



UNFAIR REDUNDANCIES

DURING PREGNANCY,
MATERNITY LEAVE
AND RETURN TO WORK

October 2017

About Maternity Action

Maternity Action is the UK's leading charity committed to ending inequality and improving the health and well-being of pregnant women, their partners and children. We deliver a well-respected and heavily used information and advice service, undertake research and policy analysis, and campaign to improve the rights of pregnant women and new parents. There are 80,000 downloads of our legal information sheets every month, and our free helpline answers some 2,200 calls each year.

Maternity Action also convenes the Alliance for Maternity Rights, a group that includes Unions and parents' organisations, and which works together to make policy recommendations aimed at eliminating pregnancy and maternity discrimination and achieving fairness for pregnant women and new mothers. In October 2016, the Alliance produced an Action Plan¹ for Change – a thirty-two point list of policy recommendations to end pregnancy and maternity-related discrimination.

In advance of the General Election last June, Maternity Action produced a manifesto² which outlined our top ten policy calls. This included asking for a legal extension to redundancy protection for pregnant women and new mothers, revised guidance for employers conducting health and safety risk assessments for pregnant women and new mothers, better protecting those in precarious forms of employment, the removal of employment tribunal fees, a right to breastfeed at work and an increase to the flat rate of parental pay by 2020.

This report was written by Annabel Berdy, Rosalind Bragg, Roz Hampson and Katie Wood of Maternity Action, with additional case studies from Emma Webster of Yesslaw.

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Contents

- 1. Rationale for exploring redundancies amongst pregnant women and new mothers**
- 2. Current legal framework governing redundancy**
- 3. Women's experiences of redundancy**
- 4. Action needed**

1. Rationale for exploring redundancies amongst pregnant women and new mothers

Each year, there are over 500,000 pregnant women in the workplace, many of whom go on to take a period of maternity leave before returning to work.³ One in every 20 of these women are made redundant during their pregnancy, maternity leave or on their return, equivalent to 6% of all pregnant women and new mothers at work. The timing of redundancy varies, with 1% of women made redundant when they were pregnant, 3% on maternity leave and 2% on their return from maternity leave. Another 3% of mothers had discussed redundancy with their employer.

Pregnancy and maternity-related discrimination

Recent research by the Equality and Human Rights Commission (EHRC) has shown that the rate of pregnancy and maternity-related discrimination is very high and has worsened significantly over the past decade.⁴

The EHRC research, released in 2016, found that 77% of pregnant women and new mothers had experienced discrimination or negative experiences during pregnancy, maternity and on their return from maternity leave. This amounts to 390,000 women each year. By comparison, research undertaken in 2005 found that 45% of pregnant women and new mothers had experienced discrimination. This is a dramatic increase in the rate of maternity discrimination.

The 2016 research found that 11% of mothers lost their job as a result of maternity discrimination each year, which scaled up amounts to 54,000 women. This group is made up of women who were dismissed, unfairly made redundant or were treated so badly that they felt forced to leave their jobs. By comparison, the 2005 research found that 30,000 women were dismissed or forced out of their jobs. The 2016 figures are 80% higher than those from the previous decade.

The EHRC calculated the cost to women of pregnancy and maternity-related discrimination.⁵ For those losing their jobs, the costs were between £46.6 million and £113 million in the first twelve months. Longer term impacts on careers were not costed. There are also costs to the state from lost tax revenue and increased benefits payments. The EHRC estimates that these are between £14 million and £16.7 million for women forced to leave their jobs and £15.1 million to £18.6 million for women who experienced negative treatment which fell short of losing their jobs. Employers also experienced costs from losing staff through maternity discrimination, which the EHRC estimated at £278.8 million.

No data is available on the precise number of redundancies which involve pregnancy or maternity discrimination. The EHRC found that one in every six pregnant women or new mothers made redundant had been the only staff member made redundant and no suitable alternative position was offered. They flagged these as likely cases of discrimination. There are, however, many women who experience discrimination in redundancy processes involving larger groups of people and these are not included in the EHRC figures.

Women and Equalities Select Committee inquiry

In 2016, the Women and Equalities Select Committee, a cross-party group of MPs, embarked on an inquiry into pregnancy and maternity discrimination, in response to the EHRC research.⁶ The Committee collected evidence from unions, academics, business representatives and organisations working on behalf of parents and families.

The Committee concluded that urgent action was required to reduce maternity discrimination:

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. ... 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.⁷

The Government's response to the Committee's report, published in January 2017, stated that it was "determined to build an economy that works for everyone. This includes ensuring that pregnant women and new mothers are supported in work, where they have made that choice, and that they are treated fairly."⁸

The Government made a specific commitment on redundancy protection:

*The legal framework in place to protect pregnant women and new mothers from discrimination is strong. If women are discriminated against because they are pregnant or take time away to care for their baby, they have a legal means of redress. The Committee's report does suggest areas where we could further strengthen existing protections and **we make a commitment in this response to review the position in relation to redundancy.***

Since this announcement in January 2017, the Government has neither consulted on the redundancy issue nor provided any timeframe for doing so. Officials from the Department of Business, Energy and Industrial Strategy (BEIS) attended a meeting of the Alliance for Maternity Rights, convened by Maternity Action, in October 2017. At this meeting they advised that the Government is not planning any legislative changes and asked for 'other ideas' to address the problem. Meeting participants advised that a legislative response was needed, in conjunction with other interventions to improve employer practice and better support women to exercise their rights. In subsequent Parliamentary Questions, the Minister has described this meeting as 'an initial consultation'.⁹ This meeting falls well short of a satisfactory consultation process.

Women in the labour market

The number of women participating in the labour market is at an all-time high. 70% of women aged 16-64 were in employment in October-December 2016, the highest proportion since comparable records began in 1971¹⁰.

Gender equality in the workforce remains elusive, with the gap between the earnings of men and women ('the gender pay gap') remaining at 9.4% for full time employees and 18.1% if part time employees are included.¹¹ There are a number of factors influencing the gender pay gap: the negative impact on pay of part time working; caring responsibilities;

occupational segregation; the tendency to devalue work in female dominated sectors; and direct discrimination.¹²

Discrimination is a major contributor to the gender pay gap. Two-thirds of the gender pay gap cannot be explained by factors conventionally found to influence pay levels: differences in occupation, working patterns, tenure, age and public or private sector employer.¹³

Discrimination constitutes a significant proportion, if not all, of this component of the gender pay gap. Unfair redundancies during pregnancy and new motherhood provide an illustration. Women who are forced to seek work during pregnancy or with a young baby are not well placed to move swiftly into a job with similar pay and prospects to one they are leaving. Ending unfair redundancies amongst pregnant women and new mothers should be an element of the Government's strategy to reduce gender pay gap.

The broader economic advantages of encouraging women's participation in the labour market are well-documented, providing an additional argument for Government intervention. According to a report by McKinsey¹⁴, encouraging women's participation in the labour market, and ensuring they are protected from discrimination, and can work when they want to work, could add as much as £150 billion pounds to the UK economy.

Enabling women to retain their job through pregnancy and new motherhood also supports efforts to reduce child poverty. Currently, around 30% of children are classified as poor – two thirds of whom are from families where one or both parents work¹⁵. Gingerbread, a group which represents single parents, reports that 47% of all single parents are in poverty, of whom 90% are women.¹⁶

2. Current legal framework governing redundancy¹⁷

Genuine redundancy

A genuine redundancy is where an employer needs fewer employees to do the work or a business is closing down or moving location. Employers can dismiss employees for redundancy as long as they follow a fair selection procedure and pay any redundancy and notice pay that employees are entitled to.

It is not a genuine redundancy situation if, for example, an employer dismisses a woman because she cannot do part of her job because of health and safety concerns during her pregnancy or the employer decides that they would prefer to keep on a woman's maternity leave cover or a woman has asked to return to work part-time after maternity leave because of her childcare needs.

Employees who are selected for redundancy because of pregnancy or maternity leave or in order to avoid paying SMP or who are not offered suitable alternative work may have a claim for automatic unfair dismissal and/or pregnancy or maternity discrimination. There is no qualifying period for these claims as employees are protected from day one. Employees with two years' service may also be able to claim 'ordinary' unfair dismissal. Employees can also make a complaint to HM Revenue & Customs if an employer has dismissed her or made her redundant to avoid paying Statutory Maternity Pay.

Selection process

Employers must select employees in a fair and transparent way and avoiding discrimination, for example, making sure that employees are not selected for redundancy because of age or disability. Employers can make pregnant women and women on maternity leave redundant but only if they have been selected using fair criteria and not because of their pregnancy, pregnancy-related sickness or absence on maternity leave. Fair criteria are likely to include 'last in, first out', asking for voluntary redundancy and using objective measures such as performance appraisals.

Under s.13 Equality Act 2010 it is not sex discrimination against a man to provide more favourable treatment to a woman because of pregnancy and maternity leave. However, in *Eversheds Legal Services v de Belin*¹⁸ the Employment Appeal Tribunal decided that any special treatment should not extend beyond what was reasonably necessary to compensate a woman for disadvantage as a result of her pregnancy or absence on maternity leave. The employer in this case had to decide who to make redundant out of a pool of a man and a woman on maternity leave. Under the criteria of 'lock up' which measured the length of time a piece of work was completed and payment received, the man was assessed on his actual performance and the woman on maternity leave was given the maximum score as she could not be assessed because of her absence on maternity leave. This was found to be sex discrimination and the EAT said that lock up should have been assessed up to the point at which the woman went on maternity leave.

Consultation

Employers must consult with employees who are at risk of redundancy, including women on maternity leave or employees who are absent from work for other reasons. Employers must make sure that women on maternity leave are not disadvantaged in a redundancy consultation. Failure to consult with an employee who is out of the workplace on maternity leave may be maternity discrimination.

Where more than 20 employees are being made redundant in a workplace over a 90 day period, the employer must follow collective redundancy procedures and must start the consultation at least 30 days before any dismissals. Where more than 100 employees are being made redundant, consultation must start at least 45 days before any dismissals.

Suitable alternative work

Employers should offer suitable alternative work to employees who are facing redundancy. Failure to offer any suitable alternative work could lead to claims for unfair dismissal. Offers of work must be suitable in terms of the employee's skills, experience, qualifications and seniority. It must also be similar to their existing pay, conditions, location and hours of work. For example, if an employee works in a branch that is near to her home or children's nursery, it may not be suitable for her to be offered alternative work that is in a different branch that will require a substantially longer commute.

Employees have the right to a four week trial period for offers of suitable alternative work. Employees who turn down a reasonable offer of suitable alternative work are not entitled to redundancy pay.

Additional protection for pregnant women and women on maternity leave

Women on maternity leave have additional protection under Regulation 10 of the Maternity and Parental Leave Regulations etc. 1999 as they are entitled to be offered a suitable alternative vacancy, if one exists, if their role is redundant at any time during the 52 week maternity leave period. The new contract should take effect immediately after the end of the previous contract, although the woman can remain on maternity leave for as long as she chooses.

Under Regulation 10, women are entitled to be *offered* a suitable alternative vacancy¹⁹ – they are not expected to go for interviews or assessment procedures along with colleagues. This protection exists because a woman may have recently given birth or may have been out of the workplace for a long time and could be significantly disadvantaged in having to compete for roles. Failure to offer a suitable alternative role under regulation 10 may amount to automatic and ordinary unfair dismissal. It may also be maternity discrimination if the reason it was not offered relates to the woman's pregnancy or absence on maternity leave e.g. redundancies were delayed to avoid having to comply with regulation 10.

Regulation 10 protection does not currently apply during pregnancy or after a woman's maternity leave has come to an end.

Employment Tribunal claims

Proving discrimination claims in an Employment Tribunal can be difficult as the discrimination is rarely made explicit. An employer will seldom say: 'I'm dismissing you because you're pregnant'. This means that it is necessary to produce evidence to prove the real reason for the dismissal or redundancy so that the tribunal can infer from the facts what really happened.

In discrimination cases tribunals must follow a two stage 'burden of proof' test when deciding a claim. Firstly, tribunals must decide whether the claimant (the woman bringing a pregnancy or maternity discrimination claim) has provided sufficient proof that an act of unlawful discrimination has taken place. Then, the burden of proof shifts to the employer to provide a non-discriminatory explanation for their actions.

Although tribunals are meant to be less formal than other courts and, in theory, claimants can represent themselves, the reality is that it is a complex and daunting process for most claimants. Without legal advice and representation and being faced with an employer who is legally represented in a tribunal places many claimants at a disadvantage.

A further complication is that the time limit for bringing an employment tribunal claim is three months (less one day) from the date of redundancy or act of discrimination. This can be difficult for women who have been made redundant in the late stages of their pregnancy or shortly after giving birth. Not only are they likely to be recovering from the birth and looking after a new baby at a time when they are having to negotiate their way through discussions with their employer, grievance procedures, Early Conciliation through ACAS (Advisory, Conciliation and Arbitration Service) and the tribunal process but they are also experiencing a loss of income (the flat rate of maternity pay is £140.98 per week) and are likely to have to find and pay for legal advice and representation.

The three month time limit is a strict one and for discrimination claims tribunals will only waive it in exceptional circumstances when it is considered to be 'just and equitable'. This in itself adds an extra element of uncertainty and someone who has missed the time limit, even by a day, would have to make special representations to the tribunal to ask for the claim to be accepted out of time. Maternity Action is asking for the time limit to be extended to six months in claims involving pregnancy and maternity discrimination

3. Women's experiences of redundancy

Redundancies which are not genuine

Maternity Action's advice line regularly receives calls from women whose 'redundancies' are in fact unfair dismissal and/or maternity discrimination.

In these cases, employers who perceive pregnancy to be an inconvenience or had assumed that their employee would not return to their job after maternity leave appear to think that by calling a dismissal a redundancy they can get rid of their employee without being accused of discrimination. However, ending a pregnant employee's job to avoid paying maternity pay or having to make health and safety adjustments for them, or preferring to keep an employee's maternity cover are not genuine redundancy situations and are unlawful.

Rebecca started work for her employer in March 2017. In August, she told her manager that she was pregnant. Initially everything seemed OK but a week later she was told that she was being made redundant because two stores had closed and her role was no longer needed. However, her role wasn't directly linked to these stores and the company had also opened two new stores at the same time. She was the only person in the company losing her job.

Redundancies during pregnancy

Pregnant employees must take part in the selection process set out by their employer if the redundancy situation arises whilst they are at work. They are protected against pregnancy discrimination under the Equality Act but do not yet have the right to be given a suitable alternative role automatically.

Many women worry that their pregnancy will affect decisions made by their employer about who is put at risk of redundancy and that they will be viewed or assessed less favourably during application and interview processes. For example, that their employer will assume that because they are having a baby they won't want to return to work or will take into account time off sick for pregnancy-related reasons.

Olayemi notified her employer when she was 20 weeks pregnant. Her company were restructuring and she had been told that there would be fewer roles at her level. The formal consultation process was starting the following week. She understood that she would have to be interviewed for the available roles but was worried that she would be disadvantaged in any interviews because of her pregnancy and the fact that any potential new manager would know that she would be going on maternity leave within the next few months.

The different levels of protection offered to employees whilst at work and during maternity leave can cause confusion when redundancy processes overlap the start of a pregnant employee's maternity leave.

The right to be given a suitable alternative position if a redundancy happens during maternity leave applies as soon as an employee's leave starts, even if the consultation started whilst she was at work. Employers do not always fully understand this which can

leave employees uncertain of their position and possibly taking part in selection processes when they shouldn't need to.

Emma was starting her maternity leave in two weeks' time. Her company was reorganising but a suitable alternative role had been identified for her. She was told that she must put in an expression of interest and be interviewed for the role. The interview date was after the start of her maternity leave so her employer told her that she must use a KIT day for interview or that she could defer her redundancy consultation process until her return to work but advised her that by then it was unlikely that there would be any suitable alternative vacancies because the reorganisation would be complete.

Knowing that their employee will have additional protection once she is on maternity leave can encourage employers to bring forward consultations so that their pregnant employees are obliged to participate in the selection process.

Adriana was seven months pregnant and about to start her maternity leave when a restructure was announced at work. All members of staff had to attend a skills assessment and Adriana was told that the head teacher had brought the date for this assessment forward so that she could do this before her maternity leave. The skills assessment was on the day before her maternity leave started.

Redundancy during maternity leave

Women on maternity leave have the right to be given a suitable alternative position if there is one available and should be given this position automatically without having to take part in a selection process. This should make the process for women on maternity leave – and their employers – straight forward, with minimal involvement needed from the employee.

In practice, many women encounter problems and considerable disruption to their maternity leave when a redundancy situation arises whilst they are away from the workplace.

A lack of awareness of – or a reluctance to implement – employees' rights during maternity leave means that women can be expected to take part in selection processes when potential redundancies are announced. If unchallenged, it means that women are entering into a process in which they are disadvantaged because of being away from the workplace, missing out on recent training or not having access to the same resources or time to prepare.

Chloe was on maternity leave, three months after it started she was told that all roles at her level were being made redundant. Some suitable alternative roles would be available at a slightly higher level so everyone affected was asked to apply and scoring was then carried out to determine who would be given these roles. She applied for the new role but wasn't successful. Instead, she was offered a different role but was told that if she took this job she would be under a performance improvement plan on her return to work because she did not score well on the matrix. Prior to her maternity leave her performance was rated as outstanding.

Isabel started maternity leave at the beginning of January 2017 and received a letter at the end of January 2017 telling her that her manager had resigned and wasn't being replaced and this meant that her role as admin support to that manager was no longer needed. She found out that an equivalent role was vacant in another team and asked if she would be given this role. Her employer told her that she would have to interview for it and, if successful, would have to start the job in six weeks' time which was around the time her baby was due. She asked why she wasn't being given the alternative role automatically and was told that she was not covered by the protection because the role needed to be filled urgently and so he didn't have to give the role to her if she couldn't start straight away. When she queried this, she was told that a recruitment freeze had just started so he couldn't move her to that role anyway. She was then given notice of her redundancy.

An added pressure for women on maternity leave comes from the fact that they are usually communicating with their employer, often about complex legal issues, remotely rather than face-to-face. Many of the women we speak to worry about getting the right and most up-to-date information from their employer and complain that their calls and emails aren't returned.

For some women, being on maternity leave and therefore not physically present in the workplace means that they are not included in the redundancy process at all and only find out that their role has gone when they contact their employer or when they return to work.

Layla was on maternity leave from her role as deputy manager at a nursery. She arranged a meeting with her manager to discuss her return to work and at this meeting, she was told that her setting had closed a few months earlier – she hadn't been informed at the time – and that all other staff had been moved to a different setting. She was told that she would also be moved to this other setting but that the management roles had all been filled so she would be returning as a nursery worker. When she asked why she wasn't told about the nursery closure at the time and given a management role at the other setting she was told that her colleagues were 'there first' because they weren't on maternity leave.

Helena worked for a small family-run care home, she started her maternity leave in March. In August, she received a letter from her company saying that the business was having financial difficulties and so they needed to make some people redundant. She was invited to a meeting but couldn't go and heard nothing from the company afterwards. A colleague later told her that he had been made redundant so she tried to contact her employer but nobody replied to her messages; when she went to the home, she found that it had closed. She didn't receive the Statutory Maternity Pay she was due at the end of August but had still not been formally told whether she had been made redundant.

Redundancy on return to work

Once women return from maternity leave, they lose the legal protection they had throughout pregnancy and maternity leave. The risk of being selected for redundancy because of their pregnancy or maternity leave does not, however, disappear so quickly. When redundancies arise after a woman has returned to work, her selection can still be rooted in her treatment whilst pregnant or on leave.

Noor had been back at work for eleven weeks when she was told that her role was being made redundant. She had been treated badly and bullied by her employer whilst she was pregnant and had raised a grievance. Whilst on maternity leave she had been given a new role because of a company restructure. Her work still existed and when she asked for reasons for her selection she found out that the scoring for her redundancy was based on sick leave she had for a pregnancy-related illness.

Alice took four months maternity leave; she had chosen to take less than her full entitlement to leave and pay in order to get back to her role and catch up quickly. When she had been back at work for a couple of months her employer asked her to increase her part time hours to full time but she declined. Soon after she was told that the company was making redundancies and that her role was no longer needed so she was at risk.

After Blessing returned from nine months' maternity leave, her manager asked her if she wanted to work part time. She confirmed she did not as she was the main bread winner in her family. A week later she was called into a meeting with her manager and told that her role was being made redundant. Hers was the only role being made redundant. She believes that they thought she would not come back to work and did not want her to return. Her role had been divided amongst her team whilst she was away and they wanted to continue with that model. There had been no discussion of this prior to her return to work. She was placed in a very difficult financial position because her partner had reduced his working hours to care for their child whilst she worked full time.

For some women, changes that are proposed or made during maternity leave appear to be weakening their position in the workplace so although they may have been given an alternative role as the law requires, their new role is more vulnerable to redundancy in a future restructure – when they are back at work.

Whilst she was on maternity leave Yui's role hadn't been covered and when she asked to work some KIT days, she was told that she wasn't needed. On her first day back after maternity leave, Yui was told that there was no longer a full-time role for her because some of her job had been outsourced to another company; she could work reduced hours but was likely to be made redundant in the next few months. She then found out that her company was merging with another company – who had taken on her work – in a month's time, and one position was being created as finance director that she was told she could apply for (along with the colleague based at the other company).

Julia started maternity leave in March 2017. In August, she was told that her department was being restructured but no-one was at risk of redundancy because three new posts were being created at her level and would be allocated to her and her two colleagues. Although all the new posts were at the same level in the organisation, two had significantly more line management responsibility than the other role; she was offered the role with less responsibility. At the same time, she was offered a 6-month secondment at a more senior level but she was worried that if she took the secondment, no-one would be recruited to cover her substantive role and then when the secondment ended she would be at risk of redundancy because her employer would be able to say that her substantive role was not needed.

Some women are made redundant after requesting flexible working, with the selection apparently related to their employers' discomfort with the proposed change in working arrangements.

Meera submitted a request for flexible working 12 weeks before her return from maternity leave. During the 12 week period she had three meetings with her managers to discuss her flexible working request. One week before she returned to work they refused her request. She returned to work full time and appealed the outcome of her flexible working request. At the end of her second week back at work she was told that her role was being made redundant due to a re-organisation. She believes that this occurred because she requested flexible working. Hers is the only role being made redundant.

Other women report redundancies on return to work which do not appear to be genuine.

Following a re-organisation, about which she was not consulted, Chyou missed out on a promotion opportunity as her manager's role became available whilst she was on maternity leave. She was not told about it, not given the opportunity to apply for it. She was then made 'redundant' in the last month of her maternity leave, with no alternative role being offered. She was the only person being made redundant and her work was being done by her manager. She did not believe it was a genuine redundancy. Her employer was a very large company with a good redundancy package, so she felt she was being bought off. She appealed the decision but it was dismissed.

Taking action

Women experiencing discrimination or negative treatment at work during pregnancy and new motherhood face significant challenges in obtaining information and advice on their rights. ACAS provides the key source of Government information on maternity rights in the workplace. Their guidance on redundancy was released in 2012 and is now out of date.²⁰ Maternity Action's online information on redundancy and maternity was viewed 30,000 times in the first six months of 2017, indicating a high level of need for information on this issue.

Women face particular difficulties obtaining telephone advice on their maternity rights at work. ACAS provides telephone advice on employment issues however knowledge of maternity rights amongst ACAS advisers is variable. One in every twenty-five callers to the Maternity Action advice line had previously sought advice from ACAS. Many of these women were referred to Maternity Action because the ACAS adviser was unable to answer their query. Women can contact their local Citizens Advice Bureau, however there has been a substantial reduction in provision of employment advice. One in every four callers to the Maternity Action advice line had first sought advice from Citizens Advice Bureau.

While Maternity Action's specialist advice line fills a significant gap in service delivery, the service is very oversubscribed. In 2016, the advice line answered 2,300 calls. For each call we answered, there were 36 which we were unable to answer due to resource constraints. This equates to one in every five callers getting through each session that the advice line is open.

Very few women who experience pregnancy or maternity discrimination at work take action to assert their rights. EHRC research found that only one in four women who experience discrimination raise this with their employer.²¹ Only 3% pursue a grievance and fewer than 1% make a claim to the employment tribunal.

Women give a variety of reasons for not making complaints or taking more formal action. These include: fear of creating bad feeling with their colleagues or employer, fear of adverse

consequences, stress and tiredness, a belief that nothing will change, a perceived lack of information about rights, lack of a clear complaints procedure, feeling guilty and the financial cost of pursuing a complaint.

Women also give a variety of reasons for not pursuing a grievance with their employer. These include: the process was too daunting, not wanting to get into trouble at work, not wanting to damage future employment prospects, not feeling they had a good enough case, being too busy with their baby and being afraid of losing their job.

Of the women who raised an issue informally with their employer, many felt their complaint was not resolved satisfactorily. Women reported that nothing was done, action was taken only very slowly, reluctantly or after repeated requests or promises of action did not materialise.

4. Action needed

The current legal framework is insufficient to protect women from unfair redundancies during pregnancy, maternity leave and return to work. Women are losing their jobs through redundancies which are not real and redundancies which are discriminatory. Women are facing stressful selection procedures during pregnancy, at a time when women are encouraged to reduce stress and anxiety. Women returning from maternity leave are facing redundancies which are rooted in negative attitudes towards new mothers and to problems which arose during their pregnancy and maternity leave.

While women have the right to take action if they encounter discrimination, very few women do so. Pregnancy and new motherhood place significant demands on women's physical and mental health, their time and financial resources, militating against women pursuing legal claims against their employer even where they have a strong case. For those women who do pursue legal action, discrimination claims are notoriously difficult to prove, forcing pregnant women and new mothers to negotiate a complex, time consuming, expensive and difficult process in order to obtain justice.

Women are at particular risk of unfair redundancy during pregnancy and on return from maternity leave. During maternity leave, women have 'Reg 10' protections which require employers to offer a woman a suitable alternative role without interview, if a role is available. These protections are not available during pregnancy. Likewise, women who have returned to work lose the 'Reg 10' protections and also find it more difficult to pursue discrimination claims.

To provide women with effective legal protection against unfair redundancy during pregnancy and new motherhood, the law should be simple and easy for women and their employers to understand, should be consistent across pregnancy, maternity leave and return to work, and should remove the obligation on individual women to prove unfavourable treatment by their employer.

Germany provides a model which meets these requirements. This model, recommended by the Women and Equalities Selection Committee in its inquiry into pregnancy and maternity-related discrimination, permits employers to make pregnant women and new mothers redundant only under specified circumstances, such as closure of the business. These protections apply throughout pregnancy, maternity leave and six months after return to work.

An alternative, weaker option is to extend the protections that currently apply to women on maternity leave to cover the period from notification of pregnancy through to six months after return to work. This model would require employers to offer women at risk of redundancy a suitable alternative post without interview or assessment process. This is insufficient protection and is recommended as only as interim step.

In both cases, these protections should be extended to fathers and partners taking paternity leave, shared parental leave and parental leave during the pregnancy and the child's first year.

Alongside enhanced legal protections, employers should be encouraged to look more closely at their workplaces. Redundancy processes are just one of the mechanisms through which pregnant women and new mothers can find themselves unfairly forced out of their

jobs. The recent EHRC research into pregnancy and maternity-related discrimination listed a myriad of problems which women encountered and which led to dismissal or resignation. Employers are well able to identify and address these problems, if they are motivated to do so. To assist with this motivation, the Government should work with employers to encourage them to evaluate the retention rate for women one year after returning to work following maternity leave, as part of the gender pay gap analysis. This would ensure transparency within the company and also promote external scrutiny of employer practice.

Recognising the very low proportion of pregnant women and new mothers who take action to resolve problems at work, the time limits for these women to pursue a claim should be extended to six months. This will enable more women to access justice and provide a stronger deterrent for employers contemplating unfair and unlawful treatment of pregnant women and new mothers. Introducing these special provisions for pregnant women and new mothers would be an appropriate recognition of the impact of pregnancy and new motherhood on women's physical and mental health, time and emotional resources.

It is worrying that ACAS guidance on redundancy and maternity has not been kept up to date. While aimed at both employers and employees, ACAS guidance is of particular importance to employers who rely on ACAS to deliver concise and accurate information on employment law and practice. There is an urgent need to bring the redundancy guidance up to date so that employers have ready access to clear information on both the circumstances under which redundancy can take place and, in these circumstances, the process to follow.

Employers face wider challenges in finding the information they require on managing pregnant women and new parents at work. Regulation of different aspects of pregnancy and new parenthood at work is spread across five or more Government agencies, with guidance released by each agency. As a result, employers seeking information on managing pregnant women and new parents at work may find only part of the material which is relevant to their situation. There is an urgent need for this information to be consolidated in a single website so that employers can find the information they require at the time when they need it.

Access to timely information about rights at work remains an ongoing challenge for pregnant women and new mothers. While high quality material on maternity rights is available on the internet, there are also sites which are not kept rigorously up to date or which have inaccurate information. Government should take action to improve delivery of maternity rights information to pregnant women and new mothers to better support women to understand and exercise their rights. Government should be signposting to high quality online information on maternity rights at work through its website, through hard copy leaflets provided to women at their first antenatal appointment and through text and email information delivered to pregnant women and new mothers by health services. Reintroduction of the 'Pregnancy' and 'Birth to five' books would also provide a useful vehicle to communicate maternity rights information, particularly for those who are not online. Midwives and maternity support workers should receive training about maternity rights at work, including signposting to sources of advice and support.

It is not acceptable that women struggle to obtain advice about their maternity rights at work. Government funding should be provided to women's charities to deliver specialist information and advice on maternity rights at work and to raise women's awareness about their entitlements.

Recommendations:

1. New legal protections should be introduced to protect women against unfair redundancy. These should operate from pregnancy through to six months after the end of maternity or shared parental leave. These should follow the German model of prohibiting redundancy except in specified circumstances.
2. To ensure better protections are in place while the new legislation is prepared, the 'Reg 10' protections should be immediately extended to operate from the commencement of pregnancy through to six months after the end of maternity or shared parental leave.
3. The protections for pregnant women and new mothers should be extended to fathers and partners taking paternity, shared parental and parental leave during pregnancy and their child's first year.
4. Employers should be encouraged to evaluate the retention rates for women one year after returning from maternity leave, as part of their gender pay gap analysis.
5. Extend the timeframe for making a claim to the employment tribunal to six months for women from pregnancy through to six months after return to work.
6. ACAS should update its guidance on redundancy during pregnancy and maternity.
7. Government should consolidate information for employers on managing pregnant women and new mothers at work on a single website, and this should be kept rigorously up to date.
8. Government should provide signposting for women to high quality online information on maternity rights, ensuring that women can access accurate, up to date information and avoid incorrect and out of date material.
9. A significant injection of funding should be made into women's charities providing specialist information and advice services that enable pregnant women and new mothers to protect their rights and entitlements.
10. All women should be given a hard copy leaflet at their first antenatal appointment which briefly outlines their rights at work and signposts to key sources of information and advice. This should have a tear-off sheet for women to give to their employers, which similarly lists key legal obligations and signposts to key sources of information.
11. Reintroduction of the 'Pregnancy' and 'Birth to five' books, previously distributed by health services. These should include essential information about entitlements at work for new and expectant mothers.
12. Midwives, maternity support workers and health visitors should receive training on maternity rights at work, including signposting to sources of advice and support.

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- ² Maternity Action. 2017. [Protect maternity rights: our manifesto for the General Election 2017](#)
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- ⁶ House of Commons Women and Equalities Select Committee. 2016. [Pregnancy and maternity discrimination.](#)
- ⁷ House of Commons Women and Equalities Select Committee. 2016. [Pregnancy and maternity discrimination.](#) At paragraph 70.
- ⁸ HM Government. 2017. [Government response to the House of Commons Women and Equalities Committee report on pregnancy and maternity discrimination.](#) At page 3
- ⁹ HC Deb, 20 October 2017, cW <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-17/108107/>
- ¹⁰ ONS, Labour Market Statistics, February 2017,
- ¹¹ ONS 2016, [Annual survey of hours and earnings: 2016 provisional results](#)
- ¹² House of Commons Women and Equalities Selection Committee. 2016. [Gender pay gap.](#)
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- ¹⁵ DWP, Households Below Average,: An analysis of the UK income Distribution: 1994-1995 – 2015-2016
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- ¹⁷ Legal references for this chapter are: Statutory Maternity Pay (General) Regulations 1986 reg. 3; Employment Rights Act 1996 ss. 98, 99, 139; Maternity and Parental Leave etc. Regulations 1999 reg. 10, reg. 19, reg. 20; Equality Act 2010 ss. 13, 18 , 123
- ¹⁸ *Eversheds Legal Services v de Belin* UKEAT 0352/10/JOJ
- ¹⁹ *Sefton Borough Council v Wainwright* UKEAT 0168/14/LA
- ²⁰ ACAS. 2012. [Managing redundancy for pregnant employees or those on maternity leave.](#)
- ²¹ Equality and Human Rights Commission. 2016. [Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers.](#)