

## **Written evidence from BEIS and other Government Departments [MEW0079]**

1. The Government recognises that most women will experience menopause symptoms that can, in some cases, be debilitating and have a significant impact on everyday activities. Without appropriate care these symptoms can have severe impacts on women's physical and mental health, workplace participation and personal relationships. Yet the menopause has, for the most part, remained an overlooked issue. Research by the GEO into the impact of the menopause published in 2017 was the first systematic examination of the issue by the Government.<sup>1</sup>
2. In the UK, the average age for a woman to reach the menopause is 51. Women over 50 comprise some 47% of the over 50s workforce. Around 1 in 100 women experience the menopause before 40 years of age. Around 400,000 women start the menopause each year.
3. There are many challenges to this group of women getting the support they need, including lack of awareness of menopausal symptoms and perceptions about whether their symptoms are 'normal', and the absence of supportive contexts to share their experiences more widely.
4. In many cases, there may be steps that women and their employers can take to help them stay in the workforce. The employment rate for women aged 50 - 64 has increased by 20 percentage points since 1992, the largest increase for any women's age group. While sickness absence rates are declining generally, they remain higher for women. In 2020, 2.3% of women's working hours were lost due to sickness compared to 1.5% of men's working hours. In addition, 30% of women were economically inactive in April - June 2021.
5. The GEO research suggests that the reasons for these differences go beyond changes in women's reproductive life; for many there are significant challenges trying to combine work with responsibility for children who are still quite young because child-bearing has been delayed for career reasons, and "sandwich generation" caring responsibilities.
6. This submission to the Women and Equalities Select Committee's call for evidence sets out the Government's assessment of:
  - Existing and future plans for healthcare support for women going through the peri-menopause and menopause;
  - The Government's ongoing work to improve support to help manage health conditions in the workplace and to enable individuals to work flexibly; and
  - Existing protections against discrimination under the Equality Act 2010.
7. This submission has been drafted in collaboration between BEIS, GEO, DHSC and DWP.

## **Healthcare support for women going through the peri-menopause and menopause**

8. A vital first step in supporting women in work who are going through the menopause is ensuring that good care is available. All women should be able to have conversations with their healthcare practitioner about symptoms and what health care support is available. For most women, hormonal replacement therapy (HRT) is an appropriate

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<sup>1</sup> Available at: <https://www.gov.uk/government/publications/menopause-transition-effects-on-womens-economic-participation>.

treatment. However, it is estimated that only 10% of menopausal women are currently using HRT. There is work underway across the system to increase access to treatment and rates of prescribing. This is important for both health and wellbeing, and for reducing the impact of symptoms in the workplace. Reducing the impact of symptoms will, in turn, reduce the challenges women can face as a result of experiencing the menopause while in employment.

9. The National Institute for Care Excellence (NICE) guidelines on diagnosing and managing the menopause state that an individualised approach should be adopted at all stages of diagnosis, investigation, and management of the menopause. The guidelines, published in 2015 and updated in 2019, also outline the information which menopausal women should be given by clinicians to support the management of their symptoms. The guidelines aim to improve the consistency of support and information provided to women experiencing the menopause.
10. It is essential that clinicians are well informed about the menopause. Individual medical schools determine the content of their curriculum, deciding how to deliver training related to the menopause to undergraduates, and postgraduates where relevant. These curricula are monitored by the General Medical Council (GMC) to make sure standards are maintained.
11. The GMC is introducing the Medical Licensing Assessment (MLA) from 2024, which will test the core knowledge, skills, and behaviours that trainee doctors need to practice safely in the UK. The content for the MLA specifies several conditions and presentations relevant to women's health, including the menopause. GPs are also provided with mandatory training on the menopause, and this is enhanced by an e-learning programme developed by the Royal College of General Practitioners (RCGP) in collaboration with Health Education England (HEE). This programme includes sessions on: What is the Menopause, Managing the Menopause, and Premature Menopause.

#### Our plans to improve menopause care

12. To ensure that NICE guidelines continue to reflect the latest evidence, a further update to the guidelines on the menopause has also been commissioned and NICE will confirm a publication date in due course. Stakeholders will be engaged throughout the review, starting with a consultation on the draft scope which is expected in early 2022.
13. In January 2021 NHS England and Improvement (NHSEI) established the 'Menopause Pathway Improvement Programme'. This programme brings together menopause specialists and other key stakeholders to improve the menopause care in England. The programme has two key strands.
14. The first is a population health management approach, which aims to develop optimal care pathways. Programme scoping work found that NICE guidelines are not followed consistently, and that misunderstanding of the menopause is common among both the population and healthcare professions. The programme aim is therefore to develop and implement optimal care pathways for women, non-binary, transgender, and intersex individuals going through the menopause, in line with NICE guidelines. The programme is taking a holistic approach to improving menopause care, including reviewing and updating information on the NHS website; designing and introducing evidence-based guides for professionals; reviewing the use of apps to support education and symptom tracking; and supporting local systems to implement change. The second strand is a

retention programme for the NHS workforce. The impact of the menopause on the NHS is significant, given that 77% of the NHS workforce is female.

15. The menopause is a key workstream for the national retention programme ([NHS England » Looking After Our People – Retention](#)). The retention programme delivers several interventions at regional, system and provider level to support engagement and improved staff experience. It also brings together information, tools and practical support for systems and providers across the NHS so that they can improve retention locally.
16. Potential benefits for the workforce and employers include:
  - Increased workforce productivity and effectiveness (due to reduced brain fog and anxiety, and improved concentration and energy levels);
  - Increased workforce retention (20% of women currently either retire early or reduce their hours during the menopause and in addition the generational retention programme of work is targeting colleagues within this age profile); and
  - Savings from reduced sickness absence and presenteeism.
17. The aim of the programme is to build the optimal menopause support package, which will be pioneered in the NHS workforce through local health economies / systems. NHSEI will support local Primary Care providers, Primary Care Networks, Trusts and Integrated Care Systems to implement best practice in support of colleagues within the workforce. The aim is also to develop an evidence-based workforce support model which can then be shared with and replicated in other sectors, including for example through the development of toolkits, events, masterclasses, and videos created to illustrate best practice and shared learnings from the menopause retention workstream.
18. The Government is working closely with NHSEI to ensure alignment with the Women's Health Strategy and findings from the Call for Evidence, enabling the programme to be informed by women's experiences.
19. It is imperative that the Government listens to women's experiences of the health and care system, including the menopause. For this reason, in March 2021 DHSC launched a Call for Evidence to inform the development of England's first Women's Health Strategy. The Strategy will set an ambitious and positive new agenda to improve the health and wellbeing of women across England. This Strategy marks a turning point in how the Government approaches women's health. This Government is making women's voices heard and placing women's voices at the centre of this work.
20. DHSC launched the Call for Evidence to ensure that the strategy reflects what women identify as priorities. It gathered women's experiences and views regarding their health and care. It ran for 14 weeks from 8 March to 13 June.
21. The Call for Evidence survey asked a number of questions about women's experiences of the menopause, including how comfortable women feel talking about it with friends and family and clinicians, and whether women feel they have enough information on the menopause. The survey also contained questions about experiences of specific conditions or disabilities, where the menopause could be selected as an option. Furthermore, the survey included a section on women's health in the workplace, where respondents had the opportunity to provide their views on current support available in the workplace and what else they would like to see.

22. The survey received responses from over 100,000 individuals, and that over 500 organisations, charities, and researchers provided written submissions. DHSC also commissioned a series of focus groups to gain greater depth of insight and to reach from underrepresented groups to understand their priorities. The academic report of the focus groups will be published in the Autumn.
23. To provide further insight into women's experiences, Public Health England and the London School of Hygiene and Tropical Medicine (LSHTM) recently ran a pilot "tracker survey", to examine how reproductive health is experienced across the life course. The survey asked a number of questions relating to the menopause, including relating to absence from work, workplace menopause policy, and access to health services. Around 10,000 women responded to the digital pilot during July 2021 and results from the survey are currently being analysed and will inform the development of the Government's Women's Health Strategy and Sexual and Reproductive Health Strategy.
24. It is very important that the Government is able to monitor trends and improvements in menopause care. In 2020, PHE conducted a consensus process to develop a set of Reproductive Health (RH) indicators that could be used at national, regional, and local levels to track RH access and outcomes across the life course and the health system. A final set of 23 indicators were agreed through this process, including two new indicators that related to the menopause, one of which explicitly covers the impact of the menopause on work. Development of these indicators is a priority ambition of the PHE RH programme going forwards.
25. Whilst analysis of the Women's Health Strategy Call for Evidence is ongoing, the menopause has already emerged as a key theme for respondents. In the online survey, the menopause was the topic respondents aged 40 - 49 and 50 -59 most wanted the Women's Health Strategy to cover.<sup>2</sup> DHSC have also received a number of written submissions from professional bodies, charities and clinicians focussed on the menopause. The menopause will certainly be a priority within the upcoming Women's Health Strategy.
26. Following analysis of the Call for Evidence, the Women's Health Strategy will draw this work together and take an end-to-end look at women's health, from adolescence to older age. This approach will ensure that women will have more open conversations about their health and receive improved treatment. Breaking down these taboos will ensure that women can have more open conversations about their health, including the menopause, at work. The Strategy will adopt a whole health system approach and DHSC is working with delivery partners across the health system, as well as other Government departments. The Government aims to publish the strategy by the end of 2021.

### **Supporting women in work during the menopause**

27. The Government understands the importance of supporting everyone to balance their personal and working lives. For women, who can face challenges in remaining in employment whilst experiencing the menopause, policies which help to manage personal needs and responsibilities alongside remaining in employment are particularly important.

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<sup>2</sup> The full analysis of the Call for Evidence is not yet published but will be in due course.

28. In Parliament, too, there have been annual debates to mark International Menopause Day, which has been a positive step in tackling the hidden issues and misconceptions. The Government also welcomes the recent establishment of the menopause APPG, which is chaired by Carolyn Harris MP.
29. This wider debate has ensured that more employers are aware of the issues and the Government is aware of a number of Networks across the public sector seeking to engage managers and staff alike e.g. the cross-government menopause network, those in Police Forces and the NHS and across Universities.
30. The Committee's attention is drawn to the early leadership of the Women's Business Council (an Expert Committee advising successive Ministers for Women) on this important subject. Their work to dispel myths surrounding the menopause, to shine a spotlight on women experiencing the effects in senior leadership positions in companies and their efforts to maximise women's economic potential at all stages of their working lives, provided vital stimulus to expand understanding.
31. Subsequently, Acas published guidance for employers on managing the menopause in the workplace.
32. The following section of the submission to the Committee's call for evidence sets out the areas in which the Government is taking steps to support women to stay in work while managing personal needs or health conditions. Whilst not specific to supporting women who are experiencing the menopause, the policies set out below are relevant in this context and important in preventing these valuable individuals from dropping out of the labour market.

### Flexible Working

33. Flexible working, which can include hybrid working, can be an important way for individuals to work in a way that meets both their personal needs, and those of their employer. For women experiencing the menopause, flexible working arrangements may make it easier for them to manage their symptoms whilst remaining in work.
34. The Government recognises that there is no 'one size-fits-all' approach to flexible working arrangements and that the extent to which flexible working is suitable for individuals will depend on personal and organisational circumstances. It is therefore important that any such arrangements are discussed between employers and employees.
35. Flexible working covers a range of working arrangements around the time, place and hours of work. The offer of flexible working can bring benefits to employers and employees alike: it gives employees much-welcomed choice when looking to balance work and life at home; and helps employers to recruit and retain valued staff members.
36. The Government has made a clear commitment to encourage flexible working and to consult on whether it can be made the default unless employers have good reasons not to. This consultation launched on 23<sup>rd</sup> September and will close on 1<sup>st</sup> December 2021. It considers measures on how to improve the existing statutory right to request flexible working to better support flexible working as the default.

37. In modern workplaces, our understanding of what it means to work flexibly – and therefore what it means to make flexible working the default – extends beyond requesting contractual changes to employment terms and conditions. It is also about getting the culture right.
38. Engagement with stakeholders (including those with long-term health conditions and older workers) has demonstrated an unmet need for time away from work on a temporary basis – to attend a one-off or regular appointment, for example.
39. In order to more fully explore this potentially unmet need, the Government will launch a separate Call for Evidence looking at the sorts of ‘extra’ flexibility people may need to help them live their lives in the best way they can – both at work and at home. The Call for Evidence will explore the need for ‘ad hoc’ and informal flexibility and how this can best be supported. In addition to the statutory right to request flexible working, more informal flexibility could help to support women going through the menopause whilst in employment.

#### Health is Everyone’s Business (HiEB)

40. The Government recognises the complex decisions faced by employers during the pandemic and the adaptations they have made for employees and to their operations, to be able to continue trading and to support people to continue working, such as increased working from home and flexibility around working patterns.
41. Preventing health-related job loss is crucial for economic recovery and can protect the progress made on reducing the disability employment gap before the pandemic.
42. There are also benefits for employers in supporting employees with health conditions; for example, investing in employee health and wellbeing can lead to increased workforce productivity and help to retain key talent in an organisation and save on recruiting costs.
43. For employees, the benefits of being in work are clear, with research showing that good work is good for mental and physical health and wellbeing.
44. DWP’s recent research shows employers agree it is their responsibility to encourage employees to be healthy, but there is variation in practice across different employers which shows the need to take further action. Consistency in employer support will help to ensure no group is left behind as the economy recovers from economic recession and a healthier population reduces pressure on both the health and welfare systems at a time when they are experiencing unprecedented demand.
45. The Health is Everyone’s Business (HiEB) consultation, published in July 2021, set out a balanced package of proposals which aim to reduce ill-health related job-loss, and build on commitments made in Improving Lives: The Future of Work, Health and Disability, published in 2017.
46. While HiEB did not contain policies on the menopause or any other specific health conditions, the measures the Government is taking forward are intended to support

employers and employees with any health condition or disability in the workplace. These measures will:

- provide greater clarity around employer/employee rights and responsibilities;
- recognise the important role of Occupational Health (OH); and
- re-enforce the need for employers to have access to clear and compelling information and advice that is easy to understand, trustworthy and accessible, and improve access to expert support services such as occupational health services when needed.

47. The measures have the potential to support people with health conditions to remain and thrive in work, support business productivity, and potentially reduce pressures on the NHS.

48. Through the package of measures proposed, we can start building a system that works for everyone, with the Government, employers, and healthcare professionals all working together with the benefit of learning gained from the challenges faced and overcome during the COVID-19 pandemic.

#### Statutory Sick Pay (SSP)

49. Statutory Sick Pay (SSP) provides a minimum level of income for employees when they are sick or incapable of work. This can include women suffering from menopausal symptoms subject to meeting eligibility conditions.

50. Employers are legally required to pay SSP to eligible employees who are off work sick or incapable of work, where employees meet the qualifying conditions. This includes being classed as an employee and having average weekly earnings of at least £120, known as the Lower Earnings Limit. Some employers may also decide to pay more, and for longer, through Occupational Sick Pay.

51. SSP is paid at a flat rate of £96.35 per week for up to 28 weeks per period of sickness absence. Any absences which are less than 8 weeks apart are considered linked and form one period of absence. Once waiting days have been served, SSP is paid for all days of work missed because of sickness in any linked periods. This supports employees who have fluctuating conditions (which may include the menopause) who may take frequent absences from work as part of managing their health condition. In any new period of sickness absence, employers are entitled to an additional 28 weeks' SSP, where they meet the eligibility conditions.

#### Information and advice

52. DWP is currently working on improving the information and advice it offers employers relating to ill health and disability, including support for mental health and well-being. This work is currently being developed with employers from small businesses to ensure it meet their needs.

#### Employer engagement

53. DWP works across Government, with employers via the Business Champion for Older Workers, and with external partners, to ensure suitable employer practices and

measures are in place to support older workers to stay in, progress or remain close to the labour market.

54. A key component of this activity is the Minister for Employment's Roundtable of employer organisations, using trusted voices to influence and drive change.
55. At the July 2021 meeting of the Ministerial Roundtable, the Minister tasked members to look at the menopause and employment as an issue, emphasising the importance of the provision of support and understanding by employers to enable people to have fulfilling working lives in the latter stage of their careers.
56. As a consequence, Roundtable members from the Chartered Institute of Personnel and Development, the British Chamber of Commerce, the Federation of Small Businesses, the Recruitment and Employment Confederation, UK Hospitality, Business in the Community, and the Business Champion for Older Workers are working together in a Task and Finish Working Group which will report back to the Minister in November with recommendations to take forward.
57. To raise awareness and drive action, the Government has appointed Andy Briggs, CEO of Phoenix Group, as Business Champion for Older Workers. Andy Briggs spearheads the Government's work to support employers to hire and retain older workers. He actively promotes the benefits of older workers and multigenerational workforces to employers across England – influencing them both strategically and in terms of practical advice.
58. Over the last year DWP has been working with the employer organisations Chartered Institute of Personnel and Development (CIPD), British Chambers of Commerce, Acas and Local Enterprise Partnerships to deliver a series of webinars aimed at small and medium enterprises on the importance to employers of supporting older workers in order to retain them in the workforce and maintain their wellbeing and productivity.

### **The Equality Act 2010 and existing protections against discrimination**

59. As with other employment issues, a framework of legislative protection is an important backdrop that should act as an incentive to employers to adopt best practices. This can help to prevent problems arising in the first place and help employers to work with employees to solve issues where they arise. Ideally recourse to the law should be the last option, but for some women this will be the only means of obtaining a just outcome where they feel that they have been less favourably treated because they are going through the menopause.
60. Menopause is not a protected characteristic in the Equality Act 2010 (the Act), but sex, age and disability are all characteristics which can provide protection against unfair treatment of employees going through the menopause, as the Employment Tribunal cases set out in the Annex demonstrate. Depending on the circumstances of a case, a claimant might bring claims for discrimination relating to one, two or all three protected characteristics. All three characteristics - including sex - do of course apply equally to both women and men, including transgender men and women, potentially providing scope for a man to claim discrimination on grounds relating to the male menopause ("andropause").

61. For disability claims, tribunals are required to focus on the effects of the condition rather than how to define the condition itself, so a lot will depend on the evidence that menopausal symptoms are affecting the person's day-to-day activities and the longevity of those symptoms. This seems appropriate to the legal treatment of a condition that can be fluctuating and longer-term.
62. Until recently, menopausal health had the reputation of being a taboo issue as far as discussion in the workplace was concerned. That is now changing, as these and other employment tribunal cases confirm. The findings in recent cases show that employees have scope within the Act to challenge outdated and/or insensitive treatment by employers, claiming under one or more of the three relevant characteristics. Increasing publicity given to the impact of the menopause at work, including through the media and this inquiry, is likely to mean that employers find themselves at growing risk of legal challenge if they fail to recognise and make accommodation for employees with menopausal symptoms.

### **Conclusion**

63. The Government is committed to supporting employers to improve their understanding of health issues such as the menopause and to introduce policies that support women in the workplace – as set out in this evidence submission.
64. The Government recognises the importance of the issues being considered by the Women and Equalities Select Committee as part of this inquiry and looks forward to continuing to the Committee's report.

### **Annex**

#### **Sex discrimination - Merchant v BT (2012)**

A BT manager dismissed an employee who was going through the menopause, on grounds of poor performance. This was despite the manager having received a GP report outlining her menopause-related health issues. The manager had also compared the experience of his own wife to the condition of his employee, wrongly assuming that the menopause affects all women the same. The tribunal found against BT, as the manager had not followed the capability policy which included seeking medical evidence. It also concluded that BT would not have treated a male in comparable circumstances who was experiencing concentration failure in the same way.

#### **Disability discrimination - Davies v Scottish Courts and Tribunals Service (2018)**

The employee was perimenopausal and was experiencing significant symptoms. To treat cystitis, she was prescribed granulated medication to put into water, which resulted in a dispute with two court users who she thought had drunk her medicated water. The employer undertook a health and safety investigation followed by disciplinary action against the employee. She was dismissed for gross misconduct despite an occupational health report which confirmed that she had perimenopausal symptoms which affected her memory of the events and concentration.

The tribunal found that the court management had not taken into account evidence of the impact the menopause had on her behaviour and concentration at the time of and following the incident. The employee was reinstated and awarded £19,000.

### Age (and sex) Discrimination - A v Bonmarche Ltd (2019)

The claimant had worked for some years as a senior supervisor at the retailer. Her manager began a bullying campaign, making fun of the fact that she was going through the menopause. He described her as a dinosaur and encouraged other employees to laugh at his derogatory remarks.

During a reorganisation, her post remained intact, yet other members of staff were encouraged to apply for her role. At this time, she took some significant sickness absence, but managed to return to her role on a phased basis working shorter shifts. Suddenly however, the claimant's manager placed her on a full shift for the following week, which she was unable to cope with. She resigned and experienced a complete breakdown due to the harassment and bullying she had endured from her manager. She was successful in her claim of age and sex discrimination and awarded £28,000.

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