2 'Escape' Clauses for employers unable to comply with s188 TULR(C)A 1992 obligations:

1. Special circumstances where not 'reasonably practicable' for employer to comply with consultation & information requirements.
    - Must take all steps towards compliance reasonably practicable in the circumstances.
2. Affected employees have been invited to elect reps & employees failed to do so within reasonable time, then employer must give all affected empolyees information set out in points 1 – 6 (*the consultation)*

    - *The Bakers' Union v Clarks of Hove Ltd*
        - Held there's three stages involved in deciding whether there's a defence:
            - (Onus on employer to prove)
        1. Were there special circumstances?
            - Something out of the ordinary or uncommon.
        2. Did they render compliance with statute not reasonably practicable?
        3. Did employer take all reasonable steps towards compliance as were reasonably praciticable in circumstances?

<u>Failure to Comply</u>

- Declaration:
    - If tribunal find complaint well-founded, will make declaration of such & may order a protective award covering the protected period.
    - This period is up to 90 days & begins on date which first dismissals took place or date of award, whichever earlier.
    - Award will be amount that tribunal decides just & equitable (s189 TULR(C)A)

Compensation can be provided for financial losses attributable to employer's non-payment.

- During protective period, employees covered will recieve a week's pay, subject to statutory maximum, for each week they would have been paid by employer.
- Protective awards resulting from claim by trade union can only be awarded in respect of employees for which trade union has been recognised.
- Where claim is made by an individual, tribunal cannot make award that benefits other employees
    - *Independent Insurance Ltd v Aspinall*
- Purpose of award
    - Ensure consultation takes place by providing sanction against employers who fail to do so properly.
    - Focus of award is not on compensating employees but on seriousness of employer's breach of statutory obligations.
    - **s12 ETA 1996** allows ETs to impose financial penalty on employers where there's been a breach of employment rights & ET thinks *'breach has one of more aggravating features'*.
    - Normally, penalty must not be less than £100 or more than £5,000 but regard must be had to employer's ability to pay & there's 50% discount if payment is made within 21 days.

<u>Calculating Redundancy Payment</u>

Statutory Redundancy Pay – calculated according to: