



EMPLOYMENT TRIBUNALS

Claimants: Mr Fowler and others

Respondent: AA Developments Limited

Heard at: Southampton On: 17, 18, 19 and 20 September
2018

Before: Employment Judge Gardiner

Representation:

Claimant: Mr N Banu, Counsel
Respondent: Mrs V Young, Solicitor

JUDGMENT

1. The following pay categories should be included when calculating the holiday pay entitlement for periods of holiday leave taken during the period covered by the Claimants' Schedules:
 - a. **Mr Locke** : Points Plus
 - b. **Mr Devine** : Points Plus; Member Commission
 - c. **Mr Fowler** : Overtime at Christmas rates; Points Plus, Member Commission; Member Spares
 - d. **Mr Gaskell** : Overtime at Christmas rates; Points Plus, Member Commission; Member Spares
 - e. **Mr Cooper** : Points Plus; Member Commission
2. By consent, the following pay categories should be included when calculating the Claimants' holiday pay entitlement for periods of holiday leave taken during

the period covered by the Claimants' Schedules :

- a. Contractual allowance;
 - b. Composite allowance;
 - c. Flexibility allowance;
 - d. Standby allowance;
 - e. Location payments;
 - f. Fixed overtime;
 - g. Voluntary overtime;
 - h. Overtime paid at x1.5, x2 and x2.5
 - i. Evening job supplement
 - j. Standby allowance
 - k. Callout/standby payment
 - l. All disruptive allowances
 - m. Premium pay per job
 - n. Night-time pay per job
 - o. London Weighting
3. The claim brought by Mr Michael Rawlings, case number 1400391/2017, is dismissed upon withdrawal.
 4. A further hearing shall be listed to determine the entitlements of the five Claimants not named above, and the remedies due to every Claimant. That hearing is to be listed on 2, 3 and 4 September 2019 before Employment Judge Gardiner if possible.
 5. Case management directions have been given to progress the case towards that hearing. Those directions will be notified separately.

REASONS

Introduction

1. This is a claim for holiday pay brought by 10 AA employees, known as Patrols. All are employed by the Respondent. They claim that their holiday pay over a period spanning more than three years has been lower than the sums to which they were entitled under Section 13 of the Working Time Regulations 1998. Their argument is that their holiday pay should include not just their basic pay and those financial emoluments accepted by the Respondents but other enhancements to their remuneration received for the work they were performing.
2. At one point there had been around thirty-five different claimants. Many of the claims have been withdrawn on jurisdictional or other grounds and some have settled. At an earlier case management hearing, it was decided that this hearing would deal with the issue of liability only.

3. There remain ten Claimants. The list of the ten Claimants is attached to the Judgment and Reasons by way of Schedule. Of these remaining ten Claimants, five have been designated as Lead Claimants. These are the claims brought by Andrew Locke, David Fowler, Timothy Gaskell, Robert Devine and Ian Cooper. I have heard oral evidence from each of those five individuals. For the Respondent, the Tribunal has heard evidence from Deborah Gallagher, Head of Employee Relations and from Jason O'Keefe, Head of Planning. Lewis Jones, Head of Treasury also prepared a witness statement in support of the Respondent's position. That witness statement was not challenged. As a result, there was no need for him to give oral evidence.
4. Each of the Lead Claimants was working under a different contract. Each of the remaining five Claimants was working under the same contract as one of the Lead Claimants. The thinking behind designating Lead Claimants was that decisions as to the correct basis for calculating holiday pay for a representative Claimant under five different contracts would then assist the parties in determining the rate applicable to the remaining claimants.
5. As will be set out below, in determining the appropriate rate for holiday pay under Section 13 of the Working Time Regulations 1998, the Tribunal must determine "normal remuneration". That requires an evidential enquiry into the normal remuneration for each Claimant based on data as to what they had been paid over the relevant period. The necessary evidence was before the Tribunal in the case of each of the five lead Claimants. It was not before the Tribunal so far as the remaining Claimants were concerned. As a result, the parties agreed at the outset that a determination of "normal remuneration" for the remaining five Claimants could not be achieved at this hearing. It would have to be determined at a subsequent hearing, to the extent that it could not be agreed in the light of the Tribunal's findings.
6. In any event, a further hearing will be needed to quantify the sums properly due to the five lead Claimants. That is because this hearing is not concerned with matters of remedy.

The issue before the Tribunal

7. In the case of each of the five Lead Claimants, the issue that the Tribunal has to determine has been narrowed as a result of agreements reached between the parties. At one point there was a very lengthy List of Issues setting out the extent of the disagreement as to the categories of financial benefit that ought to be taken into account when determining "normal remuneration". As a result of concessions made by the Respondent, and certain arguments being withdrawn by the Claimant, the original List of Issues has been reduced further to a two-page document helpfully prepared in time for the start of the second day of the hearing.
8. That list has been further shortened since the withdrawal of the claim brought by Mr Rawlings. The Tribunal is only concerned with the categories of payment set out at paragraphs (i) to (iv) of paragraph 4 of that Revised List of Issues.

9. The Tribunal therefore needs to decide whether the following pay enhancements form part of normal remuneration so that they should be included in the calculation of holiday pay :
 - a. Overtime at supplemental Christmas rates
 - b. Seasonal supplement
 - c. Points plus
 - d. Commission on member spares
 - e. Commission on member recruitment
10. The timespan of the Tribunal's enquiry is from around October 2014 until around March 2018, based on the Schedules contained in the bundles – although in the case of some Claimants the period starts later and in the case of others it finishes earlier, at least so far as the Schedules are concerned.

Factual findings

11. Each of the Claimants worked under a different employment contract. There were various features common to all the lead Claimants.
12. The contracts recorded that the Claimants would report to the Area Manager (or other designated person) who was responsible for setting and agreeing the duties and responsibilities.
13. No reference was made in the contracts to a Job Description although it was common ground that each Claimant had a Job Description and the applicable Job Description was that contained in the Bundle of Documents.
14. The wording of those job descriptions varied slightly depending on whether they were a Recovery Patrol or a Roadside Assistance Patrol. The latter is sometimes referred to as RSS.
15. The Recovery Job Description listed the following as one of the eight bullet points under the heading Main Duties (Principal Accountabilities)

Maximise the sales of AA membership and other products as required, at each opportunity during the working shift to ensure and effective personal contribution to the achievement of team targets. Validate membership on all tasks for entitlement and further explore on all occasions the potential for other recruitment and trade up opportunities with both members and their passengers. Process all membership transactions in accordance with laid down procedures.
16. A similar bullet point featured in the corresponding list of Main Duties (Principal Accountabilities) for RSS Patrol, worded as follows :

Maximise the sale of AA Membership at each opportunity during the working shift, contributing towards the Regional Recruitment Target. Be familiar with all benefits of membership, subscription levels and

administrative procedures for the renewal of existing membership subscriptions and the recruitment of new members.

17. In contrast with the Recovery Job Description, there was nothing in the RSS Job Description dealing with selling of parts, whether expressly or by reference to “other products as required”.
18. The contracts required the Claimants to work a specified number of annual hours, and be available for a further number of annual standby hours. These differed depending on the particular contract. There was the opportunity to sell back a proportion of the standby hours. Rotas were drawn up in well in advance, often six months or more before the relevant dates. As a result, holiday often had to be booked substantially ahead of time, and could not necessarily be taken at the last minute.
19. Every day of the year was potentially a working day, although all Patrols did have the right not to work on Christmas Day. There was also the right in some contracts to decline to work on a specified second day, which for some Claimants was Boxing Day and for other Claimants was New Years Day. Working on those days attracted an enhanced rate of pay. The evidence was that Christmas Day was paid at four times normal earnings and Boxing Day was either three or two and a half times normal earnings.
20. At times of particular demand, the Respondent offered financial incentives to persuade those Patrols that would not otherwise be working to make themselves available for work. This would often be as a result of adverse weather conditions, such as snow or ice in the winter, or a particularly hot period of weather in the summer. It may also be if there was a need for more Patrols in a particular part of the country, such as an increased need for Patrols in Cornwall during August. These inducements were offered in advance and coded for pay purposes as Seasonal Supplement – Hours – where the inducement was a particular rate per hour – or Seasonal Supplement – Cash, where it was a lump sum for accepting a particular shift.
21. The Respondent had a bonus scheme, known as Points Plus. Until about September 2016, this scheme was performance based. For RSS Patrols, the bonus was determined based on a score for tasks, repairs, enhanced repairs, boomerang’s and recorded mileage, as well as sales of AA membership and sales of Parts. For Recovery Patrols, the criteria were similar, save that there was no criterion based on repairs. Instead, the criteria measured were based on driver miles, both unloaded and loaded with the vehicle recovered.
22. In about September 2016, the Scheme changed. For RSS Patrols, it was replaced by an Evening Supplement payment. There is no longer a dispute as to whether Evening Supplement should be included in the calculation of holiday pay. For Recovery Patrols, it was replaced by a scheme based on driver behaviour in which the driver’s acceleration, braking and cornering was all monitored to assess whether the Recovery vehicle was being driven in a manner which maximised fuel efficiency. The evidence was that this matrix was

an assessment average over the shifts worked, such that taking holiday did not have an adverse effect on the scoring that was given for driver behaviour.

23. For Mr Locke, whose role assigned him to a contract for Jaguar Land Rover, his bonus scheme changed such that he was eligible to receive sums between £500 and £3000 based on the notional repair costs saved by carrying out roadside repairs by comparison to the potential costs if the repair had been carried out by a garage. This was paid every six months.
24. Although the basis of assessment changed for Recovery Patrols and for Mr Locke working under the Jaguar Land Rover contract, it continued to be referred to as the Points Plus Scheme.
25. In addition, there was the opportunity to earn commission in two circumstances. The first was for selling AA membership. This could occur in a variety of circumstances. If an AA Patrol noticed that a vehicle had broken down, the Respondent encouraged the Patrol to pull over to speak to the driver to see whether he or she already had breakdown cover. If they did not, then this was an opportunity to sell them membership so that they could receive breakdown assistance. Alternatively there was the possibility of selling membership to passengers who were travelling with AA members who received roadside assistance. Finally there was the opportunity to upgrade members to add Recovery to their membership if the vehicle needed to be recovered to a nearby garage.
26. The evidence was that this commission scheme was initially open both to RSS Patrols and also to Recovery Patrols. At some point in time, the FSA requirements for selling membership changed. As a result, the Respondent no longer permitted Recovery Patrols to sell membership. However, Recovery Patrols could still refer potential members to the website. Even here, they were still eligible to earn very modest commission if those individuals became members. They could be identified as having initiated the referral to the website because their Patrol number would be included on the application form. RSS Patrols continued to be eligible to sell membership, and were generally encouraged to do so, as set out below.
27. There was a factual dispute as to whether selling membership was a contractual requirement and whether it was a normal or core aspect of each Claimant's role.
28. The evidence from the Lead Claimants was that certain Area Managers had targets for enrolling new members within their Area, and communicated individual targets to individual Patrols. At group meetings, league tables were prepared showing how Patrols compared against each other in relation to the new members enrolled. Latterly, Patrols were issued with tablets. These enabled Patrols to check on various aspects of their performance. The data that could be viewed apparently included a record of how many new members had been signed up, and how many memberships had been upgraded. None of this evidence could be contradicted by the Respondent's witnesses who did not

have direct or in direct responsibility for how Patrols worked and for how they were managed.

29. So far as member spares are concerned, RSS Patrols were entitled to sell spares to members. This may be selling them batteries, oil, petrol or other parts. Where they did so, they were entitled to a commission.

30. I deal with the situation of individual Claimants below in relation to my conclusions.

Legal principles

31. I have been referred to five recent authorities in which the issue of the rate of holiday pay has been considered in relation to the four-week holiday entitlement under EU law. These are *British Airways v Williams* [2012] ICR 847 (CJEU); *Lock v British Gas Trading Limited* [2014] ICR 813 (CJEU and CA); *Bear Scotland v Fulton* [2015] ICR 221 (EAT); *Dudley v Willetts* [2018] ICR 31 (EAT); *Flowers v East of England* UKEAT/0235/17/JOJ (EAT).

32. The latter case, at paragraph 13, summarised the applicable principles as set out in *Willetts* and the previous cases, as follows :

1. The right to paid annual leave is a particularly important principle of EU social law from which there can be no derogation;
2. The overarching principle is that normal remuneration must be maintained in respect of the period of annual leave guaranteed by Article 7. Thus the payments in that period must correspond to the normal remuneration received while working;
3. The purpose of this requirement is to ensure that a worker does not, by taking leave, suffer a financial disadvantage, which is liable to deter him from exercising that right;
4. Payments in respect of overtime - whether that be compulsory, non-guaranteed, or voluntary - constitute remuneration;
5. For a payment to count as "normal" remuneration, it must have been paid over a sufficient period of time. This will be a question of fact and degree. Items which are not usually paid or are exceptional do not count. Items that are usually paid and regular across time may do so;
6. The structure of a worker's remuneration cannot detract from the right to maintenance of normal remuneration;
7. One decisive criterion or test for determining whether a particular component of pay is part of normal remuneration is where there is an "intrinsic link" between the payment and the performance of tasks that the worker is required to carry out his or her contract of employment;
8. However that is not the only decisive criterion or test. What matters is the overarching principle and its object.

33. In addition, at paragraph 15 of *Flowers* Mr Justice Soole quoted from paragraph 44 of *Willetts*, as follows :

“...in a case where the pattern of work, though voluntary, extends for a sufficient period of time on a regular and/or recurring basis to justify the description “normal”, the principle in *Williams* applies and it will be for the fact-finding tribunal to determine whether it is sufficiently regular and settled for payments made in respect of it to amount to normal remuneration.”

34. I understand that *Flowers* is being appealed to the Court of Appeal. However, it remains the most recent statement of the legal principles from the EAT that govern the issue in the current case and is binding on this Tribunal.

Conclusions

35. I now set out my conclusions in relation to each of the lead Claimants in turn, in the order in which they gave evidence. The logic behind my conclusions will also apply to subsequent lead Claimants and ought to apply to the other Claimants, although I am not determining their entitlement in this Judgment. That is because there may be particular issues in relation to the frequency with which they received particular payments that influences whether those payments can be regarded as normal remuneration.

Mr Locke

36. I find that Mr Locke is entitled to have his holiday pay calculated on the basis of sums that he has earned as part of the Points Plus bonus scheme.

37. Under the old Scheme, it was determined on the basis of his performance assessed against the various factors set out at page 387. There was an “intrinsic link” between the payment and the performance of tasks that he was required to carry out his contract of employment. He was engaged to carry out repairs and if he was effective at achieving repairs at the roadside then he would be rewarded by an enhanced payment. Further, the payments under the old Points Plus scheme had been made over the entire period for which the Tribunal had been provided with records, stretching back to February 2015.

38. Under the new Points Plus Scheme, he continued to be rewarded based on his performance, and in particular his ability to carry out repairs at the roadside. Whilst the method of computation and the frequency with which payments were made had evolved since the old scheme, it was still paid over a sufficient period of time on a regular basis to justify the description ‘normal’.

39. Mr Locke’s clients were generally those who were provided with breakdown assistance as part of the total package purchased at the time that their Jaguar LandRover vehicle was bought. As a result they were not AA members, nor did they need to be in order to receive breakdown assistance. In addition, any parts were generally covered by the manufacturer’s warranty and so there was not any opportunity to receive commission on parts sales.

40. So far as seasonal supplement is concerned, there seems to have been only two occasions on which he received a seasonal supplement – a payment of £233.35 made on 31 January 2017, apparently in relation to the period up to the end of December 2016; and a payment of £155.82 at the end of January 2018 in relation to the period until the end of December 2017.
41. The basis on which this payment was made is disputed. Mr Locke says that on each occasion it was paid as an extra payment for working on Boxing Day given that there was high demand. He says he does not think that he would have received this payment for volunteering to work in adverse weather conditions because his roadside assistance vehicle was not a four-wheeled drive vehicle. He would tend not to volunteer to work in such conditions, particularly because the vehicles he would be asked to attend did often have four-wheeled drive. That evidence is not specifically contradicted by the Respondent - although it asserts in general terms that Boxing Day work was already covered by the payment of enhanced pay when rostered on that day. It is also said that the AA would be able to plan to ensure that there were sufficient drivers on the road on Boxing Day, such that it would not be necessary to encourage Patrols to volunteer at short notice to work this day.
42. Knowing that Mr Locke was asserting that such a seasonal supplement should have been included in the calculation of his holiday pay, it would have been open to the Respondent to provide evidence from its records as to the particular reason why these particular payments were made. It has failed to do so.
43. I accept Mr Locke's evidence that it was paid as an additional enhancement for working on Boxing Day.
44. However, I do not find that it formed part of his normal remuneration. It appears that on two successive Boxing Days, the Respondent has had to offer a financial inducement to persuade JLRs to work. For whatever reason, they have miscalculated the number of drivers they need to have on the road and so offered an exceptional one off payment. That does not amount to a sufficiently regular pattern of payment to amount to normal remuneration.

Mr Devine

45. Mr Devine was a Recovery Driver. He claims that his holiday pay ought to have reflected the payments that he received for seasonal supplement, points plus and commission, both for member spares and for member recruitment.
46. So far as seasonal supplement is concerned, I reject the argument that this forms part of Mr Devine's normal remuneration. There is no reference to this in Mr Devine's contract; it was paid on an ad hoc basis, and usually in relation to extreme weather conditions. In Mr Devine's case, it seems that it was only paid on two occasions, once in January 2015 and once in April 2016. The payments were therefore not paid on a sufficient regular or reoccurring basis to justify the label 'normal remuneration'.

47. In relation to Points Plus, I accept that payments received under the Points Plus scheme ought to be taken into account in determining his holiday entitlement. Under both the old and the new scheme he was rewarded for how he was performing his job, albeit that the criteria had changed. Under the scheme he received regular payments – quarterly under the old scheme and monthly under the new scheme. They were paid over a sufficient period of time to become ‘normal remuneration’. Although there was a gap when he did not receive any payments, this was because he was off work for medical reasons for about three months, thereby interrupting his opportunity to earn this particular form of enhancement.
48. I reject the argument advanced by Mrs Young, on behalf of the Respondent, that sums received under old scheme should not be taken into account because the targets set under the old Points Plus scheme had already been adjusted to take into account expected holiday. She also argues that sums received under the new scheme should not be taken into account because the sums received on a monthly basis for driver behaviour were averages of the shifts actually worked, and not reduced as a result of time taken on holiday.
49. As was canvassed with her in closing submissions, the focus of the caselaw is on determining whether sums received formed part of normal remuneration because payment was sufficiently regular and extended over a sufficient period to justify the description ‘normal’. If they were, then it would be a disincentive on any employee to take holiday unless normal remuneration was paid in full during holiday periods.
50. Mrs Young’s points appears to have been dealt with in the way that Simler J rejected the argument advanced by the Respondent in *Dudley MBC v Willetts* at paragraphs 52-54. It is immaterial if an enhancement is unaffected by holiday absence. The focus is on normal remuneration rather than the normal working week. Mr Devine’s normal remuneration is the remuneration that he received over the course of the reference period, including payments made under the Points Plus scheme. When averaged and applied to the holiday period, paying a Points Plus inclusive amount would maintain his pay during the holiday period at the same level as would be when he was not on holiday.
51. So far as member spares is concerned, Mr Devine accepted that he did not have the opportunity to sell spares to members and that this was not a normal part of his job. Accordingly there is no basis for including any one off member spares commissions in his holiday pay. Any such payments would be exceptional.
52. So far as member commission is concerned, this was a matter that was described in the applicable job description as a main duty and a principal accountability. That job description remained applicable even after FSA changes meant that Recovery drivers were no longer entitled to sell memberships. The commission payments made in this regard were particularly low. They are unlikely to have a significant effect on the weekly figure of ‘normal remuneration’. However because there was an intrinsic link between the

payment and the performance of tasks required under the Job Description that is a decisive requirement that it be included within normal remuneration.

53. Mrs Young argues that the Job Description is not a contractual document. However, it is a document that describes the job that Mr Devine is contracted to perform. He continues to be incentivised through a commission arrangement to carry out a duty that remains described as a main duty.

Mr Fowler

54. Mr Fowler is a RSS Patrol. His claim is that he is entitled to enhanced overtime for working particular days over the Christmas period, that he is entitled to a seasonal supplement, that he is entitled to recover payments under the Points Plus scheme and he is entitled to commission for sales of both membership and parts.
55. In relation to work over the Christmas period, the pay that he received by way of overtime for doing so was clearly part of his normal remuneration. Other enhanced pay rates for working in the evenings, at weekends, or on bank holidays have been accepted as part of normal remuneration. There is no reason why work over the Christmas period if paid at x3 or x4 should be regarded differently from shifts paid at x1.5 or x2 – where the point has been conceded. It is true that work on Christmas Day was voluntary. However once a Patrol had agreed to work on that day, then the pay for doing so became part of normal remuneration. *Willetts* establishes the general principle that voluntary overtime is to be taken into account in calculating normal remuneration for the purposes of holiday pay.
56. In relation to seasonal supplement payments, these payments were generally made on an irregular basis, as a result of exceptional weather events. It has not been shown sufficiently that any were as a result of working particular days and that these days were worked as a matter of course. Over the course of a period of around three and a half years, he received seven payments paid variously in January, March, September and October. Therefore these payments were irregular and do not form part of normal remuneration.
57. So far as the Points Plus scheme is concerned, payments under this Scheme up until September 2016 did form part of normal remuneration, for the reasons already given.
58. Thereafter the scheme was replaced with an Evening Supplement. It has been accepted that Evening Supplement needs to be taken into account in determining normal remuneration.
59. So far as membership sales is concerned, the position that applies to Mr Devine applies to Mr Fowler all the more strongly. He was set specific targets by his line manager for selling memberships. When he failed to sell sufficient memberships it was a factor that led to him being put on a performance improvement plan. The Respondent had initially denied that membership sales were taken into account in assessing performance or for disciplinary purposes. Faced with the late disclosure of documents from the Respondent confirming that

his lack of membership sales was a factor in the decision to place him on a performance improvement plan, Mrs Gallagher had to accept that it was being assessed as an aspect of the way in which he was performing the job. I have already found that it had been evaluated in league tables at group meetings and this factor continued to be monitored on the tablets with which Patrols were issued. There was therefore an intrinsic link between the payment and the performance of his role, and it formed part of normal remuneration.

60. The same approach also applied to the sale of parts in the case of Mr Fowler. In his case, his contract recorded that he would receive 10% commission excluding VAT on any parts sold to members and customers in his work as a Patrol [56]. That remained part of his contract throughout the relevant period. Whilst Mrs Young argues that it gave him the option of selling parts but did not require it, by including such a provision with a financial incentive, his contract clearly encouraged him to do so. Furthermore I accept his evidence that he felt bullied to sell both membership and parts.

Mr Gaskell

61. I reach the same conclusion in relation to Mr Gaskell in relation to overtime at supplemental Christmas rates as in relation to Mr Fowler, for the same reasons.
62. So far as seasonal supplements are concerned again, I reach the same conclusion as Mr Fowler for the same reason. Although he did receive a total of 12 payments over a period of about two years, these were at different times of the year and not paid on a regular basis.
63. Mr Gaskell is not claiming that his holiday pay should reflect Points Plus and therefore this does not fall for determination.
64. So far as commission is concerned, my findings are the same in relation to Mr Fowler, both in relation to parts and in relation to membership. His contract says as follows, in relation to parts :

[30a] : All Patrol staff may be issued with a Spare Parts Kit. If you are issued with one, the sale of spares from this kit will be on the basis of laid down operating instructions that will be given to you. Tax will automatically be deducted on any commission made by you from the sale of spare parts.

65. His job description describes selling membership as a main duty. As a result, in both cases there is an intrinsic link between the commission generated by such sales and the performance of tasks required under the contract. The documents show that he generated a significant commission paid regularly over a long period of time for selling parts, and to a lesser extent in relation to commission on membership.

Mr Cooper

66. Mr Cooper was another Recovery Patrol, albeit working under a different contract to that of Mr Devine. He claims that his holiday pay should reflect

payments he received of seasonal supplements, Points Plus and commission for membership and member spares.

67. I reject the argument that his holiday pay should include payments received by way of seasonal supplement for the same reasons as in relation to Mr Devine.
68. I agree that his holiday pay should reflect payments he received by way of Points Plus both under the old and new schemes, for the reasons given in relation to Mr Devine.
69. His contract made no reference to commission on sales of membership and of parts. However, he was subject to the same Job Description that described it as a main duty to maximise the sales of AA memberships and other products, as required. As with Mr Devine, I find that there was no effective opportunity to sell parts so that any one off remuneration for doing so would not form part of his normal remuneration. As with Mr Devine, I find that the requirement to sell membership continued to the extent that he was encouraged to refer potential members to the website with a view to joining and received a modest commission if they became members. Given the Respondent's own paperwork there was an intrinsic link between the commission and the requirement that memberships be sold.

Case management

70. In the light of the Tribunal's findings in relation to each of the specific matters in dispute, it is hoped that there can be full resolution of the sums that are owing to each of the Claimants, not just those that have been dealt with in this Judgment. To that end, the parties have an opportunity between now and February to see if that can be achieved. The Tribunal has given case management directions from February 2019 onwards to enable the remaining issues in dispute (on liability, in relation to the other Claimants and on remedy in relation to all claims) to be fairly determined at a further Final Hearing, scheduled to take place in September 2019.
71. The Tribunal stressed to the parties the importance of ensuring that there was full compliance with Tribunal orders on both sides, given the failures to comply with Tribunal orders in the past.

Employment Judge Gardiner

21 September 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 September 2018

FOR THE TRIBUNAL OFFICE

SCHEDULE OF CLAIMANTS

1400199/2017	Mr David C Fowler
1400200/2017	Mr Wayne Back
1400202/2017	Mr Ian Cooper
1400204/2017	Mr Robert Devine
1400208/2017	Mr Andrew Locke
1400212/2017	Mr Paul Welsh
1400387/2017	Mr Thomas Flanagan
1400388/2017	Mr Timothy Gaskell
1400392/2017	Mr Duncan Smith
1400518/2017	Mr David Jones