



## Rigid flexibility: the work of the Working Families Legal Advice Service in 2014

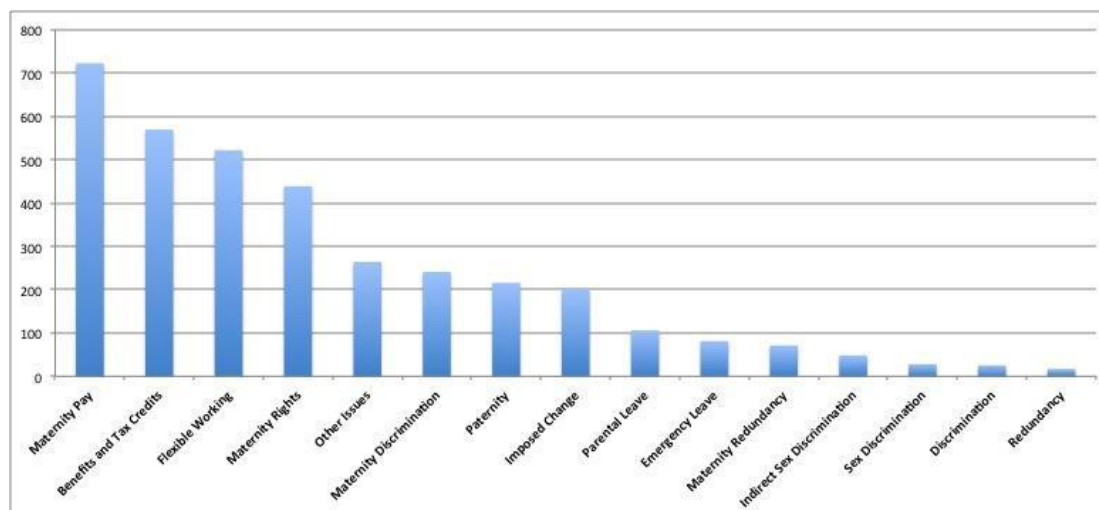
Simon is a single parent working for a provider of services to the elderly. Although employed on a zero-hours contract, Simon has always worked five full days, including Saturday and Sunday, each week. After an unavoidable change in his childcare arrangements, Simon made a formal request to swap the weekends for two days in the week. However, this has been refused by his employer, and Simon fears he may have to give up his job.

Simon is just one of the **2,766 working parents and carers** – 85 per cent of them women, and one in four a single parent – who telephoned or emailed the Working Families legal advice helpline in 2014. The helpline team provides free advice on key work-life balance rights such as maternity and paternity leave and pay, and unpaid parental leave. They provide help with requesting and negotiating flexible working – or with contesting imposed changes to an existing working arrangement – and with challenging pregnancy, maternity or other discrimination at work. And they offer advice on relevant in-work benefits and tax credits.

However, the helpline team does much more than offer information and advice: they coach callers to negotiate with their employer to find a mutually beneficial solution that, wherever possible, enables them to remain in their job. And, should the employer prove to be unreasonably intransigent, the team can support the caller through formal grievance procedures and, where appropriate, making an employment tribunal claim.

Amid the biggest living standards crisis in a generation, and with research reports by the Institute for Fiscal Studies and the London School of Economics suggesting that the Coalition Government's tax and benefit reforms have hit families with children under five harder than any other household type, 2014 was another busy year for the helpline team.<sup>i</sup>

Despite some reduced capacity due to staff changes, and an increase from six to nine per cent in the proportion of callers requiring more than one interaction, the team still managed to advise and support almost 200 more callers than in 2013. And, as in previous years, the most common issues raised by callers were: maternity leave and pay; benefits and tax credits; other maternity rights; flexible working; and pregnancy or maternity related discrimination (see the chart below).



## ***Making work pay***

With essential living costs having risen faster than wages in recent years, and childcare costs continuing to spiral upwards, many of those who called or emailed the helpline were simply struggling to find a way to make work pay. Research by the Family & Childcare Trust reveals the cost of a part-time nursery place for a child under two has risen by 33 per cent since 2010, and working parents in Britain now pay more for their childcare than in nearly every other European country.<sup>ii</sup>

Sharon called the helpline because she was pregnant with twins, and was worried about the likely cost of childcare, which her research had suggested would be in the region of £150 per day. Sharon was earning £20,000 per year, and her partner £27,000 per year. The helpline team had to advise that their initial working tax credit would be low or even nil, as it is based on the previous tax year. The couple might receive some tax credit award in respect of the tax year in which most of Sharon's maternity leave was taken, but even then help with childcare is capped at £210 per week. Sharon could see little option other than for her to drop out of work.

Nicky called the helpline shortly after returning to work from maternity leave, because she was struggling with the cost of childcare for her six-months-old child. Nicky earns just over £20,000 per year, and her partner – an apprentice electrician – £15,000 per year. The helpline team was able to confirm that Nicky is receiving the right level of working tax credit but, like Sharon above, Nicky feels the cost of childcare means she has no choice but to give up work.

Many of the women on maternity leave who contacted the helpline team were finding it difficult to manage (after the first six weeks on 90% of salary) on the weekly statutory maternity pay of £138.18, capped at below-inflation annual increases since 2013 and now equal to just 60 per cent of the national minimum wage. Others were trying to adjust their hours or working pattern upon their return to work, and once again a depressingly large



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number of them appeared to have been subjected to unlawful pregnancy or maternity discrimination by their employer.

Angie, a single parent, called the helpline while on maternity leave. Angie was in receipt of statutory maternity pay, working tax credit, and housing benefit, but was struggling to get by and was getting into debt. The helpline team had to explain that Angie's income was (just) too high for her to qualify for Income Support.

Jackie called the helpline while on maternity leave and receiving statutory maternity pay, because she wanted to take more than nine months' maternity leave but simply couldn't afford to take unpaid leave. The helpline team reports that this is a "very common call", and that many women in low-paid jobs have little choice but to return to work at the end of statutory maternity pay, and often well before.

Mandy had worked for a bank on a zero-hours contract for several months without any indication from her employer of dissatisfaction with her work. However, when Mandy informed her employer she was pregnant, her manager stated there had been complaints about her work. And, when Mandy challenged this, the manager changed the story to "you haven't been working hard enough". Mandy's hours were then reduced to zero. In effect, she was summarily dismissed.

Ella, a manager in a hospitality business, contacted the helpline team while on maternity leave, wanting help with getting agreement from her employer to return to work on a part-time basis. Despite Ella's maternity cover being employed for three days a week, Ella's informal request to work flexibly on her return had been rejected on the grounds that the three days per week cover was not working for the business, but without explaining why. Ella had then made a formal request for flexible working, but this had also been rejected, citing reasons related to "continuity" and "loss of revenue".

## ***The wrong kind of flexibility***

Many others who called or emailed the helpline in 2014 were trying to adopt a flexible working pattern – part-time working, compressed hours, or working some days at home – in response to a major change in their caring responsibilities, such as taking on the care of an elderly parent, relationship breakdown, or the onset of disability of a child or partner. And, in theory at least, this became easier in June 2014, with the extension to all employees of the existing right to request flexible working, previously limited to parents and carers. In the words of the then employment relations minister, Jo Swinson, "we want to see flexible working become the norm, not the exception".<sup>iii</sup>

Meera, a single parent in receipt of working tax credit, called the helpline to ask about benefits she would be entitled to if she left her job. Meera didn't want to give up her job, but her employer had refused her flexible working request and juggling work and childcare was proving impossible. The helpline advised that, as one of her



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children is under five, Meera could claim Income Support, but she would still be worse off overall. However, Meera felt she simply had no choice.

However, the helpline team report that if there is one stand-out feature of their work this year, it is that the notion of flexible working is simply illusory for all too many of the parents and carers who contact the team for help.

As the TUC has documented, in low-paid sectors like social care, retail, catering, cleaning and hospitality, hundreds of thousands of men and especially women are employed on contracts that offer little in the way of pay, guaranteed hours or job security.<sup>iv</sup> The onset of recession in 2008 and its aftermath appears to have heralded rapid growth in the use of zero-hours contracts and other “casualised” forms of employment by employers in these sectors. Calls and emails to the helpline team in 2014 indicate that this includes short-hours contracts, temporary fixed-term contracts, and variable shift work. And what Citizens Advice calls the “hyper-flexibility” of these jobs appears to be all one way, with all the benefit accruing to the employer.<sup>v</sup>

By their nature, such insecure jobs, with varying and unpredictable weekly hours, can result in significant variations in income, making it hard to arrange (or retain) childcare and disrupting social security payments. But they also make it very difficult if not impossible for workers to successfully request a change in their hours or working pattern to accommodate a change in their family circumstances, or to resist a problematic change in their hours or working pattern imposed – without consultation – by their employer.

For a refusal to work shorter, longer or simply different hours can easily lead to there being no work at all. And the introduction of upfront tribunal fees in July 2013, which are unaffordable to many, has made it harder than it’s ever been to challenge any unlawful action on the part of the employer. In the months immediately following the introduction of fees, claims for unfair dismissal fell by 65 per cent, and claims for sex or pregnancy discrimination fell by 80 per cent<sup>vi</sup>. In the words of one senior employment judge, it is “difficult to resist the conclusion that access to justice has been curtailed”.<sup>vii</sup>

Karen, a young single mother of a disabled child, had been working on a zero-hours contract when her employer suddenly changed her shifts to include night work. When Karen indicated that she could not work night shifts as she could not find affordable childcare, her employer insisted she work the night shifts or “find another job”.

Ahmed, a security guard, called the helpline after his employer informed him of a substantial change in his working hours and gave him four weeks to agree to the changes or “be dismissed”. Ahmed did not have the necessary two years’ service to be able to bring a tribunal claim for unfair dismissal, and the helpline team advised him that a claim for direct sex discrimination could be hard to prove, as there weren’t any women employees performing the same role.



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Denise, employed on a zero-hours contract, had had her working hours substantially cut since she had taken time off for a pregnancy-related illness. When she had challenged her employer, pointing out that several new staff had been taken on, she was told “we need people we can rely on”. The helpline team advised Denise that her treatment amounted to pregnancy discrimination, but Denise said there was no way she and her partner could afford to pay the fees of £1,200 to pursue a tribunal claim.

Working parents and carers such as these are missing out on the opportunities for more beneficial flexible working which are increasingly available to many – mostly better paid – workers as their employers recognise the business benefits from mutually beneficial flexible working. And the fact that they have a legal right to request a working pattern that matches their caring responsibilities is of little, if any, value when there is such an imbalance of power. As a recent Citizens Advice report concludes:

Work without security around terms, hours, duration or working pattern also presents unscrupulous employers with additional avenues to avoid employment rights or pressure employees into forgoing them. The ability of employers to reduce hours, change favourable shift patterns or end a temporary contract can create significant pressure on workers, which stops them defending their rights. For many, these pressures can render their rights useless.<sup>v</sup>

This is bad news not just for the workers in question, but also for the great majority of law-abiding employers, who face being unfairly undercut by less scrupulous competitors.

## ***Making a difference***

Against this rather grim backdrop, the helpline team can – and frequently does – make a huge difference to the situation of individual callers. Good information and personalised advice empowers callers to make an informed decision about whether and how to negotiate with their employer, the most effective way to challenge unlawful treatment, or how to change their working pattern in such a way to maximise their income once benefit payments, tax credit awards and childcare costs are taken into account.

For those earning low wages and receiving in-work social security benefits and/or tax credits, working out how to make such changes and yet retain an adequate income can be a complex calculation even for an experienced adviser, let alone worried working parents and carers. In 2014, one in four callers to the helpline were single parents (up from one in three in 2013), and one in three was disabled or had a disabled child or adult in their household. Such working families are particularly disadvantaged by the shortage both of local, affordable childcare, and of suitable, quality jobs offering part-time or otherwise flexible working. The debt advice charity StepChange recently reported that single parents are “significantly over-represented among our clients when compared to national figures”.<sup>viii</sup>

Tom, a single parent, called the helpline as he was struggling to reduce his working hours in order to care for his disabled teenage son. Tom had been sharing the caring



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with his former partner, but had recently been given full-time care of his son. However, Tom believed that he was unable to make a formal request for flexible working, as he had made an unsuccessful request less than a year previously (when he was still sharing the care of his son).

The helpline team was able to advise Tom that, while the law doesn't allow more than one formal request for flexible working in any 12-month period, his employer could still consider a further request, and it would be good practice on the part of the employer to do so – employers can always be more generous than the minimum required by law. The helpline team also gave advice to Tom on how best to approach and negotiate with his employer. And, having identified that Tom was not claiming Disability Living Allowance for his son the team advised him on how to do so, as the extra income might give Tom other options if he is unable to agree a practical working pattern.

Ella was advised by the helpline team on making an appeal against the refusal of her formal request for flexible working on return from maternity leave (see earlier case study on p3). They assisted her in setting out the grounds of appeal, including an indirect sex discrimination argument. The day after the appeal meeting, Ella's employer offered her an alternative role, at the same level, which she could do on a flexible basis.

Ella was delighted with this outcome, and in a letter to the helpline team stated: "Thank you for all your help! I am certain that, without me appealing, they would not have looked at further options that would work for me, and I would not have been able to appeal without your help and advice."

Christine, five months into her maternity leave and now eight weeks pregnant again, was one of dozens of women who contacted the helpline during 2014 after becoming pregnant whilst on maternity leave. The helpline team is able to advise on when and how women can return to work if they wish to maximise their pay, and on their right to maternity allowance (which often applies even if they don't go back to work before the birth).

## ***The wider impact of the Helpline team's work***

Such evidence from the helpline team's work informs and plays a key role in determining the priorities of the wider policy and campaigning activity of Working Families. During 2014, we celebrated the extension of the Right to Request Flexible Working to *all* workers with 26 weeks service (from 30 June 2014), and worked with Department for Business, Innovation and Skills officials and other organisations to help prepare both workers and employers for the introduction of shared parental leave from 5 April 2015. And, in concert with the member organisations of our Families & Work Group – a coalition of leading third sector organisations and trades unions - we drew up a 'families and work' manifesto for the General Election on 7 May 2015.



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In recent decades, the world of work has changed enormously, in many ways for the better. But for all too many families, work simply isn't working. Time-poor or cash-poor – or both – they struggle to achieve more than a barely tolerable work-life compromise. For them, the world of work has not changed anywhere near enough. And for employers, the lack of flexibility in how work is organised brings very real costs in terms of low productivity, lost skills and experience, and a reduced talent pool.

We believe the government formed after 7 May 2015 must act decisively to ensure that work genuinely works for *all*. Working parents, grandparents and carers need the twin currencies of time and money. They need equality in the home, as well as at work. They need access to justice when things go wrong. And they need proper support with childcare.

The eight key policy proposals in our manifesto include:

- Immediately **restoring the real value of statutory maternity, paternity and shared parental leave pay**, lost as a result of a one per cent cap on annual uprating since April 2013, and setting out a programme of annual, real terms increases so as to raise such pay to at least the level of the minimum wage within ten years. At the same time, the minimum wage itself needs to be both substantially increased and better enforced, which means more human and other resources for enforcement. And we need to see more employers adopting the Living Wage, with the government taking an active role in making this happen. *This would benefit helpline callers such as Angie and Jackie.*
- **Restoring access to the employment tribunal system** by scrapping the fees for claimants introduced in July 2013. To be meaningful, legal rights such as the right to request flexible working need to be enforceable. And effective access to justice is essential to the drive for gender equality, to reducing pregnancy and maternity discrimination, and to stemming the tide of casualisation and “hyper-flexibility”. *This would benefit helpline callers such as Karen, Mandy and Denise.*
- **Adopting a flexible by default approach to job design and recruitment** in the public sector, so that all jobs in central and local government are advertised on a flexible basis unless there is a specific, good business reason not to. Ministers should act and recruit business leaders as ‘flexible working’ champions, and encourage private sector employers to adopt Working Families’ *Happy to Talk Flexible Working* strapline. At present, there are simply too few *good quality* part-time or otherwise flexible jobs, putting single parents and parents of disabled children at particular disadvantage. *This would benefit helpline callers such as Simon, Karen and Meera.*
- **Appointing a cabinet-level, cross-departmental minister for childcare.** In recognition of the fact that good childcare infrastructure boosts economic activity as well as child development, this minister should be based in both the Department for Education and the Department for Business, Innovation & Skills. He or she should lead on developing a new national strategy on childcare, aimed at delivering universal access



to good quality, affordable childcare within ten years. All too often, parental choice about whether or how many hours to work is constrained or even dictated by the local availability of affordable childcare. And the childcare crunch is particularly acute for single parents, those working atypical hours, parents of disabled children, and those living in rural areas – currently, only one in four local authorities reports sufficiency of childcare for disabled children in their area.<sup>ix</sup> *This would benefit helpline callers such as Tom, Sharon and Nicky.*

The law on employment status needs to be updated to ensure that workers on zero-hours contracts, agency workers and others cannot be manipulated and unfairly treated by unscrupulous employers. *This would benefit helpline callers such as Karen and Mandy.*

The next government should also establish a new legal right to a period of adjustment leave, to enable families to weather relatively short-term life crises such as the death, serious illness, or onset of disability of a partner, parent or child, or other major change in their caring responsibilities, without having to give up work. *This would benefit helpline callers such as Tom.*

And it should enhance the potential of universal credit to ensure that work really does pay for all working families, by (a) introducing a work allowance for second earners, and (b) strengthening safeguards to prevent parents being pushed into family-unfriendly jobs by the threat of sanctions. *This would benefit helpline callers such as Nicky and Meera*

## **Conclusion**

Some of the policy proposals above could be implemented relatively quickly, while others would clearly take longer to implement fully. In the meantime, our legal helpline will continue to provide an invaluable service to parents and carers. We are therefore extremely grateful to the legal advice service's key funders, who make the work of the team possible.

In particular, we are very grateful to:

Big Lottery Fund  
Sisters Trust  
Simmons & Simmons  
London Legal Support Trust

Eleanor Rathbone Charitable Trust  
The Goldsmiths' Charity  
Matrix Chambers  
Capital Group







If you need to contact us for more advice, you can get in touch with the Working Families free legal advice service:

- by telephone on 0300 012 0312\*. The helpline is open

Monday	10am to 1pm	5pm to 6pm
Tuesday	10am to 1pm	
Wednesday	CLOSED	
Thursday	10am to 1pm	
Friday	1pm to 3pm	

But please do check our website for current opening times.

\*Our helpline number is an 0300 number and costs the same as a national call to an 01 or 02 number, and should be included in any free minutes a mobile or landline phone provider.

- by email to [advice@workingfamilies.org.uk](mailto:advice@workingfamilies.org.uk). We aim to respond to emails within two working days.

The helpline is for parents and carers and their advisers and gives advice on employment rights for parents and carers and in-work benefits for families. The helpline is run by a team of solicitors and advisers and has an Advice Quality Standard Quality Mark.

## Endnotes

- i *The effect of the coalition's tax and benefit changes on household incomes and work incentives*, Institute for Fiscal Studies, January 2015; and *The Coalition's Social Policy Record: Policy, Spending and Outcomes 2010-2015*, London School of Economics, January 2015.
- ii *Childcare Costs Survey 2015*, Family & Childcare Trust, February 2015.
- iii Jo Swinson, speech to Liberal Democrat conference, 6 October 2014.
- iv See: *Casualisation and low pay*, TUC, April 2014; and *Women's experience of casualisation*, TUC, December 2014.
- v *Second choice jobs: the real life impact of the changing world of work*, Citizens Advice, March 2015.
- vi <https://www.gov.uk/government/statistics/tribunal-and-gender-recognition-statistics-quarterly-october-to-december-2014>
- vii Shona Simon, President Employment Tribunals (Scotland), in *Senior President of Tribunals' Annual Report*, HMCTS, February 2015.
- viii *Personal debt 2014: statistics yearbook*, StepChange, March 2015.
- ix See: *Childcare Costs Survey 2015*, Family & Childcare Trust, February 2015; and *Off balance: parents of disabled children and paid work*, Working Families, February 2015.