



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case Nos: 4108833/2021, 4108834/2021, 4108837/2021, 4108838/2021,**
4108839/2021, 4108840/2021, 4108841/2021, 4108842/2021, 4108843/2021,
4108844/2021, 4108845/2021, 4108846/2021, 4108847/2021, 4108850/2021,
4108851/2021, 4108852/2021, 4108853/2021, 4108854/2021, 4108855/2021,
10 **4108856/2021, 4108857/2021, 4108858/2021, 4108859/2021, 4108860/2021,**
4108861/2021, 4108862/2021, 4108863/2021, 4108865/2021, 4108866/2021,
4108868/2021, 4108869/2021, 4108870/2021, 4108871/2021, 4108872/2021,
4108873/2021, 4108874/2021, 4108875/2021, 4108876/2021, 4108877/2021,
4108878/2021, 4108879/2021, 4108880/2021, 4108881/2021, 4108882/2021,
15 **4108883/2021, 4108884/2021, 4108885/2021, 4108886/2021, 4108887/2021,**
4108889/2021, 4108890/2021, 4108891/2021, 4108892/2021, 4108893/2021,
4108894/2021, 4108895/2021, 4108896/2021, 4108897/2021, 4108898/2021,
4108899/2021 (V)

Held on 25 February 2022

20

Employment Judge N M Hosie

25 **Mrs L Carbis**

**1st Claimant
Represented by
Mr S Pinder,
Solicitor
Instructed by
Atticus Law**

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Miss S Armstrong

**2nd Claimant
Represented by
Mr S Pinder,
Solicitor
Instructed by
Atticus Law**

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40 **Mrs L Carbis**

**3rd Claimant
Represented by
Mr S Pinder,
Solicitor
Instructed by
Atticus Law**

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E.T. Z4 (WR)

5	Mrs K Clements	4th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Mr Robert Cole	5th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Mr Gavin Coles	6th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Mrs K Cullen	7th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Mr S Cummings	8th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Miss E Davies	9th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Mr Paul Evans	10th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Miss P Evans	11th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Mrs R Everitt	12th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Ms K Frain	13th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Mr M Hedley	14th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Miss T Heming	15th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Miss K Heminsley	16th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Mr M Holley	17th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Mrs S Jones	18th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Mr M Jones	19th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Miss G Kaur	20th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Mr D Kernick	21st Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Miss L Lamley	22nd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Miss S Mann	23rd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Mrs J Marron	24th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Mr J Marshall	25th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Ms H McDonald	26th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Mr C Miller	27th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Miss C Morgan	28th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Mr I Morgan	29th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Mr P Myerscough	30th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Miss C Oliver	31st Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Miss H Ould	32nd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Mrs D Rawle	33rd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Mrs A Roach	34th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Ms K Robinson	35th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Miss R Samuel	36th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Mrs G Shoukri	37th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Ms J Snell	38th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Mrs L Southwood	39th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Miss E Thompson	40th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Mr S Thrush	41st Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Miss J Tumelty	42nd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Mr J Tumelty	43rd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Mr A Wakeham	44th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Mr J Williams	45th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Mr J Winney	46th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Miss M Wise	47th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Mr M Woolliscroft	48th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Mr P Yoxall	49th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Miss N West	50th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Mr C Miller	51st Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Mrs A Chilvers	52nd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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5	Mrs S Pitaru	53rd Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
10	Miss K Dennis	54th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
15	Miss T Cooper	55th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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25	Miss A Cozens	56th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
30	Miss H Law	57th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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40	Miss N Wheeler	58th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
45	Miss C Masters	59th Claimant Represented by Mr S Pinder, Solicitor Instructed by Atticus Law
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Miss K Felce

60th Claimant
Represented by
Mr S Pinder,
Solicitor
Instructed by
Atticus Law

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Peacocks Stores Limited (In Administration)

1st Respondent
No Appearance

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Secretary of State for Business, Energy
and Industrial Strategy

2nd Claimant
No Appearance

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that:-

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1. the Judgment dated 23 December 2021, insofar as it relates to Mrs Rebecca Everitt (Case No. 4108846/21), is revoked;

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2. the first respondent, Peacocks Stores Limited, acted in breach of its obligations in terms of s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

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3. the first respondent, Peacocks Stores Limited, should pay a protective award of 90 days' remuneration to each claimant, in terms of s.192 of the 1992 Act.

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REASONS

1. The claimants sought protective awards, in terms of s.189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). The first
5 respondent is in administration. By letter dated 10 May 2021 to the claimants’ solicitors, the Administrators advised that they consented to these proceedings. The second respondent submitted an ET3 Response Form but advised that the claims were “*neither supported nor resisted*” and that the Secretary of State did not propose to be represented in person at any future
10 hearing of this case. Nevertheless, I had regard to the terms of the Response Form in arriving at my decision.

Mrs Rebecca Everitt Case No. 4108846/21

2. On 23 December 2021, D Ellison, Legal Officer, issued a Judgment
15 dismissing a number of claims. The claim number 4108846/21 by Mrs Rebecca Everitt was dismissed in error. Accordingly, with reference to Rule 70 in Schedule 1 of the Rules of Procedure, on the application of the claimant’s solicitor, I reconsidered the Judgment and decided that it should be revoked but only in respect of Mrs Everitt’s claim number 4108846/21.

20 Hearing

3. At the Hearing, which was conducted remotely by video conference using the Cloud Video Platform (“CVP”), I heard evidence from three claimants, namely James Marshall, Alison Roach and Sarah Armstrong. They spoke to
25 witness statements which were included in the bundle of documents which had been submitted by the claimants’ solicitor (C261-265). Each of the witnesses gave their evidence in a measured, consistent and convincing manner and presented as credible and reliable. Further witness statements were included in the bundle (C.266-275). These were consistent and
30 corroborative. I had no reason to doubt their accuracy.

4. I was also satisfied that these claims by each of the claimants were competent in terms of s.189(1)(d) of the 1992 Act.

Findings in fact

- 5 5. Having heard the evidence and considered the documentary productions, I was able to make the following findings in fact, relevant to the issues with which I was concerned. Mr Marshall was employed at the first respondent's Head Office in the Marketing and Customer Services Department. Although he was involved in so-called consultation meetings at the Head Office, it was clear there was no meaningful consultation. These were consultation meetings, in name only.

6. I was taken to the Minutes of certain consultation meetings such as the first one on 16 October 2020 (C104-110). Questions posed to the first respondent's representatives were not answered in any meaningful way, the standard answer being "*We don't know what will be happening*" and the like.

7. This theme continued throughout all the meetings. For example, the Minutes of the meeting on 23 October record, typically, the following exchanges and questions posed by Michael Hogg (C.117):-

"4. Are staff that are being made redundant required to return to the office on the 2nd November?"

- Answer: 4. *As advised in 1st meeting we cannot answer that at the moment as we do not know where the company will be.*

5. On the document sent out from HR, the word is 'proposed' what does this really mean and who is proposing to who?"

- Answer: 5. *This is the company proposal. We say 'proposed' as no final decisions have been made, the collective consultation meetings and individual meetings are an opportunity for employees to offer alternative proposals to ways to avoid redundancy or the number of redundancies."*

8. Regrettably, there were no such “proposals”. This led to a sense of frustration on the part of the claimants, as can be seen from the following exchange recorded in the Minutes of the meeting on 30 October 2020 (P.143):-

5 “40. *When do you intend to give answers to the questions that you reply with -CANNOT ANSWER AT THIS TIME ?*”

10 Answer: 40. *As soon as we are able to provide an answer we will, where we cannot provide answered (sic) sometimes it is impossible to answer that at this time or to give a date when it can be answered.*”

9. I find in fact, therefore, there was no meaningful consultation at Head Office despite the Minutes of various meetings.

- 15 10. Further, so far as the other stores were concerned there was no consultation whatsoever.

11. I am satisfied, therefore, there was no consultation with any of the claimants, as required in terms of the 1992 Act.

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12. Each of the claimants was dismissed because of redundancy in terms of s.139 of the Employment Rights Act 1996, on various dates between 4 December 2020 and 2 March 2021, such terminations taking immediate effect.

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13. The first respondent Company went into administration on 26 November 2020. Thereafter the standard response from the first respondent to questions posed by the claimants was “*speak to the administrators*” (see P.156, for example). However, none of the claimants had any meaningful discussions with the administrators either.

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Special circumstances

14. I then went on to consider whether, in terms of s.188(7) of the 1992 Act, there were special circumstances which rendered it not reasonably practicable for the first respondent to comply with its obligation to consult. As was said in **Clarks of Hove Ltd v. Bakers' Union** [1978] ICR 1076 a "special circumstance" requires there to be something "exceptional", "out of the ordinary" or "uncommon". Redundancies are the consequence of adverse financial circumstances leading to insolvency. That was the case here. Insolvency itself is not "exceptional" or "out of the ordinary". There were no "special circumstances" in the present cases in my view.

15. I was satisfied, therefore, that the first respondent Company failed to comply with the requirements of s.188 of the 1992 Act in that it failed to consult and I shall make a declaration to that effect in terms of s.189(2).

16. Section 189(2) also provides that in addition to making such a declaration, a Tribunal "*may also make a protective award*". As I understand it, that issue, and the basis upon which any such award is calculated, is entirely a question for the Tribunal. In reaching my decision, I was assisted by the guidance of the Court of Appeal in **Susie Radin Ltd v. GMB & Others** [2004] IRLR 400:

"A Tribunal in exercising its discretion to make a protective award, and for what period, should have regard:

- (1) to the purpose of the award as a sanction for breach by the employers of their obligations to consult;*
- (2) to exercise of the Tribunal's discretion to do what is just and equitable while focusing on the seriousness of the employer's default, which may vary from the technical to a complete failure, as here, to provide any of the required information and to consult; and*
- (3) to adopt what Lord Justice Gibson described as the 'proper approach' in a case where there has been no consultation by starting with the maximum period and reducing it only if there are mitigating circumstances justifying a reduction."*

17. In the present cases, the claimants were afforded no opportunity of proposing alternative measures which might have avoided or reduced the need for their redundancies or which might have enabled alternative work to be found. The questions which they raised in this regard were never properly answered. In
5 my view, therefore, there were no mitigating circumstances which would justify a reduction in the maximum period. I decided, therefore, in all the circumstances, that it would be just and equitable to make a protective award for a period of 90 days, starting with the various dates between 4 December 2020 and 2 March 2021 when the claimants' employment was terminated,
10 with immediate effect.

18. For the avoidance of doubt, I attach Schedules with details of the claimants and the "establishments" where each of them was employed. I am satisfied that 20 or more employees were made redundant at each of these
15 establishments.

Schedule 1 – Head Office

Schedule 2 – Warehouse and Distribution Centre

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Schedule 3 – Liverpool Bootle Store

Schedule 4 – Middlesbrough store

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Schedule 5- Worthington store

Schedule 6 – Sunderland store

Schedule 7 - Sunderland store 2018

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Schedule 8 - Boston Retail Park

Schedule 1 – Head Office

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Title	First Name	Surname
Mrs	Linda	Carbis
Mr	Robert	Cole
Mr	Gavin	Coles
Miss	Tracy	Cooper
Miss	Anna	Cozens
Mrs	Katie	Cullen
Miss	Emma	Davies
Miss	Katrina	Dennis
Mr	Paul	Evans
Mrs	Rebecca	Everitt
Miss	Kaci	Felce
Miss	Karen	Frain
Miss	Tasha	Heal
Mr	Mark	Hedley
Miss	Tiffany	Heming
Mr	Marc	Holley
Mrs	Sarah	Jones
Miss	Hannah	Law
Mr	James	Marshall
Miss	Claire	Masters
Ms	Helen	McDonald
Miss	Cerys	Morgan
Mr	Philip	Myerscough
Miss	Hannah	Ould
Mrs	Donna-Marie	Rawle
Ms	Kay	Robinson
Miss	Rebecca	Samuel
Mrs	Georgoulla	Shoukri
Mr	Stephen	Thrush
Miss	Joan	Tumelty
Mr	Andrew	Wakeham
Miss	Nicola	Wheeler

Mr	John	Williams
Mr	Jason	Winney

Miss	Katrina	Dennis
Miss	Tracy	Cooper
Miss	Anna	Cozens
Miss	Hannah	Law
Miss	Nicola	Wheeler
Miss	Claire	Masters
Miss	Kaci	Felce
Miss	Tasha	Heal
Miss	Tiffany	Heming
Miss	Elinor	Thompson
Mr	David	Kernick

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Schedule 2 – Warehouse and Distribution Centre

Title	First Name	Surname
Mrs	Alison	Roach
Mr	Ian	Morgan
Mr	Paul	Yoxall
Miss	Paula	Evans
Mr	Stephen	Cummings

10

Schedule 3 – Liverpool Bootle Store

Title	First Name	Surname
Miss	Sarah	Armstrong

15 *Schedule 4 – Middlesbrough store*

Title	First Name	Surname
Miss	Kirsty	Heminsley

Schedule 5- Worthington store

Title	First Name	Surname
Mrs	Louise	Southwood

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Schedule 6 – Sunderland store

Title	First Name	Surname
Mr	John	Tumelty

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Schedule 7 - Sunderland store 2018

Title	First Name	Surname
Mrs	Amy	Chilvers
Miss	Elinor	Thompson
Mr	Mark	Jones
Mrs	Rebecca	Everitt
Mrs	Simona	Pitaru
Miss	Tiffany	Heming
Miss	Elinor	Thompson

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Schedule 8- Boston Retail Park

Miss	Claire	Oliver
Miss	Gurjot	Kaur
Mrs	Jayne	Marron
Miss	Mandy	Wise
Mr	Mark	Woolliscroft

Miss Stephanie Mann

Mrs	Rebecca	Everitt
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Employment Judge N Hosie

5 **Date of Judgement: 2nd March 2022**

Date sent to Parties: 2nd March 2022