

Written evidence submitted by Maternity Action (GRC0023)

Introduction

1. Maternity Action welcomes the opportunity to submit evidence to the Petition Committee's inquiry on the Government's response to COVID19. Maternity Action delivers free advice on employment rights, relevant social security benefits and access to healthcare, to pregnant women and new parents through our telephone helplines. And we undertake research and policy influencing work to protect and strengthen maternity rights, and to improve the health and wellbeing of all pregnant women, new mothers and their partners.

2. It is clear from the calls to our advice lines since early March that pregnant women and new parents in the UK workforce have faced extraordinary financial and other pressure as a result of COVID19, and that many have been further disadvantaged by a lack of clear governmental guidance to employers, a failure to pay proper regard to the specific circumstances of pregnant women and new parents in the design of the Coronavirus Job Retention Scheme (CJRS) and Self-Employment Income Support Scheme (SEISS), and a related failure to adapt existing policies and Regulations to ameliorate the impact of lockdown and the forthcoming transition out of lockdown on the most vulnerable pregnant women and new mothers in the UK.

3. In this submission, we focus on four specific issues:

- The Government's failure to deliver unambiguous advice to employers on their legal obligations to pregnant employees, and to address gaps in the CJRS and SEISS support schemes, and the NHS Test & Trace regime;
- The Government's refusal to amend the Universal Credit Regulations 2013 to ameliorate the impact of lockdown on low-income pregnant women and new mothers on Maternity Allowance;
- The case for stronger legal protection against unfair redundancy for pregnant women and new mothers; and
- The case for an extension of the employment tribunal time limit.

Pregnant women in the workplace

4. On 16 March, at a televised Downing Street press conference, the Prime Minister and the Chief Medical Officer (CMO) announced that pregnant women are classed as vulnerable and should effectively self-isolate for 12 weeks, starting that weekend. And this 'vulnerability' of pregnant women was confirmed in the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*, which came into force on 26 March. Regrettably, however, this very public advice was not followed up with any guidance to employers on how to treat pregnant employees.

5. It is evident from calls to our helplines that, in the absence of guidance from Government, some employers have treated the clinical guidance produced by the Royal College of Obstetricians and Gynaecologists (RCOG) as *de facto* official guidance. However, the RCOG guidance is *not* Government guidance and is concerned only with *clinical* issues, not the legal obligations of employers or the rights of pregnant employees.

6. This lack of follow through by ministers in relation to the Prime Minister's own very public advice, compounded by a complete abdication of responsibility on the part of the Health & Safety Executive, is deeply unfortunate.

7. For, since 16 March, our advice lines have been swamped by calls from extremely distressed pregnant women, most of them working in health and social care, pharmacies and supermarkets, whose employers have insisted that they continue to attend work in public-facing roles, especially if they are less than 28 weeks pregnant (the unhelpful distinction made in the RCOG guidance). And many of these women have been told that, if they wish to follow the Prime Minister's advice of 16 March and stay at home, they will have to take sick leave, use their paid holiday entitlement, go on *unpaid* leave, or start their maternity leave early.

8. Indeed, it is evident that, following the Prime Minister's announcement on 16 March, many pregnant workers were sent home on sick pay or unpaid leave, or pressured to start their maternity leave early, in breach of existing health & safety law, which provides that, if a pregnant employee cannot be provided with alternative safe work or work from home, she should be suspended *on full pay*. And, since the Chancellor's subsequent announcement of the Coronavirus Job Retention Scheme (CJRS), many of these pregnant women have been kept on Statutory Sick Pay (just £95.85 per week) or unpaid leave, while some or all of their fellow employees have been placed on furlough, on 80% of their normal pay.

9. This not only puts employers at risk of employment tribunal claims for unlawful deduction of wages and discrimination, but leaves pregnant women with a substantial reduction in income, adding to financial pressures at a time when family budgets are already under stress. Wrongly placing such women on sick pay or unpaid leave can also leave them ineligible for Statutory Maternity Pay (SMP) later on, which in turn can lead to reduced access to Universal Credit.

10. Due to the different treatment of Maternity Allowance and SMP in the calculation of Universal Credit awards by the DWP, women who fail to qualify for SMP and end up on Maternity Allowance can be up to £5,000 worse off over 39 weeks than new mothers in similar circumstances who qualify for SMP. We return to this issue below.

11. Furthermore, while the CJRS guidance explicitly covers "employees that need [stay off work] to look after children", there is no mention of pregnant employees in the CJRS guidance or Treasury Direction to HMRC. And it is evident from calls to our advice lines that this has led to employers refusing to furlough pregnant employees

who wish to follow the Prime Minister's advice of 16 March and stay at home, on the entirely spurious ground that 'the CJRS is only for businesses like pubs and restaurants that have had to close *completely* under lockdown'.

Caller A works in the kitchen of a (private sector) care home, and was 19 weeks pregnant when (unlawfully) sent home on Statutory Sick Pay on 17 March. A few days later, her employer told her by telephone that she was only entitled to SSP for two weeks, and would then need to return to work or take *unpaid* leave. She then asked about being furloughed, but was told (incorrectly) that the CJRS does not apply to workplaces that are still open.

12. We wrote to the Chancellor and/or other ministers about these issues on 17 and 30 March, on 7, 17, 21, 24 and 27 April, and on 18 May. In this correspondence we have urged, for example, that the CJRS guidance be amended to make clear to employers that, if a pregnant employee cannot be provided with alternative safe work or work from home, she should be suspended on full pay (as required by existing health and safety law), and the employer can then claim support in respect of that employee under the CJRS. We are surprised and disappointed not to have had a single response to this correspondence.

13. In April and early May, the Business Secretary and other BEIS ministers repeatedly claimed that "Government guidance on the CJRS makes it clear that pregnant women can be furloughed if they and their employer agree, and provided they meet the normal eligibility requirements." In fact, as noted above, there is no mention of pregnant employees in the CJRS guidance and, after their statements were challenged in written Parliament Questions in both the Commons and the Lords, BEIS ministers now say only that the CJRS guidance does not say that pregnant employees *cannot* be furloughed. Which, of course, is of no help to those women whose employers are refusing to furlough them.

14. More recently, on 1 June, following the announcement of the new NHS Test & Trace regime, we wrote to the Business Secretary, urging revision of the relevant Regulations to ensure that pregnant women and other parents-to-be do not lose entitlement to statutory maternity pay, statutory paternity pay, statutory adoption pay or statutory shared parental pay as a result of their compliance with the new NHS Test & Trace regime.

15. Under the NHS Test & Trace regime, those who have been in close contact with someone who has tested positive for coronavirus will be told to self-isolate for 14 days, and workers will be entitled to SSP for every day they are in isolation, if they meet the eligibility conditions. So pregnant women and other parents-to-be who are put onto SSP during this period risk their average weekly earnings falling below the Lower Earnings Limit (£120), rendering them ineligible for these statutory payments.

16. We first raised this issue with ministers on 30 March, in the contexts of pregnant women and other parents-to-be being put on 80% furlough pay under the CJRS, and of pregnant women wishing to comply with the Prime Minister and CMO's advice of

16 March being wrongly put on SSP, rather than being suspended on full pay. We suggested that a fair approach would base entitlements to statutory maternity pay, statutory paternity pay, statutory adoption pay and statutory shared parental pay on *usual*, full earnings, rather than 80% furlough pay or SSP of just £96 per week.

17. We raised this specific issue again on 7 April, in a letter to the Business Secretary and other senior ministers, and on 27 April, in an email to BEIS minister Paul Scully and BEIS officials. And, while we have not had any reply to that correspondence, on 24 April BEIS announced that “furloughed workers planning to take paid parental or adoption leave will be entitled to pay based on their usual earnings rather than a furloughed pay rate”.

18. In our email of 27 April to Paul Scully and BEIS officials, we welcomed this amendment to the relevant Regulations, but urged that the amendment be widened to cover SSP as well as furlough pay. Had this request been acted upon then, or when we first raised it with ministers on 30 March, there would have been no need for us to renew it this month in relation to the new NHS Test & Trace regime.

19. Most recently, on 3 June, we wrote to the Chancellor, calling for an exemption to the effective 10 June CJRS cut-off date, announced on 29 May, for new mothers and other parents/adopters currently on statutory leave and not due to return to work until after 10 June, who will otherwise be denied access to the CJRS at the end of their leave, even if their workplace remains closed and all other employees remain furloughed.

20. In its response to e-petition 306691, the Government states: “It is also possible for employers to offer furlough pay at the end of a woman’s maternity leave and pay period, in effect extending the period a woman is away from work.” However, as things stand, this will cease to be the case on 10 June.

21. Finally, it is evident from calls to our advice lines that many new mothers are currently struggling to organise safe, reliable and affordable childcare, with many unable to return to work as they had planned as a result. Organising such childcare for a new baby was a challenge before the COVID19 pandemic, and has become extraordinarily difficult in the current environment. As the TUC notes in a new report *Forced out: the cost of getting childcare wrong*, published on 4 June:

“COVID19 looks set to cause ongoing disruption to childcare provision, placing significant limits on the opening of schools and nurseries. The scale of the childcare squeeze looks set to be unprecedented. Childcare provision is a vital part of our economic recovery [and] without immediate strategic action on the part of government, many women could lose their jobs or pay as they struggle to balance work and care.”

22. The TUC report concludes that “a more limited form of the CJRS should remain in place beyond October, to support parents who are unable to return to work because of childcare responsibilities and enable them to remain on it until schools and

childcare settings are fully reopened.” Alternatively, an extension to statutory paid maternity leave would address the impact of the COVID19 pandemic and lockdown, especially in the case of women pressured into starting their maternity leave earlier than planned, and would help with the very difficult transition back to work.

Access to Universal Credit

23. Under the *Universal Credit Regulations 2013*, Maternity Allowance is treated as ‘unearned income’ and is deducted pound for pound from any Universal Credit award, whereas Statutory Maternity Pay (SMP) is treated as ‘earnings’ and is largely disregarded under the Work Allowance and 63% taper. This inequitable treatment of Maternity Allowance can result in women losing out on Universal Credit altogether, leaving them up to £5,000 worse off over 39 weeks of maternity leave than women in the same circumstances who qualify for SMP and claim Universal Credit.

24. In 2019, more than half of the some 60,000 women granted Maternity Allowance also applied for Universal Credit, and in the current circumstances the number of low-income women who fail to qualify for SMP and end up on Maternity Allowance is likely to increase substantially.

25. This is not least because, as noted above, following the Prime Minister and CMO’s announcement on 16 March that pregnant women are part of the ‘vulnerable’ group who should self-isolate, many pregnant employees were (wrongly) forced onto SSP or unpaid leave, taking their income below the Lower Earnings Limit during the eight-week SMP calculation period. So, tens of thousands of low-income women stand to lose out from the inequitable treatment of Maternity Allowance in the calculation of Universal Credit awards.

Caller B works as a bank nurse in the NHS, and has worked regular shifts at the same hospital for the last three years. The day after the Prime Minister and CMO’s announcement on 16 March, she was told by the nurse in charge that it was not safe for her to work on a ward with COVID19 patients, and was (unlawfully) sent home without pay (she should have been offered suitable alternative work or suspension on full pay for as long as her assignment would have been expected to continue).

By the time she called our advice line in April, she was 25 weeks pregnant, and had had no income for nine weeks, despite having applied for Universal Credit. Because of this loss of income she has lost her entitlement to SMP, and will need to claim Maternity Allowance, which will give her no extra support during her maternity leave as it will be deducted in full from her eventual Universal Credit award.

26. Given the vital role of Universal Credit as a ‘safety net’ for those experiencing a sudden and unexpected drop in income due to the COVID19-related lockdown – a role emphasised by Government ministers in recent weeks – a fair approach would ensure that Maternity Allowance is treated in the same way as SMP is now in the

calculation of Universal Credit awards, with those in receipt of Maternity Allowance benefiting from the Work Allowance and 63% taper. This would require only minor amendments to the *Universal Credit Regulations 2013*.

27. We have raised this issue repeatedly with successive Work & Pensions ministers since the roll-out of Universal Credit. Following the onset of the COVID19 pandemic, we wrote to the Chancellor and the Secretary of State for Work & Pensions about this and other issues on 17 March, and again on 30 March and 7 April.

28. Together with the Child Poverty Action Group, Gingerbread, the Women's Budget Group and the Fawcett Society, we again wrote to the Secretary of State for Work & Pensions on 4 May, and 101 MPs from all nine parties in the House of Commons have signed Early Day Motion 421, in support of our call for amendment of the Universal Credit Regulations 2013.

29. Most recently, on 6 May, after the Secretary of State for Work & Pensions said in the House of Commons on 4 May that she would "look into" the issue, we wrote to Dr Coffey once more, highlighting the key points as we see them. These include the fact that the uplifts of the Universal Credit standard allowances announced by the Chancellor on 20 March, and which came into force on 6 April, have *increased* the differential (which was up to £4,100 over 39 weeks prior to the uplifts).

Legal protection against unfair redundancy for pregnant women & new mothers

30. In 2015, joint research by the then Department for Business, Innovation & Skills and the Equality & Human Rights Commission found that, overall, three in four new mothers have a negative or possibly discriminatory experience during their pregnancy or maternity leave, or on return to work, with almost one in ten being treated so poorly that they have to leave their job. And, in August 2016, the Women & Equalities Committee of MPs noted that such discrimination is "getting worse".

31. Nearly four years on, it is deeply disappointing that the Government has still not taken a single legislative step to address the Committee's findings and recommendations. Indeed, ministers have not even acted upon their own July 2019 pledge to establish a Taskforce on pregnancy and maternity discrimination in the workplace. For the evidence from our advice lines and elsewhere suggests that, even before the onset of the COVID19 pandemic and associated lockdown, such limited action as the Government *has* taken on this issue since 2016 has done little if anything to improve the situation. And we fear that transition from the lockdown will generate a new wave of unfair redundancies and unlawful discrimination as businesses and organisations seek to adjust to the new economic circumstances.

32. A key recommendation of the Women & Equalities Committee's 2016 report was that the Government should implement a system of protection from unfair redundancy for pregnant women and new mothers "similar to that used in Germany, under which such women can be made redundant only in specified circumstances". And, in 2019, we worked closely with Maria Miller MP on her 10-minute Rule Bill, the

Pregnancy and Maternity (Redundancy Protection) Bill, which sought to prohibit redundancy during pregnancy and maternity leave, and for six months after the end of the pregnancy or leave, except in very limited circumstances.

33. Maternity Action has previously welcomed, as a step in the right direction, the Government's intention to include an extension of the existing Regulation 10 protection against redundancy, so as to cover a period of six months after the return from maternity leave, in the Employment Bill included in December's Queen's Speech. However, in our view Regulation 10 does not adequately protect women and, given the likely repercussions of the COVID19-related lockdown noted above, we hope that Ministers will now be prepared to go further, and implement the so-called German model, in line with the Women & Equalities Committee's 2016 recommendation. This would take the onus off women to challenge their employer, and make it much harder for employers to discriminate in the first place.

Employment tribunal time limit

34. Another recommendation of the Women & Equalities Committee's 2016 report on pregnancy and maternity discrimination was that the Government should "review the three-month time limit for bringing [an employment tribunal] claim in maternity and pregnancy discrimination cases. We suggest that six months would be a more suitable time limit."

35. As noted above, we fear that transition from the current lockdown will generate a new wave of pregnancy and maternity discrimination and unfair redundancies, as government support schemes fall away and employers seek to adjust to the new economic circumstances.

36. It is clear to us that, at such an unusually challenging time, pregnant women and new parents would benefit from having more time to prepare and submit legal challenges to such discrimination and unfair treatment through the employment tribunal system.

37. Accordingly, on 27 April, we were one of more than 20 joint signatories, including Liberty, Working Families and the Law Centres Network, of a letter to the Secretary of State for Justice, urging a temporary extension of the employment tribunal time limit. And, on 4 May, we co-signed a letter from the Fawcett Society to the Business Secretary, similarly urging a temporary extension of the time limit, from the current three months, to six months.

Maternity Action

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