



# Government response to the joint House of Commons committees' report on the impact of the closure of City Link on employment

Presented to Parliament  
by the Secretary of State for Business, Innovation & Skills  
by Command of Her Majesty

17 September 2015



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## Summary

The Government welcomes the opportunity to respond to the Joint Business Innovation and Skills and Scottish Affairs Committees' report into the impact on employment of the closure of City Link.

The Government recognises that insolvency throws up additional challenges to providing meaningful consultation and support to employees facing redundancy and is working to address these through a recently closed call for evidence on collective redundancy and insolvency.<sup>1</sup> The Government is also aware of the complex nature of determining employment status which has led to the Committees' concern over 'bogus self-employment'.

Generally the Government believes individuals who experience or are threatened by redundancy receive good support. The Redundancy Payments Service (RPS) pays 80% of employee claims within 3 weeks of receipt and 92% of claims within 6 weeks of receipt. Rapid Response Service (RRS) provides support to find new employment for those subject to the threat of redundancy quickly and is available for 13 weeks from the date of job loss.

The Government will continue to monitor the effectiveness of the support it provides to all individuals whatever their employment status and will continue to look at ways to ensure the service provided is the best it can be in the circumstances.

For clarity, this document does not represent the views of any bodies which report to the Scottish Government. This includes the Partnership for Continuing Employment (PACE) in Scotland which is the Scottish Government's redundancy support service and was significantly involved in responding to the closure of City Link.

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<sup>1</sup> <https://www.gov.uk/government/consultations/collective-redundancy-consultation-for-employers-facing-insolvency>

**Recommendation 1: We urge the Government to support dialogue between unions, employers and insolvency professionals to develop best practice guidance for sharing information with employees and unions when an administration order is likely**

**Government response**

1. The previous Government issued a Call for Evidence in March 2015 on the issue of collective redundancy consultation with employees in an insolvency (or near insolvency) situation, inviting views on how outcomes might be improved. This included asking whether additional guidance would be helpful. This Call for Evidence closed on 12 June 2015.<sup>2</sup>
2. The Government agrees that it is important that timely notification and meaningful consultation with employees should occur when employers are facing or have become insolvent, whilst recognising that there may be constraints in an insolvency situation. A number of guides already exist including:-
  - Guidance to insolvency practitioners (IPs) on the collective redundancy process and on their duties within that process. These are contained in a series of articles in “Dear IP” – which is sent by the Insolvency Service to IPs, as well as others with an interest, and also placed on Gov.uk.<sup>3</sup>
  - Guidance to employers by the Advisory, Conciliation and Arbitration Service (ACAS) on the large scale redundancy process, which was introduced in April 2013.<sup>4</sup> This covers: guidance on the law; how the consultation process should be conducted; insolvency and the collective redundancy process; and advice for employers on looking after their employees through the process including the need to work closely with trade unions and employee representatives.

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<sup>2</sup> See question 14 pg.12. <https://www.gov.uk/government/consultations/collective-redundancy-consultation-for-employers-facing-insolvency>

<sup>3</sup> Articles 33, 39, 40 and 44 under Chapter 11 of Dear IP, range from December 2008, Issue 38, to October 2010, Issue 47. Can be accessed via:  
<https://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/dearip/dearipindex.htm>

<sup>4</sup> <http://www.acas.org.uk/media/pdf/h/3/Handling-large-scale-collective-redundancies-advisory-booklet.pdf>

**Recommendation 2: Government works with insolvency professionals to agree a short initial statement to be made publically available no later than a week after an administration order has been made – setting out a high level summary of the events leading up to the administration. This note should include:-**

- **Who to contact with concerns over the conduct of company directors and evidence to support those claims**
- **When the last payment to staff and suppliers was made and the period it covered**
- **Early assessment of whether there would be any funds available to make a payment to unsecured creditors (excepting the prescribed part)**

### **Government response**

3. The committee recommended this proposal to address the lack of reliable public information that the committee felt developed in the aftermath of the collapse of City Link. Much of the Committees' concerns seem to arise from the lack of information provided to employees and contractors.
4. Legislation already provides a duty on Administrators to provide information at an early stage to affected parties. The Government intends to consider how this recommendation might work in practice and what more needs to be done to ensure all relevant parties are provided with timely information in the early stages of an administration.
5. A week is a short time period from the start of an administration, and the balance will need to be considered between the administrator producing an early assessment of the reasons for the insolvency and the likely outcome of the administration, as against a more considered view later in the administration. Moreover it is important that the early focus of the Administrator's work is on matters such as identifying and sending employee claims to the Redundancy Payments Service so that they can be promptly paid and securing assets for the benefit of creditors.
6. Currently the Administrator in a pre-pack Administration<sup>5</sup> is required to send information to creditors within 7 calendar days of the sale, and all Administrators are required to provide information to creditors within 8 weeks of the commencement of the proceedings.<sup>6</sup>

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<sup>5</sup> A pre-pack administration is where a purchaser of a business is found before a company enters into administration, and the sale is made at, or shortly after, the appointment of the administrator. The administrator must prepare a detailed narrative explanation and justification of why the pre-packed sale was undertaken, which is then sent to creditors.

<sup>6</sup> The 8 week period the administrator has to provide information to creditors can be increased on application by the administrator to the court. Paragraph 49 (5b), Schedule B1, Insolvency Act 1986.

7. It is clearly helpful for people affected to know at an early stage who to contact with concerns over the conduct of company directors, to understand what the process will be and to be kept updated in a timely way, and we will consider with interested parties how this might best be achieved.

**Recommendation 3: Government should review and clarify the requirements for consultation on redundancies during an administration so that employees understand what they can expect and company directors and insolvency practitioners have a clear understanding of their responsibility to employees.**

**Government response**

8. The Call for Evidence issued in March asked questions on how the current system of consultation for large scale redundancies in insolvency is working. These included questions on how both directors and IPs implement in practice the current requirements to undertake good quality, meaningful consultation, and what factors either support or prevent this. It also looked at how directors and insolvency practitioners could be better incentivised to comply with the requirements and how employees and their representatives can be best engaged with.
9. The Government is considering these replies and will issue a response in due course.

**Recommendation 4:- We recommend that the Government review the arrangements for information sharing in the event of a company going into administration to ensure that those affected receive timely advice and support. The Government should consider whether Government agencies should have a role in contacting affected workers directly to advise them of the help available.**

### **Government response**

10. The Government engages with individuals on potential and actual job losses in the following ways:-
  - **Employee claims** - Up until recently, in the event of an insolvency an IP would send out a form called an RP1 to affected employees, who then make a claim for any money owed to RPS. The form is in the process of moving to a digital version, with online uptake around 60% as of August 2015.
  - **Support to find new employment** – The Rapid Response Service (RRS) is provided by Jobcentre Plus in England and by Jobcentre Plus in partnership with the Redundancy Action Scheme II (ReAct II) in Wales, and Partnership for Continuing Employment (PACE) in Scotland, and includes signposting to sources of support, help to find new jobs and where appropriate, training opportunities. It is targeted at all those affected by the potential job losses, extending beyond direct employees of the business to include other forms of employment as well as to individuals working for suppliers affected by the difficulties of the business. Support commences as soon as the job is at risk, and continues for 13 weeks after the notice end date, irrespective of whether a claim for benefit is made.
11. In the case of insolvency, a memorandum of understanding is in place between the trade body for IPs, R3, DWP and the Insolvency Service that, amongst other things, provides for IPs to issue an RRS factsheet to all those affected. The factsheet provides details of the support available through the RRS and signposts to other available support including advice on job seeking, careers and training, benefits, self employment and financial matters. If the employer is solvent, then information about RRS support can be provided via the employer or directly through site visits.
12. This use of either the employer or insolvency practitioner<sup>7</sup> to signpost the support available and the employees' right to claim avoids any problems of sharing personal information. Seeking permission to share individuals' information would only serve to delay the support given and would add cost to the process.
13. Generally Government believes this system works well. We believe there are no problems with the way in which employees make claims to RPS. Where

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<sup>7</sup> Where the company is in an insolvency procedure.



the system can experience some occasional problems is in the area of RRS support.

14. As mentioned, where there is no insolvency, these agencies will contact the employer to offer support to individuals in the event of proposed job losses or changes to working conditions. DWP estimate that in roughly 50% of cases this support is either rejected or DWP have been unable to contact the employer despite a number of attempts. Part of the reason for this failure to take up DWP's support is because many employers provide their own support to employees. Alternatively some employers may reject support as they believe that involving job agencies will lead workers to conclude job losses are inevitable, which they would want to avoid.
15. Where RRS support is offered in insolvency cases, the system generally works well where the relevant individuals are employees. However where this can fall down is where the insolvency involves more atypical working arrangements including zero hour contractors, agency staff, the self employed and sub-contractors. Some IPs may not contact individuals with atypical working arrangements with employment information, not least because there would be a cost associated with getting in touch with them.
16. Despite this, we would still see the City Link case, which resulted in a slower response than we would have hoped for, as very much an exceptional case. This slow response occurred due to the large number of sub-contractors and self-employed individuals and the timing over the Christmas period. However even in this case we believe all employees received the RRS factsheet within 7 days and all workers, including sub-contractors, by 31 January 2015.
17. It is also the case that where RRS support is not offered or delivered via the employer or IP, it will be considered once the individual becomes known to DWP by making a claim for benefits, or enquiring about RRS. Even where an individual misses out on RRS support, if they are claiming benefit they are entitled to additional support from Jobcentre Plus, ReActII (Wales) and PACE (Scotland).
18. By contrast to the City Link case, the recent Phones4U administration provides an example where the current system delivered government support without any delays.
19. We have looked into the suggestion that government agencies contact individuals directly to address these problems. However in order to do so there would either need to be legislation enabling individual's personal data to be shared by the IP or employer, or permission would need to be sought from the individuals to share their personal data. Without either of these, the sharing of the relevant data would contravene data protection law.
20. Adopting either approach would not be an expedient/proportionate approach to the problem. Seeking worker permission would not be an efficient option, as it would still rely on the IP/employer writing out to individuals as they are the data owner of the individuals' details. Similarly, we do not feel a legislative

solution is justified given the limited nature of the problems experienced or likely justify the risk to privacy from acquiring the information.

21. On the issue of ensuring government departments share information effectively, RPS, BIS and DWP have a continual review process in place. This has already led to a number of improvements since the failure of City Link, including the establishment of a central contact in each organisation where it didn't previously exist.

**Recommendation 5:- Welcomes the fact that employees can claim the money they are owed if their employer goes into administration, it is a matter of great concern that, under current legislation, taxpayers are left to pick up the bill, allowing private investors to recover more of their investment**

### **Government response**

22. As the committee acknowledges, it is clearly important that employees are able to be paid the money they are owed following redundancy, and the payment by the National Insurance Fund (NIF), subject to statutory limits, achieves this. In addition, the NIF also guarantees a basic minimum payment to employees quickly, whereas without the Fund, they would otherwise have to wait a considerable time to get any payment in the insolvency proceedings. The Redundancy Payments Service aims to pay 80% of claims within 3 weeks of receipt and 92% within 6 weeks of receipt.
23. Where a payment has been made, the employees' rights in respect of those debts are subrogated to the Secretary of State for Business, Innovation and Skills. This means that they can be claimed as part of the insolvency process. The priority of the Secretary of State's claim depends on the priority accorded to the employee's claim in the insolvency so that part of the Secretary of State's claim may be preferential and part unsecured. To the extent of any such preferential rights, taxpayers therefore receive greater protection than general unsecured creditors.
24. The Government thinks that the current approach balances the interests of taxpayers with the interests of creditors, including small business creditors (such as suppliers to the insolvent company). It should be noted that investors in the company would not recover their investment at the expense of taxpayers, as shareholders only receive a payment from an insolvent company if creditors have been fully paid.

**Recommendation 6:- Welcome the review by the Secretary of State for Business, Innovation and Skills into how to tackle the problem of bogus self-employment. The incoming Government should bring forward proposals for tackling companies who use or encourage this practice. We reiterate the call in Zero hours contracts in Scotland: Interim Report for the Government to set out what steps it is taking to prevent workers from being pushed into bogus self-employment.**

### **Government response**

25. An individual's entitlement to employment protections is determined by their employment status. This is established by considering the reality of the working relationship and not by what an employer chooses to call someone who works for them. As such, many individuals in so called 'bogus self-employment' will have employment protections regardless of what their contracts say.
26. However, the Government recognises that an individual's employment status is not always easy to determine and is considering these issues further

**Recommendation 7:- We recommend that the Government updates the order of payments in the Insolvency Act 1986 to give preference to all of a company's workers, regardless of whether or not they are directly employed and that consideration is given as to how best to deal with employees and small sub-contractors and suppliers.**

#### **Government response**

27. Employees enjoy a preference for certain debts owed which includes up to £800 for any unpaid wages prior to the 4 months before the companies insolvency and any money owed for untaken holiday leave. Some pension contributions are also given preference. This raises their claim in an insolvency above those of floating charging holders and non-preferential unsecured creditors, raising the likelihood of a pay-out for any debt owed.
28. It is not clear in the recommendation whether the Committee is suggesting the inclusion of 'workers' as defined in s230(3) of the Employment Rights Act 1996 (who could be directly employed but not currently entitled to payments) or those who are genuinely self-employed. However, both would see the inclusion of individuals who are likely to have a very different working relationship with the company than employees. This potentially includes those who consider themselves to have a purely commercial relationship with the insolvent company.
29. Any change to the preference given to a particular group in an insolvency would have to be at the expense of other creditors. So, for example, if those who were self-employed were given preferential status of the same kind as employed workers, this would mean that less money would be available for other creditors such as consumers and suppliers (which may be small businesses). This could in turn mean that such creditors would be more reluctant to extend credit to a company in difficulty.
30. The Government does not consider a sufficient case has been made for changing the long-established order of priority in this respect.

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