Making Work Pay

Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and hire

Introduction

This response is made by Unite the Union. Unite is the UK's strongest trade union, representing over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, hospitality, health, local government and the not-for-profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Unite officials and stewards and workplace representatives have extensive experience of negotiating with employers over collective redundancies and restructuring exercises. Regrettably during and since the pandemic, Unite officials, reps and activists have become all too experienced in needing to respond to deplorable fire and hire tactics by employers. Unite is strongly committed to do whatever is necessary to support members to protect their jobs, pay and conditions in such situations.

We call on the government to amend the Employment Rights Bill so that it delivers on the commitment to end the scourge of fire and rehire by outlawing such practices outright.

Executive Summary:

Ending scourge of Fire and Rehire

Unite is concerned that to date the government has failed to make good on its commitment to 'end the scourges of 'fire and rehire' and 'fire and replace' that leave

working people at the mercy of bullying threats"[1]. While the Employment Rights Bill contains new restrictions on fire and rehire, there is a significant risk that the most egregious examples of fire and rehire witnessed since 2020 would continue to be lawful. The fear is there could be a recurrence of the abuses witnessed at P&O, British Airways, and Holiday Inn and more recently Oscar Mayer if the Bill is passed in its current form.

Unite calls on the government to introduce amendments to the Employment Rights Bill to outlaw fire and rehire.

Why are legal changes needed?

Fire and rehire is not a new phenomenon in the UK. As Acas reported in 2021[2], the use of fire and rehire tactics by employers is prevalent in the UK and has increased since the pandemic. Employers use the threat of dismissal as a means of driving down pay and conditions or of replacing employees with non-union staff or agency workers.

Over the last 2 years Unite has resisted the use of fire and rehire tactics in multiple workplaces and sectors across the UK, including in engineering, food and drink, airlines, energy companies, hospitality, print firms, local authorities, and housing associations. Examples include:

British Airways

In July 2020 British Airways threatened to 'Fire and Rehire' 36,000 workers. Workers had to decide whether to accept an enhanced redundancy package or reapply for a job on vastly worse terms and conditions - 80% of their previous pay.

As a result of a major Unite campaign including plans for industrial action, the company was forced into a U-turn in 2021, and the dispute was finally resolved in August 2023.

Holiday Inn

During the pandemic IHG made hundreds of workers redundant during the pandemic (despite the Job Retention Scheme (JRS)) and without carrying out proper consultation. The company sought to discourage Unite members from exercising their right to representation during final redundancy meetings. They then used money from the JRS to pay notice pay and severance packages of workers. The treatment of migrant workers during these redundancies was particularly egregious.

[1] Labour's Plan to Make Work Pay: Delivering a New Deal for Working People p 6

[2] ACAS, 'Dismissal and re-engagement (fire-and-rehire): a fact-finding exercise' *(ACAS, 8 June 2021)* https://www.acas.org.uk/research-and-commentary/fire-and-rehire/report

After the pandemic they then sought to re-hire those same workers on lesser terms effectively firing and rehiring hundreds of workers.

Oscar Mayer

Oscar Mayer is one of the UK's major ready meal manufacturers and supplies large quantities of its products to Tesco, ASDA, Greggs, Aldi, Waitrose, Sainsbury's and the Co-op. In September 2024, nearly 600 workers were threatened with fire and rehire, if they did not voluntarily accept changes planned by the company to remove some paid breaks, reduce other breaks and eradicate any enhanced payments and days off in lieu for working bank holidays. The new contracts would see worker's pay cut by £3,000 a year.

Fire and rehire would result in the workers, many of whom speak English as a second language, being dismissed without redundancy pay or compensation if they refuse to sign the new contracts. Unite continues to unconditionally support its members at Oscar Mayer. The next round of strike action takes place from 28 November to 5 December.

Why the Employment Rights Bill should be amended

Unite recognises that Clause 22 introduces new unfair dismissal rights where (i) an employer seeks to vary a contract of employment, and the employee did not agree to the variation and (ii) the employer was seeking to employ another person or re-engage the same employee under a varied contract of employment to carry out substantially the same duties as the employee carried out before being dismissed.

These provisions represent a step in the right direction. However, they do not amount to an outright ban on fire and rehire, in line with government commitments.[3] Fire and rehire tactics will still be permissible if employers can establish an economic justification which threaten its existence.

An employer can defend an unfair dismissal claim if they can show that the reason for the change to pay or conditions was "*to eliminate, prevent, significantly reduce or significantly mitigate the effect of any financial difficulties, which at the time of the dismissal were affecting, or was likely in the immediate future to affect, the employer's ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business.*"

Whilst initially this may appear to be a stringent test for the employer to meet, the provisions include significant loopholes. For example, we are concerned by the use of

[3] Labour's Plan to Make Work Pay: Delivering a New Deal for Working People p 6

the term “likely” and question how this will be interpreted by tribunals. For example, under equality legislation the term “likely” is interpreted to mean something that “could well happen”. In our opinion it would be all too easy for the employer to argue that significant reduction in terms and conditions is proposed to avoid or mitigate circumstances that “could well happen”. In our experience, employer’s opening gambit is almost invariably, significant cuts to workers pay and conditions are needed to avoid impacts to a business that “could well happen”. Such a test will almost certainly not be sufficient to prevent employers from driving through savage cuts to pay and conditions.

Secondly, Clause 23 allows for a long list of potential justifications for variations to terms and conditions - the measures will eliminate, prevent, reduce or even just mitigate against risks to the business - each test requiring a lower hurdle for the employer to overcome.

More significantly, if legal claims ensue, there is nigh on certainty that Employment Tribunals will be reluctant to second guess an employer’s assessment of their company’s financial status. Tribunals consistently refuse to enter into second guessing economic decisions or “raising the corporate veil” and to consider the financial position of parent or global corporations when determining cases.

Unite is concerned that there is nothing in the Bill to stop an employer from sacking employees. There needs to be provisions which enable trade unions or employees to ‘apply a break’, to provide time for proper scrutiny of the financial position of the company and to require the employer to demonstrate to workers and unions that changes to terms and conditions or redundancies are necessary.

It is important that the government is consulting on strengthening legal remedies in fire and rehire dismissal cases. It is welcome that the government is considering introducing interim relief for fire and rehire dismissal cases. However, for the reasons outlined in response to question 16 and following we question whether the introduction of interim relief alone would suffice to prevent the abuse of fire and rehire.

Key asks:

Unite calls on the government to amend the Employment Rights Bill to outlaw fire and rehire outright. The government should provide that:

- It should be unlawful for employers to sack employees for refusing to agree new terms and conditions or to replace them with new staff on new terms and conditions. It should be automatically unfair for employers to dismiss employees in fire and rehire situations.

- Unite would call on the government to consider introducing revised interim relief arrangements for hire and refire situations.
    - Where dismissals have not yet taken effect, a new form of Interim Relief should be introduced which accompanies measures to ensure effective consultation takes place. Employment tribunals should be empowered to make interim relief orders providing dismissals cannot be effected where an employer has failed to consult on
    - Where dismissals have taken effect and employers have continued to ignore consultation requirements, effective penalties should be applied
- Provision should be made for the appointment of expert reports to scrutinise the company / parent company finances, to enable unions to assess whether proposed changes to pay and conditions are necessary - similar to arrangements provided for in relation to European Works Councils.
- The process for applying for interim relief should be simplified and streamlined in fire and rehire cases.
- Reinstatement should be automatic, where an individual's claim for unfair dismissal succeeds – unless the employee chooses to accept redundancy.
- The Bill should also restrict the ability of employers from using contractual clauses which permit unilateral variation of terms and conditions.

Strengthening remedies for collective redundancies

Unite believes that the law on collective redundancies needs to be overhauled.

Compared with much of Europe, the UK is one of the easiest and cheapest countries to fire workforces, meaning that workers are particularly vulnerable to restructuring, redundancies and to the off shoring of production and jobs.

In many recognised workplaces, with mature and long-standing industrial relations, employers will engage in genuine negotiations with unions to maintain employment and the future for businesses. But too often employers refuse to engage, resulting in the needless loss of jobs, skills and experiences, at the same time as damaging the morale of the remaining workforce.

The effect of mass redundancies is not limited to the direct workforce. It can also have a devastating impact on local communities and businesses and public services.

It is all too easy for employers to price in the costs of redundancies and of the failure to consult with unions.

Unite therefore welcomes the government's plans to strengthen remedies in collective redundancies cases. We agree with the principle of introduction of interim relief in collective redundancy cases. interim relief provisions would need to be structured in manner appropriate to collective redundancy cases with applications being made by unions on behalf of their membership to limit any measures being enacted until such time as effective consultation and alternative proposals have been considered.

Unite supports the introduction of an alternative form of interim relief. Employment tribunals should be empowered to make interim relief orders that provide that employers cannot dismiss employees where an employer has not met its obligations to consult with trade unions. The order would remain in place until the employer engages in genuine negotiations with a view to reaching agreement.

We also welcome proposals to raise the cap for protective awards to a minimum of 180 days, including in insolvency cases.

However, we would also call on the government to go further by linking compensation to the turnover of the business, in line with the approach adopted in the UK GDPR and Data Protection Act (DPA).

Responses to Consultation Questions

Section one: collective redundancy consultation obligations

There is clear evidence that collective consultation with trade unions can avoid or reduce the need for redundancies where companies are facing financial difficulties.[4] In many recognised workplaces with mature and long-standing industrial relations, employers will engage in genuine negotiations with unions to maintain employment and the future for businesses. But too often employers refuse to engage, resulting in the needless loss of jobs, skills and experiences, at the same time as damaging the morale of the remaining workforce. The fact there were more than 5,000 employment tribunal claims for employers' failure to inform and consult on collective redundancies in 2022/23[5] suggests that there is a serious issue of non-compliance by employers and

[4] Four out of ten reps responding to a TUC Survey in 2010 reported a reduction in the number of job cuts implemented at the end of the consultation process. TUC (2012) *Collective Redundancy Consultation* www.tuc.org.uk/sites/default/files/tucfiles/callforevidencecollectiveredundancyconsultation.pdf

[5] https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2023

that the current sanctions do not create a sufficient deterrent to ensure employers comply with their legal obligations.

Question 1:

Do you think the cap on the protective award should:

The cap on protective awards should be increased as a minimum to 180 days. However, as outlined below, we would call on the government to go further and to link compensation to a company's or organisation's turnover in cases where Interim Relief has been applied for by the Union and a company has continued to fail to do so.

Please explain your answer

It is currently all too easy for employers to price in the costs of redundancies and of the failure to consult with unions. Some employers will seek to "contract out" of their legal obligations under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA 1992) to consult workers, by offering settlement agreements accompanied by payments equivalent to the protective awards. Others simply ignore their legal obligations and risk the consequences of legal action.

However, we would also call on the government to go further by linking compensation to the turnover of the business. This will specifically target the most egregious examples cited above of 'costing in' any awards made to employees.

This approach has been adopted in the UK GDPR and DPA, which provide for maximum fines of £17,500,000 or 4% of annual turnover, whichever is the higher. Benchmarking awards against turnover would create a significant deterrent effect for employers, would mean that compensation was proportionate to the size of a business and would ensure that large multinationals are not able to leverage their financial strength to avoid legal obligations.

Question 2:

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

Please explain why and note any other benefits?

Raising the cap on protective awards to a minimum of 180 days or preferably linking compensation to a company / organisation turnover would help to create an increased incentive for employers to comply with their legal obligations and to engage in

meaningful consultation with trade unions on ways of avoiding or reducing the needs for consultation.

Question 3:

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

Increasing the level of protective awards should have an impact on employer behaviour, encouraging earlier and more meaningful consultation with trade unions or employee representatives with a view to agreeing ways of avoiding or reducing the need for redundancies.

As noted above, non-compliance with collective redundancy consultation is widespread. Too often employers avoid their legal obligations and are willing to price in the cost of any legal challenge.

This suggests that the current sanctions regime is not working. Penalties should create a clear and persuasive incentive on employers to fulfil their legal obligations. Financial awards therefore need to be significantly increased to improve compliance. Unite takes the view this could be most effectively achieved by linking compensation to the turnover of the company or organisation in line with the approach taken in the UK GDPR and Data Protection Act.

This would mean that compensation was proportionate to the size of a business. It would also ensure that large multinationals are not able to leverage their financial strength to avoid legal obligations.

Question 4:

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

The impact for employees would be widely positive.

Increased compensation would create an incentive on employers to engage in more meaningful consultation with trade union representatives and provide time for unions to develop alternative plans to avoid or reduce job losses and to enable businesses to retain skilled workers and institutional knowledge and experience.

Effective and transparent redundancies consultation processes is also likely to have a positive impact on the morale and productivity of the remaining workforce.[6] Findings from a CIPD survey in 2009 revealed that seven out of ten of employees whose organisations have made redundancies report that job cuts have damaged morale, with more than a fifth (22%) of employees so unhappy as a result of how redundancies are being handled that they are looking to change jobs as soon as the labour market improves.[7]

The effect of mass redundancies is not limited to the direct workforce. It can also have a devastating impact on local communities and businesses and public services.

Increased compensation can provide employees who have been made redundant with financial support to fund training which may assist them to transition into new employment.

Question 5:

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

Proposals to increase the maximum protective awards are likely to be beneficial.

However, there is still a risk that employers will be willing to price in the costs of redundancies and still refuse to consult with unions, risking the consequences of legal action.

The most effective and fair way of avoiding this risk would be to increase the level of compensation awarded by linking awards to the turnover of the company or organisation. The law needs to impose sufficient penalties which deters unlawful practice.

Question 6:

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

- No

Please explain why and note any other benefits?

[6] https://www.cipd.org/uk/knowledge/factsheets/redundancyfactsheet/#:~:text=Redundancy%3A%20an%20introduction,Learn%20how%20to&text=Redundancy%20is%20distressing%20for%20employees,managing%20redundancy%20when%20it's%20unavoidable.

[7] Employee Outlook: Job seeking in a recession' CIPD Quarterly Survey Report Summer 2009.

Simply removing the cap on protective awards or raising it to a minimum of 180 days is unlikely to incentivise many employers to engage in meaningful consultation. It is not uncommon for employers to seek to pay off the workforce by offering payments which are commensurate with what the individual would have expected to receive had they or their union brought a claim for breach of the duty to consult on collective redundancies.

Penalties should be raised substantially to create a genuine financial deterrent for employers. This is why Unite is calling for the government to link compensation to the turnover of the business, in line with the approach adopted in the UK GDPR and DPA, which provide for maximum fines of £17,500,000 or 4% of annual turnover, whichever is the higher. Benchmarking awards against turnover would create a significant deterrent effect for employers, would mean that compensation was proportionate to the size of a business and would ensure that large multinationals are not able to leverage their financial strength to avoid legal obligations.

Question 7:

Question 8:

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

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

It is expected that the removal of the cap on protective awards is likely to lead to an increase in compensation received by employees. See the response to question 4 which sets out the potential benefits for employees of increased protective awards.

Removing the cap on protective awards would remove the certainty for employers on the maximum awards they may be required to pay for failing to comply with section 188 of TULRCA 1992. This would make it harder for employers to price in the cost of failure to consult with trade unions. The removal of the cap would also provide employment tribunals with the discretion to make higher awards in cases where an employer blatantly refuses to engage in consultation with trade unions or employee representatives.

Question 9:

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

If the cap on protective awards was removed with robust accompanying judicial guidance there is a genuine risk that employment tribunals would award significantly

lower protective awards than at present. The absence of a cap for compensation in discrimination claims has not always yielded significant levels of compensation.

Unite takes the view that a floor for protective awards of a minimum of 180 days would be preferable. We also repeat the call for compensation not to be linked to days but rather to the turnover of the relevant company or organisation.

Question 10:

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

- Yes

Please explain your answer

One of the principal weaknesses with UK collective redundancy is that there is nothing to prevent employers from dismissing large numbers of employees against their will before they have engaged in meaningful consultation and negotiations with trade unions over whether the redundancies are necessary or if there are genuine alternatives to avoid or reduce job losses.

In parts of Europe, unions can apply for a 'status quo' order which bars the employer from proceeding with dismissals, redundancies or restructuring until proper consultation has taken place and agreement has been reached.

Unite therefore welcomes proposals to make for interim relief available in collective redundancy cases *before* dismissals can take effect.

However, the application of interim relief may create practical challenges. Provision for interim relief would need to be carefully structured to address these issues.

The first challenge relates to time frames. Under the existing framework, an application for interim relief must be made no later than seven days of effective date of termination. It would be challenging if not impossible for unions to collate and prepare all the relevant evidence within this time frame in a case involving hundreds or even thousands of individual employees affected by mass redundancies. Secondly, the main effect of interim relief is to maintain the employment of the affected employee until such time as an employment tribunal determines their unfair dismissal claim. It is important that any interim relief provisions did not unduly restrict the freedom of an individual employee to choose to accept redundancy. One way to avoid and address these risks would be to provide tribunals with power to award interim relief orders on the application of a union

(or appropriate worker representative) and only in respect of employees who had opted for interim relief.

The third limitation is that interim relief only effectively applies after an individual has been effectively dismissed. The remedy will not in practice prevent redundancies from take place. Where an application for interim relief is successful, an order can be made that the employee's contract will continue to subsist with pay until a final hearing. It is however rare for employment tribunals to aware reinstatement or re-engagement pending the full hearing due to employer resistance. Given that a final hearing may not take place for 12, 18 or even 24 months it is highly unlikely that the employment tribunal will order that employees should get their jobs back even if their claim is successful

Unite would therefore support the introduction of an alternative form of interim relief. Employment tribunals should be empowered to make interim relief orders that provide that employers cannot dismiss employees where an employer has not met its obligations to consult with trade unions. The order would remain in place until the employer engages in genuine negotiations with a view to reaching agreement.

Question 11:

Do you think adding interim relief awards would incentivise business to comply with their collective consultation obligations? Please explain why and note any other benefits.

Please explain your answer

Allowing for interim relief awards would mean that employers would be required to continue employing staff until they had complied with their duty to consult with trade unions (or employee representatives) with a view to reaching agreement on the proposed redundancies – or would be required to continuing paying them until they had complied.

Question 12:

What do you consider the impacts will be on employers of adding interim relief awards to collective consultation obligations?

The introduction of interim relief would mean that the incentives on employers to comply with their legal obligations and to engage in genuine consultation with a view to avoiding or reducing redundancies would significantly increase.

Question 13:

What do you consider the impacts will be on employees of adding interim relief awards to collective consultation obligations?

The introduction of alternative or union-led interim relief (outlined above) should substantially increase the prospect of employees maintaining their employment.

The application of standard interim relief measures would mean that many employees would continue to be paid pending the outcome of their employment tribunal case.

As noted above, it would be important that adjustments are made to interim relief arrangements to ensure that individual employees retained the right to opt for redundancy should they so choose.

Question 14:

What do you consider to be the risks of adding interim relief awards to collective consultation obligations?

We have addressed the potential issues relating to the application of interim relief to collective consultation obligations above.

Question 15:

Are there any wider changes to the collective redundancy framework you would you want to see the government make?

Unite welcomes the government commitment to consider wider reforms to the collective redundancy framework.

Unite welcomes provisions in the Employment Rights Bill which removes the reference to "at one establishment" from the relevant legislation. This will mean that employers must take into account redundancies across the entire organisation when determining if the duty to consult has been triggered, reversing the effect of the decisions in the *USDAW v Ethel Austin case*. This change will have significant benefits in many sectors including high street banking where employers are currently able to avoid collective redundancy obligations in smaller branches, which employ fewer than 20 employees, even though often there is one proposal to dismiss employees concerned across the entire organisation.

The 90 days period for consultation on collective redundancies should be restored where an employer is proposing to make 20 or more employees redundant. Curtailing the length of consultation has done nothing to avoid or reduce the need for redundancy. Allowing for a longer period for consultation, provides trade unions more time to explore alternatives to job losses.

Too often consultation on redundancies takes place too late, at a stage where job losses are a *fait accompli*. To avoid this, the requirement for employers to consult under s.188(1) TULRCA should be amended so that it is triggered at the point when redundancies are "contemplated" instead of "proposed." This would enable consultation to take place at an earlier stage before thereby increasing the prospect of unions and employers identifying and agreeing alternatives to redundancies.

The duty to consultation on redundancies should apply at the right level within an organisation – i.e. with the real decision-makers. Too often in multi-nationals or large corporations, unions are deprived of the opportunity to engage in genuine negotiations on redundancies, because a decision has been taken within a parent company or in a different country from where the affected employees are based.

Employers should be required to consult trade unions about the "reasons" for the dismissals, and not just on ways of avoiding or mitigating redundancies. At present, employers are required to provide information to unions about the reasons for redundancies. But there is no requirement to consult on this. Existing case law suggests there is already a requirement to consult on the business reasons for any proposal (*UK Coal Mining v NUM* [2008] ICR 163). But this is not expressly stated in the legislation and arguably the duty is limited to situations where an organisation is closing. Consultation on the reasons for proposing dismissals by redundancy would enable more transparent and informed negotiations between employers and trade unions, as employers would be required to set out their commercial motivations and consult with reps on these matters.

Section188(1A) should be amended to ensure that employers are restricted from "issuing" notices of dismissal until the end of the consultation period rather than simply providing that dismissals cannot "take effect" until the end of that period. Unite is of the view that any final decision on redundancies should not be made until the end of the consultation period.

The obligations to collectively consult should also apply where the employer is proposing to lay off "workers" and not just employees. This change would provide increased security for those in insecure work.

SECTION 2: FIRE AND REHIRE

Question 16:

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.

As set out in the introduction to this response, Unite takes the view that to date the government has not made good in its commitment to end the scourge on fire and rehire. Under the government's proposals fire and rehire tactics will still be permissible if employers can establish an economic justification which threatens its existence. Unite calls on the government to amend the Employment Rights Bill to introduce an outright ban on fire and refire.

It is essential that any ban on fire and rehire is underpinned by effective enforcement mechanisms, including substantial penalties for employers who flout the law. In our opinion, compensation awarded in fire and rehire cases should be linked to the turnover of the business. This approach has been adopted in the UK GDPR and DPA, which provide for maximum fines of £17,500,000 or 4% of annual turnover, whichever is the higher.

Unite is also concerned there is nothing in the Bill which prevents employers from sacking workers in fire and rehire situations. We therefore welcome proposals to make interim relief available in such cases. The principal purpose of applying interim relief awards in such cases should be to maintain the employment of the affected employees.

Unite would call on the government to consider introducing revised interim relief arrangements for hire and refire situations.

- Where dismissals have not yet taken effect, employment tribunals should be empowered to make interim relief orders providing dismissals cannot where an employer has demonstrated that the proposed variations to terms and conditions or the dismissal of workers were necessary to avoid insolvency.
- Where dismissals have taken effect, employment tribunals should be empowered to make interim relief orders for reinstatement or re-engagement.
- Interim relief proceedings should be expedited.

Provision should be made for the appointment of forensic accountants to scrutinise the company / parent company accounts, to enable unions to assess whether proposed changes to pay and conditions are necessary - similar to arrangements provided for in relation to European Works Councils.

Question 17:

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

Question 18:

What do you consider the impacts will be on employers of adding interim relief awards to fire and re-hire unfair dismissals?

Please explain why?

Yes

As outlined above, Unite takes the view that employment tribunals should be empowered to make interim relief awards preventing employers from dismissing employees or reinstating employees where dismissals have taken effect. Such measures would effectively ban employers from firing and rehiring employees until they have engaged in genuine consultation with trade unions on collective redundancies or demonstrated that variations to terms and conditions were necessary to avoid insolvency.

The application of standard interim relief would also create a significant disincentive for employers to comply with the proposed new unfair dismissal provisions (in new s.104I Employment Rights Act). Where applications for interim relief were successful, employers would be required to reinstate employees or continue to pay them until an employment tribunal determines the claim for unfair dismissal which can take anything from 12 to 18 or 24 months.

Question 19:

What do you consider the impacts will be on employees of adding interim relief awards to fire and re-hire unfair dismissals?

Applying revised interim relief awards could significantly deter employers from issuing threats to employees and bullying them into accepting significantly reduced pay and conditions.

Question 20:

What do you consider to be the risks of adding interim relief awards for fire and rehire unfair dismissals?

Unite does not perceive any risks.

Question 21:

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?

Unite proposes that the following adjustments should be made to interim relief in fire and rehire cases.

Firstly, the current thresholds for making a successful application for interim relief are hight. Employees are required to show they are “likely” to have been unfairly dismissed in a final hearing.

Unite believes this test should be amended so that an employee would need to show on the balance of probabilities, they will be found to have been either automatically unfairly dismissed or unfairly dismissed for any breach of ERA s.104I.

Secondly, current arrangements for interim relief framework permit an employer to refuse any order for reinstatement or re-engagement. We do not believe this option should be available in fire and rehire cases. In dismissals under section 104I, ERA it is highly unlikely that there will be trust and confidence issues relating to the employees in question. In fact, in most instances the employer is seeking to re-engage employees on less favourable terms and conditions. On that basis, there is no good reason why an employer should not be compelled to reinstate or re-engage the employees back into the organisation for the period of interim relief.

Question 22:

We are responding as a trade union.

23.**What sector/industry do you**

- **Manufacturing**
- **Construction**
- **Wholesale, retail & repair of motor vehicles •**
- **Transport & storage**
- **Accommodation & food services •**
- **Information & communication**
- **Financial, insurance & real estate activities**
  Professional, scientific & technical activities
  Administrative & support services
  Public admin & defence; social security
  Education
- **Human health & social work activities •**
- **Other services**

Unite has more than 1 million members working across the UK in all of the above sectors.

Question 24:

If responding as an employer, business, business owner, business representative, what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

Not applicable

Unite represents members in small, medium sized and large companies.

Question 25:

Do you believe that our proposals to increase the protective award will have an impact (either positive or negative) on a specific protected characteristic under the Equality Act 2010?

Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

- Yes

Please explain your answer.

Question 26:

Where you have identified potential negative impacts, can you propose

ways to mitigate these?

- No

Please suggest mitigations

Question 27:

Not applicable

Question 28:

Not applicable

Question 29:

Not applicable

Question 30:

Not applicable