

Women and Equalities Committee

Oral evidence: Maternity and Pregnancy

Discrimination, HC 891

Tuesday 22 March 2016

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Members present: Mrs Maria Miller (Chair), Ruth Cadbury, Angela Crawley, Ben Howlett, Jess Phillips

Questions 1-34

Witnesses: **Catherine Rayner**, Chair, Discrimination Law Association, and Barrister, **Rosalind Bragg**, Director, Maternity Action, and **Elizabeth Duff**, Senior Policy Adviser, National Childbirth Trust, gave evidence.

Q1 Good morning. I start by thanking you on behalf of the Committee for coming in today to give evidence in the first session of our new inquiry into maternity and pregnancy discrimination and the report that has been commissioned by the EHRC. I thank you for your time. I know you are incredibly busy people, and we are incredibly grateful that you have fitted us in.

I apologise that you have not had a great deal of time to digest the Government's response to the EHRC recommendations. I do not know whether it is helpful to say that we are in the same boat, but we felt that it was important to press ahead with this session today because of the time that it has taken for the EHRC's work to come to fruition; we did not want to waste another moment. If it requires you to write to us on matters that you have not yet quite had time to digest, then we will thoroughly understand that. As you know, each member of the Committee will ask a set of questions.

Bearing in mind the amount of time that it has taken for this report to come to fruition, that is where I wanted to start. It has somewhat ironically been nine months since the first findings were published. I think it was in July. The Government have only just published their plan of action. I was wondering whether you would like to share with me your thoughts about that process, the delay and the need for action.

Elizabeth Duff: If I may start, I am here on behalf of NCT, a UK charity that supports women and their partners through pregnancy and the first two years of their baby's life. It is a huge issue for all of those women; we know that from repeated research by ourselves and other people and from the report today. There is currently a massive amount of discrimination going on, and it is far greater than was identified 10 years ago when the Equal Opportunities Commission did similar research. Therefore, basically action needs to be taken as soon as possible and needs to start now. We should be hitting the ground

running because, in between that time, probably thousands more women have had very hurtful, damaging and financially deleterious experiences at work.

Q2 Chair: Rosalind, what is your perspective in terms of the delay? What is Maternity Action's view?

Rosalind Bragg: Maternity Action provides telephone advice and online information to pregnant women, new mothers and their families. We answer about 2,500 calls a year, and we could answer 30 times more calls if we had the resources to do so. Each year about 600,000 information sheets are downloaded by parents using our online information. Obviously, we are campaigning very aggressively for an end to pregnancy discrimination because of the harsh impact it has on the lives of women and their families. The first findings of the research released in July last year made it very clear that we were seeing a significant increase in rates of pregnancy discrimination. In 2005, 30,000 women lost their jobs as a result of pregnancy discrimination. The first findings in 2015 showed that 54,000 women lost their jobs as a result of pregnancy discrimination. This on its own should have been enough to prompt an immediate and aggressive response from Government to reduce the number of women who were experiencing pregnancy discrimination. It was within the Government's power to commence work on this issue when the first findings were released. Instead, we have seen the Government wait until the final research has been completed and then we have encountered several months of delay before it has finally been released into the public realm.

Q3 Chair: Very clearly, your perspective is that action could have been taken more swiftly.

Rosalind Bragg: Most definitely.

Q4 Chair: Catherine, would you like to add anything?

Catherine Rayner: Yes, just very briefly. The DLA is a small charity that works to represent those who are at the rough end of discrimination and unlawful treatment. I would just like to underline that the research that has been done is not just on discriminatory treatment but on a large spread of probably unlawful treatment. For a Government to be informed that there are 390,000 women who have suffered possibly unlawful treatment in the workplace, and to do nothing and to make no response for this length of time, is frankly shocking. I echo what has been said. It is not new; we have known about this for a very long time. The research simply underlines what has been known and said by many organisations for a very long time. Action is needed, and it is needed quickly.

Q5 Jess Phillips: From the research, I find the 77% number absolutely devastating. What I would say regarding the report that we have quickly looked at this morning is that there are some positives but mostly negatives. What would you think are the most worrying findings from the report? Are there any positives?

Catherine Rayner: Speaking from the point of view of the rights of pregnant women and women on maternity leave, the most concerning matter for us is the attitude of some employers. It is hugely encouraging that a vast number of employers are saying that they support and understand the rights of pregnant women in the workplace. It is extremely worrying that, after 30 or 40 years of these rights being on the statute book, there are still employers who think that it is unreasonable for pregnant women to want to be protected in the workplace and who fail to understand some of the most basic and fundamental rights.

There is a very clear need for two things to happen. The first is leadership from Government. This perhaps comes as no surprise to you, speaking from the point of view of a lawyer: there must be much better enforcement mechanisms through the courts for women who are the victims of discrimination and unlawful treatment. At the end of the day, that is the only way that they are going to be able to enforce their rights and gain some level of compensation for poor treatment.

Q6 Jess Phillips: I suppose as experts in the field you will all have your own experiences. Do you feel that the findings of the report reflect what is going on? You are singing to the choir, but did you already know all of that? Is there anything that you think it has missed?

Rosalind Bragg: The findings from the research were that less than one in four pregnant women in the workplace can expect to have their rights respected, which is entirely consistent with Maternity Action's experience. We have seen, year on year, increases in demand for advice. Many of the cases in the report are truly outrageous. The disregard for women's rights is extremely widespread, and the impact on women's lives is quite harsh. The figures on the rate of pregnancy discrimination are entirely to be believed.

We also noticed the figures in relation to protection of health and safety, which is again consistent with what we have found through our advice line. They show that 4% of women left their job because the job was unsafe and because they had concerns around health and safety. That is quite a significant number of women—21,000 women each year. And 41% felt that there was a risk to their health or an impact on their health and welfare. That is 210,000 women each year, and certainly in our advice service we get a lot of women who are encountering problems with sickness and health and safety. It is quite good to see this reflected in the research, and certainly we would like to look at more active ways to address this problem.

Another factor that did not get a lot of attention in the research is women being made redundant. The research methodology is very sound and very strong. However, if anything I think that it erred on the side of caution. There are many women who have lost their jobs though unfair selection for redundancy who do not appear in these statistics. For instance, a woman who was part of a much larger group and was made redundant would not appear in the statistics, even if the selection process was profoundly unfair. We would actually say that the figure of 54,000 women each year is something of an underestimate of the number who lose their jobs as a result of pregnancy discrimination.

Q7 Chair: Is that because the figures should be collected differently or is it because it is difficult to disaggregate that figure from the redundancy figures?

Rosalind Bragg: The figure in the research that identifies women unfairly selected for redundancy is limited to women who have been the only person selected for redundancy or instances in which only pregnant women and new mothers have been selected for redundancy. It purely looks at those redundancies that are very targeted, and it only looks at those who have not been offered suitable alternative work.

Q8 Chair: Could we change the way in which the data is collected?

Rosalind Bragg: Yes, we could. I do understand that it is not a simple thing to do and there are methodological questions around that. However, it is possible to take a broader approach to the data to be able to extract better figures on those women who have lost their jobs as a result of unfair selection for redundancy.

Q9 Jess Phillips: I suppose it is difficult because big groups of public sector workers have been made redundant, especially in the past few years, and it would be hard to prove that it was because somebody was pregnant.

Rosalind Bragg: It is very difficult to say, in all cases, that a woman was selected because she was pregnant or a new mother. However, there are some factors that you can pick up, such as failure to comply with regulation 10, which requires women on maternity leave to be offered a suitable alternative job. That is something that could easily be extracted from the data. There are other examples of that. I understand that the EHRC sought to take a very conservative approach, but it should not be used to assume that redundancies are being well managed at the moment. That is certainly not the case.

Q10 Jess Phillips: Finally, from your experience and the work that you have done, which area do you feel is the most worrying area of discrimination against pregnant women? What concerns you? Is it to do with specific employers, the different ages of women, or different lengths of time at work? Is there any one particular area or is it just awful across the board?

Catherine Rayner: For me, looking at this research, the real concern is the extent to which it is widespread. It does not seem to be confined to particular industries or particular types of business. There are some very good examples in particular sectors, but it seems to be fairly widespread. If I had to pick out one thing, it would be the attitude towards flexible working. One of the things that we know works for women is good flexible working. The lack of understanding of it and the negative experience of it are some of the problems.

Q11 Jess Phillips: Is there any specific concern about poorer women? There was something in the report that I picked up in the health and safety field about poorer women.

Elizabeth Duff: As I recall, younger women in more junior jobs were more likely to experience discrimination in pregnancy. For example, they were put under pressure to take their maternity leave early, which of course means that they have to come back early, leaving their baby sooner. In some cases, they effectively had to leave the job because it was made so difficult. Older women in higher paid jobs were less likely to experience that kind of discrimination. However, later on when they returned to work they found that things had moved on and they had not been kept in touch; it was assumed that they would not be looking for promotion around that time, and so on. It is, as has been said, widespread in different ways.

Q12 Jess Phillips: I have a 10-year-old son so I have experience of having babies in the last 10 years. From your experience, do you feel that it has got worse? The evidence suggests that there has been a shift, from 43% to 77%, in people claiming that they are discriminated against over the last 10 years.

Rosalind Bragg: There is no question but that the situation has deteriorated significantly. The experience of women has got consistently worse across the field. We have also seen a greater difficulty facing women who wish to take action. Attitudes have solidified in a negative way. Women consistently hear that maternity rights in the workplace are a burden on business. That certainly affects their ability to pursue informal action and it also reinforces some of the negative attitudes held by employers. Alongside that, we have seen increasing difficulty for women in asserting their rights. There have been cuts to legal aid, cuts to advice services, and women's ability to access the employment tribunal system has been dramatically reduced by the introduction of quite significant fees.

Catherine Rayner: I would echo all of that. I would also underline that a lot of women are facing real difficulties because of their employment status. A lot of the rights that you will be looking at are focused on employees. There are huge swathes of women, particularly in some of the caring industries, who are treated not as employees but as workers and therefore do not necessarily access the rights. There is an argument that the 26-week period for qualifying for some of the rights, such as the right to request flexible working, and some of the benefits ought to be looked at again. I would also like to underline a plea to look at tribunal fees. This is the single most important barrier to women asserting their rights. I know that it is something that this Committee has looked at before and it has been addressed on many occasions. For those of us working to represent people at the rough end of justice, access to justice is fundamental. Without it, all of the recommendations and all the rights that are written down are just nice words.

Q13 Chair: Catherine, can you just remind me when the increase in tribunal fees came into play?

Catherine Rayner: I think it was 2013, but I cannot remember off the top of my head. It was introduced and came into effect shortly after.

Q14 Chair: The Justice Select Committee is looking at tribunal fees, and we are going to look at its findings in some detail. A lot of the issues that you are talking about predate that change in tribunal fees. The significant and seismic change in the problem that women are experiencing will not have been totally affected by that particular change. What I still do not really understand is what has caused such a seismic change. Could it be related to the fact that we now have record numbers of women in the workplace and that that has somehow changed the dynamics, or do you think it is something different?

Catherine Rayner: Can I just come back on the point about employment tribunal fees? You are right that some of the information here is not necessarily the result of that, but the drop in the number of people making claims certainly is, and that is well documented. The experience of women has not improved, certainly across the time that I have been working as a lawyer. That is not, it seems to me, about the fact that there are a lot more women in the workplace. Some of it is about a change in the workforce generally. It is about a change in the way that women are employed. It is about the fractionalisation of workplaces. It is about the move away from public sector working. The public sector has traditionally been very good at these things.

It is also about the removal of access to good advice. Certainly across my career as a lawyer I have seen a significant reduction in the availability of fairly basic legal aid, for example. When I started out as a lawyer, the green form scheme was available to deal with many of these very straightforward, fundamental problems and issues that women had. They could go to the law centre, the CAB, or a voluntary sector organisation to gain advice. That is no longer available to them. There has been a massive reduction in the amount of advice and there has been a real change in the way that businesses look at women in the workplace. They have become more aware of the rights of women to benefits and the right to return after maternity leave. However, there has not been acceptance and agreement about that. I think, to some extent, a responsibility falls on the Government for not having given good leadership on those matters.

Rosalind Bragg: It is very clear that many employees have been placed in a much more vulnerable position with the onset of the recession. In some cases, they have lost

employment rights, with changes in the nature of contracts, but they have also suffered a reduction in their ability to pursue claims through the tribunal and the availability of advice and support. Within that environment, some workers are more disadvantaged than others. Pregnant women and new mothers are particularly at risk of harsh treatment by employers. During this downturn, we have seen that actively pursued by a lot of employers. There may be a perception that women who are pregnant or new mothers are a cost to the business. There is certainly no evidence that any significant cost is attached to these employees, but a perception that they are more expensive or in some way inconvenient has underpinned the decisions by quite a few employers not to do the right thing by pregnant women and new mothers. For instance, they may try to move them on during redundancy processes or shift them into some fairly harsh treatment once they announce their pregnancy.

What we have not seen in that time has been interventions by the Government to try to address this. Employers have heard a continual flow of rhetoric about maternity rights as a burden on business, which reassures employers who are considering ignoring the law or who have not chosen to inform themselves about maternity rights that they can proceed in a way in which they should not be able to proceed. There should be some social sanction as well as some legal sanction. There is fairly widespread acceptance in the business community that pregnancy discrimination is an acceptable form of business activity, which is extremely worrying. Again, the finger is pointed at the Government for their role in allowing that perception to become firmly embedded and not challenging some very poor practice. On top of that, women are left with the impression that their needs are secondary to those of the business, rather than being treated as having fundamental rights that are key to achieving gender equality.

Elizabeth Duff: I support what both my colleagues have said. When we did surveys and research into women's experiences just over a year ago, we published a summary called "Working it out", which was part of a longitudinal cohort piece of research on the experiences of parents. We had comments such as, "I had to find a different job as the job I had while pregnant was not very accommodating. I knew I would struggle," "My boss is not understanding. It will be hard to go back to work. There is no flexibility," and, "I would have liked to have returned to work part-time, but this was not possible." These women unfortunately do not sound angry or outraged. They sound sad, demoralised and depressed; struggle is what is expected. They may struggle on with their job or they may give up and obviously have a very reduced income. Unfortunately, they sound as if everything is against them, not just their own employer but also social attitudes, as we have found. This is what happens: you have a baby, you want to go back to work, you would like flexibility and to be in the same job because of loyalty and familiarity, but these things are not possible. They accept this, and I find it heart-breaking to read these stories because there is not much fight left in many of these women. They do not perceive that there is a route for them and there is no protection.

Chair: It is a very serious situation that you are setting out there from the initial report. I know that Ruth now wants to turn us to the EHRC recommendations and get your reaction to how that organisation has responded.

Q15 Ruth Cadbury: Given what you have been saying and we have been finding about attitudes going backwards—things getting worse for women in work when they should

be getting better—I wanted to ask some questions about the EHRC recommendations. Do you think they are going to bring results? Are they workable and strong enough?

Rosalind Bragg: In our view, the EHRC recommendations are not sufficiently strong to make significant inroads into the very high rates of pregnancy discrimination that we are seeing. There are a number of useful ideas within that. However, if we are going to see a reversal of the substantial deterioration in women’s employment situation that has taken place over the past 10 years, we will need much more aggressive action.

Catherine Rayner: I would definitely echo that and underline that nice words are one thing, but we need enforceable rights. We need to look again at tribunal fees, the availability of good legal advice and the availability of good training and information for employers and possibly a couple more enforceable legal rights against employers.

Elizabeth Duff: The key researchers at EHRC have said in our communication with them that all of the points in the recommendation must be enacted. It is not a question of Government or other organisations picking and choosing and saying, “We will do 2, 3 and 5, but we really cannot do the others.” This is a multi-faceted approach. I agree with what has been said. They are not particularly strong and they have perhaps been drafted in order to make them feel more doable. The absolutely important thing is that they should all be addressed because if there is to be a solution, it has got to be multi-faceted. There has to be a carrot-and-stick approach and there has to be more information and support for employers and serious risk of penalties for those who breach the law, as well as help for the women who are having this experience.

Q16 Ruth Cadbury: You have covered the fact that there should be more focus on strengthening legal protections, which was my second question. Is there anything that any of you wanted to see and did not see, or anything that was way off the mark?

Rosalind Bragg: One problem from Maternity Action’s perspective is the lack of recommendations that would prompt employers to explore their own practice in the absence of complaints from individual women. One of the fundamental problems with the discrimination law framework is that it only responds to individual complaints. Given the scale of pregnancy discrimination, we need to be asking employers to look at their own practices to prevent discrimination occurring, rather than simply responding to individual complaints as they arise. We would like to see the gender pay gap reporting extended so that employers report on their retention rate of employees who report that they are pregnant. This is a very useful way for getting employers to explore what is happening within their own organisation. If they have a particularly poor retention rate, which many will do, it does suggest that they should review their policies and the practices of individual managers to find out what is contributing to women’s departure. That would be a really useful way to get around the problem of employers ignoring this issue until such time as they face an employment tribunal claim, particularly given that we know that very few of them will ever encounter an employment tribunal claim, even if there is extraordinarily poor practice in their organisation. That is one factor that we would be quite keen to see.

Catherine Rayner: There are three things that I would flag up. One that I have already mentioned is flexible working. I would like to see that available from day one to all women workers and employees. I would like moves to be made towards that, and that is something that the DLA feels is very important. Additionally, reporting and monitoring by

employers of the treatment of pregnant women and women returners is important. I note that there is the gender pay gap information, and reporting on that is now being looked at and introduced. It is very important that treatment of groups of people is monitored by employers and that that can be tied into issues around obligations; for example, the public sector Equality Duty imposes some obligations. We feel very strongly that that needs to be done across organisations. It may well be less feasible for some than others, but we feel that that is something that should be looked at.

Certainly one of the fundamental things that is missing from this report and the recommendations is the clear need to work very closely with workplace representatives and trade unions. There has been quite a lot of research done independently that indicates that, where there is workplace representation and discussion of grievances and difficulties at an early stage, resolution of a whole range of workplace issues can be sorted out. The report, the recommendations and the Government's response focus very much on working with business, and obviously that is of key importance. However, it is also important to recognise that women themselves have great experience and knowledge, and their representatives will also have that. I would like to see a greater focus on the positive aspects, responses and benefits that the trade unions can bring to the lives of women and the debate within the workplace.

Elizabeth Duff: I strongly agree about flexible working, particularly because that is a subject that comes up. I understand that you have all heard this many times before. The understanding needs to be clear. Flexible working is not necessarily part-time working, although part-time working is also a very good solution for a lot of parents. Clarity about different ways in which those two things can be worked is really important. It can be of great benefit to the employer as well as the employee, which I think could be more strongly put over.

We are also concerned about women who are so reluctant and frightened to speak to their managers about being pregnant that the time goes long past the point at which any health and safety check would be of benefit to the unborn baby. Of course it is in the early months of pregnancy when those risks occur.

Other feedback that we have had is that women gear themselves up to speak to their manager, go through the interview with that person, but then much later in the pregnancy find that the knowledge has actually not been passed on to HR. They are then put into a flurry of activity much nearer the due date when they might lose their rights because they have not officially made the notification. I do not know how that arises, but it is certainly a point that has been raised. This just adds another stress to women who are coping with their pregnancy, their work and planning ahead for the possible large numbers of discriminatory experiences that may happen to them.

Rosalind Bragg: It would also have been useful to reflect in the recommendations the need to strengthen health and safety protections. It is certainly of enormous concern to us that there is no requirement in law or guidance for an employer to sit down with a woman and discuss the health and safety risks that she encounters in her job or that arise out of her personal circumstances. This is extraordinarily worrying and we feel that this should be a requirement. We think that there should be a swift and efficient procedure to resolve problems around health and safety. At present women can contact the Health and Safety

Executive or their local authority, but very few of them will see a result from that. They are forced to pursue a discrimination claim in the tribunal to get a result.

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

Q17 Chair: Can I just say that you all sound very disappointed at the EHRC's recommendations? Is that right?

Rosalind Bragg: We would have hoped for much stronger recommendations than we ultimately saw.

Catherine Rayner: Given the research and given the powerful impact of that research, we would have liked to have seen some rather more forceful recommendations.

Q18 Chair: Why did the EHRC not do that?

Catherine Rayner: I do not know.

Rosalind Bragg: I would not speak on their behalf. That is a question you would need to ask the commission.

Elizabeth Duff: I would like to make it clear that I am not disappointed with the report overall. The quality and quantity of the research is absolutely great. However, it does need a bit more drilling down to look at all of the detail. Of course, that does not happen so widely. I hope a lot of the headlines will be read, responded to and acted upon. As I said before, it is possible that the recommendations were drafted from the point of view of trying to be doable and not to sound aggressive. The risk with that kind of thing is, of course, that in the Government's response they may be further watered down, which would be a shame. From that point of view, it certainly might have been more welcome if they had been very strong, rather more so than they are.

Chair: So they are rather diluted.

Q19 Ben Howlett: My questions are along the same lines. Before I move on to the main part of my questioning, I would like to ask a question in relation to where the commission has said that it is extremely effective at resolving cases at an early stage without moving to formal enforcement procedures. Do you agree with that?

Catherine Rayner: Where the commission becomes involved it can indeed be extremely effective. It has the resources, the ability and the knowledge. The difficulty, which the research underpins, is that it is not able to get involved in enough issues. Additionally, many of the real issues that women face in the workplace simply do not ever come to the attention of either the commission or anyone else, for all of the reasons that both of my colleagues who work at the coalface have identified. It is right that the Equality and Human Rights Commission can be very effective. Looking back historically to when there was an independent equality and equal opportunities commission that focused just on the experiences of women, there was even greater effectiveness. Even more was work done across the country on maternity, discrimination and unlawful treatment of pregnant

women generally. From our experience, we have seen resources being spread very thinly. Yes, the commission is effective when it can get involved, but there is simply not enough opportunity for it to do so.

Q20 Ben Howlett: Are there any other comments on that?

Elizabeth Duff: I do not have specific experience of women's reports of going through that procedure, although I certainly get the feedback that women are extremely reluctant to go all the way to tribunals for the obvious reasons: they are pregnant or they have a small baby. All of their time is either taken up with work or family life. They may not want to add the stress, the time-consuming nature and the expense of pursuing that cause. Even if that results in a victory, it does not solve all the problems, quite clearly. Anything that can be done to avoid that I would see as welcome for women.

Q21 Ben Howlett: My substantive question is about what the focus of the Equality and Human Rights Commission should be. What do you think that should look like, in terms of maternity discrimination?

Catherine Rayner: First of all, it obviously needs to continue to focus on the provision of good-quality, up-to-date and correct information, which is easily accessible. We would like to see a lot more of that and we would like to see some of it also not only being available online. We would also like to see a greater level of outreach work. Perhaps more training and assistance could be offered both to women in the workplace and to employers. Information and advice are absolutely crucial.

Certainly at the Discrimination Law Association, we would like to see greater involvement with case work. Many of us do have that historical perspective and perhaps we look back to some golden days when much more work was being done. This is not necessarily about tribunal work; it is about the work that is done, as you have already identified, before things get that bad—so when there is case work and perhaps an independent person is involved and able to advise individual women. One of the things that is really particular about pregnancy and maternity discrimination and rights at work is that they are not straightforward. The law and the regulations that govern them are very far from easy to understand at first blush. Not for nothing do a number of us specialise in this area of work and not for nothing are there great tomes of law written about it. From my experience and the experience of many other advisers who have worked with and for pregnant women and women on maternity leave, if you spend a couple of hours with a woman, giving advice on their particular situation and circumstances and assisting in writing a sensible letter to the employer, then you can very often get a very good result. Those are the things that I think the commission perhaps ought to be given more funding and more support to do much more of, up and down the country.

Q22 Ben Howlett: Why do you think that it is not doing enough in relation to enforcement? Obviously the two work in parallel.

Elizabeth Duff: I do not know enough to make a serious comment about what the commission's remit should be. We certainly want to see a positive movement forward in terms of the public campaign that has been talked about, to help change social attitudes. A number of organisations, including ourselves, could participate in something like that. It does seem that those attitudes are very powerful in undermining and demoralising women in their struggles. I do not think I can comment further about that specific remit.

Q23 Ben Howlett: I have one further question, which you might not be able to comment on; it is up to you on this point. It is in relation to the relationship between the Government and the Equality and Human Rights Commission. Do you think the organisation is effective at the moment in influencing Government?

Rosalind Bragg: Its research on pregnancy discrimination has been of extraordinary value; I do not want to understate that. Its expertise in this area has been incredibly productive in raising awareness within Government of the scale of the problem and the need for action. To ask the commission to solve the problem is somewhat overambitious. Its responsibility is to address the many different facets of pregnancy discrimination in a number of different government agencies. It is up to the Government to make the decision that this is an issue that should be given priority and resources, so that each of those government agencies can take the appropriate action. The role of the commission in kick-starting interest in this issue is incredibly valuable.

Catherine Rayner: I absolutely support that.

Q24 Ben Howlett: Who do you think is best placed to make that decision within Government?

Rosalind Bragg: I understand that the work on a cross-Government strategy on pregnancy discrimination lives within the Department for Business, Innovation and Skills. If that is where the Government have chosen to locate this work, we are very happy to see it there. What is of concern to us is that we have not seen any indication that the Department for Business, Innovation and Skills sees this as a priority and is prepared to allocate significant resources to moving it forward. To our mind, it is less a problem of where the strategy responsibility is located and more that the Government need to make a commitment to pursue an active strategy to address pregnancy discrimination with the resources necessary to make it effective.

Q25 Ben Howlett: It is interesting that you say BIS rather than the Government Equalities Office.

Rosalind Bragg: If you look at where the law lives and where the policy responsibilities live in relation to pregnancy discrimination, they live in about five different government agencies. You are looking at law and guidance, which is the responsibility of BIS, DWP, HSE as well as the GEO and EHRC, and I am sure I have missed out others that have some element of responsibility here. To locate it purely in agencies that deal with equality is to miss the fact that pregnancy discrimination issues are embedded in the way in which we manage employment rights in the workplace. It should be treated as a mainstream employment rights issue, rather than potentially side-lined as an issue for a pure equalities focus. The Equality Act is relevant here, but it is certainly not the only legislation that is at play. We need to bring all of those agencies into the process of addressing pregnancy discrimination.

Elizabeth Duff: I would agree with that and would also emphasise the fact that this represents a huge loss of productivity. It is affecting recruitment and retention of nearly half the workforce. It is affecting a huge amount of workers; all of the figures in here are working parents. To lose them, risk losing them or even to have them struggling in their job because of the very negative attitudes around them, just seems so destructive. It is clearly affecting the positive contribution that they can make to the economy. This should be the responsibility of the whole of Government.

Catherine Rayner: I would absolutely echo what has been said already. To add to it, as a lawyer I should point out that this is about unlawful behaviour by employers. It is also about a social ill, and one of the real difficulties is the approach and attitude that women are the problem. Women have been having children for quite a long time and they are going to carry on doing it for a long time, bringing up the next generation of women who are going to come along and sit in front of these Committees. I very much hope that they will be facing very different situations. I see it as a justice issue as well. It is about access to justice. None of us sitting here actually want the poor women who have suffered this disadvantage to have to go through employment tribunal process. In many ways, tribunals are not the most effective way of resolving these disputes. However, when it is necessary they should have access to proper methods of enforcement. The Ministry of Justice should be recognising that, as should the legislative bodies looking at the various bits of legislation. It should be possible for women to enforce their rights in order that they can set examples, so that other employers know what is necessary to do in order to avoid that sort of action.

Q26 Chair: I am going to move on to Angela's questions about the Government's response. Before we do, Catherine, can I ask you one question? We were talking about this earlier. Have the rights of pregnant women changed in any way in the last 10 years, which means that they have less protection now than they did 10 years ago?

Catherine Rayner: I do not think so, no.

Q27 Chair: If an employer were to unfairly dismiss a pregnant woman, what potential action would they be open to?

Catherine Rayner: It depends on when they are dismissed. If a woman is dismissed during a protected period, which is the period from a point in pregnancy until a point of maternity leave—ordinary maternity leave coming to an end; I will not go into the technicalities—for a reason related to her pregnancy, which obviously she has to prove, then it is automatically unfair and she is entitled to a remedy from an employment tribunal for unfair dismissal.

If a woman is subjected to a detriment because of pregnancy, then again she is entitled to go to a tribunal and is entitled to be compensated for that detriment, whether it is harassment, refusal of a right or whatever. If a woman is not given a right to return then she has various rights. If a woman is treated less favourably because of pregnancy, and that has changed under the Equality Act as there is now no comparator, then she has a discrimination claim and can bring a claim under the Equality Act.

In fact, what has happened over the last 10 years is that the rights have been crystallised, to some extent, and improved. For example, there has been the introduction of rights around flexible working and things like shared parental leave. The difficulty for women is not that there has been a reduction in the rights but possibly that there has been less availability of advice on what those rights are and less availability of advice and assistance in enforcing them. In addition, perhaps while the rights themselves have been put into practice, going back to the research, there does not seem to have been an awareness among all employers about what those rights are and how they work in practice. Certainly my experience is that there is very often confusion, particularly where there is not strong human resources support, for example, as to how they work in practice in the workplace. That may well be part of the difficulty.

Chair: That has been incredibly helpful, thank you. I just thought we would seize that moment while we have the expertise in front of us.

Q28 Angela Crawley: Obviously, you have not had very much time to deal with the Government's response, but based on the limited time that you have had, would you be willing to comment, or would you like to come back to the Committee, on whether you think the Government are taking this seriously enough? Is anything missing from the Government's response that you would really like to have seen?

Rosalind Bragg: From Maternity Action's perspective, the EHRC recommendations are not sufficiently strong to make a significant impact on the very high rates of pregnancy discrimination. From our perspective, the Government's response, which accepts in principle some of the recommendations and rejects others, is unlikely to make inroads to any significant degree on the scale of pregnancy discrimination. If the Government are serious about ending pregnancy discrimination or even moving back to the situation that existed in 2005, we would need to see a new, strong, well-resourced set of recommendations that go considerably further beyond the plan of action that we currently have to hand.

Elizabeth Duff: I was disappointed, though not particularly surprised, to see the outright rejection of the recommendations on the tribunal extension of time and the tribunal fees. I was also perhaps equally disappointed and perhaps a bit more surprised to see recommendation 1, which is about leadership and developing a communications campaign. The Government response says, "Accept in principle", but I do not actually see anything in what they have written underneath that looks as though any such campaign is planned or has any strength to it. That is a real missed opportunity because I do believe it is very clear. The report has come out very late and it would have been a very good sign to see something like that really picked up and addressed in a positive way.

Catherine Rayner: I would underline again what I have already said about tribunal access and what Elizabeth has said; I absolutely support that. On a slightly different tack, one of the things that we at the DLA find disappointing is the lack of emphasis on the involvement of the wider community of women and their representatives. I have only managed to find one reference to working with pregnant women and the organisations that represent them. It is of course absolutely right to work with business organisations; of course the Government have to do that. The Government also have to work with the people who are at the sharp end and who know about this. There are many really good organisations representing them and many of them are trade unions. Many trade unions have huge numbers of women members. Look at organisations like the RCN, Unison and GMB, which is representing cleaners and care workers, and look at the two organisations that I am happy to be sandwiched between. These are just two examples of excellent organisations doing a huge amount of research for women who are dealing with these problems all the time. Government really need to engage with the stakeholders that are representing and working with and for women in a meaningful way, and not see this as simply an issue for business. This really is an issue for society. It is not just about making sure that business is more effective and efficient. Obviously, that is a very much hoped for outcome, but this is actually about ensuring that women are treated properly within society.

Elizabeth Duff: I would stress that NCT would be very happy to do that. We do talk to the Government quite a lot about the health matters around maternity. I have done less so around these issues, but we would certainly be willing to do so.

Rosalind Bragg: I should add to that that in October last year Maternity Action, the NCT and the Royal College of Midwives jointly wrote to the Secretary of State for Business, Innovation and Skills asking to meet to discuss the research and the Government's plan of action. Unfortunately the Minister was unable to find time in his diary to have that discussion.

Q29 Angela Crawley: We may have heard that once or twice before. We have obviously spoken at great length about tribunal fees, and your position on it is quite clear. Regarding that point, what do you think the key issue is with tribunal fees? If the Government had adopted the time limit or the recommendation on fees, what difference do you think that would have actually made?

Catherine Rayner: There is a fundamental problem with tribunal fees, and in order to understand this problem you need to know a little bit about tribunals. Tribunals were set up to be essentially a cost-free jurisdiction. They were there to resolve issues in the workplace and they are of a very particular type. They are a product of statute. The fees that have been introduced are incredibly high and they are not necessarily recoverable. The pregnant woman or the woman dismissed for pregnancy really is a paradigm case. As has already been said, a woman in that situation is going to be exhausted because she has probably got a new baby. She has also got another focus in her life. She is probably looking ahead to what she is going to do when she does want to return to work if her employer is being unsympathetic, and she probably does not have the additional time, energy or emotional ability that is necessary to take action immediately.

The additional cost, when you look at the rate of maternity pay that is currently being paid to women unless there is some better contractual scheme, means that the costs are out of all proportion to what is affordable. That is very significant. The costs are really problematic, and the mere fact of the costs in what is essentially a cost-free jurisdiction is a real disincentive.

The time limit point is a very interesting one; six months for an equal pay claim, as opposed to three months, is worth looking at. Certainly, extending the period of time for which a woman could bring a claim for a maternity-related issue, whether it is for discrimination or dismissal, would be a very easy win and would allow women time to get proper advice and do something.

Essentially, as long as those fees remain at the level at which they are, it is a serious disincentive to women bringing a claim at all. Certainly for less well-off women or women who are not looking at returning to work because their employment has been terminated, it may well be an absolute bar.

Q30 Angela Crawley: What do you think the priorities should be? If there was an opportunity for the Government to review their position, what would you recommend that they did to ensure that they really took the right kind of action? You said that it is not sufficiently strong and it merely recommends doable actions. What would you like to see in the report that is not there?

Rosalind Bragg: Some of the issues I have raised already, such as an obligation on employers to publicly report their retention rates. This would obviously be targeted at the larger employers in the same way that gender pay reporting is currently focused.

The Government should fundamentally rethink the way in which health and safety rules operate. As I mentioned before, it would be useful to have an individual health and safety risk assessment, a simple and timely process to resolve health and safety issues, and also to explore the introduction of the Australian-style no-safe-job leave.

The removal of employment tribunal fees for all pregnant women and new mothers is fundamental, not just for discrimination claims but for all claims. Many women will be pursuing claims for unpaid holiday leave, for example, or other issues that may constitute pregnancy discrimination when taken as a whole, but they are merely identifying certain aspects of them. That is key.

It is worth pointing out that employment tribunal fees do not just affect those who go to the tribunal. Even in 2005 we had a very low proportion of women who took tribunal claims; only 3% of those with substantive discrimination took claims. However, they are fundamental to the negotiation process that takes place with employers before going to the tribunal. If employers are confident that women cannot go to the tribunal then we are much less likely to achieve a resolution in the informal and oral grievance processes that precede tribunal claims.

On top of that, significant work needs to be done on access to information. We have talked about how many women are not aware of their rights. We have seen a loss of a whole range of different mechanisms to provide women with information about their rights. It used to be the case that a leaflet was handed to women on their first antenatal appointment, with a tear-off sheet for their employer. This left women with a basic understanding of their rights and employers with a basic understanding of their obligations, and links to further information. This should be reintroduced.

There needs to be investment in advice services. As I mentioned before, we answer 2,500 advice calls a year and we have at least 30 times more calls than we can answer with our resources. That is partly because the problem has been increasing, but it is also partly because a lot of the local advice services, which might have picked up and answered much more straightforward questions, are simply not there or do not have the capacity to provide this basic level of advice. We need to be looking comprehensively at the advice that is available to women.

Ideally we would be looking at reinstating legal aid, which provided support for women who were prepared to pursue their cases.

Going back to access to justice briefly, one of the problems with the tribunal system at the moment is that only 50% of claims are paid in full. Until we have a system that actually functions to pay claimants the amounts that they have been awarded, it will not operate as an effective disincentive for employers to do the wrong thing.

Q31 Ruth Cadbury: I just had a very little question. Catherine, you used the term that tribunals were a “cost-free” environment.

Catherine Rayner: Yes, they were set up in that way.

Q32 Ruth Cadbury: Does that mean cost-free to the user?

Catherine Rayner: Yes, to the user. If you are bringing an action in a civil court, for debt, for example, the usual rule is that costs follow the event. Therefore, the person who wins gets their costs paid by the other side. That is not the case with the employment tribunal. There are provisions for costs to be awarded, but they are on the basis that one party or the other has behaved in an unreasonable or vexatious manner. They do remain the exception rather than the rule.

Ruth Cadbury: I understand, thank you.

Q33 Angela Crawley: In terms of how the Government monitor their actions, how effective do you think they are and how could they be more preventative in their measures?

Elizabeth Duff: I do not have a detailed recommendation to make there, but I do think the headline figures from the report are absolutely striking. There is a huge imbalance between the number of employers who generally support good practice or think they are pursuing good practice and the fact that more than three out of four women are experiencing discrimination. Also very interestingly, most of the women could cite at least 10 examples of negative attitudes and discrimination. It is not one thing that women have possibly enlarged in their own minds; it is serious stuff.

There is an imbalance and, whatever moves are made, it is important that Government are working with the employers and with the women and organisations representing them, so that the balance is always looked at and so that we do not end up with this huge disparity, so that the views of one are not in any way in accord with the other. That disparity just reflects the fact that women are not able to be in open communication with their employers or that the senior managers of a large organisation may think everything is fine because they have got policies in place, when in fact they have not checked that line managers are following those policies and adopting positive and encouraging attitudes to pregnant women.

Rosalind Bragg: In terms of Government monitoring of pregnancy discrimination, we saw a research report in 2005, and then a 10-year gap before we saw any further research indicating the scale of the problem. It would seem unsatisfactory to leave such a long period between investigations of this kind. Certainly, this was not as a result of ignorance on the Government's part. Maternity Action and others have regularly raised the problem of pregnancy discrimination with the Ministers responsible for employment, seeking action on this. However, in the absence of hard data there was no interest in pursuing it. Hard data, of course, is something that the Government are required to collect, given the scale of work required for an effective research project.

Catherine Rayner: All I would say, not knowing a huge amount about the monitoring other than having seen these reports, is that it would be easier for the Government to carry out the monitoring if there was some obligation on business to carry out some internal monitoring of the type that has been suggested by Rosalind and that the DLA would support. I would like to see more of that; otherwise I echo what has been said by my two colleagues.

Q34 Chair: Today as a Committee we are launching a gender pay gap report, which calls for every job to be flexible as well as for protected leave for dads around the birth of a

child. How do you think this report that has been issued today by EHRC and the Government regarding pregnancy discrimination affects the gender pay gap and the findings of the report?

Rosalind Bragg: There is no question that if women struggle to remain in the workplace during their child-bearing years then they will ultimately end up with significantly lower rates of pay than men of a similar age and background. Any efforts to address the gender pay gap have to focus on pregnancy discrimination as a priority area.

Catherine Rayner: That is absolutely right. One of the things that I have become very aware of, when I do remedy hearings for women who have been discriminated against, is the appalling impact on women's pensions. The discrimination and the poor treatment when women have children has an ongoing effect throughout our progression and throughout our working lives, and it also impacts on our pensionable pay at the end of our working lives.

Elizabeth Duff: We put a request on our Facebook page quite late yesterday to see if anyone had very up-to-date experiences. Not surprisingly, we had 50 women come back to us on that. Two were positive, but the others had some very long and extensive comments about negative attitudes. One really stands out, because she said her employer had offered her promotion, which she accepted, and then when she informed them that she was pregnant her manager immediately said, in so many words, "Then I withdraw my offer of promotion". That sort of immediate and overt response of, "You are pregnant; you cannot have the increased responsibility and pay," reflects the sort of thing that is happening both in the discrimination area and the gender pay gap area.

Chair: I cannot thank you enough for your comments on that. It probably reflects the findings of our previous report as well. I wanted to make sure that I had asked that question. Can I thank you for taking the time to come in front of the Committee today? You have provided extremely useful comments based on a great deal of evidence, and we are very thankful to you for sharing that with us. We apologise again that you had so little time to consider the Government's response. Unfortunately, we have been waiting for it too, since it was first promised in late January. We were keen to go through this exercise today because we did not want to waste any further time. Thank you again. If there is anything else that you want to share with the Committee once you have had time to more fully reflect on those Government recommendations and the response of the EHRC to them, then please do get back in touch with the Committee. We would be grateful for those comments. Thank you.