**British Printing Industries Federation (BPIF)**

**British Office Supplies & Services Federation (BOSS)**

# Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire (Department for Business & Trade)

## December 2024

## General comments on the impact of employment reforms on businesses

The British Printing Industries Federation and British Office Supplies & Services Federation appreciate the Government's ambition to provide improved protections for the UK workforce. However, our members are concerned about the likely consequences of reform on businesses. In a survey of our members conducted in autumn 2024, the Federation found that 77% were either 'moderately', 'very' or 'extremely' concerned that the employment reforms would have a negative impact on businesses.

Reasons for this concern will include increased costs and administrative burden, which companies are worried will make it more challenging to do business, and certainly to grow. When taken alongside the increase in Employer National Insurance contributions and rising minimum wage (which places pressure on employers to match increases further up their pay structures), these concerns have become all the more acute.

Members have expressed disappointment that some of the more significant reforms have not been subject to formal consultation. However, we also recognise that the Government is keen to implement the package as a priority. Therefore, sufficient time before commencement, to allow businesses to prepare for their new obligations, is vital.

## Part 1 – collective redundancy

### General comments on the reforms to collective redundancy included in the Employment Rights Bill

The British Printing Industries Federation and British Office Supplies & Services Federation welcome the opportunity to respond to the consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire. We are is keen to ensure that an appropriate balance is struck between legislating against some of the extreme, egregious business practices conducted by a minority of employers in other industries and potentially restricting the ability of good employers to respond to changing business conditions.

Our industry is comprised predominantly of SMEs, with under 250 employees and is one of the few industries with employers spread across the country, rather than concentrated into a few localised areas. Since the Covid-19 pandemic, many print companies have suffered substantial energy and raw material cost increases which has resulted in closures and mergers. Further, the industry is highly competitive and small cost fluctuations can see contracts regularly moved between suppliers. In this challenging environment, as for many other industries, redundancy is a last resort but may be necessary.

The Employment Rights Bill will amend the collective redundancy framework to ensure that employers must fulfil collective consultation obligations whenever they are proposing 20 or more redundancies, so that these obligations apply regardless of whether the redundancies are taking place at one site or more. For businesses operating from multiple sites, or under a group structure, this will mean that the trigger for collective consultancy will be much lower and will make local redundancies a company-wide issue. This is despite the fact that there may be only three or four redundancies being made at a single site and those redundancies may be being made for unconnected reasons (for example, the loss of site-specific contracts). In such an instance, it is unlikely that consultation would make any difference towards reducing the number of redundancies. Instead, the administrative burden of collective redundancy consultations will increase significantly for these businesses, with large employers needing to implement tracking systems for proposed redundancies across all sites.

Even with the implementation of tracking data, removing the one site rule could affect businesses who are trying to abide by the law but, due to changing circumstances, find themselves at risk of breaching it. An employment law-abiding employer with a site in London, making 12 people redundant, could easily face an unexpected loss of a contract at their Manchester site within the 90 days timeframe, which may result in a further 12 employees being made redundant. The combined effect of the change in establishment rule and an increase in the protective award would be a double blow for a rule-abiding employer.

In addition to the need to track this data, with the lower threshold, some employers will potentially find themselves in repeated successive collective redundancy consultations. Increasing the protective award cap is intended to discourage large employers from relying on individual settlement agreements in order to avoid consultation obligations, yet the lower threshold will act as an incentive to make agreements simply in order to avoid repeated consultation exercises. In addition to increased administration and costs, repeated exercises will divert time and energy at senior management level away from business planning, including productivity and investment decisions which aim to improve growth potential.

Further clarity is needed on logistical requirements, namely how collective redundancy consultations will take place across sites, now that a multi-site approach will be taken. For example, if 10 employees are being made redundant at Site A, and a further 10 at Site B (within the required time period), it has not been made clear whether representatives will need to be brought together for the consultation exercise. This of course would be challenging for businesses with geographically disperse sites, and would add to costs.

Looking ahead to the 2025 consultation on the duration of statutory consultation periods for more than 100 people, a lengthening of the period from 45 to 90 days will make managing the consultation process lengthier, increasing uncertainty for employees. It is important to strike the right balance between fairness to employees and allowing them certainty, as lengthy periods of time for employees during these exercises is generally unwelcome.

Increased pressure on Employment Tribunals, and the subsequent impact on employees, should also be considered throughout this consultation. The latest edition of Tribunal Statistics Quarterly (April-June 2024), found that the number of open/unresolved cases increased by 18% compared with the

same point a year earlier, whilst the number of disposals fell by 4%. This led to an increase in caseload of 4%.[1] The Employments Rights Bill will already extend the limitation for bringing a Tribunal claim from three months to six. Lowering the threshold for collective redundancy consultation by removing the one site rule will further increase pressure on the system, so there will need to be willingness to resource the system to meet potential demand.

**Consultation questions**

**Do you think the cap on the protective award should:**

- **be increased from 90 to 180 days?**
- **be removed entirely?**
- **be increased by another amount?**
- **not be increased?**

**Please explain your answer.**

We believe that the cap on the protective award should not be increased and should remain at 90 days. This is because:

- The change in the establishment rules from one site to company-wide increases business uncertainty, particularly when contracts can be moved between suppliers relatively easily. An employment law-abiding employer with a site in London, making 12 people redundant, could easily face an unexpected loss of a contract at their Manchester site within the 90 days timeframe, which may result in a further 12 employees being made redundant. The employer would then face a larger protective award even though, at the time of making staff redundant in London, they were unaware the contract in Manchester would be lost. The combined effect of the change in establishment rule and an increase in the protective award would be a double blow for a rule-abiding employer.

- Increasing the cap will act as a disincentive to grow the company and to recruit more staff. This is because the margins in the print industry can be small, production runs substantial and small cost changes can result in customers switching contracts to different suppliers. When bidding for a contract, the increase in potential costs for protective awards may deter companies from bidding for new contracts and therefore deter employers from employing staff.

- The majority of employers, at least in our industry, behave appropriately and do not (nor cannot afford to) pay individual settlements which are significantly higher than the current cap in order to avoid a consultation process. If an employer can afford to make settlements which are above the current cap, this may in fact offer a solution which works for everyone. It allows businesses to make redundancies in response to changing conditions and allows employees a level of certainty and settlement which they appreciate, rather than a prolonged period of employment after which the eventual redundancy is inevitable.

- As stated above, in our industry at least, where redundancy consultations do take place, they are usually in response to changing circumstances such as loss of major contracts. In these situations, a collective consultation process will not lead to jobs being saved. It is our experience that employers which need to make staff redundant do not do so lightly; it tends to be as a last resort.

[1] Ministry of Justice, Tribunal Statistics Quarterly, 3 October 2024

**Do you think that increasing the maximum protective award period to 180 days will incentivise businesses to comply with existing collective redundancy consultation requirements?**

- **yes**
- **no**
- **don't know**

**Please explain why and note any other benefits.**

We do not believe that increasing the protective award will affect compliance with redundancy consultation requirements in the print industry because:

(a) The lack of compliance is more likely to occur due to:

(i) Ignorance of the law rather than through fear of increased penalties.

(ii) The change in the establishment rule means that an employment law rule-abiding employer is more likely to be caught out through no fault of their own by unforeseen changes at one of their sites (as described above) than through fear of an increased protective award.

Capping the award at 180 days may incentivise a minority of unscrupulous businesses to comply with existing collective redundancy requirements due to the increased potential cost. Whether it would have avoided some of the high-profile cases reported in the news is unclear as there is no guarantee that settlement payments of over 180 days' pay would not have been made instead. However, as mentioned above and below, there will be disadvantages to this approach.

**What do you consider the impacts will be on employers of increasing the maximum protective award period from 90 to 180 days?**

For businesses which are making redundancies as a result of genuinely changing situations and financial pressures, there may be unintended consequences.

The Government's aim is to ensure that employers meet their collective consultation requirements, thereby increasing the chance of solutions being found and redundancies being minimised. As stated though, in our industry, redundancies may often be the result of a loss of a major contract, for example if a customer moves its print production elsewhere, including abroad, or elects to use digital options instead of print entirely. When this happens, an employer in a print premises generally knows exactly to what level this will affect production requirements, and therefore how many redundancies need to be made from which job roles. In these cases, the amount of a potential protective award (and the length of consultation process) is unlikely to make a difference to the outcome. Therefore, increasing the cap for protective awards will mean that decent employers will be less able to offer employees a settlement employees consider adequate (and a process which is efficient and certain), without costing significantly more.
Increasing the protective award from 90 to 180 days could have a further consequence – it could act as a disincentive for suppliers to bid for new contracts and employ more staff because of the increase in potential costs should they lose the contract. This is especially likely to adversely affect suppliers with multiple sites given the change in the establishment rule.

**What do you consider the impacts will be on employees of increasing the maximum protective award period from 90 to 180 days?**

As stated, the current situation allows more flexibility for employers to make fair settlements in an efficient and timely manner in situations in which consultation processes are very unlikely to lead to a different outcome.

For employees, certainty is often highly valued. Settlements which are over 90 days' pay allow employees to receive what they consider to be an adequate settlement, while having a clear timeframe to look for alternative employment. In an industry such as print, with close networks and highly valued specialised skills, employees are often able to find similar roles available within acceptable timeframes.

In the printing industry, in which most businesses are SMEs, the relationships between employers and employees is largely one of appreciation, respect and trust. Even in situations where sites are owned by a larger group, we find that this is the case. Increasing the maximum protective award, while lowering the threshold for collective consultation, seems a disproportionate response that may not be as beneficial for employees as the Government imagines – while it may help protect a minority of workers in a minority of companies with poor employment practices, it could prove an over-correction in the vast majority of cases.

Further, as mentioned above, there is likely to be an impact on not only existing employees but on jobseekers, with businesses more apprehensive when it comes to recruitment. Alternatively, employees may be affected by employers choosing to increase their hours, in order to avoid having to employ new staff and then make them redundant if circumstances change.

**What do you consider to be the risks of increasing the maximum protective award period from 90 to 180 days?**

The impacts outlined above may lead to the following risks for employers:

- Reduced ability to conduct timely and fair consultation processes in situations in which consultation is unlikely to affect outcome.
- Reduced ability to anticipate and manage costs, which may in turn have an impact on debt levels or even compound financial pressure.
- Insolvency and further job losses.
- More likelihood they will factor in the increase in potential costs when making decisions around investment and expansion, for example tendering for new contracts. The risks would therefore be reduced investment and employment.

**Do you think that removing the cap will incentivise businesses to comply with existing collective redundancy consultation requirements?**

- **yes**
- **no**
- **don't know**

**Please explain why and note any other benefits?**

We are not aware of a lack of compliance of collective procedures in the print industry. Members of the BPIF have access to employment law advice. We do not believe that any lack of compliance of collective redundancy procedures within the print industry is due to the size of the protective award, it is more likely to be due to either a lack of understanding of employment laws or the likelihood of the business closing. Therefore, removing the cap is unlikely to incentivise better behaviour, and is more likely to increase the business uncertainty around employing staff.

Removing the cap entirely, as with increasing it to 180 days, may incentivise a minority of unscrupulous employers in industries which are more prone to the practice. Employers are likely to fear employees bringing claims that have no predictable award, which in turn encourages litigation. We can understand the Government's assumption that it may have helped avoid some of the high-profile cases reported in the news. However, it may also have the unintended consequences outlined, for both employers and employees, of the vast majority of businesses which do not behave in this way.

**What do you consider to be the impacts on employers of removing the cap on the protective award?**

For the vast majority of employers, the impact of removing the cap will be disproportionate, for similar reasons to increasing the cap amount. Removing the cap is likely to increase business uncertainty towards employing staff, particularly given the change in the establishment rule. Employers are likely to fear employees bringing claims that have no predictable award, which in turn encourages litigation. Removing the cap entirely would allow Tribunal judges to award any amount, which will make it impossible for businesses to anticipate costs. While the aim is to ensure that employers do not attempt to 'buy out' employees as they cannot be sure that a Tribunal will not award more, an unintended consequence will be that employers may significantly underestimate potential costs of Tribunal outcomes, leading to financial distress for the business and putting more jobs at risk. Although our preference is for the cap to remain at 90 days' pay, whether it is capped at 90 days or 180 days, certainty for both employees and employers is vital.

**What do you consider the impacts will be on employees of removing the cap on the protective award?**

Given the disincentive to employ staff, we believe that (as with an increase to the cap) removing the cap entirely increases business uncertainty. Faced with this, employers are more likely to increase the hours of existing staff to cover new orders or less likely to invest in the business, which in turn reduces the opportunities for jobseekers.

**What do you consider to be the risks of removing the cap on the protective award?**

Ass set out above, increased business uncertainty, reduced investment and reduced recruitment. The risks outlined above in response to Q5, in relation to increasing the cap to 180 days, the risks of increased business uncertainty, reduced investment and reduced recruitment, will be even more acute for a complete removal of the cap. As noted in our response to Q7, it will not simply increase costs which may put the business at risk, it will make it impossible for businesses to anticipate costs at all. We understand the Government's aim is to ensure that collective consultancy takes place. However, in ensuring that businesses default to this option instead of paying individual settlements, it may in fact mean that opportunities for timely, certain and preferable outcomes for employees are actually missed, especially in situations in which consultation will not affect outcome.

**Do you agree or disagree with making interim relief available to those who bring protective award claims for a breach of collective consultation obligations?**

- **agree**
- **disagree**
- **don't know**

**Please explain your answer.**

We believe that very few interim relief applications are currently made in the categories for which it is already available. Where it does happen, sums paid under a continuation order are irrecoverable from the claimant, even if they ultimately lose their claim and unfair dismissal is not found. The suggested protection for employers, that a court will only be able to apply interim relief in cases in which the claim is 'likely' to be successful, lacks clarity and may lead to unequal outcomes based on differing judgments. It is not also unclear whether, should a claim be ultimately found to be unsuccessful, there would be any recompense for the employer. Although the protection in place should ensure that this is rare, in instances in which it does happen, this will be unfairly damaging to businesses.

Beyond this, we do not agree with extending interim relief to breaches of collective consultation because:

1. Most of those affected will have received redundancy payments and the current protective award is adequate.
2. Given the change in the establishment rule, interim relief in circumstances in which the employer was faced with unforeseen changes at multiple sites would effectively act as financial punishment of employers who fall foul of the rules through no fault of their own and are already faced with reduced income from a downturn in business.

Allowing interim relief in cases of collective redundancy, where due to changing business demands it is unavoidable that jobs will be lost, will place businesses which may already be in financial distress in an even more dire position, especially if combined with an increase to the protective award cap and the removal of the one site rule.

## Part 2 – fire and rehire

**General comments on the reforms to dismissal and re-engagement included in the Employment Rights Bill**

We recognise that dismissal and re-engagement is sometimes used by unscrupulous employers to make substantial, often detrimental, changes to contracts with little protection for employees who do not agree with the terms. However, this is not a problem we see widely in our industry, possibly because it is predominantly comprised of SMEs in which employers and employees have good relationships, and changes to contracts are dealt with in a fair and consultative way. This means that there is little need for employees to have recourse to unfair dismissal. Our autumn 2024 survey of members showed that only 6% were concerned about this reform, suggesting that dismissal and re-engagement is not being widely used. However, 88% were concerned about unfair dismissal being made a Day One right more generally, which under these proposals will now include dismissal due to a change of contract not being agreed.

The main aim of varying contracts is to work collaboratively with employees to achieve the needs of the business. Current legislation protects employees from fundamental changes to contractual terms. Employers usually find it relatively straightforward to negotiate minor, non-detrimental variations in contracts of employment. An example would be if an employer relocates to a new site on the opposite side of the same road. It is usually not a problem to persuade employees to change their contractual location in such a minor way.

The new rules, however, would enable employees to refuse changes to their contracts of employment, even if those changes are minor and non-detrimental (for example, a trivial change in location). The new rules would encourage disagreement and possibly litigation for changes to a contract that are not fundamental. This is because, especially if combined with the application of interim relief, it will provide an incentive for employees not to accept contract changes, even minor and non-detrimental ones, and will risk exposing businesses to either a) costly incentives to

encourage employees to accept changes or b) costly unfair dismissal claims with interim relief imposed. It is important that the Government strikes a balance between avoiding egregious cases carried out by poor employers and limiting the ability of good employers to simply continue to do business without excessive impediment.

In situations where there are proposed *fundamental* changes, we believe the existing legislation protects employees, for example employees are entitled to set out their ongoing objections to any changes to their contracts of employment and bring claims against their employers without any financial cost for any losses resulting from those changes that are imposed.

We also have concerns about the change to the threshold for using dismissal and re-engagement included in the Bill. The new threshold will ensure that employers can only use the practice (without facing unfair dismissal claims) if they can demonstrate that they were facing financial difficulties that threatened their viability, and that changing the employee's contract was unavoidable (for example, it was the only way to prevent insolvency).

We are concerned that this much higher threshold may prevent businesses from using dismissal and re-engagement in instances in which insolvency is not necessarily imminent, but in which financial pressure would significantly increase if dismissal and re-engagement cannot be used. The withdrawal of the current 'sound business reason' requirement (such as responding to economic changes, working practices or simply harmonising terms and conditions across a workforce) in favour of the much more extreme 'avoiding insolvency' will have a negative impact on businesses which may need to use dismissal and re-engagement for genuinely sound business reasons. It does not seem to be a proportionate response when the Government is keen to ensure that businesses are able to make decisions which enhance productivity, investment and growth (beyond simply avoiding going out of business). In the rapidly changing landscape in which industries are operating, including new technologies and varying customer demands which may require employees to adapt, there is a risk business growth may be held back without the ability to be flexible in response.

With such instances made an automatic unfair dismissal from Day One, it is also likely the number of Tribunal claims will increase, adding pressure to an already busy system and potentially leading to delays.

The current statutory code introduced in July, which encourages compliance by allowing a potential for a 25% uplift in compensation, may achieve a reduction in the amount of dismissal and re-engagement being used by employers, without a change in legislation which makes the practice automatic grounds for unfair dismissal.

The Bill as currently drafted will make it very difficult for employers to vary any terms and conditions (even everyday, non-detrimental ones, such as the inclusion of a new benefit or flexible working) without employee agreement. Employers will need to systematically audit employees' contractual terms to understand where there may be issues that could necessitate changes to terms or whether there are variation clauses which can be invoked. This will place a further administrative burden on businesses, which should be considered in the light of other administrative requirements being imposed.

**Do you agree or disagree with adding interim relief awards to fire and rehire unfair dismissals? Please explain your reasoning behind your agreement or disagreement.**

We disagree with a fixed rule of interim relief awards being available for anyone dismissed for refusing a variation in their contract of employment because:

(a) A fixed rule fails to distinguish between different circumstances. For example, interim relief for an employee who was made redundant and received redundancy pay for refusing a variation in their contract over a minor change in location, unless their without prejudice financial claims are met, would be unfair to the employer.

(b) An employee who is dismissed for refusing to a variation in their contract to work 200 miles away from their normal place of work, e.g. because they cannot perform the new terms of the contract due to childcare commitments, is likely to have a moral justification to interim relief.

If dismissal and re-engagement is to be considered unfair dismissal in all but the most extreme cases, and this right is to be applied from Day One of employment, we do not agree that interim relief should also be added to these claims at this time. The July 2024 statutory code should be allowed to bed in, and be evaluated, before further change is made which will place businesses at risk.

**Do you think adding interim relief awards would incentivise employers to comply with the law on fire and rehire dismissals?**

- **agree**
- **disagree**
- **don't know**

**Please explain why.**

We do not think interim relief will incentivise employers from dismissing an employee for refusing to vary their contract of employment and employing someone else instead because there is already a fear of a claim of unfair dismissal, particularly if it is a Day 1 right. Additional compensation available to the employee over and above the current compensation available is unlikely to impact an employer's decision.

Applying interim relief in cases of unagreed contract changes will place employees in a stronger bargaining position to negotiate incentives to accept the new terms, such as lump sum payments, even in situations in which the changes are minor or non-detrimental. This will be costly for businesses. Should businesses not be able to afford incentives, more Tribunal claims will be made for what is now to be considered unfair dismissal. Where an employer is making contract changes for a sound business reason (but falls short of insolvency) paying interim relief will prove costly if employees do not agree. So, whether unfair dismissal is avoided or not, there is likely to be additional costs on employers during what may already be difficult periods.

If employers feel it will be expensive to make contractual changes, they may be discouraged from making any changes at all in order to avoid financial risk. This may be the case even if those changes are non-detrimental or are needed to secure business growth and flexibility in response to the changing environment. This may lead to further risk for the business as a whole, as it will not be able to be as responsive as might be necessary. Employees may also be at risk of missing opportunities to receive better terms, as employers will be concerned that any contractual changes at all could leave them open to higher costs one way or the other.

**What is your view on whether any adjustments to the current approach to interim relief would be needed to ensure that interim relief for fire and rehire cases can work effectively and be determined promptly by the tribunal?**

- Clarity is needed on the threshold of evidence that will be required of employers to prove that using dismissal and re-engagement is necessary to avoid insolvency.

- Employers should be allowed to make minor, everyday, and non-detrimental changes to contracts without the risk of unfair dismissal claims being made.

## Respondent consultation questions

**Please indicate whether you are responding as:**

- ~~an academic~~
- ~~an employer~~
- ~~an employee, worker or individual~~
- ~~a legal representative~~
- a business representative organisation or trade body
- ~~a trade union or staff association other (please specify)~~

The British Printing Industries Federation (BPIF) is the principal business support organisation representing the UK print, printed packaging and graphic communication industry. It is one of the country's leading trade associations.

Our members are approximately 1300 companies operating in the £13.9bn UK printing industry. The industry had a Gross Value Added to the UK economy of £6.5bn in 2022 and productivity gains well above average. It employs almost 100,000 people, receiving £3.8bn in wages annually.

The British Office Supplies and Services Federation (BOSS) is the voice and representative body of the UK's Business Supplies industry and supports the whole supply chain in a dynamic and expanding sector. BOSS is a long-standing not-for-profit organisation with a leading and strategic role in the promotion and development of the business supplies industry.

**What sector or industry do you operate in?**

- manufacturing
- ~~construction~~
- ~~wholesale, retail and repair of motor vehicles~~
- ~~transport and storage~~
- ~~accommodation and food services~~
- information and communication
- ~~financial, insurance and real estate activities~~
- ~~professional, scientific and technical activities~~
- administrative and support services
- ~~public admin and defence; social security~~
- ~~education~~
- ~~human health and social work activities~~
- ~~other services~~
- ~~do not know~~
- ~~prefer not to say~~