



# Government response to the House of Commons Women and Equalities Committee report on pregnancy and maternity discrimination

Presented to Parliament by the  
Secretary of State for Business,  
Energy and Industrial Strategy by  
Command of Her Majesty

January 2017

Cm 9401



© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication available from [www.gov.uk/beis](http://www.gov.uk/beis)

Contact us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

Email: [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)

Print ISBN 9781474139670  
Web ISBN 9781474139687

ID 19121601 58074 1/17

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

# Contents

<b>Ministerial Foreword</b> .....	<b>3</b>
Margot James MP: Minister for small business, consumers and corporate responsibility...	3
<b>Introduction</b> .....	<b>5</b>
<b>Response to recommendations</b> .....	<b>6</b>
Are greater protections required? .....	6
Risk assessments .....	6
Ensuring that risks are dealt with.....	6
Are additional rights and protections needed for particular workers? .....	8
Redundancy and job loss .....	8
The EU context.....	9
Improving access to information and encouraging a change in attitudes .....	10
Getting the right information to women sooner .....	10
Practical support for SMEs .....	12
The case for a single website .....	13
The line manager effect.....	13
Leading the way forward .....	14
Encouraging greater compliance among employers .....	15
Improving access to justice.....	16
Tribunal time limits .....	16
EHRC recommendations and Government response.....	17
Enforcement and monitoring.....	19
Enforcement .....	19
Monitoring.....	20



# Ministerial Foreword



## Margot James MP: Minister for small business, consumers and corporate responsibility

I would like to thank the Women and Equalities Select Committee for their thorough review into this issue and the recommendations they have made to Government. We have carefully considered each of them and provide a response in this report.

The fact that women face discrimination in the workplace as a result of pregnancy or for taking maternity leave is wholly unacceptable and unlawful. It is shocking that some employers still behave in this way and alienate a key group of their workforce. It makes no business sense. The Government is committed to taking action to tackle this problem.

The research that the Coalition Government commissioned jointly with the Equality and Human Rights Commission (EHRC) shone a light on some of the treatment that women face every day. The Government responded to the recommendations made by the EHRC and is making good progress towards implementing those commitments. These included improving access to information and advice to ensure that women and employers understand their rights and obligations; taking coordinated action with the EHRC and businesses through the Working Forward initiative; and the Health and Safety Executive reviewing and updating its guidance for employers and employees. That work will continue as we restate our commitment to tackling pregnancy and maternity-related discrimination today.

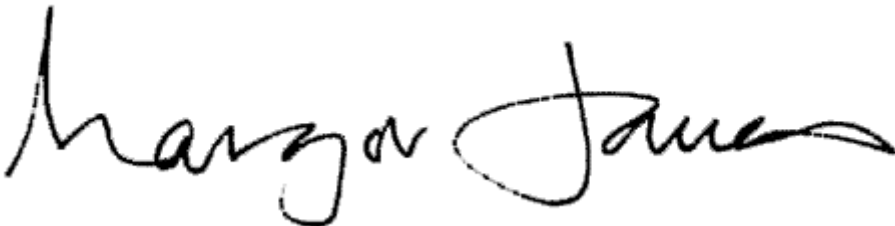
We are determined to build an economy that works for everyone. This includes ensuring that pregnant women and new mothers are supported in work, where they have made that choice, and that they are treated fairly.

The legal framework in place to protect pregnant women and new mothers from discrimination is strong. If women are discriminated against because they are pregnant or take time away to care for their baby, they have a legal means of redress. The Committee's report does suggest areas where we could further strengthen existing protections and we make a commitment in this response to review the position in relation to redundancy. As well as ensuring the legal framework is right, we need employers to know their obligations and women to understand their rights. The Government is working closely with the EHRC and business on the *Working Forward* campaign, designed to make British workplaces the best they can be for pregnant women and new mothers.

Treating pregnant women and working mothers fairly is not only good for families and society as a whole: it makes good business sense and is important for economic growth. Attracting, recruiting and retaining working mothers contributes to the success of any business and should be a priority for all employers.

**Margot James**

Parliamentary Under-Secretary of State for Small Business, Consumers and Corporate Responsibility

A handwritten signature in black ink that reads "Margot James". The signature is written in a cursive, flowing style with a large initial 'M' and 'J'.

# Introduction

This is the Government's response to the Women and Equalities Select Committee's first report of the 2016/17 session on pregnancy and maternity discrimination, which was published on 31 August 2016.

The Government is grateful for the Committee's work on this important issue and the 21 recommendations made, which build on the recommendations made by the Equality and Human Rights Commission's report in March 2016. The Government takes this issue very seriously and is committed to addressing this form of discrimination. The Government's response to each of the recommendations is set out below.

# Response to recommendations

## Are greater protections required?

### Risk assessments

**Recommendation 1: Employers should be required to undertake an individual risk assessment when they are informed that a woman who works for them is pregnant, has given birth in the past six months or is breastfeeding. The Health and Safety Executive should include this requirement in its guidance to employers by the end of 2016 and should ensure that it is properly enforced. It should also support employers in meeting this requirement by ensuring that model risk assessments for particular sectors and occupations are available to employers by the end of 2016.**

### Ensuring that risks are dealt with

**Recommendation 2: It is imperative that new and expectant mothers who are concerned that their health and/or the health of their baby is being put at risk by their work have an easily accessible, formal mechanism to compel their employer to deal with such risks appropriately. There should also be a formal mechanism by which an employee can ask a doctor or midwife to confirm that specific risks at work need to be dealt with. The Government should consider how best to provide those mechanisms and commit to implementing them by the end of 2017.**

### Government response

The Government agrees with the Committee that employers must safeguard the health of women who are pregnant, have recently given birth, or are breastfeeding.

The Health and Safety Executive (HSE) is the national regulator for work-related health and safety in Great Britain. The Government and HSE are committed to ensuring that the workplace is a safe environment for pregnant women and in March 2016 HSE accepted recommendations on health and safety, which were made by the Equality and Human Rights Commission (EHRC)<sup>1</sup>, and strengthened its guidance as a result.

The law in relation to workplace risk assessments and the action an employer must take to control risks they identify, including risks that are specific to pregnant women and women who have recently given birth, is clear. It is a legal requirement under Regulation 3 of the Management of Health and Safety at Work Regulations 1999 (MHSWR), for every employer and self-employed person to assess the health and safety risks arising out of their work, and HSE and Local Authorities will hold employers to account who fail to meet their responsibilities. This includes prosecuting

---

<sup>1</sup> EHRC:(2016): *Pregnancy and Maternity-Related Discrimination in the Workplace: Recommendations for Change*, Equality and Human Rights Commission. Available: <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/our-recommendations-tackle-pregnancy-and-maternity>



employers who fail to comply with the law having been required to do so. In the period 2006-2016, HSE inspectors issued 3,715 enforcement notices and conducted 296 prosecutions under Regulation 3 of MHSWR.

The research commissioned by EHRC and the former Department for Business, Innovation and Skills (now Department for Business, Energy and Industrial Strategy) showed that some difficulties arise when there is poor communication between an employer and employee.<sup>2</sup> The EHRC recommended that HSE review their guidance to ensure that it emphasises the importance of ongoing and open communication between employers and pregnant women and new mothers.<sup>3</sup> Driving improvements in this area will ensure that where a real risk is identified, both parties can work together to decide on the most effective action to take. Equally, where an employee may be worried about a risk, this will help to reassure them that their work environment is safe. In both cases, empowering pregnant women and new mothers to have an open and constructive dialogue with their employers is the best way to ensure that health risks and considerations that are particular to individual women are identified and addressed.

Following this, HSE has completed a review of its guidance for employers and workers, including pregnant women and new mothers. They are currently promoting this guidance (<http://www.hse.gov.uk/pubns/indg373.htm>), targeting the worst performing sectors.

Furthermore, pregnancy is a cross-cutting issue across sectors and occupations and HSE already provides guidance and detailed advice for all employers. This includes *The health and safety toolbox: How to control risks at work* <http://www.hse.gov.uk/toolbox/index.htm> which aims to help employers understand their responsibility in complying with the law. HSE therefore does not believe that model risk assessments by sector and occupation are necessary.

HSE has established a clear route through which employees, including pregnant women and new mothers, can report concerns if they believe health and safety law is being broken or minimum standards are being ignored within the workplace. Since January 2016, HSE has dealt with 233 concerns and requests for advice. Concerns are assessed and if appropriate passed to an inspector for a site visit to investigate further.

In addition to the work that is being undertaken by HSE, the Government is working with the EHRC and the Advisory, Conciliation and Arbitration Service (Acas) to identify and plug any gaps in the provision of information to pregnant women and new mothers and their employers.

---

<sup>2</sup> Large, A. (2016) *Pregnancy and Maternity-Related Discrimination and Disadvantage, Experiences of Mothers*, Department for Business, Innovation and Skills and Equality and Human Rights Commission. Available:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

<sup>3</sup> EHRC (2016): *Pregnancy and Maternity-Related Discrimination in the Workplace: Recommendations for Change*, Equality and Human Rights Commission. Available:

<https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/our-recommendations-tackle-pregnancy-and-maternity>

Given the recent changes to the HSE guidance, we do not believe that these new set of recommendations would bring about the improvement required, as the law is already sufficient in this area. We will keep the situation under review and focus instead on raising awareness and promoting guidance as a more effective way of bringing about the changes needed.

### **Are additional rights and protections needed for particular workers?**

**Recommendation 3: The right to paid time off for antenatal appointments should be extended to workers within the next year. This right should be available after a short qualifying period.**

**Recommendation 4: The Government should review the pregnancy and maternity-related rights available to workers and legislate to give greater parity between workers and employees in this regard. It should do this within the next two years.**

### ***Government response***

The Government understands that the Committee has made these recommendations in order to ensure that temporary and agency staff and those on zero-hours contracts, have the same pregnancy and maternity rights as employees, including the right to time off to attend ante-natal appointments.

On the 1st October 2016, the Prime Minister announced that a review of employment practices in the modern economy would take place. Matthew Taylor, Chief Executive of the Royal Society of Arts, is leading this wide-ranging review. It will consider ways to ensure that the regulatory framework surrounding employment and the support we provide to businesses and workers is keeping pace with changes in the labour market and the economy. He will look at how we can maintain flexibility while also supporting job security and workplace rights and whether new employment practices can be better used as an opportunity for underrepresented groups. We will ensure that as part of this review the employment rights specific to pregnant women and new mothers are considered.

### **Redundancy and job loss**

**Recommendation 5: We are persuaded that additional protection from redundancy for new and expectant mothers is required. The Government should implement a system similar to that used in Germany under which such women can be made redundant only in specified circumstances. This protection should apply throughout pregnancy and maternity leave and for six months afterwards. The Government should implement this change within the next two years.**

### ***Government response***

We understand the Committee's intention is to protect pregnant women and new mothers from unfair discrimination and we share that aim. That is why women on maternity leave have an entitlement to return to the same job if they have been off work for 26 weeks or less, and they have priority over other employees who are at

risk of redundancy (as do employees on adoption leave and shared parental leave). The protections that exist are designed to ensure that employers take account of the interests of employees who may be out of the workplace on family-related leave for some time (up to 52 weeks in the case of maternity leave and adoption leave and up to 50 weeks in the case of shared parental leave).

The independent research into pregnancy and maternity-related discrimination that we commissioned with EHRC<sup>4</sup> suggests that 6% of all mothers were made redundant and 2% of all mothers were made redundant on their return from maternity leave.<sup>5</sup> This includes voluntary redundancies.<sup>6</sup> The research also reports that around one in nine mothers (11%) felt forced to leave their jobs. This included mothers who said they were dismissed (1%), made redundant (where others in the workplace were not) (1%) or treated so badly that they felt forced to leave work (9%).

This is clearly unacceptable. Government will consider further and bring forward proposals to ensure that the protections in place for those who are pregnant or returning from maternity leave are sufficient.

### The EU context

**Recommendation 6: Given the uncertainty about what a UK exit will mean, a statement of the Government's intention to ensure that those rights and protections are not eroded would provide welcome reassurance during this period of transition.**

### Government response

This Government is clear that withdrawal from the EU will not lead to a diminution of employment rights. This Government will not roll back on the rights that British people are entitled to in the workplace, which are currently granted by EU law. This includes protecting the rights of pregnant women and new mothers. Maternity Leave and Pay are important rights where the UK has set its own high standards. The UK's maternity offer is amongst the most generous in Europe and goes significantly beyond the EU minimum requirement of 14 weeks of paid maternity leave. The UK offers up to 52 weeks of Maternity Leave and up to 39 weeks of Statutory Maternity Pay or Maternity Allowance (subject to eligibility). Before the Pregnant Workers Directive was implemented, the UK already offered more than the EU minimum and has gone significantly further since then by extending maternity rights further and introducing Shared Parental Leave and Pay.

---

<sup>4</sup> Large, A. (2016) *Pregnancy and Maternity-Related Discrimination and Disadvantage, Experiences of Mothers*, Department for Business, Innovation and Skills and Equality and Human Rights Commission, (pp. 122). Available:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Whilst we do not know why these women applied for voluntary redundancy it is likely that some mothers who were planning to leave work to focus on childcare accepted a redundancy package rather than resigning.

## Improving access to information and encouraging a change in attitudes

### Getting the right information to women sooner

**Recommendation 7: Women should be provided with a comprehensive handout, such as a booklet or leaflet, containing basic information about their pregnancy and maternity-related employment rights early in their pregnancy—ideally, at their booking-in appointment. This handout should include a tear-off sheet or card for women to give to their employers containing basic information about employers’ responsibilities to new and expectant mothers. Both the employer and the employee information should include signposting, such as web addresses, telephone numbers and QR codes, to further, more comprehensive, sources of information and advice. The Government should ensure that this system is implemented within the next year.**

### Government response

The Government agrees with the Select Committee that pregnant women and new mothers should be provided with basic information about their pregnancy and maternity-related employment rights early in their pregnancy, in line with National Institute for Health and Care Excellence (NICE) guidance on antenatal care. However, in the digital age it is important that we provide information in a format that is helpful to most people. **Better Births**, the report of the National Maternity Review (2016), and research commissioned by the Department of Health confirms that most women and their families now rely on digital sources of information.

**Better Births:** (<https://www.england.nhs.uk/wp-content/uploads/2016/02/national-maternity-review-report.pdf>)

It is easier to ensure information is accurate and up-to-date when it is provided online, rather than in hard copy. Search tools help users to identify and tailor information that is relevant to them at a particular point in time. We are ensuring we provide pregnant women and new mothers with all the information they need in the following ways:

Through the **Maternity Transformation Programme**, launched in July 2016, NHS England is working with partner organisations to implement the **Better Births** recommendation to develop a digital maternity tool that will bring together the best digital services and online information from the NHS and other organisations including maternity-related employment rights. The tool will use a combination of mediums such as video, email and social media to support accessibility needs and broaden reach. Pregnant women and new mothers will be able to access and print out information to give to their employers on maternity-related employment rights and employers’ obligations.

### **Maternity Transformation Programme:**

<https://www.england.nhs.uk/ourwork/futurenhs/mat-transformation/>)

The **Start4life Information Service for Parents** is a digital service which enables parents-to-be and new parents to sign up to receive regular free emails, videos and

SMS messages offering high quality advice and information to both mothers and fathers based on the stage of pregnancy and the age of the child.

The emails and text messages include content from NHS Choices and other trusted sources, along with videos showing midwives demonstrating practical advice and parents discussing their own experiences. The service also signposts parents to other quality assured information about parenting, relationship support and work and benefits advice.

The Government recognises the need to provide pregnant women and new mothers with high-quality information, so we are reviewing the various types of information that pregnant women and new mothers need and identifying sources of this information. We are exploring the scope for being more joined-up – both across Government and with external organisations who provide valuable support and advice to pregnant women, new mothers and employers.

***Start4life Information Service for Parents:***

(<https://www.nhs.uk/start4life/signups/new>)

**Recommendation 8: Front line health professionals should receive training and support to ensure that they are able to provide basic advice about pregnancy and maternity-related employment rights and signposting to further sources of information and advice. The Government should ensure that such training and support begins within the next year.**

***Government response***

We are confident that undergraduate education and training for midwives already addresses the provision of basic advice about pregnancy and maternity-related employment rights and signposting to sources of more detailed information and advice.

In April 2016, the Royal College of Midwives produced a guide for midwives ***Pregnancy and Maternity Rights at Work*** (<https://www.rcm.org.uk/>) as a resource for midwives on women's maternity-related employment rights and where to access further help if they are experiencing pregnancy discrimination at work.

The Government is working with the EHRC, Acas and organisations representing employers and employees to understand better the needs of users of maternity-related employment information, so that we can ensure that they are able to access accurate, up-to-date information quickly and easily. This will complement the advice that front-line healthcare professionals already provide on maternity related employment rights as well as enable them to focus on the health of the mother and child.

### **Practical support for SMEs**

**Recommendation 9: The Government should ensure that the actions it takes forward to improve employer access to information include practical support aimed specifically at SMEs. Such support could include: templates and guidance to assist employers in meeting their obligations to new and expectant mothers; information about good recruitment and equality practices; and the provision of information alongside PAYE and VAT information for new traders and businesses. This kind of support should be made available within the next year.**

### *Government response*

The Government agrees with the need to improve employer access to information, and has already accepted the EHRC's recommendation to improve access to information and advice. As part of this work, we will ensure that the information and guidance is relevant and accessible to SMEs. However, we need to strike the right balance so that we do not overwhelm them with information that they may not need at the point of registering for PAYE and VAT.

Acas already provide comprehensive advice and guidance for both employers and employees on pregnancy and maternity-related issues. They also provide training for managers on various aspects of managing employees who are pregnant or on maternity leave. We are exploring with Acas the feasibility and desirability of extending the guidance that they already provide to include, for example, sample letters and templates aimed specifically at employers who do not have a dedicated HR team. If we conclude that there is a need for templates and sample letters, Acas will work with SMEs and organisations that provide advice to employers on maternity-related issues to better understand the needs of SMEs.

In addition to this, Acas and the EHRC have developed an online e-learning tool that will provide valuable support for SMEs. Further information on this is covered under recommendation 11.

Furthermore, employers administer family related statutory pay, including statutory maternity pay on behalf of Government and 'reclaim' statutory payments that they have made to their employees through Her Majesty's Revenue and Customs (HMRC). In terms of ensuring employers meet their obligations and make statutory payments, HMRC provides a range of guidance and tools, including Statutory Payment calculators. HMRC also provide comprehensive guidance on the different statutory payments and are able to deal with more complicated technical queries – either on-line or through their call centres. HMRC seek feedback on the guidance and tools which they provide from surveys, Employer Helplines and employer consultation groups, including those representing SMEs and make improvements in response.

### **The case for a single website**

**Recommendation 10: The Government should give further consideration to the feasibility of a single website.**

#### *Government response*

We agree that both employers and employees need to know where to look for information and that this information should be consistent, clear and accessible. As indicated in the response to recommendations made by the EHRC, we would need to make sure a 'single website' effectively catered for the needs of a range of different users without diluting the quality of the information contained. We are exploring what is possible with the various providers of information to pregnant women and new mothers and to their employers, ensuring that there is better join-up and signposting to high quality sources of information as a minimum.

### **The line manager effect**

**Recommendation 11: The Government should outline in detail in their response to this Report the action being taking to ensure wider uptake of good quality training for line managers. This should include the issues to be covered in any ACAS-designed training and any targets for take-up of training.**

#### *Government response*

We are working with the EHRC and Acas to raise awareness of guidance on recruiting and managing pregnant women and maternity-related issues and maternity-related absence in the workplace.

Since July 2016, Acas has launched a new e-learning training package on Pregnancy and Maternity at work, which was developed in partnership with the EHRC and is aimed at line managers and their staff. It is intended to help employers and individuals to better understand their rights and responsibilities. This is a free tool, which is available on the Acas website. The Acas website has around 10 million visits a year and we expect this tool to have significant reach.

Acas already provides training for employers on various maternity-related issues, including the rights and responsibilities of employers and employees who are pregnant or on maternity leave. This training is advertised through the Acas website, and we will consider how best to signpost to this training from relevant online information sources.

In relation to issues that Acas should cover in their training, Acas' experience is that a proportion of their customers who are employers take advantage of training having encountered an issue that they have not come across before. Acas will therefore focus their efforts on drawing employers' attention to this type of training (subject to issues around open competition).

## Leading the way forward

**Recommendation 12: The Government should publish, alongside its response to this Report, a strong, specific communications plan for the awareness-raising and attitude-changing work it has agreed to undertake in response to the EHRC's recommendations. The plan should include clear timelines and should set out where accountability for implementation will lie.**

### *Government response*

We agree with the Committee and we are already working closely with the EHRC, Acas and a range of partners to improve the quality of information that is available to pregnant women and new mothers and their employers; consolidate and raise awareness of this information; and promote best practice. The breadth of work currently underway to deliver in this area consists of:

- EHRC's Working Forward campaign – which draws together employers from a variety of backgrounds to champion the business case for attracting, developing and retaining female talent and supporting new and expectant mothers in the workplace by sharing best practice. This has been proactively supported by leading employer representative bodies including CBI, CMI, IoD, CIPD, FSB and Chambers of Commerce and has received widespread positive media coverage across national, trade, regional and social media. More than 100 firms- representing workforce of over 400,000- have signed up to join Working Forward following the launch of this initiative. EHRC is funding this campaign from its Government grant, and Government is supporting the initiative in a number of ways. This include helping to recruit companies who will act as advocates; promoting the campaign through Government channels and GCS local at a regional level; playing an active role on the programme steering group; and ensuring the efficient delivery of the campaign.
- EHRC's Power to the Bump campaign – an online campaign to help young expectant and new mothers to understand and assert their workplace rights. The Power to the Bump campaign has been covered by national, local and social media. To date the launch video on EHRC's website has had around 25,000 views and there have been 93,000 views of a shorter version of the video on Facebook. Again, EHRC has funded this campaign from its Government grant.
- The development of an e-learning training package referred to in the response to recommendation 11.
- Exploring options for better joining up across Government and with external information providers aimed at pregnant women and new mothers and their employers (see response to recommendation 10).
- Developing a digital tool, which will enable pregnant women to access information that is relevant to their own and their unborn child's health at various stages in their pregnancy.



### **Ensuring compliance among employers**

**Recommendation 13: The communications campaign [being taken forward by the Government in partnership with the EHRC and businesses] needs to be underpinned by a strategy to provide practical support as well as clear incentives and disincentives to encourage greater compliance by employers. The Government should set out in its response to this Report the additional measures it will take to encourage compliance. In doing so, it should place particular emphasis on providing support and incentives for SMEs. We urge the Government to consider:**

- a) Paying a higher rate of Small Employers' Relief when the relevant employee is still in post 12 months after returning from maternity leave;**
- b) Automatic payment of Small Employers' Relief;**
- c) Providing financial incentives for employers to take on part-time workers and to facilitate flexible working, and linking these to the retention of women 12 months after returning from maternity leave;**
- d) Requiring large companies to report on retention rates for women 12 months after returning from maternity leave and 12 months after lodging of an application for flexible working.**

**We further encourage the Government to link any reporting on retention rates to its work to reduce the Gender Pay Gap.**

### **Government response**

- a) We agree that employers should fully utilise their whole workforce and ensure that their employees are motivated to remain with them through providing a good working environment. We do not believe that monetary compensation for retaining women who have come back from maternity leave will support this intention, nor do we believe that penalising employers for women leaving within 12 months of returning from maternity leave is reasonable, as many mothers will have reasons for leaving their employment that are not maternity related.
- b) Small employers may recover 100% of the Statutory Maternity Pay (SMP) paid out plus an additional amount. The additional amount (currently 3%) is intended to compensate small employers, whose cash flows are more sensitive, for the employers' share of the National Insurance Contributions they pay on SMP. Again we do not believe that monetary compensation for retaining women who have returned from maternity leave will support compliance.,

HMRC communicate employer liabilities and the implications of non-compliance through GOV.UK, Employer Bulletins, Agent Updates, and employer forums. They provide assistance in calculating liabilities on GOV.UK and through Basic PAYE Tools. HMRC are considering exploring possible measures to help reduce employer burdens including those relating to Statutory Payment recovery.

- c) The Government supports employers who recognise the benefits of a workforce that works flexibly and we will consider whether there is a need for further action to incentivise employers to take on part-time workers or to consider flexible working when we review the right to request flexible working in 2019. In the meantime,

Government is looking at ways to address the gender pay gap and part-time penalty and will consider flexible working within this.

- d) We agree that reporting on retention rates would help stress the importance the Government places on fairness in the workplace and support the messages of the Gender Pay Gap Reporting Regulations and greater company transparency. While requiring large companies to report on retention rates would give an indication of how many women stayed in a company, it would not provide information to assure us that companies are tackling pregnancy discrimination and bias, nor would it tell us how pregnant women and new mothers were being treated; whether they have been denied training or promotion opportunities, for example. As the evidence suggests that not all mothers will leave their organisation if treated unfairly, this proposal would not provide a full picture of the extent of discrimination and disadvantage within workplaces.

We believe that continuing to improve the guidance available to employers and mothers, alongside the introduction of the Gender Pay Gap Reporting Regulations and our ongoing work, in partnership with the EHRC and others, to tackle stereotypes that limit potential, provides an effective way to make sure mothers feel supported in the workplace.

## Improving access to justice

### Tribunal time limits

**Recommendation 14: There is clear evidence of a need to extend the limit for new and expectant mothers. We therefore endorse the Justice Committee's recommendation that the Government should review the three-month time limit for bringing a claim in maternity and pregnancy discrimination cases. We suggest that six months would be a more suitable time limit.**

### *Government response*

The Government believes it is vital that pregnant women and new mothers have access to justice where they have suffered discrimination. However, the evidence from the research we jointly commissioned with the EHRC did not suggest that the three-month time limit for bringing a claim to an Employment Tribunal was a barrier. That research found that only 4% of mothers had considered bringing a claim but had not done so and the research did not find evidence that this decision was related to the three-month time limit.<sup>7</sup>

Nonetheless, the Government notes that the Select Committee heard from several witnesses who raised concerns about the time-limit. Tribunals already have a broad power to extend the time in which a case can be heard, where it is just and equitable

---

<sup>7</sup> Large, A. (2016) *Pregnancy and Maternity-Related Discrimination and Disadvantage, Experiences of Mothers*, Department for Business, Innovation and Skills and Equality and Human Rights Commission. Available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509501/BIS-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers.pdf)

to do so. However, cases need to be considered on an individual basis and claimants need to demonstrate to the tribunal why an extension is necessary. The Government will consider what further guidance can be provided to parties about the existing flexibilities, in order to clarify the position and respond to the concerns raised to the committee, and will keep this under review.

**Recommendation 15: We join the Justice Committee in calling for a substantial reduction in tribunal fees for discrimination cases. The Government should publish the findings from its review of the impact of the introduction of tribunal fees as a matter of urgency and should set out in its response to this Report the action it will take to reverse the adverse effect of tribunal fees.**

#### *Government response*

The Government will publish the conclusions of its review into Employment Tribunal fees shortly.

In the meantime, the Government is investing significant resources to transform the justice system to help people to navigate their way to the best resolution for them; reduce the complexity in language, process and systems; minimise the steps that people need to go through to obtain justice; and improve access to justice. The Department for Business, Energy and Industrial Strategy and the Ministry of Justice jointly launched a consultation on reforming the Employment Tribunal system, which closed on 20<sup>th</sup> January 2017.

The programme of reform to the courts and tribunal system will make better use of modern technology to create a system that is able to respond promptly, effectively and proportionately to the needs of its different users. The Government will respond to the consultation in due course.

#### **EHRC recommendations and Government response**

**Recommendation 16: The Government must set out in its response whether it has conducted this review (*into the accessibility of employment advice services*), and if so what its conclusions were. If it has not yet conducted this review, it should now do so and should publish its findings by the end of 2016.**

**Recommendation 17: The Government should work with the main organisations providing free, good-quality, one-to-one advice to women on pregnancy and maternity discrimination to monitor the uptake of and estimated unmet need for such advice. It should further commit to assessing, in a year's time, whether additional resources for one-to-one advice are required, and to making such resources available.**

#### *Government response*

We are reviewing the existing guidance and accessibility of employment advice services to ensure that pregnant women and women on or returning from maternity-

related leave can access the information and advice services they need to make informed decisions and challenge bad practice.

The Government will work with organisations that provide information and advice to pregnant women and new mothers, e.g. Maternity Action and Mumsnet, to understand better the types of questions and issues that pregnant women and new mothers raise and how we can ensure that they receive the information or advice that they need at the time that they need it. This work should also enable us to identify pressures and opportunities relating to the provision of good quality advice.

The provision of one-to-one advice is resource intensive and expensive. The more we can meet pregnant women and new mothers' needs through good quality existing information sources, the more one-to-one advice can focus on the needs of the women who need advice tailored to their individual circumstances. Government already supports both the Acas helpline and the Equality Advisory and Support Service (EASS) to meet these needs. In light of the Committee's recommendation, Government will work with Acas, EASS and other providers of one-to-one advice to assess the current and likely future need for these services, in the context of improvements to online information for pregnant women and new mothers.

## Enforcement and monitoring

### Enforcement

**Recommendation 18: The Government must take action both to relieve the burden of enforcement on women and to encourage more enforcement action by women. It must set out in detail in its response to this Report the measures it will take to ensure that pregnancy and maternity discrimination law is properly enforced. It should consider:**

- a) **requiring the Health and Safety Executive (HSE) to play a greater role in ensuring that employers comply with their obligations to provide a safe working environment for new and expectant mothers.**
- b) **Commissioning research on how best to encourage greater enforcement by women where cases cannot be resolved informally**
- c) **Commissioning research on the effectiveness of alternative dispute resolution procedures such as conciliation in helping employers and employees to resolve disputes informally.**

### Government response

- a) HSE and Local Authorities already undertake regulatory activities to ensure businesses are effectively and proportionately managing health and safety risks to workers and others. Regulatory activities cover a whole spectrum from enforcement and prosecution, to guidance, advice and working with others to influence workplace health and safety. HSE targets enforcement activity in the highest risk areas where people are most likely to be killed or injured at work and plans to undertake 20,000 inspections across sectors in 2016/2017. The HSE's process for complaints and concerns encourage pregnant women and new mothers to report concerns if they believe health and safety law is being breached or minimum standards are being ignored. HSE guidance also advises women on how to report concerns to their health and safety or union representatives. Guidance, including frequently asked questions, is available on the HSE website and HSE is focussing on raising awareness of this.
- b) We do not consider it necessary to commission new research on how best to encourage greater enforcement by women where cases cannot be resolved informally. Since 2014 it has been mandatory for employees intending to lodge an Employment Tribunal claim to contact Acas in the first instance. Where women have been unable to resolve an issue with their employer themselves (or feel unable to), Acas offer conciliation to promote the resolution of disputes without the necessity of making a claim to an Employment Tribunal. This avoids recourse to a full tribunal hearing, avoiding an often lengthy court hearing and helping to resolve the issue more quickly, as well as being a cheaper and less stressful route for resolving disputes.
- c) The Government is committed to reviewing Early Conciliation in 2019 as part of a wider evaluation of the policy since introduction. Any evaluation before this time would not have allowed the policy sufficient time to bed-in. The planned review will assess whether Early Conciliation is effective in promoting earlier dispute resolution, at lower cost and time spent than full employment tribunal claims. The

review will use management information from Acas and HMCTS, and data from research on Early Conciliation and employment tribunal applications.

### **Monitoring**

**Recommendation 19: The Government should commit to repeating the BIS/EHRC research in full or in part by the end of 2020. Regular and timely monitoring must also be undertaken to enable the Government, the EHRC and other interested parties to assess the effectiveness of the actions being taken to tackle this discrimination.**

### *Government response*

The Government accepted the recommendation from the EHRC in relation to tracking mothers' experience of their treatment in the workplace. The Government will seek to undertake representative research into pregnancy and maternity-related discrimination and disadvantage among mothers and employers in Great Britain using similar methodology to that carried out in 2014-15.

**Recommendation 20: The Government should set out in more detail how it plans to track the level of pregnancy and maternity discrimination in the UK, and the measures it will use to assess the effectiveness of its actions to tackle this discrimination. It should include in its response to this Report details of:**

- **key measures that will be used for monitoring;**
- **any surveys that will be used for monitoring, including size, frequency and type;**
- **the questions on pregnancy and maternity-related discrimination that will be used in surveys and the issues they will explore;**
- **when and how the results will be published; and**
- **where responsibility for this monitoring will lie.**

**Recommendation 21: The Government should set out ambitious targets for reducing the level of pregnancy and maternity discrimination within the next two years. It should review its monitoring figures at least annually for evidence that pregnancy and maternity discrimination levels are decreasing significantly, and publish this review. If there is insufficient progress within the next two years, the Government should set out what further action it will take to tackle discrimination.**

### *Government response*

We will continue to assess the effectiveness of our activities to address pregnancy and maternity-related discrimination and disadvantage in the workplace, as we made clear in the Government response to the EHRC recommendations.

The Government agrees that it is important to track mothers' experiences of their treatment in the workplace. The Government will seek to undertake representative

research into pregnancy and maternity-related discrimination and disadvantage among mothers and employers in Great Britain using similar survey methodology to that carried out in 2014-15. The research will therefore be representative of mothers and employers in Great Britain and will enable comparison to be made of results over time.

The research will provide an understanding of:

- The types, incidence and experience of pregnancy and maternity-related discrimination and disadvantage in Great Britain;
- Awareness of maternity rights and employer responsibilities related to pregnancy, during maternity leave and on return to work among mothers and employers;
- Availability and effectiveness of advice and support for mothers, their experiences raising concerns and enforcing their legal rights;
- Employer attitudes and workplace practice in relation to women who are pregnant, on maternity leave and on return to work;

Availability and effectiveness of advice and support for employers, particularly Small and Medium-Sized Enterprises.

ISBN 978-1-4741-3967-0



9 781474 139670