



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Rackham and others (see Schedule)

**Respondent:** (1) Create Construction Ltd (in administration)

(2) Secretary of State for Business, Energy and Industrial  
Strategy

**Heard at:** Manchester Employment Tribunal (by Cloud Video Platform)

**On:** 30 August 2022

**Before:** Employment Judge Dunlop (sitting alone)

## Representation

**Claimants:** In person, save for:  
Mr C Holborow, represented by Ms P Yeo (another  
claimant)  
Mr G McMylor, represented by Mrs C Ashworth (another  
claimant)  
Mr J Hook, did not attend

**First Respondent:** No attendance

**Second Respondent:** No attendance

# JUDGMENT

1. The Tribunal makes a protective award in favour of the claimants listed in the Schedule attached to this judgment and orders the respondent to pay remuneration for a protected period of 90 days beginning on 19 October 2021 (the date of the first dismissal).
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.

**Case No: 2414220/2021  
and others (see Schedule)**

Employment Judge Dunlop

Date: 30 August 2022

SENT TO THE PARTIES ON

31 August 2022

FOR EMPLOYMENT TRIBUNALS

**Note**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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

**Claimants: Mr T Rackham & others**

**Respondent: 1. Create Construction Ltd (In Administration)  
2. Secretary of State for Business, Energy & Industrial Strategy**

**ANNEX TO THE JUDGMENT  
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a)** the amount (less any tax or social security contributions which fall to be deducted by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b)** (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or
- (ii)** in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of

**Case No: 2414220/2021  
and others (see Schedule)**

or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.

## Schedule of Claimants

Schedule

Case Number	Case Name
1601705/2021	Mr Mathew Hughes
2414220/2021	Mr Tim Rackham
2414256/2021	Mr Martin Phillips
2414257/2021	Mrs Pauline Yeo
2414261/2021	Mr Christopher Holborow
2414264/2021	Miss Christine Ashburn
2414265/2021	Mrs Carolyn Ashworth
2414309/2021	Mr Liam Willment
2414312/2021	Mrs Joanne McCabe
2414317/2021	Mrs Julie Paget
2414325/2021	Mr Christopher Birks
2414327/2021	Mrs Colette Grover
2414333/2021	Mr Jack Hook
2414351/2021	Mrs Rucha Cogle
2414367/2021	Miss Dannielle Hannan
2414459/2021	Mr David Pierpoint
2414480/2021	Mr William Metcalfe
2414485/2021	Mr Osman Ahmed
2414516/2021	Mr George McMylor
2414812/2021	Mr Andrew King
2415150/2021	Mr Darren Perkins
2415228/2021	Mr Alexander Walker