



Women and Equalities Committee

Maria Caulfield MP
Minister for Mental Health and Women's Health Strategy
Minister for Women
By email

23 January 2023

Dear Maria,

Menopause and the workplace – Government response

I am writing to you regarding the Government's response to the Committee's report of 28 July 2022.

We note that the response was received by the Committee on Thursday 12 January 2023, some three and half months late.

We were pleased that the Government has reiterated several commitments made to the Committee, within the Women's Health Strategy, and elsewhere, including the introduction of a pre-payment certificate for Hormone Replacement Therapy (HRT); the introduction of a day-one right to request flexible working; and the appointment of a Menopause Employment Champion.

We were disappointed to note that very little new work has been committed to by the Government. This is a missed opportunity. In addition, it is extremely disappointing that the Menopause Taskforce has not met since prior to the summer recess, and that the industry roundtable on HRT supplies (referred to in paragraph 56 of the Government response) has been delayed a number of times. This signals a level of complacency in Government on this area when there is still a huge amount to be done.

The Government has rejected the Committee's recommendations around promoting model workplace menopause policies and piloting specific menopause leave with a public sector employer. Both these recommendations would have had a positive impact and been low in cost to implement.

House of Commons

womeqcom@parliament.uk

Palace of Westminster

+44 (0)20 7219 4272

...

Social:
[@Commonswomequ](https://twitter.com/Commonswomequ)



Women and Equalities Committee

Government's position on legal reform

We have particular concerns about the Government's response to Chapter 3 of our report in relation to legal reform. Evidence to our Committee was extremely clear that the current law does not sufficiently protect women experiencing menopause.

Section 14 Equality Act 2010

In relation to commencing section 14 of the Equality Act 2010 (the combined or dual discrimination provision), the Government response states that the "Committee's presentation of the issues involved in commencing Section 14 of the Act [...] relates entirely to the introduction of sex and age as a single dual protected characteristic, and the impact of that one specific change" [paragraph 88 of the Government's response]. The Government goes on to say that the "implementation [of section 14] would create a further 20 dual protected characteristics in addition to age and sex" [paragraph 89], and that this could place "significant burden on employers and service providers" and create "new areas of dispute over self-identity and concerns about hierarchies of rights" [paragraph 90].

The suggestion that the Committee only considered the introduction of age and sex as a single dual characteristic is a misreading of the Committee's report. The intersection of age and sex is referred to as only one example of how the current law fails to capture intersectional perspectives [paragraph 83 and paragraphs 88-91 of the report].

In addition, we would be grateful to know what evidence the Government is relying on in relation to the potential additional burden for employers and service providers. The evidence to the Committee from both the Employment Lawyers' Association and Discrimination Law Association was that section 14 would not be complex, costly or burdensome to enact [paragraph 91].

A new protected characteristic of menopause

In relation to a new protected characteristic, the Government response states it is not satisfied that the evidence supported legislative change, quoting three stakeholders in support of that position [paragraph 92]. Further, the Government has stated that "the use of protected characteristics within the Equality Act 2010 is intended to create protection across all the fields covered by the Act. Introducing menopause as a new protected characteristic does not align with this principle as it is only relevant to Part 5 of the Act [Work]" [paragraph 94]. The response considered other options such as



Women and Equalities Committee

“expansion of the reasonable adjustments’ duty in section 20 and schedule 21 through an expansion of the definition of disability; or expansion of age discrimination provisions as they apply to employment” [paragraph 95]. However, the Government states this would require primary legislation and substantial changes should only be considered as part of wider reform of the Equality Act. The Government pointed to potential “unintended consequences” such as “discrimination risks towards men suffering from long-term medical conditions, or eroding existing protections” [paragraph 96] but did not elaborate further.

We are concerned that the Government has ignored the significant evidence base—referred to in our report—that supported the introduction of menopause as a specific characteristic. Further, the Committee acknowledged some of the complexities of introducing a new protected characteristic, which is why a consultation (which could have explored some of the Government’s concerns) was recommended.

In relation to the point that menopause would only be relevant to Part 5 of the Act, there is already variation in the protection for various characteristics in the different Parts of the Act. For example, Part 3 (Services and Public Functions) do not apply in respect of Marriage/Civil Partnership (s.28(1)) and the Part 4 protections (Premises) do not apply in respect of Age or Marriage/Civil Partnership (s.32(1)). There are also plenty of exceptions and/or special provisions which cover individual characteristics.

In paragraph 95, the Government seem to suggest it is more open to other legislative changes including expanding the definition of disability or amending the provisions on age. In relation to the expansion of the definition of disability we acknowledge the advantages of this approach in that it could potentially be done without amending the Act¹ and that it would bring with it access to reasonable adjustments. However, our report raised significant concerns about categorising menopause as a disability. We would welcome further clarification from the Government about what consideration has been given to options which do not require primary legislation, but which protect women experiencing menopause.

In relation to paragraph 96, it is not clear how a protected characteristic of menopause would create discrimination against men with long term health conditions, any more than the pregnancy discrimination provisions discriminate against men, including those with health conditions, or women who are not pregnant. Further,

¹ (Schedule 1(7) provides powers for particular conditions to be ‘deemed’ disabilities by secondary legislation



Women and Equalities Committee

menopause is an inevitable part of all women's life course, as opposed to a form of long-term ill health. In any event, men with long term health conditions may be protected under the provisions for disability discrimination (which, as the Committee heard, is often how women experiencing menopause must frame a discrimination claim).

We would be grateful to know:

1. Whether the Menopause Taskforce will continue with its work and when it is next due to meet?
2. What evidence the Government is relying on, when they state there would be potential additional burden for employers and service providers if section 14 Equality Act 2010 is commenced?
3. What consideration has been given to amending the Equality Act through options which do not require primary legislation, such as expanding the definition of disability?
4. Whether the Government will review their position on consulting to introduce menopause as a protected characteristic?

We will also follow up in the coming weeks over other aspects of the report which the Government has accepted or accepted in principle. In particular, we look forward to hearing from you in February about the update to HRT supplies and may invite you to update the Committee before the Easter recess.

Yours ever,

Rt Hon Caroline Nokes MP
Chair, Women and Equalities Committee