EMPLOYMENT TRIBUNALS

Claimant: Ms C Johnson & others (see attached schedule)

Respondent: Home Fundraising Limited

Heard at: Manchester **On:** 16 November 2020 12 January 2021 (in Chambers)

Before: Employment Judge Feeney (sitting alone)

REPRESENTATION:

Claimants: In person
Respondent: Ms C Ashiru, Counsel

JUDGMENT

The judgment of the Tribunal is that:

The claimants are entitled to a protective award and are awarded a period of of 30 days beginning with the 12 March 2019.

REASONS

Preamble

1. This case was on the list, listed as an open preliminary hearing, although in fact it had been converted to a preliminary hearing case management. However, the fact that it was on the list as an open preliminary hearing meant that when the parties requested that I determine the issue rather than holding a case management discussion it was possible to do this, as the hearing had been listed as a public hearing.

2. The claimants claim a protective award. It is the claimants' case that there were no employee representatives, and certainly Ms Johnson says she was never an employee representative. The claimants claim that the consultation requirements of the relevant legislation were not complied with.

3. The respondent states that the information consultation process was started on 1 March collectively and redundancy dismissals were effected on 12 March; that there were 27 dismissals in Liverpool where the claimants were assigned; and it is admitted that the respondent's director did not commence consultation at least 30 days before the first of the proposed dismissals took effect.

4. The respondent contends that they can rely on special circumstances defence in respect of the size of any protective award. It is also submitted that there were mitigating circumstances so that the maximum award should not be awarded, including genuine attempts at consultation in the period which was available.

5. The respondent went into administration but is now in creditor's voluntary liquidation, which is no bar to proceedings.

Witnesses

6. For the claimants Ms C Johnson and a number of witness statements were submitted; I agreed we did not need to hear from the other potential witness Mrs Dyson. There were no witnesses for the respondent

The Issues

7. Was the Respondent in breach of the requirements to consult under section 188 of TULR(A) 1992? (The respondent concedes that it did not comply with the 30 days period which applied). This includes considering:

> 7.1 When did the respondent contemplate/propose to make redundancies?
>
> 7.2 Were there any special circumstances which exonerated the respondent from complying with section 188?
>
> 7.3 Were there employee representatives, in particular was Ms Johnson an employee representative
>
> 7.4 If a protective award is appropriate what should be the protected period i.e. given that the maximum which can be award are there circumstances mitigating or otherwise which should be taken into account ? the respondent assets it provided all the requisite information in the time it ultimately had available

Findings of Fact

8. The respondent carried on business as a door-to-door fundraising agency, the claimants worked for them in their Liverpool office save for Mr Webster who worked for the respondent in the London office.

9. In 2018 the respondent was experiencing difficulties and had expected that an approved Company Voluntary Arrangement ("CVA") would be agreed to and the respondent would be able to continue to trade and repay its liabilities. However, in December 2018 it appeared that the respondent would be unable to pay its liability to HMRC in respect of VAT, however the directors felt that it could be paid to HMRC over a period of three months. The CVA required all liabilities to be paid when they fell due and although negotiations were entered into with HMRC and a first instalment was paid. HMRC did not communicate further and the respondent's turnover and profitability continued to suffer.

10. On 22 February 2019 the directors therefore met with an administrative company, Fisher Partners, due to concern about their ongoing viability and CVA contributions going forward. The outcome of that was that Fisher Partners assisted the directors in placing the respondent into administration on Monday 25 February 2019.

11. Prior to entering into administration, the respondent's Board considered any measures available to improve the performance and rescue the respondent's business. Largescale redundancies were not proposed as this would have destroyed confidence in the business among field staff who need to be highly motivated. It would also have entailed the risk of charity clients withdrawing and the business would have swiftly come to an end.

12. On 28 February 2019 the respondent submitted an HR1 to the insolvency service indicating 333 staff would be made redundant at the Liverpool office

13. On 1 March 2019 employees at each site with 20 or more employees, including Liverpool, were invited to appoint an employee representative for the purposes of collective redundancy information consultation. The respondent asserts that this resulted in the election of Catherine Johnson as a representative for the Liverpool site. Ms Johnson has given evidence today which vehemently rejects this, and says she never was or has been an employee representative.

14. Shortly afterwards the administrator staff attended the site to provide an update of the position in light of the entry into administration, a form described as a crib sheet indicated that Catherine Johnson was the representative and her mobile phone number was recorded but it also indicated that Ian Dyson was a representative. I heard no evidence regarding any efforts to inform and consult with Ian Dyson.

15. On 1 March 2019 an email was sent on behalf of the administrators to Catherine Johnson noting she had been appointed as the employee representative for her location and enclosing the information required under section 188(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 and a copy of the HR1 dated 28 February 2019. An email address, telephone number and portal were set up to inform employees of progress in relation to the administration and efforts to sell the business, and to enable their queries to be addressed. This included posting a frequently asked questions document and posting various letters from the administrator dated 4 and 8 March 2019. These did provide the information required under section 188.

16. Ms Johnson said that she was on maternity leave and received a phone call from her manager, Ian Dyson, on 1 March saying that the respondent had gone into administration, but she did not know what it meant. A meeting was to take place at 12.00pm, and the claimant's husband who also worked for the respondent stayed at home so the claimant could attend the meeting.

17. Peter Ferguson was covering the claimant's position as Regional Manager and read out a statement to all staff after asking the claimant to do it, but she did not want to do so. Mr Ferguson also got upset and could not finish it and the claimant tried to continue reading the statement, but she has no recollection of any discussion about inviting the employees to appoint an employee representative nor did she recall reading that out. At no time was there such an election. The claimant did give her details to a representative of Fisher Partners to assist them in collecting assets from members of staff such as mobile phones, iPads, etc.

18. A member of the administrator staff tried to ring Ms Johnson by phone around 4 March 2019 and left a message for her to call him back, however she did not do so. Neither did she respond to the email sent to her.

19. A further email was sent on 6 March 2019 noting that the employer's business and assets were being marketed for sale and that requests had been made for formal expressions of interest from interested parties. This said:

> "I write in respect of the administration in respect of the ongoing employee consultation. As previously advised to staff, the company's business and assets are being marketed for sale and requests have been made for formal expressions of interest from interested parties. A sale of part or the whole of the business may result in employee jobs being preserved. In this respect are you or any of the employees you represent aware of any parties who may be interested in acquiring the whole or part of the business. Additionally, are there any other ideas that the employees would like to put forward at this time?
>
> I look forward to hearing from you and will keep you advised of progress.
>
> Harry Hawkins
> For David Birne (Administrator)"

20. Again, Ms Johnson did not reply to that email.

21. By 12 March 2019 it was concluded that a purchaser could not be found and therefore all the remaining staff were dismissed on the grounds of redundancy.

22. The administrator had to make an assessment within 14 days of appointment as to whether the employees should be retained, because after that their continued employment would have resulted in the adoption of their contracts (within the meaning of paragraph 99 of schedule 1 of the Insolvency Act 1986) and in any event because since the respondent was insolvent and had ceased to trade it could not afford to pay the employees.

23. A message was left with Ms Johnson confirming the position and it was also confirmed by email to her on 12 March and in a letter dated 12 March sent to each employee. The letter to each employee also provided further information as to the claims that could be made to the Redundancy Payment Service and information as to how to claim and attaching the FAQ document.

24. The claimant believed there were no updates on the portal until 13 March 2019 nor on 4 or 8 March. She believed that she was technically employed by the respondent for a further two weeks. She did look back in her emails and saw that two or three had been opened which she had received from the respondent but she could not remember opening them nor paying any attention to them as she was on maternity leave prior to losing her job, knew nothing about the election process and had not been appointed employee representation, and neither was she referred to as that in any conversation she had or the meeting. The claimant did have a conversation with someone over the telephone, but she could not remember the content or who it was with.

25. The claimant was surprised when on 1 November when the claimants received permission to lift the stay on proceedings that the claimant was named as employee representative. She thought it was a mix-up possibly with Sue Dyson who had also been involved in pursuing the claim on behalf of the claimants.

26. The claimant said she would never have offered to be the employee representative, she was on maternity leave and Peter Ferguson who was managing the region would have been a more natural choice, or Ian Dyson, her own line manager. Neither of them were approached and she emphasised that there had been no election, neither had she been an employee representative in the past, and further her whole concerns were about how her family was going to manage financially as her husband also worked for the respondent. She did not know what an employee representative was in fact.

27. The claimant was pressed closely in cross examination about this and she accepted the emails were sent to her but she could not pay attention to them as she had only just had her baby and was concerned with that, and with finding another job. The claimant emphasised that she had never been an employee representative before nor was she aware of there being anybody else in that capacity. The claimant agreed that she had been made aware on 12 March that a potential sale had fallen through. She said, "regarding being a rep, there was nothing at the meeting which suggested she was the employee rep, there was no discussion, there was no situation where the employees said, "we're happy for you to represent us, Catherine", nothing like that occurred on the day of the meeting".

28. I accept the claimant's evidence on this as although she was sent emails to which she did not reply as employee representative, there was no evidence of any positive contact. Even though the claimant had a vague recollection of speaking to someone, the respondent produced no evidence about that. Further, there were no minutes from the meeting or any evidence from anybody else attending the meeting to suggest that there had been some sort of consensus that Ms Johnson would be the employee representative. It is also inherently unlikely given the fact that she was on maternity leave. The claimant said if she did sign anything she was under the impression it was for help in gathering up tech tablets and iPhones (no evidence

was produced that she personally had signed anything). She accepted that they had sent an email to her on 1 March setting out that she was the employee representative and attaching the HR1. The respondent provided no information regarding the inclusion of Ian Dyson as a representative. I find that the administrators who attended on 1 March had no real information to suggest that Ms Johnson was an employee representative, neither on the basis of a previous election or on the grounds one took place on 1 March 2019.

29. She had said that there were no updates on the portal. In cross examination the claimant accepted that there had been updates but that she was too concerned about other matters at the time to really pay attention.

30. The claimant also advised they were told not to claim benefits as they were still employed although it has been admitted that the respondent knew it could not pay the staff salaries.

The Law

Protective Award

31. A protective award is a sanction for the failure by an employer to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 as to collective consultation about redundancies. The award is made under section 189 of the 1992 Act.

32. Enforcement of a protective award by individuals who are entitled to the benefit of it takes place under section 192 of the 1992 Act.

33. Section 188 states:

> "(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less the employer shall consult about the dismissals of all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.
>
> 1A The consultation shall begin in good time in any event:
>
> (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1) at least 90 days; and
>
> (b) otherwise at least 30 days before the first of the dismissals take place.
>
> 1B For the purpose of this section the appropriate representatives of any affected employees are:
>
> (a) the employees are of the description in respect of which an independent trade union is recognised by their employer representatives of the trade union; or

(b) in any other case, whichever of the following employee representative the employer chooses:

(i) employee representatives appointed or elected by the affected employees otherwise than for the purpose of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and be consulted about the proposed dismissals on their behalf;

(ii) employees representatives elected by the affected employees for the purposes of this section in an election satisfying the requirements of section 188A(1).

(2) The consultation shall include consultation about ways of:

(a) avoiding the dismissals;

(b) reducing the numbers of employees to be dismissed; and

(c) mitigating the consequence of the dismissals;

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

(3) …

(4) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives:

(a) the reasons for his proposals;

(b) the number and descriptions of employees whom it is proposed to dismiss as redundant;

(c) the total number of employees of any such description employed by the employer at the establishment;

(d) the proposed method of selecting the employees who may be dismissed;

(e) the proposed method of carrying out the dismissals with due regard to any agreed procedure, including the period over which the dismissals are to take effect; and

(f) the proposed method of calculating the amount of any redundancy payments to be made (other than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.

(5) That information shall be given to each of the appropriate representatives by being delivered to them or sent by post to an address notified by them to the employer or (in the case of representatives of a trade union) sent by post to the union at the address of its Head Office.

5A The employer shall the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate…

(6) …

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsections (1A), (2) or (4) the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly) a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a request.

7A Where (a) the employer has invited any of the affected employees to elect employee representatives, and (b) the invitation was issued long enough before the time when consultation is required by subsection (1A)(a) or (b) to begin to allow them to elect representatives by that time, the employer shall be treated as complying with the requirements of the section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

7B If after the employer has invited affected employees to elect representatives the affected employees fail to do so within a reasonable time he shall give to each affected employee the information set out in subsection (4).

(8) This section does not confer any rights on a trade union, a representative or an employee except as provided by sections 189-192 below.

34. Section 188A sets out the details of any election, and section 189 concerns a complaint and a protective award. It says that:

"Where an employer has failed to comply with a requirement of section 188 or section 188A a complaint may be made to an Employment Tribunal on the ground that:

(a) In the case of a failure relating to the election of employee representatives by any of the affected employees or by any of the employees who have been dismissed as redundant;

(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 the affected employees or by any of the employees who have been dismissed as redundant.

1A If on the complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 188, it shall be for the employer to show the employee representative had the authority to represent the affected employees.

1B On a complaint under subsection 1(a) it shall be for the employer to show that the requirements in section 188A have been satisfied.

(2) If the Tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees:

(a) who have been dismissed as redundant or whom it is proposed to dismiss as redundant; and

(b) in respect of those whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188,

ordering the employer to pay remuneration for the protected period.

(4) The protected period:

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect or the date of the award, whichever is earlier; and

(b) is of such length as the Tribunal determines to be just and equitable in all of the circumstances having regard to the seriousness of the employer's default in complying with any requirements of section 188, but shall not exceed 90 days.

(5) A Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal… [and it goes on to consider the time limits].

(6) …

(7) …

(8) If on a complaint under this section a question arises –

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188; or

(b) whether he took all reasonable steps towards compliance with that requirement as were reasonably practicable in those circumstances;

it is for the employer to show that there were and that he did."

35. Accordingly it can be seen that irrespective of whether the consultation period is 90 days or 30 days the maximum award is still 90 days.

36. In respect of the case law, in **Amicus v Nissan Motor Manufacturing UK Limited UKEAT [2005]**, 30 and 90 days are minimum periods for *consultation* and in some circumstances the requirement of consultation begun in good time may mean it should begin more than 30 or 90 days in advance.

37. *Contemplating/proposing:* In **Akavan Erityisdojen Keskusliitto AEK v Fujitsu Siemens Computers [2009] ECJ** ("**Akavan**"), in this case the ECJ interpreted contemplating narrowly effectively moving it closer to proposing. It held that a duty to consult is triggered once a commercial or strategic decision compelling it to contemplate or plan for collective redundancies has been taken, and not at the time when this decision is contemplated.

38. In **Junk v Kuhnel [2005]** the ECJ provided the following commentary on what is meant by "contemplating":

> "The terms used by the community legislate indicate that the obligations to consult and to notify arise prior to any decision by the employer to terminate contracts of employment. Article 2(1) of the directive imposes an obligation on the employer to begin consultations with workers' representatives in good time in a case where the employer is 'contemplating collective redundancies'. Article 3(1) requires the employer to notify the competent public authorities of 'any projective collective redundancies'. A case in which an employer is contemplating collective redundancies and has drawn up a 'project' to that end corresponds to a situation in which no decision has yet been taken. By contrast, notification to an employee that their contract of employment has been terminated is the expression of a decision to sever the employment relationship and the actual cessation of that relationship on the expiry of a period of notice is no more than the effect of that decision."

39. The relative directive is Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies

40. In respect of *special circumstances* in section 188(7), the employer must still take such steps as are reasonably practicable towards complying with consultation requirements. Special circumstances do not include the failure of a person with control of the employer to provide information to the employer. If the employer wishes to rely on the special circumstances defence it has the burden of proof of establishing it and that it took all reasonably practicable steps. Special

circumstances are not defined – but they do not include insolvency or financial difficulties in themselves (these are not special) but they may include unexpected circumstances leading to financial problems, for example the sudden and wholly unexpected loss of a contract, although these may be considered as mitigating circumstances regarding the period of the award.

41. **Keeping Kids Company (in Compulsory Liquidation) KKC v Smith [2018]**, is a review of the relevant case law on special circumstances and protective awards.

42. In 2015 **KKC** was in financial difficulties. It needed a Government grant or it would be insolvent. If a Government grant was obtained then a largescale restructure would still be needed resulting in a large number of redundancies. Insolvency would probably lead to all of its workforce being made redundant. **KKC** argued that the application of the Government grant was a special circumstance. They relied on a previous authority (**Hamish Armour v ASTMS [1979])** to support their argument that a Government grant application could amount to a special circumstance and did so in the case of **KKC**. The Employment Tribunal dismissed this argument, noting it was clear by the time of the application that redundancies were required in any event.

43. At the end of July, the police announced they were undertaking an investigation into a number of safeguarding concerns at KKC. This announcement was unexpected. What swiftly followed this announcement was:

(a) The Government grant application was refused;

(b) A compulsory winding-up order was made and a liquidator appointed.

44. The majority of the Employment Tribunal decided this second special circumstance argument was irrelevant as collective consultation should by then have been commenced. They also appeared to disregard it when setting a protective award and the maximum of 90 days' pay was awarded.

45. The EAT appeal was successful in part in relation to the impact of the police investigation. The EAT agreed with KKC that the announcement of the police investigation was a special circumstance rendering further compliance with section 188(1A) not reasonably practicable. Whilst the collective consultation exercise should by then have commenced, the police investigation announcement would have brought it to an abrupt halt, and it should also have been taken into account when deciding on the amount of a protective award period.

46. The Tribunal must determine the *length of the protected period* and the Court of Appeal provided guidance in **Susie Radin v GMB [2004]**. The focus is on the employer's default. It was also said that the purpose of a protective award is punitive not just compensatory. In respect of a protective award, it 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 **Radin** the EAT advised that the maximum period should be the starting point but only in cases where there had been no attempt at all to comply with the consultation provisions (agreed also in **Todd vs Stain and others 2011 EAT)**. It was emphasised in **Barnet vs Unison (2013) EAT**

that the principle (of starting at the maximum of 90 days) was only to be applied where there was no consultation at all and should not be applied where there has been some attempt at consultation.

47. The award can only relate to the particular complaint of infringement before the Tribunal (**TGWU v Brauer Koley Limited [2007]**) and it cannot go beyond the class of employees even if it is clear other employees were not consulted.

48. Where an individual claimant seeks an award, the award can only be made in favour of that claimant and not in favour of other employees within the same group, unlike in the case of trade unions and employee representatives: an individual employee cannot bring a representative claim (**Independent Insurance [2011]**).

Submissions

Respondent's Submission

(1) *Regarding at which stage the respondent was proposing to dismiss 20 employees*

49. The respondent submitted that the initial situation was that the respondent was relying on the CVA to continue trading and were not contemplating dismissals at that time, however when the difficulty arose with HMRC in December. They realised by February 2019 that they needed advice and they started a consultation on 1 March 2019 (**Akavan ECJ [2010] 444 IRLR**). There has to be something more than contemplation, therefore the respondent said it was not until the end of February 2019 that a proper proposal was in mind and that, given the 14 days limitation, it was extremely tight to undertake a consultation process.

(2) *Regarding establishment*

50. The respondent accepts that 30 days applied and that there were 27 at the one local unit in Liverpool.

(3) *Appointment of employee representative*

51. It is clear that for some reason the respondent was under the impression that Ms Johnson was the employee representative and their emails and other documentation are consistent with this. It may have been a misunderstanding. Section 188(1)(c) states if there is a pre-existing employee rep there does not need to be an election. It was not a deliberate error and the administrator genuinely thought Ms Johnson was the employee representative.

(4) *Section 188(1)(a) – the period of consultation*

52. The respondent accepts this should have been 30 days.

53. The 1 March email was the information under section 4 which was provided to Ms Johnson. This meets all the requirements and was an attempt at consultation, so the requirement has been met.

54. On 6 March, did the relevant documents go on the portal? Two letters were put on the portal of 4 and 8 March, assuming they were the same letters as which were sent to Ms Johnson. The administrator encouraged employees to ask questions on the portal and therefore they made an attempt to consult. Ms Johnson did not respond when letters were sent directly to her, but they did the best they could.

(5) <u>Regarding the amount of protective award</u>

55. If the Tribunal does not accept that the consultation was undertaken under section 188, the claimant is asking for the full amount of 45 days' pay. The Tribunal has a discretion as to what is just and equitable and the Tribunal should exercise its discretion in the respondent's favour (**Barnett v Unison EAT 0191/13** and paragraph 23 of **Todd**). The maximum should be where the respondent has done nothing at all. The respondent did the best it could within 14 days. There was no time for 30 days' consultation but they did do 12 days. They sent out the correct information, attempted to consult and invited discussions. They tried desperately to get hold of the claimant: voicemail, emails, they also set up the portal and the FAQs. It was not that they simply paid lip service, it was they were inviting comments and they genuinely had a potential purchaser at the relevant time.

56. Mr Webster's case should be dismissed from London as there were employee representatives in London who were actively engaged in consultation.

Claimant's Submissions

57. The claimant's submissions were brief. She submitted that the claimants should receive the 45 days as even if there was a misunderstanding about her being an employee representative, which she denied as she had never agreed this as she did not even know what it was, the respondent should have made more efforts to sort out the situation and not simply accepted that she was not responding.

Conclusions

58. *Proposing:* I find that the respondnet knew it was in difficulties even before December 2018 and that by January 2019 it would have been aware it would need to make redundancies. Accordingly, I do not accept that there was no such state of mind before the end of February. The directors cannot rely on their own delay in obtaining advice.

59. *Employee representatives/consultation*: Whilst section 188(1)(c) says that there is no need for an employee election if there is a pre-existing representative/s it would be stretching its meaning to accept that a party can proceed on an assumption which here if it was based on anything must have been based on something said at the meeting on 1 March. However, it is not acceptable to proceed on the basis of a possible oral representation (there was no evidence on this from the respondnet so this is a finding on the basis of what is inherently likely on the balance of probabilities). The administrators could have checked with the directors or HR as to whether there was a pre-existing representative and if it was Ms Johnson, particularly once they were getting no response from her. I heard nothing regarding

Mr Dyson yet he was named on the Administrators paperwork. The fact that it was a genuine mistake is of limited value as it was a careless one.

60. There was also originally an assertion that there had been an election which was never substantiated by the administrators and in the light of Ms Johnsons evidence I have found was entirely incorrect.

61. Whilst there was a direct access to the portal I was not provided with any evidence as to whether there was any traffic on that portal from either party. Accordingly given the burden of proof is on the respondnet I find that that there was no evidence of ongoing consultation other than the bare minimum.

62. Special circumstances: whilst this was not addressed in the respondent's submissions for the avoidance of doubt I find there was nothing in the circumstances of the respondent's situation which made it stand out of the normal but unfortunate run of a company with financial problems on the edge of insolvency.

63. Period of consultation: I find that the respondent did make a genuine attempt to consult in the time available with the portal and the emails to the claimant. It was unfortunate she did not reply but the respondent did very little about it in truth. It should have rung alarm bells. Nevertheless I consider the amount awarded should reflect the attempt to consult and also the complicating factor of the potential sale. The Barnet case requires that the maximum is not the starting point where there has been some attempt at consultation. There has been no real explanation regarding the claimants' claim for 45 days, it may be a misapprehension in relation to the period of consultation.

64. On balance therefore taking all these factors into account I award the claimants 30 days rather than the full 90 days. I have considered there was just less than half of the statutory period engaged with the respondent attempting to engage in consultation and the provision of the required information and that the prospect of a sale affected the late notice of the actual redundancies. The beginning of the protected period is 12 March 2019.

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Employment Judge Feeney
Date:12 February 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
25 June 2021

FOR THE TRIBUNAL OFFICE

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Case Number	Claimant Name
2410917/2019	Ms Catherine Johnson
2410918/2019	Mr Robert Sanderson
2410919/2019	Ms Sian Carson
2410925/2019	Mr Niall Mantova
2410934/2019	Mr Benjamin Ginty
2410937/2019	Ms Jane Tyrer
2410940/2019	Ms Megan Crudden
2410924/2019	Miss Lauren Barkley
2410916/2019	Mr James Jones
2410921/2019	Mr David McMullan
2410922/2019	Ms Stacey Franey
2410939/2019	Ms Nichola Locke
2410930/2019	Ms Jodie Franey
2410915/2019	Mrs Susan Dyson
2410936/2019	Ms Maureen Pugh
2410935/2019	Mr Peter Ferguson
2410920/2019	Mr Adam Burns
2410926/2019	Mr Wilf Webster
2410923/2019	Mr Ian Steven Dyson
2410927/2019	Ms Gail Afellat
2410929/2019	Ms Sofia Lalanda
2410931/2019	Ms Kelsey Monaghan
2410932/2019	Mr Gary Boardman
2410933/2019	Mr Scott Johnson
2410938/2019	Ms Chloe Pettit
2410941/2019	Mr Ross Coulton
2410928/2019	Mr Mike Cotgreave