

**Written evidence from Dr. Gemma Mitchell, University of East Anglia, and Dr. Charlotte Bendall, Birmingham Law School**

**Question: How can inequalities in take up of shared parental leave, including by ethnicity, income, qualification level and occupational status, be addressed?**

**Summary of recommendations:**

1. Remove the requirement to be an 'employee' and the minimum service requirements for parents to be eligible for shared parental leave ('SPL');
2. Abandon the maternal transfer model and instead introduce an individual, non-transferable right to leave, to ensure that the partners of mothers who do not work can still access some extended leave;
3. Introduce income related levels of pay (e.g., 80 or 90% of their wages), rather than the low, flat rate of pay currently available;
4. Bolster discrimination law protections within the workplace;
5. Consider how to incentivise men to take leave that is not concurrent with that of the mother;
6. Also consider the option of extending leave beyond the intact, 'nuclear', two parent family;
7. Empirical research into the experiences of working-class parents could help to shed light on how best to make parental leave provision more accessible.

**Authors of the submission**

8. Dr. Gemma Mitchell (Associate Professor in Law at the University of East Anglia) is a researcher focusing on legal approaches to the reconciliation of paid work and care. She has a particular expertise on the 'SPL' legislation. In addition, after welcoming a baby in 2023, her family has used SPL, giving her both a practical and academic insight into the legislation.
9. Dr Charlotte Bendall (Associate Professor at Birmingham Law School, University of Birmingham) is an expert in all aspects of family law. She is currently working on a research project relating to grandparents' rights, and is more generally interested in the ways in which the law reinforces traditional gender roles within the family and how that might be disrupted.

10. Drs. Mitchell and Bendall combined their respective expertise to co-author the article which has formed the basis of this response: The shared parental leave framework: Failing to fit working-class families? (2023) 23(4) *International Journal of Discrimination and the Law* 299-320.

### **Central argument: SPL is not offering viable or appealing options for working class families**

11. As we argued within our article as detailed above, “SPL provisions preclude working-class fathers’ access [to leave], limiting its potential to break down traditional gender roles within those [social] groupings” (available here: The shared parental leave framework: Failing to fit working-class families?). We define ‘class’ based on occupation, rather than self-definition, referring to those who fall into the category of ‘routine and manual occupations’ within the National Statistics Socio-economic Classification as being ‘working-class’ (Office for National Statistics, undated). As against this, being ‘middle-class’ is conflated with holding one of the ‘higher’ managerial, administrative or professional occupations within the Classification (Office for National Statistics, undated).

### **Difficulties faced around eligibility**

12. First, working-class parents are less likely to be eligible for SPL. Requiring not only that fathers or co-parents are ‘employees’, but also that they meet minimum eligibility criteria, will exclude many, particularly precarious workers. Under these criteria, fathers and co-parents must have been employed continuously by the same employer for at least 26 weeks by the end of the 15th week before the baby’s due date. If the ambition is to enable all parents, regardless of ethnicity, income, qualification and occupational status, access to leave, these requirements must be removed.

13. Furthermore, it may be the case that working-class women are less commonly performing paid work. The type of work that they more frequently conduct, involving inflexible shift patterns or irregular hours, might force them to reduce paid working hours, sometimes entirely, once they have children. Requests for more flexible working arrangements will more likely be granted to those with university degrees and/or in more professional occupations (Chung and Vam der

Horst, 2018). As we noted in our article, “many working-class mothers are, as a result, pushed out of the workplace because their work and parenting responsibilities are irreconcilable.”

14. Therefore, the maternal transfer model (i.e., where leave is transferred from mother to father) is not the best way to encourage working-class fathers to access leave. This is because many mothers will simply not have leave to transfer. Instead, it is vitally important that an individual, non-transferable right to leave is introduced if working-class men are to actually take any leave.

### **Low level of pay particularly problematic**

15. There is a strong argument that the existing paternity leave entitlements should be more generous, in terms of both length and pay.
16. Even for those who are eligible, the low level of pay is likely to deter working-class parents from accessing SPL. This is because, as is explained in our article, “those in lower-paid jobs are unlikely to be able to sacrifice their income to take leave, because they are less likely to have savings to supplement [Shared Parental Leave Pay]”. Shared Parental Leave Pay currently amounts to £184.03 for the first 37 weeks, whilst the remaining period is unpaid (a total of 50 weeks of leave is transferable to the father under the Shared Parental Leave Regulations 2014).
17. Fathers’ income is likely to be particularly important in the context of the family, because of the enduring gender pay gap. It is vital that SPL, or any replacement, is paid at an income-related level (e.g., 80 or 90% of their wages), rather than a low-flat rate, if men are to actually take the leave.

### **A less supportive working environment**

18. Moreover, it is suggested that the fear of discrimination is likely to have a heightened impact on working-class families. Whilst employers may not generally be particularly supportive of parents taking SPL, research suggests that those in lower-paid work are even less likely to receive support to access family-friendly policies (Dunatchik, 2022). This indicates that working-class men are right to fear discrimination, should they wish to take leave to provide childcare.

19. The most obvious way of addressing this problem would be to boost discrimination law protections for those taking SPL. Trade unions could play an important role in supporting employees to take leave, but this would also require legislative change to ensure that these unions have the power to stand up for workers.

### **More traditional attitudes towards gender roles within the family**

20. We highlight within our article that, “it has been widely accepted that, if [the various] practical problems were solved, more fathers would use SPL”. However, we argue that this reasoning is flawed, particularly for working class families.

21. Despite “many working-class fathers having often performed a more hands-on role in parenting, both women and men in lower-paid work are more likely to hold traditional attitudes towards parenting [...] Mothers are frequently considered best placed to provide the emotional aspects of childcare by both parents.” This means that “when faced with this choice, working-class parents’ more traditional attitudes are likely to mean that neither parent thinks that maternity leave should be transferred. After all, doing so would deprive each parent of carrying out their ‘natural’ role”. This is a particular problem in England and Wales, where mothers taking a long period of leave remains the default.

22. If working-class men’s caring roles are to be encouraged, we again feel that the maternal transfer model must be abandoned. In its place, it must be the legislative default that men take extended leave when they become parents. This would require that men are entitled to an extended period of leave as a standalone, non-transferable right. Although Swedish research suggests that this will not necessarily impact working-class men in the same way as their middle-class counterparts (Ma *et al.*, 2020), it would mark an important start.

23. To further assist in breaking down traditional attitudes towards gender, our research suggests that encouraging men to take leave by themselves would be important. This is given that research indicates that less than 50% of men take leave by themselves in Norway, as the mother is either working part-time or also taking leave (Brandth and Kvande, 2015). Taking leave concurrently with the mother “affords fathers a chance to claim that they are performing a caring role,

without necessarily doing much hands-on childcare”. Thought should therefore be given as to how to incentivise men to take leave by themselves.

### **Inadequate recognition of working-class family forms**

24. Finally, it is important to note that “SPL assumes that caring will only take place within the ‘nuclear’ family model; leave is available [only] to the mother and her partner, or the child’s biological father”. Yet, this is not necessarily how working-class families live their family lives. For example, children born to parents who are not living together are “geographically concentrated in areas of high deprivation with low-wage economies” (Kiernan *et al.*, 2022). These families would be better supported if eligibility for leave were to be broadened out to wider family members, such as grandparents, as this would enable someone to assist the mother in the particularly labour intensive first year.
25. That said, “we recognise that these sorts of measures are unlikely to combat the gendered division of labour”. This is because extending eligibility for SPL would likely result mainly in grandmothers, rather than grandfathers, taking the leave (see paper: [Shared parental leave and the sexual family: the importance of encouraging men to care](#)). The result of any such legislative change may be that men’s caring labour is ‘bypassed’ in favour of another woman, reinforcing the association between women and care.

### **A need for empirical research**

26. Our research to date consequently identifies a need to reflect on how best to reframe the law around parental leave to accommodate working-class ways of thinking and living. There has been little empirical research into this area to date, and we feel that an important next step would be to gather insights from working-class people ‘on the ground’ into why they are not taking the leave, and what measures might help to make it more realisable. Research of this nature, which we are keen to pursue in the future, could helpfully inform how the law might most effectively be developed.

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