

Response of the Women and Equalities Select Committee to the Government consultation on extending redundancy protection for women and new parents

Introduction and summary

1. The Women and Equalities Select Committee ('the Committee') welcomes the opportunity to respond to this consultation.
2. We considered it most helpful to focus on the areas where the Committee has knowledge and expertise arising from our inquiry work, rather than answer each individual question. We have therefore responded to this consultation under the following headings:
 - a. 'redundancy protections – expectant and new mothers' (which broadly corresponds with questions 1-10 on the consultation document);
 - b. 'redundancy protections – other groups' (which relates to questions 11-16);
 - c. 'information provision and awareness of rights' (which relates to question 17 onwards);
 - d. 'additional observations' – we have included this section to address matters which are relevant to the consultation but have not been covered by the consultation questions or document.
3. In broad summary, we welcome and agree with the proposals to provide an additional period of protection against redundancy for new mothers and indeed other groups, and further welcome the increased information provision. However, the Committee is of the view that the proposals made in the consultation document need to go further and robustly address the issue of enforcement of existing and new rights.

Redundancy Protection – expectant and new mothers

4. As highlighted in the joint research conducted in 2015 by the Department for Business Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) into pregnancy and maternity discrimination, 11% of women surveyed reported being dismissed, made compulsorily redundant where others were not, or treated so badly that they felt they had to leave

the job. Despite the existing legal protections protecting women on maternity leave¹ (as well as parents taking shared parental leave and those on adoptive leave), the fact this protection ends upon return to work means – as we heard in evidence received during our 2016 inquiry - that an employee is at risk of redundancy on her first day back from maternity leave. Considering this, we strongly agree that further protection from redundancy for new and expectant mothers is required and agree with the Government that “*pregnant women and new mothers who had recently returned to work should have the same protection as that enjoyed by those on maternity leave.*” In our 2016 report, the Committee called for the Government to extend redundancy protection so that it applies during pregnancy and maternity leave and for six months afterwards. This extension was supported by a number of those who gave evidence to our 2016 inquiry as well as those who have given evidence to our current inquiry on Enforcing the Equality Act.²

- 5. We would therefore support an extension to the protections against redundancy during pregnancy and maternity leave, for a period of 6 months following their return to work. Given our 2016 inquiry report recommended that this change to be made within 2 years, a timeframe which has now passed, we hope the Government commits to implementing this reform as soon as possible.***

Redundancy Protection - other groups

6. The Government consultation also considers extending the redundancy protection to other groups who are taking extended periods of leave for similar purposes (shared parental leave, adoption leave and other forms of parental leave). Given that the redundancy protections for those on shared parental leave and adoption leave currently mirror the protection available to those on maternity leave, the Committee would strongly agree that any extension of the protection given to pregnant women or women on maternity leave, be similarly extended to those on shared parental and adoption leave.

¹ Maternity and Parental Leave Regulations 1999, regulation 10 and under the Equality Act 2010

² Maternity Action (EEA0178) paragraphs 12-15; Fawcett Society (EEA0260) paragraphs 6.9-6.10

Certainly, evidence³ given to our 2017-2018 Fathers in the Workplace inquiry suggested that there was a fatherhood penalty⁴ (in addition to the motherhood penalty). It may be that protection for those taking various forms of parental leave would ameliorate this perception somewhat. In terms of the proposal to extend protection to those on longer periods of parental leave, the Committee would also agree that any legislation should consider this. However, the nature of what forms of other parental leave would qualify for protection would need to be spelt out so that employers and employees have sufficient clarity.

7. ***We would strongly agree that any extension of protection also apply to those on adoption leave or shared parental leave. We agree in principle that there should also be extended protection for those on longer periods of parental leave but would welcome clarity on what forms of parental leave would qualify.***

Information provision and awareness of rights

8. The consultation has highlighted the work that has been done to update and consolidate the pregnancy and maternity discrimination pages across governmental and regulatory sites. The Committee welcomes this, as well as the fact that the Government has worked with relevant bodies to ensure that pregnant employees and new mothers have the material and understanding they need to challenge improper practice.
9. The Government has updated the MAT B1 form⁵ to include a link to advice and guidance on employment rights for pregnant women and new mothers. Whilst this is helpful, the Committee would reiterate that the MAT B1 is issued only after 20 weeks' gestation and most women and employers would need that information much sooner. In the Committee's 2016 report, we called for front line health professionals to receive training to ensure that they can provide basic advice about pregnancy and maternity-related employment rights, as well as signposting women to further information and advice. Such information could then be provided as soon as a pregnant

³ Women and Equalities Committee Oral evidence: Fathers and the Workplace, HC 943 Wednesday 22 March 2017

⁴ Whereby men move into lower paid and lower quality work because they have become fathers

⁵ The form which enables a pregnant woman to claim Statutory Maternity Pay from her employer or Maternity Allowance from Jobcentre Plus

woman sees her GP or attends her booking-in appointment with her midwife. The Committee is disappointed that the consultation contains no reference to such training.

10. The committee also notes that there is useful, easy-to-understand information on the gov.uk website in relation to maternity pay and leave. However, the section on pregnant employees' rights is more basic and directs individuals to the ACAS website if they need information on discrimination/employers' obligations, respectively. Nowhere on the relevant gov.uk page is it made clear that individuals with a discrimination claim may be entitled to legal aid for advice and representation. There is not even a link to the gov.uk legal aid pages. Nor does the page refer to other sources of advice/assistance for those who are concerned they may have been discriminated against (for example, the Equality Advisory Support Service, Citizens Advice or other organisations). Some, but not all, of this information is on the ACAS website.
11. Similarly, regarding employers' obligations, there is limited information and a link provided to the Health and Safety Executive's website. We think that much of the information on the Health and Safety Executive's website is technical, legalistic and unlikely to help most individuals, or indeed, employers who are unfamiliar with the legislation.
12. Aside from the quality of the information, the Committee also has some concern over whether individuals would know where to look to access such information. We would suggest that the question of how individuals are likely to access information, needs to be considered when evaluating how effective the steps the Government have taken have been. We would observe that the BIS/EHRC research found that only 8% of women surveyed sought advice from external organisations; with 2% seeking advice from ACAS and 1% looking on the internet. In our 2016 report, the Committee supported the EHRC's proposal of a single comprehensive website for employers and individuals and we would reiterate this suggestion. In addition, evidence received during our 2016 inquiry in a focus group with new mothers suggested a preference for receiving information about their rights and their employer's responsibilities at their first midwife appointment or even from their employer when they told them about the pregnancy (even if it was just a web address). They also suggested advertising during television commercial breaks.

13. ***In summary we welcome the existing steps taken by the Government, but in line with evidence we have received, we invite the Government to go further in setting up (in consultation with relevant stakeholders) a single comprehensive website for employers and individuals. It is vital that the information be full but easily accessible and easy to understand. In addition, we ask the Government to work with relevant stakeholders including the General Medical Council and the Nursing and Midwifery Council, to ensure frontline health professionals can provide basic advice to women and signpost them to further information and resources. This would also help to ensure that individuals who do not have access to the internet can obtain the relevant information.***

Additional observations

Enforcement (reporting)

14. The consultation proposes some useful measures to tackle discrimination against expectant and new mothers and indeed parents. However, as we noted in our 2016 report it is important that there be a ‘carrot and stick approach’ - underpinning the awareness-raising approach with implementation and enforcement - to ensure the employers with a poor record on this form of discrimination are being reached and identified.⁶ During that inquiry we found there was considerable support for the idea that employers should record and publish retention rates for employees and particularly monitoring how many employees left whilst on, or within twelve months of returning from, maternity or shared parental leave.⁷ This proposal has also emerged in evidence during our current inquiry into the use of non-disclosure agreements in discrimination cases, with a general consensus amongst witnesses giving oral evidence that this was a positive and necessary development.⁸
15. ***We repeat the recommendation made in our 2016 report, that large companies should be required to report on retention rates for***

⁶ Pregnancy and Maternity Discrimination report (HC 90), paragraph 107

⁷ Above, paragraphs 108-110

⁸ Maternity Action and YESS (NDA0005), paragraphs 23-27; Oral evidence: The use of non-disclosure agreements in discrimination cases, HC 1720, Wednesday 19 December 2018, Q5, Q41, Q49, Q51; Wednesday 23 January 2019, Q163; Wednesday 13 February 2019 Q217, Q224, Q297; Wednesday 6 March 2019 Q347;

women 12 months after returning from maternity leave and 12 months after lodging an application for flexible working.

Enforcement (general)

16. In the consultation, the Government references the Good Work Plan which seeks to implement the recommendations of the Taylor Review, including the proposals to create a new, single labour market enforcement agency. The Committee would like some clarity on this; particularly the question of how this agency will ensure that maternity and pregnancy rights are being protected. In the Committee's ongoing inquiry on Enforcing the Equality Act, we heard oral evidence from Sir David Metcalf, director of Labour Market Enforcement. When asked about the Public Sector Equality Duty, he stated was not familiar with the duty.⁹ Nor could he offer any information or insight into how this new enforcement agency would tackle maternity (or other) discrimination.¹⁰ This was of concern to the Committee.
17. ***We would welcome further detail into the scope of the new enforcement agency, as well as confirmation that this agency will be tackling maternity and pregnancy discrimination as part of their core function.***

Employment Tribunal Time Limit

18. The Committee welcomes the Government's commitment at paragraph 48 of the consultation to undertaking a consultation on changing employment tribunal time limits for claims relating to discrimination, harassment and victimisation. However there is no question in the consultation document around time limits and there is no information about when the (future) consultation will open, or which government department will be undertaking the consultation. The Department for Business, Energy and Industrial Strategy confirmed on 25 April 2019 that they are not currently consulting on this issue.
19. During an oral evidence session for this Committee's inquiry on the use of non-disclosure agreements on 3 April 2019 Lucy Frazer QC MP said

⁹ Q292

¹⁰ Q296 - 304

that there were two consultations on time limits; one by the Law Commission and one by the Government Equalities Office.¹¹ We note that the Law Commission's consultation (on employment law hearing structures) closed on 31 January 2019 and is currently in policy development stage. We are awaiting confirmation from the Government Equalities Office in relation to any consultation they will be undertaking.

20. The Government's failure to address this important issue within the scope of the current consultation is a missed opportunity. This, and the lack of clarity over when any consultation will take place, is deeply disappointing. The Committee are clear that the Government can and should treat this issue as a matter of significant priority.

21. The Committee's 2016 report recommended that the three-month time limit for bringing a claim in pregnancy and maternity discrimination cases be extended to six months. The Government suggested there was insufficient evidence of the need to increase the time limit and pointed to the Tribunal's discretion to extend the time limits in individual cases.

22. The Government seeks to rely on HM Courts and Tribunal Service (HMCTS) data collection on 'out of time' pregnancy/discrimination claims to the employment tribunal. This showed that in the period from January to June 2018, 25 cases were accepted for late submission, and none were rejected. We would note firstly that this was quite a short time period. Secondly, the Government has failed to consider those women for whom the time limit presented, or was perceived as, a barrier to even applying. There is clear evidence from the EHRC, from our 2016 inquiry and from NGOs and campaign organisations such as Maternity Action¹² and Pregnant then Screwed¹³ that women see the time limit as a considerable barrier to justice, and evidence which demonstrates that 14% of women who have encountered pregnancy or maternity discrimination did not raise a claim due to the time limit.¹⁴ In addition, there appears to be significant public and

¹¹ Oral evidence: Use of non-disclosure agreements in discrimination cases, HC 1720, Wednesday 3 April 2019, Q689

¹² Maternity Action (MPD0024), paragraphs 28-30

¹³ Pregnant Then Screwed (MPD0017) and (MPD0030)

¹⁴ Research conducted by Gorvins Solicitors with YouGov -

<http://pregnantthenscrewed.com/extending-the-3-month-time-limit/> accessed on 11/4/19

cross-parliamentary support for increasing the time limit from three to six months.¹⁵

23. Whilst the Committee recognises that there may now be increased public awareness of tribunals' discretionary power to extend the time limit, we still believe that extending the time limit is necessary and urgently required. Maintaining the status quo means that women must go through the laborious and time intensive process of preparing a claim and then hoping that the Tribunal will exercise its discretion favourably. This creates an unacceptable level of uncertainty and stress for women who may have an otherwise valid claim.

24. This significant degree of uncertainty and its effect on potential claimants was reiterated to us by Elizabeth Prochaska, Legal Director of the Equality and Human Rights Commission, on oral evidence for our Sexual Harassment in the Workplace inquiry:

"...we as an organisation and you as parliamentarians cannot dictate a judge's discretion. That will always depend on the facts of the case so there is always uncertainty about what factors will be taken into account in discretion.... as a legal advisor giving someone advice on whether or not to bring a harassment claim—or indeed a pregnancy or maternity discrimination claim—you would have to advise your client that if they had missed the three-month deadline there was a significant risk that their claim would be struck out. That is yet another obstacle to people deciding to take the claim. No competent legal advisor would say, "I am confident the discretion will be exercised in your favour," because you can never be confident about the exercise of a judicial discretion."¹⁶

25. ***We would recommend that any consultation process into extending the time limit for pregnancy/maternity discrimination claims be put in motion swiftly and take in account the already widespread***

¹⁵ Pregnant Then Screwed's petition to extend this time limit has been signed by 56,192 people - <https://www.change.org/p/greg-clark-mp-give-new-and-expectant-mothers-six-months-to-pursue-discrimination-claims> – accessed on 11.4.19. They also worked with Caroline Lucas MP to launch an Early Day Motion on this issue which has been signed by 103 MPs from all political parties - <https://edm.parliament.uk/early-day-motion/50500/pregnancy-discrimination-and-employment-tribunal-time-limit> accessed on 11.4.19

¹⁶ Oral Evidence: Sexual harassment in the workplace, HC 725, Wednesday 16 May 2018, Q311

support for increasing the time limit for claims from three months to six months.