

Failure to consult

If an employer does not meet consultation requirements, employees can make a claim to an [employment tribunal](#).

If the claim is successful, the employer may have to pay the employee or employees compensation (a 'protective award'). This can be up to 90 days' full pay for each affected employee.

Important: For redundancy dismissals on or after 6 April 2026 the maximum protective award for failing to consult in collective redundancy will increase. It will double from 90 days' pay to 180 days' pay for each affected employee.

Special circumstances

In rare circumstances it may not be reasonably practical for an employer to collectively consult. In which case, the employer may be able to use a 'special circumstances' defence.

The employer would need to be able to prove it was not reasonably practical for them to comply with the consultation requirements. But they would still need to inform and consult employees as much as possible.

Special circumstances are not defined in law and each situation is considered on a case-by-case basis by the employment tribunal judge. Special circumstances are truly unexpected situations.

Employers who think it may not be reasonably practical for them to comply with consultation requirements should [get legal advice](#).

Example of a special circumstance

If an employer suddenly and unexpectedly becomes insolvent, an employment tribunal might accept it's a special circumstance. But if an employer knew they were having financial difficulties for some time and did not meet consultation requirements, it may not be accepted as a special circumstance.