

EAT holds TUPE transfer has taken place after share sale

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Normally, a share sale would not constitute a TUPE transfer because the identity of the employer does not change. However, the courts have accepted that there may be a transfer of an undertaking to a holding company or a sister company following a share sale. In this case, the control exercised by the parent company of the purchaser of the target's shares and

extensive integration exercises carried out by it led to the judgment that there had been a TUPE transfer.

In this case, Jackson Lloyd (Jackson) had 400 – 450 employees who undertook the repair and maintenance of social housing. The annual election of employee representatives had not taken place ahead of the transfer so no employee representatives had a mandate on the date the shares were sold. The shares in Jackson were purchased by Mears Ltd, whose parent company was Mears Group plc (Mears Group). No consultation process took place. Following the share purchase, Mears Group employees were appointed to the Jackson board and a team from Mears Group was deployed to Jackson's sites to oversee the integration process. An integration consultant was tasked with reviving the Jackson brand using Mears Group's systems, policies, procedures, methods and services.

The EAT held that the acquisition of Jackson's shares by Mears Limited did not amount to a TUPE transfer but Jackson's employees had subsequently been transferred to Mears Group by way of a business transfer. The tribunal pointed to the fact that Mears Group had imposed major changes on Jackson including its own systems and that Mears Group had control over Jackson.

Jackson Lloyd Ltd and Mears Group plc v Smith and others
UKEAT/0127/13

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