



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. Graham Darby & others (see attached schedule)  
**Respondent:** Moore Large & Company Limited (in administration)  
**Heard at:** Nottingham (on the papers)  
**On:** 7 February 2025  
**Before:** Employment Judge Holbrook (sitting alone)

## Representation

**Claimants:** Written representations  
**Respondent:** No representations  
**For the Secretary of State as an interested party:** Written representations

# JUDGMENT

1. The Respondent failed to comply with the requirements of Sections 188 and 188A(1) Trade Union and Labour Relations (Consolidation) Act 1992 and the Tribunal makes a declaration to that effect.
2. The Tribunal accordingly makes a protective award in respect of all the Claimants named on the attached schedule.
3. The protected period is a period of 90 days commencing on 13 March 2023.
4. The Employment Protection (Recoupment of Benefits) Regulations 1996 may apply to these awards.

# REASONS

## BACKGROUND AND THE ISSUES

1. This is a claim advanced by a number of individual Claimants (listed in the attached schedule) who claim entitlement to a protective award following the Respondent in these proceedings, Moore Large & Company Limited (in

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Administration), terminating the employment of all of them by reason of redundancy shortly before entering into administration. On 27 June 2024 the Administrators confirmed by letter that they consented to the Claimants commencing proceedings for protective awards only.

2. The Respondent has not presented an ET3 response form to the claim. The Secretary of State for Business and Trade has been joined as an interested party given that any payments would, subject to statutory limits, fall to be paid from the National Insurance Fund under Part XII of the Employment Rights Act 1996. The Secretary of State presented a response on 22 September 2023. This, understandably, neither supports nor resists the claims given the Secretary of State was not present at the events prior to dismissals and is unaware of the circumstances surrounding consultation with employees.
3. Mr Darby was directed by EJ Heap in a case management order dated 29 August 2024 following a private preliminary hearing on 27 August 2024 to confirm specified information by no later than 14 days from the date that the order was sent to the parties, that date being 10 September 2024. At the hearing Mr Darby indicated he would not object to the Tribunal's proposal to deal with the claim by an Employment Judge alone on the papers, given the Respondent had not presented a response to the claim and the Secretary of State had indicated he did not intend to attend. The order required the Claimants and the Interested Party to confirm they consent to the protective awards being determined on the papers by an Employment Judge sitting alone. The parties were also given the opportunity to make (further) written representations, if they so wished, by 7 days before the hearing. Other than Mr Darby's confirmation sent on 13 September 2024 of the information set out in the case management order and that all claimants consented to the claims being determined by on the papers, no written representations have been received but I am treating the Secretary of State's response dated 22 September 2023 as standing as written representations.
4. The Secretary of State confirmed in correspondence to the Tribunal on 12 September 2024 and 8 October 2024 that he had no objection to the claims being heard by an Employment Judge sitting alone and on the papers without the need for a hearing.
5. There are also complaints of unfair dismissal, breach of contract with regard to notice pay, unpaid wages, unpaid holiday pay and unpaid redundancy payments however no permission has been given for the other complaints to proceed either by the Administrators or the Court dealing with the administration of the Respondent and for that reason those proceedings were stayed for 6 months by Employment Judge Heap at a private preliminary hearing on 27 August 2024. This judgment deals solely with the protective award claims.

**Witnesses**

6. As this was a hearing determined on the papers, I have not heard any witness evidence. However, I have considered the information provided by Mr Darby in his ET1, in the private preliminary hearing as recorded in the case management order of Employment Judge Heap and in his subsequent email, pursuant to her direction that he confirm that information in writing, of 13 September 2024. I must consider the weight that I should attach to that

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information and email given that I have not heard live evidence from Mr. Darby. I have little hesitation in concluding that I should take account of that information when determining the claims and should give it significant weight. It was initially provided in a hearing before an Employment Judge and is consistent with the information provided in Mr Darby's ET1. Furthermore no one from either the Respondent or the interested party would have attended in any event to cross-examine Mr. Darby and challenge the veracity of the statement which he has given. Indeed, the Secretary of State would not have been in a position to do so having not been party to the redundancies that have led to these claims. I have nothing to suggest that the account given by Mr Darby is not truthful and accurate. Accordingly, I am satisfied that I can place weight on the information which has been provided despite not having heard live evidence from Mr. Darby himself.

**THE LAW**

7. Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides for the duty of an employer to consult representatives where they are proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. That section requires the employer to consult about the dismissals of all persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or by measures taken in connection with them.
8. In cases where there is no independent trade union recognised by the employer nor are there employee representatives already appointed or elected by the employees for the purposes of receiving information and being consulted about the proposed dismissals, it is incumbent upon the employer to hold an election to appoint such employee representatives. That election must satisfy the requirements of Section 188A(1) Trade Union and Labour Relations (Consolidation) Act 1992 which provides as follows:

**188A**

- (1) The requirements for the election of employee representatives under section 188(1B)(b)(ii) are that—
  - (a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;
  - (b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;
  - (c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;
  - (d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 188 to be completed;

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- (e) the candidates for election as employee representatives are affected employees on the date of the election;
  - (f) no affected employee is unreasonably excluded from standing for election;
  - (g) all affected employees on the date of the election are entitled to vote for employee representatives;
  - (h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;
  - (i) the election is conducted so as to secure that–
    - (i) so far as is reasonably practicable, those voting do so in secret, and
    - (ii) the votes given at the election are accurately counted.”
9. Where a Tribunal finds that there has been a breach of the consultation obligations under Section 188 then it must turn to Section 189 which deals with the requirement to make a declaration in respect of well-founded complaints and that a protective award may also be made. A protective award is made in relation to the protected period which begins with the date on which the first of the dismissals to which the complaint relates takes effect and shall not exceed 90 days.
10. As to the amount of any protective award in that regard, Section 189(4)(b) makes clear that such an award should be of the length that the Tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer’s default in complying with any requirement of Section 188.
11. A sanction under Section 189 is intended to be penal rather than compensatory and the approach of the Tribunal will be to start with 90 days and reduce it only if there are mitigating circumstances justifying a reduction to the extent which the Tribunal considers appropriate (see *Susie Radin Ltd v GMB* [2004] IRLR 400).
12. The requirements of consultation under Section 188 require an employer to consult where they are proposing to dismiss as redundant 20 or more employees at one establishment (my emphasis). Therefore, the duty does not arise in respect of those employees who were dismissed as redundant where they are employed in an establishment where there are less than 20 employees, unless those employees themselves would be affected by measures taken in connection with the dismissals (see Section 188(1) Trade Union and Labour Relations (Consolidation) Act 1992).

**FINDINGS OF FACT**

7. Prior to entering into Administration, the Respondent operated from a site at Grampian Buildings, Sinfin Lane Industrial Estate in Derby. The Respondent

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employed more than 20 employees at that site. All of the Respondent's employees, and therefore all of the Claimants, worked at that site.

8. I accept the evidence of Mr Darby that all of the Claimants were dismissed as redundant with effect from 13 March 2023 and that the Respondent went into administration without prior warning on the same day.
9. The lead Claimant confirmed at the hearing before Employment Judge Hearp on 27 August 2024 and in writing on 13 September 2024 that the Respondent had no union presence or employee representatives. There is nothing to counter this from the Respondent and the Secretary of State has confirmed he holds no information about this issue. I accept this evidence from Mr Darby and I find that there were no trade union or elected employee representatives and that the Claimants are therefore entitled by virtue of section 189(1)(d) to present their individual complaints to the Tribunal.
10. Given I accept that the Respondent went into administration without warning, I also accept the evidence of the Mr Darby as set out in his claim form, at the hearing on 27 August 2024 and in writing on 13 September 2024 that there was no information given or consultation about the redundancies (or indeed the Respondent going into administration) prior to the dismissals that none of the steps set out in Section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992 were taken prior to the first of the redundancies taking place. I find that there was no consultation whatsoever in relation to the proposed redundancies with any of the employees concerned prior to the all of the Claimants being dismissed as redundant on 13 March 2023.

**CONCLUSIONS**

11. I am satisfied that the Claimants in this case do have standing to bring their complaints before the Employment Tribunal because I accept that there was no recognised independent trade union and no existing employee representatives with whom the Respondent was required to consult and who would otherwise be the correct entities to have advanced this claim.
12. For the reasons that I have already given, I am satisfied that the Respondent was in breach of the provisions of Section 188 and 188A Trade Union & Labour Relations (Consolidation) Act 1992 on the basis that no attempt was made to comply with the duty to appoint employee representatives and accordingly no consultation took place with the affected employees prior to the termination of their employment by reason of redundancy.
13. The establishment or site operated by the Respondent had over 20 employees who were dismissed as redundant. It follows that the Claimants who were based at that site are entitled to protective awards. No reason has been advanced as to why a protective award should not be made and I consider that it is appropriate to do so in this case.
14. All Claimants are therefore entitled to a protective award and have standing to bring such a complaint under Section 189(1)(d) Trade Union and Labour Relations (Consolidation) Act 1992.

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15. For all of those reasons, the complaints of all of the Claimants in the attached schedule are well-founded and succeed and I make a declaration to that effect under section 189(2) TULCRA.
16. I also exercise my discretion under section 189(2) TULCRA to make a protective award in respect of each of the Claimants who were all made redundant on 13 March 2023. As I have set out above, the starting point is 90 days as per the decision in *Susie Radin*. The Respondent (nor the Administrators, although they have consented for this claim to proceed) provided no response setting out any special or mitigating circumstances regarding its insolvency or otherwise as to why that starting point should be reduced. The Interested Party has confirmed he has no knowledge of circumstances surrounding the dismissals and any consultation. There is therefore nothing before me which would justify any reduction. Accordingly I am satisfied that it is appropriate I am satisfied that it is just and equitable to award 90 days pay in respect of each of the Claimants given the Respondent failed entirely to comply with its duties under section 188 TULCRA to provide information to and consult with the Claimants, as I have accepted the lead Claimant's account that the Respondent went into administration on 13 March 2023 without any prior warning to the Claimants, so no consultation took place at all.
17. The judgment of the Tribunal is that the Claimants' complaints under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 of a failure by the Respondent to comply with the requirements of section 188 of the 1992 Act are well-founded. The Tribunal orders the Respondent by way of protective award under section 189(3) of the 1992 Act to pay to all Claimants named in the attached schedule who were dismissed for redundancy on 13 March 2023 remuneration for the period of 90 days beginning on 13 March 2023. The Recoupment Regulations apply.

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Approved by  
Employment Judge Holbrook  
Date: 12 February 2025

JUDGMENT SENT TO THE PARTIES ON

.....07 March 2025.....

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FOR THE TRIBUNAL OFFICE

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**Case No: 2600880/2023 & Others (see attached schedule)  
Multiple Schedule**

**Multiple: 2600431 - Moore Large and Co Limited**

**\*\* Cases grouped together have been submitted on the same ET1 claim form and belong to a shared file \*\***

Case Number	Case Name
2600880/2023	<i>Mr Graham Darby -v- Moore Large and Co Limited (In Administration) &amp; Others</i>
2600979/2023	Mr Graham Darby -v- Moore Large and Co Limited (In Administration) & Others
2600994/2023	Hannah Adamson -v- Moore Large and Co Ltd
2600995/2023	Robert Andrews -v- Moore Large and co Ltd
2600996/2023	Jonathan Ashbee -v- Moore Large and Co Ltd
2600997/2023	Darren Ashford -v- Moore Large and Co Ltd
2600998/2023	Abbey Atterbury -v- Moore Large and Co Ltd
2600999/2023	Ashley Ballinger -v- Moore Large and Co Ltd
2601000/2023	Paul Ballinger -v- Moore Large and Co Ltd
2601001/2023	Brendan Barnes -v- Moore Large and Co Ltd
2601002/2023	Garry Bell -v- Moore Large and Co Ltd
2601003/2023	Nicole Beresford -v- Moore Large and Co Ltd
2601004/2023	Robert Beresford -v- Moore Large and Co Ltd
2601005/2023	Dean Beresford -v- Moore Large and Co Ltd
2601006/2023	Liam Bladon -v- Moore Large and Co Ltd
2601007/2023	Christopher Bonner -v- Moore Large and Co Ltd
2601008/2023	James Bosley -v- Moore Large and Co Ltd
2601009/2023	Joseph Brittain -v- Moore Large and Co Ltd
2601010/2023	Richard Burley -v- Moore Large and Co Ltd
2601011/2023	Nicola Burnley -v- Moore Large and Co Ltd
2601012/2023	Martin Canes -v- Moore Large and Co Ltd
2601013/2023	Josh Chateris -v- Moore Large and Co Ltd
2601014/2023	Graham Ditchfield -v- Moore Large and Co Ltd
2601015/2023	Daniel Dyer -v- Moore Large and Co Ltd
2601016/2023	Georgina Edwards -v- Moore Large and Co Ltd
2601017/2023	Caitriona Flannigan -v- Moore Large and Co Ltd
2601018/2023	Claire Hadfield -v- Moore Large and Co Ltd
2601019/2023	Darren Hardy -v- Moore Large and Co Ltd
2601020/2023	Shaun Harris -v- Moore Large and Co Ltd
2601021/2023	Warren Harrison -v- Moore Large and Co Ltd
2601022/2023	Timothy Henney -v- Moore Large and Co Ltd
2601023/2023	Tracey Herrett -v- Moore Large and Co Ltd
2601024/2023	Timothy Hodgson -v- Moore Large and Co Ltd
2601025/2023	Hayley Holt -v- Moore Large and Co Ltd
2601026/2023	Aleksandra Jaworska -v- Moore Large and Co Ltd
2601027/2023	Harpeet Johal -v- Moore Large and Co Ltd
2601028/2023	Ikpai Kaur -v- Moore Large and Co Ltd
2601029/2023	Kevin King -v- Moore Large and Co Ltd
2601030/2023	Carl Lander -v- Moore Large and Co Ltd
2601031/2023	Kamlesh Lata -v- Moore Large and Co Ltd
2601032/2023	Even Lewis -v- Moore Large and Co Ltd
2601033/2023	Lauren MacDonald -v- Moore Large and Co Ltd

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2601034/2023	Teresa Macdonald -v- Moore Large and Co Ltd
2601035/2023	Leigh Mace -v- Moore Large and Co Ltd
2601036/2023	Guy Mansell -v- Moore Large and Co Ltd
2601037/2023	Samantha Marshall -v- Moore Large and Co Ltd
2601038/2023	David Masek -v- Moore Large and Co Ltd
2601039/2023	Isabel May -v- Moore Large and Co Ltd
2601040/2023	David May -v- Moore Large and Co Ltd
2601041/2023	Sean McHugh -v- Moore Large and Co Ltd
2601042/2023	Cheryl Miller -v- Moore Large and Co Ltd
2601047/2023	Irene Murphy -v- Moore Large and Co Ltd
2601048/2023	Pierce Murphy -v- Moore Large and Co Ltd
2601049/2023	Tristan Natolie -v- Moore Large and Co Ltd
2601050/2023	Alan Newton -v- Moore Large and Co Ltd
2601051/2023	Mark Nightingale -v- Moore Large and Co Ltd
2601052/2023	Steven Palmer -v- Moore Large and Co Ltd
2601053/2023	James Parker -v- Moore Large and Co Ltd
2601072/2023	Larissa Raduenz Viera -v- Moore Large and Co Ltd
2601073/2023	Ranjana Raju -v- Moore Large and Co Ltd
2601074/2023	Willem Ramselaar -v- Moore Large and Co Ltd
2601075/2023	Mark Reader -v- Moore Large and Co Ltd
2601076/2023	Niall Reason -v- Moore Large and Co Ltd
2601077/2023	Kristian Rigby -v- Moore Large and Co Ltd
2601078/2023	Lauren Ryan -v- Moore Large and Co Ltd
2601079/2023	Mathew Selby -v- Moore Large and Co Ltd
2601080/2023	Champa Sharma -v- Moore Large and Co Ltd
2601081/2023	Scott Shaw -v- Moore Large and Co Ltd
2601082/2023	Alistair Smith -v- Moore Large and Co Ltd
2601083/2023	Lewis Smith -v- Moore Large and Co Ltd
2601084/2023	Keirann Smith -v- Moore Large and Co Ltd
2601085/2023	Lydia Stanway -v- Moore Large and Co Ltd
2601086/2023	Richard Staton -v- Moore Large and Co Ltd
2601087/2023	Martyn Stevenson -v- Moore Large and Co Ltd
2601088/2023	Alice Stones -v- Moore Large and Co Ltd
2601089/2023	Jeanette Suter -v- Moore Large and Co Ltd
2601090/2023	Louie Taylor -v- Moore Large and Co Ltd
2601091/2023	Kaley Thompson -v- Moore Large and Co Ltd
2601092/2023	Robert Thornhill -v- Moore Large and Co Ltd
2601093/2023	George Titterton -v- Moore Large and Co Ltd
2601094/2023	Rosileia Vieira -v- Moore Large and Co Ltd
2601095/2023	Douglas Vieira -v- Moore Large and Co Ltd
2601096/2023	Dirlon Vieira -v- Moore Large and Co Ltd
2601097/2023	Roger Vieira -v- Moore Large and Co Ltd
2601098/2023	Zoe Whitehead -v- Moore Large and Co Ltd
2601099/2023	Richard Williams -v- Moore Large and Co Ltd
2601100/2023	Dale Williamson -v- Moore Large and Co Ltd
2601101/2023	James Wilson -v- Moore Large and Co Ltd
2601102/2023	Michael Wilson -v- Moore Large and Co Ltd
2601103/2023	Lisa Wright -v- Moore Large and Co Ltd