

**Women and Equalities Committee  
Inquiry into Menopause and the Workplace  
Bar Council written evidence**

**About us**

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

**Scope of response**

This submission addresses all questions posed in the call for evidence.

**Question 1: What is the nature and the extent of discrimination faced by women experiencing the menopause?**

1. In a recent survey circulated by the Bar Council, 86% of the respondents reported that they had experienced negative impact on their role. Further examples supplied in the context of a webinar open to all members of the profession align with the survey, confirming that this discrimination is widespread. The reported nature of discrimination includes:
  - a. Outdated gender and age-related assumptions (i.e., a perception that the menopausal person is older than they are, or is ill, or will assume attributes associated with a derogatory stereotype of an elderly woman);
  - b. A perceived/measured decrease in work or earnings, particularly in comparison with male counterparts at an equivalent career-stage (chambers are increasingly introducing work allocation monitoring which tends to bear this out and see also the 2020 report and table referenced below). Many felt this to be due to a perception that, during and following the menopause, women (commonly from their 40s or 50s) are less energetic/dynamic/driven/focussed than a man at the same stage (who is perceived to be hitting the peak of his powers by way of experience, authority etc);
  - c. The fact that a need to adopt a particular working pattern, or to receive particular administrative or other support, is generated by the menopause can cause embarrassment inhibiting the ability to secure changes and adjustments. Embarrassment on the part of managers/clerks/senior colleagues may lead to silence with women not being asked what changes could be made to assist them even where the adjustments are perfectly routine steps that might be taken for other reasons. The responses to the survey show that women just carry on as best they can suffering in silence. The shared embarrassment caused by the taboo around menopause often makes specific alleviating action difficult to discuss openly. It is felt that the Bar, as a male dominated profession with a culture that values strength and stamina, finds this a

particularly difficult topic. It frequently manifests itself by the couching of all references to menopause in terms of a joke or a euphemism, often in a way that undermines and diminishes the professional women involved. The widespread ignorance of facts and a shying away from discussion of anything with a gynaecological connection is perceived as a major contributing factor;

- d. Explicit belittling or dismissal of the opinions of women of menopausal age, e.g. putting forcefully expressed or challenging opinions down to “hormones” or the menopause.

#### How does this impact wider society?

2. In so far as the Bar is concerned the impact on wider society is felt in several principal ways. Where menopausal women feel uncomfortable in their professional roles they may, in consequence, be inhibited in their performance and either reduce their amount or range of work or leave the Bar (the responses to the Bar Council’s recent survey bear this out). The key societal impacts are:
  - a. A reduction in the gender diversity of skilled legal representation available to the public;
  - b. There is a lack of senior female role models to encourage aspiring barristers to progress and advance in their careers;
  - c. The poor retention of female talent leads to a shortage of applicants for senior legal leadership roles including QC and judicial applications, again resulting in a narrower, less diverse pool of those in important senior positions and public roles within the justice system and a limit on the talent reaching those roles.

#### **Question 2: What is the economic impact of menopause discrimination?**

3. There has been a reported decrease in work and earnings for those affected by menopausal symptoms.
4. There is general evidence that women at the Bar earn less than men which the Bar Standards Board report on Income at the Bar mirrors.<sup>1</sup> Although the report and table did not specifically identify the causes of the gender pay gap, to look at the intersection of gender and age suggests they are consistent with menopause discrimination and/or the difficulties experienced in managing menopausal symptoms. These were also reported in the Bar Council’s survey as being perceived to be amongst the underlying reasons and a significant factor in women earning less than men during these periods.

#### **Question 3: How can businesses factor in the needs of employees going through the menopause?**

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<sup>1</sup> Bar Standards Board (2020) “Income at the Bar – by Gender and Ethnicity” Research Report <https://www.barstandardsboard.org.uk/uploads/assets/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf>

5. The Bar encompasses employed barristers and there are also employees in every set of chambers (clerks, administrative staff etc.), however the majority of barristers are self-employed. The employed Bar and the Bar's employees would benefit from the incorporation of menopause awareness by the adjustment of training policies which address other major life events impacting individuals at work.
6. Addressing the position of the self-employed Bar, the changes that would have the largest impact on the Bar are those that would address the needs of self-employed people and confront challenges specific to self-employment (for example the difficulty of reducing hours because of associated loss of income and career profile).
7. However, in all cases the key to factoring in the needs of those going through the menopause lies in
  - a. providing a genuine, safe and comfortable opportunity for women workers to identify with their employers or colleagues the type of support that might be helpful for them and
  - b. in building awareness and understanding of menopause and its impact across the profession. These would be a positive start towards changing cultures, fostering inclusion and ensuring that the real needs of those experiencing menopause are met so that they can continue performing at their best.
8. Specific steps to execute that might include:
  - a. Providing specialist training or advice not only to those experiencing menopausal symptoms but to all (especially those in management/senior/work-allocation roles);
  - b. Ensuring compulsory equality and diversity training which includes an awareness that menopause can impact performance and behaviour but also its impact can very often be neutralised or mitigated;
  - c. Building in one-to-one meetings for those who wish to discuss their wellbeing needs and including menopause as an identified subject that might be brought to such meetings;
  - d. Monitoring of work opportunities across gender and comparing by reference to seniority bands (years in practice).

**Question 4: How can practices addressing workplace discrimination relating to menopause be implemented? For example, through guidance, advice, adjustments, or enforcement.**

9. All of the factors listed above will help, although perhaps the most immediately impactful changes would be affected through the implementation of training and policies.
10. Any business (including barristers' chambers) that can put in place the right framework of training and policies, within a supportive and open culture, is likely to reap significant benefits in terms of lower sickness absence, decreased staff turnover and increased engagement and loyalty and secure the most consistent possible performance from those experiencing significant menopause symptoms. Feedback

received in the context of the Bar-wide menopause webinar was clear. Where those affected receive understanding, help and support from those they work with and who assist in managing their practices, it is greatly valued and enhances positive, productive working. There are also some specific practices which would be helpful, for example judicial recognition where it is acceptable for a woman to remove her robes and jacket and/or use a fan in court in the event of a hot flush, or that she may need more frequent comfort breaks during the court day.

**Question 5: What are examples of best or most inclusive practices?**

11. The best examples are:

- a. Developing work-place well-being policies which include recognition of the menopause (or rendering more specific and robust existing policies to encompass this);
- b. Engaging expert trainers to educate all members and employees of the chambers (not only those experiencing or likely to experience symptoms) on the menopause;
- c. Tailored absence policies to accommodate the menopause as a fluctuating life event and/or health condition;
- d. Encouragement of a positive attitude towards flexible working patterns for mid-life women;
- e. Communication of a positive approach and attitude to the menopause e.g., by setting up a buddy system to encourage peer-to-peer discussions and genuine conversation;
- f. Relatively low-cost environmental changes (which might also be embedded in policy) e.g., introduction of desk fans or air conditioning.

**Question 6: How should people who experience the menopause but do not identify as women be supported in relation to menopause and the workplace?**

12. In order to ensure a truly inclusive environment there is a need to ensure that everyone (but especially practice managers, case leaders, senior administrative staff and those on committees) are educated and knowledgeable about menopause, including the fact that it can affect those who do not identify as women. Policies should acknowledge that fact.
13. With the knowledge that it is not only those identifying as women may be affected in place, the understanding, acceptance and flexibility shown to women experiencing the menopause can be shown to others.

**Questions 7: How well does current legislation protect women from discrimination in the workplace associated with the menopause?**

14. The menopause is not in itself a protected characteristic under the Equality Act 2010. However, other protected characteristics (e.g. sex, disability or age) could be engaged to protect those experiencing menopause from discrimination in the workplace. There have already been some successful Employment Tribunal claims on the grounds of direct sex discrimination relating to discriminatory responses to perimenopausal symptoms.<sup>2</sup>
15. However, developing responses via Employment Tribunal level decisions (which are not, in any event, binding on future Tribunals) is a piecemeal and unreliable approach to ensuring the protection of those experiencing discrimination associated with the menopause.
16. Similarly, employers have an existing duty to ensure the health, safety and welfare of employees at work (including a duty to minimise, reduce or where possible remove workplace health and safety risks for employees) and must generally assess health and safety risks for employees. A properly conducted health and safety risk assessment for those experiencing menopause is likely to include consideration of additional factors such as temperature and ventilation, rest areas, and access to cold drinking water. The risk of not ensuring compliance with relevant health and safety regulations is that employees could suffer injuries or further ill health as a result of poorly adjusted work conditions; this in turn could result in a breach of those regulations and a claim.
17. However, as with the scope and use of existing equality legislation, it is important to recognise that without specific direction to considering the menopause in these contexts in practice it is easy for employers to neglect to consider their obligations from a menopause perspective.

#### **Question 8: Should current legislation be amended?**

18. Yes. Specific recognition of menopause as a protected characteristic would enhance the level of protection. Plainly there is scope to protect workers from discrimination using the current legislation as drafted but at present it is left to chance or provided only in a piecemeal way.
19. Furthermore, much of the successful engagement so far using these legal tools has involved postulating that the employee is disabled. Menopause is a natural phase in a woman's life and the degree to which menopausal symptoms and the degree of support required varies by individual. The symptoms are often debilitating and can last for a long time, but menopause is not a disability. Despite this, in order to fit within the statutory framework as it is currently drafted often requires analysis and classification of menopause as a disability. This is inaccurate and reductive as regards both those experiencing menopausal symptoms and people with disabilities.

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<sup>2</sup> see e.g. *Merchant v BT Plc*; [Davies v Scottish Courts and Tribunals Service](#); *A v Bon Marche*.

**Question 9: What further legislation is required to enable employers to put in place a workplace menopause policy to protect people going through the menopause whilst at work?**

20. See paragraph 18 above regarding enhancement of existing legislation.

**Question 10: How effective has Government action been at addressing workplace discrimination related to the menopause, and what more can the Government do to address this issue?**

21. Breaking the taboo on the impact of the menopause is a relatively new area in which the media, rather than government, has led the way.

22. The starting point for widespread societal change is education (including crucially better education of the medical profession) and on this the government is potentially able to ensure that training and scope of advice is made mandatory as part of its legislative package producing a level playing field at work.

**Question 11: How effectively is the Government Equalities Office working across Government to embed a strategic approach to addressing the impact of menopause in the workplace?**

23. See paragraph 21 and 22 for answers.

**The Bar Council  
September 2021**

