

Agenda – Equality, Local Government and Communities Committee

Meeting Venue:

Committee Room 3 – The Senedd

Meeting date: 19 April 2018

Meeting time: 09.00

For further information contact:

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Pre-meeting (09.00 – 09.15)

1 Introductions, apologies, substitutions and declarations of interest

2 Inquiry into pregnancy, maternity and work in Wales – evidence session 1

(09.15 – 10.15)

(Pages 1 – 35)

Dr Alison Parken, Wales Committee Member, Equality and Human Rights Commission

Rosalind Bragg, Director, Maternity Action

Break (10.15 – 10.30)

3 Inquiry into pregnancy, maternity and work in Wales – evidence session 2

(10.30 – 11.30)

(Pages 36 – 47)

Cerys Furlong, Chief Executive, Chwarae Teg

Catherine Fookes, Director, Women's Equality Network Wales

4 Inquiry into pregnancy, maternity and work in Wales – evidence session 3

(11.30 – 12.30)

(Pages 48 – 57)

Emma Webster, Joint CEO & Senior Solicitor, Your Employment Settlement Service



James Moss, Partner, Slate Legal

Bethan Darwin, Partner, Thompson Darwin Law

5 Papers to note

(Page 58)

5.1 Letter from the Chair of the Children, Young People and Education Committee to the Cabinet Secretary for Education in relation to the Welsh Government draft budget 2018–19

(Pages 59 – 65)

5.2 Letter to the First Minister in relation to human rights in Wales

(Pages 66 – 75)

5.3 Letter from the Chair of the Equalities and Human Rights Committee, Scottish Parliament, in relation to human rights in Wales

(Pages 76 – 77)

6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting

7 Inquiry into pregnancy, maternity and work in Wales – discussion of the evidence received under items 2, 3 and 4

(12.30 – 12.45)

8 Consideration of letter in relation to resourcing for Brexit scrutiny

(12.45 – 12.55)

(Pages 78 – 80)

The Committee will be holding a private pre-publication briefing session for the report on rough sleeping in Wales.

Document is Restricted

Equality and Human Rights Commission response to the Inquiry into pregnancy, maternity and work in Wales

About the Equality and Human Rights Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an 'A status' National Human Rights Institution. Find out more about the Commission's work at: www.equalityhumanrights.com.

Introduction

The Commission welcomes the opportunity to respond to the Committee's Inquiry into pregnancy, maternity and work in Wales.

Pregnancy and maternity is a protected characteristic under the Equality Act 2010. The legislation prohibits discrimination because of pregnancy and maternity, including treating a woman less favourably because she is breastfeeding. Instances of unlawful discrimination could include a female employee being dismissed or made redundant; refused promotion; denied the right to return to the same job; or having some of her responsibilities taken away because of her pregnancy or maternity leave. It could be sex discrimination if a woman is treated less favourably because she is breastfeeding or if she is harassed because she is pregnant, on maternity leave or because of her return from maternity leave.

In addition, Regulation 10 of the Maternity and Parental Leave Regulations 1999 requires that when a woman faces redundancy during her maternity leave, if there is a suitable alternative job it must be offered to her.

There has been a series of family-friendly legislation over the past decade which has had an impact on workplace management of pregnancy and maternity.

There had been a lack of up-to-date evidence on employers' experiences of, and attitudes towards, managing pregnancy and maternity. As a result of this, in 2016 the Commission published research in partnership with the

Department for Business, Innovation and Skills entitled '[Pregnancy and maternity related discrimination and disadvantage](#).' It explored the nature and prevalence of pregnancy and maternity related discrimination in the workplace. In addition, it examined employers' attitudes, approaches and challenges in managing pregnancy and maternity in the workplace.

Commission research findings

The research results were based on survey interviews with over 3,000 mothers and 3,000 employers. It also included over 100 face to face interviews, in addition to employers and employee focus groups. A tri-nation approach was taken with oversampling to Scotland and Wales so we are able to focus on Wales specific statistics.

Despite 87% of employers in Wales feeling it is in the best interests of organisations to support pregnant women and those on maternity leave, we found that:

- 71% of mothers reported negative or discriminatory experiences
- 46% of mothers reported a negative impact on their career (including opportunity, status and job security)
- 36% of mothers would have liked flexible working arrangements but were fearful to be viewed negatively
- A higher proportion of establishments in Wales (10%) offered no flexible working practices.

Mothers who work in the public sector were less likely to have felt forced to leave their jobs, report financial loss or report a negative experience related to a flexible working request.

In addition, the findings can be broken down to look at the size of the employer. We found:

- Small employers (under 50 staff) were more likely to feel that during recruitment women should declare upfront if they are pregnant.
- Medium-sized employers (50 -249 employees) were more likely to feel it is in the best interests of their organisation to support pregnant women and those on maternity leave.
- Large employers (over 250 staff) were more likely to state that all statutory rights were reasonable and easy to facilitate.

Our research report recommendations

In response to the research, the Commission recommended six areas for action: leadership for change, improving employer practice, improving access to information and advice, improving health and safety management in the workplace, improving access to justice, and monitoring progress.

Specific recommendations for Welsh Government were to:

- work in partnership with the Commission and business leaders to:
 - develop a joint communications campaign aimed at employers, underlining the economic benefits of unlocking and retaining the talent and experience of pregnant women and new mothers, and
 - demonstrate creative approaches to attracting, developing and retaining women in the workforce before, during and after pregnancy.

- work in partnership with the Commission to identify effective interventions that enable employers to manage and make best use of the talent and experience of pregnant women and new mothers and to ensure that employers are aware of and comply with their legal obligations.

- take action to 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.

Welsh Government Response

The Commission welcomed the Cabinet Secretary for Communities and Children writing to all Cabinet Secretaries to share our research and recommendations. Within this letter, the Cabinet Secretary asked for detail on the specific actions Cabinet Secretaries had taken, or intended to take, in relation to addressing pregnancy and maternity discrimination highlighted in our research.

Following this, we were informed of the actions identified by all Divisions within Welsh Government. These included:

- The Cabinet Secretary for Education asking officials to write to all Local Authority Education Directors, HR leads and Local Authority Governors' Support Officers to highlight our report and research findings and requiring them to cascade the information to schools in their area.
- The Cabinet Secretary for Finance and Local Government requesting officials to write to all twenty-two local authorities to highlight the support and information available.
- The Cabinet Secretary for Economy and Infrastructure asking officials to circulate our report to their social partners.
- The Cabinet Secretary for Health, Wellbeing and Sport and Minister for Social Services and Public Health sharing our report with Workforce and OD Directors in NHS Wales and to Directors of Social Services in local authorities in Wales.

The Committee should consider how the actions have been taken forward across Welsh Government Departments since the Cabinet Secretary's letter of April 2017.

Working Forward

To take forward the recommendations, the Commission launched a national campaign, led by British business, that aims to make workplaces the best they can be for pregnant women and new parents.

We brought together a coalition of businesses, leading the way on pregnancy and maternity rights for employees, who will share their advice, knowledge, and expertise with their peers.

Founding partners are: Barclays Bank, BT Group, Ford Motor Company, John Lewis Partnership, Mitie, Nationwide building Society, Royal Mail, Transport for London.

Supporters are: Chartered Management Institution, CBI, CIPD, FSB, IoD, South West Contact Centre Forum, Welsh Contact Centre Forum.

We are now asking employers that want to improve their practice to pledge to make their workplace the best it can be for pregnant and new mothers, by:

1. Demonstrating leadership from the top down
2. Ensuring confident employees
3. Training and supporting line managers
4. Offering flexible working practices

We are encouraging organisations to pledge support to Working Forward and

take action on these four areas. Our aim is to drive long term attitudinal and behavioral change to improve the experience for both the employer and employee.

We welcome the Welsh Government's signing of the Working Forward Pledge.

The Committee should consider what further action the Welsh Government can take under each of the pledge areas to improve the experiences for pregnant women and new parents. Also, how can this be shared to promote action from other employers in Wales?

Good practice examples

Welsh organisations who have signed the Working Forward Pledge include:

- Action for children
- Adult Learning Wales
- AVOW
- Betsi Cadwaladr University Health Board
- Bron Afon Community Housing
- BT
- Cardiff Business School
- Carmarthenshire County Council
- Careers Wales
- Coleg y Cymoedd
- Deloitte
- Dwr Cymru
- Family Housing Association Wales
- Ford
- Gower College Swansea
- Legal & General
- Mid & West Wales Fire & Rescue Service
- NPTC Group of Colleges
- Public Health Wales
- QLS
- South Wales Police / Police & Crime Commissioner
- Torfaen County Borough Council

A key theme of Working Forward is peer- to-peer learning. We are helping organisations to get together to share ideas and experiences about how to make workplaces better for pregnant women and new parents.

Betsi Cadwaladr University Health Board are developing a pregnancy and maternity toolkit to support line managers in having regular and open conversations with team members during their pregnancy, maternity leave and return to work.

South Wales Police have introduced 'pregnancy champions' to support pregnant staff and for the first few months of returning to work as a new parent. South Wales Police and the Commissioner ensure all of this work is fed into their Internal Delivery Plan to increase the numbers of women at all ranks in their service.

BT in collaboration with their women's network have developed a maternity handbook to support line managers. It includes practical advice and top tips. It is complemented by an employee handbook.

Further examples of best practice can be found on our [website](#).

The Committee should consider how to encourage all employers in Wales, including anchor companies, to take action on pregnancy and maternity discrimination and sign up to the Working Forward pledge.

Power to the bump

In response to the research, the EHRC launched an online campaign '[Power to the Bump](#)' to empower young expectant and new mothers to know their rights at work and to raise their confidence to assert these rights. This included supporting women to have early conversations with employers and therefore early resolution to avoidable pregnancy and maternity issues.

The five top tips are:

- Tip 1: Talk to your boss
- Tip 2: Go to your antenatal appointments
- Tip 3: Plan your maternity leave
- Tip 4: Talk about risks
- Tip 5: Avoid stress

The Committee should consider what further steps can be taken to raise awareness of the workplace rights women and mothers have when they are pregnant and return to work.

Welsh Government's equality objectives and economic action plan

We welcomed the Welsh Government's Public Sector Equality Duty Objective 2016-2020 to identify and reduce the causes of employment, skills and pay inequalities related to gender, age and disability. Actions identified included the production of a Welsh Government wide employability plan to underpin future approaches to delivery aimed at assisting young people and adults to gain, retrain and progress with employment.

'Prosperity for all: economic action plan' sets out a vision for the Welsh economy. The action plan commits to introducing economic contracts which will set the relationship between business and government to stimulate growth, increase productivity and make Wales fairer and more competitive. The contract requires businesses to demonstrate commitment to fair conditions before proposals will be considered in funding. One of these key themes is 'Fair Work'.

The Prosperity for all: economic action plan highlights work to support four foundation sectors – tourism, food, retail and care - in a joined up and consistent way across Government.

Our research found concerning attitudes towards pregnancy and maternity from some of these foundation sectors. For example,

- Hotel and restaurants – employers were more likely than average to think women should declare at recruitment stage if they are pregnant.
- Caring, leisure and other service occupations – twice as many mothers than average felt under pressure to hand in their notice when they announced their pregnancy.

The Committee should consider how the Public Sector Equality Duty, the Welsh Government's Economic Action Plan and its new Employability Plan can be used as levers to tackle gender inequality in Welsh workplaces.

The Committee should recommend that the Welsh Government's Fair Work Board considers our research and findings and that it provides support for businesses in agreeing a clear definition of fair work to ensure that female talent is valued and nurtured.

The Committee should consider how the Welsh Government is working with the four foundation sectors to address the attitudes and experiences of women working in these sectors, to ensure opportunities for growth and innovation.

Summary of recommendations

- The Committee should consider how the actions have been taken forward across Welsh Government Departments since the Cabinet Secretary's letter of April 2017.
- The Committee should consider what action the Welsh Government can take under each of the pledge areas to improve the experiences for pregnant women and new parents. Also, how can this be shared to promote action from other employers in Wales?
- The Committee should consider what further steps can be taken to raise awareness of the workplace rights women and mothers have when they are pregnant and return to work.
- The Committee should consider how the Public Sector Equality Duty, the Welsh Government's Economic Action Plan and its new Employability Plan can be used as levers to tackle gender inequality in Welsh workplaces.
- The Committee should recommend that the Welsh Government's Fair Work Board considers our research and findings and that it provides support for businesses in agreeing a clear definition of fair work to ensure that female talent is valued and nurtured.
- The Committee should consider how the Welsh Government is working with the four foundation sectors to address the attitudes and experiences of women working in these sectors, to ensure opportunities for growth and innovation.

1. About Maternity Action

Maternity Action is the leading national charity working to protect and strengthen maternity rights and to promote the health and wellbeing of pregnant women, new mothers and their families. Maternity Action provides online information and telephone advice to pregnant women and new parents on maternity rights at work, maternity benefits, and entitlement to health and other services for women from abroad. Maternity Action convenes the Alliance for Maternity Rights, a network of parenting groups, advice agencies, unions and health organisations working to bring an end to pregnancy and maternity discrimination in the workplace.

2. Nature and incidence of pregnancy and maternity discrimination in the workplace

Equality and Human Rights Commission research into pregnancy and maternity-related discrimination found that this form of discrimination was widespread and affected women working in the public and private sector, in all industries and in large, medium and small businesses. Key statistics from the 2016 research, *Pregnancy and maternity-related discrimination and disadvantage: Experiences of Mothers* (EHRC/BIS 2016), are:

- More than three-quarters (77%) of all pregnant women and new mothers in the workplace experience some form of pregnancy or maternity-related discrimination.
- One in every nine (11%) pregnant women and new mothers in the workplace are unfairly dismissed, unfairly made redundant or forced to leave their jobs because of discrimination.
- The incidence of maternity discrimination has increased significantly over the past decade. The EHRC research found that a total of 54,000 women each year lose their job as a result of pregnancy and maternity discrimination. This is 80% higher than comparable research undertaken ten years earlier by the Equal Opportunities Commission.
- One in every twenty-five (4%) women leave their jobs because of concerns about health and safety. Almost half of all women (48%)

report that their employer did not initiate a discussion about health and safety or that not all health and safety risks were tackled.

- Just over one in every ten women (11%) reported negative changes to their job on return to work.
- More than half (51%) of women who had their flexible working request approved reported negative consequences. Roughly one in every four women (38%) did not request the type of flexible working they wanted because they did not think it would be approved or they were worried about negative consequences.
- One in five women (19%) who stopped breastfeeding said that returning to work influenced their decision. Over half of these women (54%) would like to have breastfed longer (equating to 6% of all new mothers in the workplace).
- Four in ten women (41%) experienced some risk to or impact on their health and welfare. The incidence was higher amongst women on agency, casual or zero hours contracts (50%) and lowest amongst those earning more than £40,000 p.a. (35%).
- Only 28% of women who reported negative and possibly discriminatory experiences raise this with their employer. Only 3% pursue a grievance and fewer than 1% make a claim to the employment tribunal.

Pregnancy and maternity discrimination poses significant costs to women, the state and employers as documented in the EHRC research, *Estimating the financial cost of pregnancy and maternity related discrimination and disadvantage* (EHRC 2016). The cost to women of losing their jobs due to pregnancy and maternity discrimination is between £46.6 million and £113 million in the first twelve months alone. The cost to the state due to lost tax revenue and increased benefits payments is between £28.9 million and £34.2 million in the first twelve months. The cost to employers was £278.8 million per year.

By contrast, discrimination which falls short of women losing their job results in costs to women and the state but net savings to employers of between £7.1 million and £8 million in the twelve months following the event. Examples of savings include employers refusing to pay for time off for antenatal appointments and for holiday entitlements.

3. Women's experiences

Maternity Action's Maternity Rights Advice Line provides free telephone advice on maternity rights at work and maternity benefits to approximately 2,000 parents each year. Advice is delivered by lawyers and trained advisers. Callers are from across the UK, with 3% located in Wales. Three quarters (75%) earn below £30,000.

The most common topics raised by callers are: Statutory Maternity Pay, discrimination, Maternity Allowance, rights during maternity leave, redundancy, return to work, right to request flexible working, Tax Credits, maternity leave, health and safety, contractual maternity pay, resigning during maternity leave and sickness during pregnancy.

Examples of some recent calls:

- A pregnant woman employed in a hairdressing salon had experienced difficulties with her employer when she needed time off for sickness. She was then told that she would be made redundant. She felt that this was not a genuine redundancy as she was the only one being made redundant and there had been no change in demand for the service. The timing of the redundancy meant that she was not entitled to Statutory Maternity Pay. We advised her on how to challenge the decision and how to claim Maternity Allowance.
- A woman returning from maternity leave had her flexible working request refused. Her employer offered her either a more junior role on a part time basis or redundancy. She discovered that her employer had decided to keep her maternity cover on. We advised that this was not a genuine redundancy as her role was still available and that she could make a claim for discrimination.
- A woman working in a health centre was told that the time she had taken off for antenatal appointments would not be paid as she had not formally notified the employer of her pregnancy before taking leave. She had records of notifying the relevant manager however these were rejected by the head of the centre. We advised her on raising a grievance and, if this did not resolve the issue, pursuing a claim for discrimination.

Maternity Action is currently piloting a casework service for women experiencing pregnancy and maternity discrimination at work, in partnership with YESS law. The pilot, funded by the Equality and Human Rights Commission, consists of casework support up until litigation and provision of a peer supporter. The project aims to address the very low numbers of pregnant women and new mothers who take action to assert their rights (28% speak to their employers, 3% pursue a grievance and fewer than 1% make an employment tribunal claim). Preliminary findings are that this combination of support significantly increases the likelihood of women exercising their rights.

An example of a recent case for which we provided casework support:

- A woman had been extremely unwell during her pregnancy, requiring weekly visits to her doctor. She complied with the absence procedures and provided doctors certificates. Her employer called her in for a meeting to discuss disciplinary action for her absences.

Maternity Action's advice service is substantially oversubscribed. As the only specialist maternity rights advice service in the charity sector, the demand for advice has increased each year in response to the increasing incidence of maternity discrimination and cuts to other advice services, such as local Citizens Advice Bureaux and Law Centres. We are able to assist approximately one in five women who call the advice service, as we have been unable to secure funding to expand the service to meet need. We are concerned that the consequence of inadequate funding for this service is that women are not obtaining much-needed advice on their rights.

4. Welsh Government action to address pregnancy and maternity-related discrimination

In 2016, Maternity Action and the Alliance for Maternity Rights released an Action Plan: Putting an end to pregnancy discrimination in the workplace which included a detailed set of recommendations for Government action. The Action Plan influenced the UK Women and Equalities Select Committee's inquiry into pregnancy and maternity-related discrimination.

The responsibility for addressing pregnancy and maternity-related discrimination in Wales is shared between the UK Government and the National Assembly of Wales, with many of the levers to address this issue lying with Westminster. The UK Government has yet to take substantive action to address pregnancy and maternity-related discrimination. The key Government commitment in response to the Women and Equalities Select Committee report was to review redundancy protections for pregnant women and new mothers. This commitment was given in January 2017 and the Government has yet to provide a commencement date for the review. While the Taylor Review of Modern Workplace Practices was specifically tasked with investigating maternity and parental rights, it merely repeated the commitment to review redundancy protections.

Levers available to the Welsh Government to take action on pregnancy and maternity discrimination include the Fair Work Board, the Code of Practice for Ethical Employment in Supply Chains, the Sustainable Development Charter and policies and practices in devolved public services. The Welsh Government can also fund specific programmes, such as the new childcare offer.

Maternity Action is keen to see the Welsh Government invest in strategies both to reduce the incidence of pregnancy and maternity discrimination and to support women who have experienced unfair and unlawful treatment. We make the following recommendations.

(i) Demonstrating leadership in addressing high rates of pregnancy and maternity discrimination

There is an urgent need for Governments to show leadership in spearheading a change in culture. The Welsh Government should bring together employers, unions and voluntary organisations to run a campaign to communicate:

- The benefits to the wider community in addressing pregnancy and maternity-related discrimination and supporting women's participation in the workforce during their childbearing years, including promoting the health and wellbeing of women and their babies, protecting family incomes and reducing child poverty;

- The business case for attracting and retaining women of childbearing age especially in relation to small- and medium-sized enterprises;
- The legal framework for pregnancy and maternity issues;
- The penalties for failing to comply.

(ii) Public reporting of maternity retention rates

Public reporting of maternity retention rates will focus attention on employer practices towards pregnant women and new mothers, much as Gender Pay Gap reporting has shone a spotlight on pay inequality. Maternity retention rates are the proportion of women who were pregnant while working for the company and are still in post a year after return from maternity leave. The Welsh Government should explore ways to incorporate maternity retention rate reporting into the work of the Fair Work Board, the Code of Practice for Ethical Employment in Supply Chains, the Sustainable Development Charter and policies and practices in devolved public services.

(iii) Health and safety and breastfeeding

Health and safety protections are an area of particularly poor employer practice warranting attention from the Welsh Government. There is scope for significant gains to be made by supporting employers to undertake better general risk assessments and individual risk assessments, by training midwives and other health workers about health and safety rights at work, by developing good practice guides for specific industry sectors and by supporting good practice in breastfeeding on return to work.

(iv) Advice services for women and their families

Currently, few women who experience discrimination exercise their rights and advice services to support them are under enormous financial pressure. The Welsh Government should consider providing an injection of funding into women's charities providing specialist information and advice services that pregnant women and new mothers need to protect their rights and entitlements.

(v) Information for employers

Employers are more likely to comply with the law if the information on their legal obligations is readily accessible. The Welsh Government should explore options for delivering consolidated information on employers' responsibilities to pregnant women and new parents.

April 2018

Agenda Item 3

Oddi wrth: Chwarae Teg

From: Chwarae Teg

Introduction

Chwarae Teg exists to deliver our vision of a fairer Wales where women achieve and prosper. We work with women, businesses, influencers and decision makers to build a society that values, supports and benefits women and men equally.

Despite equality legislation being in place for a number of years, women continue to face pregnancy and maternity discrimination and having children still shapes the career and life choices of women to a far greater extent than men.

Ultimately this remains an issue for women due to persistent stereotypical ideas about men and women's role in society. The assumption that women will take on the primary caring role in a household is the foundation of continued discrimination and disadvantage that women face once they have children.

Key messages

1. While legislation and regulation are important to protect women from pregnancy and maternity discrimination, sustainable change will only be achieved if we are able to shift culture and attitudes so that care is no longer seen as a women's issue and our workplace structures enable parents to effectively balance work and care.
2. The Welsh Government have limited powers to directly address instances of discrimination in the private sector but can take action to deal with the underlying factors that make this such an acute issue for women. This includes tackling stereotypes, improving childcare, supporting women returners, supporting the development of inclusive and flexible workplaces and driving culture change.
3. The new childcare offer, Economic Action Plan and Employability Plan all have the potential to support women, particularly those with children, if implemented well. Close monitoring of these policies will be crucial and the inclusion of gender specific evaluation criteria could further ensure that the aims and objectives of the policies track through to delivery.

Detailed Response

Section One: How the Welsh Government is taking action on the findings of the EHRC review into pregnancy discrimination (Question One)

1. The 2016 EHRC report on pregnancy and maternity discrimination is the most comprehensive investigation of this topic for some time.¹ The findings highlight a number of areas that might be prioritised for action in Wales:
 - 1.1. It would be worthwhile investigating why Wales and Scotland have a lower proportion of women reporting negative experiences than England, although at 77% there remains a need for action in Wales. It's possible that the existence of additional equality duties in Wales and Scotland have supported greater awareness of legal requirements and lessons could be taken from this approach to improve the performance among the private sector.
 - 1.2. Wales' performance lagged behind the UK in two key areas. A higher proportion of employers in Wales reported that it was difficult to facilitate the statutory right to protect employees from being treated unfavourably because they are pregnant or on maternity leave and Wales also had the highest proportion of establishments that offer no flexible working at 10% (England 4%; Scotland 3%). These should be prioritised by government and other actors in Wales.
 - 1.3. While 84% of employers say that it is in their interest to support those on maternity leave, 77% of mothers report bad experiences. Furthermore 70% of employers think that women should declare upfront whether they are pregnant and a quarter think it's acceptable to ask women about their plan to have children at recruitment. This disconnect could suggest a lack of awareness or understanding of what supporting those on maternity looks like, which could be addressed in part by provision of further resources and training for employers.
 - 1.4. Some sectors and occupations performed particularly poorly with women more likely to report poor experiences and employers more likely to display negative experiences. Perhaps unsurprisingly the sectors that perform worst are those that are known to have a lack of women in the workforce. This is likely to be both a cause and consequence of the under-representation of women. These sectors should be prioritised for action.
 - 1.5. The private sector consistently performs worse than the public and third sector in terms of employer attitude, with 74% of private sector employers stating that women should declare upfront if pregnant compared to 58% in the third sector and 45% in the public. It is worth noting however that there was no significant difference in the proportion of women reporting negative experiences across the public and private sector.
2. Legislation alone will not deliver the sustainable change we need. Not all of the experiences described in the EHRC research fall under the legal definition of discrimination and for those accessing their legal right to work flexibly, 51% report this resulted in negative consequences.² Many of the views expressed are rooted in the perception that women are carers first and earners second. For example, 17% of employers believed that pregnant women and mothers were less interested in career progression and promotion.³ While legislation is needed to ensure protection for pregnant women and mothers, we need to see a shift in broader attitudes and culture if we are to permanently address this problem
3. This enables the Welsh Government space to take action, despite having limited powers to directly influence or respond to instances of discrimination in the private sector. There are three

¹ EHRC

² Ibid

³ Ibid

broad areas in which the Welsh Government could take action to address some of the broader factors that result in pregnancy and maternity discrimination still being so acute an issue for women:

Recommendations to support parents

1. Continue to closely monitor and evaluate the pilots of the new childcare offer to ensure that it delivers on its aims, has good coverage across Wales and support is available to those who need it most.
2. Investment in care infrastructure and the workforce must be a priority to increase capacity and capability so there is adequate provision to support parents to work but also to address poor terms and conditions within in the sector, including poor support for those accessing maternity.
3. Wrap-around childcare provision for children outside of the 3-4 age bracket must be improved. Affordability and flexibility should be the core principles that shape further development of childcare in Wales.
4. Specialist support should be developed for women returners within the new Employability Delivery Plan, which includes support with childcare and is tailored to address the barriers this group face, such as a lack of confidence.

Recommendations to drive culture change

1. Ensure that the public sector leads the way in eradicating pregnancy and maternity discrimination and supporting women to return and progress in work following any career breaks. Signing up to the EHRC *Working Forward* pledge is a good starting point.
2. Support and promote schemes like Agile Nation 2, Fairplay Employer, Stonewall Workplace Equality Index and others that support businesses to develop more inclusive workplaces.
3. Work with business representatives to promote examples of best practice in relation to managing pregnancy and maternity from both the public and private sector and challenge negative attitudes.
4. Encourage businesses to support women **and** men to work flexibly and share caring responsibilities by showcasing examples of best practice, including consideration of inclusivity in procurement and calling on the UK Government to evaluate and improve the current Shared Parental Leave scheme.

Recommendations to tackle stereotypes

1. Ensure that ongoing educational reforms, including curriculum reform and changes to initial teacher training and inspections, contribute to an educational system that effectively tackles gender stereotypes.
2. Ensure that the education and careers workforce are supported to develop the skills and knowledge to effectively challenge stereotypical attitudes and behaviour.
3. Build on campaigns such as “This is Me” to contribute to an ongoing public dialogue that challenges gender stereotypes.
4. The recommendations from the Sex and Relationships Expert Panel, including making Sex and Relationships Education a statutory element of the curriculum should be taken forward.

Section Two: Current Welsh Government Policies (Questions Two, Three and Four)

4. Strategic Equality Plan

- 4.1. The gender pay gap for all workers in Wales currently stands at around 15% but there is significant variation across different parts of Wales and different sectors with a pay gap of around 30% in some areas.⁴ While the pay gap has been reducing, the pace at which this is happening has slowed. There remains a need for targeted activity to address the causes of the pay gap.
- 4.2. The recent Annual Report on Equality from the Welsh Government summarises some of the activity being undertaken to deliver Objective Three – to identify and reduce the causes of employment, skills and pay inequalities related to gender - including ongoing work to consult on the details of the new childcare offer.⁵ The decision to tailor this policy to benefit women who wish to return to work and families on low incomes should be particularly helpful in relation to pregnancy and maternity. Our views on the childcare offer are detailed in section four.
- 4.3. Our ESF and Welsh Government funded Agile Nation 2 project is working with women and employers specifically to address the causes of the gender pay gap, including issues faced by mothers. Our work with employers is particularly important in relation to this topic as we support them to develop effective equality and diversity strategies, implement processes that prevent discrimination and bias in relation to recruitment and progression, implement flexible ways of working and drive culture change to ensure an inclusive workplace.

5. Economic Action Plan

- 5.1. The Economic Contract requires those receiving funds to demonstrate fair work. Depending on the definition of fair work this could ensure that public money only goes to employers that have inclusive workplaces and where pregnancy and maternity discrimination is not an issue. If the economic contract does not deliver the change that is desired, consideration could be given to adding in an additional Call to Action that specifically focuses on gender.
- 5.2. The focus on care as a foundation sector could also be beneficial by addressing the lack of adequate care provision and tackling poor working terms and conditions, which may include issues around maternity based on the findings of the EHRC report.⁶ Investment in this sector must cover both the infrastructure (i.e. increase provision) and the workforce (i.e. improving pay, conditions and progression opportunities).
- 5.3. The Action Plan includes a commitment to build capacity and capability across the childcare sector beyond the roll-out of the 30 free hours offer. Further development of the sector must be a priority and should be informed by the needs of parents. Affordability of provision will need to be a central focus as well as improving availability.
- 5.4. The thematic and foundation sectors include a number that perform poorly in the EHRC report.⁷ This could be used as an opportunity to get to the root of the problem in these industries and ensure that women get fair and equal treatment within them.

6. Employability Plan

⁴ ONS ASHE 2017 provisional results / Welsh Government Priority Sector Statistics 2017

⁵ Welsh Government *Annual Report on Equality 2018*

⁶ Care, leisure and other services was a sector highlighted as having a particularly high proportion of women reporting poor experiences.

⁷ Manufacturing, construction, financial services utilities and transport and communications are all highlighted as sectors where there is either a high proportion of women reporting bad experiences or a high proportion of employers expressing negative attitudes.

- 6.1. The adoption of a broad definition of employability that takes account of structural and individual barriers as well as skills is an important foundation. Coupled with a commitment to ensuring an individualised approach to delivery, services should be able to flex to different needs, including those of mothers.
- 6.2. An explicit focus on developing inclusive and flexible workplaces, a commitment to carrying out an equalities review of all programmes and a requirement for all delivery partners to demonstrate a commitment to equality, diversity and inclusion should all further strengthen delivery from a gender perspective and effectively support women into work and to progress in work.
- 6.3. In support of actions listed in the Economic Action Plan, there is also a focus on childcare, which we know has the potential to be hugely beneficial. This includes delivery of the PaCE programme and the new childcare offer, exploring solutions for elder care and working to improve working conditions and progression opportunities in the care sector.
- 6.4. As well as adequate childcare and ensuring availability of flexible, well-paid employment there may also be a need for specialist support to enable women to return to work following a career break, particularly support that focuses on building confidence. It may be worth considering developing specialist services for women returners as part of the new employability delivery plan.

7. Childcare and support for women

- 7.1. Access to childcare is crucial in supporting women into work and to progress in work. This has been recognised by the Welsh Government and the focus remains on rolling out the childcare offer of 30 free hours per week.
 - 7.2. We have held a number of engagement events with parents to discuss childcare in Wales. Broadly speaking parents welcomed plans to increase free provision in their area, with many mothers noting that they would return to work without question if this were available to them. This provision needs to be flexible and there was some concern about how to ensure support went to those who need it most.
 - 7.3. There are concerns about the lack of adequate wrap-around childcare with many making use of after school clubs in place of more suitable childcare. These often finish at 5pm, can be expensive to access and parents can face difficulty if after-school provision for children is in different locations.
 - 7.4. Pilots of the new childcare offer should be closely monitored to ensure good coverage across Wales can be delivered, that services are accessible to those who need them most and offers opportunities to build to ensure an increase in wider provision of children of all ages. To be clear, it's our view that 'those who need it most' should be parents for whom access to affordable and flexible childcare is the primary barrier preventing them returning to meaningful work. If the pilots and the new childcare offer does not meet the needs of parents needing to return to work in Wales then Welsh Government should consider amending the policy within this Assembly term.
8. These policies all have great potential, but implementation is key. Delivery must remain sensitive to gender impacts and agile enough to respond where improvements might be required. One way to ensure delivery maintains this focus is to include gender explicitly in evaluation indicators. This might include using gender disaggregated data from service delivery as well as broader national indicators including the gender pay gap, economic activity and inactivity rates, average hours worked and average time spend on unpaid work in the home, to assess impact on change at scale.

Oddi wrth: WEN

From: WEN

WEN Wales is a representative women's network¹ and human rights organisation working to influence policy-making and empower women to achieve equal status in corporate and civil life. Our charitable objects are to promote equality and human rights with specific reference to women and gender equality in Wales.

Pregnancy, Maternity & Work in Wales:

1. The Equality and Human Rights Commissions' 2017 inquiry into pregnancy and maternity discrimination research findings highlights some real concerns in Wales with regards to how women feel that they are being treated and the attitudinal barriers they face from employers.² Of the mothers who were consulted by the EHRC in Wales:³

- **71% reported negative or possibly discriminatory experiences**
- **10% felt forced to leave their jobs**
- **15% reported financial loss**
- **46% reported a negative impact on opportunity, status or job security**

2. Coupled with the findings when the EHRC consulted with employers in Wales, there are clearly worrying and contradictory attitudes that require attention. Of employers surveyed and interviewed:⁴

- **87% feel it is in the best interest of the organisation to support pregnant women and those on maternity leave**
- **65% feel women should declare upfront at recruitment if they are pregnant**
- **36% said all statutory rights are reasonable**
- **26% said all statutory rights are easy to facilitate**
- **23% said pregnancy puts an unreasonable cost burden on the workforce**

3. These snapshots indicate that despite the legislation in place to protect the rights of pregnant women and women on maternity leave there are feelings amongst the majority of Welsh employers interviewed that pregnancy and maternity leave: is unreasonably **costly**; it is **difficult to facilitate** all statutory rights; and that **statutory rights go beyond what is reasonable**. It is worrying then that 65% of employers would have women declare pregnancy during recruitment, and presumably through conscious or unconscious bias, these women

¹ Over 1000 individual members and organisational members, including women's rights and allied organisations from across the third sector, academia, international and national NGOs.

² <https://www.equalityhumanrights.com/en/file/10521/download?token=WqAvNfz5>.

³ Ibid.

⁴ Ibid.

would reap the consequences of the unpopular levels of protection that pregnant women and those on maternity are covered by, in the eyes of the law.

4. Despite this protection afforded by the Equalities Act (2010), discrimination occurs frequently across the UK and must be examined from an intersectional perspective:⁵

- **Under 25 year olds** were found to be more likely to say they were **not willingly supported by employers** and felt increased **pressure to resign** once they had announced their pregnancy, in comparison to older women.
- **Women from Ethnic Minorities** were more likely than White British women to report **financial loss, negative impact on opportunities, status and job security** or have had negative experiences in relation to **breastfeeding**.
- Women with long term **physical or mental health conditions** were more likely to feel **forced to leave their jobs**, in relation to women who did not identify long term physical or mental health conditions.
- **Single women** were more likely to feel **unsupported**, more likely to report **financial loss, negative impacts on opportunities**, under pressure to **resign** and felt that **employers were unhappy** about them going on maternity leave, in comparison to women who weren't single.

5. The EHRC's findings in this area highlight the complex nature of the discrimination that women in the UK are experiencing, not only under the protected characteristic of pregnancy or maternity but also other characteristics covered by the Equalities Act (2010), in addition to other factors such as marital status associated with societal taboos and gender stereotypes.

6. It is then not surprising, along with gender stereotyping and social taboos, that in 2016/17 just 250 men in Wales took shared parental leave, according to HMRC statistics, obtained by BBC Wales.⁶ This amounts to less than 1% of new fathers in Wales receiving payment for shared parental leave to look after their new born children, in the first full year since shared parental leave was introduced in 2015.

7. Given that research suggests that the longer the period of maternity leave taken, the larger the impact on the gender pay gap⁷ – which is estimated at around 15% in Wales⁸ – new fathers may feel that they risk damaging their own careers prospects by taking shared parental leave. PwC's 2018 report 'PwC Women in Work Index Closing the gender pay gap' shows that countries with more generous maternity leave periods have higher gender pay gaps, though the introduction of shared parental leave and encouraging men to take this up could change the effect of paid maternity leave on the pay gap over time.⁹ The additional

⁵ <https://www.equalityhumanrights.com/en/file/10521/download?token=WqAvNfz5>.

⁶ <http://www.bbc.co.uk/news/uk-wales-40265334>.

⁷ <https://www.pwc.co.uk/economic-services/WIWI/women-in-work-index-2018.pdf>

⁸ ONS ASHE 2017 provisional results / Welsh Government Priority Sector Statistics 2017.

⁹ <https://www.pwc.co.uk/economic-services/WIWI/women-in-work-index-2018.pdf>

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element of encouragement through incentivising men to take up shared parental leave is key and is missing from the current UK Government policy.

8. At a UK Government level, there is also a clear lack of leadership as demonstrated by UK Minister Andrew Griffiths' admission on BBC Radio 5, that despite launching the campaign 'Share the Joy'¹⁰ to encourage take up of shared parental leave in the UK, he himself – an expectant father – firstly would be unable to take shared parental leave, because ministers were not eligible. More shocking though, was his admission that he had not even considered the possibility of having the rules changed so that ministers could take shared parental leave. Instead, he insisted that he planned to be the first minister responsible for parental leave to take their full two weeks of paternity leave.¹¹

9. With current electoral reform considerations taking place in the National Assembly for Wales right now, there is a clear opportunity for Assembly Members and Welsh Ministers to change the rules to ensure that they themselves are eligible to take shared parental leave and can champion equality in relation to gender equality when it comes to shared caring responsibilities, unlike in Westminster. WEN Wales recommends that the Committee calls for changes to eligibility for elected ministers in Westminster and the National Assembly for Wales with regards to shared parental leave.

10. It's worrying that so few men in Wales have taken up the offer of shared parental leave since the policy came in in 2015. It is worth examining the details of parental leave in comparison to Sweden, whose approach to shared parental leave, coupled with guaranteed, affordable childcare for all children over the age of 12 months encourages equal co-parenting and parents to have the affordable choice of returning to work.

11. UK shared parental leave:¹²

- **Allows parents to share 50 weeks of leave - with 37 paid.**
- **Parents can take time off separately or together for up to six months.**
- **This is paid at £140.98 per week or 90% of parents' average earnings (whichever is lower).**
- **It must be taken between the baby's birth and first birthday (or within a year of adoption).**
- **It can be taken in one block or split into blocks (up to 3 blocks) with periods of work in between.**
- **In addition to shared parental leave, fathers can take two weeks paternity leave and mothers must take two weeks compulsory maternity leave after the birth of a child. This time is not deducted from shared parental leave allowance.**

¹⁰ <https://www.gov.uk/government/news/new-share-the-joy-campaign-promotes-shared-parental-leave-rights-for-parents>.

¹¹ <http://www.bbc.co.uk/news/uk-politics-43034292>.

¹² Ibid.

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12. Swedish shared parental leave:^{13 14 15 16}

- Parents are entitled to 480 days (around 16 months) of paid parental leave when a child is born or adopted.
- This leave can be taken by the month, week, day or even hour.
- This can be taken any time before the child's eighth birthday.
- On average, women take most of the days, with men taking around one-fourth of the parental leave.
- For 390 days, parents are entitled to nearly 80% of their pay (up to around £2,900 per month) with the remainder paid at a flat daily rate (approximately £15).
- Those who are not employed are also entitled to paid parental leave.
- Parents with twins or more have the right to additional paid parental leave (180 days extra).
- 90 days of leave are allocated specifically to each parent and cannot be transferred to the other (the "use it or lose it" system introduced in 1995 and extended in 2002).
- In addition, one of the parents of the new born gets 10 extra days in connection with the birth (20 days for twins).
- During the first 3 months of the new baby's life, the father is entitled to be home for 10 days. These days are in addition to the 480 parent days.
- A single parent is entitled to the full 480 days (with sole custody).
- Employers do not pay the cost for parental leave, instead it is paid by the Swedish Social Insurance Administration.
- To be eligible parents must be legal residents of Sweden.
- Companies, in addition to the 480 parent leave days per child, are also entitled to allow parents to reduce their working hours by an additional 25%.
- It is possible to work part-time and take parental leave the remainder of the time.
- Children are guaranteed a place in childcare from the age of 12 months for a very modest sum, making it possible for women to return to work.

13. In Sweden, women currently claim about 75% of parental leave, compared with 99.5% when it was introduced in 1974. About 80% of children in Sweden have two working parents, but only 40% of women work full-time compared with 75% of men, according to 2013 statistics. Official figures from Eurostat show that 77% of women in Sweden had a job in 2014 – the highest level in the European Union.¹⁷

14. In Wales, there does not seem to be join-up between shared parental leave in the first year of an infant's life – which according to the UK Government, allows "mothers to return to work sooner if they wish to" which "can contribute to [employers] closing their gender pay

¹³ <https://sweden.se/society/gender-equality-in-sweden/>

¹⁴ <http://www.yourlivingcity.com/stockholm/work-money/maternity-paternity-leave-sweden/>

¹⁵ Ibid.

¹⁶ <https://www.theguardian.com/world/2015/may/28/swedish-fathers-paid-paternity-parental-leave>

¹⁷ Ibid.

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gap¹⁸, and the unaffordability of childcare in the UK, which has one of the highest rates for childcare in the world.¹⁹ While the Welsh Government is proposing a policy of 30 hours per week for free early education and childcare for working parents, this applies only to children over the age of 3, which shows a clear gap between ages 1-3 which is not covered by either policy. This gap is even longer when, for example shared parental leave is taken by both parents for the first 6 months or one or both parents return to work before their child's first birthday.

15. WEN Wales would therefore recommend that childcare is offered from 6 months, rather than from 3 years and is not limited to those who meet the current employment requirements. This clearly disadvantages families and their children who do not meet these requirements. When such a large proportion of pregnant women feel pressured into resigning posts while pregnant this is highly problematic as it imposes the double burden of ineligibility for parental leave (whether maternity or shared parental leave) and childcare, which could allow women to get back into jobs.

16. With regards to the Welsh Government 30-hour childcare scheme being piloted in some areas, the law that stops childminders receiving funding for looking after relatives (e.g. their grandchildren) must be changed, as has been highlighted by the Future Generations Commissioner Sophie Howe.²⁰ Fully qualified childminders should not be disadvantaged, nor should parents be forced to seek additional childcare provisions with strangers. It adds an unnecessary and counter-intuitive burden to both childminders and working families. It is currently estimated that 12.5% of the 2,000 childminders registered in Wales have had issues caring for a relative who does not live with them, while 38% expected to provide childcare to a relative in the future.

17. There is also a real societal and attitudinal issue around care work – both paid and unpaid in the UK generally. The UK have a high reliance on 'informal' childcare (such as relying on non-official care from relatives or friends). Over a third of parents - 36.9% - use this kind of care for children aged 3-5. In France it's 19.6% and even lower in Denmark, where it's 0.1%.²¹

18. It is imperative that a 'caring economy' is created in Wales that does not rely on unpaid or underpaid, undervalued and disproportionately women-driven responsibilities of caring for children and vulnerable adults.

19. Women remain the primary carers for children with 94% of UK child benefit claims paid to women²². In Wales, almost half of mothers say they are solely or mainly responsible for child care (compared with just 4% of fathers).²³ The heavy reliance on women's unpaid work

¹⁸ <https://www.gov.uk/government/news/new-share-the-joy-campaign-promotes-shared-parental-leave-rights-for-parents>.

¹⁹ <http://www.bbc.co.uk/news/uk-42966047>.

²⁰ <http://www.bbc.co.uk/news/uk-wales-43147701>.

²¹ <https://www.theguardian.com/news/datablog/2012/may/21/child-care-costs-compared-britain>.

²² Fawcett Society (n.d.) Benefits. <http://www.fawcettsociety.org.uk/2013/02/benefits/>

²³ Chwarae Teg (2013) A Woman's Place. <http://chwaraeteg.com/a-womans-place/>

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in this regard has a huge impact on women's careers, ambitions and aspirations. With an aging population and austerity measures putting statutory services under greater strain, increased pressure on care givers in Wales will inevitably have detrimental effects on the Welsh economy and the health of the people of Wales as more and more is being expected of them, while the UK Government and Welsh Government provide inadequate support for huge sections of the population.

WEN Wales Recommends:

- **Welsh Government to challenge attitudes of employers in Wales which clearly show a disconnect between understanding the importance of supporting employees to take maternity, paternity and shared parental leave – and the lived experience of women who have voiced negative or discriminatory treatment from employers. Also, to see the connection between the treatment of women taking maternity leave and the knock on effects that this has with regards to men's willingness (or lack thereof) to take shared parental leave and their fair share of caring responsibilities.**
- **Welsh Government to ensure that there is guaranteed flexible, affordable and subsidised childcare for all parents from the age of 6 months (rather than from 3 years for parents currently in employment).**
- **Changes to the law so when rolled out, the Welsh Government's 30 hours of free child care scheme allows registered childminders to care for their relatives.**
- **Welsh ministers to call for changes to the current UK shared parental leave system available to Welsh parents, to better incentivise fathers' uptake of increased parental leave and caring responsibilities for their children. The changes WEN Wales would like to see are:**
 - i. **Fathers must have access to twelve weeks of non-transferable paternity leave at 90% of their salary**
 - ii. **increased flexibility of the model to better suit families**
- **Require employers in Wales to carry out equality impact assessments in relation to the retention of staff after parental leave.**
- **Committee and Assembly Members to push for eligibility for shared parental leave, in connection to current inquiry being conducted around Creating a Parliament for Wales, that includes provisions such as job-share so that male and female AMs can lead by example. In addition, encourage UK Government to do the same so that MPs are also eligible to take shared parental leave.**

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WEN Wales would like to thank the National Assembly for Wales' Equality, Local Government & Communities Committee for the opportunity to contribute to their inquiry into Pregnancy, Maternity and Work in Wales.

If you have any further comments or queries, please get in touch.

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Agenda Item 4

Background

Over a period of 20 years we have represented 100s of women who have suffered pregnancy/maternity discrimination. We stopped litigating because we knew, from experience, that it is not the solution. What women want is to be able to protect themselves from discrimination and if they are dismissed to leave with a negotiated settlement – not litigation. At YESS, our focus is on resolving workplace disputes without litigation. Most recently we have been working with Maternity Action in a joint pilot project funded by the EHRC advising women who are being treated badly at work during pregnancy or maternity.

The main points we would make from our experience are that:

- Women suffering maternity discrimination are not able to enforce their rights in the tribunal because they do not have the time, energy or money. Even before fees, only 3% of those suffering discrimination brought a claim. Better enforcement and removal of tribunal fees, while important, would not be the solution for women suffering discrimination.
- The key focus should be on preventative measures which stop women being dismissed or treated unfavourably so feel they are being forced out.

Proposals from YESS

- **Prohibiting dismissal during pregnancy, maternity leave and 4 months after return**

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 *Kündungsverbot*, Dismissal Ban. Only in extremely rare exceptions are employers permitted to dismiss a pregnant employee during this time. We recommend that this be adopted here.

For further information about German provisions see

http://www.howtogermy.com/pages/maternity_protection.html

If this was adopted in the UK the exceptions could be defined, for example where the company is in severe financial difficulty leading to multiple redundancies or where there has been gross misconduct by the individual. It is necessary to extend protection 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).

The alternative is that an employer can only dismiss the woman if they get prior authorization from a regulatory body, which could be ACAS.

At the very least, an employer should be obliged to contact ACAS before dismissing a pregnant woman or a woman on maternity leave, so that the employer understands their legal obligations. But the consequences of failing to apply to dismiss could be that compensation is increased in cases of an adverse tribunal finding. This would, at least, make the employer stop and think.

- **Regulation 10 should be expanded to the period of pregnancy 6-12 months after the end of maternity leave**

This is an alternative to (1) above. Reg 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.

Employers who understand the law now make a woman redundant after her return so that Regulation 10 does not apply.

- **Higher rate of SMP subsidy**

One way of alleviating the extra (actual or perceived) 'burden' on SMEs would be to increase the % recovery rate of SMP from 103% to 110-115% which would cover the extra training costs for a locum and for a maternity returner. This could apply if the woman is still employed for a period after her return.

- **There should be an ACAS/EHRC Code of Practice setting out key issues with examples**

The current EHRC Code of Practice could be expanded to cover more examples of how employers should treat employees. This could be along the lines of the joint Guidance on handling redundancies when there are employees who are pregnant or on maternity leave. We also drafted FAQs for the EHRC on pregnancy/maternity discrimination for the EHRC website. These should be expanded to cover shared parental leave and disseminated more widely. Apparently the EHRC website is not well known or visited.

- **Advice and ADR**

There needs to be better access to affordable advice for both employers and employees. Disseminating information could be done by:

- Providing leaflets – with a separate section for employer and employee – at advice centres, health centres, hospitals (eg ante natal clinics);
- Videos at health centres and hospital explaining key maternity rights;

Employees need more advice about how to avoid being treated badly and what to do if they are. At YESS, we coach employees how to protect themselves (see attached leaflet) and if dismissed how to negotiate a better exit package. The reality is that employees do not want to litigate, because it is expensive, uncertain, stressful, time-consuming and often career suicide. Employers are also more willing to speak to us about possible disputes because we never litigate. However the threat of litigation does make

negotiations more even handed. And to be a real threat, there does need to be effective enforcement. Not only should ET fees be abolished, but a system of enforcement established free of charge to complement more accessible advice & so employees have somewhere to go which will act for them (& to which we can refer when negotiations do not work)

- **More flexible & paid Shared Parental Leave and a 'take it or leave' period for partners**

The take up of SPL by fathers is very low, probably because it is not paid but also because it is still not well known. There is higher take up in countries where the leave is on replacement pay and it is reserved for the father/partner.

- **Flexible working should be a Day 1 right**

It should be Day 1 right and there should be financial incentives for SMEs who offer flexible working, whether part-time, remote working, compressed hours etc.

We endorse the recommendation of the recent report on the gender pay gap by the Parliamentary Women and Equalities Committee that '[a]ll jobs *should be available to work flexibly unless an employer can demonstrate an immediate and continuing business case against doing so.*'

- **Reporting**

There needs to be a mechanism for recording when women leave employment while pregnancy or on maternity leave. Reporting mechanisms should be considered for all employers, similar to the gender pay gap.

We agree with the other proposal such as extending time limits for making a claim, reduction or waiving of fees, proper enforcement mechanisms for awards.

- **Enforcement**

Even if a woman is successful in her tribunal claim against her employer, whether she will be paid the monies awarded to her is uncertain. Anecdotally it is well known that many phoenix companies fail to pay the awards. Further, even companies which subsist often fail to pay. Although there is now a financial penalty payable if a company fails to pay the award the enforcement scheme is not known to many and is yet another legal hurdle for women to overcome at a time they can little afford it.

Conclusions

We suggest that research is carried out into how other countries protect women who are pregnant or on maternity leave, such as EU and OECD countries including Australia to ascertain whether any of measures which have been successful could be adopted in the UK.

1. Introduction

1.1. Slate Legal welcomes the opportunity to provide a written response to the call for evidence of the Equality, Local Government and Communities Committee of the National Assembly for Wales. We are also pleased to participate in this consultation and for the opportunity to provide related oral evidence to the Committee.

2. About Slate Legal

- 2.1. Slate Legal¹ is a specialist employment law firm based in Newport, South Wales, advising clients across Wales and England in the private, public and third sectors. We are regulated by the Solicitors Regulation Authority.
- 2.2. The firm launched in January 2016, headed by James Moss, a specialist employment solicitor with 20 years' experience of advising a wide variety of employers and employees in the private, public and third sectors. James has advised Welsh public sector employers including universities, local authorities, student unions, auditors and large drainage boards. He has also advised Welsh public sector employees mainly employed by the police, the Ministry of Defence, local authorities (mainly schools and health boards) and universities. James is independently recommended for employment law in the Legal 500 and Chambers & Partners legal directories of leading UK law firms and is also top 3 rated locally by *Three Best Rated*.
- 2.3. Our aim is to make employment law work for our clients, whether they be employees or employers, advising on a wide range of employment law issues – chief of which is discrimination law - as well as bringing and defending employment-related claims in the Employment Tribunals and civil courts.
- 2.4. We consider it important to promote values of diversity, equality and inclusion throughout our business which is why, within our first month of trading, we became a signatory to the Law Society's Diversity & Inclusion Charter - the flagship diversity initiative of the solicitors profession which encourages law firms to develop and implement best practices in diversity, equality and inclusion. We are also proud members of *Working Forward*, the Equality & Human Rights Commission's campaign to support pregnant women and new parents at work. We also take our Corporate Responsibility seriously and this is now our third year of being a signatory to the Welsh Government's Sustainable Development Charter and a member of the Legal Sustainability Alliance.
- ## 3. The extent of pregnancy and maternity discrimination in the Welsh public sector - the effect of the Public Sector Equality Duty

¹ www.slatelegal.co.uk

- 3.1. In our experience, the extent of pregnancy and maternity discrimination in the Welsh public sector has been greatly reduced due to the positive effect of the introduction of the Public Sector Equality Duty (“**PSED**”) on 5 April 2011, and the additional Wales Specific Duties on 6 April 2011.
- 3.2. The PSED and the additional Wales Specific Duties have undoubtedly brought beneficial changes in a number of areas within the Welsh public sector, and even beyond - since the well-being benefits for public sector staff whose employers actively promote cultures of inclusivity, fairness and respect are often felt not only by the staff but by their families and friends.
- 3.3. It is clear from the report of July 2014 by the Equality & Human Rights Commission Wales following their review of the PSED in Wales², that the PSED has helped mainstream equality and diversity issues and has rightly raised the profile of the equality and diversity agenda. The contrast between how such issues were addressed 15 years ago compared to today is, in many public sector organisations, stark. The profile of the equality and diversity agenda in public sector organisations in Wales was clearly much lower 15 years ago, than it is today. Seven years on from the introduction of the PSED, cultures of fairness, dignity and respect in the workplace appear to be embedded in most of the public sector organisations that we have come across.
- 3.4. It should be said that a number of public sector employers were doing the right thing as regards equality and diversity long before they became legally obliged to do so and in this regard the PSED and the additional Wales Specific Duties have supported/supplemented such work. However, for the most part, we doubt progress would have happened, or at least, we doubt significant progress would have happened by now, had there not been a change in the law.
- 3.5. It is clear that as a result of the PSED and the additional Wales Specific Duties, the public sector in Wales leads the way in promoting equality and diversity in the workplace. A job candidate today choosing to work in the public sector can realistically expect their potential employer to spend time and resources actively promoting equality and diversity, rather than merely treating it as an ‘*add-on*’. If they have come from the private sector, they may have been unlucky enough to have worked for an employer who, cynically, viewed their equality and diversity obligations as amounting to no more than having a policy and being able to tick the box in order to be in with a chance of winning public sector contracts.
- 3.6. Many public sector organisations with 250 or more employees have published their gender pay gap data long before they were legally obliged to do so on 30 March 2018. Our impression is that few similarly sized private and third sector employers have done likewise (ahead of the deadline of 4 April 2018).
- 3.7. The current threshold of 250 employees excludes too many women. According to the Fawcett Society’s Sex Discrimination Law Review of January 2018³, 99% of businesses

²https://www.equalityhumanrights.com/sites/default/files/review_of_psed_in_wales_full_report_english_nov2014.pdf

³ <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=e473a103-28c1-4a6c-aa43-5099d34c0116>

across the UK fall below the threshold⁴. Looking beyond our national borders, gender pay gap reporting regulations in France apply to organisations with over 50 employees and in Sweden to those with over 25 employees⁵. We support the Fawcett Society's recommendation for the regulations to be amended by 2020 to progressively lower the threshold to workplaces with over 50 employees and for the gender pay gap to be further broken down by age, disability, race, LGBT and part-time status.

3.8. However, despite the improvements brought by the PSED and the additional Wales Specific Duties in countering harassment and discrimination within public sector organisations, and reducing the extent of pregnancy and maternity discrimination in the Welsh public sector, there remain areas where improvements can and should be made to further reduce the extent of such discrimination.

4. Examples of pregnancy and maternity discrimination in the Welsh public sector

4.1. We have advised on a number of incidences of pregnancy and maternity discrimination in the Welsh public sector. Examples range from low level one-off incidents or isolated events which would be classed as being within the bottom of the updated Vento⁶ bands (injury to feelings compensation for which would be £800-£8,400), to serious cases which would be within the middle Vento band (compensation for which would be £8,400 - £25,200), to the most serious cases which would be within the top Vento band such as where there has been a lengthy campaign of harassment (compensation for which would be £25,200 - £42,000).

Lack of consultation during maternity leave

4.2. In a number of cases, changes have been made to employees' jobs, by stealth, without prior consultation whilst they were on maternity leave. Some complained that managers had allowed work colleagues to chip away at their role whilst they were on maternity leave with the missing pieces never being restored following their return to work. The changes in question were often relatively minor, but were nevertheless changes which the employer would have been less likely to have attempted had the employee not been on maternity leave.

4.3. Similarly, it is surprising how often we have come across business reorganisations taking place whilst employees are on maternity leave without the employee being informed or consulted. Finding out about such reorganizations by chance a long time after the event and shortly before returning to work, has caused further anxiety to many employees at a time when they should be enjoying their maternity leave.

4.4. When redundancy situations purportedly arise during maternity leave, it is particularly difficult for pregnant employees to prove unfavourable treatment and Employment Judges

4 Rhodes, C (2016). House of Commons Library: Briefing Paper Number 06152 Business Statistics

5 DLA Piper (2017). Gender Pay Reporting: An International Survey.

https://www.dlapiper.com/~/_media/Files/Insights/

Events/2017/01/Annual%20Employment%20CLE%20Briefing_Gender%20pay%20survey.pdf

⁶ In **Vento v Chief Constable of West Yorkshire Police** (No 2) [2003] IRLR 102 (CA), the Court of Appeal set clear guidelines for the amount of compensation to be given for injury to feelings and set out three bands of potential awards. These bands were updated on 05 09 17 by Presidential Guidance for claims on/after 11 09 17.

are understandably reluctant to deny an employer's right to manage their business as they see fit.

- 4.5. Another common issue is that of internal vacancies arising, which would often amount to promotion opportunities, which are simply not communicated to the employee on maternity leave. Despite employers being entitled to make '*reasonable contact*' with employees who are on maternity leave, they often fail to do so. Such issues could be avoided by putting in place an agreed communication plan (see best practice point 6.5.1 below).

General lack of communication with employees on maternity leave

- 4.6. In one case, the only correspondence received by a client during 12 months of maternity leave was a letter telling her about the office Christmas party and a second letter shortly prior to her anticipated return to work confirming the date when her SMP would end and the anticipated return to work date. The client felt as though she had been '*cut off*' from communication during maternity leave.

Unconscious bias & stereotypical assumptions

- 4.7. Unconscious bias frequently appears at the recruitment stage. For example, in assessment centres, the questions and tests set for candidates often do not take into account emotional intelligence or '*soft skills*' but frequently look at skills that are more geared towards men.
- 4.8. Employees who have recently returned to work following maternity leave have reported managers making stereotypical assumptions that they are less interested in career progression than their male work colleagues.
- 4.9. Similarly, male gender-biased language (such as *active, confident, lead, analyse and competitive*) often features in job adverts (and job descriptions), describing traditional '*alpha male*' roles. We are aware of several female clients who have been dissuaded from applying for jobs because they did not identify with such a job description.

Tight time limit for discrimination claims

- 4.10. Where women have experienced discrimination shortly before or during maternity leave, many do not feel that they are in the right place, physically or mentally, to bring a claim. We support the Fawcett Society's recommendation⁷ that the time limit for all discrimination and harassment claims linked to pregnancy and maternity be increased to six months.
- 4.11. Without the benefit of legal advice, many employees - both male and female - struggle to understand how to calculate the relevant extended time limit for bringing any discrimination claims and ACAS are not at liberty to advise on such matters. There is an urgent need for a user friendly online calculator to assist potential claimants in this regard.

Discrimination Questionnaires

⁷ <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=e473a103-28c1-4a6c-aa43-5099d34c0116>

4.12. Discrimination Questionnaires – which were unjustifiably scrapped on 6 April 2014 - should be reintroduced for all types of discrimination. I am old enough to remember and to have completed and responded to such questionnaires on behalf of clients. Such questionnaires were a vital tool for prospective claimants as they provided an opportunity to gather the information necessary to decide whether or not to proceed with a claim by front-ending much of the disclosure and information gathering process long in advance of any disclosure exercise as part of Employment Tribunal proceedings. They also empowered the Employment Tribunal to draw adverse inferences of discrimination in the event that the employer's reply was late (later than 8 weeks from the date of receipt), evasive, equivocal or non-existent. Answers to a statutory questionnaire were admissible in evidence at a Tribunal Hearing.

Harassment

4.13. A number of clients have complained that they have felt under pressure by their manager not to have any more children. For example, whilst pregnant their male manager questioned them about whether they planned to have any more children, commenting that he hoped they would not as the team was a close-knit small team which worked well and he wanted to minimise any disruption.

Third party sexual harassment

4.14. Clients have recounted their experiences of sexual harassment from external training providers engaged by their employers to carry out workforce training. Examples include inappropriate jokes, asking about whether they have plans to have any more children and unwelcome touching of their bump. Prior to 2013, such conduct was prohibited by section 40 of the Equality Act 2010, subject to there having been at least 2 such incidents. However, this section was repealed in 2013 thus removing this protection.

4.15. We refer to the Fawcett Society's excellent Sex Discrimination Law Review of January 2018⁸ and support their call for the reintroduction of section 40 of the Equality Act 2010 with an amendment so that it requires only a single prior incident of harassment - after all, why should protection from such harassment be harder to obtain just because the harasser is a third party? Pregnancy and maternity, as well as marriage and civil partnership status, should also be included as protected characteristics for the purpose of prohibiting such harassment.

5. Variances between different groups of women

- 5.1. Single parents often have less support than those who have a partner, spouse or civil partner who can be relied on for help and support with child care. They consequently have even less free time within which to submit a discrimination claim (see 4.10 above).
- 5.2. For practical or economic reasons, women whose partners, spouses or civil partners work long hours or are higher paid, tend to be expected to take responsibility for the majority of child-care.

⁸ <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=e473a103-28c1-4a6c-aa43-5099d34c0116>

- 5.3. Generally, the more senior a woman within the organisation, the easier it is for her to return with greater flexibility because of her greater autonomy. More junior female staff will find it even harder to progress their careers within an organisation as with less flexibility their options are more limited.
- 5.4. Recent evidence from the Fawcett Society⁹ shows that the gender pay gap in Britain is shaped by racial inequality. In particular, Pakistani and Bangladeshi women have the largest gender pay gap of all – their aggregate (full and part-time) gender pay gap with white British men being 26.2%.

6. Examples of good practice

- 6.1. Happily, most of the examples of good practice that we have come across as employment law practitioners have come from the public sector. This is not due to any particular magic unique to the public sector, it is not inherently better at tackling discrimination than the private sector, it is simply that the public sector equality duty has forced public sector organisations to take steps to actively promote equality and diversity or face claims in the Employment Tribunals.
- 6.2. **Mixed sex recruitment panels** – Having mixed sex recruitment panels and where there are no appropriate female personnel, engaging female HR consultants. Requiring all members of recruitment panels to have undergone unconscious bias training within 2 years prior to joining the panel.
- 6.3. **Flexible working** - Allowing staff to work their core hours flexibly. Flexibility being the norm, rather than the exception. Leaders setting the culture of the organisation, leading by example, talking and walking the talk.
- 6.4. **Agile working** – Exploiting modern technologies to facilitate flexible and remote working (skype for business; encrypted smart phones, wifi enabled encrypted laptops; cloud-based solutions) and more open internal communications channels like Yammer/instant messaging.
- 6.5. **Maternity Policy** – Promoting a consistent approach to maternity across the organisation and increasing awareness of the support available for pregnant employees including:
 - 6.5.1. **Agreed communication plans** – agreeing how to notify stakeholders about the maternity leave, and how often and who will communicate with the employee during her maternity leave.
 - 6.5.2. **Agreed handover plans** - ensuring that the employee's work will be covered with the minimum of interruption to the organisation whilst on maternity leave.
- 6.6. **The right corporate culture** - Fostering a flexible and dynamic corporate culture where the leaders champion equality and diversity and practise flexible working and live these

⁹ Li, Y. and Breach, A (2017). *Gender Pay Gap by Ethnicity – Briefing*. (London: Fawcett Society). <https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=f31d6adc-9e0e-4bfe-a3df-3e85605ee4a9>

values as role models so that more junior female employees are encouraged and empowered to exercise their family friendly rights knowing that it will not be frowned upon.

- 6.7. **Women's networks** – Important for inspiration, learning from other women, boosting self-belief and giving perspective to the decisions and challenges ahead.
- 6.8. **Mentoring & coaching** – Actively supporting, guiding and developing female employees to be the best they can be, including encouraging more women into senior management roles.
- 6.9. **Unconscious bias training** – Unconscious bias can and often does permeate all aspects of the day-to-day management of employees having unfortunately become part of our psyche due to the constant subtle reinforcement of stereotypes from generation to generation. Requiring all managers to undergo unconscious bias training within 3 months of their appointment (to be repeated every 3 years), if they have not already had such training.

7. Conclusion

Slate Legal is delighted to have been able to assist the Equality, Local Government and Communities Committee by providing evidence relevant to its inquiry into pregnancy, maternity and work in Wales.

We hope that the inquiry will result in prompt, effective action being taken by Welsh Government that will build on the progress already made towards combatting this type of discrimination in workplaces across Wales.

23 March 2018

Agenda Item 5

Equality, Local Government and Communities Committee

19 April 2018 – papers to note cover sheet

Paper no.	Issue	From	Action point
ELGC(5)-11-18 Paper 7	Welsh Government 2018-19 draft budget	Chair of the Children, Young People and Education Committee	Letter to the Cabinet Secretary for Education in relation to the Welsh Government draft budget 2018-19
ELGC(5)-11-18 Paper 8	Inquiry into Human Rights in Wales	John Griffiths AM, Chair of the Equality, Local Government and Communities Committee and David Rees AM, Chair of the External Affairs and Additional Legislation Committee	Letter to the First Minister in relation to human rights in Wales
ELGC(5)-11-18 Paper 9	Inquiry into Human Rights in Wales	Christina Mckelvie Msp, Chair of the Equalities and Human Rights Committee, the Scottish Parliament	Invitation to attend an evidence session in relation to Human Rights and the Scottish Parliament

Kirsty Williams AM
Cabinet Secretary for Education
Welsh Government

14 March 2018

Dear Kirsty

Thank you for your update, received 28 February 2018, on your response to the Committee's Recommendation 7 in its report on the Welsh Government 2018-19 draft budget.

Your response appears to confirm that funding to support the educational outcomes of Gypsy, Roma and Traveller, and Minority Ethnic learners is indeed being removed from the Educational Improvement Grant (EIG) and is to be provided from the un-hypothecated Revenue Support Grant (RSG). The Committee noted your update at its meeting of 8 March 2018 and decided to write to you to raise a number of points on this matter.

These points relate to first, the decision to fund this area of provision from the RSG rather than the EIG, and secondly, the mechanism for moving this funding from the EIG to the RSG.

Decision to further de-hypothecate funding for Gypsy, Roma and Traveller, and Minority Ethnic learners

As you are aware from the Committee's *Education Improvement Grant: Gypsy, Roma and Traveller, and Minority Ethnic Children*, we are concerned about the impact the amalgamation of former ring-fenced grants into the EIG from 2015-16 has had on these groups of pupils. The Committee concluded from the evidence it received that, following the merging of the previous individual grants into the un-



hypothecated EIG, there was a lack of monitoring of how funding is being used to support the educational outcomes of these learners and a lack of evaluation of the impact it is having.

You accepted a number of recommendations aimed at improving the monitoring and evaluation of the EIG, specifically in relation to Gypsy, Roma and Traveller, and Minority Ethnic learners. For example, you committed to strengthening the outcomes framework for the EIG, accepting in principle a recommendation that such a framework should make far more specific reference to the intended outcomes for Gypsy, Roma and Traveller, and Minority Ethnic learners. In the Plenary debate on 3 May 2017 you said:

One of the recommendations I am particularly very strongly in agreement with, and that is that the current education performance framework is not sufficiently robust. It simply is not, and there was no hiding from that during the committee sessions. (...)

It [the Committee's 'valuable report'] has strengthened my arm in being able to galvanise action within the department, especially with regard to monitoring.

However, it appears this 'more robust outcomes framework' will in the future have no benefits for Gypsy, Roma and Traveller, and Minority Ethnic learners, as a result of the decision to remove the relevant funding from the EIG. When the Committee recommended you consider whether the introduction of the Education Improvement Grant has improved outcomes for these groups of learners and keep the funding model under review during this Assembly, we did not envisage that one year later this funding would be de-hypothecated further and local authorities expected to find it from the RSG.

Whilst the Committee recognises that there has been a Welsh Government-wide approach of 'reprioritising' local government funding through a shift away from



specific grants towards the RSG, we are disappointed with this decision and believe it goes against the direction of travel set out in your response to our inquiry.

We note that one of the purposes of the reprioritisation of local government funding is to protect frontline school budgets. However, as discussed further on in this letter, it is not apparent to us how the Welsh Government has made available in the RSG the £13 million removed from the EIG. We would therefore be grateful for further information in response to the following questions:

- **How does the Welsh Government plan to monitor and evaluate the outcomes from funding in the RSG to support Gypsy, Roma and Traveller, and Minority Ethnic learners?**
- **How will the Welsh Government act on the Committee's recommendations, which you accepted, in terms of the impact and outcomes of the EIG on these groups of learners, now the funding sits outside the EIG?**
- **Can you provide the Committee with a copy of the Child Rights Impact Assessment (CRIA) and Equality Impact Assessment, undertaken by the Welsh Government before making the decision to change the way funding for these groups of learners is provided?**
- **How did the Child Rights Impact Assessment (CRIA) and Equality Impact Assessment influence the Welsh Government's decisions when taking this decision?**

Movement of funding from the EIG to the RSG

In addition to the Committee's concerns about the decision to further de-hypothecate the funding for Gypsy, Roma and Traveller, and Minority Ethnic learners, we are particularly concerned about ensuring transparency in the exact way this money is moving to the RSG.



The Local Government Settlement for 2018–19 (Excel Table 9) shows that the value of the EIG is reducing by £15 million from £133 in 2017–18 to £118 million in 2018–19. During draft budget scrutiny, you informed the Committee that £2 million of this is an actual reduction, while £13 million is being ‘removed’ from the EIG and ‘made available’ to local authorities through the RSG. However, it is not clear how this is contained in the RSG for 2018–19 as it is not listed amongst the grant transfers in Table 8 of the Settlement.

You stated in your most recent update to the Committee that ‘this’ (we assume the removal from the EIG of the £13 million) does not constitute a grant transfer and is therefore not subject to the same processes and distributional considerations. We understand that the usual process when grant funding transfers to the RSG is for the Distribution Sub Group to recommend how this is undertaken. An example is that a new Indicator Based Assessment (IBA) may be added to the information published as part of the Local Government Settlement to demonstrate notionally how the RSG has been calculated. This has happened in the case of a number of grants transferred in 2018–19, including the Social Workforce Grant, the Welsh Independent Living Grant and the Waste element of the Single Revenue Grant. This does not appear to be the case with the movement of the element of the EIG which supports Gypsy, Roma and Traveller, and Minority Ethnic education.

This causes considerable concern to the Committee. Whilst it is clear that the £13 million has been removed from the EIG, it is unclear whether this money will be transferred to the RSG and if it is, what the mechanism for this will be. Your paper to the Committee on the draft budget (page 39) stated that a ‘reduction’ to the EIG of £13.145 million in 2018–19 was financing a transfer to central reserves.

The Committee is aware that there are some concerns amongst local government that it risks being short-changed, i.e. expected to continue providing these services from RSG allocations but with no visible or obvious addition to that RSG



funding. As was highlighted during draft budget scrutiny (the Cabinet Secretary for Local Government and Public Services' letter to the Communities, Equality and Local Government Committee dated 13 November 2017), the schools element of the Aggregate External Finance has increased by only £1.5 million (0.1%) between 2017–18 and 2018–19.

Furthermore, the Committee is concerned that, without the requisite funding, local authorities may not continue providing these services to Gypsy, Roma and Traveller, and Minority Ethnic learners or they may scale them back significantly.

The Committee notes that the Welsh Government is providing £5 million from reserves for 2018–19 to 'alleviate the impact on [Wales'] main urban authorities', and a further £2.5 million in 2018–19 to facilitate regional approaches to supporting these groups of learners. You state that this funding is 'additional' but it is unclear what this is additional to, given a lack of clarity over whether or not the money removed from the EIG is now in the RSG or in the Welsh Government's reserves.

We would be grateful if you could provide further information in response to the following questions:

- Can you provide further clarity on whether the £13.1 million is being transferred to the RSG and the mechanism by which this is happening? *(You state in your update that 'this' is not a grant transfer but can you confirm what 'this' means in this context?)*
- Can you confirm whether the £5 million you have allocated in 2018–19 for urban authorities is only available to Cardiff, Newport and Swansea and how is it being apportioned?
- What arrangements are in place to finance other local authorities' provision where they have Gypsy, Roma and Traveller or Minority Ethnic Learners? *(Whilst Cardiff, Newport and Swansea might have the largest concentrations*

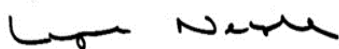


of these groups of learners, other local authorities also provide services to these learners. It is arguably more challenging and proportionately costly to ensure quality services in areas without a 'critical mass' of learners.)

- Can you provide details of how the £2.5 million allocated in 2018–19 to facilitate regional approaches will be apportioned between the four regions?
- Can you confirm that Wrexham will be the lead authority in the North Wales region (and if it is not receiving part of the £5 million, the reasons for that decision)?
- Are the £5 million and £2.5 million allocations in addition to the £13.1 million which the Welsh Government says has been made available within the RSG or does it actually constitute a £5.6 million reduction from the current level of funding? *(The Committee believes it is important to clarify this as you made a distinction during draft budget scrutiny between the £2 million 'reduction' to the EIG in 2018–19 and the 'removal' of the £13.1 million to be 'made available' in the RSG.)*
- Are the £5 million and £2.5 million allocations a one-off in 2018–19? What support will be provided on a recurring basis to fund this area of provision?

The Committee looks forward to receiving your response to the points raised in this letter, including the specific questions highlighted. We would appreciate an early response given the proximity to the new financial year.

Yours sincerely



Lynne Neagle AC / AM
Cadeirydd / Chair



Rt Hon Carwyn Jones AM
First Minister of Wales

5 April 2018

Dear First Minister,

Equality and human rights implications of Brexit

Wales has a proud history of protecting equality and human rights in world-leading and innovative ways, even within a restricted devolution settlement. From 2003, when the Assembly became the first legislative body in the world to achieve gender parity, to the passing of the *Rights of Children and Young Persons (Wales) Measure 2011*, Wales has gone beyond other UK nations to lead the way.

The Equality, Local Government and Communities (ELGC) Committee and the External Affairs and Additional Legislation (EAAL) Committee have undertaken work on the equality and human rights implications of Brexit in Wales.

The written and oral evidence provided to ELGC, and the oral evidence provided to EAAL are available on the Assembly's webpages. This letter summarises the views, questions and recommendations arising from this evidence on behalf of both committees. Two Members of the ELGC Committee, Gareth Bennett AM and Janet Finch-Saunders AM do not agree with the views or recommendations in the letter.

EU Charter of Fundamental Rights

Following our evidence sessions, we remain unconvinced by the UK Government's assertion in its right-by-right analysis of the Charter that all Charter rights are already protected by UK domestic law. As stated in the Equality and Human Rights Commission's (EHRC) legal advice, "contrary to the [UK] Government's analysis, the Charter has created valuable new rights, and extended the scope of existing

rights, and could continue to do so if Charter provisions were incorporated into domestic law”.

We welcome the inclusion of section 7 in the *Law Derived from the European Union (Wales) Bill*, which would require EU-derived Welsh law to be interpreted in line with the Charter of Fundamental Rights.

Should this Bill not proceed for any reason, **we would like the Welsh Government to set out how it will ensure that Charter rights continue to apply in Wales.**

Funding

We heard concerns about the future of EU funding from many organisations. As outlined in the Welsh Government’s response to the ELGC inquiry:

“Wales currently receives £370m a year from the EU to invest in our 2014 – 2020 European Structural and Investment Fund Programme [which includes the European Social Fund (ESF) and the European Regional Development Fund (EDRF)]. [...] Equal Opportunities and Gender mainstreaming (EO&GM) is one of three crosscutting themes integrated into the 2014–2020 Programmes”.

Recent research by the Equality and Diversity Forum (EDF) on replacing EU funding for equality and human rights after Brexit highlights that objectives 8, 9 and 10 [of the EU Structural and Investment Funds Programme] relate directly to equality and human rights and are worth £4.15 billion in the UK between 2014 and 2020. The target groups for these three objectives are: young people not in education employment or training (NEETs), older people aged 50 or over, women, disabled and minority ethnic people, people with multiple complex barriers, offenders and ex-offenders.

The research found that the ESF budget amounts to £1.4 billion in Scotland, Wales and Northern Ireland. Around 60% of ESF-funded projects identifiably target people with one or more protected characteristic under the *Equality Act 2010*. It

also found that more than half of ESF funds focused on employability, skills and experience.

EAAL Committee has previously highlighted concerns about the future of ESF funding as part of its [inquiry into the future of regional policy in Wales](#). The Committee also recently [recommended](#) that “the Welsh Government [should] seek clarity from the UK Government on how the proposed Shared Prosperity Fund would be allocated and administered”.

We share the views of our witnesses that the Shared Prosperity Fund proposed by the UK Government should be administered by the Welsh Government in relation to Wales to ensure that it is sensitive to local needs and inequalities. We also think that the Fund should be targeted at tackling inequality and socio-economic disadvantage.

Wales as a world leader

As outlined above, Wales has a tradition of going beyond minimum requirements of equality and human rights standards. Witnesses suggested ways that this tradition can be continued, such as:

- **commencing the *Equality Act's* socio-economic duty**, a power that will be devolved under the new settlement from April: the duty would require public bodies to make decisions in a way that tackles inequalities of outcome caused by socio-economic disadvantage. Scotland is currently [in the process](#) of introducing the duty, and
- **further incorporation of international human rights treaties**: Professor Simon Hoffman [argued](#) that the ‘due regard’ model used by the *Rights of Children and Young Persons Measure and the Social Services and Wellbeing (Wales) Act* could be used to require Welsh public authorities to pay due regard to other international treaties (for example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), or the Convention on the Rights of Persons with Disabilities (CRPD)).

There is an indisputable link between inequality and socio-economic disadvantage in Wales, and nearly a quarter of the population live in poverty. We recommend that the Welsh Government should outline its latest position on the introduction of the socio-economic duty, given that the power to do so will be devolved under the new settlement. We also note the Scottish Government's moves to introduce the duty, and that its financial impact assessment concluded that 'it has no significant financial effect of the Scottish Government, local authorities or on business'.

We also recommend that the Welsh Government should give consideration to the further incorporation of international human rights treaties in Wales, in the same manner as the *Rights of Children and Young Persons Measure*.

Non-regression

We note that section 3(2) of the *Law Derived from the European Union (Wales) Bill* states that Welsh Ministers must 'seek' to continue the rights, powers, obligations and remedies that are available by virtue of the *European Communities Act 1972*.

We also note that section 4(2) of the Bill places a restriction on the modifications that Welsh Ministers can make to an existing enactment when restating it. Welsh Ministers can only make a modification in so far as they 'consider [it] ... necessary to ensure the effective operation of the restated enactment after the withdrawal of the United Kingdom from the European Union'.

While we interpret these sections effectively as 'non-regression' clauses (which were called for by many of our witnesses), **we call on the Welsh Government to confirm that the intention of these provisions is to ensure that existing rights and obligations (particularly equality and human rights standards in devolved competence) are not eroded or removed as a result of Brexit – either by the UK Government acting under the *EU (Withdrawal) Bill*, or by Welsh Ministers acting under the Assembly Bill.**

Progression of equality and human rights law beyond Brexit

Many witnesses raised concerns that UK citizens will not benefit from future EU equality and human rights legislation, such as the European Accessibility Act, which aims to “increase the supply of accessibility products in the marketplace, reducing barriers to education and the open labour market and improving accessibility for smartphones, ATMs and TV equipment”.

We note that section 11 of the *Law Derived from the European Union (Wales) Bill* would allow Welsh Ministers to make regulations introducing new legislation or modifying existing legislation so that Wales can keep pace with new EU legislation passed after the UK exits the EU. Should the Bill be enacted, **we ask the Welsh Government to use this power to prioritise equality and human rights protections (as far as is possible). We also reiterate the ELGC Committee’s call for the Welsh Government to “establish a formal mechanism to track future developments in human rights and equality in the EU to ensure that Welsh citizens benefit from the same level of protection as EU citizens”. We believe that such a mechanism should be publicly available.**

Unlike in many other states, the right to equality in the UK is not protected by a constitutional bill of rights, which would limit the extent to which equality could be eroded or removed by Parliamentary legislation. EU law currently performs this ‘backstop’ function by ensuring that rights in the *Equality Act* cannot be removed or eroded (because they are required by EU law). Article 14 of the European Convention on Human Rights only partially fulfils the same function; it applies only where another Convention right is in play and UK Parliamentary legislation cannot be struck down for non-compliance with it (unlike the position vis a vis EU law).

The EHRC is campaigning for a constitutional, freestanding right to equality (by amending the *Human Rights Act 1998* or the *Equality Act 2010*) as part of its five-point Brexit plan.

On 9 March, the UK Government published [a list](#) of the areas currently held at the European level where it wants the UK Parliament to temporarily retain exclusive competence following Brexit (rather than the default position being that that competence lies with the devolved legislatures). Regarding equal treatment legislation,¹ the UK Government considers that non-legislative common frameworks ‘may be required’, but ‘will require more detailed discussion and may include a mixture of reserved and devolved competence, including where technical standards that derive from EU law are relevant’.

Currently, the Assembly has competence over “Equal opportunities in relation to equal opportunity public authorities” (i.e. in relation to all devolved public bodies in Wales, and also some bodies which might not classically be considered as devolved, but in respect of which the Welsh Ministers exercise some functions), under heading 14 ‘Public Administration’ of Schedule 7 to the Government of Wales Act 2006. Under the settlement that is going to come into force on 1 April this year, “Equal opportunities” is generally a reserved matter. We note that there are fairly wide exceptions from this reservation, but also note in this regard the very wide-ranging reservation of “employment law”. **We request the Welsh Government to outline its views on:**

- **what assessment it has made as to the possibility of introducing a form of freestanding right to equality in Wales, generally or within particular sectors or contexts, and**
- **the UK Government’s proposal to establish a non-legislative framework to deal with EU-based equal treatment law across devolved and non-devolved areas, and how it will approach discussions with the UK Government on that subject.**

¹ Including Directives that: implement the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC); establish a general framework for equal treatment in employment and occupation, prohibiting discrimination because of age, disability and sexual orientation (2000/78/EC); implement the principle of equal treatment between men and women in the access to and supply of goods and services, and in matters of employment and occupation (2004/113/EC and 2006/54/EC). Also relevant in this context is Article 157 of the Treaty on the Functioning of the EU.

Trade Bill

Clause 2 of the UK *Trade Bill* gives UK and Welsh Ministers authority to make any regulations they “consider [appropriate] for the purpose of implementing an international trade agreement” including regulations that “make provision [for] modifying primary legislation that is retained EU law” (although we note that Schedule 1 to the Bill imposes certain restrictions on Welsh Ministers’ powers in that regard).

The use of the term ‘consider appropriate’ is also used in the *EU (Withdrawal) Bill* and has been criticised for its breadth. In its response to the Commons Public Bill Committee on the Trade Bill, Liberty stated that “retained EU law appears to include a wide range of primary legislation relating to various EU mandates, including the *Equality Act 2010* and the *Modern Slavery Act 2015*. There are no safeguards to prevent Ministers from using this power to erode rights granted by Parliament”.

We note that it would, in principle, be outside the Welsh Ministers’ powers to affect the Acts referred to, or to use their powers under the *Trade Bill* to make laws relating to equal opportunities or modern slavery. However, we trust that the Welsh Government will use every opportunity to influence the UK Government not to compromise on equality or human rights standards in any way, in negotiations on trade agreements.

We recommend that in its discussions with the UK Government, the Welsh Government seeks a commitment from the UK Government that it will not enter into trade agreements whose implementation would erode any part of the Equality Act or Modern Slavery Act.

Hate crime

In the ELGC Committee’s inquiry, a number of witnesses raised concerns about the perceived rise in hate crime following the EU Referendum. The EHRC stated that “in the month following the EU referendum, reports show that racist or

religious abuse incidents recorded by police in England and Wales increased by 41% compared to the previous year.”

Figures released by the Home Office in October 2017 showed that in 2016–17, there were 80,393 offences recorded by the police in England and Wales in which one or more hate crime strands were deemed to be a motivating factor. This was an increase of 29% compared with the 62,518 hate crimes recorded in 2015–16, the largest percentage increase seen since the series began in 2011–12. The Home Office stated that “the increase over the last year is thought to reflect both a genuine rise in hate crime around the time of the EU referendum and also due to ongoing improvements in crime recording by the police.”

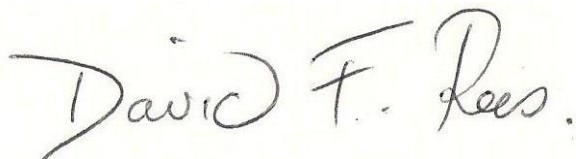
The Welsh Government published Tackling Hate Crimes and Incidents: A Framework for Action in 2014, and produces annual progress reports. In its inquiry into refugees and asylum seekers, the ELGC Committee recommended that the Welsh Government should update its Community Cohesion Plan. The Government committed to updating the Plan by summer 2017, but it has not yet been published. **We recommend that the Welsh Government update the Community Cohesion Plan before summer 2018 to take account of recent rises in hate crime and new challenges to community cohesion in Wales.**

We would request responses to these questions and recommendations by Monday 17 May.

Yours sincerely,

A handwritten signature in black ink that reads "John". The letters are cursive and connected.

John Griffiths AM, Chair of the Equalities, Local Government and Communities Committee

A handwritten signature in black ink that reads "David F. Rees.". The signature is written in a cursive style with a distinct dot over the 'i' in "Rees".

David Rees AM, Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



The Scottish Parliament
Pàrlamaid na h-Alba

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6 April 2018

Dear John,

Inquiry into Human Rights and the Scottish Parliament

Thank you for your letter of 12 December 2017 advising the Committee about your inquiry into Human Rights in Wales. Your letter drew our attention to the narrowed scope of your inquiry, which is now focusing on the impact of Brexit on human rights.

We note with interest that you have agreed on a set of core principles against which the Equality, Local Government and Communities Committee intends to adhere to during the Brexit process and against which progress in relation to human rights and equality will be monitored:

- there should no regression in human rights and equality protections as a result of Brexit;
- Wales should establish a formal mechanism to track future developments in human rights and equality in the EU to ensure that Welsh citizens benefit from the same level of protection as EU citizens; and
- Wales should continue to be a global leader in human rights, and commit to bringing forward legislation to fill any gaps in rights and protection if the UK Government does not do so (where possible).

In relation to Brexit, we have been keeping a [watching brief](#) on its impact on equalities and human rights in Scotland and have held three specific evidence sessions examining the potential impact. In addition, on [8 and 15 March](#) we took evidence on the Scottish Government's UK Withdrawal from the European Union (Legal Continuity) Bill.

Against this background, and with the extension of our remit to include human rights, we have embarked on an [inquiry](#) into 'Human Rights and the Scottish Parliament'. Our inquiry seeks to examine how the Scottish Parliament could enhance its approach to protecting and promoting human rights in Scotland. It was launched on 21 January 2018 with a public [call for views](#) and the responses will be available on our webpage shortly.

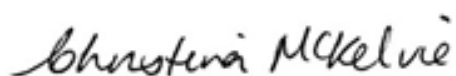
Our first evidence session was held on 29 March and we will continue to take evidence into May. Our aim is to publish our Report before the summer recess.

We would be very interested to hear more about the human rights issues faced in Wales and whether these correspond to those in Scotland. Also of interest, is what you have discovered through your inquiry and whether there is anything we could learn from your new insight into the impact of Brexit on human rights in Wales.

If you wished to contribute formally to our inquiry, then we could make arrangements for Thursday 10 May. Of course, I recognise the timing might be difficult in terms of your Assembly commitments or be contingent on the current stage of your Committee's inquiry, as such you may prefer to submit written views to assist us with our inquiry.

I am hopeful we can progress arrangements in the coming months for a meeting of the Chairs of counterpart committees of the devolved legislatures and the UK Parliament to discuss issues of mutual interest.

Yours sincerely,



Christina McKelvie
Convener
Equalities and Human Rights Committee

Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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