EMPLOYMENT TRIBUNALS

Claimants:	**v**	**Respondents:**
1. Mr V Stroud		1. Arriva London North Ltd
2. Miss A Verboort		2. London Sovereign Ltd
3. Mr J P Brown		
4. Mr K Djan		
5. Mr Jayaratnam		
6. Mr T Pyszynski		
7. Mr S Pyszniak		
8. Mr R P Wozny		
9. Mr B T Burt		
10. Mr T Hines		
11. Mr M Uslu		
12. Mr A Mickiewicz		
13. Mr P Moson		
14. Mr T Mavhangira		
15. Mr T Sivakumar		
16. Mr D Paprocki		

Heard at: Watford a Hybrid hearing

On: 23-27, 31 August 2021; 1-10 September 2021; 4-5 October 2021;

In chambers:
6 October;
1,15,26,29 November;
20-21 December 2021;
17-18 January 2022
28-30 March 2022

Before: Employment Judge Bedeau

Members: Mr D Sutton
Mr R Alldritt

Appearances

For the Claimants: Mr T Pyszynski; Mr S Pyszniak; Mr P Moson; Mr Paprocki**,** in person, via Cloud Video Platform
Mr J Tramboo, Counsel, for Mr N Jayaratnam and Mr T Sivakumar
Ms J Twomey, Counsel for the 10 remaining claimants

For the Respondents: Mr R Bailey, Counsel for 1st Respondent
Mr E Nuttman, Solicitor for the 2nd Respondent

RESERVED JUDGMENT

The following are the judgments of the Tribunal:-

Mr V Stroud

1. The constructive unfair dismissal claim, regulation 4(11) Transfer of Undertakings Protection of Employment Regulations, claim is well-founded.
2. The automatic unfair dismissal claim, regulation 7(1), is well-founded.
3. The notice pay, or wrongful dismissal, claim has been proved.

Ms A Verboort

1. The failure to make reasonable adjustments is well-founded.
2. Constructive dismissal, regulation 4(9), is not well-founded.
3. The automatic unfair dismissal claim, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr J P Brown

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), not well-founded.
3. The automatic unfair dismissal claim, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr K Djan

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), not well-founded.
3. The automatic unfair dismissal claim, regulation 7(1), is well-founded.
4. The claim for redundancy pay is not well-founded.
5. The notice pay claim has been proved.

Mr Jayaratnam

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal claim, regulation 4(11), is out of time and struck out.
3. The automatic unfair dismissal claim, regulation 7(1), is not well-founded.

4. The claim for redundancy pay is well-founded.
5. The notice pay claim has not been proved.

Mr T Pyszynski

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), is not well-founded.
3. The claim for redundancy pay is not well-founded.
4. The notice pay claim has not been proved.

Mr S Pyszniak

1. Constructive dismissal, regulation 4(9), is well-founded.
2. The automatic unfair dismissal, regulation 7(1), is well-founded.
3. The claim for redundancy pay is well-founded.
4. The notice pay claim has been proved.

Mr R P Wozny

1. Constructive dismissal, regulation 4(9), is well-founded.
2. The constructive unfair dismissal, regulation 4(11), is well-founded.
3. Automatic unfair dismissal, regulation 7(1), well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr B T Burt

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), is not well-founded.
3. Automatic unfair dismissal, regulation 7(1), is well-founded.
4. The claim for redundancy pay is not well-founded.
5. The notice pay claim has been proved.

Mr T Hines

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), is not well-founded.
3. Automatic unfair dismissal, regulation 7(1), is not well-founded.
4. The claim for redundancy pay is not well-founded.
5. The notice pay claim has not been proved.

Mr M Uslu

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), is well-founded.
3. Automatic unfair dismissal, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr A Mickiewicz

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. The constructive unfair dismissal, regulation 4(11), is not well-founded.
3. Automatic unfair dismissal, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr P Moson

1. Constructive dismissal, regulation 4(9), is well-founded.
2. The constructive unfair dismissal, regulation 4(11), is well-founded.
3. Automatic unfair dismissal, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

Mr T Mavhangira

1. Constructive dismissal, regulation 4(9), is not well-founded.
2. Automatic unfair dismissal, regulation 7(1), is well-founded.
3. The claim for redundancy pay is well-founded.
4. The notice pay claim has been proved.
5. Accrued unpaid holiday is well-founded.

Mr T Sivakumar

The claim for redundancy pay claim is well-founded.

Mr D Paprocki

1. Constructive dismissal, regulation 4(9), is well-founded.
2. The constructive unfair dismissal, regulation 4(11), is well-founded.
3. Automatic unfair dismissal, regulation 7(1), is well-founded.
4. The claim for redundancy pay is well-founded.
5. The notice pay claim has been proved.

London Sovereign

All claims against London Sovereign have not been proved.

Remedy hearing

The case is listed for a remedy hearing on 4 – 12 July 2022.

REASONS

1. The claimants were all bus drivers who were employed by the first respondent, herein referred to Arriva. They were all working from Watford

Garston Garage, on various bus routes. Over several years Arriva London had lost several routes through competitive tendering. Its five remaining routes were due to transfer from it to the second respondent, herein referred to as London Sovereign, on 1 September 2018.

2. Compendiously, they claim that the transfer involved a substantial change in their working conditions to the material detriment, regulation 4(9), Transfer of Undertakings Protection of Employment Regulations 2006, "TUPE"; constructive dismissal, regulation 4(11) TUPE; unfair dismissal, regulation 7; and redundancy pay, s.139(1) Employment Rights Act 1996.

3. In the responses all claims are denied. The second respondent do not accept that there was a relevant transfer on 1 September 2018, the first respondent takes the contrary view.

The issues

4. At the preliminary hearing held on 7 January 2020 the claims and issues in respect of 14 of the claimants, save for Mr P Moson, case number 3335588/2018, and Mr D Paprocki, case number 3335608/2018, were agreed. Mr Paprocki was joined as a claimant at the preliminary hearing held on 12 January 2021. Mr Moson was joined on 24 September 2019.

5. The following are the issues agreed between the parties on 7 January 2020:

Respondents

1. Who is/are the correct Respondents?

TUPE

2. Were the Claimants assigned to the organised grouping of resources or employees that was subject of the relevant transfer within the meaning of Regulation 4(1) of Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")?

3. Was any assignment temporary and/or short term duration such that in accordance with Regulation 3(3)(a)(ii) of TUPE there was no service provision change?

4. Was there a service provision change within the meaning of Regulation 3(1)(b)(ii) TUPE?

5. Did any of the Claimants object to the transfer under Regulation 4(7) of TUPE such that they are not treated as having been dismissed?

6. Did any of the Claimants treat their contracts of employment as terminated under Regulation 4(9) of TUPE prior to the transfer?

7. Did any of the Claimants treat their contracts of employment as terminated under Regulation 4(11) of TUPE prior to the transfer?

8. Were the Claimants' employment transferred to London Sovereign Limited (or another Respondent) under TUPE?

Automatic Unfair Dismissal

9. Were any of the Claimants dismissed?

10. If so, when was the effective date of dismissal(s)?

11. Was the sole or principal reason for the dismissal the transfer itself, within the meaning of Regulation 7(1) of the TUPE Regulations?

12. Was there an economic, technical or organisational reason entailing changes in the workforce within the meaning of Regulation 7(2) of the TUPE Regulations?

13. If so, were the Claimants dismissed for the potentially fair reason of redundancy and/or "some other substantial reason"?

14. Were the dismissal(s) fair within the meaning of s.98 of the Employment Rights Act 1996?

Ordinary Unfair Dismissal

15. In the alternative to the above, did the relevant Respondent act reasonably in treating the reason as a sufficient reason to dismiss the Claimant(s)?

16. Was the dismissal fair or unfair having regard to s.98 of the Employment Rights Act 1996?

Regulation 4(9) TUPE

17. Did the Claimant(s) treat their contracts of employment as terminated under Regulation 4(9) of TUPE?

18. If so, when did the Claimant(s) resign?

19. Did the transfer involve/would the transfer have involved a substantial change in working conditions to the material detriment of the Claimants, such as to entitle them to treat his contract of employment as terminated, and themselves dismissed by the Transferor?

20. Did the Claimants(s) resign because of this substantial change.

21. Did the terms of the Claimants' contracts of employment permit the change in any event?

22. Was the sole or principal reason for the variation an economic, technical or organisational reason entailing changes in the workforce?

23. Was any dismissal unfair by virtue of Regulation 7(1) of the TUPE Regulations or s.98 of the Employment Rights Act 1996?

Regulation 4(11)

24. Did any of the Claimants treat their contracts of employment as terminated under Regulation 4(11) of TUPE prior to the transfer?

25. If so, when did the Claimant(s) resign?

26. What was the repudiatory breach(es) relied upon?

27. Was this a breach of contract?

28. Was it sufficiently serious, or the last in a serious of events that collectively was sufficiently serious, to amount to a fundamental breach of contract entitling the Claimant to resign?

29. Were the Respondent's actions were not calculated or likely to seriously damage the relationship of trust and confidence in the employment relationship?

30. Did the Claimant delay in resigning and so is deemed to have waived any breach?

31. Did the Claimant resign because of any breach(es).

32. Was any dismissal unfair by virtue of s.98 of the Employment Rights Act 1996?

Redundancy Payment

33. Were the Claimants entitled to receive a redundancy payment?

34. In the event any redundancy payment is found to be owing, should such payment be statutory redundancy pay or contractual redundancy pay?

35. Should any compensation awarded be reduced in terms of Polkey v AE Dayton Services Limited [1987] ICR 142 and, if so, what reduction is appropriate?

Notice Pay up

36. If the Claimants were dismissed, are they entitled to any sums in respect of notice pay?

Case Specific:

Mavhangira – 3300282/2019

37. Did London Sovereign Limited fail to pay the Claimant his salary from the 1st September 2018?

38. Was London Sovereign Limited entitled to withhold the Claimant's salary from 1st September 2018?

39. If not, for what period is the Claimant entitled to be paid his outstanding salary?

40. What is the relevant Respondent's holiday year?

41. To how many days' holiday was the Claimant entitled per year?

42. How many days had the Claimant accrued at the date of his dismissal?

43. How many days had he taken?

44. Did the relevant Respondent pay in lieu of accrued but untaken holiday?

45. If so, how many days, if any did the Respondent pay?

46. In the event the Claimant is found to have been dismissed:

    46.1. Did the Claimant request written reasons for dismissal?

    46.2. Did the Respondent provide reasons in writing?

47. Is the Claimant entitled to bring a claim for failure to inform and consult under Regulation 15(1)(d)?

48. If so, did the relevant respondent fail in its duty to inform and consult under Regulation 13 of the TUPE Regulations?

49. Is the Claimant entitled to a protective award and if so, for how many weeks' pay?

Mr Djan and Mr Jayaratnam - Jurisdiction

50. Having regard to the fact that neither the ET1 Form, nor the Early Conciliation documentation names London Sovereign (or any iteration thereof), does the Tribunal have jurisdiction to hear the Claimant's claims against London Sovereign.

Mr Djan only – Ordinary Unfair Dismissal

51. Does the Tribunal have jurisdiction to hear the Claimant's unfair dismissal claim? London Sovereign submits that the Claimant was reinstated following appeal and received back pay for the missed payments.

52. If the Tribunal considers that it has jurisdiction to hear the Claimant's claims, did Arriva dismiss the Claimant for a potentially fair reason, namely capability?

53. Did Arriva have a genuine belief in the Claimant's ill health?

54. Did Arriva take reasonable steps to ascertain the position relating to the Claimant's health?

55. Did Arriva consult, or attempt to consult, with the Claimant in relation to his health?

56. Did Arriva take reasonable steps to consider alternative employment?

57. If the Claimant's dismissal was unfair due to procedural deficiencies to what extent would remedying those deficiencies have altered the outcome? What reduction should be made to any compensatory award in accordance with the principles of Polkey v A E Dayton Services Ltd [1987] IRLR 503?

58. To what extent was the Claimant's dismissal caused by his own actions?

    Should any deductions be made in respect of this?

Ms Verboort and Mr Mickiewicz only

Disability (section 6 Equality Act 2010)

59. At the relevant time, did the Claimant have a physical or mental impairment? The impairments relied upon by the Ms Verboot are apnoea and hearing issues. The impairment relied upon by Mr Mickiewicz is unspecified back issues.

60. If so, did the impairment(s) have a substantial adverse effect on the Claimants' ability to carry out normal day-to-day activities?

61. If so, was that effect long term? In particular when did it start and:

    61.1. Had it lasted for more than 12 months?

    61.2. Was the impairment likely to last at least 12 months?

62. Were any measures being taken to treat or correct the impairment(s)? But for those measures would the impairment(s) be likely to have a substantial adverse effect on the Claimants' ability to carry out normal day-to-day activities?

63. If so, did the Respondents know, or could the Respondents be reasonably expected to know, of the Claimants' disabilities during the material time?

Failure to make reasonable adjustments

64. Were/was the Respondent(s) under a duty to make reasonable adjustments?

Specifically;

64.1. Did a provision, criterion or practice applied by the Respondent(s) put the Claimants at a substantial disadvantage in comparison with those who are not disabled?

65. Did the Respondent(s) take such steps as is reasonable to avoid the disadvantage?

66. Did the acts that the Claimant seeks to rely on as the basis of her complaint arise within three months of the claim being brought?

67. If not, are the acts part of conduct extending over a period, with the Claimant bringing her claim within three months of that period?

The claims

68. There is a dispute between the Respondents as to whether any of the Claimants actually transferred by virtue of the TUPE 2006 Regulations into the employment of London Sovereign Limited (and therefore, whether any liability for claims moves with this).

Djan (Arriva London North Limited only) – 3333875/2018

- Unfair dismissal. EDT 1 Feb 2018. Claim Lodged 29 June 2018.
- Relates to a capability dismissal (and subsequent partially successful appeal) that took place in March 2018.
- London Sovereign are not listed as Respondents in the ET1 or in ACAS Early Conciliation.
- As a result, London Sovereign should be dismissed as the Tribunal has no jurisdiction to hear the claims against it.

Hines – 3335100/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).

Notice pay.

- Relates to Route 340. London Sovereign does not operate this route.
- He is claiming constructive unfair dismissal, but does not seem to have resigned. He raised a grievance at the end of his employment, but did not resign.

Mavhangira – 3300282/2019

- Unfair dismissal. It is his view that he transferred to London Sovereign and was dismissed as a result, meaning that this was automatically unfair by virtue of Regulation 7(1) of TUPE 2006.
- Notice pay.
- Alternatively, if it is argued that the move of location and removal of car entitlement was an ETO reason, the Claimant is claiming redundancy pay as the closure of the Watford garage comes under s139(1)(a)(ii) of the Employment Rights Act 1996.
- Holiday pay arrears.
- Unlawful deduction of wages (on the basis that he was not dismissed).
- Failure to inform and consult.
- Failure to give reasons for dismissal.

Uslu – 3335113/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Relates to Route 340. London Sovereign does not operate this route.
- He is claiming constructive unfair dismissal, but does not seem to have resigned. He raised a grievance at the end of his employment, but did not resign.

Verboot – 3335108/2018 and 3331333/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Failure to make reasonable adjustments in relation to sleep apnoea and hearing difficulties. She used to undertake spread over duties and sleep between shifts, she could not do this with the proposals.
- Relates to Route 340. London Sovereign does not operate this route. It is said that they worked on this route until it was transferred out of Watford. They were told that they could remain working at Watford until its closure. There is no indication as to the Routes that they were assigned to during this period.
- She is claiming constructive unfair dismissal, but does not seem to have resigned.

Stroud – 3335109/2018 and 331038/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Relates to Route 340. London Sovereign does not operate this route. It is said that they worked on this route until it was transferred out of Watford. They were told that they could remain working at Watford until its closure. There is no indication as to the Routes that they were assigned to during this period.
- He is claiming constructive unfair dismissal, but does not seem to have resigned.

Brown – 3335110/2018 and 3331176/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Relates to Route 340. London Sovereign does not operate this route. It is said that they worked on this route until it was transferred out of Watford. They were told that they could remain working at Watford until its closure. There is no indication as to the Routes that they were assigned to during this period.
- He is claiming constructive unfair dismissal, but does not seem to have resigned.

Jayarantnam (Arriva London North Limited only) – 3331669/2018 and 3303547/2019

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Relates to Route 340. London Sovereign does not operate this route. It is said that they worked on this route until it was transferred out of Watford. They were told that they could remain working at Watford until its closure. There is no indication as to the Routes that they were assigned to during this period.
- The Claimant claims that he needed to be placed on the early or late rota due to family commitments, but was told that this would not have been possible.
- He is claiming constructive unfair dismissal, but does not seem to have resigned.

Pyszynski - 3334587/2018

The claims are not well pleaded as to the legal basis, however, there appears to be:

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- The claim relates to Route 303.
- The Claimant says that the "transfer was not suitable" for them.
- The Claimant states that he is "not objecting to the transfer to RATP London Sovereign itself."
- The Claimant relies upon the lack of a mobility clause in his contract of employment.

Pyszyniak – 3335079/2018

The claims are not well pleaded as to the legal basis, however, there appears to be:

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- The claim relates to Route 303.
- The Claimant relies upon the lack of a mobility clause in his contract of employment.

Wozny – 3335013/2018

The claims are not well pleaded as to the legal basis, however, there appears to be:

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- The claim relates to Route 303.
- The Claimant claims that he was told to sign a document at the London Sovereign induction that sought to amend his terms and conditions of employment. No further details are given.
- The Claimant relies upon the lack of a mobility clause in his contract of employment.

Mickiewicz – 3335122/2019

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- Disability Discrimination has been ticked in the ET1 Form, yet not pleaded. The only mention of a condition is the Claimant's back condition. He says that the transfer would have prevented him spending time in the gym to improve this. This is presumably failure to make reasonable adjustments, but further detail is needed.
- The Claimant says that he told Arriva of the issues the transfer would cause him, but there was no proper consultation as Arriva did not deal with these concerns.
- The Claimant relies upon the lack of a mobility clause in his contract of employment.
- The Claimant was informed that he would be deemed to have resigned if he did not transfer.

Burt – 3335094/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.
- The Claimant mentions that he suffers from a stress related illness, making his longer commute (and longer working hours) more difficult. However, there does not appear to be any disability related claim.
- The Claimant relies upon the lack of a mobility clause in his contract of employment.

Sivakumar – 3310844/2019

- Redundancy pay only.
- The Claimant had a flexible working arrangement with Arriva due to childcare and caring for his wife.
- He attended an induction with London Sovereign and was told that he could not work spread over shifts, Monday to Friday.
- It was not confirmed whether his flexible working arrangement would be honoured.
- Claims that the closure of the Watford garage amounts to redundancy under s139(1)(a)(ii) of the Employment Rights Act 1996.
- Claims that it was impossible to transfer and all options unsuitable.

Moson - 3335588/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).

Paprocki - 3335608/2018

- Constructive unfair dismissal by virtue of Regulation 4(9) of TUPE 2006, in that the move of location and alleged changes to the terms and conditions amounted to substantial changes in his working conditions to his material detriment.
- Automatic unfair dismissal by virtue of Regulation 7(1) of TUPE 2006 as the principal reason for the dismissal was the transfer itself.
- Entitlement to a redundancy payment on the basis that Arriva's Watford garage was closed (s139(1)(a)(ii) Employment Rights Act 1996).
- Notice pay.

Remedies

69. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

70. There may fall to be considered reinstatement, re-engagement, a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

The evidence

71. The Tribunal heard evidence from all the claimants. On behalf of the first respondent, evidence was given by Mr Alexander Jones, Operations Director; Mr Jason Jones, Operations Manager; and Mr Marc Sands, Human Resources Projects Manager. On behalf of the second respondent evidence was given by Mr Ray Clapson, General Manager.

72. In addition to the oral evidence the parties adduced a joint bundle of documents with additional documents being added during the hearing. In total the joint bundle comprises in excess of over 1,500 pages. The Tribunal will be referring to the documents in the joint bundle by reference to the page numbers.

Findings of fact

73. Arriva provides passenger transport services throughout north London under contract with Transport for London (TfL). Up until 1 September 2018, it had a garage at Garston, Watford, and another at Palmers Green.

74. London Sovereign also operates public passenger transport bus services under a contract with TfL. It is part of the RATP group, some of which trade as RATP DEV London but it is not a legal entity. It has garages in Edgware and Harrow.

Transport for London Guidelines

75. Bus routes are regularly tendered and are very competitive. TfL issues guidelines for operators when dealing with transfers under TUPE. We were told that the guidelines are a set of instructions without any enforcement provisions. We were referred to two guidelines documents, one dated January 2016 and the other was issued in 2017. (382A-382E)

76. We are satisfied that the relevant guidelines were issued in 2017. It states that it provided "..guidelines for Operators to follow." In relation to the transfer of a bus route, it provides:

> "2. Contract award
>
> After the award of a contract to a non-incumbent operator, the incumbent operator should immediately identify those on the any route-specific rotas at the date of award.
>
> The incumbent operator should not transfer staff on or off those route-specific rotas unless it is absolutely necessary.
>
> However if there is a request for a mutual exchange onto and off the affected rotas, this should be permitted under normal procedures prior to 'Lockdown'.
>
> Any vacancies on the affected rotas after contract award should be filled from 'spare' rotas and those employees would not form part of that rota.
>
> 3. Lockdown
>
> 16 Weeks prior to the date of transfer, the affected rotas should be "locked down". After this point employees will not be permitted to move on or off the affected rotas. This enables the incumbent operator to prepare the information required no more than 12 weeks before the date of transfer.
>
> If either operator has any concerns with how the consultation is progressing they should contact LBSL. LBSL will seek to assist the incumbent and the new operators to reach a mutually agreed resolution.
>
> 4. Information provision
>
> Not less than 12 weeks prior to transfer, the incumbent operator will provide details of the staff who are expected to transfer to the receiving operator, including:
>
> - Name
> - Address
> - Age
> - Job title

- Shift pattern/rota
- Length of service
- Remuneration details

Pay rates (basic and overtime)
Grade
Hours of work
Average weekly earnings (last six months)
Disturbance or other allowance

- BTEC/City & Guilds Certificate Number
- DQC expiry date
- Number of CPC hours completed
- Details of untaken leave and any carry-forward arrangements
- If they are absent from work and if so the reason why
- Details of any outstanding claims for work-related injury/other claims
- Details of outstanding loans made
- Any current grievance/disciplinary procedures

The provision of this information shall be subject to the duty of confidentiality under the Data Protection Act."

Flexible working

77. There is also a provision in relation to flexible working. It states::

> "Flexible working
>
> Where an existing flexible working arrangement has been agreed and documented, the receiving operator should attempt to continue those arrangements, subject to normal ongoing reviews of whether the arrangements are necessary and relevant and based on need.
>
> However the receiving operator may take into account the practical feasibility of the flexibility required within existing rotas, and any existing staff who may have applied for flexible working and be on a waiting list." (382C to 382E)

Spares drivers

78. The Guidance refers to "spare rotas". Bus drivers would be allocated to a particular route or routes. Spares drivers would not be allocated to a particular route. They would fill in gaps on any routes operated by the garage. They provide cover if bus drivers take holidays or are sick, or absent for any other reason. The Spares drivers do not have a steady work pattern and would be on the spares rota.

79. The claimants all worked at the Watford garage operated by Arriva. They did not have an express mobility clause in their contracts of employment. In their contracts, under place of work, it states:

> "You will not be required to work outside the United Kingdom." (430)

80. We find that it is common practice in the bus industry that Spares drivers are not assigned to any route/s. When a route left Arriva London as part

of a relevant transfer, the Spares drivers from the spares rota were not considered to be assigned to the transferred route. They could, however, request a move voluntarily with Arriva London and the transferee company's agreement.

81. We further find that Spares drivers were not considered to be assigned to individual routes by Arriva London, the recognised trade union Unite, and by the employees themselves.

Collective consultations

82. On 17 July 2017, Arriva London wrote to Unite informing it of its proposal to close the Watford garage to move routes H2, H3, 268 and 631 to Palmers Green in June 2018. It was also going to move route 340 to Palmers Green on a date to be confirmed, and the contracts for its existing routes, H18/19, 288, 303 and 305 were due to end in August 2018. It did not anticipate making any driver redundant. The letter was sent by Mr Bob Scowen, Managing Director to Mr Roger Dillon, Regional Industrial Organiser, Unite the Union. (223-224)

83. Arriva London's clear intention was to close the Watford garage.

84. On 2 August 2017, Arriva met with Unite and said that it would be seeking volunteers to move with route 340 when it was due to move from Watford to its own garage at Palmers Green, but it would not compel anyone to do so. It ruled out redundancy on the basis that all the remaining routes at Watford were going to be run by one company, and that TUPE would apply to everyone who remained at Watford at the time of transfer. (225-230)

85. Although Arriva London tendered for the remaining routes at the Watford garage, the outcome was made known on 14 December 2017. It had not been successful. The routes were going to be operated by London Sovereign.

86. On 19 December 2017, Mr Alex Jones, Operations Director, Arriva, following a Watford Consultation meeting on 22 November 2017, wrote to Mr Dillon setting out what were agreed at the meeting. The bus drivers would be offered £3,500 retention bonus apart from bus drivers operating routes 142 and 258 and those staying with Arriva London; a £1,000 bonus for those who transfer to another London garage but would be required to sign up to Arriva London terms and conditions with no loss on grade progressions; those wishing to transfer to either Luton or Hemel Hempstead garages could do so as there was an incentive to switch across; the earliest retention bonus payment would be made in June 2018. Staff may be requested to move earlier but would still be entitled to the retention payment in June if they stayed with Arriva London. He stated that the retention bonus was in recognition of the hard work and commitment of staff during a challenging period. The information contained in the letter should be disseminated to the bus drivers and relevant staff (240-241).

87. On 5 January 2018, routes 642 and 142 moved from Arriva London to London Sovereign under TUPE.

88. In March 2018, Arriva London had confirmed that the Watford garage was closing.

89. On 9 March 2018, Arriva London had a collective consultation meeting with Unite representatives at which Mr Peter Mhagrh, General Manager; Mr Alex Jones; Mr Jason Jones, Acting Operations Manager; Mr John Murphy; Mr Bobby Ilyas; Ray DiCastiglione; Mr John Heft; and Mr Tony Garvy, were in attendance. In addition, there were two other attendees. Mr Alex Jones said that a driver could not transfer and keep continuity of service with Arriva London as they would transfer under TUPE. Mr Jones explained that the purpose of the £3,500 retention bonus was to keep the driver at Watford until the end of August 2018. Mr Alex Jones said that he had been advised by Metroline that routes H2, H3, 268, and 631, would operate from their Cricklewood garage. A TUPE meeting had been scheduled to take place on 9 April 2018 where they would be able to confirm arrangements. He stated that in relation to London Sovereign, he had not been advised where H18, H19, 288, 303 and 305 routes would operate from. Route 340 would operate from Palmers Green from 9 June 2018. He was asked whether he was prepared to make alternative offers to those drivers who declined to transfer. His response was that if they declined to transfer, they would be deemed to have resigned.

90. In relation to the question 3:

> "For any driver who does not want to transfer with their route and believes they have a good reason to refuse your alternative offer, will you consider offering them redundancy?"

91. Mr A Jones' reply was, "There is no opportunity for redundancy". He said that if there were to be redundancies, it would not be the drivers. If they cannot be TUPE transferred, potentially there could be redundancies.

92. In relation to question 7, it was put:

> "With the previous transfers you considered some groups not attached to the route. Will you now consider offering voluntary redundancy to those same groups?"

93. Mr A Jones replied:

> "If you are referring to spare drivers. These employees are likely to be TUPE'd. This is due to them being associated with the routes at the time of the transfer. RATP – Sovereign may take a different view."

94. He said that drivers who may find it difficult to commute to various locations will have to discuss those matters with the incoming operator. If the transferring driver find the transfer unsuitable, there would be no trial period.

95. When questioned about parking facilities at Palmers Green to where route 340 would be moved, he said parking would not be a problem. Those routes being TUPE'd over, the issue of parking and staff bus would have to be discussed with the new operator. He said that there would not be a staff bus for route 340. There will be one-to-one meetings with the drivers in relation to the move of route 340 to Palmers Green. He confirmed that the £1,000 bonus would be paid to those who transferred to another London garage but that they would be required to sign up to new Arriva's terms and conditions with no loss of grade progression. The £3,500 retention bonus would be paid when routes go or when the garage closes. He also confirmed that the cleaners would get the £3,500 retention bonus and the bus drivers would receive it if they remain at the garage until 31 August 2018. He said that the £3,500 applied to all staff groups, including the engineers, supervisors, and administrative staff (243-255).

96. On 8 June 2018, routes H2, H3, 268 and 631 transferred from Arriva to another bus operator, Metroline, under TUPE. No spares driver transferred. On the same day, route 340 moved from Watford garage to Palmers Green.

97. As the drivers on route 340 believed that they did not have a mobility clause in their contracts, some objected to the move from Watford to Palmers Green. Arriva London did not make them redundant but put them on the spares rota to assist in other routes in the knowledge that the routes remaining at Watford were due to transfer on 1 September 2018 to London Sovereign.

98. In a letter dated 24 April 2018, by Mr Peter Mhagrh, with reference to the route 340 drivers, he informed them that the route would be transferring to Palmers Green on 9 June 2018 and that as drivers on that route they would be eligible to transfer with it. From 9 June they would no longer be located at Arriva London's Watford Garston garage but at its Palmers Green garage. As part of the transfer Arriva London agreed to pay London terms and conditions and would ensure that they were placed on an equivalent "live" grade which was more favourable than their current terms and conditions based on length of service. They would be eligible, also, to the £1,000 retention bonus. This would be subject to tax and National Insurance deductions. Route 340 had designated early and late rotas to accommodate the transferring staff. As they would be transferring to Palmers Green, a disturbance allowance would be paid at the rate of 45 pence a mile. The distance between Watford garage and Palmers Green being 18 miles, would attract a payment of £81, paid each week for a period of 52 weeks. The payment was also subject to income tax and National Insurance deductions. Continuity of employment would be preserved as well as their Occupational Pension Scheme. They were informed of vacancies at Hemel Hempstead, Luton, Aylesbury, and High Wycombe, however, if they moved to one of these garages with either Arriva Southern Counties or Arriva Midlands, they would be eligible for the £3,500 retention bonus and the offer of £1,000 incentive to transfer would be paid in instalments, but the local pay rates would apply. The payments would be subject to income tax and National Insurance deductions. Consultation meetings would be

arranged at Watford garage. The remaining routes operating at the Watford garage were subject to a compulsory transfer under TUPE to RATP at the end of Arriva London's current contract. Those who remain would get the £3,500 retention bonus in August (256-257)

99. On 5 July 2018, Ms Leanne Hansen, Head of Human Resources, RATP DEV London, wrote to Mr Marc Sands, Human Resources Business Manager, at Arriva, with reference to the routes which were to transfer to London Sovereign on 1 September 2018, namely 288, 303, 305, H18 and H19. She did not accept that all those who were engaged in either driving or servicing those routes were within the scope of TUPE. In her proposed "Measures" letter, she stated:

> "In scope
>
> We are contracting with TFL to drive buses on routes 288, 303, 305, H18 and H19 and therefore only those drivers who operate that service will be in scope under TUPE. We therefore do not at this point accept that any other employees, including controllers, cleaners, engineers, and garage operations/allocations are in scope of this TUPE as part of the service which is transferring to us.
>
> Controllers would form part of your internal control systems. Any engineers who MOT or repair buses; cleaners for buses or allocations for assigning work to drivers are all separate internal issues and not covered by TUPE"

100. In relation to salary, she wrote that all transferring drivers' pay week would change from Sunday to Saturday, to Saturday to Friday. Pay date would change to every Friday except when it falls on a Bank Holiday. In relation to location, she wrote that upon transfer, all employees would be assigned to either their Edgware garage, Edgware, Middlesex, or their Harrow garage, Pinner Road, Harrow, Middlesex. She stated that both Edgware and Harrow garages have a satellite site in close proximity, within three miles of the main base garage and depending on operational requirements, they may require employees to start and/or finish work at one or both of their satellite sites throughout the working week. In relation to pensions, transferring staff would not be able to continue as members of Arriva London Pension Scheme. That would cease and they would become members of London Sovereign's scheme.

101. Under "Staff Travel", she wrote:

> "Staff will be entitled to keep their staff travel in line with the TFL Regulations. "

102. In her final paragraph, on contractual changes, she stated Arriva London's position:

> "The contract of employment for an employee transferring under TUPE is protected in its existing form. Any changes the employee wishes to make post transfer therefore loses this protection. As such, any such changes would if agreed by the company would be to the existing terms and conditions to move to those particular to the role/garage at that time." (268-270)

103. On 6 July 2018, Mr Peter Mhagrh, General Manager, Arriva London, wrote to all affected bus drivers on the five transferring routes. He informed them that from 1 September 2018 there was going to be a service provision change and that the five routes would transfer to London Sovereign. As a consequence, Watford garage would be closing and there would be no option for staff to remain at the garage. A meeting had been arranged on 13 July 2018 with London Sovereign, Arriva London, and union representatives in relation to the TUPE transfer. He stated that the purpose of his letter was to advise the drivers that from 1 September 2018, they would not be employed by Arriva but by London Sovereign. He wrote that they had the right to object to the transfer of their employment to RATP London Sovereign but, "it is fair to warn you that in these circumstances if you decide not to transfer you will have been deemed to have resigned."

104. He informed them that they could transfer to any Arriva London garage or Arriva Midlands or Southern Counties subject to suitable vacancies, but local terms and conditions would apply. Other than their pension scheme, their terms and conditions of employment as set out in their contract remained the same including continuity of employment. Their pension would be with RATP London Sovereign, and they would be unable to remain in Arriva London's pension scheme upon transfer. The collective agreement between Arriva London and Unite the Union would also transfer to London Sovereign on the date of transfer.

105. Mr Mhagrh then cut and pasted the relevant provisions in Ms Hansen's Measures letter which sets out the position taken by London Sovereign upon transfer. He then wrote that Arriva London would be engaged in one-to-one consultation meetings with the affected drivers during which they would be given the opportunity to discuss issues regarding the transfer. He confirmed what was agreed with Unite the Union, namely that upon leaving Arriva London they would receive £3,500 loyalty bonus payment in their final salary subject to the deductions of income tax and National Insurance. Should they transfer to another Arriva London garage they would be eligible to receive a £1,000 bonus and would be required to sign up to Arriva London's terms and conditions pertaining to that garage. The £1,000 payment would be subject to tax and National Insurance deductions. They were also informed of the disturbance allowance payment. (272-274)

106. In relation to the "In scope" paragraph in Ms Hansen's letter to Mr Sands dated 5 July 2018, what she wrote was absent from the letter sent by Mr Mhagrh to the affected drivers on 6 July 2018. London Sovereign's position was that controllers, cleaners, engineers, and garage operations/allocations were not in scope of the TUPE transfer.

107. The evidence from Mr Alex Jones and from Mr Ray Clapson, General Manager, London Sovereign, about a conversation they had prior to a consultation meeting on 13 July 2018, Mr Clapson said that during their telephone conversation Mr Jones said to him that there were about 15 or so staff, mostly drivers, who would not transfer and that if London Sovereign did not object to the principle that TUPE applied then Arriva London would

pick up the liability for those members of staff as some had been assigned to other routes previously, mainly route 340. Mr Clapson said that Mr Jones was nervous about a lot of Arriva London's employees claiming redundancy?

108. In evidence, under cross examination, Mr Alex Jones said with reference to Mr Clapson's evidence on this issue, that they did talk about redundancy, but he had never given an open indemnity to Mr Clapson. It was only in relation to route 340. He said he could not recall being pushed into giving an indemnity.

109. On 13 July 2018, there was a joint consultation meeting at Edgware garage between RATP London Sovereign, the Union, and Arriva London, with 15 attendees. Mr Clapson, Ms Hansen and Mr Matt Doughty, were absent. The meeting was held to discuss the routes to be transferred on 1 September 2018.

110. Ms Mani Flora, Human Resources Business Partner – engineering, London Sovereign, said that there were parking spaces at the Harrow garage because the former Vauxhall garage showroom next to it had spaces for drivers to park their vehicles. They were waiting for approval to purchase the Vauxhall dealership in Harrow which would be knocked down and rebuilt to specifications. There was a satellite site at Parr Road, Edgware, off Honeypot Lane, where the Edgware drivers could also park their vehicles. She stated that there were 90 drivers in scope but those not in scope would need to take legal advice. She took the view that the engineers and the eight cleaners were not in scope. Any pre-booked holidays, she said, would be honoured.

111. It was clear that Ms Flora did not depart from the letter by Ms Hansen, that engineers and cleaners were not covered under TUPE.

112. Mr Jason Jones, Arriva London, said that if there were special arrangements then they should be honoured. Rushpa Marchy said the "spread rota is not a special arrangement." Mr Jones stated that a formal arrangement such as flexible working would be classed as a special arrangement. To this Ms Marchy agreed. Mr Murphy stated: "Anyone on special arrangements should be honoured". Mr Jones replied by saying that they needed to ask at the next meeting. He also said in answer to a question whether cleaners were in-house, he replied "yes".

113. Mr Ray DiCastiglione asked whether any redundancies were on offer, to which Mr Jones replied that it was the wrong forum and that he was not prepared to answer. Mr Murphy said that under normal circumstances, spares drivers did not normally TUPE over. Mr DiCastiglione asked whether they could answer what were not associated with the routes, as on 12 May the routes were on lockdown. Mr Jones replied that the situation was different. Mr Heft said that to put someone in scope they need to work 70% of the route. Mr Jones said that the 340 drivers who did not want to go to Palmers Green their circumstances were different. The remaining routes

were going to be transferred to London Sovereign. Mr Murphy stated that they were already looking at failure to properly consult (276-282).

114. On 16 July 2018, Mr Clapson spoke to Mr Alex Jones who, we find, was disappointed that Ms Flora objected to the transfer of some employees in the presence of the union representatives. Mr Clapson had been on leave and was unable to catch up with Ms Flora following the meeting. In his discussion with Mr Jones he told him that he had been "trying it on" by trying to pass the engineers and cleaners onto London Sovereign. London Sovereign did not want them nor needed them. Mr Jones said that Arriva London needed to maintain with the union that redundancy was not an option and again said that they would cover the redundancy costs for them if it came to it and that London Sovereign, would not be paying anything. Mr Jones asked Mr Clapson to help him by not kicking up too much of a fuss in front of the union. Mr Clapson asked Mr Jones to tell him exactly how many there were still in discussions so he would be aware what the exposure to London Sovereign was. He questioned Mr Jones on the spares and drivers they would normally have to indemnify London Sovereign for and said to Mr Jones whatever games they were playing with the union, at a minimum he wanted written confirmation that they would pick up the cost of their 340 drivers.

115. The following day Mr Jones emailed Arriva's position to Mr Clapson at 09.24 in the morning. He stated that it was not very helpful Ms Flora had decided to advise those at the consultation meeting that London Sovereign was objecting to the transfer. He stated that both companies had respected each other's position in recent transfers and worked together to minimise disruption to the affected staff. He then wrote:

> "Our position remains that all the remaining work at Watford garage is transferring to your operation in one tranche and therefore the staff now based at the garage are all associated with that work and in scope to transfer, I appreciate this of course may raise liability concerns with yourselves.
>
> Therefore I think it might help to clarify the actual non-driving interest in transferring, so far we have had to advise on the ELI numbers for those in scope to transfer as of course the entire remaining Watford operation transfers to yourselves, the reality is very different as follows:
>
> There is now one engineer only expressing an interest to transfer under TUPE, his decision is based on potential location, there are no managerial, supervisory, administration or controller staff wishing to transfer. In relation to the cleaners as previous advised, we were unable to reduce the number employed from the he last service reduction so is our liability. We have our Contractor Cordant in discussions with them and hopefully your contractor, Nationwide may be interested in some staff and they have been issued with an invitation to meet the staff, although the general view is they won't wish to travel to your locations.
>
> In relation to drivers there are around 50 to 70 I am advised who have stated they wish to transfer to yourselves. We are conducting one-to-ones with them to try to get a better handle on the actual number, but you will appreciate that this hinges

around your decision on operating base for the routes, so the sooner you can resolve this and advise the better now.

As previously advised there is a small number of around 10 drivers who remained at the garage having previously operated route 340, they have already lodged interests with Acas claiming that they should have been made redundant, and whilst this is of course entirely incorrect, we acknowledge they are our liability in terms of any potential claim as they have objected -prior to any transfer taking place.

I will be grateful if you able to confirm that there is no objection from RATP to the transfer, as we need to obviously close this off following last weeks meeting. I would have thought this is in your company's interest to aid with your driver establishment position and then we urgently need to set up a new joint consultation meeting with the trade union confirming operating base(s) which Mani advised you should be in a position to answer on by this Friday 20 July…" (283-284)

116. Later, in the morning at 11.28, Mr Marc Sands emailed Ms Hansen asking if the spares drivers at Watford would be required to be split between two locations or based at one location once the routes transferred. (282(b).

117. Ms Hansen replied in the afternoon at 2.58, stating:

"Hi Marc,

Can I clarify what you mean by 'spare drivers'. In our terminology these are people who are not on a permanent rota line on a specific route. Most drive more than one route for flexibility. If this is the case at Arriva then our view is these drivers would not be in scope of a TUPE.

Putting that aside, once routes are allocated spares will be split across locations depending on requirements, but we always reserve the right to require staff to work from any reasonable location in the operational area. On a practical basis that could include them covering a rota line on a route at either Sovereign location if needs must.

Also can you send me the password for the ELI spreadsheet? I assume this was sent to Mani but does not appear to be saved in the shared drive and I want to familiarise myself with the contents." (282(a) – 282(b))

118. Mr Sands replied 15 minutes later stating:

"Hi Leanne,

These spares are only associated with the H18, H19, 303, 305 and 288 routes which you are taking over on 1 September 2018. Therefore they would be eligible for TUPE as they are associated with the transferring work and in scope to TUPE. You have already confirmed that you are accepting these as in scope. We could not run these routes without spare drivers to cover sickness, holidays and training.

> Can therefore the spare drivers chose what location they would prefer (ie closer to home). From the below do you offer a spare rota to drivers or are spares contained within the main rota.
>
> I hope to be updating the ELI document shortly so will send this through to you as soon as possible with the password" (282(a))

119. This dispute about whether the Spares drivers were in scope under TUPE was never resolved by the respondents and is an important issue to determine in this case.

120. On 18 July 2018, an employee notice was displayed at the Watford garage regarding the five transferring routes. It stated that routes 288 and 303 would be assigned to London Sovereign's Edgware garage. It informed staff that Edgware had a satellite site in close proximity, 1.9 miles from the main garage where start and finish of routes 288 and 303 would run from. There would be a shuttle to the main garage if required.

121. In relation to routes H18/H19, they would be assigned to the Harrow garage. The notice informed the drivers that London Sovereign may require them to work from its satellite sites throughout their working week. The notice was to be on display until 31 August 2018. Although on Arriva's letterhead, it was information from London Sovereign (286).

122. In fact, routes 303 and 305 merged to form one route.

123. Another consultation meeting was held with Unite the Union, Arriva, and London Sovereign, on 25 July 2018, at which Mr Clapson, Mr Alex Jones, Mr Sands, Mr Murphy, Mr DiCastiglione, Mr Jason Jones, as well as others, were present. Mr Clapson said that there was no plan to run a staff bus either from Edgware or from Harrow. When asked whether the schedules could be made available, he responded by saying that until London Sovereign knows who were transferring across it was unable to provide rotas. He further stated that those with special arrangements would be honoured, and this was confirmed by Mr A Jones. When whether there were any planned redundancies, Mr Clapson replied, "We are happy all drivers are in scope". He said that engineers were not in scope, but one engineer was on the list as having an interest in being TUPE'd. Mr A Jones said that the engineer's position would be discussed internally. He did not believe that either the engineers or the cleaners were assigned. It was put to him by Mr Murphy that the situation was different in that the garage was closing. The question was asked:

> "There are six spread over drivers and their main concern is the hours and days that they work. Will RATP assure them that they will not be required to work outside of their regular shift patterns? (6a to 7.30pm Monday to Friday)".

124. Mr Clapson responded by saying that London Sovereign would honour the shift pattern of the spread over drivers if their shifts were agreed. He also confirmed that London Sovereign would not be offering any redundancies.

125. When asked about the procedure in relation to lockdown 16 weeks prior to 31 August 2018, and that after 12 May 2018, employees should not be allowed to move on or off the transfer process, Mr Clapson repeated the answer given earlier by Mr Alex Jones that all drivers were in scope.

126. A similar question was put referring to spare drivers and those drivers with less than 70% to 80 % of their work on a specific route, would not be accepted as eligible to transfer, but in relation to the current transfer, all drivers regardless of how tenuous the attachment, were considered in scope. The question was asked why Arriva London and London Sovereign were choosing to ignore TFL guidelines to obtain drivers. Mr Clapson repeated, "All drivers are in scope to TUPE"

127. In relation to spare drivers, Mr Doughty said that there would be a rota of spares assigned to the H18/H19 routes and Mr Clapson said that if they gave an indication of where they would like to be based, London Sovereign would try to facilitate them. Mr Jones repeated that all companies accept all drivers were in scope.

128. Mr Johnie Meharry said, "340 drivers have been moved into TUPE. They are not covered by TUPE. If not involved in TUPE should not be transferred."

129. Mr Alex Jones replied: "Any issues with those drivers it is Arriva's liability." (289-295)

130. In London Arriva's employee notice dated 31 July 2018, on frequently asked questions on TUPE in connection with the five transferring routes, in answer to question 4 on whether car parking was available at London Sovereign's garages, the reply was "Yes, on a first come first served basis and there was more available spaces at the Edgware satellite site at Parr Road". In relation to question 7, whether redundancy was an option, the reply was "No" as it was a TUPE transfer, and they were eligible to transfer to London Sovereign or to take up alternative roles in other parts of Arriva London. (296-297)

131. We find that Mr Clapson agreed with Mr Alex Jones that "all drivers were in scope for TUPE." In evidence Mr Clapson said that he had only stated that all drivers were in scope to respond to a request to do so from Mr Alex Jones. In relation to the 340 drivers who objected to working at Palmers Green, Mr Jones agreed that they were Arriva London's responsibility.

132. During the three weeks prior to the transfer on 1 September 2018, London Sovereign arranged induction days at its garages for the drivers to visit and spend a day being shown around, have a health and safety briefing, and to meet the garage team. It informed Arriva London of the number of people it could accommodate on any particular day and, in turn, London Sovereign was given a list of the attendees' names.

133. The purpose of the induction days was to clarify any issues raised by the drivers before 1 September 2018. Should an issue be raised about shift patterns then London Sovereign would raise it with Arriva London and would honour whatever Arriva London stated. Mr Clapson was in the garages to

address any queries if need be. Some of the drivers asked to be based at a specific garage nearer to their homes to which London Sovereign agreed.

134. We find that London Sovereign agreed that the drivers operating the transferring routes would transfer, likewise the drivers on split shifts or spread overs, would transfer as well as the spare drivers.

135. Mr Sands said in evidence that there were at least 13 versions of the ELI of which five were sent to London Sovereign. In his email dated 30 August 2018, he attached Arriva London's most recent ELI. The complete version of which was not put in evidence. (1468)

136. In cross-examination, Mr Sands said that the final version of the ELI, as far as he could recall, was not dissimilar to the version in the bundle. (298-382)

137. In evidence Mr Alex Jones said that for the 5 routes which had transferred to London Sovereign, a total of about 74 drivers were required to staff those routes. In addition, 15% should be spare drivers or drivers without an allocated route who could be asked to drive any service to cover sickness, holidays, or service issues such as traffic backlogs, breakdowns, and other in-service issues. In other words, according to Mr Jones, there should be 11 spare drivers.

138. We find that there was a small administrative staff on duty on the last day, 31 August 2018, dealing with return of property and any correspondence from staff. We were told that there were 3 duty managers together with human resources backup and 1 full-time administrator. Mr Jason Jones was present throughout the day.

139. Mr Jason Jones, Arriva London, said that when letters arrive at the front desk from the drivers, whether they were grievances, objections to being transferred, or their resignations, they would be placed in the In-tray and then scanned to the relevant person. Some were handed directly to Mr Marc Sands rather than being scanned, in such circumstances there would not be an electronic trace of the letter.

140. In Mr Pyszynsky's evidence, he told the tribunal that when he handed in his letter those at the desk refused to acknowledge receipt of it. He was then advised by Mr Heft to post it which was what he did. (1020-1023)

141. Arriva did not call as witnesses those who were on duty at reception who received and scanned the documents from some of the claimants.

142. Upon leaving Arriva London, internal notifications of termination of employment were completed by the operations manager. The form gives a list of possible reasons for leaving and whether all the employee's equipment have been returned. It also gives the leaving date. (1291)

143. We bear in mind that when the contract was lost in December 2017, Arriva London's spares rota at Watford Garston garage covered routes, such as, 142, 642, 340, 258, H2, H3 268, 631, 288, 303, H18, and H19.

144. We will now consider the individual circumstances of the claimants.

Mr Victor Stroud

145. Mr Victor Stroud lives at 162 Magpie Place, Boundary Way, Watford. He was employed by Arriva London as a Bus Driver from 27 February 2004. His employment ended with Arriva on 1 September 2018.

146. He drove on the 340 route which provided passenger bus services throughout north London for Transport for London. He was based at Watford Garston garage. On 8 May 2018, he was informed by Arriva London that the 340 route was now going to transfer to the Palmers Green garage on 9 June 2018. (1159-1160)

147. He had his first consultation meeting with Arriva London on 22 May 2018 during which he was informed that the Watford garage was going to close because of the loss of contracts to London Sovereign. His place of work was going to be Palmers Green garage or one of the other routes. Mr Mark Sands and Ms Mary Lowrey, General Manager, Palmers Green garage, conducted the consultation. Mr Stroud said that to travel to and work from Palmers Green would be difficult as he did not have a car and enquired whether he would receive a redundancy payment. Mr Sands responded by saying he would not be getting a redundancy payment because he was not in a redundancy situation. At Palmers Green, he would be paid his London terms and conditions and would be on a live grade and would be given £1,000 retention bonus subject to tax and national insurance deductions. He was also entitled to a monthly disturbance allowance for one year.

148. He was advised that there were alternative vacancies at Hemel Hempstead, Luton, Aylesbury, and High Wycombe but he was of the view that they were too far away from his home to be considered reasonable alternatives. (1161-1162)

149. He was sent a letter dated 1 June 2018, by Mr Sands referring to the consultation meeting and alternative options, after which he wrote that Mr Stroud had not yet advised Arriva London whether he wished to take up any of the options. He confirmed that there was no requirement to make bus drivers redundant as there were sufficient posts available and that he was able to advise Mr Stroud that he would remain employed at Watford garage working on the remaining routes operating from there which would be subject of a TUPE transfer to London Sovereign later in the year. (1163)

150. In his letter to Arriva London, dated 4 June 2018, Mr Stroud gave his reasons for objecting to the move to Palmers Green. He wrote:

> "I do not have a mobility clause in my employment contract and do not agree to any changes to my terms and conditions.
>
> My place of employment has been here in Garston Watford bus garage for the last 16 years. This is in Hertfordshire not in London. By relocating my place of employment to Palmers Green in London you are changing my working conditions. The commute to and from work will adversely affect my home life,

> financial outgoings and any overtime or rest periods. I tried to convey this to you during my one to one meeting on 10 May 2018. You did not offer any suitable alternative and chose to read a statement that did not refer to my personal questions or my personal situation.
>
> It did not feel like a proper consultation during our meeting on 10 May 2018. I gave my own reasons to why I did not want to transfer, but they were overlooked in favour or unsatisfactory offers. The alternative offers that you propose related to a change of my terms and conditions of employment, a change of my employer and an unsuitable change of location. You took the position of refusing to discuss any risk of redundancy, instead you read out a statement saying "There will be no redundancies at the moment". I found this meeting to be impersonal and unhelpful.
>
> My union representatives told me that there have been no discussions in any depth involving redundancy and any time they tried to broach the subject during meetings, Alex Jones will insist "no drivers will be made redundant".
>
> I do not believe that the closure of the garage is due to the tendering cycle. Eighteen months ago the dismemberment of the garage started with separating local services from TfL services within the garage. Then losing the tender for 142 and 258 routes provided the excuse that the garage could no longer operate as a viable business.
>
> I was employed by Arriva the Shires as a driver, then eighteen months ago I was TUPE transferred to Arriva London North (no change in location). This transfer was suitable unlike the transfer you are proposing now to Palmers Green.
>
> I do not accept any of the alternative offers that you have mentioned so far. Unless you can provide me with a suitable alternative offer of employment I believe you should make my position redundant.
>
> I am not objecting to the current offer to stay at Watford, I would like this to be addressed so that you can confirm which duties I will be expected to cover and I will assert my rights under my contract and the TUPE regulations." (1164)

151. Mr Stroud's references to 10 May should read 22 May 2018.

152. In his evidence before us he stated that he raised the following objections. Firstly, it was impossible for him to get to Palmers Green using public transport, a journey of over three hours from his house according to TfL Journey Planner. Secondly, returning home after a late shift was not viable as public transport did not serve Watford that late at night. Thirdly, it would interfere with his statutory rest periods, and due to his family commitments, he could only work with a late shift. Fourthly, purchasing a car was not a viable option due to the expense involved and the requirement to drive home late at night. Fifthly, he felt forced into retirement due to the difficulty finding work at his age.

153. From the TfL maps provided, using public transport from his home to Watford garage takes between 12 to 18 minutes. Walking would be between 20 and 23 minutes.

154. In response to his letter Mr Sands replied on 5 June 2018, in which he wrote that Mr Stroud's response followed the standard format provided by the local trade union representatives. He confirmed that there was no requirement to make bus drivers redundant as sufficient posts were available and that Mr Stroud would remain employed at Watford garage working on the remaining routes which were operating from there and were to be TUPE transferred. (1165)

155. When the 340 route transferred to Palmers Green on 9 June 2018, Mr Stroud remained at Watford garage as a driver on the "spare late rota" pending the TUPE transfer to London Sovereign.

156. On 6 July 2018 Mr Mhargh, General Manager, wrote to Mr Stroud with reference to the transfer of routes H18, H19, 288, 303, and 305, the following:

> "I am sure you will be aware that on 1 September 2018 the service provision of H18, H19, 303, 305 and 288 routes for Arriva London will be transferred to RATP London Sovereign. Therefore I am writing to inform you that this is a compulsory TUPE transfer of your job to another employer.
>
> As a consequence of the TfL tendering programme and the resultant loss of work, Watford garage is closing later in the year and there is no option for staff to remain at the garage, alternative options you may wish to consider are set out further in this letter.
>
> A meeting has been arranged for 13 July 2018 at RATP London Sovereign and Arriva London where union reps from Unite the Union will be consulted with regarding this TUPE. This transfer is taking place in accordance with the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006.
>
> The purpose of this letter is to advise you that with effect from 1 September 2018 you will no longer be employed by Arriva London North Ltd (known under the Regulations as the transferor), but will become an employee of RATP London Sovereign (known as the transferee).
>
> Although you have the right to object to the transfer of your employment to RATP London Sovereign it is fair to warn you that in these circumstances if you decide not to transfer you will have been deemed to have resigned.
>
> There are other options that you can consider. You can transfer to any Arriva London garage (with the exception of Watford) or Arriva Midlands or Southern Counties subject to suitable vacancies and local T&C's will apply.
>
> Other than the identity of your employer and the details of your occupational pension scheme (should you be a member of an Arriva pension scheme), I should like to emphasise that all of your terms and conditions of employment as set out in your contract of employment will remain the same. Your continuity of employment for statutory and contractual purposes is preserved."

157. The rest of the letter was on Arriva London's pension scheme not being transferable and that the collective agreement between Arriva London and the unions would transfer to Sovereign.

158. Together with the letter Mr Mhargh set out the Measures by London Sovereign, amongst others, salary, location, rota, pension, annual leave, and terms and conditions and staff travel. (1165(a) to 1165(c)

159. There was a second consultation meeting with Mr Stroud on 30 August 2018, in the company of Mr Sands, Mr Mhargh and Mr Stroud's representative, Mr DiCastiglione. During the meeting they discussed the TUPE transfer due on Saturday 1 September 2018 to RATP London Sovereign and its Measures. It is recorded that Mr Sands asked Mr Stroud whether he was interested in any of the options to which Mr Stroud responded by saying that he was not interested in either Hemel Hempstead, Luton, or Arriva London due to the distance involved and not having a car. He did not want to be TUPE'd and did not want to work outside of Watford. Mr Sands responded by saying that should he change his mind, he should let him know. He did not sign the consultation notes. (1166 to 1168)

160. In evidence Mr Stroud told the Tribunal that when the 340 left Watford his time was spent working on the five remaining routes and that he had to go out and learn them. He worked on them until the transfer to London Sovereign on 1 September 2018. He said that he was more interested in staying with route 340 if Arriva London assisted him in getting to Palmers Green. On his rest day he found out that there was an induction meeting at Edgware. When he returned to work Mr Jason Jones told him that he should have been at the meeting because no other induction meeting was arranged and was the last week of induction meetings. Mr Stroud said that although he could do the late shift at Edgware, the question was how he would get back home as there were no buses from Edgware to Watford after the late shift. He could not do the middle shift because he needed to take his children to school.

161. He said in relation to Hemel Hempstead, the staff shuttle bus only operated in the morning not at night. He was aware of this because his brother works at Hemel Hempstead. He said that he was in the process of obtaining a loan to get a car to travel to Palmers Green, but he did not get paid the £3,500 until September 2018.

162. A move to Hemel Hempstead would only give him £1,000 but would have resulted in a 20% reduction due to tax and national insurance. He said that from his home to Edgware was 10 miles. He was unable to buy the car as he was unsure when he would be getting the payment of £3,500 and £1,000. He was 68 years of age at the time and bus companies wanted younger drivers. He did not choose to retire. He said prior to the meeting on 30 August 2018, he told Mr Jason Jones that he was objecting to the transfer. His only issue was getting back home after he had completed his late shift.

163. When it was put to him by Mr Nuttman, in cross-examination, that the Night Supervisor at Edgware would be in a position to drop him home after his shift in the ferry bus, Mr Stroud's response was that he had not heard about that.

164. On 31 August 2018, he returned his local pass and staff pass as he had given up at that stage. He said to get to Edgware he would need to travel on two buses, namely the 320 to the Watford bus station, and the 142 to Edgware. The journey from Watford to Edgware took 33 minutes and about 36 to 37 minutes on return. He said that he went to his bank for a loan to buy a Vauxhall Corsa motor car, but the bank needed a deposit and the payment of £3,500 was not going to be paid until after 31 August 2018. He was, therefore, unable to buy the vehicle.

165. Mr Stroud said in cross-examination that he had suggested he be paid the £3,500 earlier to enable him to purchase a vehicle but no-one was interested in his suggestion. He denied that from his home to Edgware was 19 minutes by car. He said he did not decide to retire but there were no other reasonable options available. From the payment of £3,500, after deductions for tax and national insurance, he received £2,400. His late shift would start about 4pm to after midnight. He said the bus service finishes at about 2am. The service from Edgware to Watford would resume at or around 4.45am.

166. According to London Sovereign, the journey from Mr Stroud's home to Edgware garage was 19 minutes each way by car and from his home to Harrow garage was 29 minutes each way by car.

167. As Mr Stroud did not have a car it would be unreasonable to assert that he could have used the £3,500 towards the purchase of a vehicle as that was a sum of money less tax and national insurance deductions which he could use at his absolute discretion.

168. He presented his first claim form on 2 July 2018 in which he claims against Arriva London that he was unfairly dismissed as he had been forced to retire. (1085-1096)

169. In his second claim form presented on 29 November 2018, he made claims of unfair dismissal, disability discrimination, redundancy pay, notice pay, breaches of TUPE against Arriva London and London Sovereign. (1114-1134)

170. He did not pursue his disability discrimination claim before us.

<u>Ms Amanda Verboort</u>

171. Ms Amanda Verboort, was employed by Arriva London North Limited from 4 January 2009. She operated Route 142 from Watford garage and in a letter dated 15 December 2017, was informed that her route was due to be transferred on 6 January 2018 to RATPDEV London. It was put to her that, should she decide to stay with Arriva London, she would only be given work that was available and not necessarily spread over duties or lates as not be operationally practicable. (1266)

172. After a conversation with Mr Jason Jones, on 3 January 2018, it was agreed that she would be driving Route 340 on a spread over rota due to her

medical requirements. According to Mr Jones in his evidence, he stated at paragraph 74 of his witness statement, that if Ms Verboort stayed with Arriva London, she would keep the same "spread over" working pattern. This meant that there would be no change to her adjustments.

173. In paragraph 75 he stated that it was very clear to Ms Verboort that the spread over duties could only be guaranteed until route 340 moved to Palmers Green. If she wanted to keep the spread over duties after the move, she may have to move to Palmers Green for the 340 route because if that route moved to Palmers Green and she did not move to with it, there would not be sufficient work left at Watford garage for her to do on a spread over or on split shift.

174. On 4 June 2018, she wrote to Arriva London setting out her reasons why she did not want to work at Palmers Green. She referred to the absence of a mobility clause in her contract of employment; her place of employment was Watford garage where she had been working for the previous nine and a half years; to relocate to Palmers Green would be a change to her working conditions, as the commute to and from work would adversely affect her home life, financial outgoings and any overtime or rest periods; there was no offer of suitable alternative work; the consultation meeting on 23 May 2018, during which she raised her concerns, was not properly conducted; and that she should be made redundant. She then wrote in the final paragraph that she was not objecting to the current offer to stay at Watford but would ask for confirmation on her duties. (1271)

175. Ms Verboort worked the 340 route until May 2018 when it moved to Palmers Green. Thereafter, she remained at Watford garage and told the Tribunal that she worked on route 288, one of the five routes remaining at Watford prior to the transfer on 1 September 2018.

176. She did not transfer to Palmers Green because spread over duties there could not be guaranteed.

177. She worked an early shift, and then in the afternoon would return to her home which was not so far from Watford garage where she would use her Continuous Positive Airway Pressure, **"**CPAP", breathing machine for her sleep apnoea. She would then return to work later in the afternoon. It was clear that the split shift or spread overs were adjustments made by Arriva London to accommodate her sleep apnoea. From June 2018 to 31 August 2018, there were either four or five occasions when she was not allocated spread over duties. (1471-1472)

178. She told the Tribunal that between June to August 2018 that she was on spread over duties while driving on route 288.

179. She was unable to attend an induction on 30 July 2018 at Edgware as she unwell. She did not ask for it to be rearranged.

180. Mr Mark Sands replied to her letter of 4 June 2018, on 5 June 2018, stating that there was no requirement to make bus drivers redundant as there were

sufficient posts available and that she would remain at Watford garage taking on the remaining routes. She was required to check her duties with the local management team. (1272)

181. In response, on 5 July 2020, Ms Verboort raised a grievance by email which she sent to Mr Mhagrh, in which she wrote that she felt discriminated against because of her disability, namely her obstructive sleep apnoea and a hearing loss, and that her shifts were spread overs enabling her to rest during the day. She stated that moving her to another work location without Arriva London accommodating her adjustments for her disabilities, was a concern. She summarised her difficulties in relation to her hearing loss and in carry out her work as a Bus Driver. She referred to the provisions of the Equality Act in respect of disability discrimination and the duty to make reasonable adjustments. She considered that Arriva London had failed to make reasonable adjustments for her disabilities in relation to the TUPE consultation process. (1273-1275)

182. The following day, 6 July 2018, Mr Mhagrh responded to the grievance stating that a meeting would be organised, "shortly", to discuss the matters she raised and that he would be in touch with her. (1276)

183. On the same day she was signed off from work due to stress and returned on 13 July 2018. Again, on 30 July 2018, she was signed off as not fit for work. She stated that this was due to stress caused by the change Arriva London made to her shifts in stating that there were no spread shifts for her.

184. On 13 July 2018, she presented a claim to the Employment Tribunal, case number 3331333/2018, in which she claimed unfair dismissal and disability discrimination against Arriva London. (1228-1242)

185. She was on sick leave from 30 July to 10 August 2018. The 11th and 12th August were rest days. She returned to work on 13 August when she was put on spread over duties from 13 August to 17 August and again from 20 August to 24 August. (1471-1472)

186. On 13 August Mr Jason Jones sent an email to Mr Sands copying Ms Lowrey at Arriva London, stating that the claimant had returned to work on that day after 2 weeks' absence with a stress related illness. She was asked whether she would like to have an induction re-booked at London Sovereign and she replied "No" as that was the reason for her stress, and that she was not going to be transferred. She refused to have a one-to-one meeting to answer questions she may have. (1284a)

187. On 15 August 2018, Mr Sands sent a letter to Ms Verboort informing her of the transfer of the routes 288, 303/305, H18 and H19 to RATP London Sovereign. He stated that there was no requirement to make staff redundant. The transfer applied to her and that other opportunities have been identified to those who would like to stay with Arriva London, Arriva Midlands and Arriva Southern Counties and there were opportunities at Hemel Hempstead, Luton, Aylesbury, and High Wycombe. He then wrote:

> "I need to remind you that you have the right to object to the transfer of your employment to RATP (London Sovereign), it is fair to warn you that in these circumstances if you decide not to transfer you will have been deemed to have resigned." (1286-1287)

188. On 21 August 2018, Mr Sands responded to the claimant's grievance. He outlined the procedure in relation to consultation following a decision that the bus routes would be transferred affecting the bus drivers. He confirmed that Watford garage would be closing. That she was offered route 340 and the opportunity was given to her to transfer with it which she refused. As a consequence, it was confirmed that she would remain at Watford garage. He repeated that there would be no redundancies, and that there were opportunities should she stay with Arriva London. He referred to the negotiated retention bonus to encourage staff to remain at Watford and the disturbance allowance. He then wrote:

> "I can see that you live just over 1 mile from the Arriva Hemel Hempstead Garage and they currently have vacancies for bus drivers at this location. We would see this as a suitable alternative role for you. In order to transfer to Hemel Hempstead you would be required to sign up to new terms and conditions and upon doing so would be eligible to receive £1,000 in addition to the £3,500 retention bonus making £4,500 in total. Please note that these payments are subject to Tax and National Insurance deductions. After the last one to one meeting I sent your union representative details of the rate of pay for this location. He said he would pass this information over to you. I can confirm that £12.80 is the new top rate of pay at Hemel Hempstead."

189. He further stated because of the TUPE transfer, with effect from 1 September 2018, she would no longer be employed by Arriva London. (1288-1290)

190. In a letter dated 15 August 2018, sent by Mr Sands to her, he made reference to her grievance dated 7 August 2018, which was considered as a collective grievance submitted by staff at the Watford garage. His response was like the response he gave to her grievance dated 5 July 2018. (1285)

191. We find as fact that the affected bus drivers at Watford garage were assisted by the union in that a template drafted by it for them to use raising concerns about the effects of the transfer on them.

192. The claimant said that she visited Hemel Hempstead garage and spoke to the Duty Manager there. She was told that she had to do the 320 rota, working 50 hours a week. She then said that she was told that to go on to spread over duties she would have to wait 2 years. She said that she was nervous about handling cash because if there were any shortages in the takings they would be deducted from wages.

193. She had a meeting with Mr Sands on 14 August and he spoke to her about what Hemel Hempstead had said to her. She, thereafter, was waiting up to 31 August, for him to contact her regarding Hemel Hempstead but she never heard from him. She said that she asked every day whether there was a letter for her.

194. According to Mr Sands, following his meeting with the claimant on 14 August 2018, he called the General Manager at Hemel Hempstead garage because he wanted to know the rate of pay. The General Manager also said that spread overs were unlikely. Mr Sands then emailed Mr Di Castiglione the outcome of his enquiries at Hemel Hempstead and expected that the email would be forwarded to the claimant. It was not forwarded by to Ms Verboort nor was it received by her prior to the 31 August 2018.

195. In cross-examination he said that Ms Verboort was concerned about pay, terms & conditions and spread overs not being guaranteed. He did say to her that he would contact Hemel Hempstead and respond and did so by emailing Mr DiCastiglione shortly after speaking to the General Manager.

196. Mr Sands said that he was aware that the claimant suffered from sleep apnoea but was not aware of why she required spread overs. If she was interested in Hemel Hempstead, he expected her to come back to him. He could not recall hearing anything about a 2 year wait before being placed on spread overs at Hemel Hempstead.

197. In the email sent by Mr Sands to Mr DiCastiglione on 14 August, he wrote:

> "Hi Ray
>
> I've had it confirmed that £12.80 is the new top rate of pay in Hemel. Hemel have explained that no one would not be able to keep their current Garston T&Cs and rate of pay. They would be eligible for the £1,000 for signing up to new SC T&Cs. The rota may be possible for earlies but spreads unlikely as they are very popular in Hemel. Please can you pass this information over to Amanda Verboort." (1284(b))

198. In cross-examination Ms Verboort said that her only issue was whether she would be on spread overs. There was no problem for her in getting to Edgware garage. She said that London Sovereign had said to Arriva London and the unions they would honour all special arrangements. She did not consult with London Sovereign because she wanted to stay with Arriva London. To travel by car from her home on the motorway to Edgware garage would take about 25 minutes which was not a problem for her. She did not know who to contact at Edgware. Her heart was, however, set on Hemel Hempstead.

199. In the Employer Liability Information, she is described as a Spares driver working Monday to Friday. (1309)

200. When the box in the employer liability information was clicked further information comes up person. She is described as "spread over driver Monday to Friday – she has a medical condition that is covered as a disability. This requires her to go home for medical treatment twice a day". (1469, 333(a))

201. At a preliminary hearing held on 17 December 2020, the Employment Judge in this current case, concluded in relation to the issue of Ms Verboort's disability, that she suffers from obstructive sleep apnoea and was suffering from that condition during her employment with Arriva London. She also

suffers from hearing loss in her left ear. Both conditions were found to be disabilities under s.6, Schedule 1, Equality Act 2010. In relation to her sleep apnoea, she is required to use the CPAP machine. (1263(a)-1263(h))

202. On 1 September 2018, she wrote to Mr Sands tendering her resignation, stating the following:

> "I write to confirm your repudiatory breach of my contract by seeking to change my place of employment in breach of the Transfer of Undertakings (Protection of Employment) Regulations 2006 I am constructively unfairly dismissed. For the avoidance of doubt, I am objecting to the transfer to RATP London Sovereign itself. I have only ever worked at Watford as a bus driver. This is my place of work. Even if there were a mobility clause in my contract, which there is not, changing my place of work is in breach of my contract and breach of TUPE.
>
> The transfer to yourselves causes a substantial change in my working conditions to my material detriment, predominantly by reason of the severe impact it has on my journey to work in terms of length, cost and my health and disability. I am therefore entitled to treat myself as dismissed. You have done nothing to seek to deal with my concerns in this regard.
>
> The substantial change to my working conditions and my routine with controlling my disability includes, details below.
>
> For over 6 years now after Arriva coming to an agreement and helping me to get back into work with spread shifts that have allowed me to top up my sleep in the middle of the day by coming home and using my CPAP machine, this has helped me stay relatively healthy and has kept the public safe, also kept my licence from being cancelled by DVLA. I have been working Monday to Friday which has also added to my routine in which I have to have due to my condition, I have been told that I cannot be accommodated with my disability and have to do normal rostered duties. Please consider the impact on my quality of life and health with all the proposals that have been made to me. The TUPE with Sovereign RATP Group and they want to change my routine is devastating. I have sleep apnoea, I have arthritis in my joints, I am nearly deaf in the left ear for which I wear a hearing aid that concentrates mainly on the loudest noise which is generally the engine. It is the main reason why I was put on TfL before the apnoea as I couldn't communicate properly with the public as I couldn't hear them I was giving out wrong tickets and making mistakes and getting very stressed.
>
> I will lose the health routine that Arriva have helped me achieve for years now to keep me in employment. This will be a total disruption to my entire life. I have a grandson that I can only spend time with at the weekends as this is the only time that will fit in with his life as he has PKU, my son and his wife rely on me to provide them with time to spend with my three granddaughters as my grandson's life is complicated due to his disability.
>
> I can't see any further than a future that will be leading to disaster me being jobless due to being ill and/or a danger to the public. A life of hell worrying about something bad happening on the bus. I have however over the years proved to be very capable of doing my job with the hours and routine that I work.
>
> Extra travel time into London and out again along the M1, whereas I am just 15 minutes away from work and very rarely use the M1 as it's always blocked.

This will be counted by the doctor as part of my working day as I will still be driving. These last few days the M1 has been gridlocked which I cannot afford to be in after work. Although the loss of routine from losing the spread duties that Arriva have helped me train and control my apnoea with is a breach of the act below.

The Equality Act 2010 (the Act) says that I am protected against unlawful discrimination at work in relation to my disability. I believe the treatment I have experienced cannot be objectively justified because reasonable adjustments have not yet been fully considered or implemented.

The adjustment/s which I consider that Arriva have failed to make are;

My working hours per day without being able to come home halfway, (as my day starts every day between 3-4am)

My driving hours per day from my door to my door.

My mental health also due to lack of oxygen to my brain without the allotted time on my CPAP machine,

Stress and the chance of the headaches, memory loss and chest pains, poorly controlled apnoea can increase the risk of high blood pressure (hypertension) having a heart attack or stroke, developing an irregular heart beat such as atrial fibrillation. Which terrifies me. My lack of use of my CPAP machine and my routine, will inevitably be putting the safety of not just myself but of the public. I have tried resolving this matter for the time that was left at Arriva. I have asked for spread duties to carry on. I was on the 340's duty 22 Monday to Friday since 6 January 2018, then when that went to Palmers Green June 4th 2018 I was put on spare. I am not satisfied with the outcome. I have been there nine and half years and feel this is very unfair as they know I would not be able to adjust to such a change and that I will be a danger on the road. I am very under stress and I'm already on medication from my doctor for this.

For the above reasons the offer of work that I have been offered is unsuitable for me.

I look forward to receiving my redundancy payment and notice pay and please let me know how and when this will be paid.

I reserve my rights to claim unfair dismissal." (1293-1300)

203. On 29 November 2018, she was one of the claimants in case number 3335108/2018 -3335110/2018, in which she claims against Arriva London and London Sovereign, breaches of the regulations.

204. Mr John Brown

205. Mr John Brown was employed by Arriva London on 4 December 2000 as a PSV Driver working part-time, 20 hours a week. He was employed on route 340. Like the others at the Watford garage, in early 2018 he became aware that Arriva London had lost the contracts and the remaining five bus routes would be transferred.

206. He told the Tribunal that on 1 March 2018, he slipped in snowy conditions and fractured his ankle in four places. He was signed off work until 6 September 2018 and was unable to drive.

207. On 8 May 2018, while on sick leave, Mr Mhagrh, Arriva London, sent him a letter informing him that route 340 would be moved to Palmers Green on 9 June 2018. This was in similar terms to the letter sent to the other 340 drivers informing them of the work conditions at Palmers Green, the disturbance allowance, and retention bonus. Mr Brown was also informed that there were alternative vacancies at Hemel Hempstead, Luton, Aylesbury, and High Wycombe. (433-434)

208. The Hemel Hempstead garage is only a 15 minutes' walk from his home, but he was unable to accept a position there as he would need to accept terms and conditions which would have meant a pay cut of between £2-£3 per hour. Further, he was required to supply a float, something he had not done for a few years, as TfL buses are cashless. He did not want to carry large sums of money for safety and security reasons. The other locations were, for him, too far away from Watford garage and were not reasonably suitable alternatives. The travel allowance was only to last for one year. There was no offer of a staff bus.

209. In Mr Brown's letter dated 1 June 2018, addressed to Arriva London, he objected to the transfer to Palmers Green. He considered himself as redundant. Travelling by public transport would add between 2-4 hours to his working day. He had responsibility for his niece who was severely disabled both mentally and physically. She lived in a care home in Harpenden. Being based at Watford meant that he could respond to her needs fairly quickly but that would not be the case were he to work from Palmers Green. Further, his elderly 88-year-old mother-in-law lived close to Watford whom he visited, provided care and reassurance, and would carry out various tasks for her, it would not be possible to do so from Palmers Green. He also did not want to have to work with a cash float. He was also not aware if there was a part-time rota at Palmers Green. He did not accept any of the alternative offers mentioned by Arriva London North. He then wrote:

> "Unless you can provide me with a suitable alternative offer of employment I believe you should make my position redundant. I am not objecting to the current offer to stay at Watford. I would like this to be addressed so that you can confirm which duties I will be expected to cover and I will assert my rights under my contract and the TUPE Regulations."

210. He also relied on the fact that there was no mobility clause in his contract of employment. (436-437)

211. He is a qualified motorcycle instructor and an Observer with the Institute of Advanced Motorcyclists. He has a low capacity 125cc motorcycle which was 20 years old at the time with a maximum speed of 50 mph. For teaching he uses a Triumph Trophy 1200cc motorcycle but did not use it to travel to and from work. He told us he used local roads to get from his

home to Watford Garage on his 125cc motorcycle. In order to commute to Palmers Green, he would have needed to use the motorways, but it was not safe to do so on his 125cc motorcycle. In bad weather his wife would take him to work. He would take the 320 bus from Hemel Hempstead town centre to Watford. He stated that he would be unable to do this if he was required to work at Palmers Green or at another London garage.

212. On 5 June 2018, Mr Sands wrote to him confirming that there was no requirement to make the drivers redundant as there were sufficient posts available at Watford. He informed him that he would remain employed at Watford garage working on the remaining routes which were to be transferred and would continue to work his part-time hours. (438)

213. When the 340 Route transferred to Palmers Green, on or around 9 June 2018, Mr Brown remained at Watford garage as a Spares driver pending the transfer of the remaining routes to London Sovereign. He said that although he worked on the part-time rota, his contract was never to be permanent part-time as it allowed him to return to full-time work if he chose to do so.

214. On 1 August 2018, he raised a grievance referring to the TUPE Transfer on 1 September. These repeated, to a large extent, what he wrote on 1 June 2018. He also challenged the process by objecting to the way that he had been treated and that he should have been offered voluntary redundancy when route 340 was relocated to Palmers Green. (339-440)

215. He had an individual consultation meeting on 2 August 2018 with Mr Sands, Ms Lowrey and Mr John Heft, union representative. It followed the same format as the individual consultation meetings with the other TUPE affected employees. It was recorded that Mr Brown was formally objecting to the transfer as he had lodged an Employment Tribunal claim alleging that he had been made redundant and claiming redundancy pay. Mr Sands said that if he wanted to transfer to London Sovereign, he would need to withdraw his claim. As he was objecting, he would not be required to go to the induction arranged by London Sovereign. Mr Brown confirmed that he was seeking redundancy and redundancy pay. Mr Sands responded by saying that redundancy was not an option as TUPE applied. At that point Mr Brown handed a grievance letter which Mr Sands read at the meeting. It was noted that Mr Brown was objecting to changes to his terms and conditions of employment and referred to his motorcycle not being capable of travelling the distance to his new workplace as it was too old. Mr Sands informed Mr Brown what he would receive £3,500 while working at Watford garage. (440a-440c)

216. In a letter dated 15 August 2018, sent by Mr Sands to Mr Brown, Mr Sands set out the position in relation to the transfer of the five routes to London Sovereign and the Measures position taken by London Sovereign. As Mr Brown was living within a mile from Hemel Hempstead, he, that is Mr Sands, saw Hemel Hempstead as a suitable alternative role for him. Should he choose to work there he would have to sign new terms

and conditions but would be eligible to receive a £1,000 retention bonus. (441-442)

217. The 15 August 2018 letter appeared to be a standard letter setting out Arriva London's position in relation to the five remaining routes due to be transferred to London Sovereign on 1 September 2018. It repeated that Mr Brown would not be made redundant as a result of Watford garage closing.

218. Mr Brown told the Tribunal that he was aware that other employees, such as workshop staff and cleaners, had been made redundant as was an Inspector who was part of management. He saw this as examples of disparate or inconsistent treatment as the bus drivers were not going to be made redundant.

219. On 21 August 2018, in response to his grievance, Arriva London sent him another letter confirming that the Watford Garage was going to close, and that TUPE applied. It was more or less a reiteration of the content of the letter of 15 August which was Arriva London's reply to the collective grievance. (444-446)

220. In Mr Brown's letter dated 30 August 2018, to Arriva London, with regard to the closure of Watford garage, he wrote:

> "Further to my letter of grievance dated 1st August 2018 and your reply dated 21st August. For clarification I am not objecting to the transfer or the fact that I would be working for Sovereign RATP. I would not have a problem working for another bus company. My objection is based on the fact that my terms and conditions would be changed without my permission and would cause me hardship and stress as I explained in my grievance and at my one to one in June. I do not believe you have given me any option that suits my particular situation. The offers you made may well have been suitable in general, but not to everyone including myself." (447)

221. On 31 August 2018, he wrote another letter to Arriva London confirming that he considered himself as having been constructively unfairly dismissed. He stated:

> "I write to confirm that in light of your repudiatory breach of my contract by seeking to change my place of employment in breach of contract and in breach of the Transfer of Undertakings (Protection of Employment) Regulations 2006, I am constructively unfairly dismissed.
>
> For the avoidance of doubt, I am not objecting to the transfer to RATP London Sovereign itself. I have only ever worked at Watford. This is my place of work, even if there were a mobility clause in my contract, which there is not. Changing my place of work is in breach of my contract and in breach of TUPE.
>
> The transfer from yourselves causes a substantial change in my working conditions to my material detriment, predominantly by reason of the severe impact it has on my journey to work, both in terms of length and cost. I am therefore entitled to treat myself as dismissed.

You have done nothing to seek to deal with my concerns in this regard.

The substantial change to my working conditions includes:-

Increased travel time. The change in location will increase my journey by approximately 10 miles in each direction.

This will impact me in the following ways

I would need to purchase a car, which I cannot afford. I ride a small capacity motorcycle which is not suitable for this journey.

I have responsibility for my severely disabled (mentally and physically) niece who lives in a care home in Harpenden. I also help out with my elderly mother-in-law by doing odd jobs and visiting if she has any problems or concerns. She lives close to Watford Garage. I can easily visit them both if I need be on my way to or from work in Watford but would not be able to if I worked in Harrow or Edgware.

I work part time (3 days a week). I do not recall ever being told if I would be able to work part time at RATP despite asking several times.

This will lengthen my working day by between 1 and 2 hours depending on my start time and traffic conditions.

Increased travel cost. It will cost me approximately £35 more per month for fuel to get to work and also the cost of buying a car and tax/insurance etc. The reason I would need a car to get to work is that I cannot ride a motorcycle in bad weather. When I worked at Watford Garage I would catch public transport or my wife would take me in her car if my start times fitted in with her work. Public transport would take me at least 2 hours each way depending on traffic and 2-3 buses. It would not be possible for my wife to take me to Edgware/Harrow before she starts work. I would also not be able to park at Edgware or Harrow as I believe there is restricted parking at these locations. This is the reason I have always ridden a motorcycle whilst working at Watford. If I caught public transport I would have to pay the fares on the local buses as I would not have a pass for them.

I have been off sick for the last 6 months after falling in the snow and badly breaking my ankle whilst walking to catch a bus to work. I am still not allowed to drive a bus due the amount of time I would have to spend in the cab during the working day. I have not been told which RATP Garage I would be based in. I am assuming Harrow or Edgware. I have been called in to speak about the garage closure but have not been given this information.

For the above reasons, the offer of work is unsuitable for me.

I look forward to receiving my redundancy payment and notice pay and please let me know how and when this will be paid. I reserve my rights to claim unfair dismissal." (448-449)

222. Mr Brown told the Tribunal that he handed in his letter of resignation to Mr Simon Salih who was behind the desk at Watford garage. He said he was taken to the garage by his wife in her car. After handing in the letter two

days later he emailed it to Mr Sands, that being on 2 September 2018. (1462)

223. On 27 September 2018, Mr Sands wrote to Mr Brown stating that with effect from 1 September 2018, he was no longer an employee of Arriva London but an employee of RATP London Sovereign. Although he did not object to the transfer should he fail to report to London Sovereign it would be deemed that he had resigned and was no longer an employee of Arriva London. He confirmed that he was contacted by the Employment Tribunal regarding Mr Brown's claim. (450)

224. In evidence Mr Brown said that he turned 65 years after the garage closed and although he planned to continue working at the garage on a part-time basis, because of the closure and his age, he had to take his pension early to ensure that he received an income.

225. He presented an Employment Tribunal claim on 6 July 2018, case number 3331176/2018, in which he claims constructive dismissal, regulation 4(9); automatic unfair dismissal, regulation 7(1); unfair dismissal, section 98(4); redundancy payment and notice pay. (384-404)

226. Mr Brown told the Tribunal that he was not objecting to the transfer to London Sovereign, only to the change in location. He said he does not travel on the M1 on his 125cc motorcycle. In his witness statement he wrote that travel from his home to Watford garage took him 17 minutes. From his home to Edgware would be 25 minutes, an additional 8 minutes. The garage at Edgware is closer to his home than the garage at Harrow. To travel to Edgware, he would not be using his 125cc motorcycle but would need to buy a car. He acknowledged that there was a difference in pay per hour at Hemel Hempstead which meant a reduction in his earnings. He said that he was not prepared to carry any cash. He insisted that Arriva London made him redundant. The one-to-one consultations took place at a time when he was on sick leave.

227. In the ELI, he is recorded as formally objecting to the transfer. He maintained, however, that he was not objecting to the transfer only to the change to his place of work. (306)

<u>Mr Kojo Djan</u>

228. Mr Kojo Djan was employed by Arriva London as a Bus Driver from 24 September 2007. He drove on the 340 route. In April 2018 he received a letter informing him that Watford garage was going to be closed due to the loss of contracts to London Sovereign and that he would be working at Palmers Green garage from 9 June 2018. He had his first individual consultation meeting with Mr Sands, Mr Jason Jones, and Mr di Castiglione on 22 May 2018. It is recorded that he said that he lived in Milton Keynes and that he had a back problem. He was not interested in working at a local garage because of the rate of pay being lower and the consequential changes to his terms and conditions. It was put to him that the other options were Luton, Hemel Hempstead, and London garages. (552-553)

229. He was aware of what came with a transfer to Palmers Green in terms of a retention bonus and a disturbance allowance and that there were other alternatives driving positions at Aylesbury and High Wycombe but considered them as far away from his home.

230. Various options, most notably a change in location, represented to Mr Djan, in his view, a substantial change to his working conditions to his detriment. He did not consider that they were suitable alternative proposals. In addition, he was aware there was no mobility clause in his contract of employment. He produced route planners on the distance from his home to Palmers Green via the M1 motorway, which would take 1 hour 10 minutes up to 1 hour 19 minutes. From his home to Watford, it would be between 42-46 minutes.

231. On 1 June 2018, he was written to by Mr Sands following the consultation meeting on 22 May. He was advised of the decision to transfer route 340 to Palmers Green on 9 June and the negotiated disturbance allowance and favourable pay rates. In relation to the options discussed during the consultation meeting, Mr Sands stated that Mr Djan had not informed him of his decision. He confirmed that there was no requirement to make the drivers redundant as sufficient posts were available. (554)

232. When route 340 transferred to Palmers Green, Mr Djan remained at Watford garage as a Spares driver pending the transfer of the remaining routes to London Sovereign.

233. On 31 July 2018, he attended a second consultation meeting with Arriva London during which he raised similar concerns to those he raised previously. He stated that he would attend the induction but would like to be paid redundancy pay. Mr Sands explained to him that that was not an option. (556-558)

234. In cross-examination Mr Djan told the Tribunal that he decided not to go to the induction as a transfer to Edgware would add 2 hours to his journey and he could not do it.

235. He raised a grievance in writing on 6 August 2018 relating to the TUPE Transfer in which he wrote that the change of work location would add an additional 9 miles commuting time each way; he already commuted 37 miles from Milton Keynes to Watford; it increase his working day by an additional 1 hour; his fuel costs would increase by £10 per week and parking by £20 or more each week; the early shift was not possible if he needed to rely on public transport; his health conditions meant that he needed to reduce his time sitting and not add to it; and he had a young family to support and could not increase the time spent at work or travelling to work, as one of his children is disabled and required special support. (559)

236. In Mr Sands' letter to him dated 15 August 2018, regarding the transferring routes and his response to the collective grievance dated 6 August 2018, he gave a similar reply as in the letters sent to the previous claimants with a

slight variation, taking into account the claimant's circumstances and the fact that he lived in Milton Keynes. (561-563)

237. A letter dated 21 August 2018, similar in content to the one sent to the previous claimants, was sent to Mr Djan but referring to his grievance. In both 15 and 21 August letters, Mr Sands referred to the close proximity of Arriva Milton Keynes depot to Mr Djan and that there were vacancies there. He was of the view that a bus driving role there as a suitable alternative position for Mr Djan, who would also be eligible for the £1,000 and £3,500 payments. (564-566)

238. On 31 August 2018, Mr Djan wrote to Arriva London North stating the following:

> "I refer to my grievance letter I handed to you in person on 06/06/18. See the receipt attached.
>
> I would like to complain again that you have failed to reply to my concerns, which you should reply within 7 days as prescribes.
>
> I am reminding you once again that you have breached the rules and regulations by continuing to ignore my letter." (567)

239. After the transfer of the routes on 1 September 2018, Mr Sands wrote to Mr Djan on 5 September 2018 stating the following:

> "Dear Kojo
>
> TUPE Transfer of Routes 288, 303/305, H18 and H19.
>
> I write further to your grievance of 6th August 2018 and 30th August 2018.
>
> I have responded previously to the grievance you sent in a letter dated 21st August 2018 that explained the options open to you and that you were under notice that a compulsory TUPE and that with effect from 1st September 2018 you will no longer be employed by Arriva London North Limited but will become an employee of RATP London Sovereign.
>
> I note in your letter it states that you do not object to the transfer; however, in the event that you fail to report to RATP London Sovereign you will have deemed to have resigned and you are also no longer an employee of Arriva London." (568)

240. Mr Djan said to the Tribunal that he did not receive any communication from London Sovereign regarding his employment status with it.

241. In evidence we find that the distance between his home to Milton Keynes bus garage is 5.4 miles. He said from his home to Edgware was 41.5 miles and it took 47 minutes. His home to Watford is 43.3 miles and that took 1 hour. From his evidence it would appear that Edgware is a shorter distance than to Watford from his home. He told the Tribunal that the additional cost to him would be £40 a day, but to travel to Milton Keynes would cost him £20 a day. He stated that he needed somewhere to urinate because of his medical condition. He said that he did not want to work at

the Arriva garage in Milton Keynes because he would be working with cash and did not want to learn a local route.

242. Further, he challenged the availability of suitable parking facilities at Edgware but had never worked out of Edgware garage. He said that the information about Edgware came from his discussions with other drivers.

243. He did not attend the induction because of the parking problems at Edgware. He did not want to go to Edgware because he needed the time to support his son and his family. His son suffers from ulcerative colitis and sickle cell anaemia, a blood disorder. He asserted that when the 340 was transferred to Palmers Green he should have been made redundant.

244. He now works as a full-time carer.

Mr Nagalingam Jayaratnam

245. Mr Nagalingam Jayaratnam commenced with Arriva London, effectively from 15 October 1998. At all material times, he worked as a Bus Driver based at Watford Garston garage and drove route 340. His contract of employment did not have a mobility clause.

246. He stated that in early 2018, he became aware that Arriva London had lost the contracts for several bus routes and was informed in a letter dated 8 May 2018, that the 340 route would be moving to Palmers Green from Watford garage. The content of the letter was the same as handed to the other 340 drivers at Watford.

247. He had his first individual consultation on 29 May 2018. Present were Mr Sands, Mr Jason Jones, and Mr DiCastiglione. It is recorded that Mr Jayaratnam said that he was not interested in being transferred to Palmers Green and was looking to be made redundant. He was told that redundancy was not an option. Mr Jones informed him that if he decided to stay at Watford, it was likely that he would be TUPE transferred over to London Sovereign at the end of August. (682-683)

248. He received a letter dated 1 June 2018, from Mr Sands which had the same content the as the letter sent to the other drivers informing them about the transfer of the 340 route to Palmers Green on 9 June 2018 and the alternative options namely, to stay at Watford or consider Hemel Hempstead, Luton, Aylesbury, High Wycombe or the garages at Arriva Southern Counties or Arriva Midlands.

249. On 4 June 2018, he sent a letter regarding the move of route 340. This was a template letter prepared by the union and populated by him. It referred to changes adversely affecting his home life and financial circumstances, overtime, and rest periods. He questioned whether there had been proper consultation. He stated that he had been employed by Arriva The Shires as a driver and 18 months previously he was TUPE transferred over to Arriva London with no change in location. The move to Palmers Green was not suitable. He did not accept any of the alternative positions and asked that

he be made redundant. As with the other similar letters sent by the affected drivers, he stated that he was not objecting to the current offer to stay at Watford. (685)

250. He too received a reply from Mr Sands dated 5 June 2018 which was similarly worded to the letters Mr Sands had sent to the other drivers on the same date confirming that there was no requirement to make the drivers redundant. (686)

251. Mr Jayaratnam told the Tribunal that he remain a Spares driver at Watford garage and had a further consultation meeting on 31 July 2018 during which he asked about redundancies and produced a list of questions. He was not prepared to consider his options properly unless his questions were answered. Mr Sands agreed to respond to the questions in writing. He again stated that redundancy was not an option. Mr Jayaratnam was told that should he decide to be TUPE transferred over his Arriva London bus pass would be extended for a further 2 years. (688-692)

252. On 31 July 2018, Mr Jayaratnam wrote to Mr Sands and to Mr Jason Jones repeating the questions he had put during the consultation meeting. He stated:

> "I would like to ask these questions
>
> 1 I am left over driver from 340 rota how can I be TUPE transfer?
>
> 2 I'm not in any rota so why are you forcing me to go on TUPE transfer?
>
> 3 If I go to Hemel Hempstead Garage why do I have to get pay cut when this is the only transfer for me?
>
> 4 I have worked in Arriva Garston since 15 October 1998 you are giving me 32 days to make up my mind whether I go transfer or TUPE or no job from 1 September the time you're giving me is not enough I need more time to make up my mind this is my livelihood I am talking about.
>
> Can you please kindly give me answers in writing thank you." (693)

253. On 18 July 2018, he received the letter from Mr Jason Jones informing him that an induction day had been arranged for Monday 30 July 2018 with London Sovereign, at Edgware. (686(b))

254. On 15 August 2018, Mr Sands again wrote to him clarifying what had been said during the consultation meeting and to answer the questions he posed. Mr Sands stated that as Mr Jayaratnam had stayed at Watford Garage, he was now assigned to the routes which were to be transferred to London Sovereign. This meant that he was not redundant. He was informed of other work at other Arriva Garages, such as Hemel Hempstead operated by Arriva Southern Counties, and that should he take up a position at the Hemel Hempstead garage his terms and conditions would change, such as a lower hourly rate of pay. He would be eligible to a £1,000 retention bonus. A move to Hemel Hempstead was a suitable alternative. (694-696)

255. Mr Sands again wrote to Mr Jayaratnam on 21 August 2018, in essence, repeating what had been previously written. (697-699)

256. On 27 July, Mr Jayaratnam presented a claim to the Employment Tribunal. He explained that he considered himself as having been made redundant, case number 3331669/2018, in which he claims redundancy pay, notice pay, accrued unpaid holiday and breaches of the regulations in his narrative. (618-629)

257. He continued to work until 31 August 2018 and accepted a bus driving role with London Sovereign at its Edgware Garage starting 1 September 2018.

258. He told the Tribunal that the travel from his home by car to Watford garage was 7 minutes; to Palmers Green it was between 40-52 minutes depending on the route and travel conditions; and from his home to Edgware garage was between 20-27 minutes.

259. Mr Clapson said in evidence that the travel from Mr Jayaratnam home to Watford garage was 6 minutes; Edgware garage 15 minutes; and to Harrow garage 23 minutes.

260. Mr Jayaratnam told the Tribunal that while working at Watford garage he would walk from his home and would use the staff car on his return journey. He had school-aged children at the time and his wife would use the family car. In relation to his work at Edgware, he would use public transport, namely the bus. He said that the journey by bus was one and a half hours one way to Edgware which meant that he was unable to accept any overtime shifts and was losing money.

261. In cross-examination by Mr Nuttman, it was put to him that the walk from his home to Watford station would take him about 18 minutes and then the bus journey time from Watford to Edgware would be about 35 minutes, less than 1 hour in total. He denied that it took him less than 1 hour.

262. We were taken to the route 142 bus timetable from Watford Junction to the various destinations including Edgware. We are satisfied that the journey time from Watford Junction to Edgware is between 29-43 minutes. On average, the time it would take to walk from his home to Watford Junction was about 18 minutes. We find that, if we take into account 5 or 10 minutes wait time at Watford Junction for the bus to arrive, the total journey time one way would be around 1 hour and 5 minutes. (1454)

263. He attended the induction at Edgware by London Sovereign on 30 July 2018. He always worked on the late shift even at Edgware garage. There was no night shift car from Edgware to Watford. He would finish his shifts at different times at 10.00 pm, 12 midnight, and sometimes around 2.00 am. When he missed the 1.30 am bus at Edgware station to Watford Junction, he would call his wife to pick him up. He recalled calling his wife

on at least five occasions to pick him up, and on occasions his work colleagues gave him a lift home.

264. It is common ground that Mr Jayaratnam was not TUPE transferred to London Sovereign but was taken on, independently, by it as a Spares driver.

265. He worked at Edgware from 3 September 2018 to 1 November 2018.

266. From leaving London Sovereign, he found work as a delivery driver and was engaged in other work until on or around 14 September 2020 when he commenced employment as a bus driver at Hemel Hempstead Garage. He said he was concerned because he was required to work with cash. He left Hemel Hempstead on 2 January 2021 to work at Metroline then returned to Hemel Hempstead on 8 February 2021. He currently works at Hemel Hempstead.

267. He presented a second claim on 31 January 2019 against both respondents, claiming unfair dismissal; breach of Regulation 4(9); redundancy pay; and wrongful dismissal, case number 3303547/2019. (640-666)

Mr Tomasz Pyszynski

268. Mr Tomasz Pyszynski, was employed effectively, by Arriva London North from 9 June 2008, as a Bus Driver. From 2008-2011, he worked at the Milton Keynes garage, and from 2011-31 August 2018, at Watford Garston garage. At Watford he was assigned to drive route 303, one of the transferring routes. He did mostly middle, early, and very few late shifts.

269. On 23 July 2018, he had his first consultation meeting with Mr Jason Jones, Mr Sands and Mr Heft, during which he outlined his concerns about the transfer to London Sovereign. He had a list of questions pertaining to London Sovereign, Arriva London terms & conditions, and redundancy. He noted the answers to the questions put to Mr Jones and to Mr Sands. We find that the answers given were consistent with the letters Mr Sands had sent to the other bus drivers in relation to there being a TUPE Transfer and that there would be no redundancies. They also answered questions in relation to weekend work and overtime. (1009-1011(a))

270. On 31 July, Mr Pyszynski wrote a grievance letter to Mr Jason Jones. He referred to the questions he had prepared to which he needed answers before making a decision regarding the change to his terms and conditions of employment, in particular, the change of location. He stated that Mr Jones was not able to provide satisfactory answers to any of his questions and was not able to give him information on the exact location of his new garage before he could make an informed decision. He further stated while Mr Jones was able to offer alternative garages, he was not able to give him specific details on their terms and conditions which he needed before making a decision. He then ended his letter by writing:

> "I was very disappointed that you did not appear to have prepared sufficiently for the meeting and had not accessed the essential information that you should have been aware would be required. If you need a copy of the questions that I had prepared and needed answers to, I am more than happy to provide this but would prefer that, once you have obtained the information, this is provided to me verbally at another meeting." (1012)

271. On 15 August 2018, Mr Pyszynski had his second TUPE individual consultation meeting accompanied by Mr Heft. Also present were Mr Mhagrh and Mr Sands. It is recorded that Mr Pyszynski asked about where he would be located, it was agreed that Mr Mhagrh would also provide the relevant details. Luton garage was rejected as unsuitable alternative employment due to reduction in pay. (1014-1016)

272. On 21 August 2018, Mr Sands responded to Mr Pyszynski's grievance dated 31 July 2018, in which he referred to the application of TUPE; the closure of Watford Garston garage; that Arriva London had identified opportunities should he wish to stay with Arriva or transfer to Arriva Midlands or Arriva Southern Counties, and that there were further opportunities at Hemel Hempstead, Luton, Aylesbury and High Wycombe. He referred to the special retention bonus and that there were sufficient vacancies for bus drivers in London. He also informed Mr Pyszynski's that he could take up one of the options or remain under notice that a TUPE transfer applied, and it was compulsory. With effect from 1 September 2018, he would no longer be employed by Arriva London as London Sovereign would become his employer. (1017-1018)

273. Mr Pyszynski told the Tribunal that, contrary to what is in the attendance register, he did attend the induction on 30 July 2018

274. He said in evidence that at the induction he asked about car parking to which the response was that it was on a first come first served basis. He said he travelled to the induction by car and did not have to park at Edgware garage because his friends advised him that they parked on the nearby Brockfield Estate. He visited Edgware garage on many occasions. He also did his own research and told the Tribunal that friends had told him that there were limited parking spaces at Edgware garage. He acknowledged, however, that during the induction he was told about parking at Parr Road. He said that at the time there were temporary roadworks at Parr Road and that he had never been there. He was aware that drivers would be paid from the time they arrive at Parr Road. (1019)

275. On 31 August 2018, Mr Pyszynski wrote to Mr Mhagrh stating, amongst other things, the following:

> "I write to confirm that in light of your repudiatory breach of my contract by seeking to change my place of employment in breach of contract and in breach of the Transfer of Undertakings (Protection of Employment) Regulations 2006, I am constructively dismissed.
>
> For the avoidance of doubt, I am not objecting to the transfer to RATP London Sovereign itself.

I have only ever worked at Watford. This is my place of work. Even if there were a mobility clause in my contract which there is not. Changing my place of work is in breach of my contract and in breach of TUPE.

The transfer to RATP causes a substantial change in my working conditions to my material detriment, predominantly by reason of the severe impact it has on my journey to work, both in terms of length and cost. I am therefore entitled to treat myself as dismissed.

You have done nothing to seek to deal with my concerns in this regard.

The substantial change to my working conditions includes:

1 Increased travel time

It would take at least 1 hour and 20 minutes to get to RATP Sovereign at Edgware. This is only one way. Both ways would be at least 2 hours and 40 minutes per day.

2 This will impact on me in the following ways detail impact on

At the moment I drive about 11,000 miles per year with a private car. Additional miles will definitely increase cost of my car insurance.

3 Increased travel cost

It will cost me at least £2,000 per year for fuel and wear and tear of my car.

4 Loss of Arriva benefits

With that transfer, I would eventually lost Arriva benefits which is local bus pass. I live in Dunstable where Arriva buses operate. The cost of annual pass is £600.

5 Health impact

The more time I spend on driving to work, the less time I have to go to the gym. It could have unpredictable impact on my health. While you drive you barely move. I need to do exercises in my own time to keep myself fit. With that change, I wouldn't be able to do it."

276. He then referred to the reduction in his social commitments as a result of the transfer. He trains in Jujitsu and the increased travel time would affect the amount of time he would engage in his training. Spending in total 2 hours 40 minutes travelling to work, would have a huge impact on his family life, in relation to parking, there were spaces at Watford garage, but at Edgware he would be spending time trying to find a place to park or would have to pay for it. Either way, "it would massively impact on my time or income". Having regard to the reasons given, the offer of work was unsuitable for him. He was looking forward to receiving a redundancy and notice pay. (1019(a)-1019(b))

277. He told the Tribunal that he handed in the letter on the 31 August 2018 but did not confirm receipt. Upon further advice he posted it. According to the respondent the letter was received on 4 September 2018.

278. Mr Pyszynski confirmed that there were car parking spaces at Sainsbury's car park next to the garage at Edgware and that there was an arrangement that the drivers would pay at a reduced rate but, he said, this was not used by the drivers and the shuttle to and from Parr Road was no longer running. He said that he was not objecting to the transfer but to him being transferred. He also said that when he attended the induction he arrived early from his home in Dunstable and the journey had taken him under an hour.

279. In a letter dated 1 September 2018, he sent a grievance to Mr Clapson, copying Mr Mhagrh and Ms Sarah Cook of Unite the Union. He was advised to do so by Mr Heft. In it he repeated his concerns as set out in his letter to Mr Mhagrh on 31 August 2018. (1020-1023)

280. On 5 September 2018, Mr Sands responded to his grievance dated 31 July 2018 stating that from 1 September 2018, Mr Pyszynski would no longer be employed by Arriva London and would become an employee of London Sovereign. He noted that he objected to the transfer but in the event of him failing to report to London Sovereign, he would be deemed to have resigned and no longer an employee of Arriva London. (1024)

281. Mr Pyszynski said he did not receive a response to his grievance from London Sovereign.

282. We find that the distance from his home in Dunstable to Watford Garston garage is 22.3 miles according to the AA. The information provided as part of his witness statement, shows that such a journey would take between 26-50 minutes.

283. From his home to the Edgware garage is 29.8 miles and that journey, on average, according to the information he provided, would take between 40 minutes and 1 hour via the M1 motorway.

284. Taking the A5183 and the M1 would take him between 40 minutes to 1 hour and 5 minutes, a distance of 26.7 miles. Taking the B440 and M1, would typically take him between 45 minutes to 1 hour and 15 minutes, a journey of 28.5 miles.

285. According to Mr Clapson, the travel times by car from Mr Pyszynski home to Watford garage, would be 28 minutes; from his home to Edgware garage, it would 38 minutes; and from his home to Harrow garage, 48 minutes. (382(az)-382(be))

286. Having considered the evidence in relation to the travel distances and times, we find that the travel from Mr Pyszynski's home to Edgware was and is reasonable as it would take him around an hour journey time. His travel from home to Watford Garston garage was, at the most, according to him, 50 minutes. An increase in journey time of 10 minutes is reasonable.

287. Mr Pyszynski presented his claim form on 3 November 2018 against Arriva London in which he claims unfair dismissal, redundancy pay, and notice pay, case number 3334587/2019. (974-986)

Mr Slawomir Pyszniak

288. Mr Slawomir Pyszniak, had been an employee of Arriva The Shires Limited from 29 June 2006. Thereafter he became an employee of Arriva London. He drove routes 303, H18 and H19. As they were affected by the proposed transfer, on 16 July 2018, he had a TUPE consultation meeting with Mr Sands, Mr Mhagrh, Ms Lowrey and with an interpreter present as he spoke Polish and limited English. From the record he asked what would happen if he did not transfer, to which Mr Mhagrh said that Luton or Hemel Hempstead or another London Garage would be offered otherwise he would be deemed to have resigned. Mr Mhagrh also explained that there would be a disturbance allowance of £81 per week for one year. (960-962)

289. On 13 August 2018, Mr Pyszniak wrote to Arriva London stating:

> "To whom it may concern,
>
> I would like to let you know that I am not continuing my work with Arriva, and not transferring with TUPE. Therefore, I understand that as of 1st September my contract terminates.
>
> The reasons for not transferring with TUPE is that I do not own a vehicle which would enable me to commute to work every day. Also, the stress caused by this transfer would have very negative impact on my health and wellbeing.
>
> Also, my contract of employment clearly states that my place of work is Watford and therefore I do not agree to work anywhere else."

290. He lodged a grievance on 20 August 2018, tom which Mr Mhagrh replied on 21 August 2018, in the same terms as in his responses to the other claimants. (964-965)

291. On 1 September 2018, Mr Pyszniak wrote to Arriva London stating that he considered himself as having been constructively unfairly dismissed. He was not objecting to the transfer to London Sovereign. He had only ever worked at Watford garage and changing his place of work amounted to a breach of his contract and the TUPE regulations. The transfer, he wrote, caused substantial changes to his working conditions to his material detriment, particularly, the severe impact on his journey to work both in terms of length and cost. The distance from his home to Watford garage was 1.1 miles and would take him 30 minutes on foot one way. The travel distance from his home to the Edgware site was 16.4 miles per day incurring a travel time of 40 minutes at a cost of £7.38 per day. Annually this amounted to £1,734.30.

292. In relation to travel to the Harrow garage, the distance was 17 miles with a travel time of 44 minutes, which was £7.65 per day. Annually the cost came to £1.797.75.

293. He further stated that should he relocate to Edgware the rental cost would be much higher than the rent he was paying where he was living at the time in Watford. The commute by bus would take him 1 hour each way and having considered early and late night starts, he would not be able to commute by bus or train because of the times they start to run in the morning, and walking to work in Watford every day, helped him with his back problems. He also said that his stammer caused difficulties in communicating with others, and as he did not speak much English. Stressful situations exacerbated his stammer. Were he to live in Edgware he would be unable to see his family in Watford on a regular basis. Having regard to the reasons given he considered that the offer of work was unsuitable. (966-968)

294. A further letter was sent to Mr Clapson the same day, with the same wording. It has a date stamp as having been received on 4 September 2018. (969-971)

295. On 27 September 2018, Mr Sands replied stating:

> "Dear Slawomir,
>
> TUPE Transfer of Routes 288, 303/305, H18 and H19
>
> I write further to your grievance of 20th August and 1st September 2018.
>
> I have responded previously to the grievance you sent in the letter dated 21st August 2018 that explained the options open to you and that you were under notice that a compulsory TUPE and that with effect from 1st September 2018 you will no longer be employed by Arriva London North Limited but will become an employee of RATP London Sovereign.
>
> I note in your letter it states that you do not object to the transfer, however, in the event that you fail to report to RATP London Sovereign you will have deemed to have resigned and you are also no longer an employee of Arriva London." (972)

296. Mr Pyszniak worked the late shift and did not transfer to London Sovereign because his contract was with Arriva London and there was no provision regarding transfers to another garage or city, and were he to transfer, having regard to his difficulty in speaking English and his mental health, it was likely that he would suffer. He found it difficult communicating with new people because of his poor command of the English language. He did not have a car. It would take him 15 minutes from his home to Watford garage, and half an hour from his home to Watford Junction sus station. He said he could no longer engage in long walks and had stopped cycling. Walking helped his back problems. While at work and during break times he would stand up to relieve his back problems.

297. He asserted that were he to transfer to the Edgware garage, the journey time would be 1 hour 20 minutes. From there to his home would be about 1 hour.

298. He said that were he to finish at Edgware garage at 1 o'clock in the morning, there would be no buses going back to Watford at that time. He would then have to wait for the next bus and would be home at or around 2.00 am. To walk from Watford Junction in the middle of the night, he said, was dangerous.

299. He did not attend the induction day as he was working. He said he did not object to London Sovereign being his employer because he was only objecting to the transfer itself. The letter that he had written on 1 September 2018 he had initially wanted to deliver it, but Arriva London was not going to accept it. He then sent it by post on 1 September.

300. In cross-examination, in relation to the internal Measures letter dated 6 July 2018, sent to the affected drivers by Mr Mhagrh, Mr Pyszniak said that he had received it and was aware that if he objected to the transfer, it would be deemed that he had resigned. He stated that he had nothing against the transfer, but he could not accept work at Edgware due to the long distance involved and his mental state. He reached 60 years of age in 2018 and had planned on working until he retired.

301. He returned his passes and equipment because he had decided that he was not going to be transferred. (1502)

302. Although Mr Pyszniak said that he had an operation on his back in 2015 and had supporting documents from Watford and St Albans Hospitals, but these were not produced in evidence.

303. He presented his claim form on 28 November 2018 against Arriva London, claim number 3335019/2018, in which he claims redundancy pay and breaches of the TUPE regulations. (917-929)

304. We have taken into account that he did not have a car and would walk from his home to Watford garage. The transfer to Edgware would require him having to walk to Watford Junction station or taking a bus to there, and then from Watford station to Edgware. This would add to cost, and were he to work late shifts, he would have to wait for the next available bus after 2.0am in the morning. We find that the extra time in travel and additional costs were significant factors.

305. Mr Pyszniak returned to Poland at the beginning of September 2018.

<u>Mr Ryszard Wozny</u>

306. Mr Ryszard Wozny, was employed as a Bus Driver by Arriva London based at Watford Garston garage. He commenced employment, effectively, on 20 June 2006. He drove on route 303 and was aware that Arriva London had lost the contracts for the five remaining routes which were going to be transferred to London Sovereign. His contract did not have a mobility clause.

307. On 8 August 2018, not as dated as 8 September 2018, he wrote to Mr Alex Jones; in relation to the TUPE transfer:

> "… at present from my home to Garston bus garage is 1/3 mile (12 minutes by walk). At early morning and night hours I have an opportunity to take staff bus. After TUPE Transfer arrival at garage would be more complicated. Videlicet, access from Garston bus garage to Watford Junction by 321 bus will take 13 minutes (2.8 miles), from Watford Junction to Edgware by 142 bus will take 40 minutes (10 miles). In early morning or night hours there is no bus connection so before TUPE Transfer I would be obligated to get to Watford Junction by a walk. Summarising time which I would have to intend to get to work I should add 1 hour in case of traffic jams. Additionally, I could start my work at RATPDEV London satellite, which is even more distant (approximately 2 miles).
>
> In my opinion after TUPE Transfer conditions of transport to garage will change radically. On the basis of TUPE Transfer they have to be similar to those I have currently.
>
> I will be grateful if you give me any solutions of this problem." (1343)

308. He had a consultation meeting in respect of the transfer on 15 August 2018, at which he was assisted by an interpreter in Polish. Mr Heft was present as well as Mr Sands and Mr Mhagrh. It is recorded that he asked whether there were any the suitable alternative roles. In response Mr Sands talked about positions at Hemel Hempstead and at the other London garages. He was told that the rate of pay Hemel Hempstead was £12.80 per hour and that it also provides a staff bus. In answer to a question whether redundancy was an option, Mr Sands replied, "It was not". Mr Wozny then asked for a response to his earlier letter. (1344-1346)

309. That there was a similar reply as given to the other claimants dated 21 August 2018, to Mr Wozny's grievance of 8 August 2018. (1347-1348)

310. On 31 August 2018, he lodged a formal grievance regarding the TUPE transfer offered to him and that the route he would be working on would be from Edgware garage from 1 September 2018. He stated that travelling to Edgware on public transport was impossible. He had his car, a VW Passat 2007, for two and a half years but was destined to be sold as the cost of repairs was going to be expensive and he could not afford it. Were he to travel by car to Edgware garage it would put a severe strain on the family's budget. He would lose Arriva's benefits and would incur extra expenses. There would also be an impact on his personal life as his family lived in Poland and had to support them. His communication with them via Skype would not be as frequent as he would be spending more time travelling while working at Edgware. The alternative position of working from Hemel Hempstead would bring major changes as he would be on a lower hourly rate and there would be a mobility clause. TfL benefits would no longer be available. He had been based at Watford for the past 12 years and would continue to do so. It was a 15 minutes' walk from home. The one-to-one meeting on 15 August 2018 was, "unhelpful, and impersonal", as he had asked questions but did not receive any answers. He was looking forward to

receiving redundancy pay and notice pay as the offer of work was unsuitable. (1355-1356)

311. In a letter dated 1 September 2018, sent by him to Mr Clapson, he stated that in light of London Sovereign's repudiatory breach of his contract by changing his place of employment breaches of the TUPE regulations, he considered himself as having been constructively unfairly dismissed. He was not objecting to the transfer to London Sovereign. He then gave his reasons why he considered himself as having been constructively unfairly dismissed, repeating those matters he had previously referred to in correspondence with London Arriva, such as, his journey times; family responsibilities; increased travel cost; and difficulties he would encounter in in car parking. (1357-1359)

312. In evidence he told the Tribunal that the estimated cost of repairing his car was £1,000. He used his car for shopping a few times and eventually sold it for £300. He had received a £3,500 less deductions in his final wages and although he could have used it to towards carrying out repairs or buying a car, the money was used for other purposes. He acknowledged that it would be free travel from Watford Junction to Edgware garage. Watford Junction was only a few minutes' drive from his home. He could have driven the vehicle to Watford Junction, but he would have found it difficult to park the car. He acknowledged that he could have driven it to Edgware garage.

313. The distance from his home to Edgware is 10.6 miles. The bus from his home to Edgware took between 1 hour 20 minutes to 1 hour 30 minutes. From his home to Edgware by car, he acknowledged, would have taken him 16 minutes. (382(cz))

314. In evidence he also told the Tribunal that walking from his home to Watford garage would take him around 12 minutes.

315. In cross-examination by Mr Bailey, on behalf of Arriva London, he said that were he to use public transport, namely buses from his home to Watford Junction and then from Watford Junction to Edgware garage, it would have taken him, in total, 1 hour 30 minutes.

316. The 142 bus timetable from Watford Junction to Edgware garage gives the average journey time at around 32 minutes. It is difficult to see how using public transport from him home to the garage would take him 1 hour 30 minutes. He also said that he was not aware of parking facilities at Parr Road in Edgware, but was aware of the Sainsbury's parking arrangement, and rarely drove his car to Watford garage as he would walk. Only he drove his car once or twice in a month. By 31 August it had not passed the MOT test.

317. He presented his claim form on 25 November 2018, 3335013/2018, in which he claims unfair dismissal against Arriva London and London Sovereign. (1303-1315)

318. He is also seeking redundancy pay because Watford garage closing and had closed.

319. He told the Tribunal that after four and a half months he returned to Poland and currently works as a Bus Driver.

Mr Brian Thomas Burt

320. Mr Brian Thomas Burt, was employed by Arriva London as a Bus Driver at its Watford Garston garage. His employment commenced on 10 June 2010. He was TUPE transferred to Arriva London in 2017. He said that his terms and conditions of employment were preserved.

321. In the offer letter dated 24 June 2010, offering him work as a PCV driver with Arriva the Shires and Essex at Watford depot, there was no mobility clause. This was his employment that transferred to Arriva London. (493-494)

322. He drove routes H18 and H19 for Arriva London and was aware in early 2018, that it had lost the contracts for the routes he was driving. He had an individual consultation on 2 August 2018 with Mr Sands, Ms Lowrey and Mr DiCastiglione. He was told that all employees would either be assigned to either Edgware or to Pinner Road, Harrow garage. It is recorded that he had concerns about the location and about parking. He said that he would be putting in a grievance and asked whether redundancy was an option but was told by Mr Sands that redundancy was not an option as TUPE applied. He, Mr Burt, said that he would return all items belonging to Arriva London on his last day of service (497-501).

323. In his letter dated 3 August 2018, he stated that Arriva London was not acting in accordance with the TUPE regulations. He wrote that his place of employment was in Hertfordshire, not London. By relocating his place of employment to Edgware in London there would be a change to his working conditions. The commute to and from work would adversely affect his home life, financial outgoings, any overtime, or rest periods. Arriva London did not offer him suitable alternative employment. He took the view that there was no proper consultation during the meeting, unsatisfactory offers were made, and there was no discussion about redundancy. He did not believe that the closure of the Watford garage was due to the tendering process. (502)

324. In his witness statement he wrote that he had raised the following objections:

    (1) the proposed new garage would add 45 minutes to his commute plus an extra 30 minutes parking time;

    (2) the additional commute would have added 1 hours 15 minutes to his working day;

    (3) the additional commute would cost an extra £50 per month;

(4) the increased driving time would have had a negative impact on his stress-related illness; and

(5) the alternative internal roles were not suitable as the journey time would be longer and he would be paid less equating to a reduction of £2,000 a year.

325. On 7 August 2018, he raised a grievance with Arriva London referring to the above points. This was responded to by Mr Sands on 21 August 2018, in similar terms to the responses he gave the other claimants. (505-506)

326. He wrote a further letter on 31 August 2018, in reply to Mr Sands' letter in which he explained that he had attempted the trial runs to the new locations, but the distances were too much for him. In addition, he stressed that the transfer represented a substantial change to his terms and conditions to his detriment in relation to the proposed change in location and that he was entitled to treat himself as having been constructively dismissed. He acknowledged that the Harrow garage is slightly nearer than his journey from his home to Watford Garston garage. Further, it took twice as long due to the nature of the routes. Extra time would be needed, he wrote, for parking. Parking at Harrow was limited as the garage is small. (507-508)

327. We find that Mr Burt was aware that routes H18/H19 were going to be operated from Harrow garage. He referred to that in his letter dated 31 August 2018. Furthermore, notice was displayed by Arriva London stating that his routes would be operated from London Sovereign's Harrow garage. (286)

328. From the Google maps attached to Mr Burt's witness statement, and having regard to his address at Augur Close, Staines, TW18, **the** fastest travel time to Edgware garage via the M25, would be 48 minutes, a distance of 31.4 miles. Another route along the M25 and Western Avenue, would take 1 hour, a distance of 30.5 miles. Another alternative route to via the M25, the Parkway/A312, would take 1 hour 8 minutes, a distance of 21.7 miles.

329. From his home to Watford garage along the M25, is a distance of 24.5 miles and took 35 minutes.

330. He was cross-examined by Mr Bailey. In relation to travel from his home to Watford garage, from the Google maps provided it took 28 to 40 minutes, a distance of 24.5 miles. From his home to Harrow garage, is a distance of 17.5 miles with travel time of between 30 to 50 minutes via the M25 motorway. (509(a)-509b)

331. It was put to Mr Burt that the distance from his home to Edgware garage is 7 miles less than the distance from his home to Watford garage based on the maps he attached to his witness statement, and that the difference in time is an extra 2 to 10 minutes. He said that the journey to Harrow would take up more fuel because of the stop/starts, and that the route to Edgware garage was the same as to Watford but he had school runs. He said that he made trips to both Harrow and Edgware. The issue for him was one of parking.

He was told by other drivers that at Edgware there was parking at Sainsbury's, costing £4 a day. There was limited parking at Harrow.

332. In relation to his letter dated 31 August 2018, to Arriva London in which he considered himself as having been constructively unfairly dismissed, he was questioned on the stated increased travel time to and from his home of 90 minutes and 75 minutes together with an extra ½ an hour parking. He stated that his working day would be lengthened by 2 hours. (1493 to 1494)

333. In evidence he amended his witness statement by changing the reference from 2 hours additional commute to his working day, to 1 hour 15 minutes.

334. He said he visited London United and London Sovereign garages in Staines and went to Fulwell and Heathrow garages but realised that he would lose continuity of service. He, however, did not ask about continuity of service during the induction. He said that Fullwell garage is much closer to his home and did not know London Sovereign and London United were part of the same group.

335. He said the 37 minutes travel time from his home to Harrow would add an additional £50 per month in travel costs. He could not turn up at Harrow and park, as he would have to wait for someone to leave. He did not want to work for London Sovereign because of the travelling and parking which amounted to material changes to his detriment. He, accordingly, resigned in writing on 31 August 2018, having treated himself as having been constructively dismissed. (507-508)

336. He told the tribunal that he currently works for South West Trains as a Guard. For the first six months his earnings were less than what he would have earned had he remained with Arriva London.

337. He did enquire of vacancies at Fullwell, Hounslow, and Hounslow Heath.

338. As stated earlier, he left Arriva London on 31 August 2018 and started his new job on 24 September 2018. He considered that he is owed redundancy pay as the Watford garage was closing and the alternative roles offered were not suitable.

339. He presented his claim form on 29 November 2018, case number is 3335094/2018, in which he claims unfair dismissal, redundancy pay, notice pay and breaches of TUPE against Arriva London and London Sovereign. (451- 460)

340. Referring to the claimant's grievances dated 7 and 31 August 2018, Mr Sands replied on 5 September 2018. He referred to his response dated 21 August 2018, in which he explained the options open to Mr Burt and that TUPE was compulsory. That with effect from 1 September 2018, he would no longer be employed by Arriva London but by London Sovereign. He then drew to Mr Burt's attention that as he did not object to the transfer, in the event of him failing to report to London Sovereign, he would be deemed to have resigned and no longer an employee of Arriva London. (509)

Mr Trevor Hines

341. Mr Trevor Hines worked as a Bus Driver from 8 November 2008 until 31 August 2018. He was employed on route 142 and in early 2018, he became aware that Arriva London had lost the contract for several bus routes. He worked on spread over duties.

342. He had his first individual consultation meeting with Mr Mhagrh and Mr Sands on 26 July 2018, during which he said that he did not like the options on offer. He was told that redundancies were not an option. It is recorded that he was, "Transferring to RATP to Twickenham so will be leaving Arriva Watford on 31 August 2018 and starting with them on a new contract on 1 October will therefore not be working to TUPE on current routes". (610-612)

343. He attended an induction day at London Sovereign's Edgware garage and had to look for parking in Sainsbury's car park which was £4 a day. He said that the offer of work at Edgware was not going to be suitable because of the parking issue.

344. He raised a grievance on 27 August 2018, in which he wrote:

> "Dear Mr Mhagrh
>
> In line with ACAS code of practice on grievance procedures please consider this letter a formal letter of grievance.
>
> The issue that has led me to lodging this grievance concerns is lack of communication I have a good understanding of why garage is closing and will be TUPE over Sovereign at Edgware and Palmers Greens that is an Arriva company. I have had the relevant meetings with HR and management and came to the conclusion that what they were offering would not be a good work life balance due to distance ie petrol, duration of journey and not enough rest times between shifts due to the concentration of my role and of course being compliant as rest is vital.
>
> My request if I should be offered redundancy as per my co-workers in engineering and shutters have been given. This decision that the company has ben TUPE over is out of my control and is caused me much distress as I am sure it has with others.
>
> My contract states that it not mobile ie not having to work in other areas if this was feasible I would have no reason to put in a grievance.
>
> I would appreciate your urgency in this matter." (613)

345. Mr Hines corrected himself in evidence by saying that in paragraph 5 of his witness statement when he refers accepting an alternative position at Twickenham, he meant Fullwell.

346. He said that as part of his grievance he was concerned that his journey to Watford would take 40 minutes to 1 hour but to Edgware the time would increase to approximately 1 hour each way, costing him £60 each week in fuel and parking. Parking was difficult as it was limited which meant that he

would have to park further away from Edgware garage. This would impact on his health and personal life, reducing the time he would be able to spend with his partner. In addition, the shifts at Edgware were longer. Taken in conjunction with the location, it would significantly lengthen his day.

347. He attached to his witness statement, three Google maps. The first shows the distance from his home to Edgware being 32.5 miles via the M25 which would take him 47 minutes. Along Parkway/A312, a distance of 17.9 miles, it would take him 1 hour 6 minutes. By the Parkway/A312 and Western Avenue, it would take 1 hour 16 minutes, a distance of 21.8 miles.

348. The second Google map is in relation to Palmers Green but there is no evidence that he was offered a position at Palmers Green.

349. The third map is in relation to the distances and time from his home to Watford garage, via the M25. This would take him 34 minutes over a distance of 25.6 miles. Via the M1, a distance of 30.3 miles and would take him 1 hour 2 minutes.

350. He was taken to AA Route Planner maps showing the distances and travel times from his home in Ashford to Watford garage. This gives a distance of 25.6 miles and a journey time of 33 minutes. In evidence he said that depending on the traffic to Watford, it could take 40 minutes from his home. (382(ah))

351. From his home to Pinner Road, Harrow, is a distance of 13.8 miles with a journey time of 36 minutes, and from his home to Edgware, a distance of 32.1 miles and would take him 46 minutes. (382(aj) to 382(am))

352. Mr Sands responded to the grievance on 28 August 2018 setting our Arriva London's position in which he stated that there were other opportunities should he stay with Arriva London or transfer to Arriva Midlands, Arriva Southern Counties. There were opportunities at Hemel Hempstead, Luton, Aylesbury and High Wycombe. (614-615)

353. Mr Hines considered that what was being offered, were to his detriment. He submitted a letter dated 30 August 2018, to Arriva London stating that he had considered himself as having been constructively unfairly dismissed from 31 August 2018. He wrote, "For the avoidance of doubt, I am not objecting to the transfer to RATP London Sovereign itself." He repeated his concerns about the increased travel time and costs; the difficulty with parking; and that the change in location would increase his journey by approximately 1 hour each way, which would have an impact on his health, work life balance and may affect the safety of others. He was waiting for his full redundancy pay and notice. (1488-1489)

354. He told the Tribunal that he was considering Edgware with a view to transferring to a garage closer to his home. He asked someone during the induction at Edgware, how long would it take before he was able to secure an internal transfer. He said that the reply was that I could take up to a year. This is not in his witness statement, and he referred to asking the

question and answer given, for the first time during cross-examination by Mr Bailey. He said he went to the induction to make up his own mind.

355. In cross-examination by Mr Nuttman, he said he drove on routes 340 which moved to Palmers Green in June 2018 and the 258 which went to Metroline in June 2018. From June to August 2018, he was not assigned a new route. He said when route 340 moved to Palmers Green he believed that he should have been made redundant. He said that he did attend the induction because he remembered it quite clearly and was told that they could not make any promises as an internal transfer could take up to one year.

356. Prior to his consultation meeting on 26 July 2018, he tried for a driving position at Fullwell garage, operated by RATP DEV London (616f to 616(j))

357. On 26 September 2018, he was offered the role of a Bus Driver based at Damford Brook garage, Chiswick High Road, London and was due to commence employment there on 1 October 2018. He was sent together with the offer letter, a statement of the terms and conditions of his employment which has a mobility clause. (616(k)-616(zz))

358. In evidence, he said that he did not tell those at Fullwell that he was transferring under TUPE.

359. In the ELI it states that he was a spares driver (300)

360. He presented his claim form on 29 November 2018, case number 3335100/2018, nearly two months after he commenced employment at Fullwell. He claims unfair dismissal, redundancy pay, notice pay and breaches of TUPE against London Arriva. (571-588)

Mr Murat Uslu

361. Mr Murat Uslu worked for Arriva London as Bus Driver at Watford Garston garage from 25 February 2008 to 31 August 2018. He was employed on route 340 and was informed on 24 April 2018, that his route would be moving to Palmers Green.

362. In relation to that move and the loss of the routes which were later to be transferred to London Sovereign, there was an individual consultation meeting with him on 9 May 2018. In attendance were Mr Lowrey and Mr Sands. Mr Uslu was informed that on 9 June 2018, he would no longer be based at Watford Garston garage but instead at Palmers Green. As the garage was based in London, he was told that he would be paid on London terms and conditions and given a £1,000 retention bonus subject to deductions. He would also be entitled to the disturbance allowance of 45 pence per mile for 52 weeks. He was advised of alternative vacancies in Hemel Hempstead, Luton, Aylesbury, High Wycombe and work with Arriva Southern Counties or Arriva Midlands. He raised the question of receiving a redundancy payment as he did not want to move to Palmers Green nor to the other routes due to the distances involved as he would have to buy a

car, there being no public transport. Hemel Hempstead and Luton paid less an hour when compared with his position with Arriva London. He was informed that redundancy was not an option.

363. They met again to continue with the consultation process on 16 May 2018, and to explore the options available. It was repeated that redundancies were not an option. (1212-1213)

364. In a letter dated 1 June 2018, sent by Mr Sands, it stated that the transfer to Palmers Green garage on 9 June would attract a negotiated disturbance allowance and favourably pay rates. He further stated that alternative options were given after consultation with the union. He confirmed that there was no requirement to make bus drivers redundant as there were sufficient posts available. He advised Mr Uslu that he would remain employed at Watford garage working on the remaining on the transferring routes. (1214)

365. On 4 June 2018, he wrote to Arriva London objecting to being moved to Palmers Green as his place of employment was Watford Garston garage but the move to Palmers Green would change his working conditions. That there had not been proper consultation during the meeting on 16 May 2018 as he had given his reasons why he did not want to move to Palmers Green. He then gave his reason why he did not believe that the closure of the garage was due to the tendering process. He did not accept any of the alternative offers, and that unless Arriva London provide him with a suitable alternative position, it should make him redundant. He was not objecting to the current offer to stay at Watford but wanted confirmation of his duties. (1215)

366. In Mr Sands' response dated 5 June 2018, he wrote that there was no requirement to make bus drivers redundant as sufficient posts were available. (1216)

367. Mr Uslu remained at Watford Garston garage as a Spares driver following the move of route 340, on 9 June 2018, to Palmers Green.

368. On 16 July 2018, at his individual consultation meeting in relation to the five transferring routes to London Sovereign, in attendance were Mr Sands, Mr Heft, Mr Mhagrh, Ms Lowrey and Mr DiCastiglione. They discussed the options available. Mr Uslu said that the other locations were unreasonable. Ms Lowrey said that he would be TUPE'd as he was associated with the routes as a Spares driver. (1217-1219)

369. He attended London Sovereign's induction on Monday 30 July 2018. He handed in all his equipment and passes on 12 August 2018, before going on holiday from 12 to 31 August 2018.

370. He said that used to travel to Watford from his home on a bicycle, but 10 bicycles were stolen. He had been working at Watford garage since 1998 and would walk to work which took him 20 minutes. He also could use the

staff bus. From his home to Edgware garage would have taken him between 1 hour 15 minutes to 1 hour 20 minutes, possibly longer by bus.

371. In relation to Hemel Hempstead, it involved a pay cut of around 77pence or less per hour, which, for him, equated to £1,000 over 12 months. He had a mortgage and would pick up his children from school. He did the early, middle, and late shifts and were he to transfer to Edgware, there would be no local buses if he was to start the early shift.

372. He said that he was told that his transfer would be to Edgware garage but could not travel by car as he did not have one, nor by bicycle, nor on foot. He had childcare responsibilities and needed to pick up his children from school as his wife, who is a midwife, had a heart condition. He would need to be working a short distance from his home in order to pickup his children from school after work, and his wife's heart condition would sometimes require urgent medical assistance. In addition, a commute to Edgware garage would cause him to suffer from fatigue which was not safe when driving the public. He stated that there was no offer of a staff bus to those affected employees to take them to their new work locations.

373. He was informed that his employment had transferred to London Sovereign as of 1 September 2018, but he was not at work.

374. From the Google maps attached to his witness statement, from his home to Palmers Green garage, a combination of walking and public transport would have taken him 1 hour 31 minutes. From his home to Watford garage walking would take him 30 minutes. From his home to Edgware garage, a combination of walking and public transport, would take him between 1 hour 10 to 1 hour 20 minutes.

375. He said in evidence under cross-examination by Mr Nuttman that he could not travel to either Edgware or Harrow. He said that being on the spares rota was a temporary arrangement. When the garage closed, he should have been made redundant. He was there to cover the absent drivers, engaged in other work, and on other occasions he may have to sit for seven hours in the garage.

376. In the notification of termination of employment, it gives his reason for leaving as to do a different type of job. (1225)

377. He said that London Sovereign stated that there was no staff bus in the evening. The additional travel time from Watford Junction station to Edgware was between 35 to 40 minutes. The early shift was from 4am to 1pm; the middle shift from between 8 to 9am to 3 to 5pm; and the late shift between 1pm to 11pm. He said on two occasions his wife had to attend Watford Hospital in an emergency. Two weeks after 31 August 2018, he said that London Sovereign telephoned him.

378. He said that two weeks after 31 August 2018, he began work as a minicab driver.

379. He presented his claim form on 29 November 2018, case number 3335113/2018, in which he claims unfair dismissal; redundancy pay; notice pay and breaches of TUPE against Arriva London and London Sovereign. (1175-1192)

Mr Adam Mickiewicz

380. Mr Adam Mickiewicz, was effectively employed by Arriva London from 6 July 2006 to 31 August 2018. He was the subject of a TUPE transfer in 2017 to Arriva London.

381. He worked on route 303 and became aware that Arriva London had lost the contracts for several routes to London Sovereign. On 6 July 2018, he received a letter form Arriva London stating that his route would transfer to London Sovereign.

382. He understood that there was no mobility clause in his contract with Arriva London. (856 - 859)

383. His individual consultation meeting was on 17 July 2018 at which Ms Lowrey and Mr Sands were in attendance. It was explained that he would either be transferring to Edgware or Harrow and the terms and conditions would remain the same. It is recorded that he said that he would wait to find out where the garages would be located. (860-864)

384. On 19 August 2018, he wrote to Mr Mhagrh in similar terms to the other claimants, referring to his place of employment being Hertfordshire not London; relocating to either Edgware or Harrow, Arriva London would be changing his work conditions; the commute to and from work would adversely affect his homelife, financial outgoings and any overtime or rest periods; he felt that the company had not engaged in proper consultation during the meeting on 17 July as he gave his own reasons why he did not want to transfer which were overlooked in favour of unsatisfactory offers; the distance from his home to Watford Garston garage was 1.5 miles and that the additional travel times, expense and inconvenience would significantly impact on his family life as he would be spending more time travelling to and from work and less time at home; and as there were sufficient parking facilities at Watford garage, the same could not be said for Edgware and Harrow. Further there was no mobility clause in his contract of employment. He felt that the compulsory relocation to London Sovereign would not be reasonable, suitable, or practical for him in the short or long term. Redundancy was the only possible option. (865-866)

385. He sent a grievance by email on 31 August 2018, to Mr Sands, objecting to the change to his place of work. He gave his reasons why it was impossible for him to accept. He stated that his journey would be 1 hour 10 minutes to 1 hour 50 minutes in rush hour, one way and referred to the impact on family and his finances. He reserved his right to bring a claim for breach of TUPE and constructive unfair dismissal. He clarified that, for the avoidance of any doubt, he was not objecting to the transfer to RATP London Sovereign itself. (1490-1492)

386. He also sent a copy of his grievance to Mr Clapson on 1 September 2018. (869-870)

387. On 5 September 2018, he received a reply from Mr Sands who referred to correspondence dated 6 July 2018, in which he explained the options available and that he, Mr Mickiewicz, was under notice that a compulsory TUPE, with effect from 1 September 2018, meant that he would no longer be employed by Arriva London but an employee of London Sovereign. Should he fail to report to London Sovereign he would be deemed to have resigned and no longer an employee of Arriva London. (871)

388. As for the specific details in his grievance letter to London Arriva North and London Sovereign, those were not addressed.

389. He stated that he shared his car with his daughter, a single mother, and if he was to use it to and from work, it would impact on her ability to get to work. He would have to pay to use local buses which would increase the time spent travelling and would impact on his ability to support his daughter with her childcare. He looked after his grandchild when his daughter was at work. He further stated that he suffers from back problems and additional time commuting exacerbated his condition leaving him in pain. Were he to use his vehicle it would cost an additional £1,100 per year.

390. He attached 3 Google maps showing the various distances and times. From his home on Balmoral Road, Watford to Watford High Street station is 7 minutes by car, a distance of 2 miles. Two alternative routes would add a further minute to 3 minutes on to his journey. From his home to Edgware garage by car via the M1, would take him 18 minutes, a distance of 8.3 miles. Two alternative routes would add 4 and 7 minutes. From his home to Harrow bus station by car, would take him 26 minutes, a distance of 7.7 miles. An alternative route via North Western Avenue/A41 would take him 31 minutes, a distance of 10.2 miles.

391. It was not clear to us why he attached a map giving the distance and time from his home to Watford High Street railway station.

392. From the information contained in AA maps, we find that the travel time from his home to Edgware is around 16 minutes, on average. (382(bl), 382(bp))

393. A further concern expressed by him was parking at Edgware. He said he had been to Edgware and that Parr Road was not there before the transfer and was in the planning phase. No one knew when it would open.

394. He said he went to the induction day to speak to London Sovereign about Edgware. There were 8 to 10 drivers present. A lot of questions were asked but he did not ask any questions about parking at Edgware. He said he sent the letter dated 31 August 2018 twice. The first had the wrong date which he later corrected. (1490-1492)

395. He accepted employment as a Coach Driver with Met Coach. He applied for it one week before 31 August 2018. His place of work is 17 minutes'

walk from his home and is on a lower rate of pay when compared to the top rate he was earning while working for Arriva London.

396. He said he has since moved home from his home on Balmoral Road, Watford to new premises on Sussex Grove, Watford, which is a 22- minute walk from Watford Junction. Although he has a car, he could take the 142 bus from Watford Junction to Edgware.

397. He said that he and some drivers tried to hand in their letters of complaint to Arriva London, but no one would take them. He finished work on Friday 31 August 2018.

398. He told the tribunal that he suffers from scoliosis and when he straightens his back he would be in pain. He had to sit on one side to relieve the pain. He, however, travelled to Poland and did the journey by car which took 12 hours. He had not been advised not to drive because of his back condition. He said that his daughter is a manger working part-time for a company in Luton and would start her shift when he finished, which would be between 5am to 6am. She would work until 1pm. His wife did not work in 2018. He was not sure about the shuttle bus from Parr Road to Edgware but was aware that the cost of parking in the Sainsburys site was £4 per day.

399. He presented his claim form on 30 November 2018, claim number 3335122/2018, in which he claims constructive unfair dismissal, ordinary unfair dismissal, redundancy pay and wrongful dismissal against Arriva London and London Sovereign. (818-826a)

<u>Mr Piotr Moson</u>

400. Mr Piotr Moson had been employed by Arriva London from 6 July 2006 to 31 August 2018. During that time, he had been TUPE'd from Arriva the Shires Ltd to Arriva London. At all material times his place of work was Watford Garston garage. There was no mobility clause in his contract of employment. (895-900)

401. He said that on 7 July 2018, he received a letter from Arriva London informing him that his route 305 was going to be transferred to London Sovereign and that he would be based at Edgware.

402. He wrote to Mr Jason Jones on 16 August 2018 setting out his response to the proposed transfer and relocation. Amongst other things, he wrote:

> "To be honest, I really cannot comply with the requirements of the offer you proposed to me.
>
> To begin with, I would like to point out that I have been working in Arriva for 12 years. For almost all of them (11) I have been living within the radius of 100 yards from the garage I was based in. This decision was motivated simply by one thing: It is the fact that I can't afford to have a car in the UK due to the very high cost of insurance and the maintenance., Unfortunately, I do not earn enough to cover those expenses.

> Having taken into consideration this very important factor now I will move to detailed explanation why it is almost impossible for me to move to another proposed workplace.
>
> 1. Hemel Hempstead – As far as I'm concerned the first condition required to work in the Hemel Hempstead is accepting a pay cut which I cannot afford with my already tight budget. The next problem is travelling to the garage, as I mentioned earlier, I cannot afford a car and the staff bus facility that takes drivers to the work is not available in the place I live in. Travelling by the public transport would simply take too much time (over an hour with no traffic) to get from Watford to the garage in the Hemel Hempstead.
>
> 2. Palmers Green – Garage in Palmers Green is 18 miles far from where I live right now. From what I was informed, the salary there is slightly higher than what I am earning right now, what may be, if I keep my budget even tighter would let me buy a car. The problem with this is the fact that travel by car would take approximately 2 hours daily (depends on the traffic on the road which vary a lot).
>
> 3. Edgware – The only way to get to Edgware early in the morning and to get back home late in the evening due to the lack of the public transport links is by car which I unfortunately, as I mentioned several times in this letter earlier, cannot afford.
>
> Given that all the offers of the alternative employment are not considered to be suitable for me I believe I do have an option to consider redundancy and would therefore request further information on this." (904-905)

403. Mr Sands responded on 21 August 2018, by sending what was by now a standard letter to Mr Moson explaining the reasons for the transfer of the route, opportunities being identified at other garages, the special retention bonus, that there was no requirement to make drivers redundant. (906-907)

404. According to Mr Moson, he did not receive Mr Sands' letter of 21 August 2018 which prompted him to send a further letter dated 28 August 2018 to Mr Jones, the content of which, except for the last two paragraphs, were the same. In the last two paragraphs he referred to the absence of a mobility clause in his contract and repeated that he did not have enough money to afford to buy a car. He again asserted that redundancy was the only possible option. He stated that the earlier letter of 16 August was left on the Duty Manager's desk, at Watford garage, but he had not received a response. (908-909)

405. He attended the induction at Edgware on 29 August 2018 and informed London Sovereign that he had decided to move to Poland. At that point he was instructed to return to Watford garage as he did not want to be TUPE'd over to London Sovereign.

406. In evidence he told the tribunal that he had stated to Mr Jason Jones, on several occasions, that he wanted to work in Poland and would not transfer to Edgware. He had no objection to working for London Sovereign, only to where he was required to work, that being Edgware. He said that he had researched rents in Edgware, and they were too high. Also, the flats were

dirty. He was unable to find a good, cheap, clean flat in Edgware to rent. Accordingly, he decided to return to his homeland.

407. He said that it was a 5 minutes' walk from his home to Watford Garston garage. Watford Junction bus station is 2 miles from his home and would need to take the 142 bus from there to Edgware. It would take more than 1 hour to get there and 1½ hours return journey, total travel time of 2½ hours.

408. He said that he was offered Hemel Hempstead, but the pay was low. He did not know whether the hourly rate was 77p less. He would lose his London Travel Pass.

409. It was put to him by Mr Bailey in cross-examination that there was a staff bus to Hemel Hempstead. His response was to say that it was possible that there was a staff bus from Watford to Hemel Hempstead, but he could not be sure.

410. We were not provided in evidence with the times and pick up points for the staff bus.

411. On 31 August 2018, Mr Moson returned his passes. In the Notice of Termination of Employment, it states that his reason for leaving was to do a different type of job. (910-911)

412. On 5 September 2018, Mr Sands wrote to him referring to his grievances dated 7 and 31 August 2018. The reply was similar the ones given to the other claimants in response to their grievances. He referred to his letter of 21 August 2018, in which he explained the options available, and that TUPE was compulsory and would take effect from 1 September 2018. From that date Mr Moson would no longer be employed by Arriva London but by London Sovereign. He was informed that should he fail to report to London Sovereign, he would be deemed to have resigned and no longer an employee of Arriva London. (912)

413. Mr Moson attached Google Maps to his witness statements showing that travel form his home to Edgware by public transport would have taken him between 1 hour 15 minutes and 1 hours 20 minutes.

414. In Mr Clapson's evidence he said that the claimant's travel from his home to Watford garage by car would have taken him 1 minute. From his home to Edgware garage, 17 minutes, and from his home to Harrow garage 28 minutes.

415. Mr Moson did not have a car and he told the Tribunal that the longer journey times would not allow him time in the gym to work out and to have frequent walks.

416. We find that at or around 4 o'clock in the morning, considering his travel time on public transport from his home in Garston to Watford Junction station, and then waiting for the bus to take him to Edgware garage, his journey time would be, in total, 1 hour.

417. In relation to travelling from his home to Edgware at or around 10am, we find that it would have taken him slightly longer because of the busy traffic conditions, a journey time of 1 hour 15 minutes. This would increase in the afternoon at or around 2pm, to 1 hour 20 minutes. (915(d) to 915(e))

418. We find that Mr Moson said to London Sovereign on 29 August 2018, that his intention was to return to Poland and that he would not be transferring to Edgware.

419. He presented his claim form on 26 December 2018, case number 3335588/2918, in which he claims unfair dismissal and redundancy pay, against Arriva London. (875-886)

Mr Trymore Mavhangira

420. Mr Trymore Mavhangira previously worked for Arriva the Shires from 1 November 2010 before transferring to Arriva London. He was employed as a Passenger Carrying Vehicle Driver. His contract of employment did not have a mobility clause. (754-757)

421. He initially worked on route 142 and was engaged in shift work. He was later transferred to the late shift rota driving routes 142 and 340 because, he said, of his family commitments. There was a staff car service for the late shift drivers to transport them to work and to their homes. He did not have a car and relied on public transport.

422. On 4 December 2017, he was sent a letter regarding the loss of route 142 to London Sovereign on 5 January 2018. He was informed that as he was employed to work on route 142, he would be transferred under TUPE to London Sovereign under his existing terms and conditions of employment except for his pension. (758)

423. He decided not to transfer and would remain with Arriva London. Following the loss of route 142, he told the tribunal that he worked on route 340 which was operating from Edgware to Harrow bus station. This route eventually moved to Palmers Green but as that location was, according to him, too far he was unable to travel that distance and could not afford a car. He remained at Watford garage working on routes H18, H19, 303 and 305, commencing from 10 June 2018. (759)

424. On 6 July 2018, he received a letter from Mr Mhagrh regarding the routes due to be transferred, H18, H19, 303, 305 and 288. He was informed that on 1 September, as a result of a service provision change, the routes would be transferred to London Sovereign by way of a compulsory TUPE transfer and that his job would also be transferred. He had the right to object to the transfer but if he decided to do so he would be deemed to have resigned. There were other options, such as, transferring to any Arriva London garage, Arriva Midlands, or Southern Counties, subject to suitable vacancies but local terms and conditions would apply. (814(b)-184(c))

425. He was given London Sovereign's Measures document. His location would either be Edgware or Harrow garage. (286)

426. He attended his individual consultation meeting in respect of the TUPE transfer, on 15 August 2018, at which Mr Mhagrh and Mr Sands attended. A set format was followed. It is recorded he may be interested in a position at Hemel Hempstead. Mr Sands responded by saying that it would need to be discussed with Mr Jason Jones. Mr Mavhangira is also recorded as saying that London Sovereign's locations at Edgware and Harrow were quite far. He requested one month off prior to starting to which Mr Mhagrh said that he would enquire of Hemel Hempstead about whether he could have Saturdays off, working Sunday to Friday.

427. The importance of having Saturdays off was because Mr Mavhangira was a Pastor and attends church on Saturday. (761-765)

428. He attended an induction on 20 August 2018 and asked about having Saturdays off, but they could not accommodate his request. He then asked to speak to Mr Matt Doughty as he already knew him as he previously worked for Arriva London.

429. The following day, he spoke to Mr Doughty who told him that he was not on the list to transfer.

430. He said in evidence that during the consultation meeting on 16 August 2018, what is recorded is inaccurate as he was not interested in Hemel Hempstead. He could not do a late shift as he had a child with a medical condition. He did not have a car and was concerned that his daughter would die at any time. Hemel Hempstead would not give him Saturdays off and the money was less. He had no objections to London Sovereign being his employer. Luton was too far.

431. During the induction questions were asked of London Sovereign whether a staff car service was available. The response was that they were not going to provide a staff car. Mr Mavhangira informed them that he had problems travelling to Edgware as he did not have a car.

432. After the induction he consulted his legal advisors on what to do.

433. On 30 August 2018, he attended a further consultation meeting in the company of Mr Mhagrh and Mr Sands. It is recorded that London Sovereign was unable to offer him a job as he would be unable to have Saturdays off. He said that he had an issue getting to Edgware due to not having a car and he worked as a Pastor on Saturdays. (767-771)

434. On 30 August 2018, at 3.48pm, Mr Mhagrh wrote to Mr Chris Berry, General Manager, Arriva Southern Counties, about a possible position at Hemel Hempstead. He stated the following:

> "Above Watford driver wanted transfer to Hemel but has an existing arrangement not to work Saturdays. Can you confirm you can accommodate. Says he has spoken to Hemel but the answer was no?..." (1480)

435. Mr Berry replied the same day, at 16.23, stating:

> "I have just spoken to Luke and provided he is prepared to go on any rota and potentially work the majority of Sundays we can accommodate him having every Saturday off." (1479)

436. It would appear that Hemel Hempstead was prepared to accommodate Mr Mavhangira's request to have Saturdays off.

437. Mr Jason Jones emailed Mr Berry and Mr Luke Gilroy, on 31 August 2018, at 10.31, stating that Mr Mavhangira had declined the offer to work at Hemel Hempstead after Mr Jones had explained to him that Hemel Hempstead would honour taking Saturdays off to enable him to carry out his pastoral duties. He declined because he had no way of getting there. (774)

438. He said in evidence that he attended Arriva London premises to enquire about his employment and was told that his name was not on the transfer list. He then, immediately, consulted his solicitors for advice. On the same day they wrote to London Sovereign stating that the move to Edgware would increase his travelling time on public transport, from approximately 29 minutes to 2 hours 1 minute, and to Harrow, 1 hour 48 minutes. He did not own a car. Variation of an employee's contract which is subject to a transfer, is void if the sole of principal reason for it is the transfer. They wrote that Mr Mavhangira had attended London Sovereign's premises the previous day and was advised that he was not on the transfer list and was not given their human resources' an email address to enable them to make contact. He had spoken to someone at London Sovereign's human resources department who advised that the contact person, Ms Ngoma Knight, was absent until 16 September 2018 and no one else would be able to speak regarding the transfer. Mr Mavhangira's solicitors proposed that urgent consultation be undertaken with him and that, if they receive no response by 5pm that day, they would take it that he could remain off work until the consultation could take place and that his absence would be considered as special leave for which he would receive full remuneration. (772-773)

439. The information given by Mr Mavhangira to his solicitors was that there was a staff car service operated by Arriva London which picked up and dropped off drivers between the hours of 4.15am-6.30am, and from 22.30pm-2.30am.

440. Mr Mavhangira said that his solicitors emailed Arriva London on 1 September, asking whether he had been transferred that day, but no response was received. The email was not produced in evidence but what the Tribunal was referred to was an email dated 3 September 2018, which that question was asked by his solicitors. The following day there was a

reply from Arriva London stating that it confirmed what his solicitors had stated, namely that he was no longer employed by Arriva London. (775)

441. He received his P45 dated 5 September 2018, in which it stated that his employment had terminated on 31 August 2018. (812-814)

442. He told the Tribunal that he lived in St Albans and would either take a train or bus to travel from his house to Watford Garston garage. The Journey would take 19 minutes by train from his home. If he used the bus it would be 35 minutes. He could not work the day shift because he had to take his children to school.

443. He also said in evidence that it was not Mr Doughty who told him he was not on the list. He had asked to see Mr Doughty but was told that he could not see him, and a man told him he was not on the list. If he was on the list, he would have turned up at Edgware. He could only work the late shift. The concern for him was the need for the provision of transport to his home when he finished. He went to Edgware because he understood that his employment had transferred to London Sovereign. He maintained that travel from his home to Edgware would take him 2 hours by bus and that the 635 bus did not operate on Sundays, he would instead have to use the train. He would have to walk from his home to Chiswell Green and take the 321 bus to Watford Junction, from there the bus to Edgware. He had four children and that his request for a month's leave during the first induction was to help with his baby who suffers from Edwards syndrome. He said that if he had transferred to London Sovereign, he did not know that he could keep his TFL travel and local passes. He had been told that everyone had to return them. He did not tell Arriva London that he was not going to transfer.

444. In the course of cross-examination, Mr Bailey accepted that although a staff bus was operated by Hemel Hempstead that service was not provided in the evening. The drivers on a late shift would have to make their own way home.

445. According to Mr Clapson, the difference in Mr Mavhangira's commute to work if he had moved to Edgware, was an extra 8 minutes. The total commute was only 17 minutes. This would have been by car. Mr Mavhangira did not have a car.

446. Mr Mavhangira told the Tribunal that he started a new job with a company called CDI Cooling, in Banbury. He drives a company van and is allowed Saturdays off. He is also allowed to attend college.

447. We find that he was not a spares driver.

448. He presented his claim form on 7 January 2019, in which he claims automatic unfair dismissal, breach of regulation 4(9), unfair dismissal, section 98(4) ERA, statutory and contractual redundancy pay, unauthorised deductions from wages, notice pay and accrued unpaid holiday, against London Arriva and London Sovereign. (708-724)

Mr Thamotharam Sivakumar

449. Mr Thamotharam Sivakumar, was initially employed by Arriva the Shires on 20 August 2007. His employment later transferred to Arriva London on 6 January 2018. (1067)

450. We find that it was agreed with Arriva the Shires Ltd, on 1 February 2010, that he would be on the spread over rota effective from 14 January 2010. (1065)

451. He was only required to work Monday and Friday and would finish at 7pm. He worked on any rota rather than driving a specific route. He needed a flexible working arrangement because he had caring responsibilities for his wife who suffered and continues to suffer from a serious kidney condition, and his children, who were 13 and 12 and 3 years of age at the date of his dismissal.

452. In a "To whom it may concern" letter, Imperial Healthcare NHS Trust wrote on 3 November 2015, that his wife had an end stage renal failure and that she attended the Renal Unit at Watford General Hospital three times a week for dialysis. (1083)

453. Mr Mhagrh wrote to him on 2 February 2018 in relation to the transfer of route 142. He stated that Mr Sivakumar would not be able to do spread overs duties as he had left it too late to transfer with route 142 to London Sovereign and spread over duties were not operationally feasible at Watford garage because work had diminished. (1068-1069)

454. The claimant stated that in February 2018 allocations gave him the shifts he wanted but he was not aware that it was informal. He had been working spread over shifts for eight years. Allocations had given him the shifts he wanted at a time when he was a spares driver. He did not work a particular route but covered the transferring routes Monday to Friday with weekends off.

455. On or around 18 February 2018, Unite the Union wrote to its members at Watford Garage informing them of the proposed closure of the garage and the transfer of three routes on 9 June 2018, and the five routes on 31 August 2018. It invited its members to decide whether they would either go for redundancy, to transfer to another Arriva garage, or to a different route. (1070)

456. Mr Sivakumar attended an individual consultation meeting on 13 August 2018 and was accompanied by Mr DiCastiglione. Also present were Mr Jason Jones and Ms Lowrey. The discussion followed the set format. Mr Sivakumar asked Mr Jones if he could confirm that he would transfer on spread over terms, but Mr Jones was unable to give that confirmation and was advised Mr Sivakumar to ask about spread over terms at the induction day with London Sovereign. (1073-1077)

457. He attended the induction day at Edgware on 28 August 2018 and spoke to Mr Matt Doughty, London Sovereign's Depot Manager. He asked if he would be transferring on the spread over rota and was told that he would not be. (1078)

458. He said in evidence that he later spoke to Mr Jason Jones at Watford garage, during which he stressed that he needed assurances that he could transfer on his agreed terms, namely working Monday to Friday on spread overs. He told the Tribunal that he was relying on the answers given at the collective consultation meeting on the 25 July 2018, by Mr Clapson, that spread over agreements will be honoured covering the period from 6.30am-7.30pm, Monday to Friday. (292)

459. On 28 August 2018, he submitted a grievance to Arriva London stating that it had failed to provide him with a suitable job at London Sovereign. He said that he had left his grievance letter in Jason Jones' office and did not keep a copy as he did not have the facilities for making a copy. He said that he did not receive a reply to his grievance. Five days prior to the transfer he told the Tribunal that he made several unsuccessful attempts to meet with Mr Jones.

460. He said that on spread over he was not allocated to one route but three routes, 142, 340 and 258. We bear in mind that route 142 was transferred in January 2018, and that 340 moved to Palmers Green in June 2018. Route 258 also went in June by way of a TUPE transfer to Metroline. Thereafter he worked on the five remaining routes which were due to be transferred to London Sovereign.

461. Under cross-examination by Mr Nuttman, he admitted that he was put on spares. He had no guarantees of spread over duties. He worked morning shifts 6.45am to 3.45pm. His spread over attendance would be 6.30am to 11.30am, followed by a break, and then 2.30pm until 7pm. The break in the middle would allow him to pick up his children from school and attend to his wife.

462. On 31 August 2018, he emailed Mr Doughty asking about his position and his duties from Monday 3 September 2018. The reply was:

> "I have responded to you – Arriva have confirmed that you do not have a Monday to Friday agreement therefore I cannot grant you anything other than what you have been doing.
>
> Your Deputy Operating Manager, Jason Jones confirmed this to me when I made the enquiry." (1078(a)-1078(b))

463. Mr Sivakumar said that London Sovereign put him on the 142 route working Monday to Friday, early, middle, and late shifts which was unsuitable taking into account his caring responsibilities. As there was no job for him with London Sovereign and the Watford garage was due to close, his employment came to an end on 31 August 2018. He stated neither Arriva

London nor London Sovereign confirmed what his position would be after 31August 2018.

464. He attended at Watford garage on 1 September 2018, but it was closed. He was instructed to empty his locker of his possessions and he then returned his bus pass and keys to the Duty Manager.

465. In cross-examination he admitted that prior to January 2018 he was on a spread over rota. He said that from January to June 2018 he worked on the 258 and 340 routes and did not transfer with them. From June he was put on the spares rota with no guarantee of a spread over shift. He would go home after 3.45pm to care for his wife.

466. In the ELI, he is down as a Spares driver. (304)

467. We find that based on the evidence in our findings of fact, he was a Spares driver.

468. He presented his claim form on 27 February 2019, case number 3310844/2019, in which he claims redundancy pay based on breaches of the TUPE Regulations. (1027-1039)

Mr Daniel Paprocki

469. Mr Daniel Paprocki, had been continuously employed by Arriva London North since 1 December 2008. In or around 2016, he stated that he had been the subject of a TUPE transfer from Arriva the Shires to Arriva London North. There was, consequently, no change to his work location or to his terms and conditions of employment.

470. He drove route 305.

471. On 6 July 2018 he was informed that he would be the subject of compulsory transfer to London Sovereign as Arriva London North had lost the contracts on a number of routes. This was from Mr Mhagrh setting out the circumstances leading up to the transfer and the implications for the claimant in terms of his terms and conditions of employment. He also referred to the measures by London Sovereign. (1419-1421)

472. There was an individual consultation meeting on 31 July 2018 attended by Ms Lowrey, Mr Sands as well as Mr Paprocki. The format was followed as the other claimants. It is recorded that the claimant transferring to Edgware was an issue as he had no car. He might be interested in going to Hemel Hempstead. Ms Lowrey would need to speak to the duty manager about a staff bus and times operations at Hemel Hempstead. Mr Paprocki stated that he would like information on rates of pay and that Hemel Hempstead's top rate was £12.69 per hour. He was undecided as to whether to transfer to Hemel Hempstead, Edgware of Palmers Green. He would like information on pay and other routes at Palmers Green. Ms Lowrey agreed to make the enquiry. (1422-1424)

473. The claimant was on an hourly pay rate of £13.56.

474. On 6 August 2018, he attended the induction with London Sovereign at Edgware. He wanted to find out if London Sovereign would make some special arrangements for him due to lack of public transport links between his home and Edgware in the morning and late evenings, but they could not guarantee this. (1425)

475. After considering his options, he wrote to Mr Jason Jones on 14 August 2018 stating that he would be unable to work either at Edgware, Hemel Hempstead, or Palmers Green. To work at Edgware, he would need to buy a car which he was unable to afford to maintain. His family budget was already very stretched. Without a car he would be unable to get to work early in the morning and back home late in the evening due to lack of public transport links. He had asked the general manager at London Sovereign if he would be prepared to make special arrangements to enable him to start later and finish earlier when public transport was available. Unfortunately, he was unable to do this.

476. In regard to Hemel Hempstead, to work there would involve a pay cut and he already had a tight budget. He would also be required to accept a mobility clause in his contract, and this would leave him defenceless in a situation like the current one. The staff bus facility was only available in the morning and would not be used to take him to work from where he lived. The problem of early morning starts and late evening finishes would not be resolved. He would be unable to get to work and back home. During the day the journey would take between 50 minutes to 1 hour 15 minutes.

477. In relation to Palmers Green, it was a lower rate of pay but the distance being 18.5 miles, according to Google maps, the fastest route, it could take anything between 30 to 35 minutes in the early morning or late evening. Even 1 hour 15 minutes during rush hour. On top of that he had to build in some extra time for eventualities. His journey to work at the time took him 3 minutes each way from his address in Watford. The changes would be substantial and a negative impact on his family life. For the above reasons it is argued that he was in a redundancy situation. (1426)

478. He received a response dated 21 August 2018, from Mr Sands who referred to his grievance of 16 August. This is in similar terms to the letters sent to the other claimants sent on the same date in response to their grievances. He stated that there was no requirement to make drivers redundant and other positions were available. (1427-1428)

479. In a letter dated 29 August 2018, sent to Mr Sands, the claimant wrote the following:

> "I write in response to your letter dated 21 August 2018.
>
> I believe that this is a breach in my contract and the alternative positions are unsuitable.

> This is constructive dismissal by reason of redundancy and I will consider taking the matter to an employment tribunal." (1429)

480. In cross-examination by Mr Bailey, the claimant said that he had no problem with London Sovereign being his employer. If he worked route 303 for London Sovereign, the first bus out would have been 5.20 in the morning. A driver would need to start before 5am and would have to check the bus before taking it out. He was told there was no guarantee that he could take the first bus. The last bus he said would leave Edgware at 12.29 in the morning.

481. He stated that if the route finishes on Parr Road, he would need to get to Edgware to take the 142 bus 00.52 in the morning to Watford Junction which would arrive at 01.22. He had a car, but his wife drove the car to take the children and he cold not use the car for it to be parked up eight hours a day. He said that during the day buses ran from his home to Watford Junction. He stated that the travel to work would be long, more than 1 hour from his home to Edgware. He said that cycling would be difficult on English roads.

482. Although he had not issued proceedings against London Sovereign, he was cross examined by Mr Nuttman. He said that when the alternatives were not suitable, he had to look at another income as they did not want to pay him redundancy. He has three children and a wife to care for. On Thursday 30 August 2018, he visited a recruitment agency at Watford Town Centre, he took a test and passed; they offered him a job which he agreed to start from 1 September 2018 as a HGV lorry driver.

483. He gave the ages of his children as a son aged 7 years, a daughter 10 years and a daughter of 11 years. As he did not receive any guarantees about delaying early starts to catch a bus, he looked for employment. There was no guarantee that a driver would swap shifts and some drivers may not take to him. He would not put his wife in a position of driving him to Watford Junction at 4 o clock in the morning. His objection was to his place of work, not to the transfer. If London Sovereign had provided transport for the first shift, it would be something he would consider but they did not give him that option. They said there was no staff cars to pick up drivers from Watford.

484. We found that Mr Paprocki's evidence to be credible. There was no obfuscation. He did not avoid the questions.

Submissions

485. The Tribunal read very detailed submissions by Ms Twomey, counsel for 10 of the claimants; Mr Tramboo, counsel for Mr Sivakumar and for Mr Jayaratnam; Mr Bailey, counsel for Arriva London; and Mr Nuttman, solicitor for London Sovereign. As their submissions are very detailed, we do not propose to summarise them having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.

486. They have also produced a joint bundle of authorities covering 1,050 pages. Again, we do not propose to go through each of the cases in that bundle as that would take up a considerable amount of time and space in this Judgment.

The law

487. Regulation 3(1)(b)(ii) TUPE provides that a relevant transfer applies to:

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

488. In paragraph (3) it states:

> "(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."

489. Regulations 4 is on the effects of the transfer. It provides:

> "4.- Effect of relevant transfer on contracts of employment
>
> (1) Except where objection is made under paragraph (7), 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.
>
> (2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer –
>
> (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

(b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.

(3) Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(4) Subject to regulation 9, any purported variation of a contract of employment that is, or will be, transferred by paragraph (1), is void if the sole or principal reason for the variation is the transfer.

(5) Paragraph (4) does not prevent a variation of the contract of employment if –

(a) the sole or principal reason for the variation is an economic, technical or organisational reason entailing changes in the workforce, provided that the employer and employee agree that variation; or

(b) the terms of that contract permit the employer to make such a variation.

(5A) In paragraph (5), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

(5B) Paragraph (4) does not apply in respect of a variation of the contract of employment in so far as it varies a term or condition incorporated from a collective agreement, provided that –

(a) the variation of the contract takes effect on a date more than one year after the date of the transfer; and

(b) following that variation, the rights and obligations in the employee's contract, when considered together, are no less favourable to the employee than those which applied immediately before the variation.

(5C) Paragraphs (5) and (5B) do not affect any rule of law as to whether a contract of employment is effectively varied.

(6) Paragraph (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection

with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to paragraphs (9) and (11), where an employee so objects, the relevant transfer shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to regulation 9, where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer."

490. Regulation 7 is dismissal because of a relevant transfer. It provides:

"7. – Dismissal of employee because of relevant transfer

(1) 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.

(2) This paragraph applies where 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.

(3) Where paragraph (2) applies -

(a) paragraph (1) does not apply;

(b) without prejudice to the application of section 98(4) of the 1996 Act (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal) –

(i) the dismissal is regarded as having been for redundancy where section 98(2)(c) of that Act applies; or

(ii) in any other case, the dismissal is regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

> (3A) In paragraph (2), the expression "changes in the workforce" includes a change to the plate where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).
>
> (4) The provisions of this regulation apply irrespective of whether the employee in question is assigned to the organised grouping of resources or employees that is, or will be, transferred…"

491. The identification of an organised grouping which has as its principal purpose the carrying out of the activities concerned, has to be established. In the case of Eddie Stobart Ltd v Moreman & Ors [2012] ICR 919, the Employment Appeal Tribunal, Mr Justice Underhill P, held that the organisation of the group must be more than merely circumstantial, the employees must have been organised intentionally.

> "If the putative "grouping" does not reflect any existing organisational unit there are liable to be real practical difficulties in identifying which employees belong to it. It is important that on a transfer employees should, so far as possible, know where they stand…whereas it is perfectly possible to see how a "part" of an undertaking may first become a separate entity only at the moment of transfer, it is the essence of a service provision change that the "organised grouping" should have existed prior to the loss of the contract…"

492. Mrs Justice Slade in Amaryllis Ltd v McLeod and Ors EAT 0273/15, held that an "organised grouping of employees" as in regulation 3(3)(a)(i), "is not synonymous with a "grouping" let alone an organised grouping" and requires more. "It is not sufficient to satisfy the Regulation that a department carries out certain work. It must be organised for the principal purpose of carrying out that work for the client in question, in this case the furniture renovation for the MOD." Her Ladyship relied on the judgments in the cases of Eddie Stobart and Seawell Ltd v Ceva.

493. Lady Smith in the case of Edinburgh Home-Link Partnership v The City of Edinburgh Council (UKEATS/0061/11, held. "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." Those who would not be assigned to an organised grouping in relation to the specific service provision change, would include, someone employed as a handyman at the transferor's head office, keeping the building in a suitable condition for client work to be administered; and a cook employed to maintain the nutritional status of the directors.

494. In Seawell Ltd v Ceva Freight (UK) Ltd [2012] IRLR 802, an organised grouping of employees denotes a deliberate putting together of a group of employees for the purpose of the relevant client work, "It is not a matter of happenstance'. There was no such conscious employee grouping on the facts of the case.

495. The Court of Session in Ceva Freight (UK) Ltd v Seawell Ltd [2013] CSIH 59, [2013] IRLR 726, held that an organised grouping implies that there be

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.

496. The Business, Energy, and Industrial Strategy, "BEIS", guide which was published in January 2014, gives an example where this requirement would not be met: "If a contractor was engaged by a client to provide, say, a courier service, but the collections and deliveries were carried out each day by various different couriers on an ad hoc basis, rather than by an identifiable team of employees, there would be no "service provision change" and the Regulations would not apply."

Fraudulent assignments

497. In the case of Carisway Cleaning Consultants Ltd v Richards and Another UKEAT/629/97, the transferor, a cleaning company, moved Mr Richards whose employment it did not wish to retain, to part of an undertaking to be transferred. He had been working for the transferor for 19 years. While at the Ladbroke Grove store, he was suspended pending an investigation into poor performance and alleged falsification of clocking-in cards. The following day he was offered work at a store in Chesham at a higher rate of pay to which he accepted. At the time, the transferor knew that it had already lost the contract to clean that store and informed Mr Richards two days later that his contract would transfer to the new contractor, the transferee. His name was not on the ELI. After a few days working for the transferee, his contract of employment was terminated. He brought proceedings against the transferor and transferee claiming unfair dismissal. The Employment Tribunal upheld the claim against the transferor on the basis that he had never been assigned to the transferred undertaking. It had manipulated the Regulations to move a long serving employee with employment protection, to the unsuspecting transferee. The transferor appealed.

498. HHJ Hull QC, at the EAT, held that Mr Richards had been defrauded into moving to an undertaking that was about to be transferred. Since the transferor had increased his salary, it made the cleaning contract not profitable for the transferee which may also have been a fraud on the transferee.

Temporary assignment

499. Regulation 2 is the interpretation provision. Regulation 2(1) defines "assigned" as "assigned other than on a temporary basis". What is either temporary or permanent is to be determined by the Employment Tribunal, Bademosi v Securiplan EAT/1128/02 (9 May 2003, unreported).

500. There can be a temporary assignment to the organised grouping of resources but in such cases there will be no transfer under TUPE. Whether an assignment is temporary will depend on such factors as the length of time the employee has been working in the undertaking or part which is being transferred.

501. In Bademosi, a security guard at a site which his employer provided security services for 21 years, was involved in an accident and was away from work for some months on sick leave. Upon his return to work he was assigned to a Magistrates court instead of to the Cable and Wireless site where he had been working for several years. After some months, he was informed that he would be returning to the original site. Before his return the security contract at the Magistrates court was taken over by another company. The claimant resigned claiming unfair constructive dismissal. The issue was whether his right to make a claim against the employer had transferred to the incoming contractor.

502. The EAT held that the employee's deployment to the original site had been terminated because of his accident and that, upon his return, his assignment to the Magistrate's court had been on a temporary basis. In those circumstances, the employee's employment would not have terminated by reason of the transfer of the Magistrate's court contract since the employee would have simply reverted to his duties either at the original site or other temporary assignments before being able to resume his position at the original site. It was held by the EAT that:

> "Looked at it realistically the Applicant had since 1978 been assigned to the Cable & Wireless site and that was not the subject of the transfer. His excursion to the magistrates' court was, as the Tribunal correctly recorded, merely temporary.
>
> In our judgment, the employment of the Applicant would not otherwise terminate by reason of the transfer of the Magistrates' court contract on 6/7 December since he would simply revert, as was disclosed to him on 3 December, to his duties either at Cable & Wireless or to other temporary assignments prior to being able to take up his position at the beginning January 2002. For those reasons the appeal is dismissed."

Objecting to the transfer

503. Where an employee objects to the transfer, the automatic transfer provision will not take effect, regulation 4(7). The transfer will have the effect of terminating the employee's contract with the transferor and will not be considered as having been dismissed by the transferor, regulation 4(8), except where the transfer involves or would involve a substantial change to the employee's working conditions to his material detriment, then the employee is treated as having been dismissed by the employer, regulation 4(9). Any employee who validly objects to becoming employed by the transferee before the transfer, do not become an employee of the transferee. Liability, if established, will remain with the transferor.

504. There is no definition in the regulations as to what qualifies as an objection. Cases under the Transfer of Undertaking (Protection of Employment) Regulations 1981 will apply. In Hay v George Hanson (Builders Contractors) Ltd 1996 IRLR 427, the EAT held that an objection could be imputed by words or deeds or both. To object means a refusal to

give consent to the transfer and the objection is not effective until it is conveyed to either the transferor or the transferee.

505. Mr Hay submitted before the ET that he had not objected to the transfer, but the Tribunal concluded, having regard to regulation (4A) of the 1981 regulations, that by his conduct he had objected. It was satisfied that he had taken all possible steps to resist the transfer, such as, unsuccessfully seeking alternative employment with the transferor, and after the transfer to request a through his union, a redundancy package from the transferor. The transferee had informed him that he was objecting to the transfer. argued that he had not objected to the transfer.

506. On appeal to the EAT, Lord Johnston, in giving judgment held:

> "Having said that, it seems to us that the scheme of this particular piece of legislation is clear, and does not require to be approached in any artificial or so-called purposive way. What is intended is to protect the right of an employee not to be transferred to another employer against his will, and it is 'against his will' that is the executive part of the process. We, therefore, construe the word 'object' as effectively meaning a refusal to accept the transfer, and it is equally clear from reg.5(4A) that that state of mind must be conveyed to either the transferor or transferee. But we do not consider it necessary to lay down any particular method whereby such a conveyance could be effected. In our opinion, it could be by either word or deed, or both, and each case must be looked at on its own facts to determine whether there was a sufficient state of mind to amount to a refusal on the part of the employee to consent to the transfer, and that that state of mind was in fact brought to the attention of either the transferor or the transferee. Furthermore, it must be so brought to their attention before the date of the transfer because, under reg. 5(4B), the transfer itself automatically terminates the contract. Accordingly, if the terms of reg. 5(4A) are not satisfied in fact, there is an automatic transfer on the appropriate date.", paragraph 10.

507. In Ladies' Health & Fitness Club Ltd v Eastmond & Ors [2004] UKEAT 0094/03, the ET found that the employees' objection to the transfer had not been properly informed and could not amount to an objection. After considering the petition signed by the employees, it remitted the question of whether there had been an objection, to the Tribunal. In paragraph 47, it held that,

> "It appears to us clear the fact that it if there is an objection within the Regulations, the fact that it may be high-handed, ignorant, over-reactive or simply misconceived would not affect the position, although of course it might be that on analysis what occurred did not amount to an objection if someone in fact does not know what they are doing".

508. An objection to becoming employed by the transferee within the meaning of regulation 4(7) TUPE includes an objection simply on the grounds of the change of employer or on substantial grounds – University of Oxford v Humphreys [2001] 1 All ER 996.

509. Lord Justice Potter held that: First, the language of paragraph (4B) is plain and unequivocal. An objection is an objection whether made simply on the grounds of the change of employer or on grounds which the Directive regards as

substantial. Second, neither logic nor the language of the decisions in Katsikas and Merckx suggest that the reason underlying the objection should dictate whether or not a transfer of the employee's contract should thereafter ensure. Third, it seems to me that the amendments were intended to put in place a regime in respect of objections to transfer which would take the employee out of the protection afforded by the novation/transfer machinery in paragraphs (1) and (2) and place him under the regime in paragraph (5). In a case where the objection was one of substance (i.e. a detrimental change in working conditions) paragraph (5) would preserve the employee's common law right to sue for dismissal in accordance with the requirement of Article 4.2. In a case where the objection lacked substance, being based on the change of employer alone, the common law right would be expressly removed, a course which Katsikas made clear (and Merckx confirmed) it was open to a Member State to take.

39.. that being so, it is clear that to the extent that the common law right of the employee to terminate and sue for constructive dismissal is preserved by paragraph (5), it is a right which exists and must be asserted against the transferor employer. The reason is twofold. First, it is the nature of the common law right and remedy that both exist in respect of the employer who wrongly terminates the employee's contract of employment and cannot be asserted against a proposed transferee. Second, it is because the introductory wording of paragraph (4A) excludes the statutory novation under paragraph (1) and the comprehensive transfer of rights and obligations under paragraph (2); thus the remedy against the transferor employer is not transferred.

40.. the only remaining question is whether the reference in paragraph (5) to the employee's right to terminate 'if a substantial change is made in his working conditions to his detriment' precludes a remedy by an employee who (like the claimant in this case) treats himself as constructively dismissed because the proposed transfer would necessarily result in such a detrimental change. In my view it does not. Whereas the language may be more appropriate to a case where the employee does not follow the objection route, but waits until after transfer to treat himself as dismissed, it does not seem to me limited to that position. If a substantial change would inevitably result from transfer (as is conceded here to be the case), then as it seems to me, the moment of transfer itself effects the change. Such a construction is in any event necessary in my opinion in order to give full effect to Article 4(2) of the Directive as elucidated in Merckx."

Mr Justice Moore Bick held: "I do not think that paragraph (4A) itself can be read as applying only to objections made for purely personal reasons. It is unqualified in its terms and the principle that an objection by an employee prevents any transfer of the contract of employment or the rights and obligations associated with it to the transferee is one which must logically apply with equal force when an objection is made on substantial grounds. Certain I can find nothing in the judgments in Katsikas and Merckx to suggest that an objection may have different effects in this respect depending on the grounds on which it is made."

510. Notification of the objection by the employee must take place before the date of transfer, Senior Heat Treatment Ltd v Bell [1997] IRLR 614, a case in which the employees had not clearly withheld their consent to the transfer and had continued to work for the transferee.

511. In the case of New ISG Limited v Vernon and Others [2007] EWHC 2665, Chancery Division, it was held that objections made after the date of the

transfer could be valid. In that case employees objected to the transfer two days after the date of the transfer in circumstances where they had not been told the date of the transfer or the identity of the transferee and had neither been informed nor consulted. A purposive interpretation was given to the Acquired Rights Directive.

512. TUPE deems an employee's resignation to be a "dismissal" where it is in response to:

1. a substantial change to the employee's working conditions to their material detriment (regulation 4(9);

2. an employer's repudiatory breach and the employee claims constructive dismissal (regulation 4(11).

513. A dismissal whether express or constructive, will be automatically unfair if the sole or principal reason for it is the transfer itself. If the sole or principal reason for the dismissal is an economic, technical, or organisational reason entailing changes in the workforce, the dismissal will not be automatically unfair under regulation 7(1) but potentially unfair for redundancy of for "some other substantial reason for dismissal", regulation 7(2) and (3), applying section 98(4) ERA 1996. In such cases liability for the dismissal will not pass to the transferee. If, however, the reason for the dismissal is an ETO reason entailing changes in the workforce, then the dismissal will be potentially fair and normal unfair dismissal rules apply, regulation 7(2).

514. The BEIS guidance states that an economic, technical, or organisational reason is likely to include:

> "(a) a reason relating to the profitability or market performance of the transferee's business (i.e. an economic reason);
>
> (b) a reason relating to the nature of the equipment or production processes which the transferee operates (i.e. a technical reason); or
>
> (c) a reason relating to the management or organisational structure of the transferee's business (i.e. an organisational reason)."

515. In regulation 7(3A), "entailing changes in the workforce" includes a change in the location of the workforce.

516. Where an assigned employee objects to the transfer of their employment, all liability rests with the transferor.

517. Where an assigned employee does not object to the transfer and:

1. resigns before the transfer, liability will transfer to the transferee regulation 4(2), unless there is an economic, technical, or organisational reason, where liability would stay with the transferor;

2. resigns after the transfer, liability will transfer to the transferee.

518. In certain circumstances, where an employee resigns and objects after the transfer, this may amount to valid objection under regulation 4(7). This will prevent employees from transferring and liability will stay with the transferor.

519. The options available to the employee who does not wish to transfer are: to terminate the contract on the ground of a substantial change has been or will be made to working conditions to their detriment, regulation 4(9) and will be considered as having been dismissed by the transferor; resign with or without notice on the ground of the employer's repudiation of contract, regulation 4(11) and be treated as having been constructively dismissed; or formally object to the transfer, regulation 4(7), whereby the contract is terminated but there is no dismissal by the transferor for any purpose. The first and second options gives rise to a claim for unfair dismissal. In the second option it may be a fair dismissal if the transferor could show an ETO reason for it.

Regulation 4(9)

520. Regulation 4(9) TUPE provides that if a relevant transfer involves or would involve "a substantial change in working conditions to the material detriment of a person" whose contract of employment transfers "such an employee may treat the contract of employment as having been terminated and the employee shall be treated for any purpose as having been dismissed by the employer".

521. The three necessary elements, which will be for the courts and the tribunals to determine in the light of the circumstances of each case, are:

1. A substantial change. This will depend on the facts of each case.

2. In the employee's working conditions. This is wider than just contractual terms and appears to cover a wide range of matters either before or after the transfer.

3. To their material detriment. The BEIS guidance suggests that "a major relocation of the workplace which makes it difficult or much more expensive for an employee to transfer, or the withdrawal of a right to a tenured post" is likely to fall within regulation 4(9) (page 27).

522. The employee, in relation to the above, may treat their employment as having been terminated.

523. It is merely necessary for the employee to establish a substantial change in their working conditions to their material detriment. There does not have to be a breach of contract by the employer, not even a fundamental breach.

Substantial Change

524. Tapere v South London & Maudsley NHS Trust [2009] IRLR 972, involved a transfer involving a change of location. The EAT considered that the correct question to be asked in identifying whether there is a "substantial change" is;

> *"Whether or not there is a change in working conditions will be a simple question of fact. Whether or not it is a change of substance will also be a question of fact and the employment tribunal will need to consider the nature as well as the degree of change in order to decide whether it is substantial. In the sense that the employee will not be the arbitrator of whether the change is substantial, it might be said that the approach is objective, but the character of the change is likely to be the most important aspect of determining whether the change is substantial."*

Material detriment

525. The next step for the tribunal is to determine whether the change was a "material detriment" for the individual employee concerned. Again, this is a question of fact:

> "Whether the treatment of such a kind that a reasonable worker could or would take the view that in all the circumstances it was to his or her detriment?"
>
> "What has to be considered is the impact of the proposed change from the employee's point of view"

526. In Abellio London Ltd v Musse and others [2021] IRLR 360 EAT; and Cetinsoy v London United Busways Ltd UKEAT/0042/14 (23 May 2014, unreported), the Tribunals, on the facts of those cases, came to different conclusions. Abellio involved a relocation of six miles driving distance from Westbourne Park garage to Battersea garage. The Tribunal held that the length of the journey was a substantial change to the material detriment of the claimants. The EAT held that in London a move from north to south of the river was substantial. In addition, an increase in the working day of between one to two hours was a material detriment. It was irrelevant that the contract contained a mobility clause; "working conditions" referred to an employee's actual circumstances, not what they could be contractually required to do.

527. In the Cetinsoy case, a relocation of 4.3 miles driving distance from Westbourne Park garage to Stamford Brook garage, was not a substantial change or a material detriment. the EAT upheld the employment tribunal's decision that the addition of between 30 minutes and 60 minutes travelling per day was not substantial or to the employees' material detriment. The EAT stressed that the question whether a transfer involves or would involve a substantial change in working conditions is not asking about contractual terms. It is asking about a change in the way in which, or the environment in which, people work when comparing the position after the transfer of undertaking with that before.

528. Mr Bailey, counsel for Arriva London, appeared in that case for the respondent, London United Busways.

529. Mr Justice Langstaff P, held:

> "[26] This evaluation is one based on factual assessment; accordingly it can only be set aside if the answer to the question is perverse or if it has not been approached properly. The judge in para 44 treated it as a question of fact. He set out the facts, if briefly, although the facts here probably could not have been elaborated much further. His approach to this issue does not display error. By using the words "in context" Mr Baily submitted, we think correctly, that the judge was referring to the context of travel within London for bus drivers, and it may well have been also a context in which the terms of the contract were relevant. The terms of the contract which the Claimants said each of them agreed with CentreWest had envisaged the possibility of moving, without breach, to other garages in the same general area, though some involved a greater travel distance for the Claimant concerned. In London, in the context of those contractual arrangements and having heard the witnesses, the judge came to the view he did."

530. In Tapere v South London and Maudsley NHS Trust [2009] ICR 1563, the EAT held that the transfer of the claimant, who was part of the hospital's procurement team based at Burgess Park, Camberwell, to Bethlem Hospital in Beckenham, was a substantial change in working conditions.

531. Although all the claimants rely on the specific term in their contracts, we are satisfied that it does not prohibit Arriva London from moving them to another location so long as the distance involved falls within a reasonable commute.

Constructive unfair dismissal, regulation 4(11)

532. The common law right of an employee to resign and claim constructive dismissal is expressly preserved by regulation 4(11) of TUPE.

533. In Cetinsoy, the EAT upheld the employment tribunal's decision that there was no standing to bring an unfair dismissal claim under regulation 4(11). Although it was a contractual term that the employees worked out of Westbourne Park and the requirement to work at Stamford Brook was therefore a breach of contract, it was not a fundamental breach.

534. Under section 95(1)(c) of the Employment Rights Act 1996 ("ERA"):

> "(1) For the purposes of this Part an employee is dismissed by his employer if… the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".

535. A constructive unfair dismissal claims requires that there be there must be a fundamental breach going to the root of the contract amounting to a repudiation of it by the employer; the employee accepts the breach and

resigns without undue delay; the breach is not affirmed by the employee, Lod Denning, Western Excavation (ECC) Limited v Sharp [1978] IRLR 27.

536. The fundamental breach can be a breach of the mutual duty of trust and confidence, which is an implied term in all employment contracts. The test is whether the employer acted without reasonable and proper cause in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties, Mahmud and Malik v BCCI [1997] ICR 606, HL.

537. The test for determining whether the employer has acted in breach of this term is a severe one. The conduct of the employer must have destroyed or seriously damaged the relationship. There must have been no reasonable and proper cause for the conduct Gogay v Hertfordshire County Council [2001] IRL 703).

538. It is not sufficient for an employer to be guilty of unreasonable conduct. He must be guilty of a breach of an actual term of the contract and the breach must be serious enough for it to be said to be fundamental or repudiatory, Western Excavation (ECC) Limited v Sharp.

539. There is no breach simply because an employee subjectively feels that a breach has occurred no matter how genuinely this view is held. If on an objective view there has been no breach then the employee's claim will fail, London Borough of Waltham Forest v Omilaju [2005] IRLR 35.

540. The Court of Appeal held in Nottinghamshire County Council v Meikle [2004] IRLR 703 that the employee must resign in response, at least in part, to the employer's fundamental breach of contract, but it does not have to be the sole or effective cause of the resignation.

541. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978 the Court of Appeal listed five questions that it should be sufficient to ask to determine whether an employee was constructively dismissed.

    1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

    2. has he or she affirmed the contract since that act?

    3. if not, was that act (or omission) by itself a repudiatory breach of contract?

    4. if not, was it nevertheless a part, applying the approach explained in Waltham Forest v Omilaju, of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence?

5. did the employee resign in response (or partly in response) to that breach?

542. In WE Cox Toner v Brook [1981] IRLR 443 a delay of 7 months undermined a directors constructive unfair dismissal claim even though, for much of the time, he had "protested vigorously". Mere delay does not constitute affirmation but calling on the employer for further performance will be affirmation "certainly when he accepts his next pay packed… the risk of being held to affirm the contract is very great."

543. In Fereday v South Staffordshire NHS Primary Care Trust UKEAT/0513/10 the fact an employee waited 6 weeks after alleging fundamental breach before resigning proved fatal. The delay combined with other factors, including the acceptance of sick pay, meant the employee had affirmed the contract.

Economic, Technical, or Organisational Reason

544. Regulation 4(4) states that any purported variation of the terms of a contract of employment "is void if the sole or principal reason for the variation is the transfer."

545. Regulation 4(4) will not apply if the sole or principal reason for the variation is an ETO reason "entailing changes in the workforce, provided that the employer and the employee agree to that variation" regulation 4(5)(a), or the terms of that contract permit the employer to make such a variation", regulation 4(5)(b).

546. The reference to "changes in the workforce" in regulation 4(5)(a), has the same meaning as section 139(1) ERA 1996, regulation 4(5A).

547. A dismissal under regulation 7(1) is potentially fair if it is for an ETO reason "entailing changes in the workforce of either the transferor or the transferee before or after the relevant transfer.", regulation 7(2).

548. The is no comprehensive definition of "changes in the workforce" but the BEIS guide suggests that an ETO reason may include: "a reason a reason relating to the profitability or market performance of the new employer's business, ie an economic reason; a reason relating to the nature of the equipment or production processes which the new employer operates, ie a technical reason; or a reason relating to the management or organisational structure of the new employer's business, ie an organisational reason." , page 23.

549. A transferor cannot rely on the transferee's ETO reason, Hynd v Armstrong and Others [2007] SLT 299, Court of Session.

550. The transferor is unlikely to have an ETO reason where the whole or the whole part of a business is being transferred. The reason being is that there is no business that is continuing. As such, the transferor cannot show that purported changes are being made with a view to continuing the business because it is either being sold or, in the case of a service

provision change, the contract has been lost, BSG Property Ltd v Tuck [1996] IRLR 134.

Redundancy

551. Section 139, ERA, sets out the circumstance which gives rise to a redundancy situation. It states:

> "(1) For the purposes of this act an employee who is dismissed if the dismissal is wholly or mainly attributable to 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 their 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."

552. In Williams and Others v Compair Maxam Ltd [1982] ICR 156, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. The EAT stated that it was not for the tribunal to impose its own standards and decide whether the employer should have acted differently. The tribunal should not substitute its view for that of the employer. Instead, it should ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted.

Some other substantial reason

553. In the alternative, it is contended that the dismissal was for "some other substantial reason such as to justify the dismissal of an employee holding the position which the employee held" under section 98(2) ERA. Namely, the requirement that the Claimants change their workplace location.

554. To amount to a substantial reason to dismiss, there must be a finding that the reason could, but not necessarily does, justify dismissal, Mercia Rubber Mouldings Ltd v Lingwood [1974] ICR 256, NIRC.

555. Whether the reason, once established justifies dismissal is to be answered under section 98(4) ERA. The question is whether in the circumstances:

> ".. the employer acted reasonably or unreasonably in treating the reasons as a sufficient reason for dismissing the employee" and the "equity" of the decision for this reason under s.98(4)(b) ERA.

556. As in all unfair dismissal claims, a tribunal will decide the fairness of the dismissal by asking whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might adopt, section 98(4).

557. Section 135(1)-(2) ERA provides:

> "(1) an employer shall pay a redundancy payment to any employee of his if the employee –
>
> (a) is dismissed by the employer by reason of redundancy, or
>
> (b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.
>
> (2) Subsection (1) has effect subject to the following provisions of this Part (including, in particular, sections 140 to 144, 149 to 152, 155 to 161 and 164)."

558. Section 141 ERA provides:

> "141 – Renewal of contract or re-engagement.
>
> (1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment –
>
> (a) to renew his contract of employment, or
>
> (b) to re-engage him under a new contract of employment,
>
> with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.
>
> (2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.
>
> (3) This subsection is satisfied where –
>
> (a) the provisions of the contract as renewed, or of the new contract, as to –
>
> (i) the capacity and place in which the employee would be employed, and
>
> (ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

(b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) the employee is not entitled to a redundancy payment if –

(a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,

(b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract.

(c) the employment is suitable in relation to him, and

(d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated."

Notice pay

559. The employer will not be liable to pay damages by reason of any failure to pay "wages" to an employee in respect of a notice period that the employee has failed to work, regulation 4(10).

560. If an employee brings a claim for unpaid wages, it is for the employee to prove that they were willing and able to work – Miles v Wakefield Metropolitan District Council [1987] IRLR 193.

Unauthorised deduction from wages

561. Section 13 of ERA provides as follows:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised –

> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
>
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
>
> (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion…"

Disability

562. Paragraph 20 of Schedule 8 EA10 provides:

> "20. Lack of knowledge of disability, etc.
>
> (1) A is not subject to a duty to make reasonable adjustments fi A does not know, and could not reasonably be expected to know –
>
> (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;
>
> (b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."

563. The EAT considered that the correct approach to adopt to actual or constructive knowledge was analysed by HHJ Eady QC in A Ltd v Z [2020] ICR 199:

> "23. In determining whether the employer had requisite knowledge for section 15(2) purposes, the following principles are uncontroversial between the parties in this appeal:
>
> (1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment: see York City Council v Grosset [2018] ICR 1492, para 39.
>
> (2) The respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of section 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect: see Donelien v Liberata UK Ltd (unreported) 16 December 2014, para 5, per Langstaff J (President), and also see Pnaiser v NHS England [2016] IRLR 170, para 69, per Simler J.
>
> (3) The question of reasonableness is one of fact and evaluation: see Donelien v Liberata UK Ltd [2018] IRLR 535, para 27; none the less, such assessments must

be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability-related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for Equality Act purposes (see Herry v Dudley Metropolitan Borough Council [2017] ICR 610, per Judge David Richardson, citing J v DLA Piper UK LLP [2010] ICR 1052), and (ii) because, without knowing the likely cause of a given impairment, "it becomes much more difficult to know whether it may well last for more than 12 months, if it has not [already]done so", per Langstaff J in Donelien 16 December 2014, para 31.

(5) the approach adopted to answering the question thus posed by section 15(2) is to be informed by the code, which (relevantly) provides as follows:

> "5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'. "5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making inquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."

(6) it is not incumbent upon an employer to make every inquiry where there is little or no basis for doing so: Ridout v TC Group [1998] IRLR 628; Secretary of State for Work and Pensions v Alam [2010] ICR 665.

(7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making inquiries, the likelihood of such inquiries yielding results and the dignity and privacy of the employee, as recognised by the code."

Reasonable adjustments

564. In accordance with section 20 of the Equality Act 2010 ("EA10"), there is a duty:

> "(3)…where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with a person who is not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."

565. In accordance with section 21 of the Equality Act 2010:

> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."

566. Substantial disadvantage is such disadvantage as is more than minor or trivial. The Code (at paragraph 6.16) emphasises that the purpose of the comparison is to determine whether the disadvantage arises in consequence of the disability.

567. Paragraph 6.28 of the Code identifies some of the factors which might be taken into account when deciding whether a step is reasonable. They include:

    1. the size of the employer;

    2. the practicability of the proposed step;

    3. the cost of making the adjustment;

    4. the extent of the employer's resources; and

    5. whether the steps would be effective in preventing the substantive disadvantage.

The absence of a mobility clause

568. In the case of Jones v Associated Tunnelling Co Ltd [1981] IRLR 477, the EAT held that where there is no mobility clause in the contract of employment it is necessary to imply one. The correct term to imply in that case was that the employee could be required to work anywhere "within reasonable daily commuting distance" of his or her home.

569. The above approach was followed in the case of Courtaulds Northern Spinning Ltd v Sibson and Another [1988] ICR 451. In that case, the claimant, a HGV driver, resigned and claimed constructive dismissal when the respondent, his employer, required him to work at a different depot. The issue was whether the Employment Tribunal implied the correct term. The EAT upheld its judgment. On appeal the Court of Appeal held that the term to be implied into the contract in order to give business efficacy was one enabling the employer to direct the driver to work, for any reason, at any place within reasonable daily reach of his home.

Conclusions

570. We have considered the agreed list of issues in our conclusions.

571. There is no dispute that these cases involve a service provision change.

Route 340 Drivers

572. It has been a long established industry practice that Spares drivers do not transfer. The Transport for London Guidelines 2017, states that the incumbent operator should immediately lockdown the rota for that route and only transfer staff to or from it where absolutely necessary. From 12 May 2018, we are satisfied that the transferring routes had been locked down.

The 340 drivers should not have been and were not assigned those routes. Where there is an industry practice, that practice carries some weight in determining what should have occurred although the practice, it is acknowledged, could be subject to the applicable law in that area. We do, however, take into account the provisions in the more recent TfL guidelines.

573. The spares drivers were not assigned to an organised grouping in relation to the transferring routes. Their principal purpose was to fill in gaps as needed at the Watford Garston garage. Where there was no work Spare drivers became standby drivers. The drivers assigned to the transferring routes continued to carry out their duties on those routes.

574. Spares drivers were never an organised grouping who had a deliberate and principal purpose of operating on routes 288, 303/305, H18, and H19. We agree with Mr Nuttman that the four transferring routes were split between Edgware and Harrow which made it difficult for the Spares driver and Arriva London to determine to which a Spares driver was assigned to.

575. We bear in mind the judgment in the case of Eddie Stobart, namely that the organised grouping must be organised intentionally.

576. In this case the former 340 route Spares drivers were told that they were to operate as Spares drivers on the transferring routes covering sickness, holiday, and any absences.

Improper motive

577. We further conclude that Arriva London wanted to minimise costs by the improper assertion that the 340 Spares drivers were assigned to the transferring routes in the full knowledge that previous transfers did not include them. Previously Arriva London wanted to include engineers and cleaners but later changed its mind. If they were all assigned to the organised grouping, why were they removed from scope? The argument did not bear scrutiny and is not accepted by the tribunal that the Spares drivers were assigned to the organised grouping. Arriva London knew that the transferring routes were in lockdown as from 12 May 2018 and that no driver should move to them. It had set aside £600k to cover itself as a contingency against redundancies. The assertion was an attempt to avoid liability and we further conclude that its conduct was improper. The fact that Watford garage was closing was not unique as London Arriva changed its mind over the engineers and cleaners. We bear in mind the judgment in the case of Carisway.

578. Even if we are wrong about the position of the Spares drivers in that they were not assigned to an organised grouping, we are satisfied that the assignment was temporary, regulation 2(1) and that there was no transfer. We conclude that they were assigned to the transferring routes to assist the drivers until the date of transfer, 1 September 2018.

Mr Victor Stroud

579. Mr Stroud's claims are automatic unfair dismissal, regulation 7(1); constructive dismissal, Regulation 4(9); constructive unfair dismissal, Regulation 4(11); redundancy pay, s.139 Employment Rights Act 1996; and notice pay. His claim numbers are 3335109/2018 and 331038/2018.

Constructive unfair dismissal, regulation 4(11)

580. We first consider constructive unfair dismissal. Was there a repudiatory breach or breaches of Mr Stroud's contract of employment? We bear in mind that he did not have a car and was concerned that he would find it difficult getting transport from Edgware to his home after his late evening shift. From his home to Watford garage was 12-18 minutes on public transport and 20-23 minutes walking. During his second consultation meeting he stated that he was not interested in either Hemel Hempstead, Luton, or Arriva London due to the distances involved and not having a car. He did not want to transfer to London Sovereign and did not want to work outside of Watford. It was Mr Mhargh, General Manager, who wrote to him on 6 July 2018, stating that if he did not transfer, he would be deemed to have resigned. He handed in his staff badge and other items to London Arriva on 31 August. We conclude that this was a resignation.

581. Being reliant on public transport, to travel from his home in Watford to Edgware he would have to take two buses. From his home to Watford Junction and from Watford Junction to Edgware. This would be closer to an hour or slightly longer, as the journey time from Watford Junction to Edgware is 33 minutes, 36-37 minutes return, and travel by bus from his home to Watford Junction which would be more than 18 minutes. No one told him about the alleged Night Supervisor's car ferry.

582. The changes to his travel times to and from work were fundamental amounting to a repudiatory breach of his contract entitling him to resign and claim constructive dismissal.

583. No fair reason has been given for his dismissal. We have concluded that he was constructively unfairly dismissed. This claim is well-founded.

Automatic unfair dismissal, regulation 7(1)

584. In relation to the claim of automatic unfair dismissal, regulation 7(1), we are satisfied that the sole reason for Mr Stroud's dismissal was the transfer in that he was required to work for London Sovereign at its Edgeware garage which he was unable to do because of the travel involved. He was, therefore, unfairly dismissed. This claim is well-founded.

Constructive dismissal, regulation 4(9)

585. In relation to Regulation 4(9), he was not subject to the transfer for reasons we have already given above as a Spares driver.

586. If we are in error, we find that there were substantial changes. He worked on the 340 route and was unable to move to Palmers Green as he did not

own a car and that purchasing a car was not a viable option because of the expense involved. Following the transfer of the 340 route to Palmers Green, he remained at Watford garage as a Spares driver. The alternative locations discussed during his second consultation were not viable options because of the distances involved and he did not have a car. Although he was in the process of considering purchasing a car, to insist that he should use his retention bonus to purchase a car, would be unreasonable as he had his own priorities and needs for that money.

587. Without a car he would be required to use public transport which added to his time. He worked the late shift although he did not have any issues working at Edgware, the problem was getting home at night. We find that this was a substantial change and taking into account his own concerns, objectively considered, the substantial changes were to his detriment. He accordingly, was constructively dismissed. This is not our primary conclusion as we have concluded that he was not the subject of the transfer.

588. If we are in error in relation to the above conclusions, we conclude that he was in a redundancy situation. In relation to redundancy pay, s.139 ERA 1996, Watford Garston garage was due to close. He was not assigned to the organised grouping in relation to the five transferring routes. The alternative routes were not suitable as they require him to carry cash in the form of a float; he would have been on a lower rate of pay; and there was to be a mobility clause in his contract. Taking all these factors into account it was reasonable for him to refuse alternative employment although none was expressly offered to him. Arriva London only put to him the possibility of work as a bus driver in one of its garages.

Notice pay

589. With regard to notice pay, he had been continuously employed since 27 February 2004 to 31 August 2018. Thereafter he retired prematurely. He had not been paid his notice and on termination was entitled to it. This claim has been proved.

Ms Amanda Verboort

590. Ms Verboort's claims are in case numbers 3335108/2018 and 3331333/2018. The claims are unfair dismissal and failure to make reasonable adjustments, are against Arriva London; constructive dismissal Regulation 4(9); automatic unfair dismissal, Regulation 7(1); redundancy pay, s.139(1) ERA 1996; and notice pay, against Arriva London and London Sovereign.

Failure to make reasonable adjustments

591. In relation to failure to make reasonable adjustments, she worked on routes 142, 258 and 340. Route 142 left Arriva London in January 2018 and routes 258 and 340 left in June 2018.

592. Her disabilities at all material times were sleep apnoea and hearing loss in her left ear.

593. While on routes 142 and 340, Arriva London made reasonable adjustments to her working conditions, such as going home to use her CPAP machine; working on split shifts to rest during the middle of the day as she did not work far from her home; being allowed to use her CPAP machine at Watford garage; working regular shift patterns; and working certain routes to minimise interference with her hearing aids.

594. She could not move to Palmers Green on route 340 as there were no spread over duties allowing her breaks to use her CPAP machine or to rest. In addition, some shifts there operated on a 50-hour week basis which she was unable to do because of her disabilities.

595. Working at either Hemel Hempstead, Luton, Aylesbury, or High Wycombe was also unsuitable as they included 50 hour working weeks which would also interfere with her rest periods. She continued to work at Watford Garston garage as a Spares driver working spread over or split shifts where possible. In July 2018, Arriva London informed her that they could not guarantee her spread over shifts.

596. She claims that the following provisions, criteria, or practices applied to her, namely:

    1. Requiring bus drivers to work shifts without substantive rest breaks;

    2. Requiring bus drivers to work at Edgware garage during their shifts;

    3. Requiring bus drivers to work non-TfL routes where they would have to deal with different fare stages.

597. Apart from the third provision, criterion, or practice, we do find that the requirements were to work shifts with no substantive rest breaks and to work at Edgware garage during their shifts, did place Ms Verboort at a substantial disadvantage in comparison with those who were not disabled or without her disabilities because she required periods of rest during her shifts due to her sleep apnoea and was required to used her CPAP machine during the day at her home. A fixed shift pattern with a definitive start and finish time enabled her to regulate her sleep. Apart from her statement in evidence that because of her partial deafness she was unable to hear customers clearly on non-Tfl routes, this had not been demonstrated by clear probative evidence.

598. We are satisfied that Ms Verboort needed to have clear shift patterns and time allowed for her to go home to rest and to use her CPAP machine as well as to sleep. Although this was accommodated after July 2018, the adjustments were neither regular nor consistent. This put her at a substantial disadvantage in that she was unable to rest during her shifts and it had an adverse impact on her effectiveness as a Bus Driver.

599. Further, as regards failure to make reasonable adjustments, enquiries into an alternative position at Hemel Hempstead, which would have been a suitable location but there was no guarantee that her reasonable adjustments would be implemented. It was, therefore, not a reasonable step taken by Arriva London.

600. A reasonable step would have been to liaise with the other drivers to work out a regular shift pattern to accommodate her rest periods. We did not receive any evidence that they had taken such a step. Reasonable adjustments are not meant to be on an 'as and when' basis but must be consistent, removing or to alleviating the disadvantage. For the reasons given by Ms Twomey in her submissions, there was a failure to make reasonable adjustments on the part of Arriva London and this claim is well-founded.

Constructive dismissal, regulation 4(9)

601. The claim under regulation 4(9) is not well-founded. Ms Verboort was not assigned to the transferred routes.

602. If we are in error and she did transfer to the routes, she resigned on 1 September 2018, the date of the transfer. Her claim is against London Sovereign not reinstating reasonable adjustments at Edgware was a substantial change to her material detriment.

603. As already stated, our main conclusion is that she did not transfer with the transferring routes.

Automatic unfair dismissal, regulation 7(1)

604. In relation to the automatic unfair dismissal claim, regulation 7(1), the claimant was a Spares driver and was not subject to the TUPE transfer. She did not transfer over to London Sovereign. Her constructive unfair dismissal was a dismissal by Arriva London and the reason for the dismissal was the transfer because Arriva London considered that she was transferring. She was dismissed because the sole or principal reason was the transfer. This claim is well founded.

Redundancy pay

605. As regards redundancy pay, s.139 ERA 1996, if we are in error in relation to the above claims, Arriva London was going to close the Watford Garston garage and did in fact close it several weeks after 31 August 2018. It intended to cease to carry on its business at that garage where the claimant worked. For the reasons given above alternative work at Edgware or Hemel Hempstead was not suitable. She would, therefore, entitled to redundancy pay.

Notice pay

606. As regards notice pay, she was continuously employed by Arriva London North from 4 January 2009 to when she resigned on 1 September 2018. As she was automatically unfairly dismissed, she was entitled to notice pay. She was not paid in lieu of notice. This claim has been proved.

Mr John Brown

607. Mr John Brown's claim numbers are 3335110/2018 and 3331176/2018. He claims automatic unfair dismissal, regulation 7(1); constructive dismissal, regulation 4(9); constructive unfair dismissal, regulation 4(11); redundancy pay, s.139 ERA 1996; and notice pay.

Automatic unfair dismissal, regulation 7(1)

608. In relation to automatic unfair dismissal, regulation 7(1), he was driving on route 340 and worked on a part-time basis, 20 hours a week. On 1 March 2018, he sustained an injury when he slipped in snowy conditions fracturing his ankle in four places. He was signed off work until 6 September 2018. He was unable to drive during his period of sick leave. He would have been a Spares driver, therefore, not assigned to the organised grouping of those engaged in the transferring routes. He was told, however, by Arriva London that if he did not transfer it would be deemed that he had resigned on 1 September 2018 and no longer its employee. He objected to the transfer and was dismissed by Arriva London North. We have concluded that he was automatically unfairly dismissed. The sole or principal reason for the dismissal related to transfer, in that, he was treated as one of the transferring employees when legally he was not assigned to the routes. Accordingly, this claim is well-founded.

Constructive dismissal, regulation 4(9)

609. In relation to the constructive dismissal claim, regulation 4(9), he was not the subject of a valid TUPE transfer as he was a Spares driver formerly driving route 340. Even if we are in error in relation to the transfer, the proposed changes, in our view, were not substantial. Apart from the 125cc motorcycle, he wanted to use for work but deemed it not powerful enough to ride on the motorway, he was also in possession of a more powerful motorbike he would be able to use were he to be based at Edgware. We were not given a breakdown of the increase in travel costs if he was required to work at Edgware. This claim is not well-founded and is dismissed.

Constructive unfair dismissal, regulation 4(11)

610. As regards regulation 4(11), the constructive unfair dismissal claim, here he places reliance on the mobility clause in his contract. As we have concluded, the mobility clause is subject to the implied term that the move to a new location has got to be within a reasonable commute. In his case the additional travel time to Edgware from his home was 8 minutes. There was

no fundamental of his contract of employment entitling to resign on 31 August 2018. We have come to the conclusion that it was reasonable for him to have worked at Edgware and he was able to travel there using one of his motorcycles. Accordingly, this claim is not well-founded and is dismissed.

Redundancy pay

611. In relation to claim for redundancy pay, the Watford garage was closing, and work suggested at Hemel Hempstead was not suitable alternative employment because of the pay differential of around £1,500 a year and having to work with cash. His redundancy pay claim is well-founded.

Notice pay

612. In respect of his notice pay claim, he commenced employment on 4 December 2000 and was continuously employed by Arriva London until 31 August 2018. He had not been paid his notice pay upon his dismissal. This claim has been proved.

613. Liability is against Arriva London.

Mr Kojo Djan

614. Mr Djan's claims are in claim number 3333875/2018. He claims automatic unfair dismissal, regulation 7(1); constructive dismissal, regulation 4(9); constructive unfair dismissal, regulation 4(11); redundancy pay, s.139 ERA 1996; and notice pay, against Arriva London.

Automatic unfair dismissal, regulation 7(1)

615. As regards automatic unfair dismissal, regulation 7(1), Mr Djan was assigned to route 340 until it moved to Palmers Green. Thereafter he became a Spares driver. He was not subjected to the transfer for the reasons already given in relation to Spares drivers. He was required to transfer to London Sovereign on 1 September 2018 but resigned on 30 August 2018. Arriva London wrote to him on 5 September 2018 stating that he had transferred on 1 September 2018 to London Sovereign. In addition, it was deemed that he had resigned.

616. The sole or principal reason for the dismissal by Arriva London was the transfer. Accordingly, this claim is well-founded.

Constructive dismissal claim, regulation 4(9)

617. In relation to the constructive dismissal claim, regulation 4(9), he was not the subject of the transfer, therefore, that provision do not apply to him, and the claim is not well-founded.

618. Even if he was part of those transferring to London Sovereign, the changes were not substantial. There was an increase in his travel to Edgware rather than Watford of around 7 miles, about 8 minutes additional travel time.

Even if 9 miles, as he had claimed, it was not a substantial change. There is no evidence that the additional cost would be £10 in fuel per week and parking costs around £20 per week. There were parking spaces at Edgware. He failed to investigate the possibility of working at the Milton Keynes garage, closer to his home. This would have been suitable taking into account his need to urinate at regular intervals.

Constructive unfair dismissal claim, regulation 4(11)

619. In relation to the constructive unfair dismissal claim, regulation 4(11), he relies on there being no mobility clause in his contract. As we have concluded, there is an implied term that to move an employee's location has to be within reasonable commute. The additional travel time to Edgware would be 8 minutes to his journey time one way. We were not persuaded that he would incur a cost of £10 per week in fuel, and £20 per week in parking. This claim is not well-founded and is dismissed.

Redundancy pay

620. In relation to the redundancy pay claim, a suitable position was available at Milton Keynes, within walking distance from his home but he did not pursue it. He was, therefore, not dismissed by reason of redundancy. This claim is not well-founded and is dismissed.

Notice pay

621. As regards the claim for notice pay, as he was dismissed under regulation 7(1), he should have been paid his notice pay. He was continuously employed by Arriva London from 24 September 2007 and was dismissed on 30 August 2018.

Mr Nagalingam Jayaratnam

622. Mr Jayaratnam's claims are in claim form 3331669/2018 and was presented on 27 July 2018 against Arriva London. (618-629); and 3303547/2019, presented on 31 January 2019, against Arriva London, and London Sovereign. (640-658)

Out of time

623. An issue in this case is whether the claim of unfair dismissal, in the second claim form, against Arriva London, was presented out of time. In the first claim form, presented on 27 July 2018, against Arriva London, he claims redundancy pay, notice pay and holiday pay. There is no dispute that in the second claim form, presented on 31 January 2019 against both Arriva London and London Sovereign, that the claims of unfair dismissal against

London Sovereign is in time. Mr Jayaratnam stated on his claim form that he left his employment on 1 November 2018.

624. It is Mr Tramboo's submission, that Mr Jayaratnam's employment transferred under TUPE to London Sovereign. If that be right, there was no break in his employment from Arriva London to London Sovereign. Therefore, the claim against Arriva London should be considered as being in time.

625. Mr Jayaratnam worked on route 340 and did not move to Palmers Green. The transferring routes were all on lockdown before June 2018 and he moved on to the spares rota. As a Spares driver he was not part of an organised grouping and, if he was, it was a temporary assignment. He did not transfer on 1 September 2018 to London Sovereign.

626. His employment with Arriva London came to an end on 31 August 2018. He voluntarily entered into a new contract with London Sovereign to work at Edgware and did that for a period of two months before he resigned on 1 November 2018.

627. He had access to union advice and/or representation. We were not told what was operating in his mind and he issued his second claim form against Arriva London knowing that he had left that respondent on 31 August 2018. There was no continuing act or a continuing state of affair. The employment relationship had changed. He was under a new employer from 1 September 2018. His claims against Arriva London of automatic unfair dismissal, regulation 7(1); constructive unfair dismissal, regulation 4(11); constructive dismissal regulation 4(9) were presented out of time and the Tribunal do not exercise its discretion to extend time. They are, accordingly, struck out as the tribunal do not have jurisdiction to hear and determine them as against Arriva London.

<u>Automatic unfair dismissal, regulation 7(1), and constructive dismissal, regulation 4(9)</u>

628. As he was not the subject of the TUPE transfer to London Sovereign, his claims under regulations 7(1) and 4(9) are not well-founded. He moved voluntarily to London Sovereign. We conclude that he did not resign because of the transfer and for any reason connected with it.

629. Even if the Tribunal is wrong about Regulation 4(9), Mr Jayaratnam continued to work at Edgware for a period of two months. From Watford to Edgware only increase his journey time from six minutes to 15 minutes which was not substantial. Although he said his wife needed the family car, she did not work, and he had used it when he was working at Watford on occasions.

Notice pay

630. He was not unfairly dismissed having regard to s.98(4) Employment Rights Act 1996 as he voluntarily decided to work for London Sovereign at Edgware.

631. He also was not wrongfully dismissed by Arriva London as he of his own free will, moved to London Sovereign.

Redundancy pay

632. In relation to redundancy pay, this is claimed on the basis that when the 340 moved to Palmers Green he did not go with it. Following union advice, he, along with the claimants, argued that they were entitled to redundancy pay. We find, although he is not subject to TUPE transfer as he was not assigned to the organised grouping, there was work at Watford garage after June 2018. He did work there until 31 August 2018.

633. However, there was no discussion about suitable alternative employment. Hemel Hempstead was raised but that would result in a change in his terms and conditions to a much lower hourly rate of pay. He was entitled to treat as unsuitable alternative employment and, thereby, claim redundancy pay. This claim is well-founded.

634. Regulation 7(1) is out of time as against Arriva London. Likewise, is regulation 4(11).

635. The claims against London Sovereign are not well-founded as there was no TUPE transfer. The claimant, in any event, worked for the company for two months before he resigned.

Mr Tomasz Pyszynski

636. Mr Pyszynski claims under claim no. 3334587/2018. His claims are only against Arriva London. They are constructive dismissal, regulation 4(9); constructive unfair dismissal, regulation 4(11); redundancy pay s.139 ERA; and notice pay.

Constructive dismissal, regulation 4(9)

637. He worked on route 303. He is on the ELI list as one of the transferring employees. He is not listed of having objected to the transfer. He, however, in his letter dated 31 August 2018, we conclude that he was objecting to the transfer to London Sovereign although he wrote the standard line advised by the Union, namely "for the avoidance of doubt, I am not objecting to the transfer to RATP London Sovereign itself." His letter then listed what he considered to be the substantial changes to his working conditions which were all to do with working at Edgware garage and not at Arriva London's garages. These included: increased travel time; cost of travel; loss of Arriva benefits such as bus pass; reduction in social commitments as he trains in martial arts; reduction of time spent with his family as a result of his alleged

increased travel time of two hours forty minutes return; and difficulty procuring a parking place at Edgware.

638. As he was objecting to the transfer, he did not transfer to London Sovereign.

639. In relation to regulation 4(9), we found that regarding the travel distances and times, that the travel to and from Mr Pyszynski's home to Edgware was reasonable as it would have taken him around an hour journey time and that his travel from home to Watford Garston garage was, at the most, according to him, 50 minutes.

640. Without evidence of alleged increase cost of travel, we do not place much reliance on his estimates.

641. We have come to the conclusion that the changes to his working conditions were not substantial nor were they to his material detriment. Accordingly, this claim is not well-founded and is dismissed.

Constructive unfair dismissal, regulation 4(11)

642. As regards regulation 4(11), reliance is based on the mobility clause, but we have concluded that the travel from his home to Edgware was a reasonable commute. This claim is not well-founded and is dismissed.

Redundancy pay

643. In relation to redundancy pay, the Watford garage was closing. The claimant lived in Dunstable. He used to work and live in Milton Keynes. A position at Luton garage would not have been far from his home and he would have saved on travel costs to offset the reduction in pay. Luton was one of the garages referred to in Mr Sands' letter to him dated 21 August 2018. We conclude that this was suitable alternative employment. This claim is not well-founded and is dismissed.

Notice pay

644. In relation to notice pay, he had refused to countenance a move to Luton garage and as it was suitable employment, he was not dismissed either by reason of redundancy or otherwise entitling him to notice pay. This claim has not been proved and is dismissed.

Mr Slawomir Pyszniak

645. In his claim no. 3335079/2018 presented on 28 November 2018, he claims against Arriva London North, redundancy pay and referred to alleged breaches of the TUPE Regulations. In the list of issues, he claims breach of Regulation 4(9); automatic unfair dismissal, Regulation 7(1); redundancy pay, s.139 ERA; and notice pay.

Constructive dismissal, regulation 4(9)

646. Mr Pyszniak's routes were H18, H19 and 303. He was, therefore, assigned to the grouping to be transferred He was told that he would be transferring to Edgware. On 13 August 2018, he wrote stating that he would be continuing his employment with Arriva London and would not be transferring to London Sovereign under TUPE. It was understood that on 1 September 2018, his contract would terminate. He stated that he did not own a vehicle and that the distress caused by the transfer would negatively impact on his health and wellbeing; there was no mobility clause in his contract; and that his place of work was Watford Garson garage. He worked late shifts and returned his passes on 31 August 2018.

647. He would walk to work from his home to Watford garage. To purchase a car to travel to Edgware would have cost him around £5,000, he said in his submissions to the Tribunal. His command of the English language was limited, and he would rely on others to assist him.

648. In relation to regulation 4(9) he was unaware that the shift supervisor would provide a lift to his home at the end of his shift were he to work from Edgware. He had not been told about that. The travel distance from his home to Watford garage is 1.1 mile. It would take him 30 minutes on foot one way. From his home to Edgware would be 16.4 miles incurring travel by car of 40 minutes, which he said would cost him £7.38 a day. The travel to Harrow garage is a distance of 17 miles with a travel time of 44 minutes at a cost of £7.65 a day. He would need to relocate to Edgware where rents were higher than in Watford. To commute by bus to Edgware would take him an hour each way. The additional travel time meant that time spent with his family would be reduced. It was clear that based on the Measures letter from Mr Mhagrh, dated 6 July 2018, that if he objected to the transfer, it would be deemed that he had resigned. He had reached 60 years of age in 2018.

649. As he did not have a car, the transfer to Edgware would require him walking to Watford station or taking a bus to Watford station, then a bus from Watford station to Edgware which is the 142. This would add to his cost. Were he to work late shifts, it is likely that he would arrive home around 2am in the morning. We have come to the conclusion that the extra time in travel and additional cost were significant factors amounting to substantial changes which operated to his material detriment. The difficulty for him, however, is that we have concluded that he objected to the transfer, therefore, liability under this regulation would not pass to London Sovereign. It is against Arriva London.

650. There was no medical evidence in support of his alleged back problem and in relation his operation in 2015.

651. We have come to the conclusion that without a car Mr Pyszniak would have to walk or take the bus to Watford station which was slightly over one mile away from his home. The journey would have taken him between 20 and 30 minutes from his home to Watford garage. He would then wait for a bus at Watford station for about five to ten minutes to ensure he takes a bus that will get him there at Edgware on time to start his shift. The journey by bus

would be 30 minutes. The additional travel time would be around 40 minutes to Edgware. His return journey would be problematic. He had not been told of the possibility that the shift supervisor may give him and others on the late shift a lift home. We find there were substantial changes to his material detriment were he to work at Edgware. This claim is well-founded.

Automatic unfair dismissal, regulation 7(1)

652. In relation to regulation 7(1), he was threatened with resignation should he fail to transfer to London Sovereign. He handed in his passes on 31 August 2018. He did object to being transferred to London Sovereign. We have concluded that the reason for his resignation was the transfer and he was automatically unfairly dismissed. This claim is well-founded.

Redundancy pay

653. Regarding claim for redundancy pay, the alternatives provided would involve increased travel and time and less pay. There would be a mobility clause added to his contract. Such alternatives were not suitable, and he is entitled to claim that he was made redundant. The redundancy pay claim is well-founded.

Notice pay

654. As he had not been paid notice pay, this claim has been proved. Liability is against Arriva London.

Mr Ryszard Wozny

655. Mr Wozny claims are in claim no. 3335013/2018. He claims constructive dismissal, Regulation 4(9); automatic unfair dismissal, regulation 7(1); constructive unfair dismissal, regulation 4(11), and redundancy pay, s.139 ERA, against Arriva London, and London Sovereign.

656. He worked on route 303 and was subject to the transfer. He was told that he would be working at Edgware garage from 1 September 2018.

657. In his grievance letter dated 31 August 2018, we are satisfied that he objected to the transfer to London Sovereign.

Constructive dismissal, regulation 4(9)

658. In relation to regulation 4(9), his travel from home to Edgware would be further than from his home to Watford Garston garage. He was unable to rely on his old VW Passat motorcar and it was unreasonable to expect him to use the £3,500 loyalty bonus towards the purchase of a car as he had other personal and family priorities. Walking from his home to Watford Garston garage to 12 minutes. The distance from his home to Edgware is 10.6 miles. The travel time from his home to Edgware was 1 hour 7 minutes to 1 hour 20 minutes. This, we conclude, represented a substantial increase in his travel time and a substantial change to his work conditions.

He could not afford to run his motor car and sold it in October 2018 for £300. The longer commute would have impacted on his time skyping his family in Poland. The changes to his working conditions were substantial and operated to his material detriment. This claim against Arriva London is well-founded.

Automatic unfair dismissal, regulation 7(1)

659. In relation to regulation 7(1), he was told that if he did not transfer, he would have been deemed to have resigned from his employment with Arriva London. If there was no transfer, he would have remained at Watford Garson garage. Although he sent a letter dated 1 September 2018, to Mr Clapson, considering himself as having been constructively unfairly dismissed, he had, on the previous day, wrote to Mr Jason Jones objecting to the transfer, stating that he was looking forward to receiving redundancy pay and notice pay. We are, therefore, satisfied that he had resigned on that date prior to the transfer. He was constructively dismissed, and that dismissal is automatically unfair. This claim is well-founded.

Constructive unfair dismissal, regulation 4(11)

660. In relation to the regulation 4(11), as we have concluded, the respondent can require an employee to move to a different location within a reasonable commute. In this case the move to Edgware was unreasonable having regard to the claimant's particular circumstances. The changes to his working conditions were fundamental entitling him to treat his contract of employment as at an end. He resigned without delay on 31 August 2018. We were not provided with a potentially fair reason for his dismissal. This claim is well-founded.

Redundancy pay

661. In relation to his claim for redundancy pay, the garage was close and the remaining routes were to be transferred to London Sovereign on 1 September 2018. Mr Wozny was in a redundancy situation and the alternative position was working from Hemel Hempstead on a lower hourly rate but there would be a mobility clause. TfL benefits would no longer be available and he would be travelling a greater distance than the 12-20 minutes' walk it took him from his home to Watford Garston garage. We have come to the conclusion that the work at Hemel Hempstead was unsuitable. He is entitled to redundancy pay. This claim is well-founded.

Notice pay

662. His claim for notice pay has been proved as he had been dismissed by Arriva London without pay in lieu of notice.

Mr Brian Burt

663. Mr Burt in his claim no. 3335094/2018 claims against Arriva London and London Sovereign, breaches of regulation 4(9); regulation 7(1); constructive unfair dismissal, regulation 4(11), redundancy pay, s.139; and notice pay.

Automatic unfair dismissal, regulation 7(1)

664. In relation to regulation 7(1), he worked on routes H18/H19 and was part of the group transferring. He was due to transfer to London Sovereign's Harrow garage. He resigned on 31 August 2018, as he was not willing to work for London Sovereign. He had lodged a grievance on 7 August 2018 raising concerns about the proposed location, objecting to it, and in his letter dated 31 August 2018, he treated himself as having been constructively dismissed. Arriva London asserts that the letter was received on 3 September 2018. We bear in mind that he had earlier on 3 August 2018, raised objection to the move to Harrow and the alleged commensurate increased travel cost. He resigned on 31 August 2018, as he was not willing to work for London Sovereign. He was, therefore, constructively dismissed by Arriva London and the principal or sole reason was the transfer. We were not provided with a potentially fair reason for the dismissal. We have concluded that regulation 7(1) is well- founded.

Constructive dismissal, regulation 4(9)

665. In relation to regulation 4(9) because he had objected to transfer his employment did not transfer to London Sovereign. We were not convinced that there were substantial changes to his working conditions were he to work from Harrow. The distance from his home to Harrow was shorter than from his home to Watford Garston garage. He lived at Staines upon Thames at the time. Further, we were not satisfied that there were parking problems at Harrow garage as new premises were acquired to provide additional parking.

666. In addition, there was no medical evidence produced by Mr Burt as to the stress and anxiety caused were he to travel to Harrow. This claim is not well-founded and is dismissed.

Constructive unfair dismissal, regulation 4(11)

667. In relation to Regulation 4(11), the term relied upon is the contractual term in relation to his place of work being Watford Garston garage and the absence of a mobility clause in his contract of employment. This is consistent with our earlier conclusions, that the employer can require an employee to move location within a reasonable commute. The move to Harrow was reasonable as it was closer to his home than Watford Garston garage. This claim is not well-founded and is dismissed.

Redundancy pay

668. In relation to redundancy pay, Mr Burt was informed of vacancies at Arriva London's other garages but did not explore them as he wanted redundancy pay. He believed that he would lose his length of service were he to take up employment at one of those garages. He also went to Fulwell and Heathrow. He did not enquire whether he would lose his continuity of service. We are satisfied that a transfer within Arriva companies would not have resulted in a loss of continuity of service. This claim is not well-founded.

Notice pay

669. With regards to notice pay, as he was automatically unfairly dismissed under regulation 7(1), he is entitled to notice pay from Arriva London. This claim has been proved.

Mr Trevor Hines

670. Mr Hines claims under case no. 3335100/2018, are constructive dismissal, Regulation 4(9); automatic unfair dismissal, Regulation 7(1); constructive unfair dismissal, regulation 4(11), redundancy pay, s.139 ERA; and notice pay. These claims are against Arriva London. He has not issued proceedings against London Sovereign.

671. He worked on route 142 until it transferred in January 2018. Thereafter he was engaged in spread over duties covering all the routes at Watford Garston garage. He was not assigned to an organised grouping for the five transferring routes. Therefore, his employment did not transfer as he was a Spares driver.

Automatic unfair dismissal, regulation 7(1)

672. In relation to his claim under regulation 7(1), he knew that the garage was about to close. He started his search for employment and was told on 26 July 2018, that his application for employment at Fulwell garage was successful.

673. There is no record of him attending the induction, but he could not recall much about what was discussed if he did attend. We are satisfied that he did not attend the induction organised by London Sovereign as his recollection was vague.

674. The offer of employment at Fulwell garage was by RATP Dev London of which London Sovereign is a part. He did not want to transfer. The principal reason for his resignation was to work at Fulwell which is much closer to his home. There was no dismissal. This claim is not well-founded and is dismissed.

Constructive dismissal, regulation 4(9)

675. In relation to regulation 4(9) we have come to the conclusion that there were no substantial changes to his working conditions. Harrow garage is only

three minutes longer in journey time by car than from his home to Watford Garston garage. In addition, there were parking spaces at Harrow.

676. As he did not attend the induction at Edgware, we find it difficult to accept that the proposed changes to his working conditions were substantial as he would not have been aware of all the changes to his working conditions were he to work at Harrow.

677. There were parking spaces at Edgware garage, at Parr Road. He was interested in working at Edgware. It was unlikely he would be paying £4.00 each day for parking at Sainsbury's as there were parking spaces free of charge on site at Edgware and at Parr Road with a connection service from Parr Road to Edgware.

678. In any event, Harrow garage which involved an additional three minutes travelling time from his home, in the Tribunal's view, was relatively insignificant. During his consultation he stated that he did not want to transfer to London Sovereign. There were no substantial changes. This claim is not well founded and is dismissed.

Constructive unfair dismissal, regulation 4(11)

679. In relation to regulation 4(11), he relies on the lack of a mobility clause, but here, the Tribunal will imply the term that an employer can relocate an employee within a reasonable commute. The travel to Harrow garage was within a reasonable commute by car.

680. Moreover, the reason for leaving Arriva London was that he had been offered and had taken up a role at Fulwell. In a constructive unfair dismissal claim, the employee must establish a causal connection between the repudiatory breach and the resignation. This had not been established in Mr Hines' case. This claim is not well-founded and is dismissed.

Redundancy pay

681. As regards redundancy pay, he did not tell RATP Dev London that he was the subject of a TUPE transfer. He was not redundant as he said during his consultation meeting that he would be transferring to Twickenham, meaning Fullwell. Arriva London was, therefore, unable to offer him suitable alternative employment. Accordingly, this claim is not well-founded and is dismissed.

Notice pay

682. In relation to notice pay, he resigned to take up another role. He was not dismissed by Arriva London. This claim has not been proved.

Mr Murat Uslu

683. Mr Uslu's claims are in claim no. 3335113/2018. These are regulation 4(9); Regulation 7(1); s.139; constructive unfair dismissal, regulation 4(11), redundancy pay; and notice pay. His claims are against Arriva London, and London Sovereign.

Automatic unfair dismissal, regulation 7(1)

684. In relation to regulation 7(1), automatic unfair dismissal, he worked on route 340 which moved to Palmers Green in June 2018. He, thereafter, became a Spares driver at Watford Garston garage. He was told that if he did not transfer it would be deemed to be a resignation. He did not transfer but resigned on 12 August 2018 when he handed in his badge and other items of property, effective on 31 August 2018. The reason for the resignation was the transfer because Arriva London insisted that he would be transferred, and he declined to be transferred. We were not provided with an ETO reason for the dismissal or a potentially fair reason. This claim is, therefore, well-founded.

Constructive dismissal, regulation 4(9)

685. In relation to regulation 4(9), he was not part of the organised grouping being transferred, therefore, he did not become an employee of London Sovereign. He, therefore, could not raise a valid objection to the transfer.

686. If we are in error in that his employment was not due to transfer, we would find, in the alternative, that he did object to the transfer and in effect working for London Sovereign as he went on holiday from 12-31 August 2018 handing in his equipment and passes on 12 August. He would ordinarily walk from his home to Watford Garston garage. As he did not have a car the journey from his home to Edgware was one hour fifteen minutes to one hour twenty minutes by public transport. He told the Tribunal it was difficult to get reliable public transport for early or late shifts. He needed time to attend to his wife who had a heart condition.

687. We also concluded that Hemel Hempstead would have involved a pay cut of 77pence per hour which equates, according to the claimant, to over £1,000 a year. He had a mortgage to pay, and children to pick up from school.

688. The changes to his work conditions were substantial and operated to his material detriment. Our primary conclusion is that he was not the subject of the transfer.

Constructive unfair dismissal, regulation 4(11)

689. As regards regulation 4(11), Mr Uslu relies on the absence of a mobility clause in his contract of employment. However, it is subject to the implied term to a reasonable commute. It was unreasonable to have required him to take on a post at Hemel Hempstead or at Edgware due to the additional travel time and cost. He was told that if he failed to transfer, he would be deemed to have resigned. This was a fundamental breach as he should not have been the subject of the transfer. He resigned without delay by handing

in his equipment and passes on 12 August 2018, effective on 31 August 2018. No potentially fair reason has been given for his dismissal. This claim is well-founded.

Redundancy pay

690. In respect of his redundancy pay claim, Watford Garston garage was due to close. There was no further work for him. The Hemel Hempstead alternative was unsuitable due to the lower rate of pay, the distance he would be travelling and his responsibilities attending to the needs of his wife and school-aged children, as well as having to pay a mortgage.

691. As already stated, Edgware also required him to spend 1 hour 15 minutes travelling by public transport each way. Harrow garage was further away and much more difficult to get to than Edgware. He was redundant and entitled to redundancy pay.

Notice pay

692. In relation to notice pay, he was dismissed by Arriva London but was not paid in lieu of notice. This claim has been proved.

Mr Adam Mickiewicz

693. Mr Mickiewicz's claims are in claim no. 3335122/2019. They are regulation 7(1); Regulation 4(9); Regulation 4(11); redundancy pay, s.139; and notice pay.

694. He worked on route 303 which was transferring.

Automatic unfair dismissal, regulation 7(1)

695. In relation to the regulation 7(1) claim, we find that on 19 August 2018, he objected to the transfer to London Sovereign. He was told that if he did not agree to the transfer he would be deemed to have resigned. Notwithstanding the statement on 31 August 2018, that he was not objecting to London Sovereign being his employer, in reality he was. He raised issues in relation to the substantial changes to his working conditions, such as the increased travel to and from Edgware; his family, in that he helped his daughter who was a single mother, with childcare; and the impact on his family's finances. He also reserved the right to bring constructive unfair dismissal and breach of TUPE. In addition. he applied for employment as a Coach Driver one week before the 31 August. We have concluded that by his conduct he had resigned on 31 August and did not transfer. The principal reason was the transfer. He was, therefore, dismissed by Arriva London by reason of the transfer. This claim is well founded.

Constructive dismissal, regulation 4(9)

696. In relation to regulation 4(9), he objected to the transfer. His claim is therefore against Arriva London. He was not able to substantiate his travel times to Edgware of between 1 hour 10 minutes to 1 hour 50 minutes. We have found that it would take him 16 minutes by car from his home to Edgware garage.

697. Having regard to the case of Cetinsoy, it was a reasonable commute. Further, there were adequate parking spaces available at Edgware.

698. There was no evidence corroborating his statement that he suffered at the material time from back problems, or that time spent commuting exacerbated his condition leaving him in pain. Furthermore, there was no supporting evidence that using his vehicle would cost him an additional £1,100 per year in travel costs to and from work.

699. Taking all these factors into account, we concluded that this claim is not well-founded and is dismissed.

Constructive unfair dismissal, regulation 4(11)

700. With regard to regulation 4(11), constructive unfair dismissal, Mr Mickiewicz relies on the absence of a mobility clause in his contract. We came to the conclusion that working at Edgware was within a reasonable commute. This claim is not well-founded and is dismissed.

Redundancy pay

701. In relation to redundancy pay, we conclude that he was in a redundancy situation. At the consultation meeting on 17 July 2018, there was no discussion about suitable alternative employment. We find that this claim against Arriva London is well-founded.

Notice pay

702. As he was dismissed by Arriva London, he had not been paid in lieu of notice, this claim has been proved.

703. Although in the list of issues Mr Mickiewicz is claiming disability discrimination, this was not pursued by him during the hearing.

704. All claims against London Sovereign are dismissed.

Piotr Moson

705. Mr Moson's claims are in case no. 3335588/2018 presented on 26 December 2018, and are against Arriva London only. They are regulation 4(9); regulation 4(11); regulation 7(1), and redundancy pay, s.139.

706. He worked on route 305 which was one of the transferring routes.

Constructive dismissal, regulation 4(9)

707. In relation to regulation 4(9), we find that he did object to the transfer on 16 August 2018 and on 28 August 2018 by writing to Mr Alex Jones and to Mr Jason Jones respectively. He was due to be transferred to Edgware. In answer to the Judge's question, he said that he had no objection working for London Sovereign, however, in answer to the question from Mr Nuttman, he said that he objected to working for London Sovereign.

708. We have concluded that having regard to the correspondence and his decision not to work at Edgware and to leave for Poland, he was objecting to working for London Sovereign. We have considered the judgment in Hay v George Hanson (Builders Contractors) Ltd. There was, therefore, no transfer to London Sovereign.

709. He lived close to Watford Garston garage, 0.2 miles and would walk to work, a journey that would take him about five minutes. Watford Junction bus station is two miles from his home. He did not have a car and there were substantial changes to his journey times. It would take him one hour on public transport getting to Edgware and one and a half hours for the return journey. He would have had to move to Edgware, but he told the Tribunal, and we do accept his evidence, that the rents were higher than at Watford. He would be unable to afford to pay his rent were he to move to Edgware. The travel times would restrict his physical activities, such as going to the gym, walking, and swimming. We conclude that the travel times to Edgware and the need to seek rental accommodation in Edgware, were substantial.

710. The substantial changes were to his material detriment as they affected his personal life. This claim is well-founded.

Constructive unfair dismissal, regulation 4(11)

711. In relation to Regulation 4(11), we have concluded that a move to Edgware was not within reasonable commuting distance for him. He was concerned and expressed his views in correspondence and at the induction. The distance involved amounted to a fundamental breach entitling him to resign. He resigned on 31 August 2018 without undue delay. No potentially fair reason has been given for his dismissal. Accordingly, this claim is well-founded.

Automatic unfair dismissal, regulation 7(1)

712. We find that he resigned because of the transfer. The sole reason for his dismissal was the transfer to London Sovereign. We were not given an ETO reason for the dismissal. Accordingly, this claim is well-founded.

Redundancy pay

713. With regard to his redundancy pay claim, Hemel Hempstead was seven miles from his home at Garston. By car it would have taken him 18 minutes,

but he did not have one. He would lose his London travel pass and was not sure whether there was a staff bus available. We were not given evidence of the staff bus operating times and whether the times would be suitable for Mr Moson.

714. The loss of the London travel pass, in the Tribunal's view, was a significant loss. Further, there would be a reduction in pay 77pence hour less, which over a year is quite significant.

715. In addition, he would be required to carry a float with all the attendant risks that would involve to his safety.

716. We have come to the conclusion that Hemel Hempstead was not suitable alternative employment. He gave evidence in relation to Palmers Green which was 18 miles from his home and without a car, he would have to travel by public transport which would take him two hours each way. This, too, was not suitable alternative employment.

717. We have come to the conclusion that this claim is well-founded.

Mr Trymore Mavhangira

718. Mr Mavhangira's claims are in case no. 3300282/2019, presented on 7 January 2019. They are regulation 7(1); regulation 4(9); redundancy pay, s.139; notice pay; accrued unpaid holiday; and failure to give reasons for dismissal, s.92 ERA.

719. Mr Mavhangira previously worked on route 142 which transferred to London Sovereign in January 2018 and thereafter, route 340 on the late shifts. When the 340 moved to Palmers Green, he remained at Watford Garston garage. From 10 June 2018, he worked on routes H18, 303 and 305 until they transferred. The assignment of him to the 3 routes after the lockdown date of 12 May 2018, we conclude, was a temporary assignment. He was, therefore, not the subject of the transfer. We further conclude that he did not transfer to London Sovereign.

Automatic unfair dismissal, regulation 7(1)

720. In relation to regulation 7(1), although he was on the ELI list when he turned up for the induction on 20 August 2018, he was told, the following day by Mr Doughty, that he was not on the list of employees to be transferred. He had been warned previously that if he did not accept the transfer he would be deemed to have resigned. London Sovereign did not accept him.

721. On 4 September 2018, Arriva London confirmed that he had been transferred. This was in response to Mr Mavhangira's email dated 1 September 2018.

722. We have come to the conclusion that he was dismissed by Arriva London as there was no transfer to London Sovereign. The reason for the dismissal was that he was told that if he did not transfer on 1 September, it would be

deemed that he had resigned. The sole reason for the dismissal was because of the transfer. We were not given a ETO reason for his dismissal. This claim is well-founded.

Constructive dismissal, regulation 4(9)

723. In relation to regulation 4(9), if he was the subject of the transfer, he did not object to it. If we are in error and he did object, by 18 July 2018, the drivers were told where they would be moving to. In his case it was to Edgware. He needed Saturdays off to engage in his work as a Minister of religion. Were he to be based at Edgware he would have to take public transport as he did not have a car, and there was no guarantee that he would have Saturday off. The travel to Edgware was 10.3 miles according to London Sovereign which would result in an increase of 17 minutes by car, but he did not have a car for his use. There was also no staff bus. These changes were substantial and operated to his detriment, particularly being unable to have Saturday off to minister as a Pastor and having to travel to Edgware by public transport. Our primary conclusion is that he was not the subject of the transfer.

724. This constructive dismissal claim is not well-founded.

Redundancy pay

725. In relation to redundancy pay, Watford Garston garage was closing. Mr Mavhangira lived in St Albans. It was recorded that he was interested in moving to Hemel Hempstead, but he denied that that was the case. We find that he was interested in Hemel Hempstead but was concerned about whether he would be allowed Saturdays off. Hemel Hempstead did reply stating that he would be allowed to take Saturdays off, but he was not interested as it would result in reduction in salary of around £1600 per year. There was no staff car to get home.

726. We conclude that the offer was not suitable. It was reasonable for him to have refused as £1600 per year is a significant loss of income for someone with family commitments. This claim is well-founded.

Notice pay

727. As regards the notice pay claim, upon his dismissal he was entitled to notice pay. This claim has been proved.

Accrued unpaid holiday

728. In relation to accrued unpaid holiday, we did not receive evidence as to the amount outstanding. If he was due to be paid holiday upon termination by

Arriva London, then this claim has been proved subject to the assessment of the number of days accrued but unpaid.

729. In relation to the failure to give written reasons for his dismissal, Arriva London failed to do so, and this claim is well-founded.

730. All claims against London Sovereign are not well founded and are dismissed.

Mr Thamotharam Sivakumar

731. Mr Sivakumar claims are in case no. 3310844/2019 presented on 27 February 2019, in which he is claiming redundancy pay against Arriva London and London Sovereign.

Redundancy pay

732. We found that Mr Sivakumar had agreed with Arriva The Shires Ltd on 1 February 2010, that he would be on the spread over rota backdated from 14 January 2010. He was only required to work between Monday and Friday and would finish at 7pm. He did not drive a specific route. He needed a flexible working arrangement to care for his wife who, at all material times, was suffering from a serious kidney condition, and his three children were all under the age of 13 years.

733. By 13 December 2017, he was told that spread overs were not guaranteed due to the diminution in work at Watford Garston garage.

734. He worked on routes 142, 258 and 340, all of which were transferred by June 2018, thereafter, he worked as a Spares driver doing spread over shifts.

735. He was going to be transferred to Edgware garage and was due to drive route 142. He was given early, middle, and late shifts but could only work the late shifts. The travel from his home to Edgware would take him about two hours by bus.

736. On 28 August 2018, at the induction, he was told by Mr Doughty, that he would not be transferring on spread overs.

737. We have already found that he was a Spares driver. As a Spares driver his employment did not transfer to London Sovereign for the reasons we have already given in this judgment. He was not offered alternative employment at another garage by Arriva London as Watford Garston garage was due to close, and he needed a position that would allow him to care for his wife. This claim is well-founded.

738. If we are in error in relation to the position of Spares drivers not transferring, and he was due to transfer, London Sovereign was offering him work without the guarantee of him doing spread overs either informally or informally, and required him to work early, middle, and late shifts, which did

not allow him to engage in the care of his wife and school-aged children. Employment at Edgware was unsuitable and was in a redundancy situation.

739. Our conclusion here is that in respect of the redundancy pay claim liability is against Arriva London.

740. The redundancy pay claim against London Sovereign is not well-founded and is dismissed.

Mr Daniel Paprocki

741. Mr Paprocki's claims are in case no. 3335608/2018 in which he claims breach of regulation 4(9); breach of regulation 4(11); automatic unfair dismissal, regulation 7(1), redundancy pay, s.139; and notice pay. His claims are against Arriva London although London Sovereign has also submitted a response.

Constructive dismissal, regulation 4(9)

742. Mr Paprocki drove route 305 which was one of the transferring routes. On 29 August 2018, he wrote to Arriva London objecting to working for London Sovereign. He stated that he considered himself as having been constructively dismissed by reason of redundancy and would be taking the matter to an Employment Tribunal. This was sent to Mr Marc Sands, Mr Jason Jones, Mr Mhagrh at Arriva London. We are satisfied, having regard to the guidance given in the Hay case, that Mr Paprocki was objecting to the transfer and considered himself as having been constructively dismissed. He did not transfer to London Sovereign. Mr Sands wrote to him on 5 September 2018, after the date of TUPE transfer, stating that he, Mr Paprocki, would be deemed to have resigned were he not to transfer to London Sovereign.

743. In relation to the changes to his proposed working conditions, he was living in Watford, which is 0.4 mile from Watford Garston garage. He had no car and to travel to Edgware from his home would have taken him between 54 minutes to 1 hour 24 minutes.

744. Hemel Hempstead meant a considerable reduction in pay and Palmers Green was a greater distance to travel with also a commensurate reduction in pay. The increased travel time to Edgware was substantial and operated to his material detriment as he did not have a car. We, therefore, have come to the conclusion that this claim is well-founded.

Constructive unfair dismissal, regulation 4(11)

745. In relation to regulation 4(11), reliance on the absence of a mobility clause is subject to the implied term that an employer can require an employee to relocate within a reasonable commute.

746. We have concluded that to transfer either to Edgware, Hemel Hempstead or Palmers Green, Mr Paprocki was unable to agree to because of the increased distances involved, the attendant costs and the reduction in pay were he to move to either Hemel Hempstead or Palmers Green. The changes amounted to a fundamental breach or breaches of his contract of employment entitling him to resign. He resigned on 29 August 2018 without undue delay. Arriva London had not put forward evidence as a potentially fair reason for dismissal. This claim is well-founded.

Automatic unfair dismissal, regulation 7(1)

747. Mr Paprocki resigned because of the proposed changes to his working conditions consequent upon the transfer. The principal reason for the dismissal was the transfer. No ETO reason was put forward for the dismissal. Accordingly, this claim is well-founded.

Redundancy pay

748. In relation to redundancy pay, based on our above conclusions, the alternative work at the three garages were not suitable and the claimant was entitled not to countenance working there. This claim is well-founded.

Notice pay

749. In relation to notice pay, he had not been paid upon termination by Arriva London. He was entitled to pay in lieu of notice. This claim is proved.

750. There are no claims against London Sovereign.

Mr Moson and Mr Paprocki

751. Both Mr Moson and Mr Paprocki represent themselves. In the list of issues, although there is no express reference to regulation 4(11), there is reference to constructive unfair dismissal which we took to include, consistent with many of the claimants, regulation 4(11).

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Employment Judge Bedeau

Date: 31 March 2022

Sent to the parties on: 31 March 2022

For the Tribunal Office