

# **If you're one of two employers being sued, don't be the first to settle**

In *Optimum Group Services Plc v Muir*, Optimum lost a key contract. They thought Mr Muir's employment should transfer to the new providers, Beaumont, under TUPE. The new providers denied this and said that Mr Muir was redundant and should claim payments from Optimum. Mr Muir ended up with no job and no redundancy payment so sued both Optimum and Beaumont. Mr Muir reached a settlement with Beaumont before the hearing where they agreed to pay him £20,000. He continued his claim against Optimum and won. The Tribunal found that Mr Muir had been unfairly dismissed by Optimum. In calculating the compensatory award for unfair dismissal, it decided not to deduct the £20,000 settlement payment from Beaumont because to do so would give Optimum, who had behaved badly, a 'windfall benefit'. The Employment Appeal Tribunal held that the first tribunal had got it wrong. A Tribunal, when calculating compensation for unfair dismissal, should only consider what actual financial loss was suffered by a claimant as a consequence of dismissal. The Tribunal cannot enable a claimant to profit financially irrespective of the circumstances. The Tribunal also erred when it sought to penalise Optimum for its behaviour towards Mr Muir.