

Royal College of Nursing submission to the consultation Making Work Pay: strengthening remedies against abuse of rules on collective redundancy and fire and rehire

Link to consultation: [Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire](#)

The Royal College of Nursing (RCN) is the largest professional body and trade union for nursing staff in the world. We represent around half a million members who are registered nurses, midwives, students, and nursing support workers across the United Kingdom and beyond.

The Employment Rights Bill proposes to restrict employers' ability to use fire and rehire by amending the law on unfair dismissal so that, where employees are dismissed for failing to agree to a change in their contract of employment, those dismissals will be treated as automatically unfair unless the employer can provide evidence of financial difficulties and demonstrate that the need to make the change in contractual terms was unavoidable.

The RCN supports legislative measures that either severely restrict or prohibit the use of fire and re-hire. Changes to terms and conditions should be negotiated transparently and fairly, with meaningful consultation with the workforce and trade unions.

Collective consultation obligations

1. **Do you think the cap on the protective award should:**
 - a. be increased from 90 to 180 days?
 - b. be removed entirely?
 - c. be increased by another amount?
 - d. not be increased?

The RCN supports the removal of the protective award cap and agrees with the reasoning provided in the consultation document. It is crucial that tribunals have strong powers to hold employers accountable, and the system is designed in such a way that violating or restricting the rights of employees is as financially prohibitive as possible.

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?**

The RCN considers that increasing the maximum protective award period to 180 days would incentivise business to comply with existing collective redundancy consultation requirements as it increases the potential financial penalty for employers who do not comply; however, the RCN would prefer to see the cap on protective awards removed entirely.

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

The RCN does not have a view on this question, as we would prefer to see the cap removed entirely.

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

The RCN does not have a view on this question, as we would prefer to see the cap removed entirely.

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

The RCN does not have a view on this question, as we would prefer to see the cap removed entirely.

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

Yes – the RCN considers that the removal of the cap is a significantly stronger financial incentive on businesses to comply with collective redundancy consultation requirements, particularly as it greatly reduces the ability of most businesses to buy their way out of compliance.

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

The removal of the cap would only impact those employers who do not comply with collective redundancy consultation requirements – in these cases, the cap removal would ensure that protective awards are made at an appropriate level, and more severe sanctions can be imposed on egregiously non-compliant businesses than are currently available. The RCN considers that this is a positive impact in terms of acting as a deterrent, and incentivising good employer behaviour.

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

The removal of the cap provides employees with significantly greater protection and security and reduces the risk they will be placed in a situation where they may be asked to accept a higher financial reward in exchange for forfeiting their rights around collective consultation.

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

The RCN does not foresee any significant risks in removing the cap on the protective award.

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?

The RCN agrees with the proposal to make interim relief available in a wider range of scenarios – an inability to access interim relief pending a hearing means that unscrupulous employers can essentially threaten employees away from making claims with a loss of income. Making interim relief available means that employees are not financially penalised or dismissed for failing to accept inferior terms under protest, providing access to justice.

11. Do you think adding interim relief awards would incentivise business to comply with their collective consultation obligations?

Yes, particularly in terms of further removing ways in which employers can financially incentivise employees not to make claims (alongside the removal of the cap for protective awards.)

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

As above – employers will have fewer incentives to discourage employees from making claims.

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

The availability of interim relief provides a crucial element of security for employees, who might otherwise be risking significant financial harm and without employment by making an application. Employees should not be made financially worse off or dismissed by seeking to have their employment rights upheld, and the RCN is strongly supportive of measures which prevent this.

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

The RCN does not foresee any significant risks in adding interim relief awards to collective consultation obligations.

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

The RCN has proposed an amendment to the Employment Rights Bill regarding redundancy notifications for administrators, which would extend the definition of “officer of the body corporate” in section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 to include administrators appointed under Part II of the Insolvency Act 1986. By doing so, it makes administrators personally liable for failing to meet redundancy notification requirements, similar to directors and other corporate officers.

This change addresses the legal gap highlighted in *Palmer v Northern Derbyshire Magistrates’ Court* [2023] UKSC 38, where administrators were ultimately not considered for redundancy notification purposes, despite the findings of the lower courts. The amendment ensures administrators cannot avoid accountability during insolvency proceedings, providing greater protection for workers facing redundancy.

Fire and rehire

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.

The RCN strongly supports the introduction of interim relief awards for employees making claims for unfair dismissal in a fire and re-hire scenario. As in the case of claims regarding collective consultation, the RCN considers that a key element of access to justice for workers regarding employment claims is that they should not suffer financially by making a claim and seeking to have their rights upheld in the workplace.

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

Yes. Making interim relief awards available provides a financial disincentive for employers to abuse fire and re-hire tactics, and strengthens the new measures outlined in the Employment Rights Bill limiting the ability for employers to do so. The RCN is strongly supportive of these new measures and considers that the additional introduction of interim relief awards for cases of unfair dismissal via fire and re-hire gives them appropriate “teeth” to ensure businesses are compliant.

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

Employers who are compliant with new measures would not be impacted by the addition of interim relief awards. For those who continued to abuse fire and re-hire tactics, the addition of interim relief awards would introduce a financial penalty for this behaviour, which the RCN considers to be a proportionate and justified impact.

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

Employees would have a greater degree of security in bringing unfair dismissal claims, as the proposal to add interim relief awards significantly reduces the likelihood of suffering financial harm via lost income while a hearing is pending. The RCN considers this to be a strong positive impact.

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

The RCN does not foresee any significant risks in adding interim relief awards for fire and re-hire unfair dismissals.

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?

Applications for interim relief must be submitted within 7 days of the effective date of dismissal which is prohibitively short. The time limit must be adjusted given these claims may involve multiple claimants who will need to seek legal advice. Furthermore, the availability of interim relief is a lesser-known right which again means employees are less likely to act quickly. We would suggest the time frame for applying for interim relief is extended to at least 28 days if not longer. The second adjustment is the test to be applied by the tribunal, in the current regime and in order to be granted interim relief, a claimant must establish they are more likely than not to win their complaint on prohibited grounds, that is a very high threshold to meet and the test must be adjusted in these circumstances i.e. has a fire and rehire situation arisen.

