



BIRMINGHAM LAW SOCIETY

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Response to Collective Redundancy Consultation

April 2026

Make Work Pay: Threshold For Triggering Collective Redundancy Obligations Consultation

About this response

This response is submitted on behalf of the Employment Committee of Birmingham Law Society. Birmingham Law Society is one of the largest regional law societies in England and Wales, representing the interests of lawyers and law firms across Birmingham and the West Midlands. The Employment Committee comprises practising employment lawyers drawn from across the region, with expertise spanning both contentious and non-contentious employment law, including advising employers and employees on collective redundancy processes, consultation obligations, and employment tribunal litigation. This response forms part of the Committee's contribution to the wider fire and rehire consultation, addressing the proposals on collective redundancy consultation thresholds.

The consultation questions to which the Committee has chosen to respond are reproduced below, with the Committee's selected answers highlighted in **yellow**. Questions directed at employers or individuals have not been answered by the Committee and are not reproduced.

Executive Summary

The Employment Committee's response addresses the Government's proposals to introduce an organisation-wide threshold for collective redundancy consultation, including the choice of methodology and the appropriate threshold level.

General observations on collective consultation (Questions 6–22)

The Committee recognises that collective redundancy consultation has real value — both in promoting transparency during a difficult process and, where trade unions are recognised, in achieving agreed selection criteria and pools that reduce the risk of tribunal challenge. The Committee notes, however, that the process can be more burdensome for employers who rarely face it, particularly where no recognised trade union or employee representative body exists and one must be established from scratch. On balance, the Committee regards the risk of protective awards and adverse tribunal findings as a greater practical concern for employers than the administrative burden of the process itself.

The Committee supports a fixed number threshold (Method 1) as the most straightforward and transparent approach for employers, employees, and representatives alike. Variable or percentage-based methods introduce unnecessary complexity, create scope for dispute about how the threshold is calculated, and risk undermining the very clarity the new obligation is intended to provide.

Threshold methodology (Questions 16–34)

The Committee identifies Method 3 (tiered fixed thresholds based on employer size) as the least appropriate option. It would create a structural unfairness whereby a smaller employer with the same number of redundancies — and potentially fewer resources to manage them — could find itself subject to collective consultation obligations that a larger employer avoids. It also requires employers to maintain rolling data on total employee numbers, introducing a further layer of administrative burden and dispute risk. The Committee notes that, at a threshold of 500 redundancies, Method 1 is anticipated to generate a similar number of additional consultations per year as Method 3, without those attendant complexities.

The Committee agrees with the proposal to deprioritise percentage-based methods (Methods 2 and 4) on the basis that they are likely to be confusing in practice and to generate disputes both at a local level and before employment tribunals.

Threshold level (Questions 23–33)

The Committee agrees that the threshold should not be set below 250 or above 1,000 redundancies. On the specific level within that range, the Committee does not express a firm preference, but notes that the threshold must be set at a level

that avoids placing larger employers with regular workforce fluctuations into a position of near-continuous consultation — a risk the Committee considers can be managed by calibrating the fixed number appropriately.

Broader observations

The Committee has no specific observations on the equality impact of the proposals (Question 35) but would note, as a general matter, that clear and predictable thresholds — accessible to employees without specialist legal advice — are likely to support rather than undermine equality of outcome in redundancy processes.

About you

Question 1: Please indicate whether you are responding as:

Other – please specify – professional membership body

Question 2: If responding as an employer, business, business owner or business representative, approximately what is the size of your business? If responding as an individual or employee, what is the size of the workplace you are employed in?

Not Applicable

Question 3: [not answered]

Question 4: Which region are you located in?

West Midlands

Question 5: What sector are you based in?

Professional, scientific and technical activities

Outcomes and benefits of the collective redundancy consultation process

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

We believe that collective redundancy consultation can be beneficial from an employee relations point of view and, in some cases, to achieve alternatives to redundancy or reductions in the dismissal numbers. It enables transparency during the redundancy process. It should be noted that for organisations where trade unions are recognised there will be collective consultation in a redundancy situation regardless of the number of proposed dismissals and collective consultation in such circumstances can be beneficial in agreeing the pools for redundancy, selection criteria etc with the aim of making the process run smoother and ultimately reducing the risk of challenge in the Employment Tribunal.

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.

Don't know

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.

Don't know

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.

Slightly burdensome

Please explain your answer below

It is arguably more burdensome for those employers who are rarely in a situation giving rise to the need to collectively consult, especially where there is no recognised trade union or elected employee body in place and this needs to be set up. We consider the risk of protective awards and adverse findings at an Employment Tribunal is greater for employers than the burden of the collective redundancy consultation process.

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

Other

Question 11: If responded yes to question x, why does your organisation

engage in collective redundancy consultations voluntarily?

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

N/A

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.

Unsure

Please explain your answer below. *We think it likely that those employers who have HR departments will monitor the number of redundancies that happen across their business and where the organisation does not have sufficient numbers to warrant an HR department then the organisation would be small enough to know how many redundancies are taking place.*

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

Unsure

Please explain your answer below. *One point for consideration is the wider definition of redundancy for collective consultation purposes. For redundancies that fall into the Section 139 Employment Rights Act 1996 definition, we anticipate that larger employers will be monitoring these and smaller employers will have knowledge of the number of such redundancies within its organisation. However we do not know if redundancies that fall within the collective consultation definition of redundancies, as provided under TULCRA 1992, are monitored.*

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.

No

Section One - Threshold Methods

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

Method 1: Fixed Number

Please explain your answer below.

As this is the simplest method of setting the threshold we believe it will be the one best understood by employers. A method that requires the calculation of the number of employees in the workforce adds to the administrative burden on employers. It could result in disagreements with employee representatives and this then has the potential to delay the consultation process to the detriment of employees who often, once redundancies have been announced, want the process to progress in a timely fashion to conclusion and certainty as to their position. Dispute as to the number of employees in the workforce and therefore what collective consultation threshold applies can also result in Employment Tribunal claims. We note that there is concern the fixed number method may put larger employer in a constant state of consultation but consider this can be minimised by an appropriate threshold number.

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.

Method 3: Different fixed numbers applying to different sized businesses (based on number of employees)

Please explain your answer below.

We consider that if the aim of the policy is to encourage employee engagement in a redundancy situation and enhancing protections for employees, we believe that method 3 does not achieve this. The different tiers are likely to result in a situation where some employers legitimately avoid collective consultation obligations altogether whilst a smaller employer with the same number of redundancies (and possibly fewer resources available to manage the redundancies) find themselves in a collective consultation process. In addition, the risks of establishing the total number of employees remain as previously stated above. We consider that for any method other than the fixed method it will be difficult for employees to work out if they can expect collective consultation to take place.

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.

Strongly agree

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

Yes

[FREE TEXT BOX] Please explain your answer below.

The challenges we identify are as follows:

1 – for employers with fluctuating workforces, whether the number of employees is truly representative of its workforce. If the calculation is based on an average then this may be burdensome in keeping accurate records of workforce numbers

2 – if calculating the number of employees at a time when redundancies are proposed then this may lead to disputes as to when that date in fact falls and may not accurately represent the workforce if the organisation has fluctuating employee numbers.

3 – if calculating total numbers on a regular basis then this may provide more certainty but again does not allow for fluctuating numbers.

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?

Please explain your answer below.

If this is the method adopted we don't think there should be any exclusions as this could be exploited by employers or create perceived unfairness between one sector and the next.

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?

Yes

Please explain your answer below.

Yes having regard to there are likely to be other employment regimes that apply to employees outside of England, Scotland and Wales.

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

No

Section Two - 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.

Agree

Please explain your answer below. *We note the data provided in support of the consultation and that for employers with fewer than 249 employees then the number of sites are 3 (mean) or 1 (median). Given this then the likelihood is that these employers are likely to trigger collective consultation based on the existing trigger of 20 but to create a threshold lower than 250 may add to the burden for medium to larger size employers.*

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.

Agree

We consider that if the threshold is set at higher than 1,000 redundancies then this would risk employees not benefitting from the new protection of collective consultation.

Section Three - 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.

Yes

Please explain your answer below.

It is the most straightforward basis for identifying when collective consultation will take place reducing administrative burdens on employers and the risk of dispute, whether during the consultation process and/or to an Employment Tribunal. It is the method that best enables employees to understand whether they are likely to be collectively consulted with. Whilst it is recognised that this method may lead to some larger employers being involved in collective consultation more often, we believe this can be alleviated to a degree by setting the threshold at an appropriate level.

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

Please explain your answer below.

The concerns are that if the thresholds are not set at the appropriate level then this may become burdensome for larger organisations who frequently carry out redundancies.

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

Unsure

Question 28 – 30: not answered.

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.

Please explain your answer below.

The concerns regarding Method 3 is the potential difficulty of identifying the number of employees an organisation, when that number will be assessed and the risk of dispute either at local level or in the form of Employment Tribunal claims regarding employee numbers. We note that this approach expects 38 additional consultations per year but

if a threshold of 500 is used for Method 1 then it is anticipated that there will be an additional 41 consultations per year. It seems that if the aim is for greater transparency and fairness for employees, Method 1 provides a route that, depending on the threshold set, is likely to produce a similar number of additional consultations per year without the risks of dispute and complexity of Method 3.

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.

Please explain your answer below.

This seems unfair when the size of the employer is the determining factor on whether a particular number of identified redundancies qualifies for collective consultation. To the extent that employees are aware that there are redundancies elsewhere across their employer's business, it may lead to a sense of ill-feeling amongst employees whose employer is not consulting with them at all because the trigger has not been met for that size employer.

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.

Please explain your answer below.

Whilst it may be advantageous for some larger employers who can make greater numbers of redundancies without having to collectively consult, this method does add a further level of complication because the employer needs to identify not only the total number of employees that they have and then the number of redundancies across all sites. This may require them to maintain rolling data for both.

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.

Yes

Please explain your answer below.

It becomes a less transparent method which is likely to be confusing for all involved, employers, employees and representatives leading to the risk of disputes both locally and in the Employment Tribunal.

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?

Don't know

Question 36 & 37: not answered

Summary of the Committee's response

Birmingham Law Society's Employment Committee welcomes the opportunity to contribute to this consultation. The Committee's overarching view is that the framework for collective redundancy consultation should be clear, predictable, and accessible — both to employers managing a redundancy process and to employees seeking to understand their rights. Complex or variable thresholds risk undermining those objectives by generating uncertainty and satellite litigation at a point when employers and employees alike benefit most from clarity. The Committee considers that a well-calibrated fixed threshold, set at a level that captures genuinely large-scale redundancy programmes without placing employers with fluctuating workforces in near-permanent consultation, best serves those aims. The Committee is happy to provide further input if that would assist the Government's consideration of these proposals.

Birmingham Law Society Employment Law Committee

April 2026