House of Commons

Women and Equalities Committee

Pregnancy and maternity discrimination

First Report of Session 2016–17

HC 90

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Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 12 July 2016

HC 90
Published on 31 August 2016
by authority of the House of Commons

The Women and Equalities Committee

The Women and Equalities Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Government Equalities Office (GEO).

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Committee staff

The current staff of the Committee are Gosia McBride (Clerk), Luanne Middleton (Second Clerk), Sharmini Selvarajah (Committee Specialist), Emma Sawyer (Committee Specialist), Asaad Qadri (Inquiry Manager), Thomas Pudlo (Senior Committee Assistant), Mandy Sullivan (Committee Assistant), and Liz Parratt (Media Officer).

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Summary

Shockingly, pregnant women and mothers report more discrimination and poor treatment at work now than they did a decade ago. With record numbers of women in work in 2016, the situation is likely to decline further unless it is tackled effectively now. Urgent action and leadership is needed, but the approach that the Government is taking forward lacks urgency and bite. There is a lack of detail about the Government's objectives, how and when it expects to achieve them, and how the effectiveness of its approach will be assessed. We welcome the awareness-raising work that the Government is doing with the EHRC and businesses, but it needs to set out a detailed plan outlining the specific actions it will take to tackle this unacceptable level of discrimination. This work must be underpinned by concrete actions to increase significantly compliance by employers and so improve women's lives.

The Government must make changes in laws and protections to ensure a safe working environment for new and expectant mothers, to prevent discriminatory redundancies and to increase protection for casual, agency and zero-hours workers. It must also provide incentives and ensure better enforcement to encourage better employer practice. Currently, the burden of enforcement rests with the individual experiencing discrimination, but the number of women taking enforcement action is low. The Government must take urgent action to remove barriers to justice and should seek ways of reducing the burden on women and making it easier for them to take action. It must also set out how it will monitor whether outcomes are improving for women.

A summary of our key recommendations is outlined here.

Strategy and leadership

1. The Government should publish 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. (Paragraph 106)

Changes in laws and protections

2. 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. (Paragraph 44)

3. The right to paid time off for antenatal appointments should be extended to workers. The Government should review the pregnancy and maternity-related rights available to workers and legislate to give greater parity between workers and employees. (Paragraphs 57 and 58)

4. The Government should increase protection from redundancy so that new and expectant mothers can be made redundant only in specified circumstances. (Paragraph 70)

Access to justice

5. The Government should review the three-month time limit for bringing a tribunal claim in maternity and pregnancy discrimination cases and should substantially reduce tribunal fees. (Paragraphs 143 and 146)

6. The Government should monitor access to free, good-quality, one-to-one advice on pregnancy and maternity discrimination issues and assess whether additional resources are required. (Paragraph 157)

Introduction - what's the problem?

Discrimination is getting worse

7. In 2015, the Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission (EHRC) published the first findings of their jointly commissioned research into pregnancy and maternity discrimination in the UK. While the research showed evidence of good employer attitudes towards, and treatment of, new and expectant mothers, there were also some very worrying results. One of the most shocking findings was that discrimination had increased since similar research by the Equal Opportunities Commission (EOC) in 2005, with more women now being made redundant or feeling forced to leave their job than a decade ago. Another was that more than three quarters of the women surveyed had experienced a negative or potentially discriminatory experience as a result of their pregnancy or maternity. Key findings from the research are outlined in the next chapter.

A plan for action?

8. The EHRC followed up the initial research with further work and analysis. It then made its final recommendations to the Government on the actions that should be taken to counter the discrimination revealed by the research. A final report was published on 22 March 2016 alongside the EHRC's recommendations and the Government's response.

9. In its response, the Government accepted or accepted in principle most of the recommendations and outlined the actions that it would take, or consider taking, as a result. The response did not set out any specific targets or timelines and did not go into detail about the actions that the Government would take.

The need for scrutiny

10. We felt compelled to launch this inquiry because we were so concerned by the findings of the BIS/EHRC research. We recognised its importance in demonstrating the scale of the problem, and we wanted to draw attention to those findings. Most importantly, we felt there was a need to ensure that action was taken now to deal with the discrimination exposed by this research. We want to be able to look back in five or 10 years and see that the situation has improved significantly, not that the same problems exist on the same scale or, worse, that there has been a further decline.

11. Our inquiry and this Report focus on what the next steps should be. Our terms of reference for the inquiry can be found in Annex 1. During the inquiry we received more than 30 written evidence submissions. We held three oral evidence sessions in which we heard from experts, unions, employers, the EHRC and the Minister of State for the Department for Business, Innovation and Skills, Nick Boles MP. We also heard directly from new and expectant mothers during a visit to Portsmouth. We are grateful for all the evidence we received whether from a position of professional expertise, personal experience or both.

12. An overview of the BIS/EHRC research findings and the Government's response is given in the Background section, which also sets out important rights and protections for employees and workers. In Chapter 1 we outline some of the key areas of concern identified as a result of the research findings and examine whether any changes in laws and protections are needed. In Chapter 2 we scrutinise the robustness of the awareness-raising approaching being taken forward by the Government. Chapter 3 looks at access to justice for women who have experienced pregnancy and maternity discrimination. Finally, in Chapter 4 we discuss enforcement and monitoring going forward.

13. We would like to thank our Specialist Adviser, Grace James, Professor of Law and Deputy Head, School of Law, University of Reading, for her help and guidance throughout this inquiry.[1]

1 Grace James declared the following interests of relevance to this inquiry and subject area: member of the Fawcett Society; the UK gender equality law expert for the European Equality Law Network (from 2016); former member of the Academic Advisory Group for the EHRC/BIS research project on pregnancy and maternity related discrimination in the workplace (2014-2015); has made two unsuccessful bids for funding – to look at invocation of law in relation to pregnancy and parenting: workplace conflicts (2008) and to look at carer concerns and workplace dispute resolution (2013).

Background

Laws and protections for new and expectant mothers in the workplace

14. Employment law and guidance relating to pregnancy and maternity is set out in a number of different Acts, regulations, codes and other guidance. Employers are responsible for keeping up to date with their obligations towards new and expectant mothers who work for them.

15. The law in this area is made more complex by the fact that different rights and protections are available to different women depending on their employment status and length of service.[2] Women who are classed as employees have different rights to those classed as workers, and some of those rights are not available until the woman has worked in that role for a certain number of weeks. The main rights and entitlements of employees and workers are outlined below.

Rights for all employees and workers

Protection from discrimination

16. All women are entitled to protection from discrimination by their employer because of their pregnancy or maternity. Under the Equality Act 2010, it is unlawful for an employer to discriminate against a woman because of her pregnancy, pregnancy-related sickness or maternity leave.[3] Discriminatory treatment can include dismissal, redundancy, removal of responsibilities, denial of a bonus and being overlooked for promotion. Some forms of harassment may also be classed as sex discrimination.[4]

A safe working environment

17. Employers have responsibilities under health and safety law to assess the health and safety risks to those working for them. This general risk assessment should include consideration of any specific risks to females of childbearing age who could become pregnant, and any risks to new and expectant mothers.[5] These risks could be from any process, working conditions, or physical, biological or chemical agents. Where risks are identified, the employer must put in place appropriate health and safety measures to control those risks.

18. If specific pregnancy or maternity-related risks are identified in the general risk assessment, the employer must take action to address those risks when they are notified in writing that a woman who works for them is a new or expectant mother, or that she is breastfeeding. However, employers are not legally required to conduct a specific, separate

2 For more information on employment status, go to: www.gov.uk, Employment status, accessed on 01 July 2016.

3 Protection is also provided under EU law: the Recast Directive 2006/54/EC (which replaces the Equal Treatment Directive 76/207/EEC) prohibits less favourable treatment of women related to pregnancy or maternity leave. Subsequent case law in the Court of Justice of the European Union provides further guidance on this issue (see Recitals 23 and 25 of the Recast Directive).

4 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, pp. 25-26

5 Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

risk assessment at this point. If the risk cannot be avoided using preventive and protective measures, then the employer must take action to remove, reduce or control the risk. If it cannot be removed, employers must take one of the following actions in the order specified:

> **Action 1** - Temporarily adjust (the employee's) working conditions and/or hours of work; or if that is not possible
>
> **Action 2** - Offer her suitable alternative work (at the same rate of pay) if available, or if that is not feasible;
>
> **Action 3** - Suspend her from work on paid leave for as long as necessary, to protect her health and safety, and that of her child.[6]

Rest facilities

19. Employers are required to provide suitable rest facilities for all pregnant and breastfeeding workers, but there is no legal duty to provide a place to breastfeed or store milk.[7]

Employees

Pregnancy and maternity-related rights

20. Under the Employment Rights Act 1996, an employee is defined as 'an individual who has entered into or works under … a contract of employment'.[8] Employees are entitled to further pregnancy and maternity-related rights in addition to the rights outlined above.[9] These include:

- protection against pregnancy or maternity-related unfair dismissal (available from day one);[10]
- paid time off for antenatal care (available from day one);[11]
- up to 12 months' maternity leave;[12]
- the option to replace some maternity leave with shared parental leave (for those with 26 weeks' continuous employment and who meet the relevant criteria),[13] and

6 Under the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242). Health and Safety Executive, *Guidance: new and expectant mothers - the law*, accessed on 1 July 2016.

7 Under the Workplace (Health and Safety and Welfare) Regulations 1992 (SI 1992/3004). Health and Safety Executive, *Guidance: new and expectant mothers - the law*, accessed on 1 July 2016.

8 Employment Rights Act 1996, section 230(1) For an explanation of the criteria for qualifying as an employee, go to: www.gov.uk, Employment status, accessed on 01 July 2016.However, the conduct of the parties prevails over definitions within the contract of employment, and employment status can be challenged in certain cases: see for example, Ferguson v John Dawson & Partners (Contractors) Ltd) [1976] 1 WLR 1213, Megaw LJ; Troutbeck SA v White and Todd [2013] CA EWCA Civ 1171; and Autoclenz Limited v Belcher and others [2011] UKSC 41.

9 For an explanation of employees' rights, go to: www.gov.uk, Employment status, accessed on 01 July 2016.

10 Employment Rights Act 1996, section 99.

11 Employment Rights Act 1996, section 55

12 Employment Rights Act 1996, sections 71-73. For more information on statutory maternity leave, go to: www.gov.uk, Maternity pay and leave, accessed on 01 July 2016.

13 Shared Parental Leave Regulations 2014 (SI 2014/3050).

- statutory maternity pay (for those with 26 weeks' continuous employment at the 15th week before expected due date),[14] or maternity allowance (for those who do not meet the criteria for maternity pay).[15]

Right to request flexible working

21. Another right that is available to employees not only during pregnancy and early maternity, but at any time (after 26 weeks' continuous employment) is the right to request flexible working.[16] Employers must consider such requests in a reasonable manner and within a reasonable period of time.[17] If the request is refused, the relevant notification must set out clear business reasons for the denial and the employee is unable to re-apply within the next 12 months.[18]

22. We recently looked at flexible working in our *Gender Pay Gap* Report.[19] A key recommendation of that Report was that that all jobs should be available to work flexibly unless an employer has an immediate and continuing business case against doing so.[20]

Workers

23. The Gov.uk web pages on employment status do not provide an overarching definition for a worker, but advise that a person is generally classed as a worker if:

- they have a contract or other arrangement to do work or services personally for a reward (your contract doesn't have to be written);
- their reward is for money or a benefit in kind, eg the promise of a contract or future work;
- they only have a limited right to send someone else to do the work (subcontract);
- they have to turn up for work even if they don't want to;
- their employer has to have work for them to do as long as the contract or arrangement lasts;
- they aren't doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client.[21]

24. Workers do not have access to the same rights as employees and there are also differences between the rights available to different types of worker, such as casual, agency

14 For more information on eligibility for statutory maternity pay, go to: www.gov.uk, Maternity pay and leave, accessed on 01 July 2016.
15 For more information on eligibility for maternity allowance, go to: www.gov.uk Maternity allowance, accessed on 01 July 2016.
16 Employment Rights Act 1996, section 80F.
17 Employment Rights Act 1996, section 80G. See ACAS statutory code of practice on the meaning of 'reasonable': www.acas.org.uk, Code of Practice 5: Handling in a reasonable manner requests to work flexibly, accessed on 01 July 2016.
18 Employment Rights Act 1996, sections 80F and 80G.
19 Women and Equalities Committee, Second Report of Session 2015-16, *Gender Pay Gap*, HC 584
20 Recommendation 134
21 www.gov.uk, Employment status, accessed on 01 July 2016.

and zero-hours workers.[22] As outlined above, all workers are entitled to protection from discrimination and to a safe working environment. However, they are not usually entitled to: paid time off for antenatal appointments; maternity or shared parental leave; the right to request flexible working; or protection against unfair dismissal. One exception is that agency workers who have been in continuous employment for 12 weeks are entitled to paid time off for antenatal appointments.[23] This right was implemented as a result of an EU regulation and so may be subject to change when the UK leaves the EU.

BIS/EHRC research and follow-up

Key research findings

25. The BIS/EHRC research revealed some worrying findings about the experiences of new and expectant mothers in the workplace. More than three quarters (77%) of the women surveyed reported at least one potentially discriminatory or negative experience, and 61% reported two or more such experiences.[24] In contrast, 89% of the employers surveyed said that it was easy to protect employees from being treated unfavourably because they were pregnant or on maternity leave.[25] This suggests a mismatch between employees' experience and employers' understanding of discrimination and the extent to which it is happening.

26. Examples of unfavourable or discriminatory experiences reported in the research are given below:

- half of mothers reported a negative impact on their career, such as being given duties at a lower level, being treated with less respect or feeling that their opinion was less valued as a result of their pregnancy (if scaled up to the general population this could mean as many as 260,000 mothers a year);
- around 20% said that they had experienced harassment or negative comments related to pregnancy or flexible working from their employer and /or colleagues (if scaled up to the general population this could mean up to 100,000 women a year);
- 11% reported being either dismissed, made compulsorily redundant, where others in their workplace were not, or treated so poorly that they felt they had to leave their job (if scaled up to the general population this could mean up to 54,000 women a year); and
- 10% said that their employer had discouraged them from attending antenatal appointments (if scaled up to the general population this could mean up to 53,000 women a year).[26]

22 For further information about criteria and entitlements for different workers, go to: www.gov.uk, Employment status, accessed on 01 July 2016.

23 Under the Agency Workers Regulations 2010, which implemented Council Directive (EC) 2008/104 on Temporary Agency Work. For an outline of the rights of / responsibilities towards agency workers, see: www.gov.uk, Your rights as an agency worker, accessed on 01 July 2016.

24 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, pp. 38-39

25 Ibid, p. 41

26 EHRC, Pregnancy and maternity discrimination research findings, accessed on 01 July 2016; HM Government and EHRC: *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, pp. 38-39

27. Overall, women reported that negative and possibly discriminatory experiences were more likely to happen during pregnancy than on maternity leave or afterwards. However, women were more likely to report feeling forced to leave their job once they had returned to work.[27] Length of service and occupation were identified as key drivers of negative or discriminatory treatment. Women with five years or more of service were less likely to say they had experienced poor treatment and those with two to five years' service were most likely to do so. The occupations in which women were most affected were the caring, leisure and other service occupations.[28]

EHRC recommendations and Government response

28. The EHRC made a number of recommendations to the Government about how the discrimination uncovered by the BIS/EHRC research should be tackled. These focused strongly on raising awareness about employees' rights and employers' obligations, increasing access to information and encouraging behaviour change. The recommendations were grouped into six broad areas, which were set out by the EHRC as follows:

> **Leadership for change** so that employers attract the best talent, create the conditions for their staff to perform well, and avoid the loss of skills and experience which can result from misconceptions and poor practice in relation to pregnant workers and new mothers.
>
> **Improving employer practice** to promote family-friendly workplaces, effective management and open communication.
>
> **Improving access to information and advice** so that women and employers understand their rights and obligations.
>
> **Improving health and safety management in the workplace** so that employers manage risks effectively and women are not forced to choose between their job and their health or the health of their unborn child.
>
> **Improving access** to justice by removing barriers to women raising complaints.
>
> **Monitoring progress** to track the pace of change towards creating fairer workplaces.[29]

29. The Government's response accepted or accepted in principle most of the recommendations, but did not set out any specific targets, timelines or detailed plans about the actions that the Government would take.[30]

30. There have been mixed reactions to the EHRC's recommendations and the Government's response. Some witnesses felt that the approach set out was well-rooted in the findings, whereas others were more critical. In the following chapters we look in more detail at the approach being taken forward and ways in which it might be improved.

27 HM Government and EHRC: *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 41

28 Ibid, p. 54

29 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 2

30 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016.

1 Are greater protections required?

Rising discrimination and key concerns

31. Many witnesses expressed shock and concern at the level of discrimination revealed by the BIS/EHRC research.[31] Rosalind Bragg of Maternity Action told us that it showed a "significant increase in rates of pregnancy discrimination" in the past decade.[32] Catherine Rayner of the Discrimination Law Association highlighted that there was evidence of not just discriminatory treatment but "a large spread of probably unlawful treatment."[33] Some witnesses suggested that greater protection from discrimination was needed, including through legislative change.[34] Three areas flagged up by witnesses as being of particular concern were:

- health and safety;
- the experience of casual, agency and zero-hours workers; and
- the level of redundancies and women feeling forced out of their job.

In this chapter we look at the level of discrimination against, and poor treatment of, women in these particular areas and examine whether additional protections, such as changes in the law, are needed to tackle this discrimination.

Health and safety

Concerning findings

32. The BIS/EHRC research revealed some concerning findings about the extent to which health and safety obligations were being met, showing that:

- two in five of the women surveyed (41% - or up to 210,000 women a year if scaled up) felt there was a risk to, or impact on, their health or welfare at work;
- 38% said that their employer did not initiate a conversation about risks when they informed them of their pregnancy;
- 19% said they had identified risks that their employer had not;
- 10% said that their employer had identified risks and had not tackled them, and 10% said that they had identified risks that their employer had not tackled; and
- one in 25 (4% - or up to 21,000 women a year if scaled up) left their job because pregnancy and maternity-related health and safety risks were not tackled.[35]

31 Q1 [Elizabeth Duff]; Q2 [Rosalind Bragg]; Q4 [Catherine Rayner]; Q36 [Scarlet Harris, Siobhan Endean]; Working Families (MPD0005); National Childbirth Trust (MPD0015); Chwarae Teg (MPD0016); Pregnant Then Screwed (MPD0017); Maternity Action (MPD0024)

32 Q2

33 Q4

34 Qq36-38, 56 [Siobhan Endean]; Qq12, 14 [Catherine Rayner]; Alexandra Heron (MPD0010); Pregnant Then Screwed (MPD0017); Your Employment Settlement Service (YESS) Law (MPD0019); Maternity Action (MPD0024)

35 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 12; HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 65

Rosalind Bragg told us that these findings were consistent with what Maternity Action had found through its advice line and that it "would like to look at more active ways to address this problem."[36]

33. We also heard some troubling stories about women's experiences in the workplace when their employer did not do a health and safety assessment and/or adjust work practices to accommodate their needs. Sarah Barton, Chair of Portsmouth and South East Hampshire Maternity Services Liaison Committee, held two focus group discussions with women from Portsmouth on these issues. Her summary of the discussions stated that in one group of eight women, only two said their employer had conducted a health and safety assessment during their pregnancy. She also detailed a distressing example of a supermarket worker who had been left to wet herself while working at a checkout because there had been no risk assessment and no adjustment to how her breaks were managed.[37]

Worst-affected groups

34. Detailed analysis of the research results showed that a greater share of mothers in caring, leisure and other services (54%) and those on agency, casual or zero hours contracts (50%) reported a risk or impact to their health and welfare.[38] Mothers who left their employer as a result of risks not being resolved were more likely than average to:

- work in skilled trades occupations (11%);
- be a single parent (11% compared with 3% married/living with partner);
- have a long-term physical or mental health condition (9% compared with 4% without);
- be on an agency/casual or zero-hours contract (9% compared with 4% on a permanent contact);
- work in the hotels and restaurants (8%) or health and social work (6%) sectors;
- work part-time (6% compared with 3% full-time); or
- earn less than £30,000 (5% compared with 1% earning £30,000 or more).[39]

Improving health and safety outcomes

EHRC recommendations and Government response

35. The EHRC responded to the findings by recommending that the Health and Safety Executive (HSE) should "address the issues raised in the research findings about health and safety in particular industry sectors and occupational groups by working with stakeholders in these areas to improve practice." It also recommended that the HSE should:

36 Q6
37 Sarah Barton (MPD0029)
38 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 65
39 HM Government and EHRC: *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 94

- review its guidance to employees and employers to emphasise the importance of ongoing and open communication with new and expectant mothers to enable employers to comply with their obligations; and
- raise employers' awareness of health and safety obligations to pregnant women and new mothers, and awareness of existing guidance on breastfeeding.[40]

36. The Government responded by stating that the HSE accepted the recommendation and wanted to make sure that good practice was shared across all sectors. The HSE has agreed to "take forward these recommendations, review current guidance and work through existing partnership channels, particularly in sectors highlighted in the research report".[41]

Risk assessments

37. As outlined in the Background section, employers are not required to conduct a 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. However, if they have identified any risks to new and expectant mothers in their general risk assessment, they are obliged to take action to remove, reduce or control those risks.[42] For example, fire services know from their general risk assessments that attending operational incidents creates risks for pregnant and breastfeeding firefighters from toxin inhalation, which could be passed on to their babies. Once they are informed that a firefighter is pregnant they must take action to ensure that she does not attend operational incidents until this risk has passed.

38. There was fairly wide agreement among witnesses that if risks were to be identified and managed, employers needed to discuss the risks with the worker or employee when they were informed that she was pregnant, had given birth in the past six months or was breastfeeding. Views differed on how best to ensure that this happened and whether an individual risk assessment needed to be conducted at this point. Sue Coe of the EHRC said:

> We saw that 38% of women said that, when they told their employer they were pregnant, no discussion happened at all about health and safety. That is a real concern to us because, even if your conversation is, "We do not feel that there is any risk to you," then at least it allows the woman to engage in that conversation, and put forward information that she might have about her health or particular conditions that she may be experiencing, so that those risks could be tackled. As I said, we do not think there needs to be a new duty; we just think that employers need to get better at talking to women about health and safety, throughout their pregnancy.[43]

39. Siobhan Endean of Unite suggested that if the generic risk assessment "understands and reflects that there might be pregnant workers in the workplace…it does not necessarily

40 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 13

41 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 11

42 See Background for a more detailed explanation of employers' health and safety obligations.

43 Q128

matter whether or not women have declared that they are pregnant."[44] Conversely, Maternity Action argued that the general risk assessment is "woefully inadequate in ensuring a safe working environment for pregnant women and new mothers", adding:

> Because there is no requirement to consider each individual pregnant employee in the context of her specific work, many employers believe their current generic risk assessments are appropriate. As a result they are not prompted to make any alterations in respect of individual employees, even where the individual circumstances of the woman would warrant adjustments to be made. [45]

40. Maternity Action concluded that it would not be "overly burdensome" for employers to be required to conduct an individual assessment for new and expectant mothers, as individual assessments were "commonplace". It recommended that the HSE should commit to including this requirement in its guidance to employers and should ensure that it is properly enforced.[46] We discuss enforcement in more detail in the final chapter. Maternity Action also suggested that model risk assessments for employers, including specific risk assessments for particular sectors, would be "very helpful for employers – especially for SMEs".[47]

41. When we questioned why the EHRC had not recommended obliging employers to conduct a risk assessment at this time, Sue Coe told us that employers had previously been obliged to do this and that even fewer risk assessments had been conducted then. She argued that the idea of conducting an assessment might in itself be a barrier and that it was better to encourage conversations between employers and women. She said:

> Quite often, the adjustments that employers have to make are very simple, in terms of getting a chair and moving start times. It is not technical rocket science. Too often, employers are seeing it as a confusing area and taking a very technical tick-box approach. What we want to drive here is conversations between women and employers ongoing throughout their pregnancy.[48]

42. The Minister said that "it would be a retrograde step to introduce a specific separate risk assessment" because that would somehow imply that "the general risk assessment should not include looking at the situation of pregnant women". He added that the obligation should remain within the general risk assessment, and highlighted the importance of sector-specific and occupation-specific guidance, particularly for higher-risk roles.[49]

43. **We are disappointed that the EHRC and the Government do not think it necessary to place a duty on employers to conduct an individual risk assessment for new and expectant mothers. Such a requirement would help employers to provide a safe working environment and would not be a great burden. We do not accept the Minister's assertion that this requirement would imply that employers no longer had to consider the risks to new and expectant mothers in their general risk assessment. We are not convinced that the EHRC's recommended approach of encouraging employers**

44 Q47
45 Maternity Action (MPD0024), para. 21
46 Ibid, para. 22
47 Maternity Action (MPD0024), paras. 22 and 26
48 Q125
49 Q166

to have conversations with women about risks is robust enough. While it may improve compliance among well-meaning employers, it is unlikely to persuade less scrupulous employers to meet their responsibilities.

44. ***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

45. An employer must place a new or expectant mother on paid leave if they identify a risk that cannot be managed. As we have noted, however, tens of thousands of women a year leave their job because pregnancy and maternity-related health and safety risks are not tackled. In addition, many women identify risks that their employer does not, some of which are not then dealt with.[50] Maternity Action has suggested strengthening the onus on employers to find women a suitable alternative job, or place them on paid leave, if they are unable to remove identified risks.[51] Rosalind Bragg told us:

> [G]iven the extraordinary scale of the number of women who left their jobs as a result of an unsafe working environment, we think it would be useful to explore the Australian model of no-safe-job leave, in which a doctor or another clinician can certify that a job is unsafe for pregnant women and a woman is placed on paid leave unless the employer offers her a suitable alternative post. This would provide a very clear financial incentive for employers to swiftly find a suitable alternative job.[52]

46. Samantha Rye of the Fire Brigades Union emphasised the need to deal with risks promptly, but also highlighted the FBU's concerns about employers unnecessarily removing pregnant women from their normal shift pattern and placing them in another role away from their team. A key concern was that some women were reluctant to disclose their pregnancy straight away, despite the risks of continuing their usual role, because of fears that this would happen to them. Another concern was the financial impact on those who had to make new childcare arrangements to fit the new shift pattern.[53]

47. **We are particularly concerned by the BIS/EHRC research finding that up to 21,000 women a year left their job because pregnancy and maternity-related health and safety risks were not tackled. We are also mindful that it is important that employers are sensitive to the employee's wishes when offering alternative work or paid leave.**

48. ***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,***

50 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 12; HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 65

51 Q16; see also Maternity Action (MPD0024), para. 23

52 Q16

53 Q43

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.

Casual, agency and zero-hours workers

49. As set out in the Background, casual, agency and zero-hours workers do not have the same pregnancy and maternity entitlements as women who are classed as employees. Both Citizens Advice and Catherine Rayner of the Discrimination Law Association suggested that the number of women now in this kind of work may be one reason for the increase in pregnancy and maternity discrimination in the past 10 years.[54] Citizens Advice stated that there had been "a 58% increase in the past decade in the number of people in temporary jobs because they are unable to find permanent work."[55] It suggested that "changes in working patterns and the use of agency staff … could mask discriminatory practices".[56]

Different treatment

50. Catherine Rayner told us that many women faced "real difficulties because of their employment status." She went on:

> A lot of the rights that you will be looking at are focused on employees. There are huge swathes of women, particularly in some of the caring industries, who are treated not as employees but as workers and therefore do not necessarily access the rights.[57]

51. Even where such workers do have the same rights as employees, there is evidence that they are more likely to receive unfavourable treatment than other types of worker. As we have seen, although employers have the same health and safety obligations to all workers and employees, the BIS/EHRC research found that casual, agency and zero-hours workers were more likely to report a risk or impact to their health and welfare and to leave their employer as a result of health and safety risks not being resolved.[58] Scarlet Harris of the TUC told us that some larger employers treated agency staff less favourably than employees. She said:

> In some larger employers you will see good practices happening among professional women at the top, but they might be large organisations with women agency workers working lower down who are not afforded the same rights at all and are treated very differently.[59]

52. Working Families related some of the discrimination and poor practice affecting such workers that it had heard about through calls to its helpline, stating:

54 Citizens Advice (MPD0027), paras. 5.2 and 6.3; Q12 [Catherine Rayner]
55 Citizens Advice (MPD0027), para. 6.2
56 Ibid, para. 5.2
57 Q12
58 HM Government and EHRC: *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 65
59 Q56

> 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.[60]

53. Citizens Advice suggested that the "increased job insecurity" experienced by such workers "impacted on [their] confidence in challenging discrimination and other workplace problems."[61]

Are additional rights and protections needed for particular workers?

54. Siobhan Endean told us that Unite was "very concerned at the treatment of women who do not have permanent employment contracts, so temporary and agency workers, and the experience of women within those sectors. She went on to suggest that "remedial action" was needed and told us that there "absolutely needs to be some more legislation around the issue of agency and temporary workers.[62] Catherine Rayner said that there was "an argument that the 26-week period for qualifying for some of the rights, such as the right to request flexible working, and some of the benefits ought to be looked at again."[63]

55. When we asked the EHRC whether such workers needed more protection, Caroline Waters replied that the work it had done in relation to the cleaning sector suggested that many of those workers were more disadvantaged, often because they did not know their rights and/or because they were concerned they would be badly thought of if they raised an issue. She went on:

> There are some perception things there and there are some actual, real gaps. Yes, I do think that that is an area that needs more work. We are working on that and there are things that can be done. Lots of agencies are great employers. We need to work with the ones that are not to get them to that standard.[64]

The EHRC did not make any specific recommendations to the Government about providing additional protection for such workers. No specific actions to improve outcomes for this group are set out in the approach being taken forward by the Government and the EHRC.

56. **We are concerned by the evidence that new and expectant mothers who are casual, agency and zero-hours workers are: more likely to report a risk or impact to their health and welfare than other types of worker; more likely to leave their employer as a result of health and safety risks not being resolved; and less likely to feel confident about challenging discriminatory behaviour. We note that the EHRC has committed to work with employers to improve outcomes for this group, but we believe that additional rights and protections are also required.**

60 Working Families (MPD0005), para. 3.3
61 Citizens Advice (MPD0027), para. 6.3
62 Qq36-38
63 Q12
64 Q136

57. **We understand that there are reasons why new and expectant mothers who are casual, agency and zero-hours workers do not have the same day-one rights as employees. However, we see no reason why they should not be entitled to paid time off for antenatal appointments. *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.***

58. **Employers should not be able to avoid affording regular, long-term workers the same rights as employees because they have a different contract type. More pregnancy and maternity-related rights should be available to casual, agency and zero-hours workers after a suitable qualifying period of continuous employment. *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.***

Redundancy and job loss

Rising redundancies and job losses during pregnancy and maternity

59. As outlined in the previous chapter, 11% of the women surveyed reported being either dismissed, made compulsorily redundant, where others in their workplace were not, or treated so poorly that they felt they had to leave their job. Rosalind Bragg of Maternity Action highlighted that this was a significant increase on the 2005 figure. She said:

> In 2005, 30,000 women lost their jobs as a result of pregnancy discrimination. The first findings in 2015 showed that 54,000 women lost their jobs as a result of pregnancy discrimination. [65]

60. Key drivers of whether mothers felt forced to leave their job were length of service prior to maternity leave, and occupation. Mothers who had been in post for less than a year were twice as likely as average to say that they felt forced out of their job, whereas those with more than five years' experience were half as likely to feel forced out. Mothers working in the skilled trades sector, such as chefs, gardeners, car mechanics and carpet fitters, were five times more likely than average to say that they had felt forced out.[66]

61. Siobhan Endean of Unite noted that if an employee suspected that they had lost their job because of their pregnancy or maternity, it might be difficult for them to obtain evidence that this was the case. She went on to suggest that legislative changes might make it easier to prevent discriminatory redundancies, stating:

> We find it is very rare that people say, "I am sacking you because you are pregnant", because obviously people know that is unlawful. What will happen is that you will be made redundant while you are pregnant or on maternity leave. If you strengthened the framework of legislation around redundancies, fewer women would fall through that net.[67]

65 Q2
66 HM Government and EHRC: *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 43
67 Q56

Your Employment Settlement Service (YESS) Law said that employers who understood the law made women redundant after their return to work so that the protection provided under regulation 10 of the Maternity and Parental Leave Regulations 1999 did not apply.[68] Regulation 10 provides that an employee who is made redundant during maternity leave is entitled to any existing suitable alternative work in preference to other employees, including those at risk of redundancy.[69]

Are changes in the law needed?

62. Several witnesses told us there was a need to increase protection against redundancy during pregnancy and early maternity.[70] Maternity Action said that the "shocking number of women losing their jobs as a result of their pregnancy" identified the need for "further protection from unfair redundancy."[71] Your Employment Settlement Service (YESS) Law said that focusing on measures that would prevent women from being dismissed or treated so unfavourably that they felt forced out was a better solution than relying on enforcement action at tribunal.[72]

63. YESS Law described the system used in Germany to protect new and expectant mothers from redundancy, stating:

> In Germany women are well protected from loss of employment due to dismissal - from the beginning of pregnancy until 4 months following childbirth (Schutzfrist) through a Kündigungsverbot, Dismissal Ban. Only in extremely rare exceptions are employers permitted to dismiss a pregnant employee during this time.[73]

64. YESS Law proposed that a similar model be adopted in the UK, with defined exceptions such as "severe financial difficulty for the employer, leading to multiple redundancies, and gross misconduct by the individual". It added that the protection should be extended beyond the maternity leave period "as employers now commonly put an employee at risk of redundancy on her first day back from maternity leave (or within the first few weeks)."[74] Academic Alexandra Heron also recommended that the German model be implemented, with an extension to six months after the woman's return to work.[75]

65. An alternative approach of extending the protection currently provided under regulation 10 of the Maternity and Parental Leave Regulations 1999 was suggested by both Maternity Action and YESS Law. Maternity Action proposed extending it beyond maternity leave to include the period from notification of pregnancy through to six months after return to work.[76] YESS Law suggested it could be extended even further, so that it would continue to apply for up to a year after return to work.[77]

68 Your Employment Settlement Service (YESS) Law (MPD0019);
69 Maternity and Parental Leave Regulations, etc. 1999, regulation 10
70 Alexandra Heron (MPD0010); Your Employment Settlement Service (YESS) Law (MPD0019); Maternity Action (MPD0024); Siobhan Endean, Q56
71 Maternity Action (MPD0024), para. 11
72 Your Employment Settlement Service (YESS) Law (MPD0019)
73 Your Employment Settlement Service (YESS) Law (MPD0019)
74 Ibid.
75 Alexandra Heron (MPD0010), para. 6
76 Maternity Action (MPD0024), para. 11
77 Your Employment Settlement Service (YESS) Law (MPD0019)

66. The EHRC did not make any recommendations specifically on tackling the rising numbers of new and expectant mothers being made redundant or otherwise losing their job at this time. However, it did recommend that the Government work with it "to identify effective interventions" to "ensure that employers are aware of and comply with their legal obligations", which the Government agreed to do in its response.[78] Similarly, there were no wider recommendations to strengthen or extend the protection from discrimination and poor treatment provided in law. Instead, the recommendations were broad and few, focusing strongly on raising awareness about employees' rights and employers' obligations, increasing access to information and encouraging behaviour change. Caroline Waters, Deputy Chair of the EHRC, told us that this was because "the problem is mostly about lack of information, attitudes and behaviours … not about big-picture stuff".[79]

67. The approach to tackling pregnancy and maternity discrimination set out in the EHRC's recommendations and Government response has been criticised as being too weak.[80] We consider the merits of this approach in the next chapter. Siobhan Endean of Unite suggested that "much clearer and stronger action by Government, employers and agencies" was needed to tackle pregnancy discrimination at work.[81] She made two suggestions for strengthening the law in this area:

- reintroducing the "questionnaires procedure" under which "if you felt that you had been discriminated against, you had the right to issue the questionnaire to your employer to find out what procedures they went through and how it came about that you lost your job"; and
- extending the public sector requirement for equality auditing and equality impact assessments to the private sector, which can help employers to uncover and tackle unconscious bias and discrimination.[82]

68. When we challenged the EHRC on the robustness of the approach it had set out in its recommendations, and asked whether the law needed to be changed, Caroline Waters replied:

> What we absolutely believe is that the legislation is clear in all of these areas, but we are seeing those misinterpreted. Mostly, the evidence we have is that that is about people not understanding what their obligations are and women not being able to hold employers to account, because they do not understand their rights. We believe that, if you close that gap, you change the reality of how women experience these things.[83]

69. Sue Coe rejected the suggestion that the lack of recommendations for legislative change weakened the EHRC recommendations, adding that shifting behaviours and

78 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination* March 2016, p. 13; HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, pp. 7-8

79 Q118

80 Q28 [Rosalind Bragg, Elizabeth Duff]; Q36 [Siobhan Endean]; Pregnant Then Screwed (MPD0017)

81 Q36

82 Q56

83 Q133

attitudes was "a really tough thing to do" and was desperately needed.[84] The Minister also told us that the law was clear and stated that the focus should be on enforcement.[85] We examine these issues in more detail in the following chapters.

70. **We find it shocking that the number of new and expectant mothers feeling forced out of their job has nearly doubled in the past decade. It is difficult to accept the EHRC's characterisation of this as solely an issue of misinterpretation of the law.** ***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.***

The EU context

71. The rights and protections available to new and expectant mothers under UK employment law go beyond what is required by EU law. **We hope that the Government is committed to not only retaining but enhancing the current level of protections available to new and expectant mothers when the UK leaves the EU.** ***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.***

84 Q133
85 Q171

2 Improving access to information and encouraging a change in attitudes

72. As set out in the Background, the EHRC's recommendations centre around raising awareness and increasing access to information as the primary means of tackling the discrimination evidenced in the BIS/EHRC research. The Government have accepted or accepted in principle most of those recommendations, but the approach being taken forward has been criticised as being too weak. Rosalind Bragg of Maternity Action told us that the EHRC's recommendations were "not sufficiently strong to make a significant impact on the very high rates of pregnancy discrimination." She went on:

> [T]he Government's response, which accepts in principle some of the recommendations and rejects others, is unlikely to make inroads to any significant degree on the scale of pregnancy discrimination. If the Government are serious about ending pregnancy discrimination or even moving back to the situation that existed in 2005, we would need to see a new, strong, well-resourced set of recommendations that go considerably further beyond the plan of action that we currently have to hand.[86]

In this chapter we examine the proposed approach and question whether it will really be enough to bring about the changes that are required.

Improving women's access to information

How easy is it to access information now?

73. During a visit to Portsmouth on 12 May, we heard directly from new and expectant mothers. There was wide agreement among participants that information about pregnancy and maternity rights at work could be easier to access. Several women told us that they had tried to find out about their rights or about their employer's maternity, flexible working and other relevant policies, but that it had been difficult for them to do so. For example, one woman had not realised that she should have accrued annual leave while on maternity leave, and another had not known about childcare vouchers.[87]

74. We also received evidence from Sarah Barton, Chair of Portsmouth and South East Hampshire Maternity Services Liaison Committee, who facilitated two focus groups with local women to discuss these issues. Only one woman out of the 17 who took part "could say that she was confident in knowing her rights whilst pregnant and returning to work", and she was a human resources manager. The other seven women in her group had not known that they were entitled to paid time off for antenatal appointments. The group felt it important that employers should have policies relating to pregnancy and maternity and that such information should be easily accessible by staff.[88]

86 Q28
87 See Annex 2 for Portsmouth visit note
88 Sarah Barton (MPD0029)

Getting the right information to women sooner

75. A key conclusion that came out of our Portsmouth visit was that there was a need for better and earlier signposting to help women find information about their rights.[89] This view was supported in much of the evidence we received.[90] Both of the Portsmouth focus groups said that they would like to receive a comprehensive guide with advice on their rights and employers' responsibilities regarding pregnancy, maternity and returning to work. Breastfeeding, parental leave, keeping-in-touch days and the rights of self-employed people, temporary workers and contractors were seen as particularly important issues to include.[91] Suggestions from our Portsmouth visit for making it easier to access information included: having all the relevant information in one place, such as a website and phone line; advertising during relevant TV programmes; and using simpler language, with less legal terminology.[92]

76. The EHRC recommended that the Government should use existing information channels and mechanisms such as health professionals and MAT B1 forms to deliver information to pregnant women and employers. However, Scarlet Harris of the TUC told us that this was "too late, as that is after 20 weeks and women need to know about simple things like when they need to tell their employer and when the employer needs to do a health and safety risk assessment."[93] Louise Handley of the London School of Economics and Political Science (LSE) agreed that there was "no substitute for information being placed directly in the hands of the individual at the earliest possible stage." She also highlighted the valuable role that unions could play in providing information to individuals.[94]

77. Women who attended the informal visit and focus group discussions agreed that information should be given to women early in their pregnancy at their booking-in appointment with the midwife.[95] Maternity Action, NCT and the TUC also suggested that information should be given at this point, and that it should include a tear-off sheet for women to give to their employer.[96] Maternity Action stated:

> All women should be given a hard copy leaflet at their first antenatal appointment, which briefly outlines their maternity rights at work and signposts to key sources of information and advice. The leaflet should include a tear-off sheet for women to give to their employers, which similarly lists key legal obligations and signposts to key sources of information and advice.[97]

78. Maternity Action supported the EHRC's recommendation that health professionals be engaged in delivering information to women and employers. Maternity Action said it was "imperative" that midwives, maternity support workers and health visitors were able

89 See Annex 2 for Portsmouth visit note
90 Q21 [Catherine Rayner]; Q59 [Scarlet Harris]; Working Families (MPD0005); National Childbirth Trust (MPD0015); Pregnant Then Screwed (MPD0017); Maternity Action (MPD0024); Sarah Barton (MPD0029)
91 Sarah Barton (MPD0029)
92 See Annex 2 for Portsmouth visit note
93 Q59
94 Q87
95 Sarah Barton (MPD0029); See Annex 2 for Portsmouth visit note
96 Q59 [Scarlet Harris]; Maternity Action (MPD0024), para. 14; National Childbirth Trust (MPD0015)
97 Maternity Action (MPD0024), para. 14

to provide "basic information on rights at work as well as to signpost women to further sources of advice and support." It suggested that the Government "must invest in the training of these front-line workers to ensure they deliver this."[98]

79. In response to these recommendations, the Government agreed to take steps to ensure that the information provided in the MAT B1 form meets user needs, including signposting to further information on employment rights that are relevant to pregnant women. It also agreed to look at the guidance for healthcare professionals on Gov.uk to ensure that they included awareness of pregnancy and maternity-related employment rights, such as the right to time off to attend antenatal appointments.[99]

80. Sue Coe told us that the EHRC had hoped for more from the Government's response on these recommendations. She suggested that despite the positive commitment to using the MAT B1 form to deliver information, there was still a gap in the Government's approach in terms of using health professionals to give women information early in their pregnancy. She supported the idea of giving women a "creditcardsized bit of information … on their bookingin appointment … to equip them to have informed and positive conversations with their employer, when they inform them that they are pregnant."[100]

81. **We welcome the Government's commitment to using the MAT B1 form to disseminate information to women and employers about pregnancy and maternity-related rights and responsibilities. However, many women and employers will need this information much sooner. *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.***

82. **Front-line health professionals involved in the care of new and expectant mothers have a key role to play in helping women to access information about their rights. *These workers 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.***

Accessing more focused advice

83. A number of witnesses suggested that while the provision of general information was useful, women also needed to be able to access one-to-one advice if they had a grievance or wanted to know whether they had grounds to make a complaint or take further action against their employer.[101] This view is supported by the BIS/EHRC research finding

98 Maternity Action (MPD0024), para. 15

99 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 9

100 Q116

101 Qq6, 14, 30 [Rosalind Bragg]; Qq14-21, 27 [Catherine Rayner]; Qq41, 58 [Siobhan Endean]; Q123 [Caroline Waters, Sue Coe]; See Annex 2 for Portsmouth visit note; Sarah Barton (MPD0029);

that that lack of information about their rights was one reason why women who had experienced a negative or possibly discriminatory experience did not raise the issue with their employer or line manager either formally or informally.[102] This issue is discussed further in the Access to justice chapter.

Improving employers' access to information

84. The BIS/EHRC research findings highlighted gaps in employers' awareness of women's pregnancy and maternity rights and of their obligations towards pregnant employees and new mothers. The research also showed that many employers were not looking for the information they needed to fill those gaps. For example:

- one in 10 employers who responded to the survey reported low awareness of pregnant women's rights and two-thirds (67%) had not sought information or guidance;
- only 4% of employers had sought information on issues such as time off for antenatal appointments or dealing with flexible working requests, and yet 10% of the mothers surveyed had experienced problems when they needed time off for antenatal appointments.[103]

Smaller businesses

85. NCT highlighted the importance of "good quality, clear and accurate information for employers", pointing out that "many small and micro businesses will have never had to deal with a pregnancy in the workplace before".[104] Sarah-Jane Butler of Parental Choice, a small business, told us that the information was there for those employers who sought it, but also advocated providing employers with information about their responsibilities early in the employee's pregnancy. She said:

> As a small business and all the way up, if you want to know how to deal with your employees who are pregnant or on maternity who want flexible working, there is plenty of information out there. The internet is full of information; the Government's website, for one, is full of information. It is a bit of a cop-out to turn around and say, "I did not know". Lack of knowledge is no excuse to following the law, as we all know, but there probably needs to be more direct, in-your-hand provision of information to both employers and employees.[105]

86. Citizens Advice acknowledged that many sources of information were available to employers, but suggested that small and medium-sized employers (SMEs) in particular could "struggle with how to find the most relevant advice and information".[106] Similarly, Louise Handley of the LSE noted that larger employers often had human resources departments to filter information for managers as well as trade union representatives to advise individuals, whereas smaller employers "do not have access to those kinds of resources".[107]

102 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 14
103 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 10
104 National Childbirth Trust (MPD0015)
105 Qq86-88
106 Citizens Advice (MPD0027), para. 4.1
107 Q87

Practical support for SMEs

87. Citizens Advice made a number of suggestions for practical ways in which SMEs could be better supported in accessing information. These included the provision of templates and top tips to simplify and demystify pregnancy and maternity issues, and information about good recruitment and equality practices. It also suggested that some of this information could be provided alongside PAYE and VAT information for new traders and businesses.[108]

88. When we asked the Minister about using HMRC communications to provide such information, he replied that this approach was oversubscribed, but that it may be something that could be done through other organisations. He said:

> The trouble is literally every branch of Government is trying to load, like a Christmas tree, on an HMRC communication. We need to think about that. DVLA does not necessarily communicate with every employer but probably does because most employers will have some kind of vehicle. That is what I would like to focus on more…[109]

89. **We encourage the provision of practical support and advice on pregnancy and maternity issues to SMEs in particular.** ***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.***

The case for a single website

90. A key EHRC recommendation on the provision of information was that the Government should create a single comprehensive online site where both employers and individuals could easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace. The Government agreed to this in principle, accepting that there was "scope for more joining up and better signposting to the types of information that are available. However, it also said that it "would be difficult to cater for all of the various types of information that employers and employees need on a single website."[110] It agreed to work with the Advisory, Conciliation and Arbitration Service (ACAS), EHRC and organisations representing pregnant women and employers to "establish what information is most important for pregnant women, to understand the needs of users better, and to improve the online information on rights, responsibilities and good practice."[111]

108 Citizens Advice (MPD0027), para. 2.3 and annex 1
109 Q179
110 UK Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace,* March 2016, p.10
111 Ibid, p.10

91. A number of the witnesses we heard from supported the idea of a single, trustworthy source of information.[112] Louise Handley expressed surprise at the Government's rejection of this recommendation, which she said seemed "defeatist at the outset". She added that it was not particularly helpful to have "scattered information" for managers, employers and individuals, and suggested that "bringing some of those messages together organisationally" might help to start conversations and resolve issues.[113] However, Working Families said that its own experience of attempting to create a one-stop shop for advice suggested that this would be difficult to do.[114]

92. When questioned about the Government's apparent reluctance to commit to implementing a single website, the Minister responded that it was an "absurd idea that the answer to every problem is to have a new website, which then by definition has a URL that nobody knows, and you then have to market." He argued that that it would be better to "point people to the resources in places they already go" such as ACAS, Facebook and the EHRC's website.[115] However, we note that only 8% of the women surveyed for the BIS/EHRC research sought advice from external organisations, with 4% seeking advice from ACAS, 2% from Citizens Advice, 2% from a trade union, 1% from a lawyer or solicitor and 1% looking on the internet.[116] This suggests that the sources of information that are already available are not as well known or used as the Minister suggests and will therefore need to be marketed if access to information is to increase.

93. **We support the EHRC's recommendation for a single comprehensive online site where both employers and individuals can easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace. It seems both logical and practical to have one starting point for all queries on these issues. We do not accept the Minister's suggestion that marketing a new URL is a significant barrier, given that the Government has undertaken to implement an awareness-raising campaign on these issues. However, the most important outcome is that employers and employees can more easily access the information they need, and that they start to do this in far greater numbers than is currently the case. *The Government should give further consideration to the feasibility of a single website.***

Encouraging a change in attitudes

94. The BIS/EHRC research showed a positive overall picture for employer attitudes, with the majority of those surveyed (84%) reporting that it was in their interests to support pregnant women and those on maternity leave. However, the finding that more than three quarters of women surveyed had experienced negative or discriminatory experience shows that those positive attitudes are not always translating into a positive experience for employees.

95. There was also evidence of less positive attitudes, with some finding particular statutory rights unreasonable or difficult to manage, and with others seeing pregnant women and mothers as being less committed than other staff. For example:

112 Annex 2, Portsmouth visit note; Q89 [Louise Handley]; National Childbirth Trust (MPD0015); Chwarae Teg (MPD0016); Maternity Action (MPD0024

113 Q89

114 Working Families (MPD0005), para. 4.3

115 Q156

116 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 146

- 27% of employers surveyed felt that pregnancy put an unreasonable cost burden on the workplace;
- 28% said that enhanced protection from redundancy during Ordinary Maternity Leave (the first 26 weeks of Maternity Leave) was unreasonable;
- 70% thought that women should declare upfront during recruitment if they were pregnant, and a quarter of employers felt it was reasonable during recruitment to ask women about their plans to have children;
- 17% believed that pregnant women and mothers were less interested in career progression and promotion than other employees; and
- 7% did not think mothers returning from maternity leave were as committed as other members of their team.[117]

The line manager effect

96. Even where employers hold positive attitudes, this may not filter down to employees through their manager. The BIS/EHRC research found that treatment by a line manager "was generally felt to have a greater impact on the experiences of mothers (whether positive of negative) than the role played by HR".[118] This finding was borne out in the evidence we received. The women we spoke to on our Portsmouth visit agreed that the attitude of line managers was very important.[119] One of the Portsmouth focus groups concluded that "their line managers were out of their depth empathetically and from a Human resources perspective, having no idea how to deal with the issues of having a pregnant employee."[120]

97. Scarlet Harris of the TUC told us that "a lot of the discrimination that goes on is at line manager level" and highlighted the need to ensure that managers at all levels of organisations received the right training. She said:

> [S]ome employers will have a good understanding of legal rights and they will have a huge HR department that is completely on top of every development in legislation, and it is all written down in a book and they have clear policies in place, which may be excellent policies, with enhanced maternity pay and maternity leave and all of that. However, that training is not happening at all levels of management."[121]

Other witnesses also highlighted the importance of line manager training, including unconscious bias training.[122] Sue Coe of the EHRC told us there was a need to "reach out to line managers", because 55% of companies did not train their line managers on some of these issues.[123]

117 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Summary*, March 2016, p.7
118 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, pp. 14-15)
119 See Annex 2 for Portsmouth visit note
120 Sarah Barton (MPD0029)
121 Q55
122 Q56 [Siobhan Endean]; Q82 [Mark McLane]; MPD0012 (OnePlusOne); Sarah Barton (MPD0029); MPD0014 (Chartered Institute of Personnel and Development); National Childbirth Trust (MPD0015)
123 Q130

98. The ERHC recommended that ACAS work with it to raise employers' awareness of "existing guidance on recruiting and managing pregnant women and maternity-related issues and absence" and to produce training for line managers.[124] The Government noted in its response that ACAS had committed to do this.[125] However, OnePlusOne suggested that more detail was needed on the training proposed for managers.[126]

99. **We emphasise the importance of good-quality training to managers in ensuring that good practice permeates all levels of organisations, and we share the concerns that have been raised regarding a lack of detail about the work being done in this area. *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.***

Leading the way forward

100. A key EHRC recommendation was that the Government work in partnership with the EHRC and business leaders to: develop a joint communications campaign aimed at employers on the benefits of retaining pregnant women and new mothers in the workplace; and to demonstrate creative approaches to attracting, developing and retaining women in the workforce before, during and after pregnancy.[127]

101. The Government accepted this recommendation in principle, stating that it would "work with the EHRC and business leaders to promote opportunities for women, including pregnant women and new mothers: with a view to closing the gender pay gap, empowering women who want to work to do so, and ensuring that female talent is recognised and rewarded."[128]

102. Elizabeth Duff of NCT expressed disappointment at this response, telling us:

> The Government response says, "Accept in principle", but I do not actually see anything in what they have written underneath that looks as though any such campaign is planned or has any strength to it. That is a real missed opportunity because I do believe it is very clear. The report has come out very late and it would have been a very good sign to see something like that really picked up and addressed in a positive way.[129]

NCT's written evidence suggested that a communications plan aimed at employers should be robustly taken up" to encourage employers to actively support women in the workplace during the maternity period, as otherwise support "may remain passive.[130] Chwarae

124 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 9
125 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 8
126 MPD0012 (OnePlusOne), pp. 1-2
127 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 6
128 UK Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 5
129 Q28
130 National Childbirth Trust (MPD0015)

Teg said that the Government "could go further in its response to the recommended communications campaign" and that it should work with a range of bodies to deliver an effective campaign.[131]

103. The EHRC also expressed disappointment at the way in which the Government was taking forward this aspect of the recommendations. Caroline Waters emphasised the need for clear leadership from the Government to drive the change in attitudes and behaviours that is needed. She told us that the EHRC wanted the Government to "step up to take a really positive leadership position in the way that they did around gay marriage, for example, and to really move the agenda forward." She added that this would require "a sustained high level input from Government".[132]

104. We asked the Minister when the Government would provide a more detailed plan of the actions it would be taking in response to the report and how it would demonstrate the leadership that the EHRC was looking for. He replied:

> I am sorry; we do not intend to publish an implementation plan. We have very clear recommendations. We have been very clear about our response to those recommendations. We have accepted the overwhelming majority of them. We are now working with the commission, with ACAS, with the Health and Safety Executive, and will continue to work with business groups…I do not believe that we need to publish an action plan to actually follow up. Rather than publishing a plan, I would rather just get on with the work, with the commission, and with all of these other bodies.[133]

On leadership, he said "I do not know what leadership means if it is not just getting on with the job."[134]

105. **We are concerned by the lack of detail in the Government's response to the EHRC's recommendations and we do not accept the Minister's suggestion that the Government has set out clearly the action that it will take. Many of the EHRC's recommendations were accepted in principle, with caveats, and there is a lack of clarity about which parts of those recommendations will be taken forward, when and how. We are surprised by the Minister's assertion that it is not important or necessary to produce a plan, and that the Government can provide leadership without setting out what they intend to achieve, by when and how. On the contrary, if the Government is unable to set out a vision that can be shared, it less likely to be able to provide effective leadership on this issue.**

106. ***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.***

131 Chwarae Teg (MPD0016)
132 Q111
133 Q162
134 Q163

Carrots and sticks

107. Several witnesses agreed that the awareness-raising approach being taken forward needed to be underpinned by appropriate implementation and enforcement if the employers with the poorest records on pregnancy and maternity discrimination were to be reached.[135] Academic Alexandra Heron said that "the time for another information campaign on rights and obligations is past unless it is backed up by making remedies accessible, effective and enforceable."[136] Working Families flagged up the need to deal with "rogue" employers, stating:

> 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.[137]

108. SarahJane Butler of Parental Choice also mentioned carrots and sticks, and suggested the form these might take:

> The recommendations are a good starting point, but it takes a lot more...There needs to be a carrot-and-stick approach towards employers. There has to be an encouragement for them to gender pay report, for example, publish their retention rates and stand up and be counted, and they should be highlighted if they are shown up as being a discriminatory employer. At the same time, there should also be rewards. For example, the recommendation of a collective insurance scheme for small businesses to help them is a very good one. Perhaps increasing the small employers rebate is another good one.[138]

109. Other witnesses agreed that reporting on the retention of employees would be useful. Academic Alexandra Heron suggested that large firms should be required to monitor and report to the Government on employees who leave their job during maternity or shared parental leave, or when it finishes, as in Australia, as well as on those who leave within 12 months of return.[139] Maternity Action suggested that employers should be encouraged to report post-maternity leave retention rates as part of gender pay gap reporting and also to analyse retention rates for women "one year after a successful application for flexible working".[140]

110. When we asked Sue Coe whether the EHRC would support employer reporting of retention rates, she said it was "an excellent idea" that "could really drive progress".[141] However, the Minister told us that reporting requirements could be a regulatory cost on business and that the Government would need to evaluate the idea. He said:

135 Q88 [Mark McLane, Sarah-Jane Butler, Louise Handley]; Alexandra Heron (MPD0010), para. 5; Working Families (MPD0005), paras. 3.1-3.2
136 Alexandra Heron (MPD0010), para. 5
137 Working Families (MPD0005), paras. 3.1-3.2
138 Qq88-89
139 Alexandra Heron (MPD0010), para. 5
140 Maternity Action (MPD0024), para. 10
141 Q146

> I can certainly see the attractions as it were, in terms of the information that would bring forward. We have introduced quite a lot of new, different things in the last year. I know that it is frustrating, in a sense, when one feels that Government should be going further. However, we would probably want to allow those interventions to bed in, see what information we get back and see whether it drives a change in behaviour before we start adding a whole lot more.[142]

111. Other "sticks" suggested by witnesses included: publishing the names of all employers that had lost employment tribunal claims relating to pregnancy; publishing the names of all employers that had not paid tribunal claims in full; and requiring employers found to have committed discrimination to make enforceable undertakings to take action to prevent discrimination.[143]

112. Witnesses also proposed a number of incentives to encourage better practices among employers. The women we spoke to in Portsmouth suggested tax relief to encourage employers to take on part-timers and enable more flexible working.[144] Sarah-Jane Butler suggested increasing the Small Employers' Relief for statutory maternity pay from 103% to 105%.[145] Alexandra Heron and YESS Law proposed increasing this rebate to up to 115% and linking this to retention of the returning employee for a specified period after their return to work.[146] Alexandra Heron said that this would "assist with the real costs of finding and training a substitute."[147]

113. Citizens Advice said that many small and medium-sized enterprises (SMEs) did not know about Small Employers' Relief, and that this contributed to the "SME perception that pregnant employees will be an expensive burden on the business." It suggested that information about reclaiming this rebate could be provided on the MAT B1 form and that the process of reclaiming could be simplified for SMEs by doing this automatically through the tax system, thus removing the need for them to apply.[148]

114. **We welcome the joint communications campaign being taken forward by the Government in partnership with the EHRC and businesses. However, we are not convinced that this approach alone will be enough to tackle the discrimination and negative employer attitudes evidenced in the BIS/EHRC research.**

115. ***The communications campaign 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:***

- ***paying a higher rate of Small Employers' Relief when the relevant employee is still in post 12 months after returning from maternity leave;***

142 Q185
143 Maternity Action (MPD0024), para 32; Alexandra Heron (MPD0010), para. 7
144 Annex 2, Portsmouth visit note
145 Q90. For information on Small Employers' Relief, see www.gov.uk, Get financial help with statutory pay
146 Alexandra Heron (MPD0010), para. 4; Your Employment Settlement Service (YESS) Law (MPD0019)
147 Alexandra Heron (MPD0010), para. 4
148 Citizens Advice (MPD0027), para. 9.2

- ***automatic payment of Small Employers' Relief;***
- ***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; and***
- ***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.

3 Improving access to justice

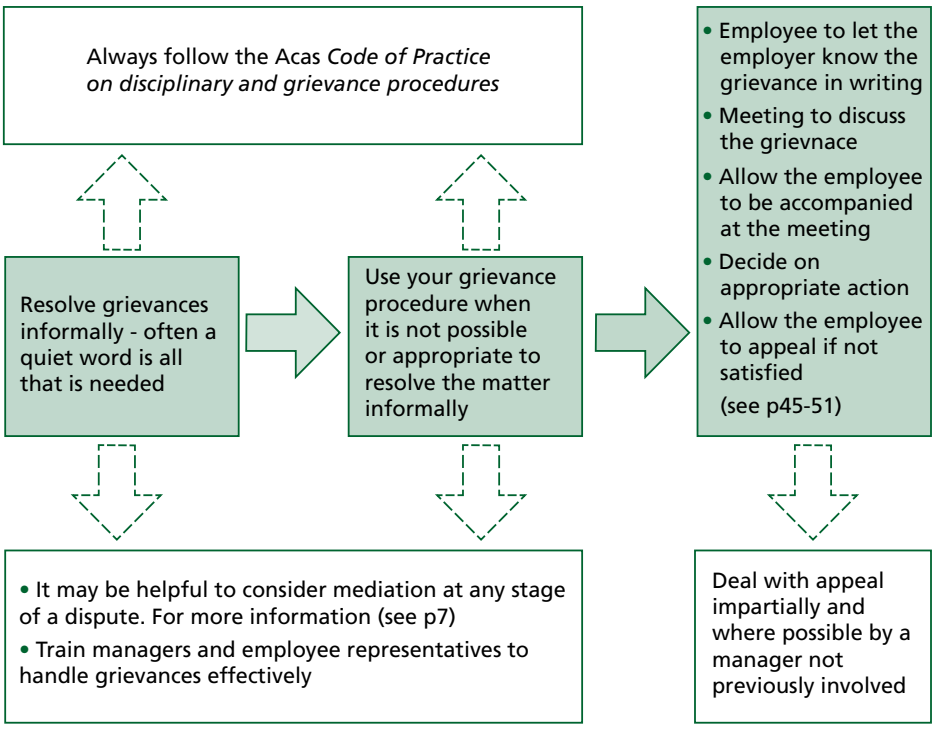
Overview

116. More than three-quarters (77%) of the mothers surveyed for the BIS/EHRC research reported potentially discriminatory or negative experiences.[149] Of those, only around a quarter (28%) had discussed the issue with their employer and only 3% went through their employer's internal grievance procedure.[150] Reasons for not raising a complaint included: fearing the impact on their relationships with their colleagues or employer; feeling that nothing would change; their own stress and tiredness; lack of information about their rights; lack of clear complaints procedures; and the financial cost of pursuing a complaint.[151]

Dealing with disputes

117. For those who do raise a complaint or grievance about their treatment, some disputes can be dealt with informally through discussions with managers. ACAS guidance on raising a grievance at work suggests that it is best to try to resolve grievances informally if possible and advises employees to raise issues promptly.[152] If informal resolution is not possible, employees can raise a formal complaint or grievance, for which employers should have a formal procedure set out in writing. Figure 1 below sets out ACAS's guidance on handling grievances:

118. **Figure 1: ACAS guidance on handling grievances**



Source: ACAS, *Discipline and grievances at work: the Acas guide* (2015) p.6

149 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 38

150 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 14

151 Ibid, p. 14

152 www.acas.org.uk, Raising a grievance at work, accessed on 01 July 2016.

119. For women who feel they have a grievance and are considering making a complaint, access to the right information and advice is important. The EHRC found that mothers who had resolved issues with their employer at an early stage had found that advice from external organisations such as ACAS and Citizens Advice or a trade union, or specialist advice providers such as Maternity Action, had helped them to reach agreement.[153] Often, when women notified their employer that they had sought advice from an external organisation, this "triggered action from the employer to resolve the issue."[154]

The role of tribunals

120. If the employee and employer cannot agree how to resolve their dispute, the case can be taken to an employment tribunal to be heard by a judge. Before applying to have a case heard at a tribunal, applicants must notify ACAS of their intention to make a claim to the tribunal. They are then offered the chance to try to settle the dispute using ACAS's free early conciliation service. If this is unsuccessful, the claim to tribunal can go ahead.[155]

121. Witnesses noted the importance of tribunals as a means of resolving disputes and encouraging employers to carry out their obligations, but there was also agreement that it was better to resolve disputes earlier, and that ideally cases should not get to tribunal.[156] Louise Handley told us that the LSE focused on "early resolution of disputes in the workplace before they even reach our grievance procedure, ideally, let alone the tribunal stage."[157]

122. Sarah-Jane Butler of Parental Choice emphasised that going to tribunal could be an unpleasant and stressful experience. She told us:

> I do not think anybody voluntarily agrees to put themselves through a tribunal system unless they really have to. I would say most women would not want to have to go through all of that stress and, even if it is relatively cheap, have to pay that kind of money. They just want to be treated fairly within the workplace. They want to be able to come back to work.[158]

This reluctance to go to tribunal is reflected in the EHRC/BIS finding that fewer than 1% of the mothers surveyed (18 out of 3,254) pursued a claim to an employment tribunal.[159] Reasons for not going to tribunal included: earlier resolution of the grievance; the prospect of a tribunal being too daunting; being too busy with the new baby or wanting to focus on pregnancy or maternity leave; not wanting to get into trouble at work; feeling that the case was not strong enough; fear of losing their job; getting another job; and not being able to afford the fees.[160]

123. We also heard directly from new and expectant mothers, on our visit to Portsmouth, that they probably would not think about going to employment tribunal when pregnant

153 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 10
154 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 146
155 www.gov.uk, Making a claim to an employment tribunal
156 Q20 [Elizabeth Duff]; Q25 [Catherine Rayner]; Q96 [Mark McLane]; Q98 [Louise Handley], Q105 [Sarah-Jane Butler]
157 Q98
158 Q95
159 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 14
160 HM Government and EHRC, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, March 2016, p. 149

or looking after a new baby. The main reasons given were that there would be too many other things to think about; being put off by the idea of having to represent themselves while looking after a small baby; and tribunal fees, particularly for those on statutory maternity pay.[161]

Tribunal fees

124. Fees for employment tribunal claims were introduced in 2013. The Government's stated aims in introducing the fees were to: "transfer a proportion of the costs from the taxpayer to those who use the tribunal where they can afford to do so"; "encourage parties to seek alternative ways of resolving their disputes"; and to "maintain access to justice".[162] The fees for bringing a discrimination case are £250 for making the claim and £950 for the hearing. [163] This does not include any legal, travel or other costs associated with making a claim. Help with fees is available for those on a low income or certain benefits.[164]

A barrier to justice?

125. Several witnesses suggested that rather than achieving the Government's aim of maintaining access to justice, tribunal fees were a barrier to justice.[165] Catherine Rayner told us they were too high, stating:

> The fees that have been introduced are incredibly high and they are not necessarily recoverable…The additional cost, when you look at the rate of maternity pay that is currently being paid to women unless there is some better contractual scheme, means that the costs are out of all proportion to what is affordable. That is very significant. The costs are really problematic, and the mere fact of the costs in what is essentially a cost-free jurisdiction is a real disincentive.[166]

126. Since the introduction of fees, the number of sex discrimination and pregnancy-related tribunal claims has dropped significantly, as highlighted by the EHRC. It has outlined that the number of sex discrimination claims dropped from 18,814 in 2012/13 to 4,471 in 2014/15 (a 76% decrease) and that the number of pregnancy-related cases dropped from 1,589 in 2012/13 to 790 in 2014/15 (a 50% decrease).[167]

The case for abolishing or reducing fees

127. The EHRC recommended that the Government should make changes to the employment tribunal fee system "to ensure that fees are not a barrier to accessing justice

161 See Annex 2 for Portsmouth visit note
162 Ministry of Justice, Review of the introduction of Employment Tribunal Fees, June 2015.
163 www.gov.uk, Make a claim to an employment tribunal, accessed on 01 July 2016.
164 www.gov.uk, Get help paying court and tribunal fees, accessed on 01 July 2016.
165 Q12 [Rosalind Bragg]; Q55 [Scarlet Harris]; Q56 [Siobhan Endean]; Working Families (MPD0005), para. 5.2; Alexandra Heron (MPD0010), para. 7; Annex 2, Portsmouth visit note
166 Q29
167 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 14

for women experiencing pregnancy and maternity discrimination".[168] The Government rejected this recommendation, stating that it was "too soon to consider whether any action is needed" and highlighting that a Government review of the fees was under way.[169]

128. A number of witnesses voiced their concerns about the very low numbers of women now going to tribunal and the effect this would have on women's ability to assert their rights and hold their employer to account.[170] A key issue was the concern that some employers could act with impunity knowing that they were unlikely to be taken to tribunal. Working Families said there was "no doubt" from its experience that the fees were "discouraging good claims", with the number of queries to its helpline remaining stable but with a "dramatic decline" in the number of people asking for its help "in the employment tribunal process". It went on:

> 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.[171]

Similarly, Siobhan Endean said that employers were "confident that they are not going to be tackled, because women cannot afford…the £1,200 to go to employment tribunal".[172]

129. Scarlet Harris of the TUC also suggested that some employers were less likely to comply with their obligations if they knew that women were unlikely to take action, adding, "Employers can be quite candid, saying, 'Yes, we know that is your legal right but what are you going to do about it?'"[173] On a similar note, Rosalind Bragg of Maternity Action suggested that the low likelihood of a woman taking a case to tribunal would make it harder to achieve satisfactory early resolution of a dispute, stating:

> Even in 2005 we had a very low proportion of women who took tribunal claims; only 3% of those with substantive discrimination took claims. However, they are fundamental to the negotiation process that takes place with employers before going to the tribunal. If employers are confident that women cannot go to the tribunal then we are much less likely to achieve a resolution in the informal and oral grievance processes that precede tribunal claims.[174]

130. Maternity Action concluded that "the overwhelming majority of women simply cannot afford the tribunal fees, especially with the financial pressures of a new family" and that the Government "must abolish the upfront fees for employment tribunal claims for pregnant women and new mothers".[175] Working Families stated that it had "long campaigned" for their abolition.[176]. Catherine Rayner said there was a need to "look again" at tribunal fees, and Scarlet Harris said they were "an additional barrier that does

168 Ibid, p. 15
169 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 12
170 Q16 [Rosalind Bragg]; Qq 55, 70, 155 [Scarlet Harris]; Q56 [Siobhan Endean]; Q75 [Samantha Rye]; Q94 [Sarah-Jane Butler]; Working Families (MPD0005), para. 5.2; Alexandra Heron (MPD0010), para. 7
171 Working Families (MPD0005), para. 5.2
172 Q56
173 Q55
174 Q30
175 Maternity Action (MPD0024), para. 29
176 Working Families (MPD0005), para. 5.2

not need to be there."[177] The Scottish Women's Convention supported the "commitment on the part of the Scottish Government to scrap Employment Tribunal fees once powers are devolved to the Scottish Parliament".[178] Citizens Advice recommended that tribunal fees be "reduced to make them an accessible means of resolving employment disputes where conciliation has failed".[179]

131. When we raised the issue of fees with the Minister, he highlighted the role of conciliation, and referred to the Government's review of the impact of tribunal fees.

Government review of the impact of tribunal fees

132. In June 2015, the Government began a review of the impact of the introduction of tribunal fees. The terms of reference for the review stated that it would gather evidence on the take-up of alternative dispute resolution services, including the numbers of people using ACAS's conciliation services, and the impact of mandatory notification of a dispute.[180] The review has not yet reported. In a letter of 29 June 2016, the Parliamentary Under-Secretary of State for Justice, Dominic Raab MP, told us that "good progress" had been made on the review and that it would be "published in due course".[181]

Tribunal time limits

133. Employment tribunals are subject to time limits. The deadline for making a discrimination claim is three months less one day from the date when the discrimination happened.[182] A number of witnesses raised concerns about the effect of this time limit on pregnancy and maternity discrimination cases, with some commenting that the time limit is particularly unjust for new and expectant mothers, given the physical and emotional pressures on them at this time.[183] Catherine Rayner said:

> The pregnant woman or the woman dismissed for pregnancy really is a paradigm case. As has already been said, a woman in that situation is going to be exhausted because she has probably got a new baby. She has also got another focus in her life. She is probably looking ahead to what she is going to do when she does want to return to work if her employer is being unsympathetic, and she probably does not have the additional time, energy or emotional ability that is necessary to take action immediately.[184]

134. The EHRC recommended that the Government consider increasing the time limit for a woman to bring an employment tribunal claim from three to six months in cases involving pregnancy and maternity discrimination, in line with claims regarding redundancy and equal pay.[185] The Government rejected this recommendation, stating that there was "no evidence from the responses to the research into pregnancy and

177 Q15 [Catherine Rayner]; Q71 [Scarlet Harris]
178 Scottish Women's Convention (MPD0006)
179 Citizens Advice (MPD0027)
180 Ministry of Justice, Review of the introduction of Employment Tribunal Fees, June 2015
181 Ministry of Justice (MPD0036)
182 www.citizensadvice.org.uk, Time limits for making a discrimination claim in the employment tribunal, accessed on 01 July 2016.
183 Q29 [Catherine Rayner]; Q138 [Caroline Waters]; Working Families (MPD0005), para. 5.4; Maternity Action (MPD0024), para. 29; Pregnant Then Screwed (MPD0030)
184 Q29
185 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 15

maternity-related discrimination to suggest that there is a need to increase the time limit for a woman to bring an Employment Tribunal claim." It also said that there was already flexibility for the time limit to be extended "to whatever limit the Tribunal consider to be 'just and equitable'."[186]

135. The EHRC rejected the Government's assertion that there was no evidence of a need to increase the limit. Caroline Waters said:

> We have presented it. The evidence is here. You have seen the evidence. They only have to talk to women, particularly new mums, to understand that that is a very unique time in a woman's life. They have told us that they are often tired and perhaps the sleepless nights and all the stress and the worry of, "Am I doing the right thing for my child?", means that the last thing that they feel capable of is doing something that they perceive as costly and difficult.[187]

136. We received evidence from a number of sources that the time limit was a barrier. Pregnant then Screwed said that it knew, from the stories it had received and its conversations with victims of discrimination, that the three-month time limit caused "a major barrier for women when accessing justice". It added that its website had more than 500 stories offering insight into the different experiences of women, including 32 stories stating that women could not go tribunal because the deadline had passed "by the time they were in a position to seek justice."[188] Working Families said that it was disappointed by the Government's rejection of the EHRC's recommendation to increase the time limit, stating:

> 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.[189]

Maternity Action said that the time limit was a barrier to justice and recommended that the Government extend the time limit to six months and "develop statutory guidance for Employment Tribunal judges concerning the use of their discretion in relation to extending the time limit in claims brought by pregnant women and new mothers."[190]

137. When we put it to the Minister that the time limit was an issue for many women, he responded that it was important to understand that tribunals can "waive the time limit and extend it if they believe that it is justifiable in the circumstances to do so" and that it was "not impossible" for the claim to be heard later.[191]

186 UK Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 12
187 Q138
188 Pregnant Then Screwed (MPD0030);
189 Working Families (MPD0005), para. 5.4
190 Maternity Action (MPD0024), para. 29
191 Q175

Justice Committee recommendations on tribunals

138. On 20 June 2016, the Justice Committee published a Report on Courts and tribunals fees, which looked at "changes introduced in recent years by the Government to fees for court users in the civil and family courts and in tribunals"[192] The Committee looked at these issues in more detail than we have been able to achieve for this inquiry and we note its findings that tribunal fees have had a "significant adverse impact on access to justice for meritorious claims" and should be "substantially reduced".[193] We also note its recommendation that "further special consideration should be given to the position of women alleging maternity or pregnancy discrimination, for whom, at the least, the time limit of three months for bringing a claim should be reviewed."[194] Finally, we note its finding that it is "unacceptable that the Government has not reported the results of its review one year after it began and six months after the Government said it would be completed" and support its call for the Government to "publish the information it has collected as part of the review of tribunal fees."[195]

Mind the enforcement gap

139. Before we set out our conclusions and recommendations on these issues it is important to consider the wider context. As the Minister made clear in his evidence, in this area of law the burden of enforcement rests on the individual who has experienced discrimination to seek redress and thereby increase employer compliance.[196] He noted that "a very small number of women" had "got to the point of registering a formal complaint" and acknowledged that a key issue was working out how to "encourage more women to take that route." However, he did not have a clear idea of why the numbers of women taking action were so low, stating:

> I would not presume to know whether it is that people either do not know about what routes are available to them—that could be part of it—or whether it is that people feel that they frankly have already got quite a lot going on in their lives.[197]

140. When we pressed the Minister on whether tribunal fees might be one reason why so few women took their case to tribunal, he emphasised the role of conciliation and the fact that women would now be offered conciliation by ACAS if they went to lodge a tribunal claim. However, he acknowledged that there was still the question to answer of "why nobody calls in the first place to lodge a claim" and went on:

> I suspect that there are a lot of people who are put off by the hassle. Also, by definition these are pregnant women; they have got quite a lot else on their minds and on their plates. I do not know quite what the suggestion would be as to how to persuade more of this number of women who…the report said had left their jobs as a result, to report.[198]

192 Justice Committee, Second Report of Session 2016-17, *Courts and tribunals fees*,HC167, p. 3
193 Ibid, paras. 69 and 79
194 Ibid, para 79
195 Ibid, paras 59 and 79
196 Q171
197 Q172
198 Q172

141. Following the Minister's admission that the Government does not have a clear idea why more women are not taking action against their employer to tackle discrimination, and that they do not know how to persuade more women to do so, we asked if the Government had any plans to seek answers to these questions. The Minister responded that the Government was "not in a position to commission a huge piece of further research" and that its "main focus should be on trying to actively promote good behaviour by employers because if we could do that … then in a sense we would not need to be encouraging more women to complain when something goes wrong."[199]

142. **We note the Minister's acknowledgment that pregnant women "have got quite a lot else on their minds and on their plates" and that this may be a reason why they do not take action against their employer when they suspect there has been discrimination. This easy acceptance of the pressures on expectant mothers contradicts the Government's assertion that there is "no evidence" of a need to increase the time limit for a woman to bring an employment tribunal claim. We agree with the EHRC that the case has been made.**

143. ***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 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.***

144. **We have concerns about the Government's approach of placing all its hopes in a campaign to persuade employers to comply with the law. It is clear that women are not taking action in large enough numbers to ensure compliance from employers, and yet this type of action is the main source of enforcement for discrimination law. This enforcement gap leaves it open to rogue employers to flout the law, and the actions set out by the Government do not deal with this. The Government has a clear responsibility to ensure that pregnancy and maternity discrimination laws and protections are better enforced.**

145. **We agree with the Government that it is preferable for workplace disputes to be resolved at the earliest possible stage and that tribunals should be a last resort. However we also recognise the important role that tribunals play in enabling individuals to seek redress, in holding employers to account, and as a wider deterrent. We are well aware that the number of sex discrimination and pregnancy-related tribunal claims was low before tribunal fees were introduced. We do not suggest that the removal or reduction of fees would solve the enforcement problem. Nonetheless, we cannot ignore the evidence we have received and the Justice Committee's findings that tribunal fees have had a significant adverse impact on access to justice.**

146. ***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.***

199 Q174

Access to one-to-one advice

147. As outlined above, lack of information about their employment rights was identified in the BIS/EHRC research as a barrier to women raising complaints with their employer about negative or potentially discriminatory experiences.[200] While access to general information was seen as important, witnesses also identified a need for some women to access one-to-one advice. Catherine Rayner of the Discrimination Law Association highlighted the importance of specific and timely legal advice, commenting that pregnancy and maternity discrimination and rights at work are "not straightforward". She told the Committee that sometimes all that is needed is a few hours' advice and a "sensible letter to the employer" to get "a very good result".[201]

148. On our visit to Portsmouth, a number of mothers told us that they would not know where to go for advice about their legal rights if they were experiencing poor treatment or discrimination at work.[202] Some thought they would try Citizens Advice but others suggested that it was insufficiently resourced to provide timely advice. One of the Portsmouth focus groups proposed that there should be workshops at children's centres where they could go for such advice.[203]

149. Catherine Rayner also drew attention to reductions in access to legal advice about pregnancy and maternity discrimination issues over the years. She told the Committee:

> When I started out as a lawyer, the green form scheme was available to deal with many of these very straightforward, fundamental problems and issues that women had. They could go to the law centre, the CAB, or a voluntary sector organisation to gain advice. That is no longer available to them. There has been a massive reduction in the amount of advice..."[204]

150. Citizens Advice provided us with its figures for the number of people it had helped with specific maternity rights and pregnancy discrimination issues in the past few years. In total, it helped 6,358 people in 2014/15 with, this number rising to 6,725 in 2015/16. For pregnancy discrimination figures, the number of people it helped rose from 1,551 in 2014/15 to 1,923 in 2015/16. Similarly, the number of people it helped with maternity rights (maternity leave, contractual maternity pay, other maternity rights and redundancy during maternity leave) rose from 5,256 in 2014/15 to 5,324 in 2016/17. It outlined that this advice ranged from the provision of basic information and signposting to advice and casework, which "might vary from 20 minutes for a one off advice interview, to 15 or more hours for detailed casework." It explained that its work to help clients with pregnancy discrimination issues was about 10% casework such as negotiating a settlement, or helping a client to present their case to their employer or an employment tribunal. This suggests that there is a significant need for one-to-one advice at all stages of complaint.[205]

151. Citizens Advice highlighted that there was unmet need for its services, stating:

200 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 10
201 Q21
202 See Annex 2 for Portsmouth visit note
203 Sarah Barton (MPD0029)
204 Q14
205 Citizens Advice (MPD0035), paras. 1-4

> While we do not turn away anyone who reaches out to our service, we know that many individuals do not access our service who need advice. There are a range of reasons for this, including consumer behaviour, but one of the barriers is capacity in the service due to how our service is resourced…[206]

It suggested that the best way of meeting this need would be by providing "scaleable advice services, designed to best meet the needs of both the employee and the employer" and proactively taking an "advice and casework service out to touch-points where women who are pregnant can be helped (such as maternity groups, GP surgeries and other health settings), and to employers."[207]

152. Citizens Advice also identified a wider unmet need for advice and support to women experiencing pregnancy and maternity discrimination, stating that the BIS/EHRC findings "suggest that an unknown but very significant number of women who experience maternity and pregnancy discrimination issues at work are not seeking advice or support from external organisations."[208]

EHRC recommendations and Government response

153. The EHRC has highlighted the need for access to good-quality advice to "help employers and employees to understand their rights and obligations and resolve issues early on".[209] Sue Coe reiterated this need, telling us that it was important to "ensure that women have access to advice, as well as information."[210] The EHRC recommended that the Government should review the availability of and women's ease of access to employment advice services and address any barriers identified.[211]

154. The Government accepted this recommendation, stating that it would "review 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".[212] However, the Minister told us that ACAS was already providing this service and that the Government was "not planning to invest more in this."[213]

155. **We were disappointed to hear from the Minister that the Government has already decided not to invest any more in improving access to good-quality advice. It is unclear whether the Government has reviewed the accessibility of employment advice services, as it said it would in its response to the EHRC, or whether it has merely concluded that no action is required without conducting a review. *The Government must set out in its response whether it has conducted this review, 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.***

206 Ibid, para. 4
207 Ibid, para. 4
208 Citizens Advice (MPD0035), para. 4
209 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 10
210 Q123
211 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, pp. 10-11
212 UK Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 9
213 Qq177-78

156. **Given the low numbers of women taking enforcement action against their employer in pregnancy and maternity discrimination cases, it is crucial that there is sufficient access to free, good-quality, one-to-one advice and support where needed. ACAS provides a valuable service but we do not accept the Minister's assertion that it can provide all the advice and support that is required. For example, it cannot provide the kind of specific, focused legal advice and casework assistance that is offered by Citizens Advice. It is possible that the actions that the Government is taking to increase access to information will reduce the pressure on advice services for more general advice and signposting, thereby freeing up resources for more tailored advice. However, there may also be an increase in demand for such advice as more women become aware of their rights.**

157. ***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.***

4 Enforcement and monitoring

Enforcement

158. We have set out our concerns about the need for greater enforcement of measures to prevent pregnancy and maternity discrimination. We have also set out our concerns about the burden of enforcement resting predominantly with women. Several witnesses have suggested that there could be a greater role for statutory and independent bodies in enforcing pregnancy and maternity discrimination laws and measures. For example, Maternity Action saw a greater role for the HSE in ensuring that health and safety protections for new and expectant mothers were properly enforced. It recommended:

> HSE must work together with local inspectors to ensure consistent examination of the suitability of general risk assessments in relation to pregnant women and new mothers, as well as ensuring inspectors request to see specific risk assessments where there is a pregnant woman or new mother in the workplace.[214]

159. Alexandra Heron noted the low levels of enforcement action by women and commented that "not to enforce the law invites it to be disregarded". She went on to suggest that enforcement "should be undertaken by a properly resourced independent agency which can relieve employees not wishing to bring their own case by investigating and taking action against the employer."[215] Working Families outlined its concerns about the "antagonistic", "often lengthy" and "increasingly legalistic" tribunal process and suggested that further consideration be given to "alternative mechanisms to ensure that the law is upheld". It added that ACAS could be involved earlier in the appeal or grievance process.[216]

160. When we asked the EHRC if it could play a greater enforcement role, Sue Coe told us that this would not be a good use of resources. She said:

> One reaction to…[the] really shocking figures that came out of the research would be more enforcement and to lead with enforcement. That is not the correct approach. We would sink a great deal of resources, but perhaps not very effectively, if we supported more and more individual cases, which do not have a strategic push in terms of clarifying the law, because this is a very settled area of law.[217]

161. Conversely, the Minister told us that the focus in relation to increasing compliance with pregnancy and maternity discrimination should be "about enforcement rather than changing the law".[218] He went on to suggest that the burden of enforcement for pregnancy and maternity discrimination should remain with the women experiencing discrimination, stating:

> We do not want to change the fundamental way the whole system works, which does not just work in relation to this kind of discrimination but works with regard to all other employment rights. We do not proactively send enforcement

214 Maternity Action (MPD0024), para. 22
215 Alexandra Heron (MPD0010), para. 3
216 Working Families (MPD0005), para. 5.1
217 Q123
218 Q171

> teams into companies randomly in the same way, for instance, that we send Ofsted into schools…and haul them over the coals if their employment practices are not proper. Our approach, in order to have a reasonable balance of constraint and freedom, is to say, "There are clear rules. It is your duty to understand them and to abide by them, and if you do not, and somebody complains about it then you will suffer through this process.[219]

162. **The Government's approach to improving compliance with pregnancy and maternity discrimination law is disjointed and contradictory. It has stated that it is important to focus on enforcement and yet its main focus is on awareness-raising and persuasion. It has voiced concern about the low numbers of women taking enforcement action against their employer, but has rejected the EHRC's recommendations to remove barriers to justice and has no plans to ease the burden of enforcement on women. It has acknowledged that it does not know why so few women take enforcement action, but is unwilling to allocate resources to working out how best to encourage and enable more women to do so.**

163. ***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:***

- ***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;***
- ***commissioning research on how best to encourage greater enforcement by women where cases cannot be resolved informally; and***
- ***commissioning research on the effectiveness of alternative dispute resolution procedures such as conciliation in helping employers and employees to resolve disputes informally.***

Monitoring

The need for monitoring

164. The BIS/EHRC research provides the most comprehensive information currently available on the extent and nature of pregnancy and maternity discrimination in the UK. Scarlet Harris from the TUC said that it was "an incredibly robust piece of research" and highlighted the gaps in knowledge about such discrimination before the research was published, stating:

> The TUC really welcomed the report; it was a long time coming…We had been saying for a long time that we needed updated research, because we had a sense from the unions that we work with that it was a worsening situation and we wanted some evidence to back that up.[220]

219 Q171
220 Q36

165. Maternity Action also commented on the fact that regular Government monitoring of trends in the labour market had not identified the discrimination evidenced in the research. It went on to suggest that "a more active programme of data collection and research" should be undertaken "to keep track of what is happening to women in the workplace."[221] Its suggestions for monitoring included:

- publishing quarterly numbers of pregnancy-related tribunal cases and the number of such claims which have been paid in full;
- repeating the research into the incidence of pregnancy and maternity-related discrimination in four years' time.[222]

EHRC recommendations and Government response

166. The EHRC recommended that the UK, Scottish and Welsh Governments "include relevant questions about pregnancy and maternity discrimination and disadvantage in planned surveys of employers and mothers, report on the outcomes and keep under consideration what further research or action may be needed to address enduring areas of discrimination and disadvantage." It also recommended that ACAS consider "monitoring and publishing the number and outcome of Early Conciliation cases in England, Scotland and Wales that involve pregnancy or maternity discrimination or a breach of other rights related to pregnancy or maternity."[223]

167. The Government accepted the recommendations, stating that it and ACAS were considering how best to take them forward. It also noted that ACAS "already publishes the number of cases relating to pregnancy and maternity discrimination in its annual report and is investigating options to publish further data sets to allow outcome analysis to be done by external bodies."[224]

168. Sue Coe told us that the EHRC had not asked for a repeat of the whole BIS/EHRC survey because of the cost, but that key parts of it "should be measured at least annually, so we can see where we are going in terms of rates of women's experience". She suggested that the Government was best placed to do the monitoring because it had access to national-level surveys, and gave the following example of how these surveys might be used:

> If we are measuring, for example, take-up of information and training of line managers, if those questions are fed into Government surveys of employers, which happen quite regularly, we can keep an eye on where that is going and know where the actions that have been taken are biting, where they are not and where more action needs to be taken. [225]

169. Caroline Waters of the EHRC saw a role in monitoring for information collected by employers, noting that many employers already ran internal surveys and that they

221 Maternity Action (MPD0024), para. 31
222 Ibid, paras. 32-33
223 EHRC, *Our recommendations to tackle pregnancy and maternity discrimination*, March 2016, p. 18
224 HM Government, *Government response to recommendations made by the Equality and Human Rights Commission on Pregnancy and Maternity-related Discrimination and Disadvantage in the Workplace*, March 2016, p. 13
225 Qq142-147

could also collect data on "levels of return and levels of satisfaction, with the experience of the take-up of flexible working patterns and perhaps even information like equal pay."[226] However, the EHRC did not make a recommendation on this.

170. When we asked the Minister how he would measure the success of the Government's actions to tackle pregnancy and maternity discrimination, he said that he did not think key performance indicators were needed and that he just needed to "see progress." When pushed on what progress would look like he said:

> We would like to see that all of these different bodies have done what they need to do…we would like to see that the Health and Safety Executive has done what it needs to do with its guidance; that ACAS has done what it needs to do to try to communicate better to more employers… I do not think that it requires KPIs to update guidance; just get on and update the guidance and tell me when you have done it.[227]

171. **We note the importance of the BIS/EHRC research in establishing the extent and nature of pregnancy and maternity discrimination in the UK. It showed that discrimination had worsened since similar research was conducted a decade earlier, and this had not been picked up by labour market monitoring. We want to ensure that another decade does not pass before we are next able to ascertain the level of discrimination. *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.***

172. **We welcome the Government's acceptance of the EHRC's recommendations on monitoring. It is positive that the Government has agreed to include questions about pregnancy and maternity discrimination in surveys of employers and women. However the lack of detail about what this monitoring will look like makes it difficult to assess how robust it will be and how useful in measuring the prevalence of pregnancy and maternity discrimination. We are concerned that the Minister does not recognise the need for targets to aid scrutiny and measure success. We do not accept his suggestion that simply completing the actions that the Government has agreed to take equates to success. We understand the desire to keep bureaucracy to a minimum but we do not see how the Government—or we—can judge the success of its actions if it does not set out clearly what it intends to achieve and how it will measure success.**

173. ***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;***

226 Q142
227 Qq189-191

- ***when and how the results will be published; and***
- ***where responsibility for this monitoring will lie.***

When can we expect to see positive results?

174. Sue Coe told us that the EHRC would do its own monitoring of the recommendations and that they "may take a little time to start to bed in".[228] However, Caroline Waters suggested that it would be "possible to see change by the end of the year, if we have the right kind of highlevel and sustained visibility, both from Government and from business leaders" although it might not be easy to produce "statistically valid" evidence of improvement.[229]

175. The Minister saw a longer timescale for change, telling us that a "painstaking, consistent, sustained month-to-month, year-to-year, decade-long change of a culture" was needed and that it would be "some time before we are able to point to evidence of change in people's experience".[230] He offered to report back to the Committee in a year's time on the actions that the Government had taken, stating:

> I am very happy to come back and say what we have done and what effect we think what we have done might be having, and what evidence we have for that.[231]

176. **We are concerned by the lack of urgency displayed by the Government in tackling pregnancy and maternity discrimination. We accept that complex work will be required and that some of this will take time to bed in, but there is also potential for quick wins. There is no reason why the Government should not have ambitious targets for positive and visible results within the next few years. It should also be prepared to take further action if there is no evidence that the situation is improving. *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.***

228 Q142
229 Q150
230 Qq155 and 162
231 Q188

Conclusions and recommendations

Are greater protections required?

1. We are disappointed that the EHRC and the Government do not think it necessary to place a duty on employers to conduct an individual risk assessment for new and expectant mothers. Such a requirement would help employers to provide a safe working environment and would not be a great burden. We do not accept the Minister's assertion that this requirement would imply that employers no longer had to consider the risks to new and expectant mothers in their general risk assessment. We are not convinced that the EHRC's recommended approach of encouraging employers to have conversations with women about risks is robust enough. While it may improve compliance among well-meaning employers, it is unlikely to persuade less scrupulous employers to meet their responsibilities. (Paragraph 43)

2. *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.* (Paragraph 44)

3. We are particularly concerned by the BIS/EHRC research finding that up to 21,000 women a year left their job because pregnancy and maternity-related health and safety risks were not tackled. We are also mindful that it is important that employers are sensitive to the employee's wishes when offering alternative work or paid leave. (Paragraph 47)

4. *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.* (Paragraph 48)

5. We are concerned by the evidence that new and expectant mothers who are casual, agency and zero-hours workers are: more likely to report a risk or impact to their health and welfare than other types of worker; more likely to leave their employer as a result of health and safety risks not being resolved; and less likely to feel confident about challenging discriminatory behaviour. We note that the EHRC has committed to work with employers to improve outcomes for this group, but we believe that additional rights and protections are also required. (Paragraph 56)

6. We understand that there are reasons why new and expectant mothers who are casual, agency and zero-hours workers do not have the same day-one rights as employees. However, we see no reason why they should not be entitled to paid time off for antenatal appointments. (Paragraph 57)

7. *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.* (Paragraph 57)

8. Employers should not be able to avoid affording regular, long-term workers the same rights as employees because they have a different contract type. More pregnancy and maternity-related rights should be available to casual, agency and zero-hours workers after a suitable qualifying period of continuous employment. (Paragraph 58)

9. *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.* (Paragraph 58)

10. We find it shocking that the number of new and expectant mothers feeling forced out of their job has nearly doubled in the past decade. It is difficult to accept the EHRC's characterisation of this as solely an issue of misinterpretation of the law. (Paragraph 70)

11. *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.* (Paragraph 70)

12. We hope that the Government is committed to not only retaining but enhancing the current level of protections available to new and expectant mothers when the UK leaves the EU. (Paragraph 71)

13. *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.* (Paragraph 71)

Improving access to information and encouraging a change in attitudes

14. We welcome the Government's commitment to using the MAT B1 form to disseminate information to women and employers about pregnancy and maternity-related rights and responsibilities. However, many women and employers will need this information much sooner. (Paragraph 81)

15. *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.* (Paragraph 81)

16. Front-line health professionals involved in the care of new and expectant mothers have a key role to play in helping women to access information about their rights . (Paragraph 82)

17. *These workers 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.* (Paragraph 82)

18. We encourage the provision of practical support and advice on pregnancy and maternity issues to SMEs in particular. (Paragraph 89)

19. *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.* (Paragraph 89)

20. We support the EHRC's recommendation for a single comprehensive online site where both employers and individuals can easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace. It seems both logical and practical to have one starting point for all queries on these issues. We do not accept the Minister's suggestion that marketing a new URL is a significant barrier, given that the Government has undertaken to implement an awareness-raising campaign on these issues. However, the most important outcome is that employers and employees can more easily access the information they need, and that they start to do this in far greater numbers than is currently the case. (Paragraph 93)

21. *The Government should give further consideration to the feasibility of a single website.* (Paragraph 93)

22. We emphasise the importance of good-quality training to managers in ensuring that good practice permeates all levels of organisations, and we share the concerns that have been raised regarding a lack of detail about the work being done in this area. (Paragraph 99)

23. *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. (*Paragraph 99)

24. We are concerned by the lack of detail in the Government's response to the EHRC's recommendations and we do not accept the Minister's suggestion that the Government has set out clearly the action that it will take. Many of the EHRC's recommendations were accepted in principle, with caveats, and there is a lack of clarity about which parts of those recommendations will be taken forward, when and how. We are surprised by the Minister's assertion that it is not important or necessary to produce a plan, and that the Government can provide leadership

without setting out what they intend to achieve, by when and how. On the contrary, if the Government is unable to set out a vision that can be shared, it less likely to be able to provide effective leadership on this issue. (Paragraph 105)

25. *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.* (Paragraph 106)

26. We welcome the joint communications campaign being taken forward by the Government in partnership with the EHRC and businesses. However, we are not convinced that this approach alone will be enough to tackle the discrimination and negative employer attitudes evidenced in the BIS/EHRC research. (Paragraph 114)

27. *The communications campaign 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*:

    - *paying a higher rate of Small Employers' Relief when the relevant employee is still in post 12 months after returning from maternity leave;*
    - *automatic payment of Small Employers' Relief;*
    - *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; and*
    - *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. (Paragraph 115)

Improving access to justice

28. We note the Minister's acknowledgment that pregnant women "have got quite a lot else on their minds and on their plates" and that this may be a reason why they do not take action against their employer when they suspect there has been discrimination. This easy acceptance of the pressures on expectant mothers contradicts the Government's assertion that there is "no evidence" of a need to increase the time limit for a woman to bring an employment tribunal claim. We agree with the EHRC that the case has been made. (Paragraph 142)

29. *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*

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. (Paragraph 143)

30. We have concerns about the Government's approach of placing all its hopes in a campaign to persuade employers to comply with the law. It is clear that women are not taking action in large enough numbers to ensure compliance from employers, and yet this type of action is the main source of enforcement for discrimination law. This enforcement gap leaves it open to rogue employers to flout the law, and the actions set out by the Government do not deal with this. The Government has a clear responsibility to ensure that pregnancy and maternity discrimination laws and protections are better enforced. (Paragraph 144)

31. We agree with the Government that it is preferable for workplace disputes to be resolved at the earliest possible stage and that tribunals should be a last resort. However we also recognise the important role that tribunals play in enabling individuals to seek redress, in holding employers to account, and as a wider deterrent. We are well aware that the number of sex discrimination and pregnancy-related tribunal claims was low before tribunal fees were introduced. We do not suggest that the removal or reduction of fees would solve the enforcement problem. Nonetheless, we cannot ignore the evidence we have received and the Justice Committee's findings that tribunal fees have had a significant adverse impact on access to justice. (Paragraph 145)

32. *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.* (Paragraph 146)

33. We were disappointed to hear from the Minister that the Government has already decided not to invest any more in improving access to good-quality advice. It is unclear whether the Government has reviewed the accessibility of employment advice services, as it said it would in its response to the EHRC, or whether it has merely concluded that no action is required without conducting a review. (Paragraph 155)

34. *The Government must set out in its response whether it has conducted this review, 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.* (Paragraph 155)

35. Given the low numbers of women taking enforcement action against their employer in pregnancy and maternity discrimination cases, it is crucial that there is sufficient access to free, good-quality, one-to-one advice and support where needed. ACAS provides a valuable service but we do not accept the Minister's assertion that it can provide all the advice and support that is required. For example, it cannot provide the kind of specific, focused legal advice and casework assistance that is offered by Citizens Advice. It is possible that the actions that the Government is taking to increase access to information will reduce the pressure on advice services for

more general advice and signposting, thereby freeing up resources for more tailored advice. However, there may also be an increase in demand for such advice as more women become aware of their rights. (Paragraph 156)

36. *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.* (Paragraph 157)

Enforcement and monitoring

37. The Government's approach to improving compliance with pregnancy and maternity discrimination law is disjointed and contradictory. It has stated that it is important to focus on enforcement and yet its main focus is on awareness-raising and persuasion. It has voiced concern about the low numbers of women taking enforcement action against their employer, but has rejected the EHRC's recommendations to remove barriers to justice and has no plans to ease the burden of enforcement on women. It has acknowledged that it does not know why so few women take enforcement action, but is unwilling to allocate resources to working out how best to encourage and enable more women to do so. (Paragraph 162)

38. *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:*

    - *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;*
    - *commissioning research on how best to encourage greater enforcement by women where cases cannot be resolved informally; and*
    - *commissioning research on the effectiveness of alternative dispute resolution procedures such as conciliation in helping employers and employees to resolve disputes informally.* (Paragraph 163)

39. We note the importance of the BIS/EHRC research in establishing the extent and nature of pregnancy and maternity discrimination in the UK. It showed that discrimination had worsened since similar research was conducted a decade earlier, and this had not been picked up by labour market monitoring. We want to ensure that another decade does not pass before we are next able to ascertain the level of discrimination. (Paragraph 171)

40. *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.* (Paragraph 171)

41. We welcome the Government's acceptance of the EHRC's recommendations on monitoring. It is positive that the Government has agreed to include questions about pregnancy and maternity discrimination in surveys of employers and women. However the lack of detail about what this monitoring will look like makes it difficult to assess how robust it will be and how useful in measuring the prevalence of pregnancy and maternity discrimination. We are concerned that the Minister does not recognise the need for targets to aid scrutiny and measure success. We do not accept his suggestion that simply completing the actions that the Government has agreed to take equates to success. We understand the desire to keep bureaucracy to a minimum but we do not see how the Government—or we—can judge the success of its actions if it does not set out clearly what it intends to achieve and how it will measure success. (Paragraph 172)

42. *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.* (Paragraph 173)

43. We are concerned by the lack of urgency displayed by the Government in tackling pregnancy and maternity discrimination. We accept that complex work will be required and that some of this will take time to bed in, but there is also potential for quick wins. There is no reason why the Government should not have ambitious targets for positive and visible results within the next few years. It should also be prepared to take further action if there is no evidence that the situation is improving. (Paragraph 176)

44. *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.* (Paragraph 176)

Annex 1 - Terms of reference

The inquiry was launched on 22 March 2016. The call for evidence stated:

The Committee is keen to hear from employers, policy organisations, and individual women. The inquiry will focus on solutions, with a particular emphasis on the following areas:

- The likely effectiveness of the Government's proposals for action
- How the Government can work with employers to drive behaviour change and improve outcomes for women
- Whether particular groups or types of employers need more support to achieve this
- How to help women and their employers find the information they need
- Reasons for the reported rise in discrimination in the past decade
- The extent to which changes in the labour market in the past decade have affected levels of discrimination
- What improvements could be brought about by better inter-departmental working in Government
- Whether some areas of existing legislation could be implemented more effectively
- Effectiveness of tribunals as a deterrent, and whether this has been affected by the introduction of fees in 2013
- Health and safety
- Whether increased financial support for small business would help to reduce discrimination
- What can be learned from best practice in the UK and elsewhere

Annex 2 - Portsmouth visit note

Overview

The visit was held on 12 May 2016 in a café in Southsea, Portsmouth, where an NCT Bumps and Babes group meet each week. Various networks were used to publicise the event and encourage attendance by a range of participants. About 20 women attended, mostly with babies and young children. Occupations of those attending included chef, military, entrepreneur, teacher, NHS staff, private sector workers, hostel manager and factory worker.

Discussion points

The group discussed:

- their experiences in the workplace during pregnancy, on maternity leave and on returning to work
- access to information about pregnancy and maternity rights and employers' responsibilities
- changes that could be made to make things easier for women in the workplace during pregnancy, on maternity leave and for returning to work

Workplace experiences

Women's experiences had been mixed. Some women had had to leave their job or go on maternity leave early due to health and safety concerns. For example, a teacher had felt unprotected in the classroom when teaching groups of boys/young men. A hostel manager had felt the risks of working alone with substance abusers, including needle users, was too great when pregnant. When she raised these concerns, they were not dealt with. A factory worker on a zero-hours contract said that pregnant workers were not allowed to sit down for shifts of eight hours. She knew a colleague who had lost her baby at eight months and felt that this was due to the lack of adequate health and safety measures at the factory.

While on maternity leave, some women had been made redundant, with one being given a less senior role instead. Another's employer had restructured a number of jobs while three women were on maternity leave, leaving some out of work and forcing another to return to work earlier than she had intended. Some attendees had felt pressured to work from home or had been asked to "pop in" to the office while on maternity leave. One woman said she had lost out on a scheduled pay rise because she had not attended a performance review while on maternity leave.

Some women had felt unable to return to work for various reasons. For example, some who had been in the military had chosen to leave the service because their partners were also in the military and it was difficult to manage child care with both parents in the military. Some women said they had not been able to afford to go back to work at the end of their maternity leave because of childcare costs. Some had decided to work for themselves and it was suggested that this could be made easier. Others commented that it was difficult to find good-quality part-time work.

On returning to work, some women had experienced difficulty in getting the flexibility they needed from their employer, including over the length of lunch breaks. One attendee had had a very good experience and attributed this to her manager, who had accepted her part-time hours and flexible working. Others agreed that the attitude of line managers was very important. Some women had experienced difficulty in getting the facilities they needed to support breastfeeding, such as suitable places for breastfeeding, expressing and milk storage. Some had switched to using formula as a result. There were several suggestions for incentives and assistance that could help women with children get back into work after maternity leave or a career break. These included:

- financial incentives for employers to take on part-timers – eg, tax relief;
- a gold standard for family-friendly employers, similar to Investors in People, to encourage more family-friendly working practices;
- more flexibility over working times and hours, including lunch breaks;
- more paternity leave/ mandatory paternity leave;
- a job share match-up system;
- greater protection from redundancy;
- more guidance for employers on their responsibilities;
- access to advice about getting back into the workplace after a career break, perhaps through a centralised online/phone advice service, careers fairs and events, and mentoring;
- Rent A Granny – pool of volunteer grannies willing to help out families who don't have family nearby;
- support for women who want to go self-employed;
- greater financial assistance with child care – eg, tax relief on the whole amount per child rather than per parent;
- suitable facilities to support breastfeeding; and
- affordable childcare.

Accessing information

There was wide agreement that information about pregnancy and maternity rights at work could be made more easily accessible and that there was a need for better and earlier signposting to help women find this information. For example, some women were interested in knowing more about how shared parenting could work and how it would affect their husbands' careers but did not know how to access this information. Others said it had been difficult for them to find out about their rights and their employers' responsibilities early on in their pregnancy. Several women said it had been difficult to find out about their employer's maternity, flexible working and other relevant policies. For example, one woman had not realised that she should have accrued annual leave while on maternity leave, and another did not know about childcare vouchers.

Most of the women did not know where to find this kind of information and said they would use an internet search engine if they wanted to find out (but few said that they had actually done this). Some felt that if information came from a health professional they would be able to trust that it was correct. Others felt there was already a great pressure on midwives.

When discussing potential discrimination, some women felt it would be hard to know whether they had been discriminated against in some circumstances. For example, if they were made redundant they would not know how their employer had reached that decision and whether their pregnancy or maternity was a factor.

When asked where they would go for legal advice about rights and/or how to enforce them, most women said they would not know where to go. The cost of legal advice was also raised. Most women said that they probably would not think about going to tribunal when pregnant or with a new baby as there would be too many other things to think about and the idea of representing oneself while looking after a small baby was off-putting. Tribunal fees were considered to be a barrier, particularly for those on statutory maternity pay.

Suggestions for making it easier to access information and legal advice included:

- provision of information about rights and employer responsibilities to women at their first midwife appointment, or when they told their employer about the pregnancy, even if this was just a web address;
- having all the relevant information in one place – eg, a website and phone line;
- advertising during relevant TV programmes;
- access to free legal advice / more funding for organisations such as NCT to provide legal advice for women;
- greater clarity about KIT days, including how they work and the fact that they are optional; and
- simpler language in the information that is available, with less legal terminology.

Formal Minutes

Tuesday 12 July 2016

Members present:

Mrs Maria Miller, in the Chair

Ruth Cadbury	Gill Furniss
Jo Churchill	Ben Howlett
Mrs Flick Drummond	Jess Phillips

The following declarations of interest relating to the inquiry were made:

3 May 2015

Specialist Adviser, Professor Grace James, declared the following interests: *Member of the Fawcett Society; the UK gender equality law expert for the European Equality Law Network (from 2016); former member of the Academic Advisory Group for the EHRC/BIS research project on pregnancy and maternity related discrimination in the workplace (2014-2015).*

12 July 2015

Specialist Adviser, Professor Grace James, declared the following interests: *She has made two unsuccessful bids for funding – to look at invocation of law in relation to pregnancy and parenting: workplace conflicts (2008) and to look at carer concerns and workplace dispute resolution (2013).*

Draft Report (*Pregnancy and maternity discrimination)*, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 176 read and agreed to.

Annexes and Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

The following written evidence was ordered to be reported to the House for publication.

MPD0036 Ministry of Justice

[Adjourned till Wednesday 20 July at 9.45 a.m.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 22 March 2016	*Question number*
Catherine Rayner, Chair, Discrimination Law Association, and Barrister, **Rosalind Bragg,** Director, Maternity Action, and **Elizabeth Duff,** Senior Policy Adviser, National Childbirth Trust	Q1–34
Tuesday 26 April 2016	
Siobhan Endean, National Officer for Equalities, Unite, **Scarlet Harris,** Women's Equality Officer, TUC, **Samantha Rye,** National Women's Committee Secretary, Fire Brigades Union	Q35–79
Sarah-Jane Butler, Director, Parental Choice, **Louise Handley,** Head of Employee Relations, London School of Economics, and **Mark McLane,** Global Head of Diversity and Inclusion, Barclays	Q80–105
Tuesday 24 May 2016	
Caroline Waters OBE, Deputy Chair, and **Sue Coe,** Programme Head, Economy and Employment, Equalities and Human Rights Commission	Q106–153
Nick Boles MP, Minister of State for Skills, Department for Business, Innovation and Skills	Q154–192

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

MPD numbers are generated by the evidence processing system and so may not be complete.

1 Alexandra Heron (MPD0010)
2 Anonymous (MPD0025)
3 Association of Independent Professionals and Self-Employed (IPSE) (MPD0003)
4 Barclays (MPD0033)
5 British Pregnancy Advisory Service (bpas) (MPD0022)
6 Carillion plc (MPD0021)
7 Chwarae Teg (MPD0016)
8 CIPD (MPD0014)
9 Citizens Advice (MPD0027)
10 Citizens Advice (MPD0035)
11 Department for Business, Innovation and Skills (MPD0034)
12 Dr Pippa Leighton (MPD0001)
13 Dr Tanja Staehler (MPD0011)
14 Equality and Human Rights Commission (MPD0026)
15 Equality and Human Rights Commission (MPD0028)
16 Lee Taylor (MPD0013)
17 Lifebulb (MPD0018)
18 Maternity Action (MPD0024)
19 Ministry of Justice (MPD0036)
20 Mrs Caroline Ryder (MPD0002)
21 NCT (MPD0015)
22 OnePlusOne (MPD0012)
23 Pregnant and Then Screwed (MPD0030)
24 Pregnant Then Screwed (MPD0017)
25 Sarah Barton (MPD0029)
26 Scottish Women's Convention (MPD0006)
27 UCEA (MPD0007)
28 Unite (MPD0023)
29 Working Families (MPD0005)
30 Workingmums.co.uk (MPD0004)
31 Yess Law (MPD0019)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Transgender Equality	HC 390 (Cm 9301)
Second Report	Gender Pay Gap	HC 584
Third Report	Appointment of the Chair of the Equality and Human Rights Commission	HC 599