document setting out the roles of Company Director and Company Secretary.
67. On 23 December 2021, Mr Kissick sent a further letter to Ms Greenwood confirming the up-to-date position regarding employees in scope and expressing his disappointment at DfE not agreeing to indemnify 2buy2 in respect of employees in scope who could be redeployed but may be at risk of redundancy

in 12 months. The only role that remained disputed at this stage appeared to be that of Marketing Assistant.

68. On 22 December 2021, Ms Sparkes sent an email to Mrs Stables advising that *“For the roles listed below where they are unable to travel to a DfE office, we’ll anticipate staff transferring to DfE on 1 Feb and moving at that point (or earlier where possible – this is being mapped out) into our redundancy/redeployment activity. Is there anything else you were awaiting on those roles where colleagues have confirmed they are unable to travel?”*. The roles being referred to were that of data analyst, the 4 Claimants and Mrs Stables.
69. On 29 December 2021 an email was sent by Ms Hill to Will MacGee, accountant DfE, regarding estimated redundancy cost. Ms Hill stated *“Again, based on a worst-case scenario of making all 14 redundant, we would be liable for notice periods for a total of 36 months. Note that this includes 4 people who each hold a Directors role in 2buy2 (so I assume they would be relatively high earners) with 6 months’ notice apiece”*.
70. On 5 January 2022 the DfE made generic provisional job offers to all 4 Claimants. The offer emails did not specify any roles or provide any details other than requesting information so that pre-employment checks could be completed.
71. On 14 January 2022, a letter was sent to Mr Kissick by Mr Allanson. In oral evidence, Mr Allanson clarified that whilst the letter was in his name, he had not drafted this and had been asked to send this out by Rachel Cammiss, Head of Schools commercial sustainability, DfE. The letter followed the provision of job descriptions by 2buy2 in respect of the roles of the Claimants’ employed roles. The letter clarified that the DfE did not seek to challenge the high percentage of time that these individuals devoted to the DfE contract, however, it was noted that the roles each required the job holders to carry out a range of activities that were not related to the DfE contract but rather were essential to the functioning and overall organisation of 2buy2 as a business. In addition, it was understood that it was the intention of the four Claimants to continue with these activities post-transfer and that 2buy2 would be retaining their services as employees in

some capacity. The Claimants were informed that in those circumstances, their contracts would not otherwise be terminated by the TUPE transfer, so they would remain employed by 2buy2 and would therefore be outside the scope for TUPE transfer.

72. It was also set out in the letter of 14 January 2022, that if 2buy2 disagreed with the DfE analysis then it should provide evidence and assurances that the individuals would not remain employed by 2buy2 in any way post transfer. The letter also stated that *“We appreciate that we may need to assess individuals on a case-by-case basis (e.g. as not all directors hold statutory positions) and therefore, I propose that we discuss this further to ensure that we have a clear understanding of the circumstances”*. In respect of redundancy, where locations offered were not considered suitable, Mr Allanson reiterated the DfE’s commitment to finding suitable alternative employment within the Civil Service.
73. Following the letter dated 14 January 2022, Mr Kissick attended a meeting with Ms Cammiss and Ms Hill, on 20 January 2022. The parties dispute the facts of this meeting, the Tribunal were not assisted by any formal minutes, however, Ms Hill belatedly produced a copy of her notes of the meeting which were admitted by consent into the bundle. Key points from the transcribed notes are; that for the 4 Directors there will be no activity post 1 February 2022; the Statutory roles will continue 1 day a month, outside of hours during annual leave; activities will be done by others with oversight, and there are 8 Senior Leadership team members who are separate from the Directors.
74. It is the Respondents’ position that at this meeting Mr Kissick stated that the 4 Claimants would continue to have strategic oversight of 2buy2 after the transfer to DfE. The Tribunal noted the written evidence of Ms Cammiss, in which she stated that Mr Kissick also explained something along the lines that he had been working with the Company’s senior leadership team to set the strategy so that 2buy2 could continue operating when the Claimants TUPE transferred to DfE. In his evidence to the Tribunal, Mr Kissick stated that he made clear the role distinctions between the Claimant’s day-to-day roles on the SBHNW contract and the roles that he and Mr Stables held as Company Directors. Mr Kissick

also stated that he provided assurance that none of the Claimants would be involved operationally in 2buy2 post-transfer.

75. We prefer the evidence of Mr Kissick in relation to this matter, which we find is consistent with the documentary evidence. The Respondent's own meeting notes make the distinction between statutory roles and operational roles. The notes state that the 4 Directors would not be continuing with any activity post 1 February 2022. We accept that the notes do not make clear that the 4 Director roles was a reference to the operational roles of the 4 Claimants, however, prior to this point Mrs Stables had made it clear in her email of 16 December 2021 that the operational roles were different to that of the statutory roles. It is clear from the letter of 14 January 2022 that there was some confusion within the DfE relating to the statutory and operational roles, this was further re-iterated in the letter of 24 January 2022.
76. On 24 January 2022, Mr Allanson wrote to Mr Kissick, advising that *"the evidence you have provided still affirms that these roles will continue to provide strategic oversight to 2buy2 after the transfer date. This is not related to the DfE contract but rather to the essential functioning and overall organisation of 2buy2 as a business. Therefore, 2buy2 will be retaining their services as employees in some capacity. In these circumstances, their contracts would not otherwise be terminated by TUPE transfer, and they would in fact remain employed with 2buy2, and therefore outside the scope of TUPE"*.
77. On 27 January 2022 Brian Gegg, Solicitor at BDB Pitmans, instructed by 2buy2 sent an email to Mr Allanson copying in Ms Cammiss stating that *"After 1 February the Directors are not remaining employees of 2buy2 in any capacity. Their intention is only to retain their positions and duties as statutory directors and officers in the 2buy2 limited company where they are currently directors or officers. DfE have during the past few months been shown job descriptions for the company directors and Company Secretary but those described only their statutory duties as statutory officers. It is also not correct to say that they will continue to provide strategic oversight as employees post transfer, as expanded upon below. They will not be involved in the day to day running of the 2buy2"*

business. In the case of the Procurement Director there will be no role of any kind in 2buy2 for that person after 1 February”.

78. On 31 January 2022, the Government Legal Department ‘GLD’ responded to Mr Gegg stating that *“We do not propose to litigate this matter via correspondence, especially in respect of case law, when it is clear that our clients have different viewpoints on these issues. ... Ultimately, our client stands by its position as set out in Garry Allanson’s letter of 24 January 2022 and we do not accept that the directors are liable to transfer to the employment of DfE by operation of TUPE”.*
79. On 1 February 2022, Mr Gegg sent an email to GLD copying in Ms Cammiss stating that *“DfE have refused to employ these persons, and as such are now deemed to have dismissed them today”.*
80. On 2 February 2022, Mr Kissick wrote to GLD advising, *“2buy2 are considering, offering each of the four directors new positions on reduced salaries so that they are not unemployed and to protect 2buy2’s position in the extremely unlikely event that TUPE is deemed not to have applied to the directors. Even with the reduced salaries, this will cause significant financial strain on the business, and the potential of additional salary cuts within the business (including staff who were previously on the TUPE list but were removed by 2buy2 based on the agreed TUPE list of October 2021) is a distinct possibility”.*
81. On 2 February 2022, Mr Kissick sent a letter to all Claimants including himself stating that: *“Without prejudice to our view on the legal position in relation to the transfer of your employment as set out above, we are proposing to offer you new employment with 2buy2 Limited in a new role but on reduced terms compared to your previous terms with 2buy2 and in accordance with the attached contract of employment. Please let me know if you are happy to accept this offer”.*
82. All 4 Claimants accepted employment with 2buy2, on the same job titles as they held whilst working in the DfE hub, however, all were offered significantly reduced salaries. Other than the employment contracts, which states that “your

duties will be advised by a Director”, we were not taken to any documentary evidence setting out details of the roles that the Claimants’ would be undertaking.

83. All 4 Claimants in their oral evidence stated that not only were their salaries reduced significantly, the scope and range of their responsibilities was also significantly reduced. In his oral evidence to the Tribunal, Mr Kissick stated that to date he had not signed his contract as the company have not been able to confirm that they could afford to pay him.
84. Ultimately, out of the 36 2buy2 employees initially deemed to be in scope to transfer, only 8 transferred across to DfE. For those who did not transfer, excluding the 4 Claimants, approximately 8-10, were offered other roles within 2buy2 and approximately 14-16, left the company.
85. One of the individuals who was transferred across was Mrs Stables. Mrs Stables was an individual who had been identified as spending 59% of her time on the DfE contract, the remainder of her time was spent on managing the HR function of 2buy2. Mrs Stables was made redundant post transfer in or around July 2022, as the DfE were unable to offer her a permanent post which was within commutable distance to any DfE office.
86. In or around 9 March 2022, DfE wrote to three 2buy2 members of staff who had been TUPE transferred to the DfE advising that they were at risk of redundancy as the DfE were unable to offer them a permanent post which was within commutable distance to any DfE office.

Organisation and structure of 2buy2

87. The only evidence of the organisation and structure of 2buy2 was presented by the Claimants. Apart from some limited evidence from Mr Allanson and Ms Greenwood in respect of their contact with the 4 Claimants, the Respondent accepted that it was unable to offer any direct evidence in relation to the organisation and structure of 2buy2. The evidence of the Claimants was cogent, detailed and consistent with the documentary evidence, we had no reason to

question the veracity of their accounts. Considering these factors, we accept the evidence of the Claimants in this regard.

88. In order to successfully deliver the contract, 2buy2 deemed it necessary to form a specific platform for the delivery of the contract with specific areas of the contract headed up by different individuals who were assigned key roles and named as Key Personnel by the DfE. All 4 Claimants were named as Key Personnel, and all headed up specific areas with Mr Kissick having overall responsibility for delivery of the contract.
89. Following the implementation of the contract, and to ensure resource was dedicated to it, 2buy2 staff were organised by Platforms. For the DfE contract, there was a cross functional organised grouping of employees who met fortnightly to operationally manage the delivery of the SBHNW contract. This was referred to as the “DfE Platform”.
90. 2buy2 created the specific platform for the contract with the Respondent with its own Customer Relations Management ‘CRM’ instance, financial and performance reporting, KPIs, website, fortnightly platform performance meeting, marketing and communications strategy which were all distinct from the rest of the business. All of these were solely dedicated to the delivery of the contract. For example, Department 60 was Finance and Department 62 was Finance – DfE. These departments were used for expenses relating to the SBHNW contract. This platform was delivered by a dedicated group of individuals and resources allocated by the business to deliver the service. The platform included everybody whose principal role was to deliver the SBHNW contract, this included all 4 Claimants.
91. As 2buy2 developed their technology for the delivery of the service, it created Teams channels for specific activities relating to contracts. Individuals involved in the delivery of those channels would have specific access to them. With reporting accuracy, a critical aspect of the Respondent contract, a dedicated Teams channel for reporting was created for this purpose. Each of the claimants was part of a smaller group of individuals given access to this channel to ensure reporting compliance as it was a key aspect of their role in the contract delivery.

Of the approximately 58 people within 2buy2, only 21 had access to this channel, including the 4 claimants.

92. By far the biggest platform at 2buy2 was the SBHWN platform. A number of 2buy2 staff, about 10% of the employees, were not engaged at all in the direct delivery of the contract with the Respondent. The rest of the team varied from 3% to 100% of their time on the DfE contract.

Robert Kissick

93. Mr Kissick's employment contract with 2buy2 commenced on 3 May 2011. Paragraph 4 of his employment contract sets out his duties as CEO, relevant sections of the contract are as follows:

- i) *“4.1 The Employee shall serve the Company as Chief Executive Officer or such other role as the Company considers appropriate.*
- ii) *4.2 During the Appointment the Employee shall:*
 - (a) act as a director of the Company and carry out duties on behalf of any other Group Company including, if so required by the Board, acting as an officer or consultant of any such Group Company;*
.....
 - (g) faithfully and diligently exercise such powers and perform such duties as may from time to time be assigned to him by the Company;*
.....
 - (k) use his best endeavours to promote, protect, develop and extend the business of the Company and the Group.”*

94. In a spreadsheet provided to Mr Allanson in or around December 2020 and confirmed on 3 November 2021, Mr Kissick's role at 2buy2 is described as the “Chief Executive of Company”. His responsibilities are *“setting strategic direction and directing all of its operations, as well as directly overseeing the management of our People”*.

95. In or around 3 November 2021, the TUPE due diligence information provided by 2buy2, states Mr Kissick's NW Hub Current Position to be *“Senior level*

liaison and dialogue with DfE and other stakeholders; supervising other directors and delivery manager including regular KPI review and action; ensuring overall project delivery". Mr Kissick retained his role as Lead for Contract Delivery throughout the contract up to 1 February 2022.

96. Mr Kissick's written evidence to the Tribunal was that from the initial onboarding of the contract, his involvement with the SBHNW service was always significant. When the contract started, 2buy2.com turned over slightly over £600k per annum. The SBHNW contract increased 2buy2's turnover to over £2.6m in its last full year delivering the contract, 2020/2021). This increase was almost solely due to the growth of the SBHNW contract.
97. Similar to all other Claimants, the evidence of Mr Kissick in relation to his day-to-day activities under the DfE contract was largely unchallenged by the Respondent. None of the Respondent's witnesses were able to provide evidence directly on what the Claimants' day to day activities were. Mr Allanson accepted in his evidence that he was not able to comment on how 2buy2 was organised to service the contract and what each of the Claimants were doing on a daily basis. His limited evidence was in relation to his interaction with each of the Claimants.
98. The Respondent's position in respect of all 4 Claimants was that whilst they were involved in management meetings to varying extents, their involvement was in a strategic capacity. Mr Allanson's evidence was that in his opinion the reports that were discussed at meetings were prepared by others within the team who were undertaking the day-to-day activities. Whilst he accepted, he could not comment on what the Claimants were doing on a day-to-day basis, he contended that the Claimants were all in supervisory roles and not involved in day-to-day activities relating to the delivery of the contract. Ms Hill in her oral evidence to the Tribunal accepted that there was an 'organised grouping' of employees, who were carrying out the day-to-day work on the contract, however, the Claimants' were not assigned to this group as their roles were strategic and supervisory in nature.

99. The evidence of the Claimants was cogent, detailed and consistent with the documentary evidence, we had no reason to question the veracity of their accounts. Considering these factors, we accept the evidence of the Claimants in relation to their day-to-day activities.
100. Mr Kissick's evidence was that he communicated on a regular basis with the Respondents' team including the Contract Manager, Marketing Team and Procurement Team, through weekly, monthly, and quarterly formal meetings and hundreds of ad hoc conversations and emails. He attended the vast majority of monthly contract meetings, which looked at how the service was being delivered successfully, the challenges and forward planning. Mr Allanson in his evidence accepted that he had regular contact with Mr Kissick at these meetings.
101. The core team responsible for delivering the SBHNW service met internally on a fortnightly basis. The 4 claimants either frequently attended these meetings or ensured they kept up to date on developments.
102. Mr Kissick stated that in his day to day work a minimum of 80% of his time was directly involved in the operational delivery of the SBHNW Service, often it would go above this but due to the challenges and pressure 2buy2 felt from the Respondent around budgets, he felt unable to claim for the additional time.
103. Mr Kissick's evidence was that during the early stages of the contract, particularly 2018-2019, as other sales areas of the business grew, external recruitment took place to recruit platform leads and resources on the consultancy and church business to ensure that his attention, and that of the other Claimants, remained focused on the delivery of the contract for the Respondent. In late 2020, the Board of 2buy2.com took the decision to bring in additional Senior Leadership staff to support the non-SBHNW aspects of its work. At the time of the transfer, 1 February 2022, there were 8 members of the senior leadership team dealing with non-SBHNW work.
104. Mr Kissick's operational involvement increased further when the contract moved into the post-pilot phase. This involved daily contact with the team regarding

different opportunities that were being developed, where they required advice or input.

105. Mr Kissick outlined his specific duties on a day-to-day basis as managing the team responsible for delivering the pipeline of opportunities for the procurement team to work on. This included weekly meetings with the team leader and the wider team to review the operational activity involved in engaging with schools and progress against the service KPIs. He personally developed several tracking spreadsheets which were used to identify the level of engagement with different schools and multi-academy trusts to monitor ongoing performance and improvements.
106. Mr Kissick led on, and wrote, the majority of the report at the transition phase between pilot and post pilot, which outlined the range of approaches and likely ways to ensure success for the national roll out. He also led on the research, project briefs and delivery of two special projects looking at an ambassadors programme and aggregations, the latter in conjunction with Mr Morgan. Mr Kissick oversaw issues relating to data breaches alongside Mr Stables and provided operational cover for the other three Claimants when they were on annual leave.
107. Mr Kissick and Mr Stables were the main points of contact and people responsible for responding to Freedom of Information requests, and Ministerial and senior management requests from within the Respondent organisation. They were also the primary points of contact for the service both customer and Respondent facing during periods of office shutdown between Christmas and New Year.
108. In his written evidence to the Tribunal Mr Kissick advised between 1st January 2020 and 31st January 2022 he directly received approximately 1,400 emails relating to the SBHNW service, of which 643 emails were in the final 13 months of the contract. In the same period, he stated that 122 emails, out of the 643 emails he received were from Mr Allanson covering all aspects of the SBHNW service delivery. None of these emails were in relation to the TUPE process as

that was handled by others within the Respondent organisation. In his oral evidence to the Tribunal, Mr Allanson did not directly challenge the number of emails Mr Kissick claims to have received from him but stated that the subject matter may have been the same on a number of these emails.

109. Over the last 12 months of the contract in particular Mr Kissick continually engaged with the team in the Northwest who were delivering the services in the schools themselves. This included regular visits to the Northwest, Manchester and Liverpool, and day to day close working with the team leader in the region and other colleagues, looking at a range of areas including procurement, reporting, systems, digital, marketing and finance.
110. Mr Kissick's evidence to the Tribunal was that his daily work throughout the contract was dominated by multiple phone calls, emails, Teams/Zoom meetings and conversations with his internal team and the Respondent's team about the day to day operational activity on the contract from planning and reporting through to operational activity directly with internal and external stakeholders including 2buy2 staff, the Respondent's staff, individual schools, key promoters such as the Catholic Church and Church of England for whom he was the designated point of contact.
111. Mr Kissick saw his role as akin to the Service Owner role within the GHBS organogram/structure which was at the equivalent Grade 6 band that he was operating at for the delivery of the SBHNW. The role of Service Owner was filled in September 2021 by Ms Cammiss.

Russell Stables

112. Mr Stables' employment contract with 2buy2 commenced on 7 April 2011. Paragraph 4 of his employment contract sets out his duties as Operations Director, relevant sections of the contract are as follows:
 - i) *"4.1 The Employee shall serve the Company as Operations Director or such other role as the Company considers appropriate.*

ii) 4.2 During the Appointment the Employee shall:

(b) *act as a director of the Company and carry out duties on behalf of any other Group Company including, if so required by the Board, acting as an officer or consultant of any such Group Company;*
.....

(g) *faithfully and diligently exercise such powers and perform such duties as may from time to time be assigned to him by the Company;*
.....

(k) *use his best endeavours to promote, protect, develop, and extend the business of the Company and the Group.”*

113. In information provided to the Respondent in or around December 2020 and confirmed on 3 November 2021, Mr Stables role for 2buy2 is described as *“Responsible for business operations including IT development and marketing”*.

114. In the TUPE due diligence information provided by 2buy2 on 3 November, Mr Stables’ NW Hub Current Position is described as; *“Liaison with DfE management. Responsible for hub marketing / website / CRM provision and development. Final QA approver for DfE reporting (non-financial), providing practical support as required”*.

115. In his evidence to the Tribunal, Mr Stables stated that in a small medium enterprise, ‘SME’, directors are more involved in the day-to-day delivery of services than they would be in a larger business. This was the case for all the Claimants. They were not merely oversight roles but very much involved in front and back-office day-to-day SBHWN service delivery. We accept the evidence of Mr Stables in relation to this matter.

116. Mr Allanson in his evidence stated that Mr Stables was his day-to-day contact in respect of any matters related to the operation of the hub. He accepted Mr Stables attended all the monthly management meetings as well as the majority of the weekly meetings and the monthly marketing meetings. Mr Allanson stated in his opinion, out of all the Claimants, Mr Stables was the most involved in the hub activity.

117. Mr Stables outlined his roles and responsibilities as part of his operational management of the SBHWN contract as follows:

- i) responsible for the creation, maintenance, and development of the SBHWN website. This included working with external agencies and internal IT resource to ensure a successful website build in 2018 through to the contract exit in 2022;
- ii) Integration with the CRM instance provided for the SBHWN, this required engagement with 2buy2's IT and Operations team, (for which he was responsible) and the SBHWN DfE contract manager;
- iii) responsibility for the marketing team, ensuring sufficient resource for the SBHWN service, and review and final sign off of marketing material that would be used to inform and promote the service to schools. A suite of marketing tactics was employed including print material, online material, case studies, webinars, events etc. The marketing aspect of the role required regular contact with the relevant DfE contract manager, for the final 12 months of this contract;
- iv) Responsible for submitting monthly marketing updates to ensure marketing progress was being tracked. A termly marketing strategy document was also submitted, covering learnings from the previous terms and plans for future campaigns. Mr Stables oversaw the creation of these plans with the marketing team, feeding into what content was required and timelines. Each document required his final review, update and approval before submission to DfE;
- v) Mr Stables was an active member of the cross functional group of employees who met regularly to operationally manage the delivery of the SBHWN contract, which was referred to as the 'DfE Platform';
- vi) Mr Stables was a member of the specific Microsoft Teams channels which were created to manage specific activities under the DfE platform.

- vii) Mr Stables managed the Operations team that was responsible for the initial scoping, building, maintenance and development of the CRM instance, designed specifically for the SBHNW service;
- viii) A significant part of the SBHNW service provision was reporting. Mr Stables was responsible for and had final sign off on non-financial reporting. This included a regular monthly reporting suite consisting of: SBHNW Monthly Report, SBHNW Savings Monitor, SBHNW Procurement Delivery Plan, SBHNW National Deals and Frameworks Feedback, and SBHNW DfE Risk Register. Mr Stables and all the other Claimants were assigned 'owners' to specific risks and coordinated together monthly to update risks to protect the SBHNW service. These reports were produced by the Operations team that Mr Stables managed;
- ix) Mr Stables fed into the monthly report production as required and his role included final review and sign off. The monthly report suite would take around 1 week each month to produce and involved input from the other Claimants. A specific Microsoft Team's channel named 'DfE Monthly Report' was created to manage this process and the interactions across the team. This reporting suite was of high value to the DfE, tracking the progress / success of the SBHNW. If errors were identified, there was the contractual consequence of service credits potentially being applied. Mr Stables spent a significant amount of time manually reviewing the content and calculations each month prior to submission;
- x) Mr Stables was the first point of contact for any other non-financial report requests (finance reports were covered by Mrs Easun), including ad hoc formal data requests and Freedom of Information requests or Parliamentary Questions from DfE, these were subject to tight time constraints, generally within a maximum of 24 hrs;

- xi) Mr Stables role covered Data Control, including oversight alongside Mr Kissick. Mr Stables personally contacted affected schools as part of corrective action required for data breaches and led the internal team to ensure corrective actions were put in place to avoid repetition.
- xii) At Monthly Contract Management Meetings (produced by DfE), Mr Stables provided an update on 'Marketing and Comms' and 'Reporting & Performance against KPIs' in these contract management meetings and was tasked with various operational actions.

Jonathan Morgan

118. Mr Morgan's employment contract with 2buy2 commenced on 17 October 2011. Paragraph 5 of his employment contract sets out his duties as Procurement, relevant sections of the contract are as follows:

- i) *"5.1 The Employee shall serve the Company as Procurement Director or such other role as the Company considers appropriate.*
- ii) *5.2 During the Appointment the Employee shall:*

.....

(c) faithfully and diligently exercise such powers and perform such duties as may from time to time be assigned to him by the Company;

.....

(g) use his best endeavours to promote, protect, develop, and extend the business of the Company and the Group."

119. In information provided to the Respondent in or around December 2020 and confirmed on 3 November 2021, Mr Morgan's role for 2buy2 is described as *"responsible for procurement, strategic coordination, contract management and supplier management within 2buy2"*.

120. On 3 November 2021 the TUPE due diligence information provided by 2buy2 states Mr Morgans' NW Hub Current Position to be *“Senior Strategic Responsibility for Hub Procurement team. Oversees all Hub procurement delivery, regularly engaging with Hub procurement delivery managers”*.
121. As Director of Procurement Mr Morgan was responsible for the Procurement Category Management services and Customer Services, both departments having responsibilities for the delivery of front-line services to the SBHWN.
122. Mr Morgan directly managed the team that delivered the contracted procurement activities for the DfE Schools Buying Hub Northwest, at both a strategic and operational level. Mr Morgan's assignment was to ensure that school business managers and Head teachers understood how the Hub could help schools, as well as the delivery of procurement services to their schools. This occurred via initially face to face forums and meetings in the Northwest, where Mr Morgan attended school cluster forums alongside the DfE Schools Commercial Teams meeting with School Heads and Schools Business Managers to present and discuss the Hub procurement process and how to access the Hub services.
123. Mr Morgan attended the monthly contract management meetings as well as the fortnightly internal meetings. Mr Allanson accepted that Mr Morgan regularly attended the monthly meetings, however, like the other Claimants, this was in a strategic, supervisory capacity.
124. Mr Morgan stated in his oral evidence that the Company made it clear in a board meeting that all 4 Claimants were to allocate 80% of their time to the DfE contract. No board meeting minutes were provided to corroborate Mr Morgan's evidence.
125. Mr Morgan gave the following specific examples of day to day work he undertook in relation to the DfE contract:

- i. Attending monthly and weekly operational reviews to present, discuss and analyse the procurement activity, actions, and open issues for the registered schools.
- ii. Informing and liaising with Public Sector Buying Group (PSBO) organisations. These DfE approved Frameworks for schools involved:
 - a. Reporting on the processes of how the SBHNW Hub managed PSBO frameworks;
 - b. Tracking and reporting use of PSBO existing Deals for schools;
 - c. Informing schools on how to access existing Deals;
 - d. Creating a rationale for the aggregation of product categories;
 - e. Supporting the implementation of new approved frameworks, such as Risk Protection Arrangements (RPA) Framework for Schools;
 - f. Free assessment questionnaires for schools to understand their procurement needs and priority spends to ensure the best possible framework and suppliers were selected for their procurement requirements.

Claire Easun

126. Ms Easun's employment contract with 2buy2 commenced on 4 March 2019. Paragraph 4 of her employment contract sets out her duties as Director of Finance & Legal, relevant sections of the contract are as follows:

- i) *5.1 The Employee shall serve the Company as Finance Director or such other role as the Company considers appropriate.*
- ii) *5.2 During the Appointment the Employee shall:*

(c) faithfully and diligently exercise such powers and perform such duties as may from time to time be assigned to her by the Company;

.....

(g) use her best endeavours to promote, protect, develop, and extend the business of the Company and the Group.”

127. Considering our findings at paragraphs 32-38 above, we find that Mrs Easun was specifically recruited to perform the role of a dedicated Finance Director on the DfE contract. Her recruitment was directly in response to the capacity issues that Mr Lewis previously had in his role as Finance Director and the conflict that this presented with his wider responsibilities within the Company.
128. In information provided to the Respondent in or around December 2020 and confirmed on 3 November 2021, Mrs Easun’s role for 2buy2 is described as *“responsible for all finance and legal functions within the business”*.
129. In the TUPE information provided to DfE on 3 November 2021, Ms Easun’s day-to-day involvement with the SBHNW is describes as; *“production of the DfE spend and cashflow reports, contractual queries and issues, invoicing of the DfE and making payments to suppliers etc plus payroll”*. Mrs Easun’s time allocation to DfE is recorded as 80%. Within the spreadsheet, the Finance Manager role is marked as a ‘Leaver’, immediately prior to transfer Ms Easun was also covering that role and duties.
130. As the sole qualified accountant at the time of the TUPE transfer, Ms Easun was responsible for all aspects of financial accounting, management accounting, tax compliance, payroll including statutory deductions and pensions, cash management including authorising all payments made from the bank and the implementation of a new finance system, required by the DfE. With regard to 2buy2, there was a bookkeeper who predominantly dealt with wider financial accounting for the company. For the duration of the contract, the Finance Manager was responsible for overseeing other areas of 2buy2, whilst Mrs Easun focused on the DfE contract. Ms Easun’s evidence to the

Tribunal, which we accept, was that it is not unusual for bookkeepers to deal with the day-to-day accounting matters for a small to medium size company.

131. Mrs Easun's specific tasks directly related to the SBHWN contract included the preparation and review of monthly actual cost reporting, reforecasting costs, forecasting and preparing proposals for the various extensions of the contract between March 2019 and January 2022, monthly cashflow forecasting for the DfE and meetings with the DfE contract manager to review the reporting and respond to questions. Mrs Easun was responsible for ensuring that project costs were managed within the budget set and challenging spend. Additionally, there were indirect tasks such as managing the payroll and expense claims of all employees working specifically on the DfE contract and managing purchase orders and invoices related to the delivery of the contract.
132. Mr Terret whilst an experienced and valued member of 2buy2 staff, was an unqualified accountant. Cashflow reporting was something which had been outsourced previously as Mr Steve Terret, management accountant did not have the experience to prepare these reports. This was something Mrs Easun brought back in-house when she was recruited, and she was responsible for the preparation of such reports.
133. In his oral evidence to the Tribunal Mr Allanson stated that He was in regular contact with individuals from 2buy2. When asked about his specific contact with Mrs Easun, Mr Allanson stated that his contact on the spend reports was with Mr Terrett rather than Mrs Easun. He stated that all the questions he had on the spend reports went to Mr Terrett, normally he responded and that occasionally Mrs Easun would respond.
134. Mr Allanson's evidence was disputed by Mrs Easun who stated that due to Mr Allanson's lack of knowledge in financing, he would ask a lot of questions. In response, Mrs Easun would provide ad hoc analysis and responses to additional queries on a frequent basis. Mrs Easun states that after a period of time, she pre-empted these questions and addressed these by adding commentary within the reports, however, ultimately, she was the person

responsible for reviewing the financial reports, highlighting any discrepancies, and adding commentary to clarify matters as required. Mrs Easun accepted that she did not meet as regularly with Mr Allanson at the monthly contract meetings, but this was because of all the work that she had undertaken beforehand preparing, reviewing and clarifying the financial reports.

135. One of the Key Performance Indicators 'KPI's' set by the DfE, was to have 100% accuracy in financial reporting with the possible penalty of 1% of the monthly contract value. Given the high level of risk and the lack of tolerance to errors, we accept Mrs Easun's evidence that all reporting was reviewed multiple times by her and Mr Kissick and Stables who she met with fortnightly to review and discuss the financial reporting before it was sent to the Respondent.
136. We prefer the evidence of Mrs Easun in relation to her significant involvement with the financial reporting. Our conclusion is based on the stringent KPI's that had been set by the DfE; Mr Allanson's acceptance that he regularly asked questions to clarify information that had been provided and post Mr Evans' departure the fact that Mrs Easun was the sole qualified accountant at 2buy2 meant that all complex financial reporting issues relating to the DfE contract fell to her to address.
137. Mrs Easun was also part of the cross functional organised grouping of employees who met fortnightly to operationally manage the delivery of the SBHNW contract. Mrs Easun provided finance business partner support to non-finance staff including helping them understand financial reports and advising on the accounting treatment of various transactions.
138. Mrs Easun also held the position of 2buy2 Company Secretary. In her evidence to the Tribunal, she advised that there was no statutory requirement for a private limited company to have a named company secretary. It was an unremunerated position which took about three days a year to fulfil. This is a role that she had performed, unpaid, for other companies, such as Education Buying Group Limited, on a voluntary basis, for many years.

139. Mrs Easun stated that she had no intention to continue her 2buy2.com finance director activities post-transfer. She went on to explain that the size and value of the remnant of the company meant an experienced senior chartered accountant was not required. A competent bookkeeper was in post and an existing relationship with an external accountant could be used for any more complex accounting requirements.
140. In her evidence to the Tribunal, Mrs Easun highlighted that in her opinion the work that she had been doing on the DfE contract pre-transfer would still be required to be undertaken post transfer, on a larger scale as GHBS covered schools nationally. In her written evidence to the Tribunal, Mrs Easun stressed that this was a multimillion-pound, multi-year project and all financial work was required to be undertaken in line with governmental guidelines on accounting and reporting on the use of public funds.

Relevant Law

TUPE

141. This case involved the Transfer of Undertakings (Protection of Employment) Regulations 2006, which are referred to in this Judgment as TUPE.
142. Regulation 3 of TUPE provides, so far as relevant:

3(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—

...

(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

...

and in which the conditions set out in paragraph (3) are satisfied.

...

(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.

143. Regulation 4 of TUPE provides, so far as relevant:

4 (1) ...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.

144. HHJ Eady QC summarised the effect of these provisions in **Costain Ltd v Armitage and another UKEAT/0048/14/DA** as follows: “So, first, there must be an organised grouping of employees dedicated to the client (reg 3(3)(a)(ii)) and, second, the employee must be assigned to that grouping. Those questions are “analytically distinct” per Underhill P (as he then was), at para 16 **Eddie Stobart Ltd v Moreman (2012) UKEAT/0223/11/ZT, [2012] IRLR 356, [2012] ICR 919.**

145. The concept of an organised grouping implies an element of conscious organisation by the employer of its employees, in the nature of a team, which

has, as its principal purpose, the carrying out of the activities in question. There must be deliberate putting together of a group of employees for the purposes of the relevant client work it is not a matter of happenstance **Seawell Ltd v Ceva Freight UK Ltd [2012] IRLR 802** at para 17 and **Eddie Stobart Limited v Moreman [2012] IRLR 356 EAT** at paras 18-20.

146. In **Seawell Ltd v Ceva Freight UK Ltd [2013] CSIH 59, [2013] IRLR 726, 2013 SC 596**, the Court of Session approving the Judgment of Lady Smith in that case, reported at [2012] IRLR 802 stated “There will not be an “organised grouping of employees” with the relevant purpose if the employees in question simply happen to be working on that activity at the time of the transfer, perhaps because shift arrangements mean that they are working on a particular contract at a particular time without their actually being dedicated to it, or they are working on that activity, even if for 100% of their time, for some other entirely fortuitous reason.
147. On the second question, that of a particular employee's assignment, the starting point is generally taken to be the Judgment of the European Court of Justice in **Botzen and others v Rotterdamsche Droogdok Maatschappij BV [1985] ECR 519, [1986] 2 CMLR 50**, where it was stated: “An employment relationship is essentially characterized by the link existing between the employee and the part of the undertaking or business to which he assigned to carry out his duties. In order to decide whether the rights and obligations under an employment relationship are transferred under [the Directive] . . . it is therefore sufficient to establish to which part of the undertaking or business the employee was assigned.”
148. That talks of assignment in terms of a business undertaking or part, rather than any service provision change, but the language of assignment remains the same. In approaching that question, it is often tempting to try to establish assignment by reference to the percentage of time an employee is engaged in working in the relevant undertaking or part or on the particular activities in question. That might not be an irrelevant question, but it is not the test.

149. In ***Duncan Webb Offset (Maidstone) Ltd v Cooper and another [1995] IRLR 633*** the EAT observed that the question of assignment is one of fact for the Employment Tribunal, albeit that it might be relevant to look at the amount of time an employee spends on one part of the business or the other, the amount of value given to each part by the employee, the terms of the contract, showing what the employee could be required to do, and how the cost to the employer of the employee's services had been allocated between the different parts of the business (see para 1 of the Judgment of Morison J in that case). What is to be given weight in any particular case will be a matter for the Employment Tribunal as the tribunal of fact, but it will not be determinative that the different aspects of the employee's work are carried out for the same client.
150. As Lady Smith observed, at para 19 of her Judgment in ***Edinburgh Home-Link Partnership v The City of Edinburgh Council (UKEATS/0061/11 10 July 2012***: *“Regarding the reg 4 issue of assignment, the question has to be asked in respect of each individual employee. It is not to be assumed that every employee carrying out work for the relevant client is assigned to the organised grouping If, for instance, an employee's role is strategic and is principally directed to the survival and maintenance of the transferor as an entity, it may then not be established that that employee was so assigned.”*
151. In ***Argyll Coastal Services Ltd v Stirling and others (UKEATS/0012/11, 15 February 2012***, Lady Smith again had to consider the interplay between regs 3 and 4, TUPE and offered the following analysis. First, in respect of the question of an organised grouping of employees for reg 3(3)(a)(i) purposes: *“It seems to me that the phrase 'organised grouping of employees' connotes a number of employees which is less than the whole of the transferor's entire workforce, deliberately organised for the purpose of carrying out the activities required by the particular client contract and who work together as a team.....Turning to 'principal purpose' there seems to be no reason why the words should not bear their ordinary meaning. Thus, the organised grouping of employees need not have as its sole purpose the carrying out of the relevant client activities, that must be its principal purpose.....If a Claimant can show that a relevant service provision change occurred, he then requires to satisfy the requirements*

of regulation 4(1). That involves considering whether or not the Claimant was assigned to the organised grouping of resources referred to in regulation 3(3)(a)(i)."

152. Lady Smith then, going on to consider the question of assignment stated: *"The issue of whether or not a particular employee was assigned to the 'organised grouping of employees' affected by the transfer and thus entitled to the protection of TUPE is not a mere formality. It can only be resolved after a proper examination of the whole facts and circumstances. Being involved in the carrying out of the relevant activities immediately prior to the transfer will not necessarily mean that that employee was assigned to the organised group."*
153. In ***London Borough of Hillingdon v Gormanley UKEAT/0169/14/KN***, the EAT concluded that the Employment Judge had *"failed to consider and take into account the material factor referred to in Botzen, the organisational structure within which the employment relationship took effect. Whilst whether an employee is so assigned is a matter for the ET, all relevant material is to be considered, including, in my judgment in this case, the duties the Claimants could be called upon to perform under their contracts of employment."*
154. In ***McTear Contracts Ltd v Bennett and others UKEATS/0023/19***, applying the ECJ decision in the case of ***ISS Facility Services v Govaerts, C-344/18***, the EAT held the question of whether (and which) employees transfer following a service provision change will need to be considered differently in cases where there are two or more incoming service providers. Potentially, an employee's contract could be split between multiple transferees. The EAT considered that it would not be desirable to take a different approach to the transfer of employment contracts under TUPE according to whether it was a service provision change (i.e. outsourcing) or a business transfer. The same considerations should apply to both types of transfer. In principle, there was no reason why an employee could not hold two (or more) contracts of employment with different employers at the same time, if the work was clearly separate.

Unfair dismissal

155. **Section 94(1) of the Employment Rights Act 'ERA' 1996 Act** provides that:

“An employee has the right not to be unfairly dismissed.”

156. **Section 98 ERA** provides clarity as to what is meant by unfair dismissal:

“(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.”

157. The meaning of redundancy is set out in **section 139 ERA**:

“(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-

(a) the fact that the employer has ceased or intends to cease-

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(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.”

158. If the employer has a potentially fair reason for dismissing the employee, it still needs to be reasonable in the particular factual circumstances for the employer to rely on that reason to dismiss the employee, and it needs to follow a fair procedure in doing so, as required by section 98(4) of ERA:

“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
(b) shall be determined in accordance with equity and the substantial merits of the case.”*

159. Where a dismissal has been found to be procedurally unfair, a tribunal, when assessing the appropriate remedy to be awarded, should consider whether the employer could have dismissed the employee fairly, and whether it would have done so (***Polkey v AE Dayton Services Ltd [1988] ICR 142***).

Regulation 7 TUPE

160. Dismissal of an employee in connection with a TUPE-transfer is, on-the-face-of-it, automatically unfair, as provided for by **Regulation 7(1) of TUPE**:

“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.”

161. This is subject to an exception, set out in Regulation 7(3), where:
(As per Regulation 7(3)(a), which cross-refers to Regulation 7(2)) *“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.”*

162. If an “economic, technical or organisational reason entailing changes in the workforce” (an ETO reason) applies, the employee is to be regarded as having been made redundant or as having been dismissed for “a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held” (Regulation 7(3)(b)).

163. In other words, Regulation 7(3) acknowledges that there are two potentially fair reasons for dismissing an employee in connection with a TUPE-transfer, though a fair dismissal in that situation still requires that it is reasonable, on the facts,

for the employer to rely on one or other of those reasons to dismiss the employee, and that it follows a fair process, as Regulation 7(3) of TUPE does not displace the requirements of the 1996 Act.

164. If a dismissal takes place shortly after a TUPE-transfer, the question therefore arises as to what the reason or reasons for the dismissal were. If the dismissal was not for the sole or principal reason of the transfer, Regulation 7 does not apply. Where the sole or principal reason for the dismissal was the TUPE transfer, the dismissal is still potentially fair if it was for an ETO reason.

Failure to inform and consult

165. TUPE requires a sharing of information between the transferor and transferee prior to transfer, and for information to be provided, and consultation to be conducted where appropriate, with affected employees.

166. **Regulation 13(2) TUPE** provides that:

“Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the employer shall inform those representatives of [a list follows]”

167. Regulation 13(1) defines affected employees as:

“Any employees of the transferor or the transferee (whether or not assigned to the organised grouping of resources or employees that is the subject of a relevant transfer) who may be affected by the transfer or may be affected by measures taken in connection with it; and references to the employer shall be construed accordingly”.

168. Regulation 13(6) requires that consultation occurs in certain circumstances:

“An employer of an affected employee who envisages that he will take measures in relation to an affected employee, in connection with the relevant transfer, shall consult the appropriate representatives of that employee with a view to seeking their agreement to the intended measures.”

169. **Regulation 15(1) TUPE** provides:

“Where an employer has failed to comply with a requirement of regulation 13 or regulation 14, a complaint may be presented to an employment tribunal on that ground—

- (a) in the case of a failure relating to the election of employee representatives, by any of his employees who are affected employees;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related;
- (c) in the case of failure relating to representatives of a trade union, by the trade union; and
- (d) in any other case, by any of his employees who are affected employees.”

170. The obligations in Regulation 13 fall on the employee’s employer at the relevant time so in the case of an employee transferring from the transferor to the transferee in connection with the transfer, the obligations fall on the transferor. Mrs Justice Slade DBE, giving the EAT’s judgment in ***Allen v Morrisons Facilities Services Ltd [2014] IRLR 514*** observed that: “The standing of an employee to bring a claim for breach of an obligation under TUPE reg. 13 is determined at the date of the breach of the obligation, not at the date the claim is lodged. If a transferor fails to give representatives of their affected employees, the information required by reg. 13(2)(d) they can pursue a claim against the transferor notwithstanding that at the time of lodging an ET1 the employees may have transferred to the transferee... An employee of a transferor cannot obtain standing to claim against a transferee for breach of pre-transfer obligations because he became an employee of the transferee on the transfer of the undertaking.”

171. Regulation 15(5) concerns complaints about failures to consult about “measures”. It provides that:

“On a complaint against a transferor that he had failed to perform the duty imposed upon him by virtue of regulation 13(2)(d) [the obligation on the transferor to provide information about any measures the transferor envisages the transferee will take in relation to any affected employees who will become employees of the transferee after the transfer]... he may not show that it was not reasonably practicable for him to perform the duty in question for the reason

that the transferee had failed to give him the requisite information at the requisite time in accordance with regulation 13(4) [the obligation on the transferee to give the transferor such information as will enable the transferor to consult about measures] unless he gives the transferee notice of his intention to show that fact; and the giving of the notice shall make the transferee a party to the proceedings.”

172. In other words, this paragraph refers to the situation where the transferor’s failure to consult about “measures” is attributable to the transferee’s failure to give it the requisite information about measures. This is described by Mrs Justice Slade DBE in Allen: *“It is only if the affected employees bring a claim against the transferor and the transferor alleges that the transferee had failed to give them the requisite information at the requisite time in accordance with reg. 13(4) and give the transferee notice under reg. 15(5) that the transferee is made a party to the proceedings. It is clear from the scheme of the Regulations that the transferee cannot be made a party to the proceedings by any other means. An order can only be made against a transferee if the tribunal finds the complaint against the transferor under reg. 15(1) well founded and the transferor shows that the transferee failed to perform their obligations under reg. 13(4).”*

Wrongful dismissal

173. An employee, by virtue of their contract of employment with their employer, is entitled to be given a period of notice before that contracted is terminated. Where an employer dismisses an employee without notice or payment in lieu of notice in breach of that contract, the employee has been wrongfully dismissed and is entitled to seek damages equal to the pay and value of benefits they would have received had their employer complied with the terms of the contract.

Submissions

174. We had the benefit of helpful written submissions provided by the representatives of both parties which were then supplemented orally. They are not set out in detail in these reasons but both parties can be assured that we have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

DISCUSSION & CONCLUSIONS

TUPE - Transfer

175. It is common ground between the parties and we find that there was a relevant transfer on 1 February 2022, within the meaning of Regulation 3(b)(iii) by way of a service provision change in that the activities of 2buy2, under the amended version of the contract of November 2019, were insourced to the Respondent.

176. Mr Gill submitted on behalf of the Claimants that the principles set out in the case of **McTear** and **Govaerts** apply, and the Tribunal should consider the impact. However, we agree with the Respondent's submissions in response that the decisions in **McTear** and **Govaerts** have no application to the present case. This case does not involve multiple transferees, the DFE contract was taken in-house, DFE being the only transferee; Neither does it involve the splitting of an organised grouping into different parts to different transferees as the company did not retain any part of the DFE contract.

TUPE – Organised grouping

177. The first question that we considered in respect of assignment was whether immediately prior to the transfer there an organised grouping of employees in existence was whose principal purpose was to deliver the DfE contract. The Respondent accepted in its evidence that there was in fact an organised grouping of employees whose principal purpose was to deliver the DfE contract, however, they do not accept that the Claimants were part of the organised

grouping due to the strategic and supervisory nature of their roles. We separately considered this issue and make our determination based on the evidence that we heard. As highlighted in the Eddie Stobart case, for there to be an organised grouping the employees ought to be organised in some sense by reference to the requirements of the client in question, not by 'happenstance'.

178. As we found earlier the only evidence relating to the organisation and structure of 2buy2 was presented by the Claimants. Other than some limited evidence from Mr Allanson and Ms Greenwood in respect of their contact with the four Claimants, the Respondent was unable to offer any direct evidence in relation to the organisation and structure of 2buy2. We found the Claimants to be truthful and credible in their evidence and have no evidence to the contrary disputing their evidence in relation to the organisation and structure of the business. In light of this, we accept the evidence of the Claimants in this regard.
179. We find that there was an organised grouping of employees whose principal purpose was to deliver the DfE contract. We find that 2buy2 had deliberately structured the business in such a way to enable it to successfully deliver the DfE contract, this was not just by 'happenstance'. We reached this conclusion based on the following key factors:
 - i) 2buy2 formed a specific platform for the delivery of the contract, the DfE platform, with specific areas headed up by different individuals who were assigned key roles and named as key personnel in the contract.
 - ii) The cross-functional grouping of employees who met fortnightly to operationally manage the delivery of the contract.
 - iii) The contract required and 2buy2 created its own CRM instance, its own financial and performance reporting, its own KPI's, its own website, its own fortnightly platform performance meetings, its own marketing and communications strategy, which were all distinct from the rest of the business.

- iv) The DfE platform only included those who were dedicated to work in or on the DfE contract.
- v) The creation of a dedicated Teams channel for reporting relating to the contract with only 21 employees who had access to this channel, including the four Claimants.

TUPE – Assignment to Organised Grouping

180. We then went on to consider whether each of the Claimants were assigned to the organised grouping. In respect of this particular question, we considered each Claimant individually and in reaching our conclusions, we considered the following factors as critical to the issue of assignment:

- i) whether the Claimants' principal purpose was the carrying out of the activities necessary for delivery of the DfE contract;
- ii) the organisational structure of 2buy2;
- iii) the nature of the roles undertaken by the Claimants;
- iv) the time spent on one part of the business or the other.

181. It is the Respondent's position that the principal purpose of the Claimants' roles within 2buy2 was the overall development and promotion of the company as a whole not delivery of the activities necessary for the DfE contract.

182. In reaching our conclusion on this issue we carefully considered the EAT decision in the ***Edinburgh Home-Link Partnership*** case. In that case the EAT concluded that the roles of the Directors were "*strategic; concerned with the running and maintenance of the charity rather than providing the service. As a result, the Directors could not be assigned to the "organised grouping of employees"*". The EAT agreed with the original tribunal judge in finding that there was an element of direct service provision in the Directors' roles, however, it was difficult to reach any conclusion as to the extent of this as the Directors had "*sought to exaggerate the direct service provision element, they having perceived it as being in their interests to do so*".

183. The facts and circumstances of the ***Edinburgh Home-Link Partnership*** case differ significantly to the present case. On the facts and circumstances of this case we find that all 4 Claimants were heavily involved in direct service provision. In contrast to the ***Edinburgh Home-Link Partnership*** case, we find the evidence of the Claimants in this case to be honest, consistent and credible. We accept that the roles of all 4 Claimants were heavily strategic, but this was because the contract itself had a heavy strategic focus in relation to what was required to deliver it. Ultimately, the principal purpose of the Claimants' roles was delivery of the activities necessary for the DfE contract.
184. We also applied the ruling of the EAT in the ***Hillingdon*** case and looked at the contractual obligations of employment for all 4 Claimants and their roles within the organisational structure. We set out our conclusions in respect of such considerations for all 4 Claimants below.

Robert Kissick

185. We find Mr Kissick's principal purpose was the carrying out of the activities concerned on behalf of DfE. Whilst his employed position within the Company involved a wider role as CEO, we found earlier that his employment contract allowed the company to place him in such other role as the company considered appropriate. We accept the evidence of the Claimants that the role of a CEO and/or Director in a SME is very different to that of a large national or multinational company. Certainly, in this case we find all the Claimants were very hands on in terms of service delivery. We conclude that the role that Mr Kissick was placed into was identified and set out in a number of documents. This was referenced in the updates provided to the Respondent in terms of roles and time allocations, most notably in August 2020 by Mr Stables and then the TUPE information spreadsheet, which confirms Mr Kissick's role as delivery manager responsible for ensuring overall project delivery.
186. Applying ***Hillingdon***, we also considered whether the company could have moved him to another role. Unlike ***Hillingdon***, in this case there were other

smaller contracts in existence in respect of which, senior leadership team members were brought in not only to carry out the day-to-day activities but also to expand these areas of work. As we have found earlier, the business was deliberately structured in this way and the Claimants were directed to focus on the delivery of the DfE contract rather than other areas of the business. Whatever we may think of that as a business decision, evidently the position of the company was that this was their main area of work, and this is where all 4 Claimants were assigned, to provide the service to DfE under the service contract. The Directors did not only become involved in the DfE contract by “happenstance” as per *Hillingdon*.

187. Whilst we have not seen confirmation in any board meeting minutes explicitly setting out that Mr Kissick was placed into the delivery manager role. We consider his evidence that he was placed into this role by the company is corroborated not only by the documents set out above but also by the evidence of the other 3 Claimants.
188. Mr Morgan stated in his oral evidence that the Company made it clear in a board meeting that all 4 Claimants were to allocate 80% of their time to the DfE contract and again whilst we have not seen any board meeting minutes confirming this to be the case, we accept that this was the understanding of all 4 Claimants. Mr Kissick pointed to the DfE contract being the number one priority for the business and this is set out in board meeting minutes which we noted. The DfE contract accounted for 75% of 2buy2's income and it was its single largest contract; as such, we find it unsurprising that the Company would take a view that the 4 Claimants, in view of the specific roles they had relating to the DfE contract, would devote 80% or at least a significant amount of time to the contract.
189. Mr Kissick was named as key personnel under the contract, and we found earlier that those named as key personnel were identified as individuals who were seen as critical to the service delivery.

190. We find that it is not without significance that up to the point of January 2022, the Respondent accepted that the Claimants were all eligible for TUPE transfer. The roles of the Claimants and the high percentage of time that they were allocating to the contract were not challenged and had not been done since August 2020, when the 80%-time allocation of the Claimants was presented to the DfE. The information provided was accepted and considered before a reasoned decision was reached regarding TUPE eligibility. We attach limited weight to Ms Cammiss' evidence, regarding her concerns that the Claimants were exaggerating the time they were spending on the DfE contract. This was not something that was ever put to the Claimants and is contradicted by the letters in January 2022, which clearly state that the Respondent takes no issue with the time each of the Claimants were spending on the contract.
191. We find that Mr Kissick dedicated around 80% of his time to the DfE contract, this included a significant amount of strategic and managerial responsibility, however, such strategic and managerial duties related to delivering the DfE contract rather than the Company as a whole. Clearly, the role that he was undertaking was benefiting the Company as the DfE contract was the largest and most significant contract 2buy2 were delivering accounting for over 75% of the company's income. That said, in our view this did not detract from the fact that the work that Mr Kissick was doing was direct service delivery not just strategic work relating to the wider survival of the company.
192. The evidence of each of the Claimants' day-to-day activities in relation to the Contract went largely unchallenged by the Respondent and none of their witnesses were able to comment directly on any of the Claimants' roles. The evidence of day-to-day activities came from the Claimants, and we have no reason to doubt their assertions. Mr Kissick and the other Claimants came across as genuine and honest witnesses and we do not accept the Respondent's assertion that their time suggested as dedicated to the contract was in any way inflated or exaggerated to assist them with arguments in relation to TUPE and assignment; there is simply no evidence to back this assertion.

193. On the other hand, as we set out earlier, there are a large number of documents, which support the Claimants' accounts of their day-to-day activities. Most notably, the fact that Mr Stables set out in August 2020 that the Claimants were all dedicating 80% of their time to the DfE contract and explaining that as a small company, the role of Directors took on a more hands on approach supports the evidence of the Claimants in this regard and evidences that this level of dedicated work to the contract did not just come about as a result of TUPE and any inclination by the Claimants to exaggerate their involvement. The Claimants' evidence was that post-pilot phase, their day to day involvement in delivering the contract increased, we accept that as the project continued to grow there was a greater need for involvement of all 4 Claimants, and in respect of Mr Kissick, we find that he was front and centre of this work and was key in liaising with schools, which included him regularly personally attending the North West sites and working closely with team leaders.
194. We find that the multiple examples of Mr Kissick's day to day work are clear and cogent indicators of his significant involvement with the day-to-day work on the delivery of the contract. Amongst other things, these examples specifically included; writing reports at the transition phase between pilot and post pilot phase; producing tracking spreadsheets; personally responding to Ministerial and Senior Management requests; leading on research; project briefs; delivery of the ambassadors and aggregation programme; overseeing data breaches alongside Mr Stables and providing cover for the other 3 Claimants whilst they were on annual leave. We conclude all these activities were hands on day-to-day activities directly servicing the DfE contract.
195. Mr Allanson accepted that Mr Kissick attended the monthly contract meetings and in cross examination he accepted that in the last 12 months of the contract, he sent a large number of emails to Mr Kissick. These emails were not simply copying Mr Kissick in, nor did they relate to the TUPE process. These were emails relating directly to the delivery of the DfE contract.
196. We note under the GHBS structure, there is a Service Owner role responsible for the delivery of the service and whilst we have not seen the job description

for this role; the role title and its position in the structure leads us to conclude that it is very likely that this role is akin to the role that Mr Kissick had under the SHBNW service.

197. Regarding the ultimate decision that the Claimants were not eligible to TUPE transfer, the letters of 14 & 27 January 2022 are clear that the reason for the decision was based on the Respondent concluding that each of the Claimants would be retaining strategic roles within 2buy2 post transfer. We find that this decision was flawed in respect of Mr Morgan as he did not hold a Statutory Directors position and to some extent in respect of Mrs Easun as she did not hold a Statutory Directors position but one of Company Secretary.
198. Additionally, we found earlier that Mr Kissick did not state that he or Mr Stables would be continuing in their statutory roles, but they wished to consider the feasibility of this. He did however make it clear that he and Mr Stables would not be continuing in their operational roles. As Mr Kissick set out in his evidence due to the lack of time that he and the other 3 Claimants had to be involved in other much smaller areas of the business, a number of individuals had been recruited to senior leadership roles. It was these individuals who were dealing with the day-to-day work and strategic elements of those areas of work and following the TUPE transfer discussions, it was these individuals who would be taking the company forward in those areas.
199. If there was any confusion about the Claimants involvement with 2buy2 post transfer, this was clarified by the Claimants solicitor in his letter of 27 January 2022, where he clarified the position in respect of Mr Morgan and Ms Easun as well as making it clear that none of the Claimants would be involved with 2buy2 in any operational capacity. It is also of significance that the Civil Service rules/code of conduct did not exclude the holding of directorships but required permission to be obtained, something which the Claimants were prepared to do. The fact that the Respondent gave no consideration to Mr Gee's letter clarifying the position regarding the Directors supports the Claimants position that the Respondent's position in respect of their transfer was based on a false premise,

with a lack of proper consideration being given to whether each individual Claimant was assigned to an organised grouping delivering the DfE contract.

200. We note that all 4 Claimants were offered re-employment and new contracts with 2buy2. As set out in our findings earlier, whilst these roles were all offered under the same job titles, these contracts were all on reduced salaries as well as a reduced ambit of responsibilities. We do not accept the Respondent's submissions that this evidenced the Claimant's roles with 2buy2 remained as they did prior to the TUPE transfer and as such they were ineligible to transfer. Based on our findings and conclusions the fact that the Claimants were part of an organised grouping, and their primary role was dedicated to delivering the DfE contract, means that they should have been TUPE transferred. The fact that some strategic elements of their roles remained, and they were then re-employed in reduced roles does not change the TUPE position.
201. Having considered all the circumstances as a whole, we conclude that Mr Kissick was part of the organised grouping of employees responsible for the delivery of the DfE contract.

Russell Stables

202. We find Mr Stables' principal purpose was the carrying out of the activities concerned on behalf of DfE. Whilst his employed position within the Company involved a wider role as Director of Operations, similar to Mr Kissick we found earlier that his employment contract allowed the company to place him in such other role as the company considered appropriate. We conclude that the principal role that Mr Stables was placed into was operational delivery manager for the DfE, this was identified and set out in a number of documents as referenced in relation to Mr Kissick and we repeat paragraphs 183 to 185 above in this regard.
203. We find that Mr Stables dedicated 80% of his time to the DfE contract, this included a significant amount of strategic and managerial responsibility,

however, such strategic and managerial duties related to delivering the DfE contract rather than the Company as a whole.

204. We repeat the general conclusions set out at paragraphs 190 to 192 above in respect of the evidence of Mr Stable's relating to his day-to-day activities.
205. We find that the multiple examples of Mr Stables Day to day work are clear and cogent indicators of his significant involvement with the day-to-day work on the delivery of the contract. Amongst other things, these examples specifically included; attending monthly and weekly operational and contract meetings to present, discussing and analysing the operational activity, responsible for the creation, maintenance, and development of the SBHNW website, review and final sign off of marketing material, responsible for submitting monthly marketing updates, responsible for and final sign off on all non-financial reporting, overseeing data breaches alongside Mr Kissick and providing cover for the other 3 Claimants whilst they were on annual leave. We conclude all these activities were hands on day-to-day activities directly servicing the DfE contract.
206. Mr Allanson accepted that Mr Stables was involved in the monthly and weekly contract meetings and in fact in his oral evidence, Mr Allanson made the point that the individual he had the most interaction with was Mr Stables.
207. Mr Stables was named as key personnel under the contract, and we repeat our general conclusions in relation to this as set out at paragraphs 186 and 187 above.
208. Whilst Mr Stables did not set out what his equivalent role was under the GHBS structure, we find that there would have been an even greater need for an operational delivery manager, for a larger national service.
209. We repeat our general conclusions set out above under paragraphs 196-200 above in respect of the Respondent's change of position on the Claimants TUPE transfer eligibility and the position of the Claimants post TUPE transfer.

210. Having considered all the circumstances as a whole, we conclude that Mr Stables was assigned to the organised grouping of employees, whose principal purpose was the delivery of the DfE contract.

Jonathan Morgan

211. We find Mr Morgan's principal purpose was the carrying out of the activities concerned on behalf of DfE. Whilst his employed position within the Company involved a wider role as Director of Procurement, similar to Mr Kissick and Mr Stables we found earlier that his employment contract allowed the company to place him in such other role as the company considered appropriate. We conclude that the principal role that Mr Morgan was placed into was the Head of procurement for the DfE, this was identified and set out in a number of documents as referenced in relation to Mr Kissick and we repeat paragraphs 183 to 185 above in this regard.

212. We find that Mr Morgan dedicated 80% of his time to the DfE contract, this included a significant amount of strategic and managerial responsibility, however, such strategic and managerial duties related to delivering the DfE contract rather than the Company as a whole.

213. We repeat the general conclusions set out at paragraphs 190 to 192 above in respect of the evidence of Mr Morgan, relating to his day-to-day activities.

214. We find that the multiple examples of Mr Morgans' day to day work are clear and cogent indicators of his significant involvement with the day-to-day work on the delivery of the contract. Amongst other things, these examples specifically included: attending monthly and weekly operational and contract meetings to present, discuss and analyse the procurement activity; Informing and liaising with PSBO organisations; reporting on the processes of how the SBHNW Hub managed the PSBO framework; tracking and reporting use of PSBO existing deals for schools, creating a rationale for the aggregation of product categories, supporting the implementation of new approved frameworks, such as Risk

Protection Arrangements (RPA) Framework for Schools. We conclude all these activities were hands on day-to-day activities directly servicing the DfE contract.

215. Mr Allanson accepted, and we find that Mr Morgan was involved in the monthly and weekly contract meetings.
216. Mr Morgan was named as key personnel under the contract, and we repeat our general conclusions in relation to this as set out at paragraphs 186 and 187 above.
217. Whilst Mr Morgan did not set out what his equivalent role was under the GHBS structure, we find that there would have been an even greater need for a procurement specialist heading up the procurement function, for a larger national service.
218. We repeat our general conclusions set out above under paragraphs 196-200 above in respect of the Respondent's change of position on the Claimants TUPE transfer eligibility and the position of the Claimants post TUPE transfer.
219. Having considered all the circumstances as a whole, we conclude that Mr Morgan was assigned to the organised grouping of employees, whose principal purpose was the delivery of the DfE contract.

Claire Easun

220. We find Mrs Easun's principal purpose was the carrying out of the activities concerned on behalf of DfE. On the face of it Mrs Easun's role as Director of Finance had clear and visible duties towards the wider company. However, we find with Mrs Easun that there were a unique set of facts and circumstances in relation to her role which support our conclusion that she was assigned to the organised grouping of employees whose principal purpose was the delivery of the DfE contract.
221. Firstly, at the point of Mrs Easun's appointment, 2buy2 had set out its needs in terms of recruitment of a dedicated finance director. As Mr Kissick clarified in

his email to Ms Carter at the time, the appointment of Mrs Easun was to ensure that the business had sufficient resource to effectively carry out all necessary roles and responsibilities going forward on the DfE contract. We find that Mrs Easun was appointed as a dedicated resource for the DfE contract. She did have other duties to the wider company, but her principal role was the servicing of the DfE contract.

222. Secondly and linked to the above point, Mrs Easun was immediately named as a key person under the contract. We repeat paragraphs 186 and 187 as to our conclusions on the importance of Key Personnel to the contract.
223. Thirdly, the KPI requirement of 100% accuracy on financial reporting and Mrs Easun's onerous and significant task of reviewing reports multiple times and addressing discrepancies. We repeat paragraphs 131 and 132 as to our conclusions on the importance of 100% accuracy for Mrs Easun's role.
224. Finally, in the latter few months of the contract Mrs Easun was the only qualified accountant with 2buy2 and remained so to the point of transfer. She was the only person dealing with all financial accounting management aspects of the DfE contract. We accepted earlier that the bookkeeper employed for the rest of business was dealing with deal with day-to-day matters for other areas of the business.
225. We find that Ms Easun dedicated around 80% of her time to the DfE contract, this included a significant amount of strategic and managerial responsibility, however, such strategic and managerial duties related to delivering the DfE contract rather than the Company as a whole.
226. We repeat the general conclusions set out at paragraphs 190 to 192 above in respect of the evidence of Ms Easun relating to her day-to-day activities.
227. We find that the multiple examples of Ms Easun's day to day work are clear and cogent indicators of her significant involvement with the day-to-day work on the delivery of the contract. Amongst other things, these examples specifically included: attending monthly and weekly operational and contract meetings to present, discuss and analyse the financial activity the preparation and review of

monthly actual cost reporting, reforecasting costs, forecasting and preparing proposals for the various extensions of the contract between March 2019 and January 2022, implementing financial processes and systems for the “Get Help Buying” service, providing financial support to develop budgets, managing project costs within the budget set and challenging spend, managing the payroll and expense claims of all employees working specifically on the DfE contract, managing purchase orders and invoices related to the delivery of the contract. We conclude all these activities were hands on day-to-day activities, directly servicing the DfE contract.

228. We repeat our conclusions set out in paragraphs 129-132 above regarding Mrs Easun’s interactions with Mr Allanson.
229. Whilst Mrs Easun did not set out what her equivalent role was under the GHBS structure, we find that there would have been an even greater need for a qualified accountant heading up the finance function, for a larger national service.
230. We repeat our general conclusions set out above under paragraphs 196 to 200 above in respect of the Respondent’s change of position on the Claimants TUPE transfer eligibility and the position of the Claimants post TUPE transfer.
231. Having considered all the circumstances as a whole, we conclude that Mrs Easun was assigned to the organised grouping of employees, whose principal purpose was the delivery of the DfE contract.

Unfair Dismissal

232. Based on our findings above we conclude that by operation of law, the Claimants’ employment transferred to the Respondent on 1 February 2022. By refusing to accept their employment, the Respondents dismissed the Claimants with immediate effect on the same date. As we have found that the Claimants’ employment transferred to the Respondent, we are in no doubt that the transfer was the sole or principal reason for the Claimant’s dismissal.

233. The Respondent disputes that the transfer was the sole or principal reason for the Claimants' dismissal. The Respondent argues as an alternative case, that the dismissal was not automatically unfair under Regulation 7 of TUPE because the sole or principal reason for the Claimant's dismissal was either an ETO reason entailing changes in the workforce, redundancy, or some other substantial reason.
234. The question that we must consider firstly is whether the Respondent has established an ETO reason for dismissal, as if there was such a reason in existence then the sole or principal reason provision being TUPE under s7(1) would not apply and the dismissals would not be automatically unfair.
235. In the TUPE measures discussions in December, the Respondent had advised the Claimants that the only offices where the type of activity they were conducting were located in Sheffield and Darlington. The Claimants had indicated via Mrs Stables that they were not prepared to travel 30 miles outside of Pencoed and should these remain as the only locations, then they would look to pursue the option of redundancy.
236. Ms Hill's email at the end of December made it clear that where staff were unable to travel to a DfE office, they would transfer across to the Respondent and move into redundancy/redeployment activity, this was the clear understanding of all 4 Claimants in their evidence. In light of these discussions, we conclude, the likely scenario accepted by all was that it was highly likely that the Claimants would be at risk of redundancy, albeit the assumption was a fair process would be followed, meaning redeployment options would be considered.
237. The Respondent provided limited evidence on this point; however, we find what was provided was sufficient to show the potential existence of an ETO reason, namely a change in the location where employees are employed by the employer. However, we note that an ETO or dismissal for any other reason is not the Respondent's principal case. It cannot therefore assert that it made a positive decision to dismiss the Claimants for an ETO reason or for any other reason because it has maintained throughout that the Claimants did not transfer.

We find this is fatal to the Respondent's case that the dismissal was either for an ETO reason or any other reason. In light of this finding, we the Claimants' dismissals are automatically unfair.

238. If we are wrong about that, we went on to consider the fairness of the dismissals for an ETO reason, namely, redundancy. The Respondent made it clear in their preliminary application that it had not prepared its case to deal with the issue of fairness and very limited evidence was presented in this regard. In any event, we find it clear on the facts that no procedure was followed in respect of the dismissals.
239. The Respondent itself accepts that no redundancy consultation process was followed with the Claimants. The Tribunal note that redundancy options were being considered alongside the TUPE consultation process and as such we find that the Respondent had every opportunity to consult with the Claimants. The Respondent could have carried out a fair consultation process prior to dismissal, particularly as the Claimants were in scope for a significant length of time. Redeployment options, in other areas of the civil service which may have been within reasonable commuting distances, could also have been discussed as set out in Ms Hill's email of 22 December. Had we concluded that there was an ETO redundancy reason, we would have found the dismissals to be procedurally unfair.
240. We conclude there was no reasonable basis for dismissal for some other substantial reason, namely that the Claimants were going to retain their employment with 2buy2, following transfer. Having found the only roles that 3 of the Claimant's had indicated they wished to retain were statutory director roles, we conclude there was no reasonable basis for dismissal on these grounds. Mr Morgan was not a statutory director and should not have been included in the same group as the other Claimants. Had the Respondents been unsure about this position, this was clarified by the Claimants' solicitor prior to the date of dismissal.
241. In addition to dismissal for this reason being substantively unfair, we also find that it was procedurally unfair. There was simply no procedure followed,

including a lack of consultation and enquiries once the Claimants solicitor had clarified the Claimants' position. The Claimants carrying out statutory directors' roles would not necessarily have meant that their roles were incompatible with roles in the Civil Service, which would be dependent on the circumstances of each individual case.

Failure to Consult

242. We agree with the Respondents submissions that the claims relating to a failure to consult are misconceived in law. Pursuant to Regulations 13(2) and 13(6) the duty to inform and consult rests with the employer, at the time the consultation obligations arose.
243. As per the judgment in *Allen v Morrisons*, “an employee of a transferor cannot obtain standing to claim against a transferee for breach of pre-transfer obligations because he became an employee of the transferee on the transfer of the undertaking.”
244. In this case, it is not difficult to understand why the Claimants feel aggrieved. The Respondent changed the goal posts a few weeks before the transfer. Up until that point and for around 4 months, the Claimants were of the understanding that they would be TUPE transferred across to the Respondent. Other than a short conversation between Mr Kissick and Ms Cammiss, which we have concluded, was ultimately misunderstood by the Respondent, there was no individual discussion with any of the Claimants around their future intentions in relation to 2buy2 and when matters were clarified by their solicitors, the Respondent failed to take any notice. Whilst we accept these matters are reasonable grievances, they do not amount to legitimate claims under the TUPE consultation provisions and as such they must fail.

Wrongful dismissal

245. The Claimants all became employees of the Respondent on the date of transfer with their employment contracts transferring across. They were dismissed

without notice pay and holiday pay, which they were entitled to under the terms of their contract. The amounts to which they are individually entitled will be addressed at a remedy hearing.

- 246. Directions in respect of the remedy hearing will be sent to the parties separately. The remedy hearing will also deal with any *Polkey* procedural unfairness issues.

Employment Judge Akhtar

19 March 2024

Sent to the parties on:

21 March 2024

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For the Tribunal Office:

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