Case Numbers:1802527 /18 & others
1802570/18 & others
1802574/18 & others
1803970/18
COMBINED PROCEEDINGS

EMPLOYMENT TRIBUNALS

Claimants: Ms N Jiwanji & others (see attached schedules)

Respondents: 1 East Coast Main Line Company Limited
2 London North Eastern Railway Limited
3 Hitachi Rail Europe Limited

Heard at: Leeds **On:** 11-14 July 2022
18 July and 15 August 2022 (deliberations)

Before: Regional Employment Judge Robertson
Mr D Wilks
Mr M Taj

Representation
Claimants: Mr O Segal, Queen's Counsel
Respondents: (1) Mr J Galbraith-Marten, Queen's Counsel; (2 & 3) Mr J Bowers, Queen's Counsel

UNANIMOUS RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. Except for those claims mentioned in schedules 4 and 5 to this judgment, as to which paragraphs 5 and 6 below apply, the claimants' complaints of contravention of section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 are well-founded.

2. The first respondent, East Coast Main Line Company Limited, is ordered under sections 145E(2)(b) and (3) of the 1992 Act to pay to each claimant listed in schedule 1 to this judgment the sum of £3,907.

3. The second respondent, London North Eastern Railway Limited, is ordered under sections 145E(2)(b) and (3) of the 1992 Act to pay to each claimant listed in schedule 2 to this judgment the sum of £3,907.

4. The third respondent, Hitachi Rail Europe Limited, is ordered under sections 145E(2)(b) and (3) of the 1992 Act to pay to each claimant listed in schedule 3 to this judgment the sum of £3,907.

5. The claims set out in schedule 4 to this judgment are dismissed on withdrawal by the claimants.

6. The claims set out in schedule 5 to this judgment are stayed generally until further order.

REASONS

Introduction

1. The Tribunal has before it some 1,250 claims brought under section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 concerning inducements relating to collective bargaining. In the broadest terms, section 145B gives workers who are members of recognised trade unions the right not to have offers made to them by their employer, if the purpose of such offers is that terms of employment of those workers will no longer be determined by collective agreement negotiated by the trade unions.

2. The claimants were, at the relevant time for their claims, members of the Rail, Maritime and Transport Workers' Union ("the RMT"). They were employed in various capacities by the first respondent, East Coast Main Line Company Limited, better known by its then trading name, Virgin Trains East Coast ("VTEC"). VTEC operated the InterCity East Coast rail franchise for services from London King's Cross to Yorkshire, the North-East of England and Scotland. VTEC recognised the RMT, and other trade unions, for collective bargaining purposes. Most of the claimants have since transferred to the employment of the second and third respondents, London North Eastern Railway Limited ("LNER") and Hitachi Rail Europe Limited ("Hitachi"). LNER and Hitachi accept that they are liable for the

claims by transferees to them under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

3. The claimants contend that VTEC infringed section 145B by way of a communication with its workforce on 13 November 2017. Summarising it at this stage, that communication stated that VTEC would implement its 2017 pay and conditions award on 1 December 2017, with an entitlement for members of the RMT to opt out of receiving the award. The communication followed a collective bargaining process in which the other recognised trade unions involved in the process, the TSSA and Unite, accepted the award, but the RMT rejected it. The communication, the claimants say, in terms of section 145B, was an offer by VTEC which when accepted by those to whom the offer was made, would have the prohibited result that their material terms of employment would not be determined by collective bargaining. They say that this result was VTEC's sole or main purpose when making the offer.

4. The respondents dispute that the 13 November 2017 communication was an offer within section 145B. They dispute that if accepted, it would have the prohibited result or that the purpose of making it was to achieve that result. They say that when the communication was sent, VTEC genuinely believed, and it was in fact the case, that collective bargaining about the award was exhausted. Thus, they say, the relevant terms would not have been collectively bargained, even had the offer not been made.

5. Section 145B is in the following terms:

"145B Inducements relating to collective bargaining

(1) A worker who is a member of an independent trade union which is recognised, or seeking to be recognised, by his employer has the right not to have an offer made to him by his employer if –

(a) acceptance of the offer, together with other workers' acceptance of offers which the employer also makes to them, would have the prohibited result; and

(b) the employer's sole or main purpose in making the offers is to achieve that result.

(2) The prohibited result is that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union.

(3) it is immaterial for the purposes of subsection (1) whether the offers are made to the workers simultaneously.

(4) …

(5) A worker or former worker may present a complaint to an employment tribunal on the ground that his employer has made him an offer in contravention of this section."

6. Section 145D provides that:

"145D Consideration of complaint

(1) …

(2) On a complaint under section 145B it shall be for the employer to show what was his sole or main purpose in making the offer.

(3) On a complaint under section … 145B, in determining whether the employer made the offer (or offers) or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring, or financing a strike or other industrial action, or by threatening to do so, and the question shall be determined as if no such pressure had been exercised.

(4) In determining whether an employer's sole or main purpose in making offers was the purpose mentioned in section 145B(1), the matters taken into account must include any evidence –

(a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining;

(b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining; or

(c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer.

7. Section 145E sets out the remedies for breach of section 145B. If these claims succeed, the claimants are each entitled under section 145E(2) to a declaration and a fixed lump sum award of £3,907, this being the amount prescribed at the time of the contravention for the purpose of section 145E(3). Thus, if the claims succeed, the awards will total almost £5 million.

8. The Tribunal has to decide:

8.1 Did VTEC, on 13 November 2017, make an offer to the claimants within section 145B(1) of the 1992 Act?

8.2 If so, did or would acceptance of such offer, together with other workers' acceptance of the offer, have the prohibited result under section 145B(2) of the 1992 Act that the claimants' terms of employment, or any of those terms, would not (or would no longer) be determined by collective agreement?

8.3 In particular, on the facts as found, was there objectively a real possibility that if the offer had not been made and accepted, the relevant terms would have been determined by a new collective agreement reached for the period in question?

8.4 If the answer to issue 8.2 is yes, was VTEC's sole or main purpose in making the relevant offer to achieve that prohibited result?

8.5 More specifically, when it made the offer, did VTEC genuinely believe that the collective bargaining process had been exhausted?

Procedural history and hearing

9. The proceedings have taken a long time to reach hearing. The claimants presented their claims in batches in January and February 2018. Following case management, the claims were listed for hearing beginning 1 July 2019. On 24 May 2019, however, the present Employment Judge directed that the claims be stayed pending the conclusion of the appeal initially to the Court of Appeal, then later to the Supreme Court, in the case of **Kostal UK Limited v Dunkley ("Kostal")**, as similar issues arose in that case. The Supreme Court delivered its decision in **Kostal** in October 2021 ([**2021] UKSC 47**), after which the parties were permitted to amend their claims and responses to take account of the decision before the proceedings were listed for this hearing. Much more will be said about **Kostal** later in this decision.

10. The Tribunal heard the claims over four days (including a reading day) between 11 and 14 July 2022, followed by deliberations on 18 July and 15 August 2022. The claimants were represented by Mr O Segal, Queen's Counsel, who called sworn evidence from Mr S McGowan, former RMT Regional Officer. VTEC was represented by Mr J Galbraith-Marten, Queen's Counsel, and LNER and Hitachi by Mr J Bowers, also Queen's Counsel, who called sworn evidence from Ms P Bullock, VTEC's, then LNER's, Head of Employee Relations and Reward. The Tribunal had before it an agreed bundle of documents of 500 pages, and considered material from it which the parties introduced in evidence.

11. Immediately before the hearing, the claimants' solicitors provided by email a list of claimants who were withdrawing their claims or for whom they were no longer acting because, although they did not have instructions to withdraw the claims, it appeared the Tribunal did not have jurisdiction due to the date the claimants had joined the RMT[1]. The Tribunal has by consent at paragraph 5 of its Judgment dismissed the former claims on withdrawal and at paragraph 6 of the Judgment has stayed the latter until further order. This is to allow the Tribunal time to contact these claimants to seek information about their intentions and entitlement to bring their claims, which require them to have been members of the RMT when the alleged offers were made on 13 November 2017. There is no suggestion that the position of those claimants is otherwise different from those whose claims have been determined by the Tribunal in this hearing.

Findings of fact

12. Most of the material facts are not in dispute. Where there is any dispute, the Tribunal indicates how it has resolved the matter. References to page numbers are to the agreed bundle.

13. At the material time in November 2017, the first respondent, VTEC, operated the InterCity East Coast rail franchise for passenger train services from London King's Cross to Yorkshire, the North-East of England and Scotland. It employed about 3,000 people, of whom 450 were train drivers and 400 management and executive grades. This left about 2,000 employees in VTEC's customer experience, engineering and clerical grades, most of whom were members of the RMT. The claimants were employed by VTEC in various capacities in those grades.

14. The respondents do not dispute that in November 2017, the claimants, except for those few identified at schedules 4 and 5 to the Tribunal's Judgment, were members of the RMT.

15. In June 2018, the second respondent, LNER, became the train operating company for the East Coast Main Line following the termination of VTEC's franchise. All employees of VTEC, including the claimants in these proceedings except for a few who had left its employment between November 2017 and June 2018, transferred to LNER's employment. Thereafter, on 11 November 2018, employees in the engineering function transferred from LNER to the employment of the third respondent, Hitachi, after Hitachi, the manufacturer of LNER's fleet of new Azuma trains, became responsible for LNER's maintenance activities.

[1] They also advised the Tribunal of some typographical errors in or changes to certain claimants' names, which are recorded in the schedules to this judgment.

16. LNER and Hitachi accept that under TUPE, they are responsible for the claims brought by those employees who transferred to them. There are 1,052 such claims against LNER and 203 against Hitachi, leaving 14 claims against VTEC. No issues arise otherwise from the transfers.

17. The railway industry has a long history and tradition of collective bargaining with trade unions. At the material time, VTEC recognised and collectively bargained with the ASLEF, TSSA, Unite[2] and RMT trade unions in respect of employees other than management and executive grades. VTEC had not shown any hostility to or intention to vary or depart from the concept of collective bargaining with recognised trade unions including the RMT.

18. VTEC conducted collective bargaining with its recognised trade unions under the terms of an agreement between it and those trade unions called the "Great North Eastern Railway Limited Procedure Agreement 1" effective 1 January 2016 (275-287) ("the Collective Bargaining Agreement "or "CBA"). This agreement was the latest in a series of similar, although somewhat modified, agreements dating back to the days of British Rail.

19. The CBA provided at paragraph 7 for three tiers of collective bargaining: business-wide via a Joint Committee (Annex A) (279); function-specific on particular issues via Company Councils (Annex B); and locally (Annex C). Here the Tribunal is concerned with the Joint Committee process under Annex A, described from now as "the JNC".

20. Paragraph 4 of the CBA (277) emphasised the importance of mutuality:

> **"The processes of collective bargaining and joint consultation rest upon the concept of mutuality. Within the machinery and procedures established by this Agreement, mutuality will be underpinned by joint regulation of those questions appropriate for negotiation and by cooperation through discussion on those matters appropriate for consultation. The aim is to develop mutual trust between Great North Eastern Railway Ltd[3] and its employees."**

21. By paragraph 2 of Annex A, the scope of the JNC was all employees outside management and executive grades whose terms and conditions were regulated

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[2] In strict terms the union identified as Unite was, as set out in the Collective Bargaining Agreement, the Railway Sub-Committee of the Confederation of Shipbuilding and Engineering Unions ('CSEU'). CSEU is a federation of the Unite, GMB, Community and Prospect trade unions. However, it has been referred to in contemporaneous documents and throughout these proceedings as "Unite", and the Tribunal will so identify it.

[3] There is no significance in the different name given here.

by collective agreements with trade unions. Under paragraph 3, membership of the JNC consisted of no more than eight Employer Side and eight Employees Side representatives, each of the four trade unions providing two representatives (of whom one was to be a full-time paid trade union official). Paragraph 6 provided that the JNC's purpose was to provide a forum for negotiation and agreement on questions of general pay and general terms and conditions, with implementation of agreements on such questions referred to Company Councils or the local level. Paragraph 8 was in the following terms:

"The Committee will endeavour to conclude negotiations by agreement and to hold negotiations in a timely manner. The procedure is exhausted once negotiations and discussions within the Committee have concluded. However, this would not preclude further discussions between an appropriate Manager or the Managing Director and a full-time paid trade union official to consider what other steps might assist resolution of questions upon which there has been failure to agree."

22. This was, therefore, single-table bargaining with four recognised trade unions. Neither the CBA nor particularly Annex A incorporated a specified procedure or structure for collective bargaining and negotiations, providing only that meetings of the JNC would be held as often as necessary and in any event within 28 days of a request. The document was silent as to voting or whether agreement must be unanimous or by majority of the members of the JNC or participating trade unions. There was no avoidance of disputes procedure (although there was such a procedure under Annex B, governing Company Councils). There was no mechanism within paragraph 8 for how, when and by whom it should be decided that negotiations and discussions within the JNC had concluded.

23. The terms of employment of VTEC's employees in scope of the CBA, that is all employees except for management or executive grades, incorporated collectively bargained terms of employment in the following way (298):

"27 Incorporation of Trade Union Agreements

Your contract of employment is subject to such terms and conditions as may be settled from time to time, in relation to employees in your grade under Procedure Agreement 1: General Collective Bargaining established between the Company and recognised Trade Unions…"

24. In March 2017 VTEC began negotiations with the TSSA, Unite and the RMT about the 2017 annual pay award, to be effective from 1 April 2017, using the Annex A JNC process.

25. Although ASLEF, which represents train drivers, was a party to the CBA, it was not involved in the negotiations, having reached a separate two-year agreement with VTEC in 2015. It is unclear whether this was a permanent arrangement; Ms Bullock thought it was, although she acknowledged that the CBA had not been amended to remove ASLEF; the trade unions knew that ASLEF was still a party to the CBA and as will emerge, they aspired for all four unions to participate in negotiations and reach single pay deals covering all employees.

26. Paula Bullock, VTEC's Head of Employee Relations and Reward, led the JNC negotiations for VTEC. She conducted the negotiations within the scope given to her by VTEC's Executive Directors, and she sought authority if she needed to go outside that scope. She was an experienced negotiator with the railway unions, having spent her whole career in HR roles within the industry, including with VTEC since September 2015. Sean McGowan, RMT Regional Organiser, led for the RMT. He was also an experienced negotiator and had been a Regional Organiser with the RMT since January 2014.

27. There were meetings of the JNC about the 2017 pay award on 22 March 2017 (310-312), 23 May 2017 (313-316) and 15 June 2017 (317-319). It is unnecessary to describe these meetings in detail; they show after the first meeting a process of negotiation about offers and counter offers, covering percentage pay awards, single or two-year deals and offers with and without productivity "strings". The process, as shown in the minutes, was that the trade unions conferred privately together in break-out meetings and put forward common responses; generally Mr McGowan took the lead. Although she did not have the exact numbers, Ms Bullock knew that the RMT had the largest membership within VTEC of the unions involved. No agreement was reached at these meetings.

28. The next meeting was on 30 August 2017 (339-340). Ms Bullock had expressed concern at the delay in arranging the meeting and had attempted to bring it forward but the trade unions resisted this, especially Mr McGowan, who expressed his views trenchantly, accusing Ms Bullock of bullying (335, 338).

29. In the meeting Ms Bullock proposed a two-year pay offer made up of either, in year 1, a 3% increase in pay and allowance without conditions, or a 3.2% increase with conditions about rolling sick pay, changes to sick pay entitlement for new entrants and commitment to use of mobile technology, and in either case, in year 2, an RPI-based increase. The trade unions rejected the offer, and put forward a counter-offer for one year only, made up of a 3.2% increase with agreement to rolling sick pay and commitment to mobile technology, but removing the proposed differential treatment of new entrants whilst agreeing to a review of absence

management procedures. They included an additional stipulation that all trade unions, including ASLEF, should be part of the absence management review. Ms Bullock rejected the unions' counter-offer, repeated her previous offer and asked the unions to put that offer to members by way of ballot, summarising VTEC's position by letter dated 8 September 2017 (341-2), in which she described the offer as "full and final".

30. Unite and the TSSA rejected the offer after ballots; the RMT's Executive Council rejected it without a ballot. The unions advised Ms Bullock of this outcome in early October 2017 (349-351).

31. The Tribunal highlights three matters from the meeting on 30 August 2017: first, VTEC's sick pay scheme was exceptionally generous, and VTEC wished to reduce its cost by moving to a rolling sick pay year. In the meeting, the union negotiators, including Mr McGowan, said they were prepared to accept the principle of rolling sick pay as part of the package; second, the unions' demand that all trade unions should participate in the absence management review reflected a growing concern that the train drivers represented by ASLEF had (or might have) different and more favourable arrangements; third, Ms Bullock knew, as she confirmed in evidence to the Tribunal, that the trade unions had internal processes to follow, including balloting, to seek members' views on proposals. She knew that whilst Mr McGowan (and the other representatives) could recommend acceptance of proposals to their unions' executive and, ultimately, membership, they could not bind their unions or their members to any deal.

32. Following the unions' rejection of the 30 August 2017 proposals, Ms Bullock agreed to their request for a further JNC meeting, which took place on 17 October 2017 (352-356). It was clearly a difficult meeting, lasting several hours.

33. This was the fifth negotiating meeting. Mr McGowan described the 2017 negotiations thus far as "unremarkable". He did not consider five meetings as unusual when what was being negotiated was a pay deal for one or two years with productivity related terms and conditions. He suggested that negotiations over such matters would usually take place over "more like 5-10 meetings", although he accepted in cross-examination that perhaps five would be more common. Ms Bullock told the Tribunal the number of meetings was unusual and the tone more hostile than she had experienced. The Tribunal's impression is that there were more meetings than sometimes happened but not exceptionally so. Ms Bullock's practice was that if agreement was not reached, or any proposals were taken away but rejected, as happened with the August 2017 offer, she would arrange a further JNC meeting as part of the continuing discussion and negotiation process.

She said that if matters became stalled, she would ask the unions to agree that collective bargaining could go no further, although she had never encountered that situation in practice.

34. At the beginning of the meeting Ms Bullock put forward an offer of an increase of 3.2% in year 1, RPI in year 2, with the introduction of the rolling sick pay year, commitment to mobile technology and the absence management review. This was substantially the same as the trade unions' August 2017 counter-offer, but for two years rather than one year only as the unions had proposed. The unions expressed concern about whether the rolling sick pay year would be introduced to all grades, and whether ASLEF would be invited to the absence management talks. Ms Bullock said that the deal would only apply to the parties to the negotiations, but the aspiration was to apply the rolling sick pay year to all grades, and she would invite ASLEF but could not require them to attend. Mr McGowan said that the unions would prefer a one-year deal which would enable ASLEF to re-join the single table bargaining in 2018 when their deal ended. He put forward an alternative proposal which he said the unions could recommend of a one-year deal of a 3.2% increase, the introduction of a rolling sick pay year, commitment to mobile technology and a review of absence management, with a floor increase of £650 for low earners**.**

35. During further negotiations, Ms Bullock expressed surprise that the unions would not accept proposals they had themselves put forward, and concern about the cost of the package given VTEC's financial position. She said she was trying to reach a good deal which would enable employees to receive their back pay in time for Christmas, and commented that the contentious separate arrangements for new entrants were now withdrawn. Eventually, she put forward a revised offer of, in year 1, a 3.2% increase, the introduction of a rolling sick pay year, commitment to mobile technology and a joint review of absence management, with a floor increase of £600 for low earners, and in year 2, an RPI-based increase ("the 2017 Pay Deal"). At Mr McGowan's request, she provided wording for the commitment to new technology and the absence management review, which the meeting discussed and agreed.

36. The respondents' case is that Mr McGowan then agreed to recommend the deal for acceptance. The minutes of the meeting support this (356):

> **"SM** (Mr McGowan) **and JW** (Mr Wilks, the TSSA representative) **confirmed that TSSA and RMT would be recommending the deal for acceptance. SJ** (Mr Johnson, the Unite representative) **said he would feed back to KM** (Mr Mawer, the lead Unite representative***).***

37. As the Tribunal has already said, the union negotiators, including Mr McGowan, did not have power to agree a deal. Mr McGowan was required by the RMT's procedures initially to obtain the comments of the Company Council, then refer the proposals to the union's National Executive Committee, who would decide whether to refer it to the membership by ballot, with or without a recommendation whether to accept or reject, or to reject it outright (as had happened with the August 2017 proposals). Mr McGowan agreed in evidence that he was able to say whether he would recommend the proposals, but he soon disputed after the meeting that he had done so, and continued to dispute it in evidence to the Tribunal. He told the Tribunal that although he agreed to take the offer away and consult members, he did not say that he would recommend the offer. Ms Bullock's evidence was that the minutes were accurate, and although she could not recall his precise words, Mr McGowan "shook my hand, and said he would recommend the offer for acceptance through their internal processes".

38. Whatever in fact happened, it is clear from subsequent events that Ms Bullock *believed* that Mr McGowan had said he would recommend acceptance. However, the Tribunal prefers Ms Bullock's evidence, and finds as fact that Mr McGowan did say in the meeting that he would recommend the offer for acceptance through the RMT's processes. First, this is consistent with the contemporaneous minutes of the meeting (356). Second, it is consistent with Ms Bullock's letter sent the same day which referred to what he had said and which Mr McGowan did not immediately contradict (357, and paragraph 39 below). Third, Mr McGowan referred to sending the offer to the union's National Executive Committee "for recommendation" (362); the Tribunal does not accept his evidence that the word "recommendation" denoted no more that a decision whether to recommend. Fourth, it is consistent with the TSSA's later email about events that day (394). Finally, the Tribunal finds that Mr McGowan changed his position about what he had said at the meeting, for clear reasons (paragraph 44 below).

39. Immediately after the meeting on 17 October 2017 Ms Bullock emailed Mr McGowan with details of the "full and final" offer just made (357-358).The letter included this paragraph:

> **"I understand from our discussions that you now intend to recommend this offer for acceptance to your respective executive committees, and subject to receipt of written confirmation of this offer we will prepare to introduce revised rates of pay within our December pay".**

Mr McGowan does not dispute he received this letter, and it is notable that he did not immediately challenge what Ms Bullock said about his intention to recommend the offer.

40. On 18 October 2017 Mr McGowan emailed Ms Bullock twice (362-3). He asked her to send the terms of the offer to full-time officials "so I can send it into the National Executive Committee later for recommendation", and also asked for details of the rolling sick pay scheme, as he had had a number of questions seeking clarification. He also asked for paid time off (which was agreed) for Company Council representatives to attend a meeting with him on 23 October 2017 to get "their thoughts and feedback" on the offer.

41. It is clear (364-368) that once Mr McGowan communicated the terms of the offer to those he represented, concerns were expressed to him about the lack of detail of the sick pay proposals, whether the Company Council would be consulted about the offer and why he was consulting about proposals that had previously been rejected. In responding to the concerns, he described the negotiators as "only messengers", he said he wanted to explain how the offer came to be as it was before the Company Council decided whether was the best offer available, and he confirmed that the Company Council would vote on whether to accept the proposals before he sent his report to the National Executive Committee for decision.

42. On 18 October 2017 Richard Close, VTEC's Head of Commercial Engineering, and Natalie Wilding, General Manager Central, updated the workforce (370-371) about the offer which had been made to the trade union representatives, saying:

"We believe this is a fair offer and we'll now wait to hear final confirmation from each of the unions. If accepted we will look to back pay in the December payroll".

Then on 20 October 2017 (372-373) Ms Bullock replied to Mr McGowan, sending him a "broad summary" of the rolling sick pay proposals and the wording agreed at the meeting on 17 October 2017 for the absence management review and commitment to technology.

43. At its meeting on 23 October 2017 the Company Council voted to reject the proposals. Their concerns were that ASLEF had been offered the same pay deal without conditions; in their view more could be done about pay; and insufficient detail had been given about the commitment to technology and the absence management review and whether these conditions would apply across all grades.

44. The same day, Mr McGowan emailed his report (477-478) to the RMT's General Secretary, Mick Cash. Having referred to the National Executive Committee's previous rejection of the August 2017 offer, he set out the terms of the improved October 2017 offer, saying that the offer almost exactly mirrored the offer "quite

rightly rejected previously" because it would create a two-tier workforce. He recommended rejection of the offer on the basis it would create that two-tier workforce on the question of rolling sick pay. Curiously, and contrary to paragraph 40 of his witness statement, he did not mention the Company Council decision which had focussed on different issues.

45. The Tribunal finds that Mr McGowan was embarrassed that, having told Ms Bullock he would recommend acceptance, he found himself unable to do so faced with opposition from members to the proposals. This led to his trenchant and defensive reaction when challenged by Ms Bullock about the change of mind, and the confrontational style of his later communications to her and his membership about the proposals.

46. On 24 October 2017 the RMT's National Executive Committee decided to ballot its members in VTEC with a recommendation to reject the offer. Mr McGowan communicated this decision to Ms Bullock on 26 October 2017 (385).Ms Bullock expressed disappointment:

"I am however disappointed as you confirmed following our recent pay meeting on the 17 October that you would be recommending the final offer for acceptance. Whilst I appreciate that you have your own internal procedures to follow I would have appreciated a further conversation if the position had changed."

In response, Mr McGowan threatened legal action (383-384) if VTEC repeated what he described as "the lie" that he had agreed to recommend acceptance at the meeting on 17 October 2017. This led Clare Burles, VTEC's People Director, to write to Mr Cash describing Mr McGowan's communication style as "unacceptable".

47. The same day, 26 October 2017, Derek Docherty, Chair of the Company Council, sent a lengthy message to RMT members within VTEC described as" a personal message from the RMT Lead Officer" (Mr McGowan) (374-381). It was on any showing strongly-worded; Ms Bullock described it in evidence as "inflammatory". The Tribunal gives only a flavour of it. It asserted that VTEC had not provided any details of the "strings" attached to the pay offer and had "reneged" on its agreement to provide more details ahead of the Company Council meeting on 23 October 2017. It described the offer as "a blatant attack on your current terms and conditions" and the behaviour of the company as "arrogant and bullish" and "showing contempt" for members' intelligence. It criticised the "strings" attached to the offer, accusing VTEC of being "hell-bent on attacking you from every angle" and mounting "wave after wave of attacks on your pay and conditions of service". There was more in the same vein. It compared the treatment of members with the

treatment of train drivers who were not subject to the proposals and concluded "reject this insult of an offer".

48. Ms Bullock saw Mr Docherty's communication. She was concerned by it on several levels. She was surprised that Mr McGowan had gone from accepting the offer to showing what she described in evidence as "utter contempt" for it. She noted that although wording for the commitment to technology and absence management review had been agreed at the meeting on 17 October 2017, and further detail about rolling sick pay had been given on 20 October 2017, Mr McGowan was wrongly saying that no details had been given. She felt that the change in Mr McGowan's attitude to the deal was "extreme", and the management team was "completely shocked and confused". She told the Tribunal in evidence that she had never come across a trade union official who would "shake hands on a deal" and then report it differently to their members and such behaviour if it happened generally would "make collective bargaining impossible". She regarded Mr McGowan's correspondence threatening legal action as "unprecedented". She suspected (correctly, in the Tribunal's view) that Mr McGowan had incorrectly accepted a deal which when relayed to his colleagues was rejected, causing him to lose face with his colleagues and explaining why he had reacted in such an emotive way. She did not know what Mr McGowan had in fact done in discussions within the union to recommend the offer, but drew conclusions from the tone and content of the 26 October 2017 communication.

49. On 27 October 2017 Jerry Wines, the TSSA's lead full-time official, advised Ms Bullock (392-393) that his members had accepted the offer. On the same day, Mr Wines wrote to his members (394-395) confirming acceptance of the pay award, and commented at some length on events at the 17 October 2017 meeting and what the RMT had since communicated about them. Although the Tribunal is conscious of the possibility that inter-union rivalry and the need to justify the decision to recommend the award might have influenced his response, what Mr Wiles said is consistent with Ms Bullock's evidence and the Tribunal believes it was accurate.

50. Mr Wines confirmed that all three unions had agreed at the meeting on 17 October 2017 to recommend acceptance of the offer, observing that

"It was accepted by all Unions that following months of very difficult discussions, this was the best settlement achievable through negotiation at this time….The facts are very different to what is being portrayed: all three Union negotiating teams did agree to recommend the offer in their respective internal consultation processes; written details of the conditions attached to the pay offer were circulated and agreed by all three Unions at the meeting; and the principle of moving to a rolling sick pay reference period was

discussed during previous meetings and had not been identified by any Union as a deal-breaking issue due to the fact its impact is negligible and it is common practice in the industry."

51. Mr Docherty responded later that day with a widely-distributed email (403-404), described by Ms Bullock in evidence as "insulting and inflammatory", in which he addressed Mr Wines as having made a "piss poor, blatant attempt to nick our members" and told him "you may as well have been sat on management's lap" and "that's any trust between us done". Mr Wines was upset by this; he forwarded the email to Ms Bullock, describing Mr McGowan's behaviour as "bullying and harassment" and saying that the TSSA would not be attending any meeting where Mr McGowan was present until further notice.

52. On 27 October 2017 Ms Bullock emailed the workforce with an update on the pay negotiations and details of the offer (396-399). She stated that the TSSA had accepted the offer and Unite would soon ballot members with a recommendation to accept. She stated that the unions had agreed to recommend the offer for acceptance through their internal channels, but the RMT had changed its position and were recommending they reject the offer, about which she expressed herself as "surprised and baffled". She concluded:

"At a time when public sector pay caps are widely known, and average private sector pay increases are 2.8% I believe this is a fair offer – and many of you have said it is too. As we enter winter many of you have said the extra pay, which would be backdated to April 2017, would be more than welcome in December which is an expensive month for many of us. In order to pay you this in time for 1st December, RMT need to confirm the deal has been accepted in writing by 10th November, 2017."

53. On 10 November 2017 Ms Bullock was advised that Unite members had voted to accept the offer (405-406). Then finally on 13 November 2017 Ms Bullock discovered from the RMT's website that RMT members had voted to reject the offer, the outcome being confirmed formally to her on 14 November 2017 (409). In this communication Mr McGowan asked Ms Bullock to identify dates for "further meetings in order that further discussions can be held in relation to the pay claim".

54. However, already on 13 November 2017 Claire Ansley, Customer Experience Director, and John Doughty, Engineering Director, had written to the workforce (407-408). This is the communication alleged to contravene section 145B and therefore the Tribunal sets it out in full, with only some administrative details omitted:

"The result of Unite's referendum is in and we're pleased to say members have voted to accept the pay deal: a 3.2% basic pay increase (minimum £600pa), with productivity

commitments in year 1 and an increase equivalent to RPI in year 2. This is great news and follows TSSA also accepting the offer for its members.

The negotiations over the past eight months were challenging yet constructive, and we have a fair deal that we think gives you the award you deserve whilst balancing the needs of the business and our customers.

The RMT has confirmed on its website members voted to reject the pay award, although the ballot is not verified independently. This is incredibly disappointing, and we're surprised by this outcome as we made changes to the original pay offer based on feedback from you and representatives. We know that many of you would welcome backdated pay in time for Christmas.

With all this feedback in mind we're eager to give you what you deserve – and soon! Therefore all of you will see this award land in your bank accounts in December – often an expensive month for us all.

(Details of when payment of the award would be made omitted)

We hope you see this as good news. With challenging trading conditions, and economic growth predictions looking slower than expected, staff in many other industries would be envious of a 3.2% increase in year 1 pay. The public sector cap is well known, and average private pay increases are around 2.8%.

However, if you're an RMT member and do not wish to accept the two year pay award (as attached), please email {address omitted] by midday 24 November with the subject line "Pay Award Opt-out". Alternatively you can send a letter to opt out of the award….

….

Please think carefully before making a decision and bear in mind that if you opt out in the hope the deal will improve – it won't.

As a reminder, details of the award and productivity conditions are attached. It also gives example pay increases over the two years."

55. The speed with which VTEC reacted to the RMT ballot result by sending the communication the same day is striking. The Tribunal did not hear evidence from Ms Anstey or Mr Doughty, its signatories, about why they sent the communication. Ms Bullock told the Tribunal, and the Tribunal accepts, that although the decision to send the communication was made upon receipt of the ballot result, there were discussions before then about what to do, and the decision was made by the Executive Directors, upon her recommendation as "the subject-matter expert". She described the decision as "a business decision that collective bargaining was completed, and we would write to the membership".

56. The Tribunal has not seen any documentation of any kind to support the discussions and decisions within VTEC management leading to the 13 November 2017 communication. All the Tribunal can say is that it was precipitate, communicated the same day management knew RMT members had rejected the deal.

57. The implementation of the 2017 Pay Award from 1 December 2017 meant, for RMT members, that their pay and conditions, at least until the next pay award, would not be collectively bargained by the union which represented them[4]. If they opted out, not only would the same result obtain, but they would not receive the increased pay (including back pay from 1 April 2017) under the 2017 Pay Award (although the other conditions included in it would not apply to them).

58. The Tribunal will set out later, in its conclusions (paragraphs 144-5), its findings about why VTEC sent the communication to its workforce on 13 November 2017 and what its purpose was.

59. There were no further meetings of the JNC about the 2017 Pay Award.

60. Mr Cash wrote to Ms Burles and Ms Bullock on 15 November 2017. He referred to the communication of 13 November 2017, describing it as "the imposition of the pay award", He said that a trade dispute would exist unless VTEC made a "significantly improved pay offer" (412).

61. Ms Bullock responded on 16 November 2017 (413-414):

> **"I refer to your correspondence dated 15 November and your advanced notification that a dispute situation may soon arise between our two organisations.**
>
> **We have met with our trade union partners over many months to discuss and agree our collective pay award. We have revised our position in order to offer an RPI deal in 2017 and 2018. Whilst we have identified areas of productivity, each of these areas has been discussed in detail with RMT, TSSA and Unite in order to reach a final position where all parties including RMT indicated their intent to recommend the pay award for acceptance, through the normal channels.**
>
> **Through discussions we have shared information candidly in respect of our financial circumstances, and believe that we have been able to reach a position where we are able to offer a very good increase in pay for our people and, as a result of productivity improvement, one we also are able to afford.**

[4] Whether the terms could be regarded as collectively bargained through the other unions' acceptance of them is an issue the Tribunal considers in its conclusions, although anticipating the outcome, the Tribunal finds that they could not.

Given that we had exhausted collective bargaining on the issue and our people are understandably keen to receive their pay award which has now been agreed by other trade unions parties to the pay discussions, TSSA and Unite, this has led us to the decision to pay the increase generally across the relevant grades within the next available payroll on 1 December. In recognition of the RMT position, however, we have also provided the opportunity of an opt-out arrangement".

I am of course keen to avoid any trade dispute, this manner of action is rarely productive, rather it is damaging to any business, as well as upsetting and distressing for our people. As discussed previously, we are not in a position to improve on the offer discussed and previously recommended for acceptance by your trade union within our discussions on 17 October after many months of consultations and agreement by the other two unions. However as we remain uncertain as to the issues which resulted in your trade union withdrawing your previous recommendation and would welcome the opportunity to meet with you urgently in order to discuss this further.

I await confirmation of your availability to meet and hope that we will be able to do so over the coming days."

62. Contrary to Ms Bullock's assertion at paragraph 75 of her witness statement that in this letter she was "stressing again" that collective bargaining was "exhausted", this was her first assertion to this effect.

63. On 17 November 2017 Mr Cash wrote asking for an Avoidance of Dispute meeting (415). Then on 20 November 2017 he questioned how VTEC would implement different rates of pay arising from the opt-out (416). Ms Bullock responded the same day that the company would answer the questions at a future meeting, and stated (419) that the purpose of this meeting was VTEC's intention to avoid any trade dispute and she hoped therefore that the RMT would not take steps to initiate a ballot for industrial action.

64. Ms Bullock duly met the RMT's Assistant General Secretary, Steve Hedley, with Mr McGowan and Mr Docherty on 22 November 2017 in what Ms Burles later described as "an Avoidance of Dispute meeting" (455). This led to some further clarification but no change in substance to the company's position, summarised in her letter of 23 November 2017 (422-423). She stated that it was helpful to understand the RMT's rationale for not accepting the 2017 Pay Award. She gave further explanation about the commitment to technology, absence management review and rolling sick pay year, and as to the latter, stated:

"I am not in a position to withdraw the rolling sick pay as a principle. However, within our absence management review we are prepared to consider alternative approaches which may negate the future changes to the sick pay year. We do of course need your commitment to this review with a view to introducing changes by 1 April 2018. If an alternative cannot

be agreed by 31 March 2018, we will implement the rolling sick pay as outlined in the offer dated 17 October 2017 with effect from 1 April 2018."

Finally she confirmed that the pay offer was unchanged, and expressed the hope that the clarification would resolve the difficulties leading to the threat of a trade dispute and enable the union to reach the position to recommend the offer to members who had chosen to opt out.

65. The RMT remained dissatisfied with the position. Mr Hedley told Ms Bullock on 23 November 2017 "we are now in dispute" (424). Following this, on 1 December 2017, the RMT instigated a ballot for industrial action (432-434).

66. Whilst the ballot result (446-447) was in favour of industrial action, it did not achieve the legally-required minimum turnout threshold for industrial action and so no industrial action ensued.

67. On 20 December 2017, Ms Burles emailed Mr Cash offering the RMT the opportunity to accept the pay award on behalf of its members (448). However, she advised that if the offer was not accepted by 29 December 2017, it would be withdrawn, including back pay.

68. Further communications ensued between Ms Bullock, Ms Burles and RMT representatives, involving Mr Cash and Mr McGowan, including a lengthy meeting on 2 February 2018 (455-459). The minutes record that several issues were discussed at the meeting. These included the RMT's continuing rejection of the 2017 Pay Award, the position of employees who had not opted out and Mr Cash's assertion that RMT members were not individually bound by terms not collectively bargained, whether the pay award or the conditions attached to it could be renegotiated, and the section 145B claims which had not yet been served but had been intimated by Mr McGowan to Ms Bullock in January 2018 (451). Ms Burles agreed to consider what had been said and whether any changes could be proposed.

69. Following the meeting, Ms Bullock wrote to Mr Cash on 12 February 2018 (460-462). She reiterated VTEC's position that when it implemented the 2017 Pay Award on 1 December 2017, it considered that collective bargaining was exhausted after nine months of negotiations and acceptance by the other trade unions involved. She clarified the purpose of the letter of 20 December 2017. She expressed the hope that the parties could work together to reach final agreement on the issues. She offered to withdraw the rolling sick pay condition in return for the union's commitment to tackle absence management issues including rolling sick pay. She also stipulated that the section 145B claims must not be pursued.

If accepted by 16 February 2018, this would enable all RMT members, including those who had opted-out, to receive the 2017 Pay Award.

70. Mr Cash responded on 3 March 2018 (467). He indicated that the 12 February 2018 proposals were acceptable but the RMT would continue to support the section 145B claims arising from the imposition of the award. Correspondence between VTEC and the RMT continued during March and April 2018 but ultimately no agreement was reached at that time, with the sticking point being that the RMT would not countenance withdrawing support for the section 145B claims (467-473). In the event, although VTEC did not introduce the rolling sick pay year for any employees, it was not until November 2018 that LNER (as the employer had now become) abandoned the demand for the claims to be withdrawn and the RMT accepted the 2017 Pay Award including full back pay for employees who had opted out.

71. Ms Bullock told the Tribunal that the initial discussions in November and December 2018 were in the context of avoiding a trade dispute, although she accepted that she had known already that if the ballot result in November 2017 was unfavourable, a trade dispute was likely to ensue. The amended proposals as to rolling sick pay in February 2018 were linked to the resolution of the section 145B claims as she did not think it was feasible to reach agreement if the RMT continued to support the claims. However, she acknowledged that VTEC wanted to resolve matters, as the business was facing a number of significant issues on the horizon, in particular the phased introduction of a new fleet of trains that would involve a significant change to the business and a large TUPE transfer arising from the franchise move to LNER. In that context, she said, the business offered a concession to try to resolve the outstanding pay issue and avoid any ongoing dispute, in particular any possible sizeable or lengthy litigation.

72. Finally, the Tribunal notes that in her letter of 9 March 2018 (468), Ms Bullock wrote that if the RMT did not agree to withdraw the section 145B claims, she would "draw the pay review to a close". Further, on 6 April 2018 Ms Ansley wrote to staff (472-473) rehearsing the history of negotiations from June 2017 to date, including the two meetings in November 2017 and February 2018, and concluded that "after a year of negotiations" it could not keep revising its pay offer and therefore it could not see "where else there is to go with the 2017 pay talks and therefore the talks have come to a natural end". The same day Ms Bullock wrote to Mr McGowan and Mr Cash (474), stating that because RMT would not withdraw support for the tribunal claims, VTEC intended "to now draw our pay discussions to a close".

Relevant law

73. The Tribunal set out the relevant provisions of section 145B of the 1992 Act at paragraphs 5-7 above. Two preliminary points should be made: first, the object of section 145B, broadly stated, is to penalise offers made by employers to workers who are trade union members which, if accepted, would have the result that one or more terms of their employment will not (or will no longer) be determined by collective bargaining; and second, the three key concepts within section 145B are (1) offer; (2) prohibited result; and (3) prohibited purpose. All three concepts are in issue in these proceedings.

74. Section 145B was incorporated into the 1992 Act as long ago as 2004. Its purpose was to give effect to the decision of the European Court of Human Rights in **Wilson and Palmer 2002 IRLR 568** on Article 11 of the European Convention on Human Rights. The meaning and proper interpretation of section 145B has recently been determined by the Supreme Court for the first time in **Kostal**. The Supreme Court reached its decision by 3:2 majority, references below are to the decision of the majority, delivered by Lord Leggatt.

75. In **Kostal**, an employer had a formal Recognition and Procedure Agreement with the Unite trade union which set out a specified bargaining procedure. During collective bargaining which had not resulted in an agreement about pay, the employer made two sets of pay offers directly to its workforce which would allow employees to receive their Christmas bonus but would not have been collectively bargained. When it made the offers, the final stage in the agreed bargaining procedure had not taken place. The issue before the Supreme Court was whether the offers would have the prohibited result within sections 145B(1)(a) and (2); it was conceded that the employer had made offers within section 145B(1), and that if it was established that the offers would have the prohibited result, the employer's purpose fell within section 145B(1)(b). In consequence, the Supreme Court did not analyse the concepts of offer or purpose in detail.

76. The key conclusions of the Supreme Court were as follows:

    76.1 The exercise of statutory construction of section 145B sits within the context of "the modern case law", including, in the field of employment law, the decision in **Uber BV v Aslam [2021] UKSC 5,** emphasising the central importance of identifying the purpose of the legislation and interpreting the relevant language in the light of that purpose (paragraph 30).

    76.2 Where a trade union is recognised, the right not to have an offer made by the employer applies where the result of acceptance would be that one or more terms of employment either (i) will not or (ii) will no longer be

determined by collective agreement negotiated by or on behalf of the union (paragraph 33).

76.3 It is crucial to have in mind section 145B(1)(a), which, when read together with section 145B (2), defines the "prohibited result". It is that result which represents the mischief which the legislation aims to prevent or deter (paragraph 31). No minimum length of time is specified or can reasonably be read into section 145B(2) for which that result would have to persist in order to constitute the "prohibited result" (paragraph 34). It is sufficient that, on the particular occasion, the result will be the prohibited result, even if there is no long-term intention to end collective bargaining. The focus is on the result, not the content of the offers.

76.4 To determine whether the result is the prohibited result defined in section 145B(2), it is necessary to look forwards from the notional date of acceptance of the offers to what will or will not happen thereafter. The period during which one or more terms will not be determined by collective agreement may be time-limited or open-ended, but it starts to run when the offers are assumed to have been accepted. It follows logically that the prohibited result is not a result capable of being achieved by the very acceptance of the offers irrespective of what happens afterwards (paragraph 41).

76.5 The employer has a defence if it shows that its sole or main purpose in making the offers was not to achieve that result. The purpose of achieving the prohibited result is the "prohibited purpose". It is, however, important to note that what constitutes the prohibited purpose is defined by reference to what constitutes the prohibited result. For that reason too, although the relevant provisions must be construed as a whole, the primary question must be to identify the nature and scope of the prohibited result.

76.6 Where an employer has negotiated with the union and the parties have exhausted the procedure for collective bargaining without being able to reach agreement, there is no policy justification for preventing or deterring the employer from at that point making an offer directly to workers. There is accordingly no reasonable basis for attributing to Parliament the intention that acceptance of such an offer would have the prohibited result. The legality of such an offer cannot rationally depend on the employer having to show what its purpose was in making it. If the acceptance of such an offer is treated as automatically having the prohibited result just because the worker is being invited to accept terms which have not been collectively

agreed, showing the purpose in making the offers cannot anyway provide a secure or stable defence to the employer. It could always be said that achieving a change in terms of employment which had not been collectively agreed was the employer's main purpose in making the offers. Nor does section 145D(4) provide any basis on which a contrary argument could be made. In particular, section 145D(4)(c) could not apply to an offer made generally to the workforce after negotiations with the union had ended without a collective agreement (paragraph 46).

76.7 As to where the line might in practice be drawn in deciding whether an employer had 'by-passed' collective negotiation with a recognised union,

> **"there seems to me a strong case for saying that the obligation of the state to secure the right under art 11 to be represented by a trade union and for that union's voice to be heard entails that an employer which has recognised a trade union for the purpose of collective bargaining and agreed to follow a specified bargaining procedure cannot be permitted with impunity to ignore or by-pass the agreed procedure, either by refusing to follow the agreed process at all or by being free to 'drop in and out of the collective process as and when that suits its purpose'** (paragraph 61) .

76.8 Finally, the Tribunal sets out paragraphs 63 to 72, in full:

> **63. There is an important feature of the wording of section 145B which both parties' interpretations of the section leave out of account. In this respect, although diametrically opposed, they seem to me to share a common flaw. In both cases they treat the question whether an offer falls within section 145B(1)(a) and (2) as depending entirely on the content of the offer. On the claimants' preferred interpretation, all that matters is whether the offer is to agree a change which has not been collectively agreed with the union to a term or terms of the individual worker's contract of employment. On the Company's interpretation, all that matters is whether the offer requires the worker to contract out of any collective bargaining rights.**
>
> **64 Both interpretations fail to reflect the structure of section 145B. What is prohibited by the section is not the making of an offer which, if accepted, would constitute an agreement with a particular content. Rather, what is prohibited is the making of an offer which, if accepted, would have a particular result. Furthermore, and importantly, that result is not defined as one which follows simply from acceptance of the offer by the worker who is the subject of section 145B: it takes account additionally of any offers which the employer also makes to other workers and requires consideration of what would happen if <u>all</u> the offers made were accepted. This indicates that section 145B is concerned not merely with the content of individual offers but with the potential practical consequences of the employer's conduct, considered in the round. The interpretations of section 145B for which the claimants and the Company contend both seem to me incapable of explaining why, in judging whether**

acceptance of an offer would have the prohibited result, it is necessary to assume, as required by subsection (1)(a), "other workers' acceptance of offers which the employer also makes to them".

65. I think it is possible to read section 145B in a way which gives meaning and effect to this significant feature of its language and does so in a way which is compatible with article 11. Once it is recognised that the question whether the acceptance of offers would have the prohibited "result" is a question of causation, it is evident that the state of affairs described in subsection (2) cannot be regarded as the "result" of acceptance of the offers if it would inevitably have occurred anyway, irrespective of whether the offers were made and accepted. In that case there would be no causal connection between the presumed acceptance of the offers and the state of affairs described in subsection (2). More specifically, in order for offers made by the employer to workers to be capable of having the prohibited result, there must be at least a real possibility that, if the offers were not made and accepted, the workers' relevant terms of employment would have been determined by a new collective agreement reached for the period in question. If there is no such possibility, then it cannot be said that making the individual offers has produced the result that the terms of employment have not been determined by collective agreement for that period. In other words, it is implicit in the definition of the prohibited result that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union when they otherwise might well have been determined in that way.

66. On this interpretation, there is no difficulty in applying section 145B in cases where the union is not yet recognised but is seeking to be recognised. In that situation the employer is free to make individual offers to workers in relation to a particular pay round without any risk of contravening section 145B because, at the time when the offers are made, there is no possibility of agreeing terms through collective bargaining.

67. Likewise, where there is a recognised union, there is nothing to prevent an employer from making an offer directly to its workers in relation to a matter which falls within the scope of a collective bargaining agreement provided that the employer has first followed, and exhausted, the agreed collective bargaining procedure. If that has been done, it cannot be said that, when the offers were made, there was a real possibility that the matter would have been determined by collective agreement if the offers had not been made and accepted. What the employer cannot do with impunity is what the Company did here: that is, make an offer directly to its workers, including those who are union members, before the collective bargaining process has been exhausted.

68. It was argued on behalf of the Company that it may be difficult to say with certainty whether the collective bargaining process has been exhausted in any particular case and that this interpretation therefore exposes employers to risks which they cannot afford to take and hence would unreasonably restrict their freedom of negotiation. I do not accept this. In my view, employers have two means of protection against that risk. The first is to ensure that the agreement

for collective bargaining made with the union clearly defines and delimits the procedure to be followed. The Recognition Agreement made in this case does this sufficiently. I have quoted Stage 4 of the agreed procedure at para 5 above. If in the present case, following the meeting specified at Stage 3, the Company had written to the union representatives stating that the Company did not agree to refer the matter to ACAS, it is clear from the terms of Appendix 1 that the procedure would at that point have been exhausted. A second level of protection is provided by the requirement of section 145B(1)(b) that the section will not be contravened unless the employer's sole or main purpose in making the offers is to achieve the prohibited result. If the employer genuinely believes that the collective bargaining process has been exhausted, it cannot be said that the purpose of making direct offers was to procure the result that terms will not be determined by collective agreement when that otherwise might well have been the case.

69. This interpretation of section 145B is further supported by section 145D(4)(a) of the 1992 Act. That provision identifies, as a matter which must be taken into account in determining whether an employer's sole or main purpose in making offers was the prohibited purpose, any evidence:

> **"that when the offers were made the employer … did not wish to use, arrangements agreed with the union for collective bargaining."**
>
> **This supports the inference that, where the acceptance of individual offers would by-pass arrangements agreed with the union for collective bargaining, such acceptance would have the prohibited result.**

70. In the present case the Company agreed when it entered into the Recognition Agreement to conduct annual pay negotiations with Unite and to follow the procedure outlined in Appendix 1 before making or proposing any change to terms and conditions of employment outside that process. The offers made directly to employees dishonoured that agreement because they were made before the process had been exhausted. Furthermore, the Company's behaviour, potentially at least, treated less favourably employees who were not prepared to relinquish their right to have the agreed procedure for collective bargaining followed. In the case of each direct offer made during the collective bargaining process, the clear message was that, if the employee did not accept it, he would not receive the Christmas bonus (or an equivalent payment) calculated at 2% of basic salary. In the case of the second offer, there was also a threat to terminate the worker's contract of employment unless the offer was accepted. It is hard to imagine how, on the assumption required by section 145B(1)(a) that all the direct offers were accepted, the negotiations with Unite could as a matter of practical reality have resulted in a better deal than the one which all the workers would thereby already have accepted individually. On the other hand, there was a real likelihood that any worker who did not accept the direct offers would be left financially worse off. That is indeed what happened, as workers who declined both offers did not receive the Christmas bonus (or

> **any equivalent payment) for 2015. In these circumstances the Company's conduct can fairly be characterised as a disincentive or restraint on the use by the claimants of union representation to protect their interests. The relevant use was the exercise of their right to be represented in collective bargaining conducted in accordance with the Recognition Agreement.**
>
> **71. I conclude that, on the proper interpretation of section 145B of the 1992 Act, an offer would have the prohibited result if its acceptance, together with other workers' acceptance of offers which the employer also makes to them, would have the result that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union when, had such offers not been made, there was a real possibility that the terms in question would have been determined by collective agreement. That must ordinarily be assumed to be the case where there is an agreed procedure for collective bargaining in place which had not been complied with."**
>
> **72. In the present case, on the facts found by the employment tribunal the collective bargaining process outlined in the Recognition Agreement was still continuing when the first and second offers were made by the Company directly to the claimants. In those circumstances the tribunal was entitled to find that the offers were made in contravention of section 145B. I would therefore allow the appeal.**

77. Thus (1) an employer cannot with impunity make an offer directly to its workers, including those who are union members, before the collective bargaining process has been exhausted; (2) an offer will have the prohibited result if its acceptance, together with other workers' acceptance of offers which the employer also makes to them, would have the result that the workers' terms of employment, or any of those terms, will not (or will no longer) be determined by collective agreement negotiated by or on behalf of the union **when, had such offers not been made, there was a real possibility that the terms in question would have been determined by collective agreement** (emphasis added). This is a test of causation. That must ordinarily be assumed to be the case where there is an agreed procedure for collective bargaining in place which had not been complied with; and (3) the effect of section 145B(1)(b) is that the section will not be contravened unless the employer's sole or main purpose in making the offers is to achieve the prohibited result. **If the employer genuinely believes that the collective bargaining process has been exhausted, it cannot be said that the purpose of making direct offers was to procure the result that terms will not be determined by collective agreement when that otherwise might well have been the case** (emphasis again added).

78. Those are the key principles to be taken from **Kostal**. But what of the situation where there is no structured bargaining process, as there was in **Kostal**? The

Employment Appeal Tribunal held in **INEOS Chemicals Grangemouth Limited v Arnott & Others [2022] EAT 82** that in such cases the Tribunal's task is to ascertain whether, objectively, negotiations are in fact at an end, and the employer's purpose may be relevant in deciding that question :

> **"64. Both parties were in agreement that where there is no structured agreement as in Kostal, the proper approach is to ascertain, objectively, whether or not negotiations were as a matter of fact at an end. I concur, and consider that this was the approach taken by the Tribunal in this case when they concluded that parties were close to an agreement.**
>
> **….**
>
> **66. It is worth reiterating that this is a case where the** [collective bargaining arrangements] **were not as structured as those in Kostal and therefore the argument for the company in the Supreme Court that 'it may be difficult to say with certainty whether the collective bargaining process has been exhausted' might have some resonance here. In such a case, the Supreme Court determined that the question of the employers' purpose in making the offer becomes very relevant."**

79. Finally, it will be recalled that the concept of "offer" was not discussed in **Kostal**. The Employment Appeal Tribunal considered this in **Ineos**, and in the earlier case of **Scottish Borders Housing Association Limited v Caldwell EA-2020-SCO-000084-SH**.

80. In **Caldwell**, the employer had over a two-year period negotiated with the recognised trade unions in relation to proposed changes to terms and conditions of employment, but was unable to reach agreement with the trade unions. It arranged meetings with its staff, from which they appeared willing to agree to the terms offered. The employer accordingly wrote on staff on 18 September 2019 to give them the opportunity to agree to amended terms, explaining how the proposed changes affected them and informing them that if they were willing to accept the variation to contract, they should sign and return their copy of the revised terms and conditions of employment by Wednesday 21 October 2019. Most employees agreed to the changes, but on 13 December 2019, the employer wrote to those who had not, stating that the new terms and conditions would come into effect on 16 January 2020. The claimants did not accept the proposed variation to their contracts of employment. The issue was whether the claims were in time, which required the letter of 13 December 2019 to have been an offer within section 145B.

81. It was accepted that the letter of 18 September 2019 was an offer. However, the Employment Appeal Tribunal found that the letter of 13 December 2019 was not. It was not a contractual offer. It intimated the employer's intention to impose new terms, constituting an anticipatory breach of contract. That in turn entitled the claimants to rely on that breach for the purpose of any claim they wished to make.

The Employment Appeal Tribunal held that if an employee accepted the terms, that was not an acceptance of an offer but was an acceptance of a repudiatory breach of contract. It held that an employer that intimates its determination to unilaterally impose new terms cannot be said to offer new terms under section 145B.

82. The Employment Appeal Tribunal's reasoning in **Caldwell** appears heterodox; conventionally, a repudiatory breach of contract is accepted by resignation rather than by agreeing to the proposed terms. **Caldwell** was not considered, however, in **Ineos**, in which a different conclusion was reached on the question of offer. The Employment Appeal Tribunal said this, at paragraphs 55-59:

> **"55. There is in this case a prior question to be determined, which was not one raised in submissions before the Supreme Court in Kostal, or addressed in the Judgment. That is because of the particular factual scenario which existed in that case, where there was no dispute that an offer had been made. Here the question arises as to whether or not an 'offer' was made in this case which would have the effect of engaging s.145B at all.**
>
> **56. Each party relied on the unchallenged findings in fact of the Tribunal for their own purposes. However, so far as the question of whether an 'offer' was made as envisaged by s.145B, the Tribunal concluded that it was. In so doing, it determined that the communication from the employers on 5 April 2017 was a statement of intention to vary employees' contracts as to pay, and that in continuing to work, the employees accepted that variation. Before the Tribunal, the appellants' submission was to the effect that there could be no offer because there had been no expectation of a *'quid pro quo'* in return. By their conclusion, the Tribunal rejected that contention.**
>
> **57. That argument was not pressed before me, despite being adverted to in the appellants' skeleton. This is unsurprising standing the conclusion of the Supreme Court in Kostal on this particular point that there is no requirement for a 'quid pro quo' to be implied into the legislation.**
>
> **58. Rather, Mr Burns focussed on the proposition that the letter of 5th April 2017, properly understood, was a unilateral promise, not requiring acceptance, which created an obligation collateral to that contained in the contract between the appellants and the claimants. Mr Segal developed the position advanced before the Tribunal on behalf of the claimants which was to the effect that the contract was a bilateral one which could only be varied by offer, acceptance and consideration (both acceptance and consideration arising or being inferred from the workers continuing to work under the new arrangements). This was the argument ultimately accepted by the Tribunal. Before me, that argument was amplified to be, in summary, that it would offend against basic principles of Employment Law to suggest that something as fundamental as the 'work pay' bargain between employer and employee could be varied in a way extraneous to that contract by making a unilateral promise creating an obligation collateral to that bargain.**

> **59. I agree with Mr Segal, both as a matter of principle, and on an analysis of the findings in fact made by the Tribunal. I can discern no error in the conclusion, in paragraph 111, that the word 'offer' should be given its ordinary meaning, and that the letter of 5th April 2017 was a statement of intention to vary employees contracts as to pay, which was accepted by the employees continuing to work. Although not expressly stated by the Tribunal, I am of the view that their conclusion is fortified by the express language of the letter of 5th April which states their intention to "implement our pay increase as described in our latest offer backdated to 1st January 2017 (emphasis added)." The plain reading of the letter is consistent with an implementation of an offer already made with the result that the employees' contractual terms as to pay would be varied. The construction contended for by the appellants would be inconsistent with the language used in their own communication and ultimately artificial. The Tribunal reached a decision that was open to it on the facts it found established. There is nothing in the decision in Kostal which bears directly on, or is inconsistent with, this conclusion."**

83. On that basis, the Employment Appeal Tribunal found that the employer's notification of its intention to implement the pay increase intimated in its most recent offer to the trade unions amounted to an offer within section 145B. As it explains in its conclusions, the Tribunal, faced with apparently conflicting decisions of the Employment Appeal Tribunal, prefers the analysis in **INEOS** to that in **Caldwell.**

Submissions, discussion and conclusions

Introduction

84. The Tribunal received very comprehensive written and oral submissions from Mr Segal, Mr Galbraith-Marten and Mr Bowers, for which the Tribunal is grateful. The Tribunal will structure its decision by referring to the submissions as necessary and setting out its conclusions on the issues before it. Those issues, as they appear at paragraph 8 above, are:

    84.1 Did VTEC, on 13 November 2017, make an offer to the claimants within section 145B(1) of the 1992 Act?

    84.2 If so, did or would acceptance of such offer, together with other workers' acceptance of the offer, have the prohibited result under section 145B(2) of the 1992 Act that the claimants' terms of employment, or any of those terms, would not (or would no longer) be determined by collective agreement?

    84.3 In particular, on the facts as found, was there objectively a real possibility that if the offer had not been made and accepted, the relevant terms would

have been determined by a new collective agreement reached for the period in question?

84.4 If the answer to issue 2 is yes, was VTEC's sole or main purpose in making the relevant offer to achieve that prohibited result?

84.5 More specifically, when it made the offer, did VTEC genuinely believe that the collective bargaining process had been exhausted?

85. Counsel each analysed the decision in **Kostal** in detail; having summarised the Supreme Court's reasoning above, the Tribunal will not refer to their analysis unless necessary for its conclusions.

1. "Offer": Did VTEC, on 13 November 2017, make an offer to the claimants within section 145B(1) of the 1992 Act?

Submissions for the respondents

86. Mr Galbraith-Marten submits that the communication on 13 November 2017 was sent after notification of the TSSA and Unite ballot results. It was not, therefore, an offer. He contends that having reached agreement through collective bargaining with two out of three recognised unions, employees' contracts of employment were varied pursuant to the express incorporation clause in their contracts. The agreed pay award was implemented in December 2017. However, because agreement had not been reached with the RMT, RMT members were given the option to opt out of the pay award.

87. Mr Galbraith-Marten says that whether a communication from an employer constitutes or contains an 'offer' for the purposes of section145B is a question of fact, see **Caldwell** in which the Employment Appeal Tribunal held that the unilateral imposition of new terms and conditions of employment cannot amount to an 'offer'.

88. Mr Galbraith-Marten accepts that **Caldwell** is inconsistent with the later decision in **Ineos**, but the Employment Appeal Tribunal in **Ineos** did appear to accept at paragraph 59 that whether a communication from an employer constitutes or contains an 'offer' is a question of fact.

89. Mr Galbraith-Marten contends that **Ineos** is of no real assistance to the determination of the issues in these proceedings as it concerned a very different factual situation. In these proceedings, the members of two recognised trade unions voted overwhelmingly to accept the employer's pay offer.

90. Mr Bowers also refers the Tribunal to **Caldwell** in which the unilateral imposition of terms was held not to be an offer because acceptance would not be acceptance

of an offer but "acceptance of the repudiation" (paragraph 25). VTEC, he says, was varying terms in accordance with the agreement reached with the union majority in the single table bargaining.

91. Mr Galbraith-Marten developed his submissions orally. He says that in this case, there was no unilateral imposition of terms. There was an offer, in which RMT members were given the choice to opt out of the 2017 Pay Award. That award had been agreed by the TSSA and Unite and within the JNC, each union had an equal voice regardless of membership. The interpretation of the CBA is a matter of construction applying the usual principles. The unions represented a wide variety of people with different voices, and if unanimity was required, it should be spelt out, otherwise a small union could hold the rest to ransom.

92. Mr Galbraith-Marten referred to the decision of the Employment Appeal Tribunal in **South Tyneside MBC v Graham UKEAT/0107/03** for a case where the Tribunal was required to construe a collective agreement and concluded that on its proper construction, there was no need to find that the agreement required unanimity of decision, as long as meetings were convened properly. He contends that the Tribunal must interpret the CBA to decide what the agreement means, accepting that there is no provision about unanimity or majority decision.

93. Finally, Mr Galbraith-Marten refers the Tribunal to the wording of the 13 November 2017 communication (407) and in particular, the words "we have a fair deal". This, he says, communicates that VTEC believed a collective agreement had come into existence at the agreement of two of the three unions, and the company was now implementing it, subject to an opt-out. This was not making an offer; it was implementing an agreement.

Submissions for the claimants

94. Mr Segal submits that the respondents' case on this issue is hopeless. He says that the purpose of collective bargaining is, primarily, to vary the terms of workers' employment contracts by negotiation. An employer who during collective bargaining has an offer refused by its recognised union and then implements its terms in respect of individual workers, is simply implementing its 'offer' to those workers.

95. Mr Segal submits that the key issue, both from a purposive perspective and by reference to the statutory language, is whether the employer's implementation of the pay increase is capable of 'acceptance' by the relevant workers such that the 'prohibited result' arises: see 145B(1)(a). It would, he says, obviously defeat the purpose of section 145B if an employer could, during a collective bargaining process, avoid liability simply by implementing its offer unilaterally, as opposed to seeking express acceptance from its workers.

96. Moreover, Mr Segal submits, as a matter of well-established law, an employer which unilaterally implements a variation to the contracts of its workers, does make an 'offer' which requires acceptance by those workers – which acceptance can be, but is far from always, inferred by their continuing to work without protest. Without such implied acceptance by the workers' conduct, the purported variation is of no effect.

97. Such acceptance, however, is particularly easy to infer where the variation takes immediate effect and/or is to the employees' advantage, as in the paradigm instance of a pay increase.

98. Those principles were accepted in **Ineos** as applying in the context of section 145B, at paragraphs 58-59. In **Ineos**, Mr Segal says, a unilateral imposition of a varied term was an offer which was accepted by the employees continuing to work, and to the extent that **Caldwell** says anything different, it is clearly wrong and was in effect overruled in **Ineos**.

99. However, in this case, the offers expressly invited employees either to accept by continuing to work without opting out, or to opt out. On any view, those were offers capable of acceptance or rejection.

100. In his oral submissions, Mr Segal submitted that unilateral imposition of terms remains an offer which employees can accept by continuing to work or reject by protesting or resigning.

101. Mr Segal contended that the common-sense interpretation of the CBA is that there is no agreement unless all parties agree. If there was to be majority voting, as there was in **Graham**, there would normally be some form of proportional representation. He observes that in the communication of 13 November 2017 and in subsequent correspondence, there is no suggestion that the respondents thought there was already a collective agreement; he describes the contention as "the invention of lawyers".

102. Finally, Mr Segal says that there could be no agreement to vary terms of employment of employees covered by sole recognition by way of agreements reached by other unions[5].

The Tribunal's conclusions

103. The Tribunal can set out its conclusions relatively briefly. It agrees broadly with Mr Segal. It finds that the communication of 13 November 2017 was an offer for the purposes of section 145B.

[5] Ignoring the position of train drivers for whom ASLEF was recognised but were not involved in the 2017 negotiations, VTEC solely recognised the RMT for on-board train employees; for all other groups of employees covered by the CBA, there was joint recognition of the RMT, TSSA and Unite.

104. Section 145B requires that the employer makes an offer to the relevant workers, but the term "offer" is not anywhere defined.

105. The first question is whether, on a proper construction of the CBA, a collective agreement had come into being upon the agreement of two of the three unions involved in the collective bargaining, such that VTEC was on 13 November 2017 implementing an agreement already made rather than making an offer capable of acceptance.

106. The Tribunal accepts that the ordinary principles of construction apply to collective agreements: **Graham**, paragraph 18. Although counsel did not direct the Tribunal to them, beyond agreeing that they applied, the general principles can be found in cases such as **Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896** at 912 – 913, **Chartbook Ltd v Persimmon Homes Limited 2009 HL 38** and **Arnold v Britton 2015 UKSC 36** at paragraph 15 (Lord Neuberger)**.** The Tribunal must identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the relevant document to mean, and is required to perform such exercise by focusing on the meaning of the relevant words of the provision being construed in their documentary, factual and commercial context. That meaning has to be assessed in the light of:

> **"(i) the natural and ordinary meaning of the clause; (ii) any further relevant provisions of the [agreement]; (iii) the overall purpose of the clause and the [agreement]; (iv) the facts and circumstances known or assumed by the parties at the time the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of the parties' intentions."**

107. The Tribunal finds that the natural and ordinary meaning of the word "agreement" in the CBA, in the absence of any provision as to voting, is that it means the agreement of all the parties to the collective bargaining arrangements. If there had been any intention that agreement should be by some form of majority, the Tribunal would have expected the CBA to have said so.

108. Throughout the CBA, the language used was of mutuality and consensus. Unlike in **Graham**, there was no proportional representation to reflect the different membership strengths of the unions. Neither the employer nor, together, the trade unions had majority representation. The purpose of the CBA was to create a mechanism for single-table bargaining between the employer on the one hand and its recognised trade unions *as a whole* on the other hand, in order to arrive at a single bargain which would be incorporated into the contracts of employment of all employees within its scope. It is notable that when ASLEF reached a separate agreement for its members, a discrete and identifiable group consisting of train drivers, it did so outside of the CBA mechanism. There was a mechanism in

paragraph 8 for discussions between management and any of the unions on matters where dispute remained. Having regard to the nature and purpose of the CBA, it is inconceivable that the parties could have intended that terms of employment of all employees, whichever union represented them, could be decided by a bare majority of the unions involved.

109. Mr Galbraith-Marten directs the Tribunal to the words "we have a fair deal" in the 13 November 2017 communication (407). He suggests this means that VTEC believed a collective agreement had come into existence. The Tribunal does not agree. The words used cannot bear the weight Mr Galbraith-Marten places upon them. In the same communication, Ms Bullock refers to the other unions having "voted to accept the pay deal", where she cannot have been using the word "deal" to denote a concluded agreement. There is nothing in any of the other contemporaneous correspondence which suggests the company thought an agreement had been reached.

110. The Tribunal therefore rejects the respondents' contention that the agreement of the TSSA and Unite, being the majority of the unions participating in the negotiations, created a collective agreement binding on all employees by incorporation into their contracts of employment. The position is that following the failure of all parties within the JNC to reach agreement, no collective agreement existed in November 2017.

111. Agreeing then with Mr Segal's submissions and preferring the analysis in **Ineos** to that in **Caldwell,** the Tribunal finds that the communication of 13 November 2017 was, properly analysed, a proposal by VTEC to make a unilateral variation to employees' terms of employment, which employees could, in line with normal workplace practice, accept by continuing to work, or reject by resigning or by exercising their right to opt-out. It was an offer, capable of acceptance or rejection by those to whom it was made, and this was particularly so when it gave RMT recipients an express choice of opting-out. There was no requirement for some kind of quid pro quo.

112. Finally, the Tribunal agrees with Mr Segal that it would defeat the purpose of section 145B if employers could circumvent the requirements of the section simply by imposing a change in conditions unilaterally and arguing that they thereby did not make an offer to employees. "Offer", in the workplace context, means a proposal, including a proposal amounting to a unilateral variation of terms and conditions, which employees can accept by continuing to work or reject by resigning.

2. "Prohibited result": did or would acceptance of such offer, together with other workers' acceptance of the offer, have the prohibited result under section 145B(2) of the 1992 Act that the claimants' terms of

employment, or any of those terms, would not (or would no longer) be determined by collective agreement? In particular, on the facts as found, was there objectively a real possibility that if the offer had not been made and accepted, the relevant terms would have been determined by a new collective agreement reached for the period in question?

Introduction

113. The Tribunal begins with four preliminary observations.

113.1 First, at one level, it is inescapable that if VTEC's offer was accepted, the terms of employment of the relevant employees would not be determined by collective agreement, because for the period covered by the 2017 Pay Award, the terms would be imposed on them and not collectively bargained. But as explained in **Kostal**, that is not enough. The test is one of causation. In order for offers made by the employer to workers to be capable of having the prohibited result, there must be at least a real possibility that, if the offers were not made and accepted, the workers' relevant terms of employment would have been determined by a new collective agreement reached for the period in question (**Kostal**, paragraphs 65, 71).

113.2 Second, it is not the purpose of the statute that employers should be precluded from making offers direct to the workforce if collective bargaining has genuinely come to an end or reached an impasse. The legislation does not confer a right of veto on trade unions.

113.3 Third, unless acceptance of the offer would have the prohibited result, the question of the employer's purpose under section 145B(1)(b) does not arise at all.

113.4 Fourth, it may be difficult to say with certainty whether the collective bargaining process has been exhausted in any particular case. In such cases, as observed in **Ineos**, the question of the employer's purpose becomes more important in assessing the likelihood that the terms would have been collectively bargaining absent the offer.

Submissions for the respondents

114. Mr Bowers says that the crucial issue resolves around whether at the time of the offer there was any realistic prospect of the negotiations being successfully concluded and more particularly what the employer genuinely believed about this.

He accepts that the Tribunal should look at the relevant facts in the round to establish whether there was any realistic chance of the terms being collectively bargained in November 2017.

115. As to this, Mr Bowers says that:

115.1 clearly the company was not motivated by anti-union animus and the widespread and intensive collective bargaining machinery continued in place (although he and Mr Galbraith-Marten accept that it would be sufficient if VTEC were bypassing the collective bargaining machinery on this one occasion);

115.2 Mr McGowan's conduct and behaviour was such, most notably in reneging on the commitment to recommend the deal for acceptance and his personal attacks and abuse and bad faith, that by the time VTEC wrote to employees on 13 November 2017 there was no realistic prospect of the negotiations being successfully concluded with the RMT;

115.3 under the CBA, the collective bargaining mechanism was the JNC. There were no negotiations through the JNC after 13 November 2017. Whilst he accepted that the further discussions which took place after November 2017 were a form of collective bargaining, they were not collective bargaining within the JNC process, which was the process the parties had agreed. This was why Ms Bullock told Mr Cash on 16 November 2017 (423) that "we have exhausted collective bargaining on the issue"; she was referring to the JNC process;

115.4 the language used by Mr McGowan shows that he did not genuinely believe there was any possibility of further negotiations. This was not just the language of, as he suggested in evidence, a plain-speaking Yorkshireman";

115.5 The description of the offer as a "final offer" is not relied on to any extent. However, VTEC decided there was no more negotiating room given that two of the three unions had agreed the deal, Mr McGowan's "stirring the pot" in a most direct way, and the fact that the offer was in essence the deal with the unions had proposed in August 2017.

116. Mr Bowers says that it cannot be right that all parties in the JNC must agree that negotiations are at an end. It is not what the agreement says. He submits that Ms Bullock was right when she said in evidence that either side could decide that the process had concluded.

117. Mr Bowers submits that the facts in **Ineos** were very different; there the parties were found to have been close to agreement; and there was evidence of animosity between the parties and a desire on the part of the employer to be rid of the union.

118. Mr Galbraith-Marten accepts that the test whether the collective bargaining procedure is exhausted is objective. Otherwise there are dangers of the employer deciding itself when the procedure is exhausted. Therefore, if there is an offer, there is on the face of it a breach of section 145B, but the key issue is the employer's purpose. If that purpose is not to deny employees a voice in collective bargaining, the employer should not be liable.

119. Mr Galbraith-Marten says that as the employer cannot decide itself that the procedure is exhausted; so neither can the union decide it is still live, thus the test is objective.

120. The Tribunal's task, he says, is to look at all the facts and circumstances, including what the parties said or did at the time and Ms Bullock's subjective belief. In this case, the evidence shows that Ms Bullock genuinely thought the process was at an end.

121. Mr Galbraith-Marten says that whether the parties were close to agreement is relevant, but not determinative. Small issues, he says, can wreck a deal. In this case, the parties appeared close to a deal, in that VTEC had offered the trade unions almost all they asked for, yet still the RMT rejected the deal. It may be that Mr McGowan simply exceeded his authority, but the question remains: why did he go so far the other way?

122. Mr Galbraith-Marten says that an employer is entitled to take the view that they are so fed up with progress that negotiations should end, but that view must be objectively valid. He says that in this case, the employer was entitled to walk away, when Mr McGowan was saying the package on offer was an assault on employees' terms and conditions (374).

Submissions for the claimants

123. Mr Segal submits that the purpose of section 145BB, as decided in **Kostal**, is that collective negotiation between employers and organisations of workers should be encouraged and promoted by making it unlawful for an employer to make offers to workers to vary their terms of employment in circumstances where had such offers not been made, there was a real possibility that the terms in question would have been determined by collective agreement.

124. He agrees with Mr Bowers and Mr Galbraith-Marten that the test of prohibited result is objective; was there a real possibility that the terms in question would be decided by collective bargaining. It is a simple test. Whilst the test of the

employer's purpose is subjective, that cannot negate the objective test of prohibited result by introducing the employer's reason for acting.

125. Mr Segal contends that here can be no question but that, on the facts of this case, section 145B was infringed. In particular, (a) the CBA did not include any specified bargaining procedure; (b) at the time the offers were made there was an ongoing process of collective bargaining, without agreement having been reached between VTEC and the RMT, but with those parties clearly close to agreement, and an expectation on the part of both parties that there would be further talks given that negotiations had not resulted in agreement; and (c) VTEC's purpose in making the offers was to drop out of the current collective bargaining process in order to have its offer on pay and productivity accepted directly by the workers.

126. Mr Segal references Ms Bullock's subjective view that VTEC "had exhausted collective bargaining on the issue" (413), or that "pay negotiations had been exhausted and that collective bargaining with the RMT had broken down on this particular matter" (witness statement paragraph 70). He says that meant no more, in the context of there being no agreed collective bargaining process in the CBA, than that the company did not think (following what it saw as the RMT's objectionable conduct) that there was anything to be gained by, or at least it felt no obligation on it to continue, further negotiation with the RMT. He says that an employer's subjective decision that there was no reason to pursue further negotiations cannot be a relevant, let alone the decisive, factor in determining its main purpose in making offers which have the prohibited result. Were it otherwise, there would literally never be a case in which offers achieving the prohibited result were unlawful.

127. Mr Segal contrasts this case with **Ineos**. Applying the causation test is, he says, self-evidently, a question of fact for the Tribunal. The company's offer in **Ineos** was genuinely its final position. It was prepared to dismiss and offer reengagement on the terms of that offer to any workers who refused it. In contrast with the present case, there was no suggestion, and certainly no finding by the Tribunal, that had collective negotiations continued, the parties might or would have reached agreement.

128. Mr Segal notes that the CBA did not include any specified bargaining procedure. It stated only that meetings shall be held as often as necessary. Paragraph 8 stated that the procedure was exhausted once negotiations and discussions within the committee have concluded. This cannot mean when the employer has decided negotiations and discussions have concluded, both as a matter of natural interpretation/common sense and because it would undermine the principle of mutuality on which the CBA is founded. The procedure is only exhausted, he says, if both parties have agreed a particular procedure such as a specified number of meetings, or if both parties agree that there is no further scope for agreement to

be reached by negotiations, or perhaps if it becomes obvious that the parties cannot reach agreement because the final position of each is in reality immoveable and irreconcilable.

129. Mr Segal submits that the CBA does provide at paragraph 6 for unresolved differences/disputes to be dealt with through the "appropriate agreed procedures": [277]. He accepts that no such procedures are spelt out in Annex A. However, it is clear that both parties knew and recognised that a trade union could give formal notification of a dispute ((412), which would trigger an Avoidance of Dispute meeting (415, 419, 455); and that "no form of industrial action will be undertaken until procedures have been exhausted" (276). The offer in this case was made before any such procedure had commenced, let alone concluded, as in **Kostal**.

130. Mr Segal says that at the time when the employer disengaged, the parties in fact were very close to agreement; both as a matter of analysis (the difference between the parties concerned only whether and/or the way in which rolling sick pay would be introduced, with both parties committed to addressing the underlying issue), and as a matter of fact (the disputed matter was resolved during two further short meetings).

131. Mr Segal comments that the meeting on 17 October 2017 was neither stated in advance to constitute the conclusion of the collective bargaining process, nor characterised as such during or even after that meeting, prior to the offer being made. On the contrary, immediately after that meeting the company wrote to affected staff saying simply that "This week we met with union representatives, in the spirit of collaboration, to discuss and agree a revised offer" (370). After 13 November 2017, the parties sought to resume meetings and did so quickly, such that the first such meeting (22 November 2017) took place about five weeks after the previous meeting on 17 October 2017; which was a similar or shorter period than between the meetings which had taken place between March and October. The content of the discussion at the November 2017 and the February 2018 meetings, as Mr McGowan put it in evidence, "proceeded seamlessly on from the collective negotiations between June and October 2017, with the same issues being canvassed and similar potential solutions being examined", or, as Ms Bullock put it, the purpose of those meetings was "to get to common ground", which was precisely the purpose of the earlier negotiation meetings.

132. Mr Segal says that this shows that when the offers were made, there was a real possibility that the matter would have been determined by collective agreement if the offers had not been made and accepted. He says that the only reason that the offers were made was because VTEC thought that Mr McGowan had reneged on a promise to recommend the latest proposed deal to its members. The fact that the offer made in October 2017 was described as full and final is nothing to the point; the August 2017 offer had been similarly described [341]. In any case, such

a description by an employer cannot determine whether a collective bargaining procedure had concluded. An employer cannot avoid liability simply by describing an offer it makes to its workers during the collective bargaining process as 'final'.

133. At the heart of the respondents' defence to these claims, Mr Segal says, is the proposition, only articulated retrospectively, after the offers had been made, that there was a collective bargaining procedure which was concluded after five meetings, ending in October 2017; but that procedure was followed by two further collective meetings, where exactly the same matters were negotiated and in essence agreed, but which the respondents say should be seen as outside of that collective bargaining procedure.

134. Mr Segal says that this argument does not meet the causation test in **Kostal**, but is in any event artificial. The true position was set out at the time by VTEC, when, in her letter of 9 March 2018, Ms Bullock wrote that if the RMT did not agree to withdraw the section 145B claims, she would "draw the pay review to a close". Further, on 6 April 2018 Ms Bullock wrote to staff rehearsing the history of negotiations from June 2017 to date, and concluded that "after a year of negotiations" it could not keep revising its pay offer and therefore it could not see "where else there is to go with the 2017 pay talks and therefore the talks have come to a natural end". The same day Ms Bullock wrote to the RMT (474), stating that because RMT would not withdraw support for the tribunal claims, VTEC intended "to now draw our pay discussions to a close".

135. Mr Segal also notes that, perhaps not realising the effect of this statement, Ms Bullock complains that the RMT was in breach of the CBA in seeking to initiate industrial action in December 2017 before "procedures have been exhausted". He agrees. The procedures had not been exhausted.

136. Mr Segal describes the respondents' contention that collective bargaining could not continue because the other unions who had been involved in the previous meetings had already reached agreement as misconceived. He contends that it is by no means uncommon for an employer which recognises more than one union in respect of a particular bargaining unit to reach agreement with one or more of those unions before reaching agreement with all of them. Negotiations can either continue with the initial constitution of participants, or separate negotiations can be conducted between the employer and the union(s) who have not yet agreed – as, of course, happened in this case in November 2017 and February 2018. He contends that where no agreement has been reached with the union representing most of the affected employees, negotiations are expected to continue unless some different procedure has been previously collectively agreed.

137. Mr Segal notes that the CBA provided for all recognised unions, including ASLEF, to participate in collective bargaining. However, VTEC had already concluded a sperate agreement with ASLEF.

138. Finally, Mr Segal drew attention that when in October 2018 LNER finally implemented the 2017 Pay Award to include the RMT, it did so on the basis that rolling sick pay was removed. Thus members of the TSSA and Unite unions benefitted from terms negotiated only with the RMT.

The Tribunal's conclusions

139. The Tribunal must decide if, when the offer was made, there remained a realistic chance that the relevant terms of employment would be collectively bargained. That involves consideration of all the relevant circumstances, including the collective bargaining arrangements between the parties, what the parties were saying and doing at the time and the subjective positions of the parties. However, an employer's unilateral decision to end negotiations (or a union's to seek to treat them as continuing) cannot itself be determinative; an employer cannot say that there was no chance terms would be collectively bargained because it was not prepared to negotiate any further, unless objectively it is clear the bargaining process was over (or, if it was not, that it lacked the required purpose because it genuinely believed negotiations were over).

140. The reasonableness or rationality of the parties' positions is immaterial. However, their subjective positions at the time may evidence whether negotiations were at an end.

141. This brings into consideration why the decision was made to implement the 2017 Pay Award on 13 November 2017. Ms Bullock said this in her witness statement:

> "**With regards to the negotiations, VTEC had put our final offer down on 17 October 2017, and as far as we were concerned that was the end of pay negotiation process. We were not planning at all to enter into new negotiations. VTEC never considered going around the pay negotiation table after a deal was struck with TSSA and Unite. Any additional negotiation under the collective bargaining agreement would require meetings with the other unions and this was something we were not willing to do having regard to the fact that TSSA, Unite, in principle, and at the time the RMT agreed to the deal. Collective bargaining was over on this pay round but not by any fault of ourselves (paragraph 67).**
>
> **There was no mutual understanding that bargaining would resume if the members rejected the offer. The collective bargaining process was exhausted. In particular, paragraph 6 of the Procedure Agreement 1 (264) states that "no form of industrial action will be undertaken until procedures have been exhausted". I had considered that the RMT had breached the Procedure Agreement 1 by putting a ballot for industrial action to its members. The good faith negotiation between VTEC and the RMT had evaporated with the actions of Mr McGowan. Mr McGowan had agreed that the deal was to be recommended to its membership and they later reneged on this decision without explanation. I considered Mr**

McGowan's increased vitriol to be counterproductive creating an environment of animosity (paragraph 69).

I do not accept that VTEC made any "offer" to the RMT members other than giving them the option to opt out of the pay award if they wished to do so (pages 410-411). Again, the very purpose of giving the RMT members that option to opt out was not to cease or reduce collective bargaining with the RMT. On the contrary, the very purpose was to show respect to the fact that the RMT had by this point rejected the pay award and to allow RMT members to excuse themselves from the award if they wished to do so. The opt-out option was given very much because we did not have any intention of ending or reducing collective bargaining with the RMT. We were genuinely trying to fairly recognise a situation in which two out of three trade unions had endorsed the deal. As stated above, it was and is inconceivable that there will not be collective bargaining with the RMT on pay and on all other typical collective bargaining issues now and in future (paragraph 70).

142. The Tribunal finds this evidence troubling for several reasons. First, sections of it (for example, as to whether VTEC made an offer on 13 November 2017 or whether management intended to have any further discussions after the meeting on 17 October 2017) read as after-the-event argument of a position rather than evidence of fact. Second, it is internally contradictory; if, as she asserts, management believed collective bargaining was exhausted, why did she consider the RMT had breached the procedure agreement by calling an industrial action ballot, which required that procedures were not exhausted? Third, there is no documentary evidence from before or at the time of the offer to support her assertions about why VTEC's management took the decision to impose the deal against the wishes of one of its recognised trade unions.

143. All of this means that the Tribunal views Ms Bullock's evidence with some scepticism. But the Tribunal must still decide, on the evidence available to it, why management decided to issue the 13 November 2017 communication to its workforce.

144. The answer lies, in the Tribunal's view, in Ms Bullock's reply to a question from the Tribunal:

"**It was a business decision that collective bargaining was completed and we would write to the membership**".

In other words, it was a unilateral business decision by VTEC's management to treat collective bargaining as at an end and implement the pay award. It was not, in the Tribunal's view, a business decision that collective bargaining was *already* at an end or, put another way, exhausted; rather, it was a business decision to conclude collective bargaining unilaterally because it no longer wished to participate in it. As, following this decision, the terms would not be collectively

bargained, management could achieve their incorporation into contracts of employment only by unilateral imposition of them.

145. The Tribunal finds that there were several reasons for this business decision.

145.1 Ms Bullock was upset by what she saw as Mr McGowan's and, therefore, the RMT's change of heart. She felt he had gone back on his promise and had not recommended the offer. She said so, not only in evidence to the Tribunal but in contemporaneous correspondence.

145.2 Ms Bullock was also upset by the aggressive and hostile tone of communications Mr McGowan sent to her and to the RMT members he represented.

145.3 Ms Bullock wanted the workforce to receive back pay in time for Christmas. She said so at the meeting on 17 October 2017, in her letter of 27 October 2017 and in the communication of 13 November 2017 itself. That required that payment be made in the December pay run. The only way to achieve this in time was to impose the terms, unilaterally.

145.4 VTEC did not want to return to the negotiating table once the TSSA and Unite had accepted the deal. Ms Bullock felt that negotiations had gone on long enough, and the RMT had wrecked the negotiations by what she saw as its unreasonable conduct. The Tribunal does not accept that management concluded that further bargaining within the JNC *could not* take place once two unions had accepted the offer but the RMT had not. Rather, the Tribunal believes that management *did not want* to proceed in that way.

145.5 Ultimately, the Tribunal finds that the reason why management sent the communication on 13 November 2017 was that they believed negotiations had gone on long enough, they did not wish to re-enter negotiations in the situation (which Ms Bullock accepted in evidence) that two of the three unions had accepted the offer, and in their view, agreement had been sabotaged by the RMT's and Mr McGowan's actions. Therefore, they decided that they did not wish to continue with collective bargaining.

146. The Tribunal finds that when the offer was made to the workforce, there remained a realistic chance that the relevant terms would have been collectively bargained. Its reasons are these:

146.1 The CBA did not contain any structured bargaining process or specify how it should be decided that collective bargaining was exhausted, saying only that would occur once negotiations and discussions were concluded. That, the Tribunal finds, was a matter for the JNC . It was not open to VTEC to make that decision unilaterally for itself without any reference to the JNC. The negotiations and discussions had been within the JNC process, and it was for the JNC to decide they were concluded;

146.2 Objectively viewed, the parties were close to agreement. Mr McGowan thought so at the meeting on 17 October 2017, as he agreed to recommend the deal. The contentious issues in the meeting were whether the deal should last one year or two years; whether ASLEF should join the absence management review; and the amount of the floor pay increase, where the parties were only £50 apart. The unions had accepted the principle of rolling sick pay. Objectively, whilst there were matters still to be resolved after the RMT rejected the deal, these were not, individually or collectively, fundamental matters that suggest a deal could not have been agreed through further negotiations;

146.3 Objectively viewed, the negotiations had not reached an impasse. There was an ongoing negotiation process. Ms Bullock knew that the unions were required to seek members' approval to the proposals, with the possibility of rejection. It cannot be said that negotiations were deadlocked when there had been no further discussions in the context of the RMT's decision;

146.4 Objectively viewed, there was no reason why the JNC could not have been re-convened. Single-table bargaining requires agreement by all parties. Therefore, agreement had not been reached. If the TSSA and Unite declined to participate, negotiations could have taken place with the RMT alone; this was contemplated by the second part of paragraph 8. This would have been, as Mr Galbraith-Martin conceded, collective bargaining; and any agreement could then have been ratified within the JNC in order to be incorporated in employees' terms of employment;

146.5 The Tribunal has carefully considered the language used by the RMT, particularly Mr McGowan, before the ballot. On the face of it, it does not suggest agreement was near. But it was the language of rhetoric. As an experienced negotiator, Ms Bullock will have been used to the language sometimes used in such situations. She correctly deduced why Mr McGowan was acting as he was. It can objectively be expected that if negotiations had resumed, these experienced negotiators would have focussed on what was outstanding between them;

146.6 As it transpired, further discussions did ensue between VTEC and the RMT, resulting ultimately in a collectively-bargained agreement. Whilst there were other matters to be resolved, management were keen to resolve the outstanding pay and conditions issues and did not refuse to participate because the other unions had already reached agreement. As mentioned at paragraph 72 above, the language used by the parties during the discussions was of resolving the issue of the 2017 pay award;

146.7 The Tribunal attributes no significance to the description of the offer as "full and final". The same words had already been used for the August 2017 offer. In any event, the employer cannot circumvent section 145B by unilaterally describing an offer as final or shut out further collective bargaining which would otherwise take place.

147. The Tribunal finds, therefore, that acceptance of VTEC's offer, together with other workers' acceptance of the offer, would have had the prohibited result under section 145B(2) of the 1992 Act that the claimants' terms of employment, or any of those terms, would not (or would no longer) be determined by collective agreement. The Tribunal finds that objectively, there was a real possibility that if the offer had not been made and accepted, the relevant terms would have been determined by a new collective agreement reached for the period in question. Therefore, the prohibited result exists in this case.

3. "Prohibited purpose": If the answer to issue 3 is yes, was VTEC's sole or main purpose in making the relevant offer to achieve that prohibited result? More specifically, when it made the offer, did VTEC genuinely believe that the collective bargaining process had been exhausted?

Introduction

148. First, the Tribunal reminds itself of what was said in **Kostal**, at paragraph 68:

> **"A second level of protection is provided by the requirement of section 145B(1)(b) that the section will not be contravened unless the employer's sole or main purpose in making the offers is to achieve the prohibited result. If the employer genuinely believes that the collective bargaining process has been exhausted, it cannot be said that the purpose of making direct offers was to procure the result that terms will not be determined by collective agreement when that otherwise might well have been the case."**

149. Second**,** it is for the respondents to prove, under section 145D(2), what the sole or main purpose was in making the relevant offer.

150. Third, in determining the employer's sole or main purpose, the Tribunal must have regard to the factors set out in 145D(4):

"(a) that when the offers were made the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining;

(b) that when the offers were made the employer did not wish to enter into arrangements proposed by the union for collective bargaining; or

(c) that the offers were made only to particular workers, and were made with the sole or main purpose of rewarding those particular workers for their high level of performance or of retaining them because of their special value to the employer."

Respondents' submissions

151. Mr Bowers reminds the Tribunal that the purpose of section 145B, as referred to in **Kostal**, is that "to avoid inflexibility … the law should allow employees to make offers where the sole or main purpose of the inducement is unconnected with the aim of undermining or narrowing the collective bargaining arrangements".

152. Mr Bowers submits that following **Kostal**, the key question is what VTEC genuinely believed. There is no requirement, he says, that the belief must be reasonable. Here he says there was a genuine belief that negotiations had been concluded, given at least these factors:

    152.1 The belief that the RMT and Mr McGowan had reneged on the promise to recommend the deal, as Ms Bullock put it, "pay discussions were derailed by the RMT";

    152.2 their protracted nature;

    152.3 that the single table bargaining was at an end, TSSA and Unite having agreed the deal;

    152.4 the serious breakdown of trust with Mr McGowan and the fact that he was stoking up the fire;

    152.5 the fact that the union had rejected proposals they had themselves put forward;

    152.6 VTEC's financial position.

153. Mr Bowers says that VTEC had made its final offer; the RMT appeared to be in breach of the provisions of paragraph 6 of the CBA about joint responsibility; and there was a genuine business reason for implementing the pay deal in that agreement had been reached with the unions representing at least some of its employees.

154. Mr Bowers observes that the RMT must have thought the procedure was exhausted as it commenced an industrial action ballot. VTEC had business

reasons for implementing, there was no ignoring or bypassing the procedure, nor had the employer 'dropped in and out' of collective bargaining.

155. Mr Bowers therefore submits that this was a classic case of implementation by an employer when the collective bargaining machinery was exhausted, and the prohibited purpose was not present.

156. Mr Galbraith-Marten does not agree that in **Kostal**, the Supreme Court played down the significance of "purpose". Rather, at paragraphs 31 and 68, Lord Leggatt specifically referred to it as a defence. It was unnecessary to discuss further in **Kostal**, as purpose was not contested. However, an employer may genuinely believe an impasse existed, and make an offer direct to the workforce. In this case, VTEC's purpose was accurately summarised in paragraphs 70 and 104 of Ms Bullock's statement.

157. The Tribunal has already referred to paragraph 70 of Ms Bullock's witness statement above. Paragraph 104 is in the following terms:

"We decided to adopt what we had hoped was a reasonable and rational compromise approach in applying the award whilst allowing RMT members an opt-out. We did so with the aim of balancing the competing needs to implement an award agreed by two of the three trade unions after collective bargaining had been exhausted, whilst at the same time respecting the RMT position and avoiding any dispute or worsening of the relationship with that union."

Claimants' submissions

158. Mr Segal submits that the observation made by Lord Leggatt at paragraph 68 of **Kostal** that:

"If the employer genuinely believes that the collective bargaining process has been exhausted, it cannot be said that the purpose of making direct offers was to procure the result that terms will not be determined by collective agreement when that otherwise might well have been the case"

must clearly refer to the situation where an employer believes that *the procedure* agreed by it with the union has concluded, that the final stage of that process has been completed.

159. Mr Segal contends that the respondents have misunderstood the law on 'sole or main purpose'. It is immaterial that the respondents had no intention of abandoning collective bargaining with the RMT. Section 145B applies even if the offers made to workers who are union members are simply offers of a pay rise along with other changes to their terms of employment and do not require or request the recipients to agree to give up any collective bargaining rights (either indefinitely or at all).

160. Mr Segal's short point is that, as at 13 November 2017 VTEC, frustrated by what it saw as the RMT reneging on its agreement to recommend its latest proposed

pay deal to its members, no longer wished to use the arrangements agreed with RMT and the other unions for collective bargaining within Procedure Agreement 1 in respect of that round of pay talks.

161. That, Mr Segal says, is a relevant matter which the Tribunal must take into account within section 145D(4), namely evidence that when the offers were made, the employer had recently changed or sought to change, or did not wish to use, arrangements agreed with the union for collective bargaining. The Tribunal must take into account, in determining the employer's sole or main purpose, that the acceptance of individual offers would by-pass arrangements agreed with the union for collective bargaining, in respect of that episode of collective bargaining (**Kostal**, at paragraph 69)

162. It is irrelevant whether VTEC was committed to collective bargaining with RMT and its other recognised unions in the next round of pay talks in 2018 or beyond.

163. Mr Segal says that it is clear that VTEC's purpose in making the offers was to achieve the prohibited result of inducing the large majority of affected workers, who had just rejected the latest proposed deal in a ballot, to accept that latest deal outside of the collective bargaining process, essentially under threat of their not benefiting from a pay rise. It could not, at that time, achieve that result within the agreed collective bargaining process because the RMT had not agreed that offer; thus, clause 27 of the employees' contracts did not apply to incorporate the terms of that offer. VTEC had two options: (1) continue the collective bargaining process; or (2) step outside of that collective bargaining process and make offers directly to the affected workers. It elected the second option because it wanted to achieve the prohibited result. That election was unlawful.

The Tribunal's conclusions

164. Section 145B(1)(b) provides that the employer's sole or main purpose when making the offer must be to achieve the prohibited result.

165. Purpose was not in issue in **Kostal**, and there is no discussion of the concept beyond what is said briefly in paragraph 68. This is not to downplay the importance of purpose within section 145B. However, a fundamental consideration is whether the employer genuinely believed that collective bargaining was exhausted, and that was why it made the offer direct to the workforce.

166. The Tribunal does not agree with Mr Segal's interpretation of paragraph 68 of **Kostal** that the employer's genuine belief is limited to the exhaustion of the agreed collective bargaining process or procedure. The proposition is of general application; an employer cannot purpose something that it genuinely believes is already the case.

167. The Tribunal has set out at paragraphs 144-5 above its detailed findings about VTEC's reasons for making the offer direct to the workforce on 13 November 2017, and refers to them as they are material to the employer's purpose under section 145B(1)(b).

168. The Tribunal must take into account the matters listed in section 145D(4) in determining the employer's purpose. The factors at section 145D(4)(b) and (c) do not arise on the facts of this case. However, the Tribunal has considered whether, when the offers were made, VTEC had recently changed or sought to change, or did not wish to use, the arrangements agreed with the union for collective bargaining, recognising that this is not decisive of the case but only a relevant factor.

169. VTEC had not changed or proposed to change the collective bargaining arrangements in the CBA. But the key consideration in this case is whether, on the evidence, VTEC did not wish to use those arrangements on this occasion.

170. The Tribunal has found that on 13 November 2017 VTEC did not wish to continue negotiations through the agreed JNC process (or indeed at all). There was no attempt by VTEC to reconvene the JNC or to consult its members about next steps in light of the RMT's decision. The Tribunal references its conclusions as to VTEC's management's reasons at paragraphs 144-5.

171. This was not, the Tribunal finds, the result of a genuine belief on management's part that collective bargaining was already at an end; it was a decision by VTEC's management for those reasons that it did not wish to continue collective bargaining and, therefore, in order to implement the pay award, it would impose it unilaterally. That was its purpose in making the offers.

172. It is immaterial whether the employer's decision was reasonable or unreasonable, or whether the RMT acted reasonably or unreasonably; the issue is only the employer's subjective purpose. That purpose was to achieve the result that the terms of employment of the relevant employees would not be collectively bargained for the period of the 2017 Pay Award, in that, as a result of its decision to pull out of collective bargaining, implementation of the 2017 Pay Award would be accomplished by imposition on the affected employees rather than by collective bargaining.

173. The Tribunal finds for these reasons that VTEC's purpose in making the offer to its workforce on 13 November 2017 was to achieve the result, on this occasion, that the 2017 Pay Award would not be collectively bargained, and, therefore, section 145B(1)(b) is satisfied.

174. In these circumstances the Tribunal's unanimous decision is that the three elements of section 145B of offer, prohibited result and prohibited purpose are

each satisfied, and, therefore, these claims succeed, and the claimants are entitled to an award under section 145E. Schedules 1, 2 and 3 below set out which claims succeed against which respondent.

Regional Employment Judge Robertson
23 August 2022

Sent to the parties on:
24 August 2022

SCHEDULE 1

(East Coast Main Line Limited)

Title	Forename	Surname	Case No
Ms	Caroline	Coulson	1802840/2018
Mr	Paul Eric	Darby	1802869/2018
Mr	William	Devine	1802889/2018
Ms	Karina	Fisher	1802967/2018
Mr	Raymond	Knight	1803225/2018
Mr	Thomas	McNally	1803373/2018
Mr	Anthony	Murray	1802425/2018
Mr	Ronald	Park	1803495/2018
Mr	Peter	Rae	1803567/2018
Mr	William	Slater	1803683/2018
Mr	Robert Henry	Swales	1803749/2018
Mr	Alun Douglas	Thomas	1803771/2018

Ms	Pamela Beatrice	Thompson	1803776/2018
Mr	Nathan Alexander	Webb	1803830/2018

SCHEDULE 2

(London North Eastern Railway Limited)

Title	Forename	Surname	Case No
Mr	Nicholas William	Ackroyd	1802570/2018
Mr	Luke Brian	Ackroyd	1802572/2018
Mrs	Olabisi Olasimbo	Adesina	1802575/2018
Mr	Godwin	Agbaje	1802576/2018
Mr	Owen	Agnew	1802577/2018
Mr	Zulqurnain	Ahmed	1802578/2018
Ms	Ashwaq	Ahmed-Kyungu	1802579/2018
Mr	Paul John	Alder	1802581/2018
Mr	Findlay	Alderson	1802582/2018
Mr	Aftab	Ali	1802584/2018
Mr	Awais	Ali	1802583/2018
Mr	Rahman	Ali	1802585/2018
Mr	Michael	Allsopp	1802586/2018
Mr	Jason Mark	Ampleford	1802587/2018
Mr	David	Anderson	1802588/2018
Mr	Ross	Anderson	1802591/2018
Ms	Wendy	Anderson	1802592/2018
Mr	Graeme David	Anderton	1802593/2018
Ms	Denise	Andrews	1802594/2018
Mr	Alan	Andros	1802595/2018
Mr	Paul Vincent	Angelosanto	1802596/2018
Mr	Wilson	Appah	1802597/2018
Mr	Gordon	Archibald	1802598/2018
Ms	Nicola Ann	Archibald	1802599/2018
Mr	John	Ardron	1802600/2018
Ms	Margaret	Armoo	1802601/2018
Ms	Lauren	Armstrong	1802606/2018
Mr	Lewis	Armstrong	1802605/2018
Mr	Mustafa	Armutcuoglu	1802607/2018
Miss	Lianne Myumi	Arnison	1803877/2018
Mr	El Houssine	Arsalani	1802608/2018
Mrs	Claire	Ashdown	1802609/2018
Mr	Nicholas	Ashley	1802610/2018
Mr	Nigel	Askew	1802612/2018
Ms	Felicia	Assim	1802613/2018

Ms	Carolyn	Atwell	1802616/2018
Miss	Jennifer	Austin	1802617/2018
Mr	Prince	Baafi	1802618/2018
Ms	Feyi	Babalola	1802619/2018
Mr	Ashley James Paul	Banks	1802621/2018
Ms	Claire Louise	Banks	1802622/2018
Miss	Shinell	Baptiste	1802623/2018
Mr	Stuart Robert	Barber	1802624/2018
Mr	William Stanley	Barber	1802625/2018
Mr	Simon Paul	Bardney	1802626/2018
Ms	Sue Elizabeth	Barfield	1802627/2018
Mr	Kevin	Barham	1802629/2018
Mr	Mark	Barker	1802631/2018
Mr	Martin Howard	Barker	1802633/2018
Ms	Lorraine	Barnard	1802634/2018
Mr	Diane	Barnes	1802546/2018
Mr	Tristam	Barnes	1802635/2018
Mr	Malcolm	Barnett	1802636/2018
Mr	Edward	Barr	1802637/2018
Miss	Remy	Barr (now Cairns)	1802638/2018
Ms	Simone	Barr	1802639/2018
Mr	Lee	Barrett	1802640/2018
Ms	Lyn	Barrett	1802641/2018
Ms	Claire	Bates	1802642/2018
Mr	Steven	Baxter	1802643/2018
Mr	Liam Neil	Bayles	1802644/2018
Mr	Morgyn	Beattie	1802648/2018
Mr	Ryan Scott	Beattie	1802649/2018
Ms	Annmarie	Beattie	1802647/2018
Ms	Sharon	Beaumont	1802651/2018
Mr	Steve	Beaumont	1802650/2018
Ms	Carol	Beckett	1802652/2018
Ms	Shelley	Beckett	1802654/2018
Mr	Brendan	Begley	1802655/2018
Mr	Liam Robert	Bell	1802659/2018
Mr	Philip Lee	Bell	1802661/2018
Mr	Barry McKenzie	Bell	1802656/2018
Miss	Daisy May	Bell	1802657/2018
Ms	Emma	Bell	1803083/2018
Mr	Paul	Bell	1802660/2018
Mr	Anthony	Bennett	1802664/2018
Ms	Leanne	Bennett (now Caldwell)	1802665/2018
Mr	Taylor	Bennie	1802667/2018
Mr	Simon Alexander	Bentley	1802668/2018

Mr	Shkelzen	Beqiri	1802669/2018
Ms	Mehaelal Alina	Beta	1802671/2018
Mr	Andrew David	Beveridge	1802672/2018
Mr	Tito	Bianco	1802673/2018
Mr	Shihab	Biplu	1802674/2018
Mr	Paul	Birks	1802675/2018
Ms	Gemma Rachel	Birnie	1802676/2018
Mr	Kenneth	Black	1802677/2018
Mrs	Pamela	Black (now Shiels)	1802678/2018
Ms	Stephanie	Black	1802679/2018
Mr	Stuart	Black	1802681/2018
Mr	Ryan	Blackadder	1802682/2018
Mr	Mark Anthony	Blackburn	1802683/2018
Mr	James	Blackie	1802684/2018
Mr	Kevin	Blair	1802685/2018
Mr	Joseph	Blakeborough	1802687/2018
Mr	Stephen	Blakey	1802688/2018
Ms	Denise Joan	Blas	1802689/2018
Mr	Jimmy	Board	1802690/2018
Ms	Matilda	Boateng	1802691/2018
Ms	Samantha	Boddington	1802692/2018
Ms	Ramona	Bodor	1802693/2018
Mr	Radoslaw Michal	Bogdanowicz	1802694/2018
Ms	Kay	Bonner	1802696/2018
Mr	Mark	Boon	1802697/2018
Ms	Suzanna	Boon	1802698/2018
Mr	Thomas	Booth	1802699/2018
Mr	Iain Richard	Bostock-Frith	1802701/2018
Mr	Barry Michael	Bouch	1802702/2018
Ms	Corinne	Bourdon	1802703/2018
Mr	Robert John	Bousfield	1802704/2018
Mr	David	Bowman	1802706/2018
Mr	Nathan	Boyd	1802708/2018
Ms	Christine	Boyle	1802709/2018
Ms	Claire Lorraine	Bradley	1802711/2018
Mr	David	Brady	1802712/2018
Ms	Dawn	Bratton	1802715/2018
Mr	John Paul	Breach	1802716/2018
Mr	Garry	Brennan	1802717/2018
Ms	Hayley	Brennan	1802718/2018
Mr	Olivia	Bridge	1802719/2018
Ms	Debbie	Briggs	1802720/2018
Ms	Charlotte Jane	Brock (now Scotland)	1802721/2018
Mr	Shaun Adam	Brooke	1802724/2018

Ms	Cheryl Ann	Brooks	1802725/2018
Mr	Mark	Brooks	1802726/2018
Mr	Ryan	Broom	1802727/2018
Ms	Sandra	Brophy	1802728/2018
Mr	Terry	Brotherton	1802729/2018
Mr	Christopher Paul	Brown	1802732/2018
Mr	Anthony	Brown	1802730/2018
Mr	Ben	Brown	1802731/2018
Mr	Ian	Brown	1802733/2018
Ms	Maria	Brown	1802734/2018
Ms	Bernadette	Browne	1802735/2018
Ms	Caroline	Bruce	1802736/2018
Mr	Carl Brian	Brunning	1802737/2018
Ms	Gina	Brunning	1802739/2018
Ms	Holly	Brunton	1802740/2018
Mr	Thomas	Brydon	1802742/2018
Ms	Mandy	Buchanan	1802745/2018
Ms	Laura	Buchanan	1802744/2018
Ms	Angela	Buddo	1802746/2018
Mr	David Philip	Bunn	1802747/2018
Mr	Brian	Burke	1802748/2018
Ms	Ash Joanna	Burnell	1802750/2018
Ms	Rachel Olivia	Burnett	1802751/2018
Mr	Dennis	Burrell	1802754/2018
Ms	Amy Louise	Butler	1802755/2018
Ms	Deborah Ann	Butler	1802756/2018
Mr	Melvyn	Caddick	1802759/2018
Mr	John Morgan	Cahill	1802760/2018
Mr	Stephen	Cain	1802532/2018
Ms	Pauline	Callaghan	1802763/2018
Ms	Rachel	Cameron	1802764/2018
Mr	Stewart Lee	Cameron	1802765/2018
Ms	Karla	Campbell	1802768/2018
Ms	Michelle-Ann	Campbell	1802769/2018
Mr	Alan	Campbell	1802766/2018
Ms	Donna	Campbell	1802767/2018
Ms	Susie	Campbell	1802770/2018
Mr	Michael	Canagasabey	1802545/2018
Ms	Claire	Canavan	1802771/2018
Ms	Joanne Davena	Cantrill (now Lavery)	1802772/2018
Ms	Karen	Carden	1802773/2018
Mr	Robert	Cardownie	1802775/2018
Ms	Gwenneth Bronwen	Carey	1803822/2018
Ms	Alison Caroline	Carnevale Paterson (now Thomson)	1802776/2018

Ms	Georgina	Carrick (now Collins)	1802777/2018
Ms	Gemma Michelle	Carrington	1802779/2018
Ms	Kathryn	Carroll	1802780/2018
Mr	Scott	Carruthers	1802781/2018
Mr	Andrew	Carter	1802782/2018
Ms	Maria	Carter	1802783/2018
Mrs	Alison Jayne	Casling	1802784/2018
Ms	Carly	Casling	1802785/2018
Mr	Craig	Cassells	1802786/2018
Mr	Glen	Casson	1802787/2018
Ms	Andrea	Cawood	1802788/2018
Mr	Terrence	Channer	1802789/2018
Mr	Alan Stuart	Charters	1802792/2018
Mr	Thomas	Clare	1802795/2018
Mr	Chris	Clark	1802797/2018
Ms	Donna	Clark	1802800/2018
Mr	Duncan	Clark	1802798/2018
Mr	Maria	Clark (now Laws)	1802801/2018
Ms	Amy	Clarke	1802802/2018
Ms	Gillian	Claye	1802803/2018
Ms	Charlotte	Clayton	1802804/2018
Ms	Rebecca Jade	Clayton	1802805/2018
Mr	Kevin John	Cleary	1802807/2018
Ms	Justine Samantha	Cleary	1802806/2018
Ms	Pamela Jean	Cleckner	1802809/2018
Ms	Susan	Clegg	1802810/2018
Ms	Kelly Cherie	Clements	1802811/2018
Ms	Jennifer	Clifford	1802808/2018
Ms	Yvette Louise	Clough	1802812/2018
Mr	Ronald Graham	Coats	1802813/2018
Mr	Chris	Cockerham	1802814/2018
Mr	Alan	Coe	1802815/2018
Mr	Duncan	Cohen	1802816/2018
Mr	Mark	Collingwood	1802817/2018
Mr	Alec	Collins	1802818/2018
Mr	Nelson Angus	Combe	1802819/2018
Mr	James Richard	Connolly	1802820/2018
Mr	Christopher	Cook	1802823/2018
Ms	Amanda Nicole	Cook	1802822/2018
Ms	Autumn	Cook	1802821/2018
Mr	Jamie	Cook	1802824/2018
Mr	Michael	Cook	1802825/2018
Ms	Nicole	Cooke	1802826/2018
Mr	Peter	Cooper	1802829/2018
Mr	Simon	Cooper	1802830/2018

Mr	Jordan Erik	Cooper	1802827/2018
Mr	Miles	Cooper	1802828/2018
Ms	Vicki Elaine	Cooper	1802831/2018
Mr	Kevin	Copeland	1802832/2018
Mr	Steven	Copeland	1802833/2018
Ms	Lauren	Cormack	1802835/2018
Ms	Kathy	Corsbie	1802836/2018
Ms	Hannah	Coulbeck	1802837/2018
Mr	Andrew John	Coulson	1802838/2018
Ms	Rebecca	Cozens	1802844/2018
Mr	Robert Gordon	Craig	1802845/2018
Ms	Emma Louise	Crawford	1802848/2018
Mr	Graham Morrison	Crighton	1802849/2018
Mr	Douglas	Cringles	1802850/2018
Mr	Benjamin	Crisp	1802851/2018
Ms	Jodie	Crisp	1802853/2018
Ms	Lorraine	Crossley	1802855/2018
Ms	Marie Tereasa	Cullen	1802857/2018
Ms	Leah Robson	Cunningham	1802858/2018
Ms	Rosie	Cunningham	1802859/2018
Mr	Simon	Cunningham	1802860/2018
Ms	Donna	Currie	1802861/2018
Ms	Lorna	Currie Gooding	1802863/2018
Mr	Cristiano	Cuzziol	1802865/2018
Mr	Daniel Gordon	Dalzell	1802867/2018
Ms	Sarah	Danks	1802868/2018
Mr	Gary	Davidson	1802871/2018
Mr	Stephen	Davidson	1802873/2018
Mr	Adam	Davies	1802875/2018
Mr	Alan	Davies	1802876/2018
Mr	Daniel	Dawson	1802877/2018
Mr	Philip	Dawson	1802878/2018
Ms	Susan	Day	1802879/2018
Mr	Christophe	De Pessemier	1802880/2018
Mr	Jonathan	Deacon	1802881/2018
Mr	Martin	Dean	1802882/2018
Ms	Diana	Del Pozo Sotillo	1802884/2018
Mr	Karl	Denham	1802885/2018
Mr	Michael	Denton	1802886/2018
Ms	Nicola	Denton	1802887/2018
Mr	Alan	Devine	1802888/2018
Mr	Barnabas	Dhokwani	1802891/2018
Mr	Nelson	Dhokwani	1802892/2018
Mr	Ahmad	Dibnah	1802893/2018
Ms	Coreana Louise	Docherty	1802896/2018

Mr	Derek	Docherty	1802897/2018
Miss	Jay	Dodds (now Jepson)	1802899/2018
Ms	Ana	Dogaru	1802528/2018
Mr	Brian	Doherty	1802900/2018
Mr	Martin	Donald	1802901/2018
Miss	Angela	Doran	1802902/2018
Ms	Kayleigh Marie	Douglass	1802905/2018
Mr	Adam	Dowling	1802907/2018
Mr	Malcolm	Dowson	1802908/2018
Mr	Paul	Doyle	1802909/2018
Ms	Louise	Drake	1802911/2018
Ms	Michelle	Draycott	1802912/2018
Mr	Stuart	Drummond	1802913/2018
Mr	William	Drummond	1802914/2018
Mr	Scott	Dudfield	1802915/2018
Mr	Daniel	Duncan	1802916/2018
Mr	Thomas	Duncan	1802917/2018
Ms	Lisa Leanne	Dunn	1802918/2018
Ms	Carol Ann	Durrant	1802921/2018
Mr	Connor	Dutton	1802922/2018
Mr	Michael	Dye	1802923/2018
Mr	Benjamin	Dyson	1802924/2018
Mr	Peter	Eaglesham	1802925/2018
Ms	Sophie	Easton	1802928/2018
Mr	James Grant	Edward	1802929/2018
Ms	Angela Modupe	Ejaita	1802931/2018
Mr	Darren	Ellerby	1802932/2018
Ms	Anna-Louise	Ellington	1802933/2018
Ms	Michala	Elliott	1802934/2018
Ms	Sarah	El-Shoubashi	1802936/2018
Mr	John Arif	Emmanuel	1802937/2018
Mr	Kelly	Emmerson	1802938/2018
Mr	Thomas David	Emmerson	1802940/2018
Mr	Paul	Emmerson	1802939/2018
Mr	James	Emmott	1802941/2018
Mr	Derek	England	1802942/2018
Mr	Euan Stewart	Erskine	1802943/2018
Mr	Peter	Etherington	1802944/2018
Ms	Tracy Jane	Etherington	1802945/2018
Mr	David	Evans	1802947/2018
Ms	Lisa	Evans	1802948/2018
Mr	David William	Evans	1802946/2018
Mr	Jeffrey	Evinou	1802950/2018
Ms	Christine	Exley	1802951/2018
Mr	Asher	Farman	1802954/2018

Mr	Daniel Mark	Fawcett	1802955/2018
Ms	Lynn	Fawcett	1802956/2018
Ms	Simone	Fearon	1802957/2018
Ms	Lisa	Fenwick	1802958/2018
Ms	Sharon	Field	1802962/2018
Mr	Joe	Finn	1802963/2018
Ms	Jenifer Yvonne	Finn	1802964/2018
Mr	Steven David	Finn	1802965/2018
Mr	Richard Mark	Firth	1802966/2018
Mr	David	Fitches	1802968/2018
Ms	Lorna	Flanagan	1802969/2018
Ms	Beverley	Flatt	1802970/2018
Mr	Robert	Fleming	1802971/2018
Mr	Stuart Edgar	Fletcher	1802972/2018
Ms	Laura	Flynn	1802973/2018
Mr	Steve	Follit	1802974/2018
Ms	Karen	Forbes	1802975/2018
Ms	Carol	Ford	1802977/2018
Mr	Robert	Ford	1802978/2018
Ms	Hayley	Forrest	1802979/2018
Mr	Gareth Stewart	Fowler	1802981/2018
Mr	Neil	Fox	1802982/2018
Mr	James Murray	Fraser	1802983/2018
Mr	Kenneth	Fraser	1802984/2018
Ms	Karen	Fraser	1802985/2018
Ms	Rachael	Fraser	1802986/2018
Ms	Sarah	Freckleton	1802987/2018
Ms	Geraldine	Fregene	1802988/2018
Mr	Ritchie	Frost	1802989/2018
Ms	Samantha Louise	Froude	1802990/2018
Mr	Greig	Fulton	1802991/2018
Ms	Domenica	Fusco	1802992/2018
Ms	Lindsey	Gallagher	1802994/2018
Mr	Mark	Galsworthy	1802995/2018
Mr	David James	Gannaway	1802996/2018
Ms	Jacqueline	Gannaway	1802997/2018
Ms	Aurora	Garcia Diaz	1802998/2018
Ms	Joanne	Gardner	1802999/2018
Ms	Janine	Garnett	1803000/2018
Mr	Shaun Anthony	Garrett	1803001/2018
Mr	Kevin	Garthwaite	1803002/2018
Mr	Andrew James	Garvie	1803004/2018
Ms	Elizabeth	Gasken	1803005/2018
Ms	Joanne	Gatenby	1803006/2018
Ms	Kathleen	Gaughan	1803007/2018

Mr	Simon	Gavaghan	1803008/2018
Ms	Justina	Gawel (now Mackowiak)	1803009/2018
Mr	Dean	Geddis	1803010/2018
Ms	Pavla	Georgievova (now Mannifield)	1803013/2018
Mr	Sergio	Gil Grancha	1803015/2018
Mr	James Gordon	Gilbert	1803016/2018
Ms	Naomi	Giles (now Patterson)	1803017/2018
Mr	Istvan	Gilicze	1803019/2018
Ms	Lorraine	Gill	1803020/2018
Mr	Stephen	Gillies	1803022/2018
Mr	Graeme Peter	Gilroy	1803024/2018
Ms	Michelle	Gilroy	1803025/2018
Mr	Matthew	Gipson	1803026/2018
Mr	Ian Kenneth	Glen	1803028/2018
Ms	June	Glendinning-Mills	1803029/2018
Mr	David Sydney	Glennie	1803030/2018
Mr	David	Glover	1803031/2018
Ms	Julie Anne	Gooding	1803033/2018
Ms	Jacqueline	Gordine	1803034/2018
Ms	Ann-Marie	Gordon	1803035/2018
Mr	Michael	Gordon	1803036/2018
Mr	Steven	Gordon	1803037/2018
Ms	Janet	Gough	1803039/2018
Ms	Katy Elizabeth	Gough	1803040/2018
Mrs	Hannah	Grainger	1803041/2018
Mr	Andrew	Gray	1803043/2018
Ms	Caroline	Gray	1803723/2018
Mr	Kevin	Gray	1803047/2018
Mr	Jonathan	Gray	1803045/2018
Mr	Maurice	Green	1803048/2018
Mr	David	Gregory	1803050/2018
Mr	Jeffrey	Grey	1803051/2018
Ms	Rebecca	Grey now Carson)	1803052/2018
Ms	Elizabeth	Gribben	1803054/2018
Mr	Neil	Grogan	1803055/2018
Mrs	Orlette	Guardascione	1803056/2018
Mr	Salvatore	Guardascione	1803057/2018
Mr	Meral	Gungor	1803058/2018
Ms	Stacey	Guthrie	1803062/2018
Mr	Gerald	Guthrie	1803060/2018
Ms	Karen	Guthrie	1803061/2018
Mr	Ian	Gwilliam	1803063/2018
Ms	Anne	Haining	1803065/2018

Mr	Christopher	Hall	1803066/2018
Mr	Leslie	Hall	1803068/2018
Ms	Melinda	Hallas	1803070/2018
Mr	Ross	Hallewell	1803071/2018
Ms	Joanne	Hammond	1803075/2018
Mr	Lorraine	Hammond	1803076/2018
Ms	Becki	Hancock	1803078/2018
Ms	Jacquelyn	Hancock	1803079/2018
Mr	Michael James	Hannon	1803081/2018
Mr	Aminul	Haque	1803082/2018
Mr	James Arthur	Hare	1803084/2018
Miss	Elizabeth	Harkness	1803085/2018
Ms	Yvonne Wendy	Harrison	1803090/2018
Mrs	Darren	Harrison	1803088/2018
Miss	Julie Ann	Harrison	1803089/2018
Miss	Gonca	Has	1803091/2018
Mr	James	Haslam	1803092/2018
Mr	Lenroy	Haughton	1803093/2018
Mr	Andrew	Hawkins	1803094/2018
Mr	Robert Mark	Hawkins	1803096/2018
Mr	Keith	Hawkins	1803095/2018
Mr	Joseph Terence	Heatherington	1803097/2018
Ms	Angela	Heaton	1803098/2018
Ms	Elizabeth	Hemple	1803099/2018
Ms	Annmarie	Henderson	1803100/2018
Ms	Helen	Henderson	1803102/2018
Ms	Zoe	Henderson	1803104/2018
Ms	Joan Valerie	Hendry	1803105/2018
Mr	Michael John	Herman	1803106/2018
Ms	Ruth	Herring	1803107/2018
Mr	Keith	Herron	1803108/2018
Ms	Amy Louise	Heslington	1803109/2018
Mr	Martin John	Hick	1803111/2018
Ms	Alexandra	Hick (now Naylor)	1803110/2018
Mr	Mark	Higginbottom	1803112/2018
Mr	Kyle	Higgins	1803113/2018
Ms	Nicola Janie	Higgins	1803114/2018
Ms	Leeanne	Higginson	1803116/2018
Ms	Barbara	Higgs	1803117/2018
Mr	Edward	Hill	1803120/2018
Ms	Avril	Hill	1803118/2018
Ms	Clare	Hill	1803119/2018
Mr	Stephen	Hinds	1803123/2018
Mr	Bernard	Tak Kei Ho	1803124/2018
Mr	Jonathan Neil	Hodge	1803126/2018

Ms	Laura Jayne	Hodge	1803127/2018
Mr	Alan	Hodgson	1803128/2018
Mr	Philip	Hodgson	1803129/2018
Mr	Robert George	Holland	1803131/2018
Ms	Lorraine	Holmes	1803132/2018
Ms	Amanda Jane	Honour	1803133/2018
Mr	Edward	Honour	1803135/2018
Ms	Sharon	Horbury	1803137/2018
Ms	Leanne	Horwood	1803139/2018
Mr	Kevin	Howe	1803140/2018
Mr	Robert Thomas	Howes	1803141/2018
Ms	Jacqueline	Howlett-Smith	1803143/2018
Mr	Robert James	Hoye	1803144/2018
Mr	James Alexander	Huby	1803145/2018
Mr	Steve	Hucknall	1803146/2018
Ms	Lindsey Angela	Hudson	1803147/2018
Mrs	Lea Anne	Hughes	1803148/2018
Mr	Ben Nils	Hume	1803150/2018
Mr	Peter Neville	Humphries	1803151/2018
Ms	Susan	Hunt	1803152/2018
Ms	Amanda	Hunter	1803153/2018
Ms	Anne-Marie	Hunter	1803154/2018
Ms	Natalie Rose	Hurdus	1803156/2018
Mr	Matthew Owen	Hurst	1803157/2018
Mr	Clive	Husband	1803158/2018
Ms	Louise	Hussein	1803159/2018
Mr	James Robin Watson	Hutton	1803160/2018
Ms	Janice Elaine	Imlah	1803161/2018
Miss	Keli	Irwin	1803164/2018
Mr	Rahnum	Ishtiaq	1803165/2018
Miss	Nikki	Jackson	1803167/2018
Ms	Francine Maria	James	1803168/2018
Ms	Samantha	Jameson	1803169/2018
Ms	Kimberly	Jamieson	1803170/2018
Mr	Yathavan	Jenanachandran	1803171/2018
Ms	Carolyn	Jepson	1803172/2018
Mr	Daniel	Jepson	1803173/2018
Ms	Jolene	Jewitt	1803174/2018
Ms	Nimu Aleem	Jiwanji	1082527/2018
Ms	Nicola Jayne	Johnson	1803180/2018
Mr	Richard Adeniyi	Johnson	1803181/2018
Mr	Adrian Philip	Johnson	1803175/2018
Mrs	Caroline	Johnson	1803176/2018
Mr	Daniel	Johnson	1803178/2018
Mr	David	Johnson	1803177/2018

Ms	Joanne Kathryn	Johnson	1803179/2018
Ms	Victoria	Johnson (now Holmes)	1803182/2018
Mr	Steven	Johnstone	1803184/2018
Ms	Emma Louise	Jones (now Stacey)	1803185/2018
Mr	Gareth Paul	Jones	1803186/2018
Ms	Sally Ann	Jones	1803189/2018
Ms	Holly	Jones	1803187/2018
Mr	Robert	Jones	1803188/2018
Ms	Dorothy Mary	Jordan	1803191/2018
Mr	Ian Robert	Jordan	1803192/2018
Ms	Claire Lorraine	Jowett	1803193/2018
Mr	Titani Emmanuel	Kamphandira	1803194/2018
Mr	Ibrahim	Kanu	1803196/2018
Mr	Bakul	Kapadia	1803197/2018
Mr	Thomas	Kaplanis	1803198/2018
Mr	Lee	Kay	1803200/2018
Mr	Alan Thomas	Keary	1803201/2018
Mrs	Nada	Keary	1803202/2018
Mr	Ian	Keith	1803204/2018
Ms	Christine	Kelly	1803205/2018
Mr	Wayne Anthony	Kelly	1803206/2018
Mr	Richard Anthony	Kemp	1803207/2018
Ms	Claire	Kemper (now Thompson)	1803208/2018
Mr	Scott	Kemper	1803209/2018
Ms	Margaret	Kennedy	1803210/2018
Ms	Lynn	Kenneway	1803211/2018
Ms	Mary Elizabeth	Kenny	1803212/2018
Mr	Alan	Kettlewell	1803214/2018
Mr	Christopher	Kindlan	1803217/2018
Mr	Raymond John	King	1803219/2018
Mr	Richard Patrick	King	1803220/2018
Mr	Robert	Kingsnorth	1803221/2018
Ms	Tracey	Kirkbright	1803222/2018
Mr	Kester	Kissane	1803223/2018
Ms	Michelle	Knighton	1803228/2018
Ms	Lisa	Knighton	1803227/2018
Mr	Ian	Knott	1803229/2018
Mr	Elton	Kociraj	1803231/2018
Ms	Barbara	Kouame	1803232/2018
Mr	Christopher	Krakowski	1803233/2018
Ms	Victroria	Krapp	1803234/2018
Ms	Bethany	Lacey (now Brown)	1803235/2018
Ms	Stephanie	Laidler	1803236/2018
Ms	Stacey	Lake	1803238/2018

Ms	Pauline	Lamont	1803241/2018
Ms	Claire	Lancaster	1803242/2018
Mr	Kenneth	Lang	1803244/2018
Mr	Matthew	Langdown	1803245/2018
Ms	Elaine Patricia	Langford	1803246/2018
Ms	Julianna	Laszlo	1803247/2018
Ms	Luisa	Lauren	1803248/2018
Ms	Alison	Law	1803249/2018
Mr	Craig	Lawrence	1803250/2018
Mr	Craig	Lawson	1803252/2018
Ms	Sandra	Lee	1803255/2018
Mr	Kenneth	Leech	1803256/2018
Ms	Melanie	Leeming	1803257/2018
Ms	Beverley	Lee-Moulding	1803258/2018
Mr	Duncan	Leishman	1803259/2018
Mr	Mark	Lemmon	1803260/2018
Mr	Tristan	Leonard	1803261/2018
Ms	Roxsanne	Lesieur	1803262/2018
Ms	Anneka	Lewis	1803264/2018
Ms	Keely	Liddell	1803265/2018
Ms	Lisa Anne	Lilley	1803266/2018
Mr	Paul	Lippeatt	1803267/2018
Mr	Ian	Littlefear	1803270/2018
Mr	John	Littlewood	1803272/2018
Ms	Michelle	Livingstone	1803273/2018
Ms	Hayley	Lockerbie	1803275/2018
Ms	Mandy	Lockhart	1803277/2018
Mr	David	Lockwood	1803278/2018
Mr	Raymond	Lockwood	1803279/2018
Mr	Darren Brian	Lodge	1803280/2018
Ms	Suzanne Adelene	Love	1803281/2018
Mr	Philip	Lowe	1803282/2018
Ms	Sheila Ann	Lowther	1803284/2018
Mr	Darren Joseph	Lumber	1803285/2018
Ms	Emma	Lycett	1803286/2018
Mr	Derek Thomas	Lynas	1803287/2018
Mr	Delroy	Lynch	1803288/2018
Mr	William	Lynch	1803290/2018
Mr	James	Lyons	1803291/2018
Ms	Catherine	MacDonald	1803292/2018
Ms	Kathryn	Mace	1803295/2018
Mr	David Duncan	MacLauchlan	1803297/2018
Mr	Gavin	MacLean	1803298/2018
Mr	Norman	MacLeod	1803300/2018
Mr	Kenneth	MacLeod	1803299/2018

Mr	Andrew	MacNair	1803301/2018
Mr	Scott	MacRae	1803302/2018
Mr	Paul	Maddison	1803303/2018
Miss	Samira	Madkour-Ali	1803304/2018
Ms	Anna	Maggs (now Fenton)	1803305/2018
Mr	Ingemar	Magnusson	1803306/2018
Ms	Kathleen Mary	Maguire	1803307/2018
Mr	Philip	Maher	1803308/2018
Mr	Sharef	Malik	1803309/2018
Ms	Brenda	Mallinson	1803310/2018
Mr	James	Mallinson	1803311/2018
Mr	Anthony	Mallon	1803312/2018
Mr	Rodger	Maningding	1803315/2018
Ms	Ruta	Mankeviciene	1803316/2018
Mr	Jonnie	Manners	1803317/2018
Mrs	Claire	Manning	1803318/2018
Mr	Freddy	Maremeni	1803320/2018
Ms	Sofija	Maricic	1803321/2018
Mr	Zimele	Maroti	1803322/2018
Mr	David	Marris	1803323/2018
Ms	Hayley	Marsay	1803324/2018
Ms	Joanna	Marsden	1803326/2018
Mr	Gary	Marsden	1803325/2018
Mr	Lee	Marshall	1803329/2018
Ms	Alison	Marshall	1803327/2018
Mr	Graeme	Marshall	1803328/2018
Mrs	Lee	Martin (now Naughton)	1803330/2018
Ms	Debrah	Mason	1803331/2018
Mr	Jack Robert	Mason	1803332/2018
Mr	David	Maughan	1803334/2018
Mr	Martin John	Maytum	1803335/2018
Ms	Carrie	McCann	1803338/2018
Ms	Lorna	McClarence	1803339/2018
Mr	Martin	McCleary	1803340/2018
Mr	Shaun	McCrudden	1803343/2018
Mr	David	McCutcheon	1803344/2018
Ms	Jane	McDaid	1803345/2018
Ms	Alison	McDermott	1803346/2018
Mr	Daniel	McDonald	1803347/2018
Mr	John Vincent	McDonald	1803348/2018
Ms	Keeleigh	McDougall	1803350/2018
Mr	Chris Ramsay	McDowell	1803351/2018
Ms	Brigid	McElroy	1803352/2018
Mr	Darren	McGowan	1803354/2018

Ms	Izabela	McGowan	1803355/2018
Mr	Ross Thomas	McGowan	1803356/2018
Ms	Teresa Gemma	McGowan	1803357/2018
Ms	Sharron	McGrath	1803358/2018
Mr	Brian	McGroarty	1803362/2018
Ms	Claire Anne	McGroarty	1803363/2018
Ms	Elena	McHugh	1803365/2018
Ms	Eileen	McKenna	1803367/2018
Mr	Daniel	McLaughlin	1803370/2018
Ms	Zoe	McNamara	1803374/2018
Mr	Stephen Christopher	McNichol	1803375/2018
Mr	Neal	McNulty	1803376/2018
Mr	Andrew	McStay	1803380/2018
Ms	Carole	McVay	1803381/2018
Ms	Tracy Ann	McVeigh	1803382/2018
Mr	Simon	Mehdi	1803383/2018
Ms	Paula	Melvin-Cadger	1803384/2018
Ms	Clara	Mennie	1803385/2018
Ms	Leanne	Mennie	1803386/2018
Ms	Roseann	Mennie	1803387/2018
Ms	Amanda June	Middlemas	1803388/2018
Ms	Denise	Middleton	1803389/2018
Mr	Ryan	Miller	1803392/2018
Mr	Neil	Milne	1803394/2018
Mr	Sarfraz	Mirza	1803395/2018
Mr	Michael	Mishner	1803396/2018
Mr	Daryl Thomas	Mitchelhill	1803397/2018
Mr	Adam	Mitchell	1803398/2018
Ms	Karin	Mitchell	1803400/2018
Ms	Angela	Mitcheson	1803401/2018
Ms	Collette	Modral	1803402/2018
Ms	Helen	Moffitt	1803404/2018
Mr	Derek	Moloney	1803405/2018
Ms	Donna	Moorehead	1803406/2018
Ms	Chloe	Moorhouse	1803407/2018
Ms	Natalie	Moorhouse	1803408/2018
Ms	Janice	Mordue	1803409/2018
Ms	Patricia	Morgan	1803410/2018
Mr	Craig	Morrison	1802541/2018
Ms	Sheila	Morrison	1803411/2018
Ms	Amanda	Moss	1803412/2018
Ms	Sheron Elizabeth	Moss	1803413/2018
Mr	Boualem	Moussouni	1803414/2018
Ms	Anna	Mowat-Reay	1803415/2018
Ms	Jill	Muff	1803416/2018

Mr	Thomas	Mulcahy	1803417/2018
Mr	Andrew	Mulholland	1803418/2018
Mr	Thomas	Mulholland	1803419/2018
Mr	Stephen	Mullen	1803420/2018
Mr	David Stuart	Munro	1803422/2018
Ms	Elizabeth	Murphy	1803424/2018
Mr	Liam	Murray	1803426/2018
Ms	Lorraine	Musgrove	1803427/2018
Ms	Natasha	Mushonga	1803428/2018
Mr	Eidris	Mussa	1803429/2018
Mr	Yasir	Mussa	1803431/2018
Mr	Hanif	Mussa	1803430/2018
Mr	Steven	Muter	1803432/2018
Ms	Christine Monica	Myers	1803434/2018
Ms	Melanie	Myers	1803435/2018
Ms	Susan	Napier	1803437/2018
Mr	Naseer	Naseer	1803438/2018
Ms	Philippa	Nash	1803439/2018
Ms	Tara	Nash	1803440/2018
Mr	Piotr	Nawrocki	1803441/2018
Mr	Richard	Ndikumana	1803442/2018
Ms	Debra	Neal	1803443/2018
Ms	Elena Alina	Necula	1803446/2018
Ms	Dawn Margaret	Neish	1803447/2018
Mr	Antony	Newman	1803448/2018
Ms	Wendy	Newton	1803450/2018
Mr	David	Nicholls	1803452/2018
Ms	Alexandra	Nichols	1803455/2018
Ms	Angela	Nichols	1803453/2018
Mr	Michael	Nichols	1803456/2018
Mr	David	Nicol	1803458/2018
Mr	Frank Vickery	Nicol	1803459/2018
Ms	Vivian Mukoma	Nkhata	1803460/2018
Mr	Paul John	Noblett	1803465/2018
Ms	Ada	Nowakowska	1803466/2018
Mr	Phemelo	Ntshabele	1803467/2018
Ms	Bridget	Nuamah (now Kakra)	1803469/2018
Ms	Kelly	Nye	1803470/2018
Ms	Katherine	Oates	1803471/2018
Mr	Brian	O'Brien	1803472/2018
Miss	Linsey Beth	O'Brien	1803473/2018
Mr	John	O'Connell	1803474/2018
Mr	Kieran	O'Donnell	1803476/2018
Mr	Mark	O'Donnell	1803477/2018

Ms	Pamela Elizabeth	O'Donnell	1803478/2018
Mr	Richard Alexander	Ogden	1803479/2018
Mr	David	Ogg	1803480/2018
Mr	Feyisitan	Omolabi	1803481/2018
Mr	Kevin	Ong	1803482/2018
Ms	Amy	O'Reilly	1803483/2018
Mr	Aaron Anthony	O'Sullivan	1803484/2018
Mr	Roy Stephen James	Outing	1803485/2018
Mr	David Andrew	Owen	1803487/2018
Ms	Michelle	Owen	1803488/2018
Mr	Alan	Page	1803490/2018
Mr	Keith	Page	1803491/2018
Mr	Glenn	Palmer	1803492/2018
Mr	Paul	Panesar	1803493/2018
Ms	Karen	Paparesti	1803494/2018
Mr	Darren Lee	Parker	1803496/2018
Mr	Nick Ian	Parker	1803498/2018
Mr	Raju	Patel	1803504/2018
Mr	Mohmed Zuned	Patel	1803502/2018
Mr	Ridwan Abdul Hamid	Patel	1803503/2018
Mrs	Sagufta Banu	Patel	1803505/2018
Mr	Scott	Paterson	1803510/2018
Mr	Neil Charles	Paterson	1803509/2018
Mr	Christoper	Paton	1803511/2018
Mr	Thomas	Paton	1803512/2018
Mr	Jack	Paul	1803513/2018
Ms	Sarah Louise	Paul	1803514/2018
Mr	Craig Thomas	Peacock	1803515/2018
Mr	Richard	Pearce	1803516/2018
Mr	Ryan John	Pearsall	1803517/2018
Ms	Sophie Elizabeth	Pearson	1803520/2018
Mr	Craig	Pearson	1803518/2018
Ms	Suzanne	Pearson	1803519/2018
Ms	Christine	Peat	1803521/2018
Mr	Tom	Peirce	1803522/2018
Ms	Amy Teresa	Penfold	1803523/2018
Mr	Darren	Penman	1803524/2018
Mr	Nigel	Penman	1803525/2018
Mr	Christopher	Perkins	1803526/2018
Ms	Katrina Louise	Peterson	1803527/2018
Ms	Nicoleta	Petrica	1803528/2018
Ms	Nicoleta	Petrisor	1803529/2018
Ms	Lyndsey Alexandra	Petty	1803530/2018
Mr	Israel	Philips	1803531/2018
Mr	David	Phillips	1803532/2018

Ms	Ella	Phillips-Jones	1803533/2018
Mr	James	Phillpott	1803534/2018
Ms	Helen	Pickering	1803535/2018
Ms	Michaela Louise	Pickles	1803536/2018
Ms	Sonja	Pietersen	1803537/2018
Mr	Kevin	Pikett	1803538/2018
Mr	Philip	Pilkington	1803539/2018
Mr	Arthur Malcolm	Pinchin	1803540/2018
Mr	Paul Michael	Pinkney	1803541/2018
Ms	Ruby	Pino	1803543/2018
Ms	Elma	Pinon	1803544/2018
Ms	Rachel	Place	1803545/2018
Mr	John	Popham	1803547/2018
Ms	Ditirwa	Poroga	1803548/2018
Mr	Luis	Pose-Rodriguez	1803549/2018
Mr	Calum	Potter	1803550/2018
Ms	Pauline	Pownall	1803552/2018
Mr	Domiziano	Pozzi-Carioti	1803553/2018
Ms	Lynette	Preen	1803554/2018
Ms	Nicola Louise	Price	1803556/2018
Ms	Samantha	Proud	1803557/2018
Mrs	Rita	Pulavska	1803542/2018
Mr	Marcin	Pulawski	1803558/2018
Mr	Tom George	Pulford	1803559/2018
Ms	Shelley	Purdham	1803561/2018
Ms	Nicola	Pyle	1803563/2018
Mr	Malcolm	Pyle	1803562/2018
Mr	Brian	Quinn	1803564/2018
Mr	Thomas	Quinn	1803565/2018
Mr	Simon Gary	Race	1802571/2018
Mr	Robert Kenneth	Rainey	1803569/2018
Mr	Mahen	Ramrajsingh	1803570/2018
Mr	Thrishna	Ramrajsingh	1803571/2018
Ms	Michelle	Ramsay	1803572/2018
Mr	Richard	Ramsey	1803574/2018
Ms	Kimberley	Rankin	1803575/2018
Ms	Deborah	Rankine	1803576/2018
Mr	Tejan	Rashid	1803577/2018
Mr	James Liam	Rawcliffe	1803579/2018
Mr	Stuart	Rawcliffe	1803580/2018
Mr	Syed Imran	Raza	1803581/2018
Mr	Daniel John	Read	1803582/2018
Ms	Emma	Reed	1803584/2018
Mr	Max	Reid	1803588/2018
Mr	Paul	Reiling	1803589/2018

Ms	Fiona Anne	Renney	1803590/2018
Mr	David Michael	Rennison	1803591/2018
Ms	Sara Orquidea Rangel	Ribeiro	1803594/2018
Ms	Christine Heidi	Richardson (now Marriott)	1803596/2018
Mr	Andrew	Richardson	1803595/2018
Ms	Karen	Richardson	1803597/2018
Ms	Jane Karen	Richmond	1803598/2018
Mr	Aaron	Riding-Brown	1803600/2018
Ms	Erika	Riley	1803601/2018
Ms	Helen	Riley	1803602/2018
Mr	John Martin	Robb	1803603/2018
Mr	Malcolm Carl	Roberts	1803606/2018
Mr	Steven Stuart	Roberts	1803607/2018
Mr	Anthony John	Roberts	1803604/2018
Ms	Margaret	Roberts	1803605/2018
Ms	Joanne	Robertson (now Fenton)	1803610/2018
Mr	Ross Iain	Robertson	1803611/2018
Mr	Alan	Robinson	1803612/2018
Ms	Daniela	Robinson	1803613/2018
Ms	Diane	Robinson	1803614/2018
Ms	Marrianne	Robinson	1803615/2018
Mr	Philip	Robinson	1803616/2018
Ms	Rosemary	Robinson	1803617/2018
Ms	Susan Elizabeth	Robinson	1803618/2018
Mr	Glen	Rochester	1803619/2018
Mr	Mathew	Rogers	1803621/2018
Ms	Emma	Ronan	1803622/2018
Mr	Stephen	Rooney	1803623/2018
Mr	John	Ross	1803627/2018
Ms	Jane	Ross	1803626/2018
Ms	Kelly Eleanora	Rowley	1803628/2018
Ms	Katherine	Rowley	1803629/2018
Ms	Rachel	Rowley	1803630/2018
Ms	Lisa	Rudzinski	1803631/2018
Mr	Oluwole Enoch	Runsewe	1803632/2018
Mr	Collette	Russell	1803633/2018
Mr	Terence David	Russell	1803634/2018
Mr	Bryan Trevor John	Rust	1803635/2018
Mr	Connor	Rutherford	1803636/2018
Mr	Mathivarna	Sabaratnam	1803637/2018
Mrs	Cheryl	Sadler	1803639/2018
Ms	Lianne-Robyn	Salter	1802904/2018
Mr	Mark	Salvona	1803640/2018
Mr	Christopher John	Samuels	1803641/2018

Ms	Katie	Sanderson	1803643/2018
Mr	Javed	Sath	1803644/2018
Ms	Kerry	Sawers	1803646/2018
Mr	Malcolm	Scorer	1803647/2018
Mr	Craig Robertson	Scotland	1803648/2018
Ms	Lauren	Scott	1803652/2018
Mr	David	Scott	1803649/2018
Mr	Sam	Scott	1803653/2018
Ms	Claudia	Serban	1803654/2018
Mr	Abdul	Shaik	1803655/2018
Mr	Michael	Sharman	1803656/2018
Mr	Kenneth	Sharpe	1803657/2018
Mr	Lee Micheal	Sharratt	1803658/2018
Mr	Darren	Shawcroft	1803659/2018
Ms	Caroline Louise	Sheard	1803660/2018
Mr	Stephen	Sheard	1803661/2018
Ms	Deborah	Sheils	1803662/2018
Mr	Mark Andrew	Shepherd	1803663/2018
Ms	Beryl	Sheppard	1803664/2018
Ms	Lisa	Sholder	1803666/2018
Ms	Sophie	Sholder	1803667/2018
Ms	Lyndsey Michelle	Shooter	1803668/2018
Ms	Nicolette	Short	1803669/2018
Mr	Masotja September	Sibandze	1803670/2018
Ms	Malgorzata Joanna	Sielska	1803671/2018
Mrs	Ewelina	Siemieniuk	1803672/2018
Mr	Paul	Simons	1803673/2018
Ms	Helen Marie	Simpkin	1803674/2018
Mr	Gary	Simpson	1803675/2018
Ms	Louise	Simpson	1803676/2018
Mr	Peter Stuart	Simpson	1803677/2018
Mr	Parmjit	Singh	1803678/2018
Mr	Nathan John	Skinner	1803679/2018
Miss	Iwona	Skulska	1803680/2018
Ms	Kelly	Slee	1803682/2018
Mr	Matthew	Smith	1803693/2018
Mr	Paul Alan	Smith	1803695/2018
Ms	Sharon	Smith	1803697/2018
Ms	Sharon Lesley	Smith	1803700/2018
Mr	Alan	Smith	1803684/2018
Mr	Andrew	Smith	1803685/2018
Mr	Craig Aitken	Smith	1803686/2018
Mr	Hugh	Smith	1803688/2018
Ms	Karen	Smith	1803689/2018
Ms	Kellie	Smith	1803691/2018

Ms	Lisa Marie	Smith	1803692/2018
Mr	Stephen	Smith	1803698/2018
Ms	Vanessa Elizabeth	Smith	1803701/2018
Mr	Chris	Snaith	1803702/2018
Mr	Ian James	Sneddon	1803703/2018
Mr	Robert John	Snelling	1803704/2018
Mr	Kevin	Soakell	1803705/2018
Ms	Bethany Claire	Soards	1803707/2018
Mr	Graham	Spence	1803710/2018
Mr	Sean	Spoors	1803711/2018
Mr	Grant James	Spring	1803712/2018
Mr	Andrew	Squires	1803713/2018
Mr	Patrick Lewis	Stacey	1803714/2018
Mr	William	Stacey	1803715/2018
Ms	Joyce Audrey	Stafford	1803716/2018
Mr	Bryan Richard	Stancliffe	1803717/2018
Ms	Donna Marie	Stanway	1803718/2018
Ms	Tracey Marie	Steel	1803720/2018
Ms	Claire Louise	Stephenson	1803721/2018
Mr	Peter	Stevenson	1803722/2018
Mr	Gary	Stewart	1803724/2018
Mr	James	Stewart	1803727/2018
Ms	Sonia	Stewart	1803729/2018
Ms	Julie	Stewart	1803726/2018
Mr	Douglas	Stones	1803730/2018
Ms	Leane	Storey	1803731/2018
Ms	Sandra June	Strachan	1803733/2018
Mr	William	Strang	1803734/2018
Mr	Adam	Straughan	1803735/2018
Mr	Andrew	Straughan	1803736/2018
Mr	Gavin	Straughan	1803737/2018
Ms	Elaine	Stretton	1803738/2018
Mr	David	Strickland	1803739/2018
Mr	Andrew Peter	Strong	1803740/2018
Ms	Vikki	Strong	1803741/2018
Ms	Jacqui	Stuart	1803742/2018
Mr	Peter Timothy	Suggitt	1803743/2018
Mr	Umran	Sultan	1803744/2018
Ms	Elaine	Summerill	1803745/2018
Ms	Rachel Victoria	Summers	1803746/2018
Mr	Graham	Sutherland	1803747/2018
Ms	Mary Margaret	Sutherland	1803748/2018
Mr	Conrad	Sysa	1803750/2018
Mr	John Trevor	Taafe	1803751/2018
Mr	William	Taggart	1803752/2018

Ms	Paula	Tait	1803753/2018
Ms	Gabriela	Tanase	1803754/2018
Mr	David	Taylor	1803758/2018
Mr	David William	Taylor	1803757/2018
Mr	Greg	Taylor (now Wilkie)	1803759/2018
Ms	Jacky	Taylor (now Barker)	1803762/2018
Mr	Julian	Taylor	1803761/2018
Mr	Matthew	Taylor	1802543/2018
Ms	Anna Judi	Taylor	1803755/2018
Mr	Ben	Taylor	1803756/2018
Mr	Geoff	Taylor	1803760/2018
Mr	Lee Andrew	Taylor	1803764/2018
Mr	Scott	Taylor	1803765/2018
Mr	Stephen James	Taylor	1803766/2018
Mr	Robert	Terry	1803767/2018
Ms	Wendy	Thackray	1803768/2018
Mr	Alan Christopher	Thomas	1803770/2018
Ms	Claire	Thompson	1803773/2018
Mr	Gary	Thompson	1803774/2018
Mr	Philip Martin	Thompson	1803777/2018
Ms	Sheila	Thomson	1803782/2018
Mr	Gregor	Thomson	1803779/2018
Ms	Kathryn	Thomson	1803780/2018
Ms	Sarah	Thomson	1803781/2018
Mr	Liam	Thornton	1803783/2018
Mr	Daniel	Thorpe	1803784/2018
Mr	Paul	Thorpe	1803785/2018
Mr	Steve	Tiffin	1803786/2018
Mr	Stephen Paul	Tiplady	1803787/2018
Ms	Sharon	Toner	1803788/2018
Ms	Linsley	Tones	1803789/2018
Ms	Melanie	Tosh	1803790/2018
Ms	Amy Jane	Treadwell	1803792/2018
Mr	Thomas	Trehy	1803793/2018
Mr	Wayne	Truman	1803794/2018
Ms	Jacqueline	Turnbull	1803797/2018
Ms	Julie	Turpin	1803798/2018
Ms	Jeanette	Tyers	1803799/2018
Mr	Prakash	Valambhia	1803800/2018
Ms	Jacqueline Sharon	Valley	1803801/2018
Mr	Paul	Varley	1803802/2018
Ms	Karen	Vaughan	1803803/2018
Mr	Sean	Veal	1803804/2018
Miss	Mihaela	Velicu	1803805/2018
Mr	Leighton James	Vellam	1803806/2018

Ms	Janet	Verity	1803807/2018
Ms	Carmen	Villafranca	1803808/2018
Mr	Aleksandar	Vuletic	1803809/2018
Ms	Sharon	Wadeley	1803811/2018
Mr	George Matthew	Waitt	1803812/2018
Ms	Karina	Wallace	1803813/2018
Mr	David	Walls	1803815/2018
Mr	Daniel	Ward	1803818/2018
Ms	Geraldine	Ward	1803819/2018
Ms	Carol	Wass	1803820/2018
Ms	Kathleen	Waters	1803821/2018
Ms	Alana	Watson	1803823/2018
Mr	Allan Peter	Watson	1803824/2018
Ms	Geraldine	Watson	1803825/2018
Mr	Timothy	Watson	1803826/2018
Mr	Richard Murray	Webster	1803831/2018
Mr	Robb	Weir	1803833/2018
Mr	Colin Robert	Weldrick	1803834/2018
Mr	Patrick	Wells	1803835/2018
Ms	Angela	West	1803836/2018
Mr	Ian Alexander	Westwater	1803837/2018
Ms	Tracy	Westwater	1803838/2018
Mr	Jon	White	1803841/2018
Mr	Kevin	White	1803842/2018
Ms	Sadie	White	1803845/2018
Ms	Wendy	White	1803846/2018
Ms	Emma Louise	White	1803840/2018
Mr	Grahame	Whitehead	1803847/2018
Mr	Mark	Whittaker	1803848/2018
Ms	Kate	Whitworth	1803850/2018
Ms	Kristina Carolyn	Whitworth	1803849/2018
Mr	Anthony	Whyke	1803851/2018
Ms	Jemma	Whyman	1803852/2018
Ms	Donna	Wilkie	1803853/2018
Ms	Heather	Wilkinson	1803856/2018
Ms	Kelcey	Wilkinson	1803858/2018
Mr	Daniel Leonard	Williams	1803859/2018
Mr	Joseph	Williams	1803861/2018
Ms	Katie	Williams	1803863/2018
Mr	Donald	Williams	1803860/2018
Mr	Jude Alexander	Williams	1803862/2018
Mr	Philip Andrew	Williams	1803864/2018
Mr	James	Williamson	1803866/2018
Ms	Claire	Wills	1803867/2018
Ms	Susan	Wills	1803868/2018

Mr	David	Winfleld	1803870/2018
Miss	Kinga	Wisniewska	1803871/2018
Mr	Stephen John	Witchard	1803872/2018
Mr	Winston George	Witter	1803873/2018
Mr	Michal	Wojcik	1803875/2018
Miss	Kerry	Wood	1803876/2018
Mr	Michael Anthony	Wood	1803878/2018
Ms	Maxine	Woodman	1803879/2018
Ms	Kelly	Woods	1803880/2018
Mr	Gary	Woodward	1803881/2018
Ms	Lucy	Woodward	1803882/2018
Mr	Shaun Antony	Worrall	1803883/2018
Ms	Cindy	Worth	1803884/2018
Ms	Lesley	Worthington	1803885/2018
Mr	Robert	Worthington	1803886/2018
Ms	Dawn	Wraith	1803887/2018
Mr	Gary	Wray	1803888/2018
Ms	Lynne	Wright	1803889/2018
Ms	Melanie	Wright	1803890/2018
Mr	Marc	Wroe	1803891/2018
Mr	Andrew	Wyatt	1803892/2018
Mr	Steve	Wyllie	1803893/2018
Mr	Harry	Yates	1803894/2018
Ms	Julie	Yearham	1803895/2018
Mr	Robert	Yorkston	1803896/2018
Ms	Caroline	Young	1803897/2018
Ms	Claire	Young	1803898/2018
Mr	Shaun	Youngs	1803091/2018
Ms	Helen	Zato	1803902/2018

SCHEDULE 3

(Hitachi Rail Europe Limited)

Title	Forename	Surname	Case No:
Mr	Bruce	Adamson	1802574/2018
Mr	Jimmy	Alalade	1802580/2018
Mr	Liam	Amos	1802535/2018
Mr	Gordon	Anderson	1802589/2018
Mr	John	Anderson	1802590/2018
Mr	John McKenzie	Armstrong	1802603/2018
Mr	Jason Wayne	Armstrong	1802604/2018
Mr	David	Ashton	1802611/2018

Mr	Derek James	Attenburgh	1802614/2018
Ms	Karen Georgina	Attenburgh	1802615/2018
Ms	Eleanor	Bell	1802658/2018
Mr	Paul	Bennett	1802666/2018
Mr	Matthew	Bond	1802695/2018
Mr	George Reid	Borthwick	1802700/208
Mr	Lee Garrett	Bowden	1802705/2018
Mr	Keith David	Boyd	1802707/2018
Mr	Christopher	Bradley	1802710/2018
Mr	Alan Stewart	Braidwood	1802713/2018
Mr	Kevin	Brogan	1802722/2018
Mr	Thomas	Brogan	1802723/2018
Mr	Jamie	Bryant	1802741/2018
Mr	Nathan	Bryce	1802538/2018
Ms	Shannen	Bryce	1802539/2018
Mr	Scott	Buchan	1802743/2018
Mr	Glenn	Burn	1802749/2018
Mr	David Allen	Burns	1802752/2018
Mr	John	Burns	1802753/2018
Mr	Patrick	Butshingi	1802757/2018
Mr	Ian	Byrne	1802758/2018
Mr	Ryan Andrew	Cairns	1802762/2018
Mr	David	Cairns	1802761/2018
Mr	Nathan	Chappell	1802790/2018
Mr	Paul	Charlesworth	1802791/2018
Mr	William	Cherry	1802793/2018
Mr	Aidan William	Christie	1802794/2018
Mr	Campbell	Clark	1802796/2018
Mr	Thomas	Coyle	1802843/2018
Mr	Stewart	Craigie	1802846/2018
Mr	Gary Lee	Cranston	1802847/2018
Mr	Alexander	Cruickshank	1802856/2018
Mr	Stuart	Currie	1802862/2018
Mr	Cezary	Cyran	1802866/2018
Mr	Darrin	Davidson	1802870/2018
Mr	James	Davidson	1802872/2018
Ms	Valerie	Deegan	1802883/2018
Mr	James	Devlin	1802890/2018
Mr	Norman	Dickson	1802894/2018
Mr	Jamie	Docherty	1802898/2018
Mr	Ian	Dougan	1802903/2018
Mr	Colin	Dower	1802906/2018
Mr	Patrick	Doyle	1802910/2018
Mr	Steven	Dryburgh	1802534/2018
Mr	William	Dunn	1802533/2018

Mr	Ross	Duns	1802920/2018
Mr	Christopher	Easby	1802926/2018
Mr	Mark	Edwards	1802930/2018
Mr	David	Ellis	1802935/2018
Mr	James	Fairley	1802952/2018
Mr	Daniel Crawford	Fallon	1802953/2018
Mr	Jack	Ferguson	1802959/2018
Mr	John Bear	Ferris	1802960/2018
Mr	Scott Thomas	Forbes	1802976/2018
Mr	Andrew	Forsyth	1802980/2018
Mr	William	Freeland	1802542/2018
Mr	Martin	George	1803012/2018
Mr	John	Gibson	1803014/2018
Mr	Bernard	Gilhooley	1803018/2018
Mr	James	Gillen	1803021/2018
Mr	Ian	Gilmour	1803023/2018
Ms	Denise	Gladstone	1803027/2018
Mr	Henry George	Gobourne	1803032/2018
Mr	David	Gormley	1803038/2018
Mr	Alan	Grant	1803042/2018
Mr	James	Gray	1803046/2018
Mr	Gordon	Greenan	1803049/2018
Mr	David	Haggarty	1803064/2018
Mr	John William	Hall	1803067/2018
Mr	Colin	Hamilton	1803072/2018
Mr	Stephen	Hamley	1803074/2018
Mr	Robert	Hammond	1803077/2018
Mr	James	Harper	1803086/2018
Mr	Greg	Henderson	1803101/2018
Mr	Scott Alexander	Henderson	1803103/2018
Mr	Hubert Alain	Hillah	1803121/2018
Mr	Keith Steven	Hoatson	1803125/2018
Mr	Craig	Holburn	1803130/2018
Mr	James Douglas	Horn	1803138/2018
Ms	Elaine	Howie	1803142/2018
Mr	Patrick	Hughes	1803149/2018
Mr	Paul	Hunter	1803155/2018
Mr	Ian	Inkster	1803163/2018
Mr	Mark	Johnstone	1803183/2018
Mrs	Agnieszka	Kanadys	1803195/2018
Mr	Keith	Kerr	1803213/2018
Mr	Mathu	King	1803218/2018
Mr	Gary	Knight	1803224/2018
Mr	Kevin Ian	Knox	1803230/2018
Mr	Robert	Laing	1803237/2018

Mr	Aaron	Lamont	1803239/2018
Mr	Ciaran	Lamont	1803240/2018
Mr	Stewart James	Lawrie	1803251/2018
Mr	Peter	Laycock	1803253/2018
Mr	James	Learmonth	1803254/2018
Mr	Darren	Letson	1803263/2018
Mr	Robert	Liddell	1802537/2018
Mr	Stewart	Lister	1803269/2018
Mr	Sean	Littlejohn	1803271/2018
Mr	Daniel	Lobb	1803274/2018
Mr	John George	Lockhart	1803276/2018
Mr	Ross	Love	1802540/2018
Ms	Linda	Lynch	1803289/2018
Mr	Scott	MacDonald	1803294/2018
Mr	Kevin	Malone	1803314/2018
Mr	James	Mansell	1803319/2018
Mr	Callum David	Matthews	1803333/2018
Mr	Fraser	McBay	1803336/2018
Mr	Sean Michael	McCabe	1803337/2018
Mr	Ian Stephen	McCormick	1803342/2018
Mr	Gerard	McCormick	1803341/2018
Mr	Scott Henderson	McDonald	1803349/2018
Mr	David	McGregor	1803359/2018
Mr	Jamie	McGregor	1803360/2018
Mr	Mark	McGregor	1803361/2018
Mr	Lewis	McGrory	1803364/2018
Mr	Darren	McKay	1803366/2018
Mr	Alexander Duthie	McKenzie	1803368/2018
Ms	Caroline	McKernan	1803369/2018
Ms	Jasmine	Kimber (now McLean)	1803216/2018
Mr	Alexander Millar	McLeod	1803371/2018
Mr	Richard Brian	McManus	1803372/2018
Mr	James Murray	McPhail	1803377/2018
Mr	Callum	McPherson	1803378/2018
Mr	John	McQuillian	1803379/2018
Mr	Darren	Miller	1803390/2018
Mr	Graham John	Miller	1803391/2018
Mr	Graeme	Mitchell	1803399/2018
Mr	Raymond Alfonse	Moffat	1803403/2018
Mr	David	Moir	1802531/2018
Mr	Andrew	Murdoch	1803423/2018
Mr	Edward	Myckanuik	1803433/2018
Mr	Connor	Napier	1803436/2018
Mr	Paul Robert	Nealon	1803445/2018

Mr	Kevin	Nicholas	1803451/2018
Mr	Paul	Nicholson	1803457/2018
Mr	Adam Lee	Noble	1803462/2018
Mr	Alexander	Noble	1803461/2018
Mr	John	O'Donnell	1803475/2018
Mr	Oluyemisi	Omotayo	1803970/2018
Mr	Tom	Ovens	1803486/2018
Mr	James	Owens	1803489/2018
Mr	James	Parker	1803497/2018
Mr	Andrew	Paterson	1803506/2018
Mr	Greg	Paterson	1803508/2018
Mr	David	Paterson	1803507/2018
Mr	Matthew	Potter	1803551/2018
Mr	David	Rae	1803566/2018
Mr	Peter	Raeburn	1803568/2018
Mr	Scott	Ramsay	1803573/2018
Mr	Andrew	Reid	1803585/2018
Ms	Caitlin	Reid	1803586/2018
Mr	Christopher George	Reid	1803587/2018
Mr	Keiron	Renton	1803592/2018
Mr	Kris	Renton	1803593/2018
Mr	Alan	Robertson	1803608/2018
Mr	Jamie	Robertson	1803609/2018
Mr	Arron	Ross	1803624/2018
Mr	Douglas	Ross	1803625/2018
Mr	Kenneth	Sawers	1803645/2018
Mr	James	Scott	1803651/2018
Mr	Jason	Scott	1803650/2018
Mr	Louis	Sheridan-Bruce	1803665/2018
Ms	Audrey	Smillie	1803683/2018
Mr	Derek	Smith	1803687/2018
Mr	Peter Mark	Smith	1803694/2018
Mr	Kevin	Smith	1803690/2018
Mr	Stuart	Smith	1803699/2018
Mr	David	Sowersby	1803709/2018
Mr	Cameron	Stemp	1802536/2018
Mr	Matthew	Stewart	1802530/2018
Ms	Jennifer	Stewart	1803725/2018
Mr	Peter	Strachan	1803732/2018
Mr	Robert	Thom	1803769/2018
Mr	Christakis	Thomas	1803772/2018
Mr	Keith	Thompson	1803775/2018
Mr	Boubacar	Traore	1803791/2018
Mr	Clifford	Tuitt	1803795/2018
Mr	Andrew	Tunmore	1803796/2018

Ms	Tracey	Waddell	1803810/2018
Mr	Kevin	Walls	1802529/2018
Mr	Raymond Ian	Walls	1803816/2018
Mr	Thomas	Walls	1803817/2018
Ms	Pamela Joan	Watt	1803827/2018
Mr	Declan	Watters	1803828/2018
Mr	John	Webb	1803829/2018
Mr	John	Weddell	1803832/2018
Mr	David	White	1803839/2018
Mr	Lester	White	1803843/2018
Mr	Stephen	Wilkie	1803854/2018
Mr	Stephen	Williams	1803865/2018
Mr	Kenneth William John	Wilson	1803869/2018
Mr	Derek	Young	1803899/2018
Mr	Robin	Young	1803900/2018

SCHEDULE 4

(Claims dismissed on withdrawal)

1.	David	Samuels	1803642/2018
2.	Amanda	Armstrong	1802602/2018
3.	Ross	Stewart	1803728/2018
4.	Diane	Bessaha	1802670/2018
5.	William	Devine	1802889/2018
6.	Cheryl	Bendle	1802662/2018
7.	Gareth	Bendle	1802663/2018
8.	Rashpal	Kaur-Kahlon	1803199/2018
9.	Cheryll	Fyffe	1802993/2018
10.	Wendy	Thompson	1803778/2018
11.	Carina	Dobson	1802895/2018
12.	Jed	Davie	1802874/2018
13.	Agnieszka	Wlodarczyk	1803874/2018
14.	Amy	Keegan	1803203/2018
15.	Dylan	Clark	1802799/2018
16.	Jacqueline	Wilkinson	1803857/2018
17.	Liam	Inkson	1803162/2018
18.	Stephen	Black	1802680/2018
19.	Steven Peter	Brammer	1802714/2018
20.	Philip James	Garthwaite	1803003/2018
21.	Debbie	Killen	1803215/2018
22.	Jamie	MacDonald	1803293/2018
23.	Karen Lisa	Partridge	1803499/2018

24.	Karun	Patel	1803501/2018
25.	Nicholas	Pope	1803546/2018
26.	Scott	White	1803844/2018
27.	Cain Morrissey	Wilkinson	1803855/2018
28.	Karen	Curry	1802864/2018
29.	Dionne Victoria	Gray	1803044/2018
30.	Lauren	Redpath	1803583/2018
31.	Julie	Rodham	1803620/2018
32.	Sobia	Rasool	1803578/2018
33.	John	Millie	1803393/2018
34.	Michael	Olley	1802544/2018

(Claims dismissed on withdrawal as duplicate claims)

	Name on Schedule		Claim Number
1.	Ms Feyi	Babalola	1802620/2018
2.	Ms Sue Elizabeth	Barfield	1802628/2018
3.	Mr Kevin	Barham	1802630/2018
4.	Mr Mark	Barker	1802632/2018
5.	Ms Carol	Beckett	1802653/2018
6.	Mr Stuart	Black	1802680/2018
7.	Mr Carl Brian	Brunning	1802738/2018
8.	Ms Karen	Carden	1802774/2018
9.	Miss Georgina	Carrick	1802778/2018
10.	Mr Duncan	Clark	1802799/2018
11.	Mr Benjamin	Crisp	1802852/2018
12.	Mr Christopher	Easby	1802927/2018
13.	Ms Lisa	Evans	1802949/2018
14.	Mr Dean	Geddis	1803011/2018
15.	Miss Rebecca	Grey	1803053/2018
16.	Mrs Angela	Nichols	1803454/2018
17.	Mrs Jane Karen	Richmond	1803599/2018
18.	Ms Donna Marie	Stanway	1803719/2018
19.	Mr Ross	Stewart	1803728/2018
20.	Ms Jacky	Taylor	1803763/2018
21.	Ms Karina	Wallace	1803814/2018

SCHEDULE 5

(Claims to be stayed)

	Name on Schedule		Claim Number
1.	Jesse	Acquah-Hayford	1802573/2018
2.	Steven	Handley	1803080/2018
3.	Chavon	Noble	1803464/2018
4.	Stewart John	Partridge	1803500/2018
5.	Stuart Andrew	Mullin	1803421/2018
6.	John	Hamilton	1803073/2018