



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Mr. J. Mant  
(2) Mr. J. Coppin  
(3) Mr. H. Badhan  
(4) Mr R. Powell  
(5) Miss. E. Stepion-Pasko  
(6) Mr M. Coombes

**Respondent:** Wiley Fox Europe Limited (in liquidation)

**Heard at:** London Central **On:** 31 January 2020  
**Before:** Employment Judge Goodman

## Representation

**Claimants:** Mr. Mant, Mr Coppin, Mr Badhan and Ms Pasko in person.  
Mr Coombes and Mr Powell did not attend.

**Respondent:** did not attend

## RESERVED JUDGMENT

1. The respondent failed to inform and consult about redundancy.
2. The claimants are entitled to a protected award of 90 days from 12 January 2018.
3. The awards to individual claimants are:

Mant	£12,362.65	Powell	£10,978.07
Coppin	£21,016.41	Stepion-Pasko	£10,978.07
Badhan	£ 9,468.77	Coombes	£6,287.14

## REASONS

1. The six claimants are former employees of the respondent who were made redundant in January and February 2018. They seek a protective award for failing to inform or consult about redundancy.

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2. They presented claims in March 2018. Proceedings were stayed while the company was in administration, which ended on 13 February 2019 when winding up commenced in a creditors' voluntary liquidation. As the Department of Business Enterprise and Industrial Strategy would be paying all or some of the award for an insolvent company and so had an interest in the proceedings, the tribunal then wrote to the redundancy payments office in Birmingham to ask if the Secretary of State wished to be joined as a respondent. The Secretary of State did not reply, and proceedings were served on the respondent's liquidator only on 15 August 2019. The liquidator did not respond to the proceedings. A direction was made by Employment Judge Wade under rule 21 that the respondent was now only entitled to participate to the extent permitted by the judge, and on 14 November 2019 the claims were listed for hearing today.
3. All claimants have provided some documentary information, and four attended today. Mr Mant and Mr Badhan gave evidence about what employees were told at any stage about impending redundancy.

### **Findings of Fact**

4. The respondent company manufactured smartphones. At the time of the redundancies the workforce was just over 30, with a number of consultants in addition. The claimant Mr. Coombes was the CEO and managed the sales marketing and technical teams. He says the company was part of Meridian Group, but he was not part of the group management team, and did not know the overall position on the company's finances.
5. According to Mr. Coombes, the group legal secretary advised him on 2 November 2017 that there were financial difficulties and there was to be a meeting with the bank. In December he was told things were under control, but there would have to be some changes, including redundancies of those without current projects. At about this time some staff noticed that there were delays paying their suppliers, but knew nothing of any redundancy plans.
6. On Friday 12 January Mr. Daniel Redman, a director, and Mr. Coombes, summoned Mr. Mant, Mr. Coppin, Mr. Powell and another employee, Stefan, and told them they were redundant, and that some contractors were also going. They were each handed letters of dismissal and finished work that day.
7. On Monday 15 January Mr. Robert Pryke, an operations manager, called an all hands meeting, attended by around 20 people with some dialling in. He told staff there had been a particular need to cut the four who had left and the rest should carry on as normal and that the company was looking to release a new product soon. Mr. Badhan took over Mr. Powell's job as Service Manager.
8. On 31 January 2018 staff salaries were not paid. Mr. Badhan asked what was happening and was told by Mr. Redman next day that the company was getting the finances together. On 2 February Mr. Badhan was paid about half his January salary. On 5 February the company filed for administration and all remaining staff were handed letters and told that as

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the company could not pay their salaries they were dismissed as redundant. Each received a letter from the administrator confirming this on 6 February 2018.

### **Relevant Law**

9. Chapter II of the Trade Union and Labour Relations (Consolidation) Act 1992 lays out a procedure for handling redundancies. By section 188, an employer proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, should consult about the dismissals with “appropriate representatives” of the employees who may be affected. The consultation “shall begin in good time and in any event ... at least 30 days before the first of the dismissals takes effect”.
10. “Appropriate representatives” are trade union representatives, if the employer recognises a trade union, and otherwise, representatives of the employees, elected for the purpose.
11. Consultation: “shall include consultation about ways of avoiding dismissals, reducing the number of employees to be dismissed, and mitigating the consequences that dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives”. An employer must disclose in writing to the representatives his reasons for the proposals, the numbers and descriptions of employees it is proposed to dismiss, the proposed method of selection and carrying out dismissals, and so on.
12. Section 189 provides that where an employer has failed to comply with these requirements of section 188, a complaint can be presented to an employment tribunal, either by representatives, or, where there are no representatives, the employee is dismissed. The tribunal finds the complaint well-founded it will make a declaration to that effect, and may also make a protective award.
13. A protective award is an award in respect of one or more descriptions of employees who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and in respect of whom the employer has failed to comply with a requirement of section 188, ordering the employer to pay remuneration for the protected period.
14. The protected period begins with the date on which the first of the dismissals to which the complaint relates takes effect, and is “of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer’s default in complying with any requirement of section 188, but shall not exceed 90 days”. In *GMB v Susie Radin Ltd* [2004] EWCA Civ 180, [2004] IRLR 400, the Court of Appeal confirmed that a protective award is made to punish the employer for failing to inform and consult, and must be proportionate to the employer’s fault. It is not to be scaled to the employee’s loss. (The only reduction is made where an employee remains employed but is not entitled to remuneration under the contract for some reason; this is not relevant to these claimants, as all were at work).

15. Section 190 provides that the rate of remuneration payable is a week's pay for each week of the period. A week's pay is to be calculated according to Chapter II of the Employment Rights act 1996.

### **Discussion**

16. In this case the employer took no steps to inform and consult about anticipated financial difficulties. On the evidence, the first four redundancies were planned some time in December, but for the rest, far from being consulted, employees were actually reassured as to the company's future, barely three weeks before the axe fell on them too. Given that the group legal department was aware of impending financial difficulty from the beginning of November, information and consultation could have begun then, "in good time", when proposing to dismiss. When this was is not clear, but there must have been some contingent proposal, if further finance could not be had, from November. There is no evidence at all from the company or the group about the realism of any November hopes of further funding, or any factors which justified their January optimism. There may be business reasons not to hasten a company's demise by news of redundancy affecting their credit, but the statutory requirement is clear, with a view to protecting the workforce. There is no reason to find that the failure to consult was excusable.
17. On the evidence available, I make a declaration that the respondent employer failed to comply with the statutory duty. I also make a protective award. The protected period is 90 days from 12 January 2018.

### **The Awards**

18. Working from the claim forms and pay slips supplied, the week's pay and awards are as follows:

Mr Mant:	£961.54	£12,362.65
Mr Coppin:	£1,634.61	£ 21,016.41
Mr Badhan	£738.46	£ 9,468.77
Mr Powell	£853.85	£ 10,978.07
Miss Stepion-Pasko	£757.69	£ 9,741.72

19. In the case of Mr Coombes, there is an evidential difficulty. He did not answer the question on the claim form about his pay. He has not supplied a pay slip or replied to a request to send a schedule of loss. On the claim form he added a note that he wanted outstanding pay of: "3 months x £12,000=£36,000 (approx, as I will need to run exact calculations)." It is odd that he shows uncertainty about his pay. Given the uncertainty, I make an award of the amount capping payments under the insolvency provisions, which in January 2018 was £489 per week, on the assumption that as CEO he is likely to have earned more than average earnings. His protective award is £6,287.14. It is open to Mr Coombes to apply for reconsideration of this decision within 14 days of this judgment being sent to the parties, with evidence of his pay, and an explanation why it was not placed before the tribunal for this hearing.

20. As the claimants are already aware, some of the award will be met by the Redundancy Payments Office of the BEIS Insolvency service. For the rest,

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they will receive what is available in the liquidation of the company's  
assets.

Employment Judge - Goodman

Date 31 Jan 2020

JUDGMENT SENT TO THE PARTIES ON

3<sup>rd</sup> Feb 2020

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FOR THE TRIBUNAL OFFICE