



Striking a balance: the work of the Legal Advice Service in 2015

Overview

Working Families is the UK's leading work-life balance charity, committed to creating a world in which everyone can achieve the right balance between paid work and their home life. One of the ways that we further our mission is by providing free legal advice to parents and carers.

We advise on key employment rights including maternity and paternity leave and pay, negotiating a flexible working pattern, and using unpaid leave to deal with family commitments. Crucially, staff on the advice line coach callers on how to achieve the best solution for them *and* their employer: we're committed to helping people stay in their jobs.

The helpline is staffed for 14 hours a week and for 50 weeks of the year. We delivered more than 3,200 pieces of advice over 2,800 people asking for our help in 2015*. But we know that many more people are in need of our support - call analysis shows that each week there are at least 40 calls we cannot answer.

In 2015, hundreds of parents and carers called us about **benefits and tax credits**. In part, this may be due to ongoing changes to the welfare benefits system: 2015 saw ongoing roll-out of the Universal Credit scheme, changes to tax credits which were proposed and then dropped, and continuing uncertainty about how the new tax-free childcare scheme will work. What is clear is that this uncertainty is having a 'chilling effect' on people applying for the benefits that they need and are entitled to.

Amber† had to pay back tax credits because she was told she had been overpaid. She told us she wasn't sure how it occurred and it's even possible she wasn't overpaid at all. But she never challenged it and has accepted a repayment agreement.

When the overpayment arose she asked to come out of the tax credit system, and hasn't received any payments since. When Amber called us she was expecting another child. We identified that she would be entitled to tax credits if she were to claim again, but she is too scared to do so.

Commentators have suggested that the majority of working families will lose out from the changes in the long-term‡, and in the short-term we are hearing from parents who are anxious that they could suffer during the transitional arrangements. Perversely, this

* A third of this was email support

† All names have been changed

‡ Finch, D *Universal Challenge: making a success of Universal Credit*, Resolution Foundation 2016



uncertainty may deter parents and carers from increasing their working hours, or pursuing higher paid jobs, although achieving this is a key objective of the new system.

There is need for:

- measures to better communicate the changes to the scheme, and how families can ensure they are not worse off under transitional arrangements; and
- greater recognition of the structural barriers such as childcare that may prevent parents from working longer hours.

In 2015, we took over 100 calls about **Shared Parental Leave** - a new way for parents to share working and caring in the first year of their new child's life. Working Families successfully campaigned for the introduction of this new right because we think it gives parents more choice and means more fathers will have a realistic opportunity to take a longer period of paid time off to spend with their new child.

But as the policy came into force, we heard from a number of parents who didn't understand how the scheme worked, what the implications are for self-employed parents, or who were having problems getting their employer to agree to their request.

Mark wanted to take Shared Parental Leave to spend time with his new son and his wife. His employer told him that he couldn't take the leave until his wife returned to her job from maternity leave.

When he called us, we explained that this isn't the case and that both parents can take time off together, as long as the total time off taken by the family is not more than 52 weeks. We worked with Mark to explain to his employer how the law works, and to negotiate so Mark was able to take leave as he had planned.

Our research[§] with employers shows that we're beginning to see the green shoots of culture change towards shared care, but there's clearly still a knowledge gap about how the scheme works. We've been told by a number of our callers that they've found Working Families the most useful source of available advice on Shared Parental Leave.

- There is a role for both government and employers to explain not only how shared parental leave works, but also to make clear that this initiative is supported and encouraged. We saw an uplift in calls following government communication about the new scheme.
- But, if shared parental leave does not include enhanced pay it will always be a second class option – in the longer term, we are calling for a properly paid period of leave just for fathers.

[§] Working Families (2016) *Shared Parental Leave: the perspective from employers*



Uniquely, our advice service offers specialised support to **parents of disabled children who work or want to work**. The misconception that at least one parent will give up work if their child is diagnosed with a disability continues to persist: but our research** found that nine out of ten parents caring for a disabled child currently not in paid work would like to be. Childcare continues to be a major hurdle for working parents with disabled children.

Caroline is a mother of two disabled children. She was about to return to work with her large employer after a period of unpaid carer's leave. When she checked that she would still be working the family-friendly hours she had worked before, she was told that if she needed to take one of her children to an appointment it would be treated as unauthorised absence and she would be penalised. In their words, there was 'no availability' for her to take time off in such circumstances.

We explained that she couldn't be penalised for taking leave, albeit unpaid, for dependants in an emergency and that having notice of an appointment didn't necessarily mean it wasn't an emergency. We also advised Caroline that if she had 21 days' notice of any appointment she could use parental leave. All working parents are entitled to 18 weeks unpaid parental leave for each child to take before they are 18, and parents of children entitled to Disability Living Allowance are able to take parental leave in units of one day.

** Working Families (2015) *Off balance: parents of disabled children and paid work*



Issue in focus: pregnancy and maternity discrimination

2015 was the year that the Equality and Human Rights Commission published research showing that 54,000 pregnant women and new mothers a year are treated so badly they are left with no option but to leave their jobs. We take calls from women experiencing this type of discrimination every single day that our helpline is open.

The Westminster Government has said they will be working with employers to secure changes in practice. But this approach is largely reliant on awareness-raising: something that isn't likely to strike a chord with the rogue employers we hear about on our helpline.

Lucy worked as clerk for an insurance company under a fixed-term contract. She was highly praised by her boss and told her contract would be renewed. She then became pregnant, told her boss and a few weeks later was told that actually her contract would not be renewed. When she asked why, she was told that she did not work to the expected standards. No concerns had ever been raised about her performance before.

This meant that Lucy wasn't entitled to Statutory Maternity Pay. She applied for a number of other jobs without success, and was in a very difficult financial situation by the time she was six months pregnant.

With our help, Lucy lodged an employment tribunal claim for unfair dismissal and sex discrimination. She was threatened throughout the process by the employer's representative and came very close to withdrawing her claim. In the end the employer offered to settle shortly before the hearing and paid her more than seven months' salary in compensation. Lucy told us that without the helpline's coaching and support it's unlikely she would have started, or continued with, her claim.

The experience of our callers shows that it's too easy for employers to sow the seeds of doubt about what the law really says – for example, suggesting that it doesn't apply in the particular situation because the employer is smaller, or the employee hasn't worked in the role long enough, or that business reasons mean that the employer has to implement changes which detrimentally impact women in maternity.

Neeta works for a large retailer. When she came back to work after maternity leave, she was told that she couldn't have her old hours back because she had taken more than 26 weeks' leave. The employer had taken someone else on to do her hours and told Neeta she couldn't expect to have exactly the same job back.

We advised that this wasn't lawful. After more than 26 weeks of maternity leave, the employer still has to give a woman her job back, on the same terms and conditions as before, unless this is 'not reasonably practicable'. We explained to Neeta that 'not reasonably practicable' didn't apply here because



the employer could have covered her established hours on a temporary basis, with the assumption that she would return.

We encouraged her to continue negotiating with her employer and to raise a grievance if necessary. After a few weeks, the employer backed down and agreed Neeta could return on her old hours. They also issued new guidance to all their staff explaining the right to return in full so that other women do not lose out in the future.

We often hear about health and safety issues in pregnancy on our advice line. Most commonly, women we speak to have been encouraged to take sick leave - or to use up their annual leave - rather than their employer making adjustments to their role, hours, working pattern or duties to enable them to continue working. This can bring serious financial consequences both in the short term - where the individual may receive only statutory sick pay - and further down the line in terms of eligibility for maternity pay.

Aisha's job included night shifts. When she became pregnant, her manager refused to rearrange her shifts even though there were risks involved. To deal with the problem, Aisha swapped some of her shifts with a colleague but then her manager put an end to that too.

In the end, Aisha had to call in sick when she had a night shift due to the risk involved. She didn't have a work-place risk assessment until later in her pregnancy and she ended up using her sick pay when adjustments could easily have been made.

Since up-front fees were introduced in 2013, we have seen a dramatic decline in the number of women who are able or willing to take their employer to a tribunal even though they were experiencing pregnancy or maternity discrimination. Official figures suggest that the number of sex discrimination claims has dropped by three quarters and that pregnancy-related claims have dropped by half^{††}. This is reflected in our experience: the number of callers pursuing claims has fallen close to zero. There is no link between the merits of cases and the likelihood that women will press ahead for tribunal: rather, the decision appears to be much more based on financial considerations.

Camilla was on a zero hours contract but had regularly been working thirty hours per week on shifts in a hotel. She fell ill and discovered she was pregnant. When she returned to work after this maternity-related sickness, she was suddenly told there were no shifts available for her.

When she called us, Camilla explained that she had struggled to save just over £3,000 to meet the expenses of a new baby. This meant that she would have to pay fees to go to a tribunal. As this would mean spending nearly half of her hard-won savings she decided not to lodge a claim despite having, in our opinion, a good chance of success.

^{††} Equality and Human Rights Commission (2016) *Pregnancy and maternity discrimination in the workplace: recommendations for change*



In November 2015, we raised our concerns about the impact of tribunal fees with the House of Commons Justice Select Committee^{##}. There is no doubt that the fees are discouraging good claims and therefore obstructing access to justice for pregnant women and new mothers. We have seen a rising category of rogue employers who consider that they do not have to – and will not – obey the law unless forced to do so and who are well aware that the fees create a major barrier to people bringing claims against them.

Clearly, many pregnant women and new mothers are in vulnerable situations where they may feel unable to challenge their employer, or are simply too busy with their new families. Added to which, the consequences of discriminatory treatment may only become clear months down the line when, for example, women may realise they are not eligible for full maternity pay because they have been on sick pay, or that there have been unfair changes to their role while they have been on maternity leave.

The shocking figure of 54,000 women a year leaving their jobs will continue to rise if the current barriers remain in place. We urgently need:

- an end to employment tribunal fees; and
- an extension to the three month time limit for pregnant women and new mothers to bring a tribunal case so that they're able to access justice at a time when they're in a position to pursue it.

For advice on employment rights and in-work benefits for parents and carers call 0300 012 0312 or email advice@workingfamilies.org.uk. The helpline is open Mondays 10am to 1pm and 5pm to 6pm, Tuesday 10am to 1pm, Thursday 10am to 1pm and Friday 1pm to 3pm

If you have any queries about this briefing, or would like further information, please contact Mubeen Bhutta, Head of Policy and Campaigns on 020 7017 0070 or email Mubeen.bhutta@workingfamilies.org.uk

^{##} We submitted written evidence to the committee in October 2015 and oral evidence in November 2015



Legal Advice Service 2015



on average, we helped 55 people every week



top five issues



Benefits and tax credits Maternity pay Maternity rights Flexible working Discrimination



"Without your help I would not have had the confidence to challenge my employer...I'm thrilled with the outcome and to me makes the fight I had so worthwhile to know that future women won't suffer that same treatment."

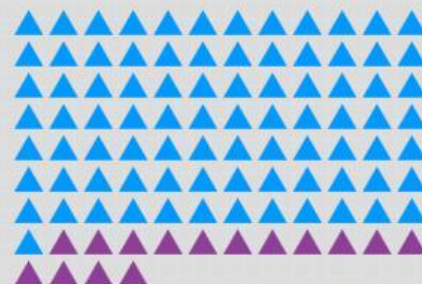
80%



fewer people asking for our help with tribunals since fees came in



our reach



0300 012 0312 advice@workingfamilies.org.uk

