THOMPSONS SOLICITORS

Make Work Pay: Threshold for triggering collective redundancy obligations

Consultation response on behalf of Thompsons Solicitors LLP

Thompsons is the most experienced trade union, employment rights, and personal injury law firm in the country, with 19 offices across the UK. It acts only for trade unions and their members on employment and industrial relations issues.

Thompsons represents most UK trade unions and advises on the full range of employment rights issues through its specialist Trade Union Law Group and employment rights department.

Thompsons is a large employer with over 250 employees.

Summary

We note the government's position that collective redundancy consultations support fairness and transparency between employers and employees, and benefit both employers and employees, including by helping employers retain employees where possible (paragraph 8 of this Consultation). We note also that the stated policy objective of the introduction of s 29 Employment Rights Act 2025 (the "**ERA 2025**") is to remedy the current deficiency in the law whereby employers can make large numbers of employees redundant without being required to engage in collective consultation where the redundancies are dispersed across an organisation, with fewer than 20 redundancies at any one site.

The government's preferred proposal is to set a flat threshold of 250 redundancies across an organisation to trigger collective consultation. We are concerned that this approach does not adequately serve the policy objective of the legislative reform, in that it will still permit employers to make substantial collective redundancies without being required to engage in collective consultation. We consider the policy aim would be better achieved through setting a much lower threshold that captures any redundancy exercise that could be considered "collective". The impact of redundancy on an employee is the same regardless of whether they lose their livelihood as one of 20 employees or one of 250 employees, and we consider there is an equal imperative for employers (who have had the benefit of their employees' labour throughout the employment relationship) to engage in collective consultation whenever they propose collective redundancies.

We have doubts as to the extent to which large employers will find themselves in a state of "*constant consultation*" if a lower threshold is used. We also query the appropriateness of making accommodations of this nature for employers generally, and ask 'in what other contexts can an employer avoid statutory obligations on the basis that they are inconvenient?'

However, in any event, concerns about the threat of "*constant consultation*" can be mitigated through supplementary provisions and appropriate qualifications to counting redundancies, as set out in this response. We believe this approach is more appropriate in that it adequately addresses the deficiency in the law that the reform was intended to target; that is, it ensures

that employees are not deprived of consultation in the context of collective redundancy solely because of how an employer's workforce is dispersed. Whilst lower thresholds do of course inevitably entail a greater burden on employers than higher thresholds, as noted by the government, collective consultation is ultimately beneficial to both employers and employees. In any event, it is a reasonable 'cost of doing business' for employers to be required to consult collectively where they are imposing collective redundancies.

Outcomes and benefits of the collective redundancy consultation process

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

When employers engage in collective redundancy consultation in good faith, with a view to reaching agreement on ways of avoiding, reducing or mitigating the consequences of dismissals, it is a highly beneficial process. Trade unions and employee representatives necessarily offer a different perspective to employers, advocating directly for the interests of those who will be most affected by an employer's redundancy proposals.

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.

Moderately effective.

Collective redundancy consultations are beneficial and can help prevent redundancy when entered into with a genuine intention to reach agreement and explore ways of avoiding dismissals. However, in our experience, it is unfortunately the case that some employers treat collective consultation as a "tick-box" exercise, convening meetings and producing documentation on their proposals, but without at any point seriously engaging with trade unions or employee representatives on exploring alternatives to dismissal. Such cases technically constitute a breach of s 188 Trade Union and Labour Relations (Consolidation) Act 1992 ("**TULRCA**"). However, we are aware from our substantial experience in this area that it is evidentially and practically difficult for unions and employees to succeed in a s 189 TULRCA claim on the basis that an employer did not genuinely engage in consultation.

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.

Moderately effective.

We repeat our comments in response to question 7, above. Consultation can be beneficial as regards increasing redundancy pay, subject to how the parties engage in the process. We are

unable to provide specific examples of this, as we are generally not privy to such information due to the nature of our business.

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.

Moderately burdensome.

It is necessarily somewhat burdensome for an employer to be subject to a requirement to consult with employees or unions before implementing a business proposal. However, as the government recognises, collective consultation has benefits for both employers and employees. For example, employers may be able to avoid imposing redundancies and the inevitable cost and potential negative reputational impact of doing so through engaging in consultation with representatives. It is also to be noted that, ordinarily, consultation will be conducted on the employer side by salaried staff, such that there is no direct cost to an employer in running a consultation (other than opportunity cost of that staff member's time).

We further note that, during a redundancy exercise, the employer is also required to consult at an individual level to fulfil its duties under the Employment Rights Act 1996 (the "**ERA 1996**"). There is substantial overlap between the topics and purposes of individual and collective consultation, and the additional 'burden' of collective consultation can easily be overstated.

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

N/A.

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

N/A.

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

N/A.

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

Always.

Employers embarking on redundancies are necessarily aware of the fact they are doing so. Redundancy situations are identified and planned based on analyses of what staff costs are intended to be saved. Employers will generally calculate the cost of redundancy payments in advance to encourage volunteers, and will inevitably have to do so when imposing redundancies so that payroll can pay the affected employees. Payroll departments also need that information to prepare P60s. Employers are also required to monitor redundancies to fulfil their statutory duty to notify the Secretary of State of proposed redundancies under s 193 TULRCA.

Further, employers are subject to various duties as regards personal information management, including a duty to ensure the personal data it holds on data subjects (including its employees and former employees) are accurate and up to date. Whilst some employers, particularly larger ones with diffuse operations, may not maintain a consolidated record of all redundancies across their organisation, they will invariably be in possession of the underlying information that would enable them to determine the consolidated number.

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

Very easy.

As above, employers maintain records of their employees and former employees and are under various duties as regards the management of that personal information. Whilst employers may choose not to aggregate these data as a matter of course, they are invariably in possession of the underlying information that would enable them to determine the number of redundancies across their organisation.

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. Whilst there may be a small number of employees who work between both Great Britain and Northern Ireland, such that there may be some doubts as to whether they should or should not be counted for the purposes of calculating whether redundancy thresholds have been met, there are established tests for determining an employee's ordinary place of work. These can easily be applied to any disputes as to whether an employee should or should not be counted for the purposes of consultation thresholds. As explained above, employers

already routinely maintain data on their employees. This will typically include their workplace. Records are also maintained on redundancies.

Section 1 – Threshold Method

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

We agree that a fixed number is the most appropriate method for determining the organisation-wide threshold. As set out in the government's Options Assessment, there would be significant scope for dispute on whether thresholds had been met if a percentage-based threshold was used. Such disputes would divert employer and union/representative resources away from meaningful consultation and create uncertainty.

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

Other.

We consider any method whereby the threshold is determined by or varies based on an organisation's employee count is inappropriate for the reasons identified in response to question 16, above. It is undesirable for both employers and employees for the applicability of collective consultation requirements to depend on the number of employees employed in the organisation. Employers would be incentivised to structure their organisations and redundancy proposals in such a way as to avoid triggering consultation requirements and there would be substantial scope for dispute as to whether thresholds had been met. Whilst the government could issue prescriptive guidance as to how employee numbers are to be calculated and what the relevant reference date should be for this, we consider it is in all parties' interests for the consultation trigger to be a fixed number with minimal scope for dispute or interpretation as to whether a threshold has been met.

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.

Agree.

We agree that a tiered threshold will inevitably produce marginal cases where, because of a minor difference in employee/redundancy numbers, an employer will or will not be required to engage in collective consultation. Whilst we generally prefer the proposed method of setting a fixed number as the threshold in any event, we would note that all thresholds of this nature will produce marginal cases. We do not consider it is a particularly significant factor

that some employers (or unions/employees) may feel aggrieved by the fact they are slightly above or below the threshold.

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

No.

As explained above, employers are under various duties to maintain accurate records as to their workforce, such that they ought to know how many people they employ at any given time. This is the case regardless of group structure or employee turnover. Whilst employers with high employee turnover may not have ready access to a running total of employees at all times, they will invariably possess such information as would enable them to accurately calculate how many employees they have/had on a given date.

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

No, subject to our response to question 21 below.

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.

We consider that only employees employed by an employer in England, Scotland and Wales should be included, if a tiered/percentage-based approach is adopted. This will avoid a situation where an employer proposing to make a substantial number of redundancies is not required to consult because it employs a substantial overseas workforce that results in the percentage threshold not being met. Whilst multinational organisations typically employ employees through local group companies, this is not always the case and, to the extent a tiered approach is used (which we oppose), it would be prudent to ensure collective consultation obligations cannot be avoided/frustrated in this way.

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

No, noting the observations at paragraphs 39-42 of the Options Assessment.

<u>Section 2 – Threshold Levels</u>

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.

Strongly disagree.

We do not understand the rationale for setting the organisation-wide threshold at this level, and we consider that it should be considerably lower. The stated purpose of this legislative reform is to ensure that employers who are imposing collective redundancies are not exempted from the requirement to collectively consult where, because of how their workforce is distributed, they do not propose to dismiss 20+ employees in any one workplace. This is to ensure that all employees benefit from the right to be collectively consulted on collective redundancies, regardless of how their employer has chosen to structure and distribute its workforce. The impact of redundancy on an employee is no different whether that employee is being made redundant as one of 20+ employees in their workplace or otherwise, and the redundancy is no less collective in nature if an employer is imposing those redundancies at one workplace or multiple.

Setting the threshold at 250 would enable employers to 'game the system' as they could make 19 staff redundant at 13 separate establishments before triggering this obligation at all. Such an approach would not address the current gap in the law in any meaningful way.

We note the government also proposes setting this threshold on the basis that it "*would also avoid disproportionate regulation on small and medium sized businesses*". Under the shared UK and EU standard, to be considered an SME, a business must have fewer than 250 employees and meet at least one of the following financial caps:

- Medium-sized: Fewer than 250 employees, and an annual turnover ≤ €50 million OR a balance sheet total ≤ €43 million;
- Small: Fewer than 50 employees, and an annual turnover or balance sheet total ≤ €10 million;
- Micro: Fewer than 10 employees, and an annual turnover or balance sheet total ≤ €2 million.[1]

Under the proposed threshold, the new consultation obligation would only apply to the very largest SMEs where they are shutting down their operations completely, with other SMEs entirely exempt. That abjectly fails to meet the objective set out in paragraph 50 "*to set the threshold at a level that balances business needs with adequate protections for employees*".

We consider that the organisation-wide trigger should be such as ensures that, where an employer is proposing a redundancy exercise that could be characterised as a "collective redundancy", it is required to engage in collective consultation. We note that the original proposal in the Employment Rights Bill was to simply remove the requirement for redundancies to be "*at one establishment*", such that any employer imposing 20+ redundancies across its organisation would be required to engage in consultation. We remain of the view

[1] Commission, 'Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises' [2003] OJ L 124/36 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361> accessed 21 May 2026.

that this would be a better approach, as it would avoid the manifest unfairness of some employees being denied consultation rights based solely on how their employer's business is structured. Were the threshold to be set at 250, employers imposing 19 redundancies at 13 sites would not be required to consult collectively, despite the fact that such a proposal would clearly constitute a collective redundancy.

We note the comment in the Options Assessment that most organisations with fewer than 250 employees operate from a single set of premises, such that any proposal to dismiss 20+ employees would, for those employers, trigger consultation under the existing single-establishment law. We also note that setting the threshold at 250 would mean that 88% of employees would be in scope of this policy. This of course leaves 12% of employees without protection, even though they could be subject to a proposal to be made redundant together with 19+ of their colleagues. We further note the observation that 76% of organisations with more than 20 but fewer than 250 employees operate from a single establishment. This of course means 24% operate from multiple establishments. They would be entirely exempt from the organisation-wide threshold if it was set at 250. We see no good reason for this.

With respect to the concern expressed in the Options Assessment as to the risk of employers being left in a state of "*constant consultation*" if the threshold is set too low, we note there is no statistical or other analysis of the likelihood of this and how it would affect employers. Indeed, we do not consider this perceived threat is well founded. Redundancies only occur where there is either a reduced need for staff doing a particular role, or at a particular workplace (s 139 ERA 1996). Dismissals for other reasons do not of course constitute redundancies. Redundancies are therefore intended to achieve an economic equilibrium for employers, at which point the need for redundancies stops. It is difficult to envisage a scenario in which a going concern would genuinely be in a state of "*constant consultation*".

In any event, given the policy purpose of the reform is to extend consultation rights to ensure employees are not deprived of the right to be consulted on collective redundancies because of their employer's structure, we consider it is right and appropriate that an employer who is "*constantly*" engaging in collective redundancy exercises beyond the applicable threshold should be required to consult in relation to all such collective redundancies.

It is of course already the case that, where an employer has already consulted in respect of a group of employees it proposes to make redundant, those employees would not be counted for the purpose of assessing whether the threshold has been reached for further consultation (s 188(3) TULRCA). This would apply in multi-site consultations too, thereby offsetting the risk of employers being required to engage in "*constant consultation*" other than where they are proposing to dismiss the threshold level and have not consulted in relation those redundancies.

We therefore do not consider that the risk of employers being in a state of "*constant consultation*" is realistic, or that it should have a bearing on the level at which the organisation-wide threshold is set.

Given the legislative intent of s 188 TULRCA and s 29 ERA 2025 is to ensure employers are required to engage in collective consultation when they propose a collective redundancy regardless of how their employees are dispersed, we consider that the threshold should be

set at such a level as to capture any redundancy exercises that can rightly be characterised as collective.

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.

Strongly agree. See our response to question 23, above.

<u>Section 3 – Proposals</u>

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. See our response to question 16, above.

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

We consider that, provided it is set at a suitably low level, adopting method 1 (fixed number) would be the simplest and most appropriate approach.

We do have some concerns that there is no provision to aggregate redundancies across group companies. We consider it would be prudent to provide that, where a group of companies are all under common control, proposed redundancies can be aggregated for the purposes of establishing the organisation-wide threshold. This will avoid creating a perverse incentive for employers to incorporate employing companies at each site they operate to reduce the likelihood of being required to engage in collective consultation when proposing organisation-wide redundancies.

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.

Another number.

See our response to question 23, above. We would propose 50 as an absolute maximum, but consider the threshold should be substantially lower.

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

See our response to question 23, above.

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.

Setting the threshold below 50 would bring more employees in scope of collective consultation. It would ensure that the vast majority of employees subject to collective redundancy are not deprived of the right to be consulted thereon. The underlying Directive that gave rise to s 188 TULRCA, s 188 TULRCA itself and the government's proposal in this consultation make clear that the imposition of collective consultation requirements is driven by a policy intent to avoid, reduce and mitigate the effect of proposed redundancies. Given the substantial impact collective redundancies have on both individuals and society, there is an imperative to involve those who will be most affected and their representatives in the decision-making process. We do not consider there is a legitimate reason to exclude from this right some employees facing collective redundancy solely on the basis that fewer than 249 of their colleagues (and 19 of their colleagues at their workplace) are at risk.

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.

More redundancy proposals that could be characterised as collective would be in scope. At present, employers are of course only required to consult collectively so when proposing to impose this 20+ redundancies at one establishment, such that our proposed approach would expand the duty substantially. Whilst this will impose a burden on employers insofar as they will be required to invest time and employee resources in consulting with employees, we consider this is appropriate given the policy aim of ensuring that employees potentially subject to collective redundancy have a meaningful say in this process. We note the government's observation as to the benefits of collective consultation for both employers and employees.

We anticipate that employers would oppose setting the consultation threshold at a level that would capture most collective redundancies. However, we consider it is perfectly reasonable and appropriate to expect employers to consult collectively with employees whenever they propose to make them redundant on a collective basis, noting that prior to the redundancy situation, the employer would inevitably have had the benefit of those employees' labour, employers will receive any savings from redundancies that come to fruition, and the workers who are made redundant will be the people most affected by the decision, in that they will lose their livelihoods.

We note the analysis in the Options Assessment as to striking a balance between the obligations on employers/employees. The overall picture that emerges is that the cost/benefit is largely a zero-sum balance equation between employers and employees. Where employers are subject to a greater consultation obligation, the net benefit to employees increases, and

vice versa. On that basis, we consider the relevant question is ultimately whether the government considers there is a moral imperative to afford employees a right to collective consultation when being made collectively redundant, or whether it is more appropriate to deprive many employees of this right in order to pass savings onto employers at the expense of workers, on the basis that those employees were not part of a redundancy exercise comprising 250+ people. See elsewhere for our response as regards concerns about the risk of "*constant consultation*".

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.

As stated elsewhere in this response, we consider a fixed number (method 1) would be optimal. Method 3 could result in disputes as regards the appropriate tier for a given employer.

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.

See our response to question 31, above.

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.

See our response to question 31, above.

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.

#See our comments elsewhere in this response as regards our preference for the threshold to be set by reference to a single, fixed number. From employees' perspective, any redundancy proposals threaten a loss of livelihood, regardless of how many of an employee's colleagues are in scope and regardless of the size of their employer.

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?

Yes.

Black and minority ethnic workers are disproportionately likely to be selected for redundancy.[2] BME workers are also twice as likely as white workers to face unemployment, with BME women being affected the most.[3] ONS data indicates people with disabilities, people from minority ethnic backgrounds and older people are less likely to return to work following a period of unemployment than non-disabled, white and younger workers.[4]

The ONS study cited above also indicates that the longer a person is out of work, the harder it becomes for them to secure employment. There is therefore a significant advantage in employers being required to delay redundancies for the period of consultation, giving the parties time not only to seek to find alternative proposals, but also to reduce the time employees spend out of work and provide further opportunity for them to source alternative roles whilst still in employment.

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

The factors that result in BME people, older people and people with disabilities being disproportionately affected by unemployment and redundancy are deep rooted and structural. We do not consider there is a sensible way to offset these through the proposed regulations, other than by setting the redundancy consultation threshold at a sufficiently low level as to ensure that employers are required to collectively consult whenever proposing collective redundancies. This will of course not alter the balance as regards how different groups are impacted by redundancy and unemployment, but will ensure that those workers who are selected as potentially in scope for redundancy have a meaningful say on the proposals.

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)?

No.

Thompsons Solicitors LLP

21 May 2026

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[2] David Child, 'UK: Ethnic minorities disproportionately laid off in pandemic' *Al Jazeera* (London, 20 January 2021) <https://www.aljazeera.com/news/2021/1/20/covid-job-cuts-hit-uks-bame-workers-worst-report-reveals> accessed 11 May 2026.

[3] Trades Union Congress, 'Jobs and recovery monitor – BME Workers 2023' (26 May 2023) <https://www.tuc.org.uk/research-analysis/reports/jobs-and-recovery-monitor-bme-workers-2023> accessed 11 May 2026.

[4] ONS, 'Which groups find it hardest to find a job following a period out of work' (30 March 2021) <www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/articles/whichgroupsfindithardesttofindajobfollowingaperiodoutofwork/2021-03-30> accessed 11 May 2026.