

Working Families response to Women and Equalities Committee inquiry: why has pregnancy and maternity discrimination worsened over past decade?

1. Introduction

1.1 Working Families is the UK's leading work life balance charity. We run a free legal advice telephone line and email service for parents and carers needing advice about employment rights. We reach around 3,000 families across the country through email and telephone support each year. We receive calls related to maternity and pregnancy discrimination every day that our helpline is open. In addition, we support a network of 2,000 parents of disabled children who work or want to work. We also work with employers to benchmark best practice and to help create family friendly workplaces.

1.2 We welcome the opportunity to submit evidence to the Committee's inquiry into pregnancy and maternity discrimination. Our submission focuses on the experiences of callers to our legal advice service. Our submission covers:

- the importance of working with employers to improve compliance, including support for smaller employers;
- the need to integrate employment information with existing support for pregnant women and new mothers;
- the impact of employment tribunal fees;
- how health and safety requirements can impact on pregnant women; and
- examples of UK and international best practice.

1.3 If you have any queries about this response, or would like further information, please contact us

2. The Government's proposals for action

2.1 We were pleased to see the Government accept most of the recommendations from the Equality and Human Rights Commission's final report, especially the commitment to exploring an insurance scheme to help smaller employers meet the cost of maternity leave and pay.

2.2 We remain concerned that the Government has ruled out changes to tribunal fees and time limits despite the EHRC's compelling evidence of the barrier to justice they pose for pregnant women and new mothers experiencing discrimination. Our experience as a legal advice provider has been that there has been a drastic reduction in pregnancy and maternity tribunal cases since the fees came in, and this reduction is not linked to the merits of particular cases.

2.3 The areas identified by the EHRC of working with employers: ensuring that women can easily access information on their rights; and addressing the systematic barriers to implementing the law are the right areas to focus on. However, there are areas where the proposals could go further which are outlined in the remainder of this submission.

3. Working with employers

3.1 The EHRC and the Committee have indicated an interest in working with employers to secure changes in practice. While engagement is key to stamping out pregnancy and maternity discrimination, it is important to note that those employers who currently discriminate are rogue and acting outside of the law. An awareness-raising campaign on the economic benefits of employing pregnant workers, while potentially useful, will not go far enough. Negative consequences – or sticks – as well as carrots are needed to root out unlawful practice

3.2 The experience of callers to our helpline shows us that it is too easy for employers to sow the seeds of doubt about what the law really says – for example, suggesting that it doesn't apply in the particular situation because the employer is smaller, or the employee hasn't worked in the role long enough, or that business reasons mean that the employer has to implement changes which detrimentally impact women in maternity.

3.3 The committee has asked whether changes in the labour market have affected levels of discrimination. A number of changes have had a knock-on impact on the pregnant women and new mothers that we hear from. We have seen a number of instances of shift patterns or the number of hours of work offered being changed without agreement for women who are pregnant or returning from maternity leave. These women find it very difficult to protect their income and position, and may not be able to afford to return to work or find childcare to suit the new arrangement. Some of these women have zero hours contracts or even no written terms and conditions of employment, and others have been told that it is their employer's right to change their terms and conditions.

3.4 In other instances, some women are informed by their workplace that they are self-employed whereas we consider that there is a high likelihood that an Employment Tribunal would find them to have employment status, thereby fundamentally changing their position in terms of employment rights and maternity pay. We are also starting to receive queries regarding hours being cut due to the national living wage, which will affect the income of those women both during pregnancy, for calculation of maternity pay and in terms of whether they can afford to return to work. For example, one woman called us saying that her working hours had been cut by over thirty per cent but noted that, as a 'self-employed' barmaid, she would "have to go off on maternity at around 4 or 5 months of pregnancy" as she wouldn't be able to work later due to heavy lifting etc., whereas had she been an employee she would have felt able to ask for her role to be adjusted to work for longer. For employers like these, retention simply isn't enough of an incentive to change behaviour – and the consequences can be long-lasting both in terms of the individual's financial position and their future employment.

3.5 For example, one caller to our helpline rang in distress because she needed to take paid time off for her antenatal appointments. She was terrified of telling her employer she was pregnant in order to get the time off because she had been sacked in her previous pregnancy after announcing she was expecting. She wanted to avoid telling her employer until the last possible moment and preferred to miss her appointments rather than tell them. She had also decided not to apply for an alternative job with her employer because she believed they would be able to turn her down simply because she would be on maternity

leave when the job began. By the time she received advice from Working Families it was too late for her to apply for the job – meaning that she had lost out due to believing employers are allowed to discriminate.

3.6 There is therefore clearly a role for the EHRC's recommendation that more work needs to be done with employers, for example to ensure that everyone understand the questions that can or cannot be asked during the recruitment process. This should be accompanied by more general advice and answers to frequently asked questions about handling pregnancy and maternity in the workplace. This clarity would also enable women to more easily spot discrimination when it occurs.

3.7 We hear from women experiencing discrimination in a wide variety of workplaces but, in our experience, smaller employers can be less aware of the steps they need to take to ensure that they are not being discriminatory. And larger employers often have a number of branches that operate autonomously which can mean that they're not well versed in their legal obligations.

3.8 We were pleased to note the Government's support for examining the feasibility of a collective insurance scheme to support small and medium-sized employers to spread the cost of enhanced maternity pay and organising cover for maternity leave. This could make a real difference to overcoming prejudice and unconscious bias amongst employers worried about the financial impact of employing women who are pregnant, or planning to have children.

4. Finding information

4.1 As a provider of advice to women on pregnancy and maternity discrimination, we agree that it is not always easy for those looking for support to identify where best to turn. The simplest way to ensure that women find the information that they need – on their rights, as well as avenues to turn to should they experience or suspect discrimination – is to integrate this within the health and other advice routinely provided by the government to pregnant women and new mothers. Details of Working Families helpline are currently included in NHS birth notes and we know that this is an important route for callers to find out about our service.

4.2 The recommendation to include employment information alongside the MAT B1 form is a useful starting point but it is worth noting that women will experience different situations as their pregnancy and maternity leave progress. We produce a calendar for pregnant women and new mothers setting out their employment rights, and the work-related issues they need to be thinking about, ordered according to particular points when they are most relevant. This has been well received by antenatal teachers and others. There is much more that could be done to raise awareness of rights and sources of support through channels available to the Government.

4.3 It would be helpful to examine the different sources of support currently available to women and to consider whether there is scope to link them better together. However, our past experiences of attempting to create a one-stop shop for advice suggest that this would be difficult to implement – above all, any changes must not undermine what already exists. Working Families provides a helpline and email advice as well as online information because women still need to discuss the specifics of their situation – and they need reassurance that the law does apply to them.

4.4 For example, one caller to our helpline was told, during her second maternity leave, that her job had been given to someone else because – as a mother of two – she would

have too many responsibilities to be able to continue to perform as a senior manager. The employer told the caller that it was their right not to keep her job open because it was 'not reasonably practicable' for her to do her job alongside her family situation. We explained that 'not reasonably practicable' means something which would have happened even if the woman hadn't been on maternity leave – her job wouldn't have changed if she hadn't had a second child, so it shouldn't change now. We advised that raising a grievance and appealing the decision would show she knows the law and may result in the employer giving her the job back.

5. Implementation of the law and tribunals

5.1 It is clear from the EHRC's research that the law is *not* being implemented effectively, given that it is so frequently being breached. The only way that employees who have experienced discrimination can enforce the law is through an employment tribunal which, as well as now requiring payment of upfront fees, is an antagonistic and often lengthy process. It is also increasingly legalistic and therefore very difficult for individuals to navigate without legal advice. Further consideration needs to be given to alternative mechanisms to ensure that the law is upheld, for example being able to involve ACAS earlier in the appeal or grievance process. From our experience, we have seen that many trade unions are not able to offer advice or adequate legal guidance to employees who are trying to resolve discrimination issues with their employer, for example if the individual has not been with the union for long enough before the issue arose, or where the local union rep does not pass on the query to the union lawyers.

5.2 Working Families has long campaigned for abolition of employment tribunal fees and gave evidence to the Justice Select Committee inquiry on this topic in 2015. There's no doubt from our experience that these fees are discouraging good claims. The number of queries that come through our helpline has been stable over the last three years, but there has been a dramatic decline in the number of people asking for our help in the employment tribunal process: the number of our callers feeling able to pursue a case to tribunal has fallen to close to zero. We have seen a rising category of rogue employers who consider that they do not have to and will not obey the law unless forced to do so and who are well aware that the fees create a major barrier to people bringing claims against them.

5.3 For example, one of our callers had regularly been working 30 hours a week in a hotel. She was ill whilst pregnant and, on return from sick leave she was told there were no shifts available for her anymore. She had carefully saved a little over £3,000 for her baby's arrival – meaning that she wouldn't be eligible for tribunal fees remission, even though she now had no source of income. But she could not afford to pay a total of £1,200 in tribunal fees which would eat up nearly half of her hard-won and very necessary savings. She therefore decided not to lodge a claim, despite having - in our opinion - good chances of success.

5.4 We were also disappointed that the Government has rejected the EHRC's recommendation to increase the time limit allowed to bring a claim for pregnancy and maternity discrimination. In our experience this would make a real difference. At its simplest, the length of pregnancy and maternity leave means that the implications of discriminatory decisions – for example forcing a pregnant worker on to sick leave, which can consequently reduce the amount of maternity pay she is eligible for – often only become clear to the affected employee some months down the line. Furthermore, the circumstances of a woman managing her health and that of her baby during maternity and following birth are particularly

difficult and vulnerable, therefore such employees cannot be expected to act upon the treatment which they have suffered as quickly as employees in other situations.

6. Health and safety

6.1 We often hear about health and safety issues in pregnancy on our advice line. Most commonly, women we speak to have been encouraged to take sick leave - or to use up their annual leave - rather than their employer making adjustments to their role, hours, working pattern or duties to enable them to continue working. This can bring serious financial consequences both in the short term - where the individual may receive only statutory sick pay- and further down the line in terms of eligibility for maternity pay. Action to address this issue also needs to encompass GPs who are responsible for signing off employees: there may be a knowledge gap about what the law requires amongst healthcare professionals.

6.2 For example, one woman we spoke to had a high-risk pregnancy. Her doctor had recommended that she cut her hours and avoid heavy lifting. Her employer had agreed to cut her hours – but only on reduced pay. They told her they could not reduce the lifting involved in the job and so she was signed off on sick leave. At five months pregnant this had a knock on effect onto her maternity pay, as well as the loss of pay at the time. In a different case, we were contacted by a women with an existing rheumatoid condition that was made worse by her pregnancy. She was signed off sick from her care work job although she was not unwell, meaning that her average earnings were reduced and her eligibility for statutory maternity pay was in jeopardy.

7. Learning from best practice

7.1 In contrast to the shocking practices uncovered by the EHRC in their research, we have come across many examples of employers who go above and beyond the law to support pregnant women and returning mothers.

7.2 Every year, we run a series of special awards recognising employers that have made significant progress in particular areas of family-friendly working. In 2015 we identified iCrossing, a small employer with 150 employees, as the 'best for all stages of motherhood'. iCrossing offer all pregnant employees a meeting with HR to discuss how they want to manage pregnancy in the workplace. In this meeting the employee is given the option to tailor her working pattern through, for example, home working or a change in hours. She is also able to talk about her pay during maternity leave, KIT days, returning to work and how much communication she wants with work while she is off. The week before her planned final day of work, the pregnant employee is offered a meeting with her line manager to discuss performance and any promotion opportunities in the pipeline, and training activities happening while she is on maternity leave. iCrossing also offers a mentoring scheme, which matches new mums or mums-to-be with seasoned parents who can guide them through their re-entry into the workplace¹. The winner of this year's award will be announced in June.

7.3 We are also aware of good practice in other European countries which could be replicated in the UK. For example, in Portugal the dismissal of a pregnant employee or an employee who has returned from maternity leave must be submitted for ex-ante authorisation by the labour inspectorate. In France the courts firmly control the right to return to the same job, requiring the employer to provide adequate training so that the employee

¹ Further information about the awards, winners and finalists is available at <http://www.topemployersforworkingfamilies.org.uk/index.php/special-awards/winners>

can indeed return to the same job or a job at the same level. And in Belgium, a claim for pregnancy or maternity discrimination in the recruitment process can result in two types of legal redress: an order to put an end to the discrimination and fixed damages if the employer is unable to demonstrate that the candidate would not have been recruited even if there had been no discrimination.

Working Families
April 2016

Working Families response to Women and Equalities Committee: inquiry into the gender pay gap

1. Introduction

1.1 Working Families is the UK's leading work life balance charity. We run a free legal helpline for parents and carers needing advice about employment rights. We support a network of 2,000 parents of disabled children who work or want to work. We also work with employers to benchmark best practice and to help create family friendly workplaces.

1.2 We welcome the opportunity to submit evidence to the Committee's inquiry into the gender pay gap. Our evidence focuses on the research we have conducted around how women with caring responsibilities navigate the workplace, and the impact that this has on their promotion, recruitment, retention and training. Our research is conducted with women across different age groups. While the committee's focus is specifically on women aged over 40, the wider trends affecting women in working families are pertinent to the committee's questions. Over half of all children born in England and Wales in 2013 were born to women aged over 30¹.

1.3 If you have any queries about this response, or would like further information email

2. Barriers to recruitment, retention and promotion

2.1 Research carried out by Working Families signals that parents are willing to forgo opportunities for promotion because of the impact on childcare arrangements. This is a bigger issue for mothers than fathers: with 67 per cent of women saying childcare arrangements would be a factor in deciding whether to apply for a promotion or a new job, compared to 51 per cent of men². There is also evidence that women are prepared to downgrade their careers in exchange for flexibility³. This dilemma could have a knock-on impact on the roles that women take up and, consequently, the gender pay gap.

2.2 There has been a marked increase in the cost of childcare in recent years, with parents in the UK spending a far greater proportion of their wages on childcare costs than parents in other OECD countries⁴. These high costs can be a barrier to women entering the labour market, or can prohibitively push parents out of employment to care for their own

¹ Office for National Statistics (2014) *Live Births in England and Wales by Characteristics of Mother 1, 2013*

² Working Families (2015) *The Modern Families Index 2015*. This is a survey of over 1000 working families across the UK, a third of respondents were aged 36-45.

³ Timewise Foundation (2013) *Jobs not careers: summary findings of a 3 year longitudinal study of 80 mothers in London who have been searching for work*

⁴ Equality and Human Right Commission (2013) *Women, Men and Part-time Work*

children. We regularly receive callers to our helpline worried about childcare costs and in many cases families will offset the cost of childcare against the mother's wages, rather than viewing this as a family expense, meaning many women feel unable to afford to return to work. One in five parents would like to use more childcare but cannot due to the cost and a similar proportion cannot use more childcare because they cannot find provision for the hours that they need⁵. The commitments that the government has made to increase the availability and affordability of childcare for working parents are welcome but these need to recognise the flexible and varying needs of families.

2.3 This 'childcare crunch' is experienced even more acutely by women who have caring responsibilities for disabled children. Specialist childcare to meet the sometimes complex needs of disabled children is in short supply and is considerably more expensive than care for children who are not disabled. Our evidence suggests that one in three in-work parents of disabled children are paying more than £10 per hour for childcare, more than twice the national average cost per hour⁶. While this is an issue that affects both men and women who are parents, a number of the mothers that we spoke to for our research told us about having to give up well-paid jobs due to the lack of suitable childcare, or because they were unable to maintain the flexibility needed to attend medical and other appointments for their children. Two-thirds of parents in work who took part in our research have avoided promotion, declined promotion or accepted a demotion in order to balance work and caring responsibilities.

2.4 In order to help tackle this issue, Working Families has worked with employer representatives to develop the 'happy to talk flexible working' strapline for employers to use when they advertise vacancies to signal that they are open to applicants working flexibly⁷. Women leave the labour market in order to care for children of pre-school age, in order to care for disabled children with additional needs, or in order to care for a sick parent, spouse or relative. They may leave for a short spell of for a number of years. A 'flexible by default' approach to recruitment would help women in any of these situations to re-enter the labour market. Given the age profile of women with caring responsibilities, a visible commitment to flexibility in the recruitment process may help to attract women aged over 40 to more senior or better paid roles.

3. Culture change

3.1 The committee has raised questions about the measures that should accompany gender pay gap reporting to create change within organisations. Our research shows that family-friendly working practices remain heavily gendered, with women more likely to work part-time, to work flexibly, and to be seen as the default parent when childcare arrangements break down⁸.

3.2 Working Families benchmark (2010-2015) of employer practice⁹ has found that HR managers' report that employees who work flexible or part time hours are viewed as favourably as their full time colleagues within their organisations. They are not seen as less productive; effective or committed.

⁵ Working Families (2015) *The Modern Families Index 2015*

⁶ Working Families (2015) *Off balance: parents of disabled children and paid work*. This is a survey of 900 parents of disabled children, respondents are both men and women.

⁷ There is more information about the strapline available on our website at <http://www.workingfamilies.org.uk/campaigns/happy-to-talk-flexible-working/>

⁸ Working Families (2015) *The Modern Families Index 2015*

⁹ There is more information about Working Families benchmarks of employer practice available on our website at <http://www.workingfamilies.org.uk/employers/the-top-employers-for-working-families-benchmark/>

3.3 There have been huge strides towards family-friendly workplaces, most recently through the advent of shared parental leave. But these changes will not lead to change in and of themselves – as long as it remains more culturally acceptable for women to work flexibly and take time off for caring responsibilities. Gender pay gap reporting should be accompanied by reporting on the steps that employers have taken to embed gender-neutral flexible working in their organisations, including a 'flexible by default' approach to recruitment, and providing sufficient pay and time off for paternity leave to be an attractive option for new fathers.

December 2015

