

**Department for Business, Energy and Industrial Strategy  
Consultation – “Extending redundancy protection for pregnant  
women and new parents”**

**A Response by  
The Chartered Institute of Legal Executives (CILEx)**

**[April 2019]**



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## 1. Summary of Recommendations

- 1.1. CILEx welcomes the government's efforts to tackle prejudice and discrimination in the workplace. (Para 3.1-3.2)
- 1.2. 85.7% of surveyed CILEx members supported the proposal for extending redundancy protections following a period of return to work (Para 4.1), with a majority favouring a period of 6 or 9 months for these new protections. (Para 4.2)
- 1.3. However, this proposal will not be sufficient to address underlying issues that have left pregnant women and new mothers feeling "*pushed out*," "*side-lined*" and "*punished for being a mother*." (Para 5.1-5.4)
- 1.4. CILEx calls on government to strengthen the enforcement mechanisms available to pregnant women and new mothers who are facing a range of barriers when trying to challenge workplace decisions. (Para 5.3.1, 6.1-6.2)
- 1.5. Reforms need to be sensitive to the acute needs of pregnant women and new parents who are likely to have vulnerabilities and strained financial resources. (Para 3.3, 6.1)
- 1.6. Parallel reforms should be implemented to improve access to justice within the employment tribunal, including: extending time limits for bringing claims, providing the tribunal with powers to enforce their own orders, and opening up access to legal aid. (Para 6.3)
- 1.7. These reforms are all the more necessary given the Government's track record with implementing an unlawful Employment Tribunal Fees regime. (Para 6.4.1)
- 1.8. Awareness of employee rights and protections during pregnancy/maternity needs to be improved, including by making information more accessible and ensuring it is in an easy-to-read format. (Para 7.1-7.2)
- 1.9. Same or similar protections should also be afforded to those who have taken adoption leave, paternity leave and shared parental leave. (Para 4.3)

## 2. Introduction

- 2.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. Amongst these almost 1,250 specialise in employment law.
- 2.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 2.3. CILEx is proud of the diversity in its membership body, by which 75% of members are women, and to whom these proposals shall be relevant on more than one level. Whilst this response includes contributions made in a professional capacity from members working in employment law, it is largely based on personal contributions from those working in the wider legal profession who shared their experiences of pregnancy protections, maternity leave and related workplace discrimination.<sup>1</sup> These views and opinions are expanded in more detail below.

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<sup>1</sup> 75% of respondents to this survey were responding in a personal capacity, having either directly received maternity protection/parental leave (59%) or having had a partner who has received maternity protection/parental leave (16%).

### 3. General Points

- 3.1. CILEx has long been an advocate for eliminating barriers in the workplace and encouraging greater diversity within the profession. As a provider of alternative routes into law, it is our firm belief that the gateway to career progression should rest solely upon a person's merit and ability. Everyone has the right to be treated fairly and equally at work, to have their rights and interests protected, and their family life respected.
- 3.2. CILEx is concerned to see that prejudice and discrimination is still encountered on the basis of pregnancy and maternity in today's workplaces and welcomes the government's efforts to challenge and address these structural inequalities. Survey results from engagement with our members identified that only 44.8% of respondents were able to say with certainty that in their personal life they had not experienced nor witnessed these kinds of problems at work. Drawing from member comments, it is clear that the issues covered by this consultation, notably new mothers being forced out of work when seeking to return, are still very much in existence.
- 3.3. In implementing proposals, these reforms should be sensitive to the acute needs of pregnant women and new parents who are undergoing life changing circumstances and are therefore in a more vulnerable position; which will exacerbate any lack of awareness of their rights when challenging workplace decisions and intensify the stresses of enforcing protections.

### 4. 'Return to work' Protections

- 4.1. 85.7% of survey respondents supported the proposal for extending redundancy protections following a period of return to work, with 71.4% further agreeing that this should reflect the protections already in place during maternity leave and thus align with the Maternity and Parental Leave etc. Regulations 1999 ("MAPLE").
- 4.2. A majority of respondents favoured a period of 6 or 9 months as an appropriate length for these protections, and two thirds agreed with the premise that pregnancy for such purposes should be defined as starting at the point at which a woman informs her employer that she is pregnant in writing.
- 4.3. Members largely agreed that the same or similar protections, if implemented, should also extend to: 1). Adoption leave,<sup>2</sup> 2). Paternity leave,<sup>3</sup> 3). Shared parental leave,<sup>4</sup> and 4). Longer periods of parental leave (e.g.: determined by agreement).<sup>5</sup>
  - 4.3.1. Further suggestions were made for protections to extend to situations where special sick leave has been taken for post-natal depression and other pregnancy-related illnesses, or due to long term illness of the child.

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<sup>2</sup> 69.2% of respondents agreed/strongly agreed with this proposal.

<sup>3</sup> 69.2% of respondents agreed/strongly agreed with this proposal.

<sup>4</sup> 85.7% of respondents agreed/strongly agreed with this proposal.

<sup>5</sup> 71.4% of respondents agreed/strongly agreed with this proposal.

## 5. Existing Protections

- 5.1. Whilst the notion of extending protections to a period following return to work is generally welcome, CILEx is apprehensive that this alone will not be sufficient to tackle some of the underlying problems that respondents have identified with existing protections under MAPLE and the Equality Act 2010.
- 5.2. Members highlighted instances in which they believe employers strategically waited for statutory time limits to pass before making new mothers redundant; including being placed on garden leave in the build up to the redundancy. There are concerns that even where statutory protections are extended following a period of return to work these practices may continue to subsist without wider efforts to counter discriminatory behaviours in the workplace.
- 5.3. Worryingly, a handful of members cited instances in which employment contracts (and training contract offers) had been terminated during maternity leave, or following an extension of it, with no suitable alternative offered. One member shared experiences of how a restructure of her previous employer led to redundancy but with no alternative position offered in the new company, whilst the member of staff who had replaced her for maternity cover was retained. CILEx recognises that there will be cases where a redundancy during maternity leave is made for legitimate business reasons without a discriminatory motive, however, survey comments indicate that good reasons are not always being given, leaving individuals to feel as if they have been targeted on the basis of their pregnancy.
  - 5.3.1. The consultation paper objects to adopting protections afforded under German law (i.e.: that a redundancy cannot be made during pregnancy without first securing consent from competent public authorities), on the grounds that this would not be compatible with the current UK system of enforcement of individual employment rights and the role of Employment Tribunals.<sup>6</sup> CILEx is concerned by this line of argument as there are a number of barriers facing pregnant women and new mothers when enforcing individual rights and accessing the tribunal<sup>7</sup> that suggest there are deficiencies in the current system. Where the system is no longer working effectively, it is only proper that this will warrant reform, and CILEx welcomes the finding of the Women and Equalities Select Committee<sup>8</sup> that these alternatives are worth further consideration as they may present a viable foundation on which to base solutions for improving the system accordingly.<sup>9</sup>
- 5.4. Members additionally highlighted that alternative arrangements including flexible working hours or part-time work are often unavailable during pregnancy, within recruitment practices following redundancy,<sup>10</sup> and following return to work. Members shared experiences of: arriving back at work only to find that their basic work apparatus had not been set up; that they were refused flexible working

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<sup>6</sup> Consultation Paper, para 41.

<sup>7</sup> See paragraph 6.2 below.

<sup>8</sup> Women and Equalities Committee, *Pregnancy and Maternity Discrimination*, First Report of Session 2016-17 (HC 90), p.24, para 70.

<sup>9</sup> 64.3% of survey respondents agreed/strongly agree that the current redundancy protections offered under the UK system should be reformed to adopt the stance taken in Germany.

<sup>10</sup> Although it is noted that 65.5% of respondents had not experienced recruitment practices where women are specifically asked about their future plans to have children. Nevertheless, barriers in the profession for new mothers was raised as an issue.

hours/working from home options (even where their employment contracts had expressly catered for these arrangements); or, that they were made to attend meetings later on in the day, with little empathy or understanding of their caring responsibilities. CILEx is concerned that proposals to extend redundancy protections will be unable to counteract these less obtrusive methods of treating pregnant women and new mothers differently in the workplace.

- 5.4.1. Indeed, one of the most consistent themes throughout survey comments, was suggestions of employees/workers being treated poorly before, during and after their maternity leave. This included being “*side-lined*”, “*pushed out*” and feeling as though they were “*being punished for being a mother.*” Anecdotal data suggested that upon return to work, the role and scope of employment duties were unreasonably changed, with little help or support, and respondents felt a knock-on impact limiting their prospects of promotion or career development.
- 5.4.2. One member recounted experiences of being made to work three job roles during her pregnancy, on the basis of cost saving strategies by her company, and subsequently gave birth to a premature baby at 26 weeks owing to stress; whilst another communicated how her office environment, internal policies and a general workplace disregard, meant that she had no support or assistance in dealing with her pregnancy-related illness.

## 6. Enforcement mechanisms

- 6.1. CILEx acknowledges the proposals contained within this consultation as a welcome first step towards remedying these issues, however further efforts will be needed, particularly in helping pregnant women and new mothers to enforce their rights at a time where they are likely to have vulnerabilities and strained financial resources.
- 6.2. Survey respondents identified the following barriers which may currently prevent pregnant women and new mothers from enforcing their rights: 1). Lack of legal grounds to rest a case on, 2). Lack of proof of discriminatory treatment, 2). “*Inadequate protections for whistleblowers*”, 3). “*Fear of recrimination*”; 4). “*Absence of legal support to enforce rights - no Legal Aid*”; 5). Fears of being blacklisted by future employers; 6). The strong dependency that new mothers have on their salary.
  - 6.2.1. The government may wish to reassure itself that under the remit of the new technical taskforce (to be established), a further examination of these wider issues and alternative frameworks to enhance enforcement mechanisms is made. Once again, CILEx recognises the benefits of looking to other legal jurisdictions such as Germany to do so.<sup>11</sup> In addition, members suggested that enforcement could be benefitted by: 1). the introduction of new monitoring mechanisms, 2). An out-of-court mechanism for imposing fines/sanctions on employers who fail to abide by these protections, and 3). The creation of new reporting systems.
- 6.3. Parallel reform projects such as the Law Commission’s work on employment law hearing restructures may also be useful in combatting some of these wider issues. Under these reforms, proposals to strengthen the employment tribunal’s role within resolving workplace disputes such as: a). extending time limits for bringing claims,

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<sup>11</sup> See paragraph 5.3.1 above.

b). providing the tribunal with powers to enforce their own orders, and c). removing arbitrary technicalities which prevent ‘workers’ from having their case heard, could help to overcome some of the practical barriers to enforcement.<sup>12</sup> One member suggested that there should be an additional time limit provided for pregnant women to bring their case before the tribunal post-partum so that pregnant women are not expected to undertake these enforcement procedures, which are often stressful and time consuming, whilst pregnant.

- 6.4. In addition, CILEx fully endorses that legal aid should be available for litigants having their case heard in the employment tribunal, as well as other areas, so that access to justice can be improved.<sup>13</sup>
- 6.4.1. Integral to this is that the courts and tribunals are, and are seen to be, accessible to those who need them. This has particular significance with regard to employment claims given the Government’s Employment Tribunal fees regime that was found to be illegal in the Supreme Court’s judgment in *R (UNISON) v Lord Chancellor* [2017] UKSC 51. That fees regime will inevitably have lingering deleterious effects, and the Government will wish to assure itself that the perception that the employment tribunal prices people out of justice is not putting people off bringing legitimate claims.

## 7. Public Awareness

- 7.1. As well as improvements to enforcement mechanisms, survey results indicated that public awareness of the rights and protections afforded to employees could be better communicated notwithstanding more recent efforts to improve signposting. As stated previously, pregnant women and new parents are likely to be under unique pressures and hard-pressed for time. Members commented on the difficulty of accessing up-to-date information and the importance of delivering information in a user-friendly and easy to understand format to try and account for these unique circumstances. One member shared with CILEx that despite her own proactive efforts to research into employment law and know her rights, a lack of awareness within the organisation both at a management and a human resources level, prevented her from getting confirmation of what she would be entitled to under corporate policies. As a result, she was left unaware of her entitlements up until one week before her maternity leave, despite several attempts to communicate with the relevant department.
- 7.2. Members identified the following improvements that could be made to improve public awareness of existing rights and protections amongst both employers and employees: 1). The establishment of a legal advice helpline, 2). Downloadable advice for easy access, 3). The introduction of a new requirement for employers to disseminate government endorsed leaflets to pregnant employees/workers when first notified of the pregnancy, 4). Improving access to information through alternative routes, such as within GP surgeries where leaflets are already disseminated on health-related issues.

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<sup>12</sup> See: CILEx Submission, *Law Commission Consultation – Employment Law Hearing Structures*, (January 2019).

<sup>13</sup> See footnote 12.



**For further details**

Should you  
require any  
further  
information,  
please contact;

Chandni Patel  
Policy & Research Officer  
chandni.patel@cilex.org.uk  
01234 845740