



## **Call for Evidence – Collective Redundancy**

**This evidence is submitted by Unite the Union. Unite is the UK’s largest trade union with 1.5 million members across the private and public sectors. The union’s members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.**

**Unite has conducted a survey of officers to provide evidence in response to this consultation. Specific case examples are included at the end of this document.**

### **Executive Summary**

- **Unite is opposed to the suggested changes to collective redundancy consultation legislation. They would do nothing to save jobs and improve the UK’s economic performance.**
- **Unite is strongly opposed to the following suggestions:**
  - **Cutting consultation periods,**
  - **Increasing thresholds for consultation periods**
  - **Undermining unions’ priority right to consultation**
  - **Watering down definitions of which workers are consulted**
  - **Greater flexibility on when notice periods can start**
  - **Exemptions from consultation rights for people on fixed term contracts**
  - **Concurrent TUPE and Redundancy consultation processes**

- Greater flexibility on the rules around redundancy during an insolvency
- These changes will have a devastating impact on the UK economy and employees.
- They may also put the UK in breach of the EU directive.

## **The Unite evidence in detail:**

### **1. Introduction**

- 1.1. Unite is keen to take the opportunity to submit evidence to the BIS enquiry into collective redundancy consultation rights. Unite represents members across the whole UK economy, working with many thousands of employers of varying shapes and sizes. While many of the questions in the call for evidence are designed to be answered by individual employers, Unite have attempted to supply evidence in this response that meets the needs of the call for evidence.
- 1.2. Unite has therefore split its evidence into two sections – a general response to the issues covered in the consultation questions and an appendix with real case studies provided by Unite negotiating officials.

### **2. Collective redundancy rights**

- 2.1. The Rights and Obligations under section 188-198 of the Trade Union and Labour Relations (Consolidation) Act 1992 are crucial to good working relationships with employers.
- 2.2. The collective redundancy consultation regulations have been of great benefit to both workers and employers. As Unite evidence shows (see appendix) these rights have helped save jobs, save money for employers, secure a better deal for workers, safeguard vital skills and develop stronger business models going forward. They also help affected families and communities, as well as reducing the number of people out of work and claiming benefits.

- 2.3. Unite has seen no evidence that current UK regulations on collective redundancy consultation are having any negative impacts on the British economy. The myth that employment legislation damages the economy is based on an ideological position about the efficiency of deregulated markets.
- 2.4. The financial crisis that started in 2008 has shown just how flawed this position really is – to the cost of millions of people’s jobs and livelihoods. Markets are structures that embody unequal power relations – for example, the relationship between employers and workers, or the relationship between big employers and small. Regulations are necessary in order for these markets to function better; they create a level playing field and help avoid distortions and injustices like those that we have seen with the financial markets.
- 2.5. As with all employment law, it is not the good employers that complain about these regulations. Many of the best employers welcome and meet regularly with employee trade unions in order to involve them in decisions. This helps pre-empt and avoid serious disputes and saves both employees and employers from undue disruption and cost. In the best cases statutory minimum requirements are greatly exceeded and in practice consultation goes on continuously.

### **3. International comparators**

- 3.1. The rights in the UK that emanate from the European *Collective Redundancies Directive* (98/59/EC) are already considerably weaker than in many other European countries. There is no evidence that this has helped the UK economy overall.
- 3.2. If anything Unite believes that the British economy would benefit from these rules being strengthened rather than watered down. The example of the level of consultation that workers representatives in

Germany<sup>1</sup> or in the Scandinavian economies should illustrate that, far from having a negative effect on economic performance, employment rights help improve productivity and industrial relations. The case of Novellis illustrates this point, as jobs were lost in the UK in order to save jobs in France and Germany.

- 3.3. To this end Unite would suggest several improvements to collective redundancy rights that would bring the UK closer to its European neighbours.

#### **4. Thresholds**

- 4.1. Unite believes that the 20 employee threshold for consultation rights should be either removed or reduced. The 20 employee threshold sets the UK apart from EU counterparts. In the Netherlands and the UK consultation rights only apply where 20 or more employees face redundancy. However in most countries the right is triggered where 5 or 10 employees are affected. In France the duty to consult applies wherever two or more workers face redundancy.
- 4.2. In much of the EU, where consultation arrangements involved genuine engagement and co-determination between employers and worker representatives, such arrangements help to support long term planning and increased productivity within organisations. Unite would like to see a similar set of regulations and protections implemented here in the UK, that requires companies to fully engage with trade union representatives on all matters involving the workforce and the future of the business. In this way it would be possible to avoid or pre-empt many redundancies.
- 4.3. Currently UK law fails to comply with the existing EU Directive on Collective Redundancies in two main respects. Firstly, the UK has

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<sup>1</sup> <http://www.tuc.org.uk/economy/tuc-20488-f0.cfm>

failed to implement the *Junk*<sup>2</sup> decision properly and as a result it is possible under UK law for employers to issue redundancy notices before consultation has been completed. Secondly, the duty to consult on collective redundancies only applies to employees in the UK. However the EU Directive has a broader scope and also applies to 'workers', including agency workers, freelancers and casual workers. Unite believes that UK law should be brought into line with EU law, on these two issues.

## **5. Number and frequency of redundancy consultations**

- 5.1. Unite has conducted an extensive survey of its hundreds of officials working across the economy. These officers are regularly called upon to be involved in negotiations with employers over planned redundancies and organisational changes, ranging from insolvency situations, to small cuts to the workforce and individual cases.
- 5.2. In many cases there are effective lay representative structures within workplaces and across employers, which would also be involved in redundancy negotiations, often without involving a full time official.
- 5.3. Unite officials and lay representatives report that in the vast majority of cases redundancy negotiations are straight forward, covering a small number of employees with a constructive relationship between both the employer and the union.
- 5.4. In a small, but significant, number of cases, however, redundancy negotiations cover a far larger number of employees (the Government's statistics put this at only 16%). These cases are usually complicated and controversial, not just within the workforce of the employer but also in the local labour market and community. Unite has attached a list of high profile case studies to illustrate this point (see appendix).

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<sup>2</sup> *Junk v Kühnel* [2005] IRLR 310 ECJ

## **6. Time for consultation**

6.1. In such cases Unite believes that 90 days should be treated as the minimum necessary time for consultation. Unite officials report that consultation periods have often had to be extended far beyond this period and where the employer has been willing to engage with consultation this has always led to a better result for all concerned.

## **7. Who is consulted?**

7.1. As is currently accepted in law, recognised Trade Union representatives are the most appropriate representatives to consult. These representatives are independent, resourced, skilled and experienced in negotiating on behalf of the entire workforce. In contrast, non-union reps are often untrained and lack experience of representing workers and of developing alternatives to redundancies. They have no access to support or advice nor do they have the long established and productive working relations that come from union recognition.

7.2. Government has an obligation to promote effective collective bargaining (see DEMİR AND BAYKARA v. TURKEY 12 November 2008 Grand Chamber European Court of Human Rights (*Application no. 34503/97*)). This includes promoting the involvement of independent, resourced, skilled and experienced representatives.

7.3. Any changes that undermine the role of trade union representatives will have a detrimental impact on collective bargaining. As Unite evidence clearly demonstrates changes that undermine the effectiveness of consultation will lead to more job losses.

## **8. What constitutes and establishment?**

8.1. Unite would support greater clarity on the definition of which workers are covered by consultation rights. In Unite's experience unscrupulous employers often succeed in avoiding the duty to consult by relying on the vagaries of the definition of an "establishment" and breaking up

businesses into smaller units. UK officers have reported that this has been common in several sectors including IT, computing, finance and media. In order to prevent such avoidance tactics it is essential that the meaning of an “establishment” is broadly defined in any Government guidance, in line with recent ECJ judgments.

- 8.2. Unite believes that this duty to consult should be based on the number of employees at risk of redundancy in an ‘undertaking’ rather than in an ‘establishment’. This would ensure that whenever larger organisations propose to make collective redundancies, the duty to consult would apply regardless of existing business structures.

## **9. Fixed term contracts**

- 9.1. Unite would oppose any moves for employers to exclude fixed term staff from consultations. In UK law the failure to renew a fixed term contract is considered as a redundancy and fixed term employees are included in collective redundancy consultation arrangements. Unite believes that this should not change, especially given workers with fixed term contract have legitimate rights to equal treatment more generally. For example, it is unlawful for employers to select individuals for redundancy pay on the grounds that they are employed on a fixed term basis. Fixed term employees are entitled to equal treatment on redundancy pay and on access to redeployment. It therefore makes sense for employers always to consider issues relating to fixed term employees as part of the wider consultation arrangements.
- 9.2. The decision in *Lancaster University v UCU (EAT 2010)* makes clear that employers are obliged to collectively consult the recognised union where there are 20 or more fixed term employees whose contracts expire within a 90 day period. Typically the contracts of fixed term employees end on a variety of dates so it is important for unions to ask employers to provide the details of fixed term contracts due to expire within 90 days. Unite would therefore be strongly against revising existing laws on this issue.

## **10. Time period**

10.1. Unite is against any reductions to consultation periods. As has already been noted only a relatively small number of cases (16%) involve the full 90 days consultation. There is therefore no evidence that the duty to consult creates an unjustified burden on business. Any reduction on consultation periods will limit the ability for employers and unions to develop alternatives to redundancies, including redeployment and short-term working. As a result, unnecessary redundancies will take place, employers will lose skilled staff, unemployment levels are likely to rise and staff being made redundant will lose out on income and the time and resources needed to access training and new employment.

## **11. High Impact redundancies**

11.1. Unite believes that all redundancies are high impact for those people involved. Some large redundancies have a very severe impact on the local economy or community that it hits. Such redundancies can have a severe impact on unemployment levels, the welfare bill and wider economic performance. Recognition of this should lead the Government to create greater protections and rights rather than making suggestions that would reduce them. Creating new categories of “high impact” redundancies would not help, instead it would lead to increased bureaucracy and red tape. Such moves would only increase the impact of redundancies on communities.

11.2. Similarly creating a variety of time periods for different numbers of redundancies has many disadvantages. This would create more red tape and confusion for employers while potentially eroding the consultation rights that employees currently have.

11.3. Government suggestions that new laws be brought in to allow for voluntary agreements to end consultation early are unnecessary. This provision would simply be used by bad employers to put pressure on workers to sign away their consultation rights. This is a particular

concern for workers in workplaces without a trade union. Unions and employers can already agree that consultation has been completed before the end of the protected period. Employers can then issue redundancies notices, although they do need to ensure that the dismissals do not take effect until 30/90 days after the Government was notified of the likely redundancies. Such a measure is therefore unnecessary.

## **12. Relationship with TUPE**

12.1. Unite believes that dismissal and redundancy rights of staff who are being contracted out must be protected. Unite officers report that in some cases members are TUPE transferred out of one organisation only to find out that their job is being made redundant in the new. Unite believes that it is important that consultation rights should start early between union reps and the new employer and that early consultation increases transparency and assists new employers to meet their TUPE obligations.

12.2. Unite does not believe that this issue requires changes to the collective redundancy consultation legislation. Rather, Unite believes that it is TUPE legislation that needs improving. Unite has submitted substantial evidence to the BIS call for evidence on TUPE legislation to explain how consultation rights can be improved in TUPE situations.

## **13. Insolvency**

13.1. In Unite's experience, insolvency practitioners rarely consult over collective redundancies, even though they have a legal duty to do so. This is in large part due to the lack of any personal liability for failing to consult – claims for protected awards can be made to the National Insurance Fund or against the remaining assets of the business. There are also no mechanisms for preventing the insolvency practitioner from acting where consultation has failed to take place.

- 13.2. A recent case of this was the collapse of Jarvis in 2010<sup>3</sup>. Unite and the other unions representing the 1,200 workers who lost their jobs had to go to industrial tribunal to argue that the company should have given 90 days' notice of compulsory redundancy. The result of this process was that workers only received statutory minimum redundancy from the Government as the company had no money. Many of these workers not only lost their jobs but also lost their pay for the last month.
- 13.3. Unite believes that collective redundancies should be strengthened in insolvency situations to ensure that insolvency practitioners comply with their legal duty to consult. Collective redundancy consultation can make a major contribution to rescuing businesses and protecting the interests of employees. Unite is opposed to any amendments to the special circumstances test with a view to exempting insolvency situations from the requirement to consult.

#### **14. Evidence**

- 14.1. What follows (Appendix) are real accounts of collective redundancy consultations from Unite officials. Unite would be happy to provide further written or oral evidence on any of the issues covered in this submission.

**31/01/2012**

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<sup>3</sup><http://www.bbc.co.uk/news/uk-england-14615845>

**This response has been submitted on behalf of Unite the Union by:**

**Simon Dubbins,**

**Unite Director of Research**

[Simon.Dubbins@unitetheunion.org](mailto:Simon.Dubbins@unitetheunion.org)

**For further information or clarifications please contact:**

**James Lazou**

**Research Officer**

[James.Lazou@unitetheunion.org](mailto:James.Lazou@unitetheunion.org)

**020 7611 2504**

**Unite House,**

**128 Theobalds Road,**

**Holborn, London, WC1X 8TN**

**Richard Lowe**

**3rd floor Abbey 2**

**Department for Business, Innovation and Skills**

**1 Victoria Street**

**London SW1H 0ET**

[collectiveredundancies@bis.gsi.gov.uk](mailto:collectiveredundancies@bis.gsi.gov.uk)

## **Appendix: Collective Redundancy Cases**

### **1. Logistics and freight company**

**Date of redundancy consultation:** 17 May 2011

**Region:** East Midlands

**Number of workers involved:** 122

**Why were people being made redundant?**

Loss of contract

**Did three months consultation make a difference in any of the following ways?**

More time for people to find new jobs

Alternatives to those redundancies

A better deal for those people being made redundant

**Please describe:**

Yes the three months consultation did make a differences as we were able to ensure that all possible vacancies were made available for our members to consider applying for.

**Would 30 days have been enough time to consult workers about this redundancy?**

Given the nature of the locations and numbers involved the 30 day consultation would not have been sufficient and my belief is most of our members would have had no opportunity to stay in a job. Many would have claimed benefits and paid less in taxes.

**Did you have any problems defining which workers had consultation rights?** No

**Did consultation start before decisions to dismiss workers have taken place?** Yes

**Did you have to go to a tribunal due to problems with the consultation?** No

**Any other comments?**

Had the consultation been limit to 30 days then yes we would probably have needed to go to tribunal as I do not believe it would have provided sufficient time to ensure all possible avenues are examined before our members were made redundant.

## **2. NHS foundation trust**

**Date of redundancy consultation:** April 2011

**Region:** North East Yorkshire and the Humber

**Number of workers involved:** 2673 workers with a proposal of 80 redundancies

**Why were people being made redundant?** Need for cost savings due to poor financial position.

**Did three months consultation make a difference in any of the following ways?**

Alternatives to those redundancies

More time for people to find new jobs

**Please describe:**

A longer consultation meant that there was exploration of a mutually accepted resignation scheme to avoid compulsory redundancies.

**Would 30 days have been enough time to consult workers about this redundancy?** No.

**Did you have any problems defining which workers had consultation rights?** No.

**Did consultation start before decisions to dismiss workers have taken place?**

Yes, they consulted on the proposal to dismiss. The employer could have done more to do a more structured review of existing services when looking at cost reduction which would have been of greater benefit to the consultation process.

**Did you have to go to a tribunal due to problems with the consultation?** No.

**Any other comments?**

Good working relationships between the employer and trades unions meant that we were informed that there was a need to reduce staff expenditure. The organisation had no up to date redundancy handling procedure, nor appropriate scoring mechanisms. We were able to fully engage in ensuring that processes were fair and transparent, and held meetings to explain to members what was happening and how we could support them. We also negotiated on a revised pay protection policy that was still better compared to other Trusts but ensured that the savings would mean that less jobs would go.

### **3. National banking group**

**Date of redundancy consultation:** Numerous - 22,500 announced to date since late 2008

**Region:** National

**Number of workers involved:** 22,500 job losses announced, at risk probably nearer 30,000

**Why were people being made redundant?** Near bankruptcy of the Group resulting in a corporate loss of £24.5bn and huge state/taxpayer bail out.

**Did three months consultation make a difference in any of the following ways?** More time for people to find new jobs

Alternatives to those redundancies

A better deal for those people being made redundant

**Please describe:** The consultation period has enabled the agreement of Enhanced Redundancy Mitigation Measures i.e. lump sums to transfer, travel assistance etc. Unite have also agreed a Voluntary Job Matching Policy (bumping) and the consultation period enables full exploration of these alternative opportunities. The minimum notice period in the group on redundancy is 2 months, therefore with the 90 days and minimum 2 months, this provides a considerable opportunities for redeployment and/or alternatives to the proposals on the table.

**Would 30 days have been enough time to consult workers about this redundancy?** In most cases no, if not all.

**Did you have any problems defining which workers had consultation rights?** No

**Did consultation start before decisions to dismiss workers have taken place?** A moot point, at the beginning of consultation the plans were all but fully formed, therefore there is not a great deal of opportunity to amend, challenge and propose alternatives, but consultations are being undertaken in a timely manner and in good faith.

**Did you have to go to a tribunal due to problems with the consultation?** No

#### **Any other comments?**

We do come up against some issues where there are multiple announcements and the Group has attempted to argue that each announcement was less than 100 therefore only requiring 30 days consultation, although by and large the Group do agree to lump the announcements together and agree to 90 days. On one such occasion the employer insisted on 30 days, they realised they needed to keep staff for longer.

#### **4. University**

**Date of redundancy consultation:**

2009-2010 continuing into 2011

**Region:** Yorkshire

**Number of workers involved:** 100+

**Why were people being made redundant?** Student numbers were in decline, changes in department priorities and a refocus in research. This led to a deficit of £2million.

**Did three months consultation make a difference in any of the following ways?** A better deal for those people being made redundant more time for people to find new jobs alternatives to those redundancies

**Please describe:**

A deal was done on the following:

No compulsory redundancies, Enhanced packages, Compromise agreements

Many Unite members found new roles with in the University.

**Would 30 days have been enough time to consult workers about this redundancy?** No in the end this process lasted 2 years.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** No

**Did consultation start before decisions to dismiss workers have taken place? (please describe)** Consultation started fairly early but there were some initial problems with process.

**Did you have to go to a tribunal due to problems with the consultation? (please describe)** UCU colleagues went to visit the Minister at BIS who investigated the process. This added a six month delay to process but there was no need for a tribunal.

**Any other comments?**

It was a useful process for both employers and employees. We managed to avoid any compulsory redundancies which prevented issues getting public and embarrassing the university.

Since then the university has set up an employment security review group to mitigate against further job losses. This is a joint committee between Trade Unions and the Uni management to avoid any compulsory redundancies in the future. It meets monthly and so far has saved other job losses by pre-empting them. Without the amount of time given a consultation and the good working relationship that developed from it, a lot more jobs would have been lost.

## **5. Defence manufacturer**

**Date of consultation:** Current ongoing.

**Region:** North East, Yorkshire & Humber

**Number of workers involved:** 900

### **Why were people being made redundant?**

Company wishes to move its manufacturing away from Yorkshire to other sites in the UK

**Did three months consultation make a difference in any of the following ways?** This consultation is still ongoing, extensive talks with the company and politicians seem to be making headway. Without these 3 months (or for how ever long it finally takes) the following results would not have been possible:

- a better deal for those people being made redundant
- more time for people to find new jobs
- alternatives to those redundancies

There is an enhanced redundancy scheme already in place for members.

Clearly within this time scale if we cannot mitigate all the proposed job losses then it is giving “breathing space” for members to find new jobs, (already in very short supply in the Hull area)

The union is also looking for alternative manufacturing work to be located at the site.

**Would 30 days have been enough time to consult workers about this redundancy?** Definitely not.

**Did you have any problems defining which workers had consultation rights?** No

**Did consultation start before decisions to dismiss workers have taken place?**

Unfortunately it became apparent that the company had made this decision some months prior to the announcement. The consultation process at times has felt more like was a “tick box” exercise in this particular scenario but it did allow the union to put forward their own opinions and suggestions.

**Did you have to go to a tribunal due to problems with the consultation?**  
No

## **6. Defence manufacturer**

**Date of redundancy consultation:** 2010

**Region:** West Midlands

**Number of workers involved:** 120

**Why were people being made redundant?**

Lack of orders

**Did three months consultation make a difference in any of the following ways?**

Alternatives to those redundancies

**Please describe:**

The company issued the consultation document. I helped form a team of reps/local managers. That took time. We put together an alternative proposal and attended a meeting in Leeds to present it. The employer then changed the decision and has since invested in the Telford site.

**Would 30 days have been enough time to consult workers about this redundancy?** No

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** No

**Did consultation start before decisions to dismiss workers have taken place? (please describe)** N/A

**Did you have to go to a tribunal due to problems with the consultation? (please describe)** No

**Any other comments?** No

## **8. Bed manufacturer**

**Date of consultation:** 28<sup>th</sup> October 2011

**Region:** NEY&H

**Number of workers involved:** 225

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Market collapse so relocating to another area where they already have another building so can consolidate it all in one.

**Did three months consultation make a difference in any of the following ways?:** Options one and two:

- a better deal for those people being made redundant
- more time for people to find new jobs

**Would 30 days have been enough time to consult workers about this redundancy?** No

**Did you have any problems defining which workers had consultation rights?** No

**Did consultation start before decisions to dismiss workers have taken place?** No

**Did you have to go to a tribunal due to problems with the consultation?**  
No

## **9. Lifts and escalators company**

**Date of redundancy consultation:** April 2011

**Region:** National

**Number of workers involved:** 100+

### **Why were people being made redundant?**

due to the effects of the 2008-2010 Great Recession the company advised Unite as the recognised Union that they needed to restructure the business and as a consequence "jobs were to be placed at risk".

### **Did three months consultation make a difference? Please describe:**

Following extensive dialogue the jobs at risk were mitigated by redeploying engineers in areas where the work had started to pick up to below the original over 100 envisaged and those made redundant were eventually all from the register of interest for volunteers, which could not have been achieved in a 30 day period.

### **Would 30 days have been enough time to consult workers about this redundancy?**

No, because of the existence of a National Recognition Agreement between the company and Unite and because over 100 jobs could be at risk a 90 Day Consultation commenced which explored all options including the setting up of a non conditional "register of interest" for any engineer to explore options available. As this process in itself took 45 days to conclude, and another 15 days to evaluate 90 days would be the minimum period to conclude such an in depth dialogue, including the formal submitting of a counter proposal.

### **Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an "establishment")** No

### **Did consultation start before decisions to dismiss workers have taken place? (please describe)** Yes

### **Did you have to go to a tribunal due to problems with the consultation? (please describe)** No

### **Any other comments?**

Any proposal to reduce the minimum period of consultation to 30 days regardless of the number of employees affected could undermine Collective Agreements on Redundancy which in this case would have meant that the eventual 2011 outcome on restructuring would not have been concluded in the legally determined period. It should therefore be highlighted that if a process is to be seen as fair it would be impossible to conclude any nationally based restructuring within a 30 day period.

## **10. Food, Drink and Tobacco sector**

The 90 days consultation rights in cases of redundancy has been crucial in avoiding redundancies in the following companies:

- **Drinks and spirits manufacturer:** when 2 sites closed. Didn't save factories but jobs saved by greatly extending VR opportunities to other sites and redeployment, plus improvement to pension scheme/redundancy payments negotiated both cushioning those unemployed and creating greater incentive for others to volunteer
- **Biscuit manufacturer:** factory closure announced with 660 jobs at stake. It was possible to retain the chocolate refinery (see below).
- **Salad company,** when despite 375 redundancies announced, this figure was significantly reduced to less than 100 and all achieved on voluntary basis

None of this would have been possible without the full length of the redundancy consultation period and proper engagement between the Union and the company.

- **Chocolate manufacturer** have just announced 200 redundancies across three factories and the same will apply.

We need the time to be able to:

- Examine all proposals in detail
- Request information to enable us to put forward alternatives – this takes weeks
- Negotiate on all relevant issues and explore possibilities of redeployment, enhanced early retirement, volunteer options etc

## **11. Biscuit manufacturer**

**Date of redundancy consultation:** May 2007

**Region:** Northwest

**Number of workers involved:** 660

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Asset Stripping by a Private Equity Company

**Did three months consultation make a difference in any of the following ways?**

More time for people to find new jobs

Alternatives to those redundancies

A better deal for those people being made redundant

**Please describe:**

Retained 364 Jobs with a viable Trade union alternative proposal to the closure, retraining for those going back into the job market.

**Would 30 days have been enough time to consult workers about this redundancy?**

No. The company finances and owners were complicated to unravel and information on the closure proposals turned out to be inaccurate. A longer period was needed to enable a challenge and put forward an alternative; market and industry specialist advice was sought. This took some time to do.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an "establishment")** No

**Did consultation start before decisions to dismiss workers have taken place? (please describe)**

Consultation started before dismissals took place BUT the decision to dismiss was taken prior to any consultation

**Did you have to go to a tribunal due to problems with the consultation? (please describe)**

No but sought legal advice throughout the process

**Any other comments?**

I have a full pack of the process if it is needed to demonstrate the huge task any trade union has to contend with when dealing with limited consultation periods.

### **13. Bus and coach manufacturer**

**Date of consultation:** November 2009

**Region:** Scotland

**Number of workers involved:** 650 (potential of 260 redundancies at commencement of consultation)

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Every 8 -10 years there is a dip in bus orders which leads to a reduction in market. This last dip had the potential to cause the reduction in jobs of 260 +.

**Did three months consultation make a difference in any of the following ways?**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies**

During the 3 month consultation period we had the opportunity to explore a number of options whilst at the same time, giving the market room to breathe. In the final analysis, all redundancies were prevented. However, had there not been the 3 months period then the likelihood is that the employer would have made 260 members redundant.

The time period also gave us as a union an opportunity to lobby the Scottish Government to set up a green bus fund as existed in England and Wales, and also the time to consult extensively with our members over fairly radical short term measures to reign in the cash flow problems.

These measures included short term annualised hours and a short working week agreement.

If the timescale of 3 months had not been there then there would have been 260 + redundancies in the first instance and crucially, the company would not have recovered from the resultant loss of skills.

It is clearly the case that the company would not have been able to bid for contracts that were going to come online, if a reduced workforce had been the result.

Bringing us forward to a year down the line, our members now have a more stable environment and have agreed a 2 year pay deal worth 4%+4%.

**Would 30 days have been enough time to consult workers about this redundancy?**

No – certainly not – the member had not only difficult decisions to contemplate but also the 3 months created a timescale to allow the market to recover.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** No

**Did consultation start before decisions to dismiss workers have taken place?**

Yes – a number of options were fully explored prior to the final decision which ultimately rested on our members decisions.

**Did you have to go to a tribunal due to problems with the consultation?**

No

## **14. Package and postal delivery company**

**Date of redundancy consultation:** Throughout 2011

**Region:** National

**Number of workers involved:** 9600 involved with over 2500 redundancies

### **Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

The company undertook a restructuring and moved from a decentralised management structure, with different business units which had their own finance, HR and other support functions to a centralised structure. Many, but not all, of the job losses were down to removal of duplication of activities. Other redundancies were because of the new structures and the need to "maintain the necessary profitability to support future investment". The company was planning to cut jobs and reduce costs.

The restructuring followed the appointment of a new Chief Executive Officer.

The company, which has sites spread across the country, adopted the approach setting up the redundancy procedure across a number of different "establishments". This resulted in some of the consultation periods being of 90 days and others for 30. We were however able to agree that many, but not all, of the consequential activities, including redundancy notices, were undertaken simultaneously.

The benefit of this was that those employees who were in an establishment with 30 days consultation had more opportunity to find alternative jobs within the company.

### **Did three months consultation make a difference in any of the following ways?**

Alternatives to those redundancies  
More time for people to find new jobs

### **Please describe:**

The approach to redeployment was through a "Suitable Alternative Employment Process" which meant that any vacancy that arose within the company was available only to those that were at risk of redundancy in the first instance and an objective process was adopted to ensure that where there was an appropriate skills match that redeployment took place. A 90 day consultation period allowed for more opportunities and also time for new vacancies to be filled by otherwise at risk employees.

### **Would 30 days have been enough time to consult workers about this redundancy?**

No. Inevitably employers embark on the consultation period immediately and in this case the amount of possible redundancies, the complexity of the

organisation and the wide geographical spread of the company would make a 30 day consultation impossible, and, more importantly, ineffective.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)**

Only as described above where the employer used the definition of establishment to its advantage and could have potentially resulted in shorter periods of consultation for one group of employees than others during the same redundancy exercise.

**Did consultation start before decisions to dismiss workers have taken place?**

No. Clearly decision to make redundancies, including the proposed number, had been made before consultation started.

**Did you have to go to a tribunal due to problems with the consultation?**

No.

## **15. Aluminium manufacturer**

**Date of consultation:** October 2010

**Region:** West Midlands

**Number of workers involved:** 320

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Closure of and moving work to save jobs in France and Germany.

**Did three months consultation make a difference in any of the following ways? (please describe):**

- a better deal for those people being made redundant
- more time for people to find new jobs
- alternatives to those redundancies

All 3 of above

**Would 30 days have been enough time to consult workers about this redundancy?**

No. It enabled us to get the company to agree to sell part of the work and work with interested parties to put in a bid, saving 120 jobs.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** No

**Did consultation start before decisions to dismiss workers have taken place?** No decision to close had been made.

**Did you have to go to a tribunal due to problems with the consultation?**  
No

## **16. Engineering and manufacturing company**

**Date of redundancy consultation:** 2011

**Region:** West Midlands

**Number of workers involved:** 20

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Loss of orders

**Did three months consultation make a difference in any of the following ways?**

More time for people to find new jobs

A better deal for those people being made redundant

**Please describe:**

Although only 20 people were involved, an issue arose out of the contracts from a previous TUPE. i.e the members were allowed enhanced redundancy payments. 20 appeals were lodged, the extra time allowed the employer to seek legal advice which confirmed that payments were due. If this hadn't happened ET claims would have been lodged.

**Would 30 days have been enough time to consult workers about this redundancy?** No

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an "establishment")** No

**Did consultation start before decisions to dismiss workers have taken place?** Yes

**Did you have to go to a tribunal due to problems with the consultation?**  
No

**Any other comments?** No

## **17. Train manufacturer**

**Date of consultation:** June to October 2011

**Region:** East Midlands

**Number of workers involved:** 446

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Loss of major contract to another company for building trains

**Did three months consultation make a difference in any of the following ways? (please describe):**

- a better deal for those people being made redundant – Yes
- more time for people to find new jobs - Yes
- alternatives to those redundancies – Yes

(Please see below)

**Would 30 days have been enough time to consult workers about this redundancy?** - No

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** - No

**Did consultation start before decisions to dismiss workers have taken place?** - Yes

**Did you have to go to a tribunal due to problems with the consultation?**  
- No

### **Further Information**

Following the announcement of the loss of a huge Government contract, the company announced 446 redundancies, the closure of one of its sites and a review of their UK presence. We agreed a series of meetings with the company on an at least weekly basis throughout the summer and autumn.

This gave us the opportunity to look at bringing in new work, reviewing shift patterns to maximise workloads, review staffing structures. We were also able to agree a robust selection criteria (the company had work for approximately 200 going forward to 2013/14).

The whole process allowed the company, unions and Government departments (Work & Pensions, BIS etc) to bring in appropriate agencies to assist in job search etc.

As a result of the ongoing discussions there have been NO compulsory redundancies amongst our bargaining unit, from an original proposal for 446 redundancies. This could not have been achieved with only 30 days or even 60 days consultation period.

## **18. Energy component manufacturer**

**Date of consultation:** 1/6/2010

**Number of workers involved:** 96

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Due to a reorganisation of the energy sector of the company & over capacity in the world wide marketplace

**Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant – Yes**
- **more time for people to find new jobs - Yes**
- **alternatives to those redundancies – Yes**

The operation of the 90 days allowed for consultation & campaigning to keep the plant open, it allowed to negotiate a higher severance payment, seek redeployment & eventually it was agreed to keep the site open for a further 12 months to September 2012

**Would 30 days have been enough time to consult workers about this redundancy?**

30 days would not have been sufficient to keep the carry out any campaign

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)**

No as the whole site was closing

**Did consultation start before decisions to dismiss workers have taken place? - Yes**

**Did you have to go to a tribunal due to problems with the consultation?**

Not applicable.

## **19. Telecoms company**

**Date of consultation:** 2010

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)** The company was trying to move work from the UK to Italy and China.

This would have led to the closure of several sites and the loss of 1100 UK jobs. It would also have led to the loss of a large amount of R&D capacity and knowledge from the UK.

**Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies** The 90 days consultation period was crucial in this case as the company needed to bring people from across the globe to the meetings.

**Would 30 days have been enough time to consult workers about this redundancy?**

No

**Any other comments?**

The negotiations were positive and led to a major decrease in the number of redundancies (in the end to around 400) with a UK site saved, including the substantial R&D capacity. Many of the workers were offered relocation opportunities, voluntary redundancy and enhanced terms. None of this would have been possible without the 90 days.

## **20. Drinks distributor**

**Date of consultation:**2010

**Region:**NEY&H

**Number of workers involved:** 100+ on site but only 60 in our agreement

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)**

Closure of site/brewery.

**Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies**

Consultation took place after 12 months due to the early announcement – it gave us the opportunity to consult properly and gain enhanced payments for our members of up to £1,500. Also employment was extended on the initial period due to change of plans. If shorter consultation period was in place this would have have happened. Also gave us time to send in the learning/skills team.

**Would 30 days have been enough time to consult workers about this redundancy?**

No, it never is.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)**

No.

**Did consultation start before decisions to dismiss workers have taken place? (please describe)**

No, as the closure was announced nationally. I was representing members at the third party transport and distribution provided.

**Did you have to go to a tribunal due to problems with the consultation? (please describe)**

No.

## **21. Print and paper company**

**Date of consultation:** 23.8.2011-24.11.2011

**Region:** National

**Number of workers involved:** 260

**Why were people being made redundant? (e.g. market collapse, poor management, take over and asset stripping, funding cuts)** Management were closing to sites in the south east and relocating the work to the North.

**Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies**

We have managed to relocate two teams (30) to another SE site, identify some employees that can work from home – still in progress, and having called for volunteers in another nearby site arranged some swaps and redeployments.

All workers were finally given the option to relocate to the North but this has not resulted in more than 1 or 2 showing an interest.

Redundancy terms were made contractual in the face of a potential hostile takeover during the 12-18 month project and additional run down and training payments secured.

The 90 days and then the 12 week notice we secured for all has allowed outplacement, job centre and re-training to be carried out at the two sites.

The employees have also agreed to train the new employees in the two north sites and this has secured recognition for another 200 employees in the north.

The 90 day also ensured equal treatment for the office and supervisory staff not covered by the Unite agreements, some of whom were members.

**Would 30 days have been enough time to consult workers about this redundancy?** No due to the complicated issues raised above.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)**No

**Did consultation start before decisions to dismiss workers have taken place? (please describe)** Yes, the employer consulted meaningfully and alternatives went back to the board for consideration on at least two occasions.

**Did you have to go to a tribunal due to problems with the consultation? (please describe)** No

## **22. Print and paper company**

**Date of consultation:** 6/12/2011 – 5/3/2012

**Region:** Gateshead

**Number of workers involved:** 280

**Why were people being made redundant?** Company issued a S188 notice to terminate and re-engage on new terms and conditions

**Did three months consultation make a difference in any of the following ways? (please describe):**

- ⤴ **a better deal for those people being made redundant**
- ⤴ **more time for people to find new jobs**
- ⤴ **alternatives to those redundancies**

Consultation continues but a deal is expected and negotiations to retain and harmonise terms and conditions are positive. This will result in certain pay cuts after the job evaluation identified pay inequalities of up to 20k.

The 3 months consultation has made the process far less hostile and without the 90 days period industrial action and many job losses would probably have resulted.

**Would 30 days have been enough time to consult workers about this redundancy?**

No due to the complicated issues under negotiation.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)**

No – all employees were covered by the Unite collective agreement

- **Did consultation start before decisions to dismiss workers have taken place? (please describe)**

Yes but the S188 has always been the gun to our heads. However the employer consulted meaningfully and with the intentions of cutting a deal.

- **Did you have to go to a tribunal due to problems with the consultation? (please describe)**

No

### **23. Car manufacturer**

**Date of consultation:** 2008-2009

**Number of workers affected:**

1700 jobs negotiated on voluntary process – over 2008-9. 3000 remaining.

In 2012 - the company has begun recruiting 500 new workers

**Why were redundancies needed?**

In 2008 when the recession kicked in no one was buying cars and the bottom dropped out of the market.

The company did not expect this and had set its business plans accordingly. Their initial response was to start talking about non production days and substituting them with extra holidays.

The company had for several years refused to enter into negotiations with the union over a lay off agreement claiming that they “did not plan for failure”. This meant that when the crisis hit they had no policies in place. The company hence came back to the union and asked for help.

**Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies**

Proposed to lay off everyone in four months with no pay. This meant a potential loss of skills, especially of maintenance, technicians, and others.

Once the union was involved solutions started to be found. They agreed a banking of hours arrangement – where workers owed hours but got to keep jobs and continuity of pay. The negotiations also came up with a traditional working time agreement.

The company decided to close down for 2 month. but then the situation got worse and this extended 4 months.

The union managed to agree a 50% pay for hours over the 250 hours cap. Without this proposal workers would have been entitled to statutory redundancy and all the jobs would have been lost.

After this agreement this was expanded to get full pay for 3 quarters of time and holiday. In the end average 80% pay so members were happy – and this agreement allowed members to find other jobs during the close downs.

The company agreed to come up with an “associate release programme” (basically a voluntary redundancy scheme). They got over subscribed: 500-600 accepted.

This was done over two phases – second phase was more generous than the first. These redundancies happened concurrently with the lay off.

Whilst the lay off was in place things got worse again. The company didn't want to let the people go but they were still 500 over staffed. In the end they tried to cut pay to save jobs and cut terms and conditions. The Union sat down with them round the table and the stewards agreed a scheme for shared work deal.

This was followed by a further deal to protect 489 jobs through exchanging pay for time off, opt outs from the pension scheme for a year, and increased costs of the lease cars. People that were laid off were also given the option to work in some of the company's supply chain companies.

The Union and company agreed that managers would also take a pay cut hence workers took a 3% pay cut for 11 months and managers took 5% pay cut for 11 months. In return everyone got an additional 6 days paid holiday.

Towards the end of the 11 months – they realised that they didn't need the 489 jobs and set up another voluntary redundancy scheme. They also reinstated the 3% pay cut.

**Would 30 days have been enough time to consult workers about this redundancy?** The process worked because the Union was engaged early and in good faith. In the end no formal redundancy consultation was needed as negotiations went on continuously for several years allowing for voluntary redundancy packages and other protection for workers who stayed on.

**Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** N/A

**Did consultation start before decisions to dismiss workers have taken place? (please describe)** No

**Did you have to go to a tribunal due to problems with the consultation?**  
No

**Any other comments?**

This allowed the company to save its UK manufacturing plants and it is now in the process of recruiting again.

## **24. Car manufacturer**

**Date of consultation:**2008-2009

**Number of workers involved:** 12,000

### **Why were people being made redundant?**

In the 2008-9 crisis the Union agreed a pay freezes with the company in order to save jobs at the factory.

There were 12,000 jobs potentially at risk

### **Did three months consultation make a difference in any of the following ways? (please describe):**

- **a better deal for those people being made redundant**
- **more time for people to find new jobs**
- **alternatives to those redundancies**

An agreement was reached to reduce of hours for manual workers with a loss of pay, while some office staff increased hours with no increase pay. There were also other changes agreed such as with shift patterns

The result was that all jobs were saved.

### **Would 30 days have been enough time to consult workers about this redundancy?**

As soon as the crisis hit the union and management began talks that lasted months. This was done outside of formal consultation limits as the view from both sides was that consultation should last as long as it took to get solutions.

It therefore took longer than 90 days. In the car industry the statutory is always treated as the minimum. Both sides recognised this and they used the time they need.

The time was not just needed to discuss options it also required discussing the issues with thousands of workers and convincing them that the solutions proposed were the right thing to do. This couldn't have happened without positive relationships with the Union and the result would have meant thousands of job losses.

### **Did you have any problems defining which workers had consultation rights? (i.e. ambiguities about who works in an “establishment”)** N/a

### **Did consultation start before decisions to dismiss workers have taken place? (please describe)** No

### **Did you have to go to a tribunal due to problems with the consultation?** No

**Do you have any other comments?**

The company offered good redundancy terms. This meant that the company could have spent millions of pounds in payouts to redundant workers while losing vital skills and knowledge. The agreement that resulted from consultation therefore saved the company millions of pounds.

**Other elements of the agreement:**

The union and company also agreed a movement of labour agreement. One plant was losing money, while another plant was recruiting agency staff. It was agreed to move labour between the two plants to save jobs. This agreement continues today.

One plant is starting 1000 people on – but had a surplus of 300 at the other – therefore these moved to the first plant. There is also an agreement on agency workers where after working for 2 years they become full time.

The company has since put on 4000 new jobs since then and this is still rising.