Association of Business Recovery Professionals

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Make Work Pay: Threshold for triggering collective redundancy obligations

R3 Association of Business Recovery Professionals ("R3") - response

1. ABOUT R3

1.1. R3 is the trade association, representing 3,300 insolvency, restructuring, advisory, and turnaround professionals across the UK. We represent licensed insolvency practitioners (IPs), lawyers, turnaround and restructuring experts, students, and others in the profession. Our members work across the spectrum of the profession, with representation from 750 firms, from global legal and accountancy firms through to smaller, local practices.

1.2. The insolvency, restructuring and turnaround profession is a vital part of the UK economy. Through the work of the profession, our members promote economic regeneration, resolve financial distress for businesses and individuals, save jobs, and create confidence and public trust which underpin trading, lending and investment.

1.3. We have responded to this consultation from the perspective of our members and the financially distressed firms they work with. We recognise that the proposals outlined in the consultation are designed to protect employees of all businesses.

1.4. This response has been prepared in collaboration with R3's Employee Working Group and wider membership.

1.5. R3 would be delighted to meet officials to discuss the points raised below in greater detail. If you would like to meet us or if you have any other queries, please contact R3's Policy and Public Affairs Manager, Ceara Roopchand – ceara.roopchand@r3.org.uk

2. About You

Question 1: Please indicate whether you are responding as:

2.1. A business representative organisation

Question 2: If responding as an employer, business, business owner or business representative, approximately what is the size of your business?

2.2. Micro or small (1 to 50 employees)

Question 3: If responding as a large employer, business, business owner or business representative (as answered above), approximately what is the size of your business?

2.3. Not applicable

Question 4: Which region are you located in?

2.4. London

Question 5: What sector are you based in?

2.5. Financial activities

3. Outcomes and benefits of the collective redundancy consultation process

Question 6: What is your assessment of the benefits of a collective redundancy consultation?

3.1. Our members are aware of the importance of protecting employee rights and the need to incentivise employers to fulfil their obligations. For solvent businesses, collective redundancy consultation serves an important purpose in helping to mitigate the effects of redundancy by giving employees time to prepare and a voice in how mass redundancies are decided.

3.2. However, R3 remains concerned that in insolvency situations there is clear tension between employment law and insolvency law on the issue of collective redundancy consultation.

3.3. In the period before an IP is formally appointed, they have no control over the steps taken by the employer or its directors, although it is good practice for the proposed IP to advise the directors to seek advice on their responsibilities. The key point to note is that where there are breaches of the consultation requirements after an insolvency event, this is generally a result of the circumstances and exigencies of the individual case, and not deliberate neglect by an IP of the law.

3.4. Failure to consult once the insolvency of a business has been established is often a result of simply not having access to the necessary funds within the estate or sufficient time to facilitate a legally compliant consultation process. Furthermore, the circumstances of the case will often mean that there are no realistic alternative courses of action on which it is possible to have meaningful consultation by the time that an IP has been formally appointed.

Question 7: In your experience, how effective are collective redundancy consultations at preventing or reducing redundancies? Please provide any additional evidence which helps to support your point.

3.5. In an insolvency situation, collective redundancy consultation requirements often make no difference to the number of redundancies as the business is not viable in its present form.

3.6. Generally, there are three types of situations inherited by IPs:

3.6.1. The company will have completely run out of cash and means to generate more cash, and as a consequence ongoing trading will not be possible and an immediate shutdown will be necessary. In this type of situation an IP is not consulted by directors until too late, at a point when the company is unable to meet wage liabilities falling due within the following few days. The entire workforce is therefore likely to be made redundant immediately.

3.6.2. The company will have, or have access to, limited funds, but only sufficient to enable trading to continue for a limited period to allow the IP more time to conduct a sale of the business and assets or effect an orderly wind-down or effect a rescue as a going concern. In this situation, where trading requires all or only some of the staff for the entire expected trading period, it may be possible to consult to a limited extent, but perhaps not for the full statutory consultation period. Furthermore, there will probably be competing claims on those available funds. For example, there may be other statutory obligations which the company (or IP, now acting as an insolvency office holder) must comply with.

3.6.3. The company will have sufficient funds to enable ongoing trading for a reasonable period until a sale of business and assets, orderly wind-down or rescue as a going concern is concluded. In this situation it may be possible to consult for the full statutory period.

3.7. In reality, IPs often face a mix of more than one of these scenarios – there may be a branch, factory or division where the business can trade on in the hope of finding a buyer, but other branches, factories or divisions which are deemed not viable to continue with. The above scenarios are therefore not exhaustive and with the proposed changes a shutdown of one branch, factory or division may now fall within the collective redundancy regime whereas previously it would not have.

3.8. Even where it is not possible to consult for the full statutory period, IPs will try to mitigate the effect on the workforce by providing as much information and support as possible in the circumstances, including contacting the various support Government agencies to begin a coordinated approach to dealing with the proposed redundancies and supporting those employees affected.

Question 8: What is your assessment of how effective collective redundancy consultations are at increasing redundancy pay? Please provide any additional evidence which helps to support your point.

3.9. **Not effective:** In an insolvency situation as described above where there are no funds to continue trading, collective redundancy consultation requirements do not affect redundancy pay due to the reliance on the National Insurance Fund to meet the costs of statutory redundancy pay. In a solvent situation or where there is financial distress short of insolvency the requirement may allow for more effective consultation between employees and directors which can improve outcomes.

Question 9: What is your assessment of the extent to which running collective redundancy consultations is burdensome for employers? Please provide any additional evidence which helps to support your point.

3.10. **Other:** For solvent businesses the consultation requirements are somewhat burdensome. However, in an insolvency situation whether a business runs a consultation is dependent on the financial realities of the situation. Without the funds to continue trading it simply becomes a statutory obligation that cannot usually be met.

Question 10: Does your organisation voluntarily offer collective consultations, which are beyond legal requirements, during redundancy programmes?

3.11. **Yes:** Where possible R3 members will be able to engage in collective consultation above and beyond the legal requirements to ensure that affected employees are informed on the position with their ongoing employment. In cases where a business is distressed but can continue to be traded for a period, such as in an administration, IPs generally ensure that employees are made aware of the redundancy risk they face and their rights. They engage with representatives of the affected employees or in some cases organise the election of employee representatives to speak on behalf of employees. They will continue the consultation and engagement process for the duration of the appointment until redundancies are made, employees are transferred under the Transfer of Undertakings (Protection of Employment) regulations (TUPE) or are no longer at risk of redundancy. It is important to note that the cost of doing this is significant.

Question 11: If responded yes to question 10, why does your organisation engage in collective redundancy consultations voluntarily?

3.12. Despite the costs involved IPs will engage in consultation when it is reasonably practicable to do so for a number of reasons. Consultation can play an important role in maintaining workforce stability during the administration period. In a trading administration, preserving value often depends on continuing operations for a short period (for example, to facilitate a sale). Engaging with employees and their representatives can help to reduce uncertainty, and mitigate the risk of sudden departures or disruption to business activity.

3.13. Consultation, over and above the statutory requirements, reflects a commitment to treating employees fairly and transparently in what is often a highly distressing situation. Even where redundancies are likely and there is little scope to alter outcomes, employees value being informed, having the opportunity to ask questions, and understanding the rationale behind decisions. Providing this engagement can help maintain trust and reduce the likelihood of conflict.

Question 12: On average, how many redundancies does your organisation make in a three- month period? Please write in a number below.

1.1. Based on a data sample of approximately 30,000 employees provided by large R3 member firms, on average 70% of the workforce are made redundant in a typical case.

Question 13: Based on your experience, to what extent do employers currently monitor the number of redundancies that happen across their business? Please explain your answer.

1.2. **Rarely:** In the experience of our members, businesses rarely monitor the number of redundancies they make. Upon appointment IPs often have trouble identifying how many employees were made redundant pre-appointment for collective consultation purposes. Any protective awards for redundancies made pre-appointment can be treated as preferential claims in an insolvency so understanding how and when claims might be triggered is an important part of an IP's role.

Question 14: Based on your experience, how easy is it for employers to monitor the number of redundancies across their organisation?

1.3. **Other:** While R3 members frequently see businesses that do not monitor the number of redundancies, they are capable of keeping track across their own organisation.

Question 15: The changes to the Collective Redundancy consultation threshold will generally apply only to employees who are working in Great Britain and not to those working in Northern Ireland (unless their employment has a sufficiently strong connection with Great Britain).

Do you foresee any potential challenges for a business operating across both Great Britain and Northern Ireland when monitoring headcount and redundancies? Please explain your answer.

1.4. **Yes:** This will create additional administrative burdens for businesses operating across both jurisdictions, as they will be required to monitor and apply different legal thresholds and frameworks simultaneously. The divergence between Great Britain and Northern Ireland regimes – including the existence of a separate Redundancy Payments Service in Northern Ireland – risks introducing confusion, duplication of processes, and an increased risk of inadvertent non-compliance.

2. Threshold Methods

Question 16: Which of the methods for determining the organisation-wide threshold do you consider the most appropriate? Please explain your answer.

2.1. R3 members strongly support Method 1 as the most appropriate approach, as it provides the greatest level of simplicity and clarity for employers when determining the organisation-wide threshold.

2.2. Members emphasised the importance of minimising additional cost and administrative complexity, particularly in light of the practical challenges already associated with monitoring redundancies across different jurisdictions, as outlined above.

2.3. A simple and easily understood methodology will help businesses comply more effectively, reduce the risk of error, and avoid introducing further operational burdens at an already complex stage of the redundancy process.

Question 17: Which of the following methods for setting the organisation-wide threshold do you consider to be the least appropriate? Please explain your answer.

2.4. Methods 2, 3 and 4 will add greater complexity and regulatory risk.

Question 18: To what extent do you agree that a tiered approach to the organisation-wide threshold, which applies a different threshold based on the number of employees an employer has, could create unfair outcomes for employers (and their employees) near the margins of a tier? Please explain your answer.

2.5. We strongly **disagree** with the use of a tiered approach for the reasons mentioned above.

Question 19: Do you foresee any challenges for a business when calculating the number of employees the business employs? Please explain your answer.

2.6. **Yes:** R3 members foresee several practical challenges for businesses when calculating employee numbers, particularly in distressed or insolvency scenarios.

2.7. Members with HR experience highlighted a clear distinction between practices in solvent and insolvent businesses. In solvent organisations, there is typically limited focus on the prospect of large-scale redundancies, and employee headcount records may not be maintained in a consistently accurate or readily accessible format.

2.8. By contrast, once an IP is appointed, there is an immediate need to establish a clear and accurate understanding of headcount and payroll. In some cases, IPs must implement entirely new systems to capture this information, often under significant time pressure. HR data may be fragmented across multiple sites or systems, and in certain cases, IPs or their teams may need to travel to physically retrieve records, adding further delay, cost, and complexity.

2.9. Additional challenges arise in the context of larger entities with complex group structures. The distinction between the "organisation" and the "employer" is not always straightforward, as these may be legally separate entities. Employees may work within one operational organisation but be formally employed by another group entity, making it more difficult to determine which employees should be counted for the purposes of the threshold.

2.10. Taken together, these factors create a heightened risk of inconsistency and error in calculating employee numbers, particularly at a time when businesses are already operating under significant financial and operational strain.

Question 20: In your view, are there any certain types of employees that should be excluded when working out the total employee numbers an employer has?

2.11. N/A

Question 21: Should employees outside of England, Scotland and Wales (where these regulations would apply) be excluded when working out the total employee numbers an employer has?

2.12. **Yes:** Including employees from other jurisdictions will only serve to further complicate the process.

Question 22: Are there any international approaches or best practices we should consider when developing our approach to the organisation-wide threshold?

N/A

3. Threshold Levels

Question 23: To what extent do you agree that the organisation-wide threshold should not be set at a number which is lower than 250 redundancies? Please explain your answer.

3.1. We **strongly agree** that the organisation-wide threshold should not be set at a number which is lower than 250 redundancies. This would dramatically increase the cost to the National Insurance Fund for protective award claims as a consequence of the additional protections afforded to employees.

3.2. Looking at the 250 redundancies trigger level in isolation with a sample of cases from large R3 member firms, around half (14 out of 29) of cases would face collective consultation requirements.

Question 24: To what extent do you agree that the organisation-wide threshold should not be set at a number which is higher than 1,000 redundancies? Please explain your answer.

3.3. We suggest that the organisation-wide threshold should be set as high possible for the reasons mentioned above.

3.4. Only 6 out of those same 29 cases mentioned in the previous question would face collective consultation requirements if the threshold was set at 1000 redundancies.

4. Proposals

Question 25: Do you agree with the preferred method to make the organisation-wide threshold based on a fixed number (Method 1)? Please explain your answer.

4.1. **Yes**, for the reasons explained above.

Question 26: Are there any concerns or risks that should be considered with the preferred method (Method 1: Fixed Number)?

4.2. R3 members identified some risks associated with a fixed numerical threshold, particularly for sectors with seasonally variable workforces, such as retail and agriculture, where employee numbers can fluctuate significantly over short periods. A single fixed number may not fully reflect these variations and could lead to inconsistent application in practice.

4.3. However, members emphasised that the benefits of simplicity outweigh these potential concerns. As noted above, obtaining an accurate and up-to-date snapshot of employee numbers can be challenging, particularly in distressed or insolvency scenarios.

4.4. On balance, a straightforward and easily understood fixed threshold is preferable, as it provides clarity, reduces administrative burden, and supports more consistent compliance across businesses.

Question 27: In your opinion, which of the following do you think would be the most appropriate threshold for an organisation-wide fixed threshold? Please explain your answer.

4.5. **1000 redundancies:** The threshold should be as high as possible to ensure that fewer insolvency cases are within scope and the cost to the National Insurance Fund is minimised.

Question 28: If answered Question 27, please explain the reasoning behind the threshold level you selected for the organisation-wide fixed threshold.

4.6. As mentioned above out of a sample of 29 cases from R3 member firms only 6 would face collective consultation requirements if the threshold was set at 1000 redundancies as opposed to 14 out of 29 cases at the 250 threshold.

Question 29: In your opinion, what would be the impact on employees of using Method 1: Fixed number, at your chosen threshold (as answered in question 27)? Please provide any additional evidence which helps to support your point.

4.7. Based upon the data sample of approximately 30,000 employees provided by large R3 member firms, approximately 72% of the employees already received protection under the current legislation. Setting the threshold at a higher level would alleviate a degree of the burden on the NIF.

Question 30: In your opinion, what would be the impact on employers of using Method 1: Fixed number, at your chosen threshold level (as answered in question 27)? Please provide any additional evidence which helps to support your point.

N/A

Question 31: In your opinion, are there any concerns or risks you think should be considered with the alternative proposal (Method 3: Tiered Fixed)? Please provide any additional evidence which helps to support your point.

N/A

Question 32: In your opinion, what would be the impact on employees of our alternative option (Method 3: Tiered Fixed)? Please provide any additional evidence which helps to support your point.

N/A

Question 33: In your opinion, what would be the impact on employers of our alternative option (Method 3: Tiered Fixed)? Please provide any additional evidence which helps to support your point.

N/A

Question 34: Do you agree with the proposal to deprioritise options with percentage based methods (Method 2 and Method 4) for the organisation-wide trigger? Please explain your answer.

4.8. **Yes:** As mentioned above those options would create unnecessary cost and complexity and given the difficulty that insolvent businesses have with tracking headcount it would be very hard to implement.

Question 35: Do you believe that the proposals discussed in this consultation will have an impact on individuals with a protected characteristic under the Equality Act 2010?

4.9. No.

Question 36: Where you have identified potential negative impacts under question 35 can you propose ways to mitigate these? Please explain your answer below.

N/A

Question 37: Is there anything else you would like to share your reflections on, that was not covered by the previous questions (e.g. broader risks)?

4.10. Before implementing this proposal, the government should calculate the cost to the National Insurance Fund, as taxpayers will ultimately pay for any protective awards that cannot be reclaimed due to insolvency.

4.11. As part of that exercise, it may be helpful as part of any impact assessment to ascertain what proportion of protective award claims are currently brought against employers who were insolvent at the time when the employees were dismissed, and how that may change over time. Anecdotally we would expect that a very large proportion of protective award claims, potentially the majority, would be brought against insolvent employers where there was limited, if any, scope to comply with the consultation requirements after entering into an insolvency process.