



Equality and Human Rights Commission

Pregnancy and maternity discrimination in the workplace:

Recommendations
for change



Equality and
Human Rights
Commission

Supporting pregnant workers

84%

84% of employers believe that supporting pregnant workers and those on maternity leave is in the interests of their organisation.



77%

However, 77% of mothers say they have had a negative or possibly discriminatory experience at work during their pregnancy, maternity leave and/or on their return to work.

This includes being dismissed, demoted, harassed by colleagues or managers, refused training opportunities, threatened with dismissal or put under pressure to leave.
This could be as many as 390,000 women affected each year.

So what needs to change?

Government to show leadership for change by working with employers to attract the best talent and create conditions for their staff to perform well.



Improving employer practice to promote family-friendly workplaces, effective management and open communication.



Improving access to information and advice so that women and employers understand their rights and obligations.



Improving health and safety so that employers manage risks effectively and women are not forced to choose between their health or the health of their unborn child.



Improving access to justice by making changes to the tribunal fee system and considering increasing the time limit to bring a claim from 3 to 6 months.



Monitoring progress to track the pace of change towards creating fairer workplaces.



Recommendations

Discrimination against pregnant women and new mothers has been unlawful in Great Britain for thirty years and we have a strong legal and policy framework promoting family-friendly workplaces.

Government and employers recognise that women are an essential part of the workforce, contributing talent, skills and drive that make businesses productive. In spite of this, many women report that their experience at work changes for the worse when they are pregnant, on maternity leave or when they return to work from maternity leave. Research commissioned by the Department for Business (BIS) and the Equality and Human Rights Commission (EHRC) found that:

- around one in nine mothers (11%) felt they had to leave their job (if scaled up to the general population this could mean as many as 54,000 mothers a year)
- one in five mothers said they were harassed by their employer and/or colleagues
- more than half said they experienced negative consequences to their job opportunities and careers as a result of having a flexible working request approved, and
- 4% (around 21,000 if scaled up to the general population) said they left their jobs because workplace risks were not tackled.

These experiences adversely affect the lives of individuals and their families, but also mean that businesses lose skilled and productive workers.

These findings emerge from independent research which drew on the experiences of more than 3,000 mothers and more than 3,000 employers across Great Britain.

The research found that most employers, across a range of industries, say they are firm supporters of women during and after their pregnancies and find it easy to comply with the law. Yet this commitment does not appear to translate into practice.

The issues identified by this research, and their scale, demand urgent attention. As the Women's Business Council pointed out, 'while women need work, work also needs women'. For businesses to thrive they need to use the talents, skills and experience of all employees. If, as the research suggests, up to 54,000 pregnant women and new mothers a year felt that they had to leave their job because of a pregnancy or a maternity-related issue, this represents not only lost opportunity for these women and their families, but also lost skills and productivity for employers on a significant scale.

So what needs to change?

We identified six areas for action:

Recommendation One: Leadership for change

so that employers attract the best talent, create the conditions for their staff to perform well, and avoid the loss of skills and experience which can result from misconceptions and poor practice in relation to pregnant workers and new mothers.

Recommendation Two: Improving employer practice

to promote family-friendly workplaces, effective management and open communication.

Recommendation Three: Improving access to information and advice

so that women and employers understand their rights and obligations.

Recommendation Four: Improving health and safety management in the workplace

so that employers manage risks effectively and women are not forced to choose between their job and their health or the health of their unborn child.

Recommendation Five: Improving access to justice

by removing barriers to women raising complaints.

Recommendation Six: Monitoring progress

to track the pace of change towards creating fairer workplaces.

We believe the UK, Scottish and Welsh Governments, employers, regulatory bodies and the voluntary sector across Great Britain all have a role to play to make this happen. We call on them to join us in making British workplaces the best they can be for pregnant women and new mothers and to ensure that female talent is nurtured and valued rather than wasted.

We will review and report on progress in implementing these recommendations.

Recommendation One:

Leadership for change

84% of the employers surveyed, across a range of industries, said they believed that supporting pregnant workers and those on maternity leave is in the interests of their organisation.

However, 77% of the mothers who were interviewed reported they had a negative or possibly discriminatory experience at work during their pregnancy, maternity leave or on their return to work, for example being dismissed, demoted, harassed by colleagues or managers, refused training opportunities, threatened with dismissal or put under pressure to leave. If scaled up to the general population, this would amount to as many as 390,000 women affected each year.

Most employers were positive about managing the statutory rights relating to pregnancy and maternity. However, some employers thought these were unreasonable, saw pregnancy as a cost burden, and believed pregnant women and mothers were less interested in career progression and promotion and were less committed to work.

Small businesses found it more difficult than larger businesses to manage some statutory rights. For example, among the small businesses surveyed almost one in five (18%), compared to 3% of large businesses, found additional maternity leave (the last 26 weeks of statutory maternity leave) difficult to manage, and one in six employers (16%) felt that small businesses lacked the resources to cope with this.

77% of mothers
reported they had a negative or possibly discriminatory experience at work.
Of these, 28% raised concerns,
3% took a grievance, less than 1%
lodged a complaint with a tribunal.



Leading businesses are keen to develop their talent pipeline, recruiting, developing and retaining the best candidates to ensure they benefit fully from the investment they make in staff. We need strong leadership from Government, employers and business representative groups to articulate the business benefits that come from attracting and retaining talent, including pregnant women and new mothers, to make the case for change, and to support smaller businesses to do what is needed.

We recommend that:

UK Government, Scottish Government and Welsh Government

- work in partnership with the Commission and business leaders to:
 - develop a joint communications campaign aimed at employers, underlining the economic benefits of unlocking and retaining the talent and experience of pregnant women and new mothers, and
 - demonstrate creative approaches to attracting, developing and retaining women in the workforce before, during and after pregnancy.

UK Government

- explores the feasibility of a collective insurance scheme to support small and medium-sized employers to spread the cost of providing enhanced maternity pay (where they wish to do so) and cover for maternity leave.

Recommendation Two:

Improving employer practice

There has been a significant raft of family-friendly legislation over the past decade which helps individuals balance home and work life and supports employers in retaining valuable staff.

For example, the UK Government extended the right to request flexible working to all employees, but the research findings suggest that mothers commonly felt there was 'a price to pay' for working flexibly. Around half of mothers who were interviewed said they experienced unfavourable treatment as a result of having a flexible working request approved, including being given fewer opportunities than other colleagues at the same level or more 'junior' tasks than previously.

Many employers made assumptions about the cost of women to their workplace; 70% of the employers surveyed believed women should declare upfront during recruitment if they are pregnant and some said they were unwilling to employ pregnant women. A quarter of employers felt it was reasonable to ask women about their plans to have children at interview.

51%

of mothers who had a flexible working request approved said it resulted in negative consequences.



4%

of employers had sought information or guidance on dealing with flexible working requests



70% of employers

believed women should declare upfront during recruitment if they are pregnant.



Mothers were especially positive about their experience at work if the attitude of managers and general culture of the workplace was supportive about pregnancy and work-life balance. The most positive experiences were described by mothers who felt they had supportive line managers. Treatment by a line manager generally had more impact (whether positive or negative) than the role of human resources. However, over half of employers (55%) interviewed said that they provided no guidelines, training or support to their managers on managing pregnancy and maternity-related issues.

Employers are legally¹ required to provide somewhere for breastfeeding employees to rest. Although not set out in law, the Health and Safety Executive and the European Commission recommend that employers should provide:

- access to a private room where women can breastfeed or express breast milk
- use of secure, clean refrigerators for storing expressed breast milk while at work, and
- facilities for washing, sterilising and storing receptacles.

Under half of employers (47%) who took part in the research knew what they would need to do to accommodate mothers' requests to express milk or breastfeed at work, and two in five employers (42%) had no facilities for breastfeeding.

To improve employer practice we need clarity in the law to provide a framework for employers to build fair and diverse workplaces. Employers also need to provide guidance and training to their managers so they manage a woman through her pregnancy and maternity leave with ease, and employers need to consider how they can better support breastfeeding mothers who return to work.

The legal framework protecting pregnant women and new mothers in the workplace is extensive, but employers need greater clarity on their obligation not to discriminate in the recruitment process. We will produce clear practical examples to help employers understand their obligations and what this means in practice.

We recommend that:

UK Government

- considers the most effective intervention and implements the changes required to prevent employers seeking information about women's pregnancy, motherhood or plans to have children that could be used to discriminate unlawfully during recruitment.

UK Government, Scottish Government and Welsh Government

- work in partnership with the Commission to identify effective interventions that enable employers to manage and make best use of the talent and experience of pregnant women and new mothers and to ensure that employers are aware of and comply with their legal obligations.

Acas

- works with the Commission to raise the awareness of employers across England, Scotland and Wales of existing guidance on recruiting and managing pregnant women and maternity-related issues and absence, and produces training for line managers.



Overall,
3 out of 10

workplaces (29%) provide guidelines, training or other support for managers involved in recruitment and those who did were less likely to believe that women should declare during recruitment if they are pregnant.

Recommendation Three:

Improving access to information and advice

The research findings highlighted gaps in employers' and employees' understanding of the rights of pregnant women and women returning from work following maternity leave, and employers' obligations towards them.

One in 10 employers who responded to the survey reported low awareness of pregnant women's rights and two-thirds of all employers spoken to (67%) had not sought information or guidance. Only 4% had sought information on issues such as time off for antenatal appointments or dealing with flexible working requests, yet 10% of the mothers surveyed experienced problems when they needed time off for antenatal appointments and 51% said they experienced negative consequences after approval of a flexible working request.

Over three-quarters of mothers who were interviewed and said they had a negative or possibly discriminatory experience did not raise this with their employer or line manager, either formally or informally. Mothers said a lack of information about their rights made it difficult for them to discuss a complaint with their employers. Mothers who resolved issues with their employer at an early stage said advice from organisations such as Acas and Citizens Advice or a trade union, or specialist advice providers such as Maternity Action, had helped them reach agreement.

To help employers and employees to understand their rights and obligations and resolve issues early on they need clear, comprehensive and consistent information and advice.

We recommend that:

UK Government

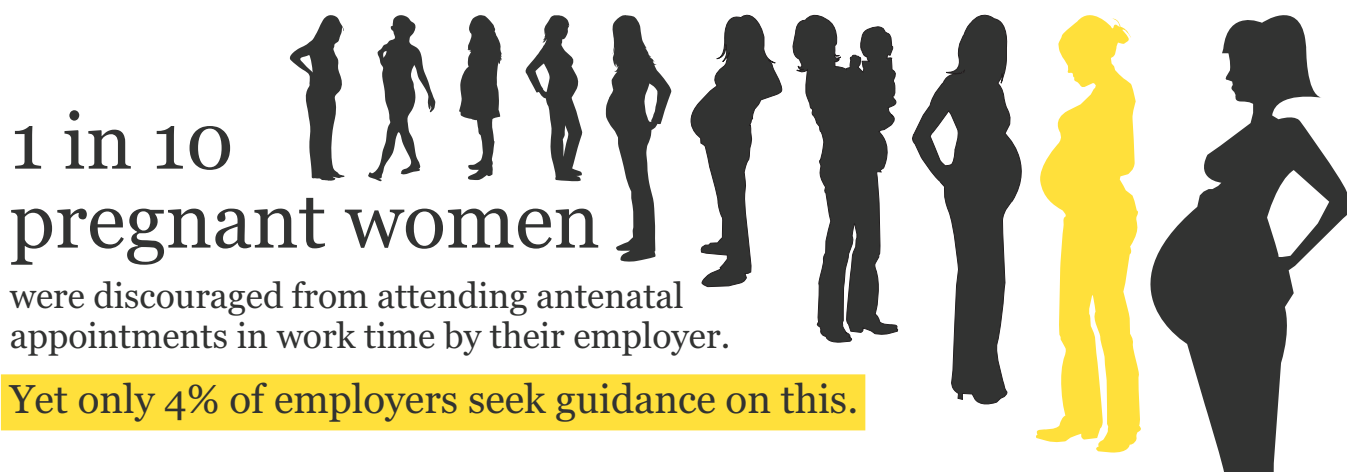
- reviews the availability of and women's ease of access to employment advice services and addresses any barriers identified
- uses existing information channels, such as health professionals, and existing mechanisms, such as MAT B1 Forms, to deliver timely and relevant information on employment rights and obligations to pregnant women and employers, and
- creates a single comprehensive online site, drawing on appropriate advice sector expertise, so that employers and individuals can easily find out about their rights, responsibilities and good practice in relation to pregnancy and maternity in the workplace.

Citizens Advice

- works with the Commission to support the network of Citizens Advice Bureaux in England, Scotland and Wales to provide advice and information on pregnancy and maternity discrimination.

TUC/Wales TUC/STUC

- ensure trade union representatives are able to provide good quality advice and information on pregnancy and maternity discrimination.



Recommendation Four:

Improving health and safety

Although employers are not legally required to conduct a specific risk assessment once an employee informs them they are pregnant, they must make sure that working conditions do not put the health of pregnant women and new mothers at risk.

The research revealed that 4% of mothers reported they left their job as a result of workplace risks not being resolved; if scaled up to the general population this could mean as many as 21,000 mothers a year. These women were more likely to work in the Hotels and Restaurants (8%) or Health and Social Work (6%) sectors.

Nearly two in five women (38%) said their employer did not initiate a conversation about risks when they informed them of their pregnancy, and around one in five mothers (19%) said they identified risks their employer had not. This left some mothers thinking their employers were not interested in their welfare. Two in five mothers (41%) felt there was a risk to, or impact on, their health or welfare: around 210,000 every year. This rose to over half of all mothers (54%) in the Arts, Culture and Leisure sector.

Almost all employers said they understood their legal responsibility to conduct general health and safety risk assessments, and that this included ensuring a safe working environment for pregnant women and mothers returning from maternity leave. However, employers had varied approaches to ensuring a safe working environment for pregnant women and new mothers. Some employers felt that after a woman had told them she was pregnant, they should carry out a specific risk assessment, regularly reviewed as the pregnancy progressed; others felt general risk assessments covering all employees were sufficient.

To ensure women work safely when pregnant and on return to work following maternity leave, employers need more clarity about their obligations, focusing on the need to create a culture of ongoing, open discussion between managers and mothers about risks and ways to mitigate them.

We recommend that:

Health and Safety Executive

- review their guidance to employees and employers to ensure it emphasises the importance of ongoing and open communication between employers and new and expectant mothers in enabling employers to comply with their obligations to:
 - ensure the general risk assessment includes an assessment of the risk to new and expectant mothers, where applicable
 - inform the employee of any risks identified to her health and safety and the relevant preventive and protective measures, and
 - review the general risk assessment where there is reason to suspect it is no longer valid
- address the issues raised in the research findings about health and safety in particular industry sectors and occupational groups by working with stakeholders in these areas to improve practice, and
- raise employers' awareness of their health and safety obligations to pregnant women and new mothers, and awareness of existing guidance on breastfeeding.

Only 4%
of employers

had sought information or guidance
on health and safety.



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Recommendation Five:

Improving access to justice

Over three-quarters of the mothers surveyed (77%) reported potentially discriminatory or negative experiences, yet only around a quarter (28%) discussed this with their employer and only 3% went through their employer's internal grievance procedure.

Many mothers were reluctant to raise complaints:

- they feared the impact on their relationships with their colleagues or employer
- they felt nothing would change
- their own stress and tiredness was a barrier
- lack of information about their rights or lack of clear complaints procedures made it difficult, and
- some said the financial cost of pursuing a complaint was a hurdle.

Very few mothers pursued a claim to an Employment Tribunal – just 18 of the 3,254 mothers surveyed (less than 1%) had done so. For tribunal claims lodged on or after 6 May 2014, it is a legal requirement in most cases for a claimant to have made an Early Conciliation Notification to Acas. The aim of Early Conciliation is to give the parties a chance to settle potential claims through Acas to avoid Employment Tribunal proceedings. Since the introduction of fees of up to £1,200 in 2013 to take a case to Employment Tribunal, the number of complaints of sex discrimination included in an Employment Tribunal claim has dropped from 18,814 in 2012/13 to 4,471 in 2014/15 (a 76% decrease) and pregnancy-related cases from 1,589 in 2012/13 to 790 in 2014/15 (**a 50% decrease**).

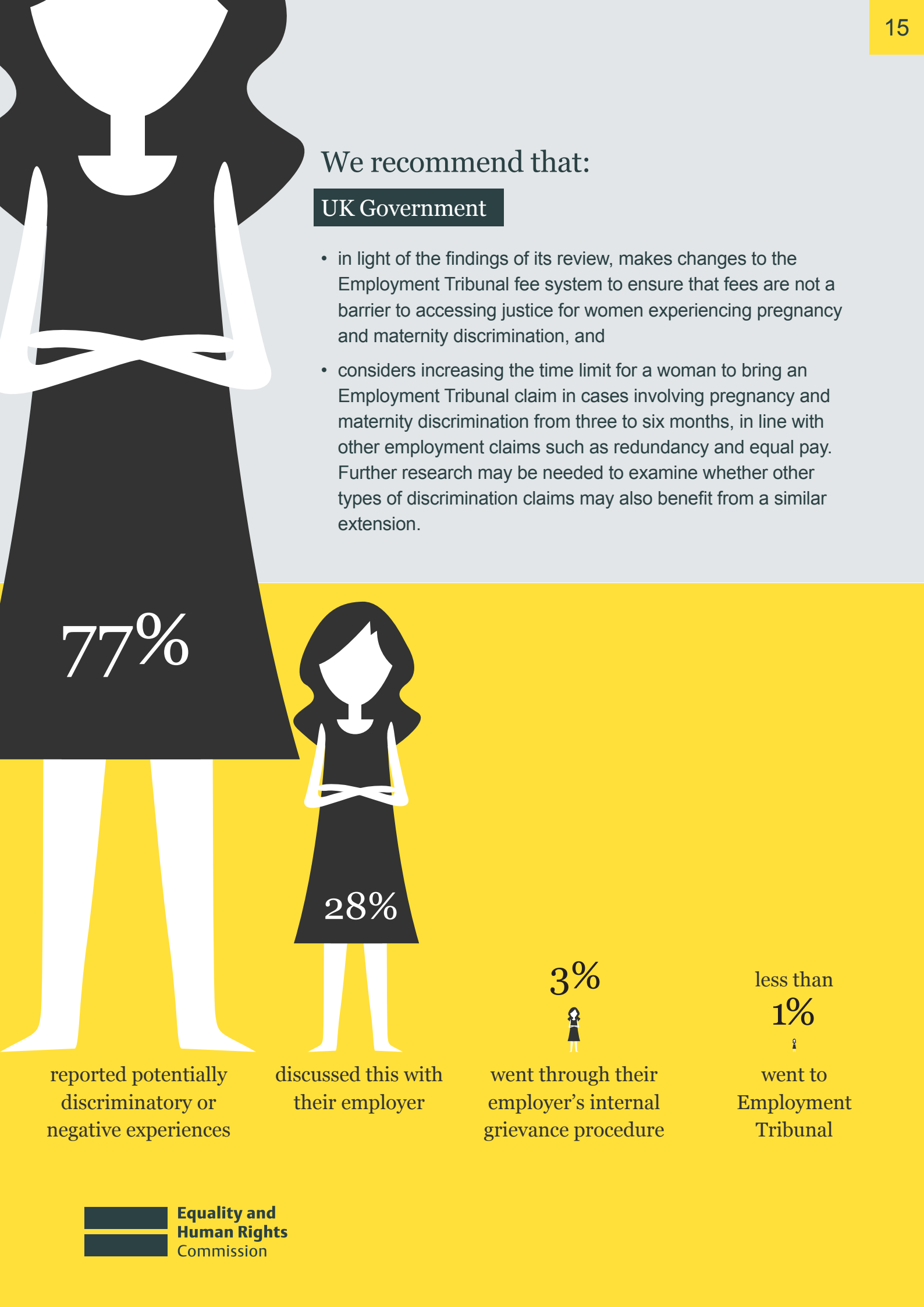
Some mothers sought advice about financial support to pursue a claim against their employer, but most were not advised about the conditions for fee reductions. The Government is currently conducting a review of the impact of Employment Tribunal fees, which is ongoing.

It is good practice for employers to encourage communication and to try to resolve problems early, but then, if this does not solve matters, to provide a clear complaints procedure. When this fails, employees need to be able to secure redress through access to Early Conciliation and, if necessary, the Employment Tribunals.

We recommend that:

UK Government

- in light of the findings of its review, makes changes to the Employment Tribunal fee system to ensure that fees are not a barrier to accessing justice for women experiencing pregnancy and maternity discrimination, and
- considers increasing the time limit for a woman to bring an Employment Tribunal claim in cases involving pregnancy and maternity discrimination from three to six months, in line with other employment claims such as redundancy and equal pay. Further research may be needed to examine whether other types of discrimination claims may also benefit from a similar extension.



77%

reported potentially
discriminatory or
negative experiences

28%

discussed this with
their employer

3%

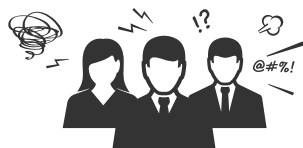
went through their
employer's internal
grievance procedure

less than
1%

went to
Employment
Tribunal

Reasons why pregnant women and new mothers don't raise complaints with their employer about their negative experience

Fear of creating bad feeling with their colleagues or employer



Fear of adverse consequences



Stress and tiredness



Belief nothing would change



Lack of information about rights



Lack of clear complaints procedures



Guilt



The financial cost of pursuing a complaint



Recommendation Six:

Monitoring progress

The research revealed that pregnant women and new mothers face worrying levels of discrimination and disadvantage at work.

Discrimination is unlawful, but it is also bad for business. These recommendations set out a framework to help drive the progress and improvement that will benefit business and employees. We want to see employers provided with legal clarity, guidance and training so they manage pregnancy and maternity in their workforce positively and make best use of their female talent. We also want mothers to feel their experience has improved.

We need to ensure that change is happening at the right pace and in the right place, so we will review and report on the progress of the UK, Scottish and Welsh Governments, employers and regulatory bodies in implementing these recommendations in a year's time.

Transparency shines a light on the effectiveness of our dispute resolution system and holds to account employers who ignore their legal obligations. But information on Early Conciliation cases that involve pregnancy or maternity discrimination is not routinely published and it is difficult to find out the outcome of Employment Tribunal judgments, so we will publish the names of all employers who lose and do not appeal an Employment Tribunal decision which involves pregnancy or maternity discrimination or a breach of other rights related to pregnancy or maternity.

We recommend that:

UK Government, Scottish Government and Welsh Government

- take action to include relevant questions about pregnancy and maternity discrimination and disadvantage in planned surveys of employers and mothers, report on the outcomes and keep under consideration what further research or action may be needed to address enduring areas of discrimination and disadvantage.

Acas

- considers monitoring and publishing the number and outcome of Early Conciliation cases in England, Scotland and Wales that involve pregnancy or maternity discrimination or a breach of other rights related to pregnancy or maternity.

10 years

have passed between these two research reports and the proportion of women experiencing disadvantage has increased. We need to take action now.

Equal Opportunities Commission research:

45%

reported dismissal or disadvantage at work.

EHRC/BIS research:

77%

report negative or possibly discriminatory experiences at work.



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Contacts

This publication and related equality and human rights resources are available from the Commission's website:

www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website **www.equalityadvisoryservice.com**

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Questions and comments regarding this publication may be addressed to: **correspondence@equalityhumanrights.com**.

The Commission welcomes your feedback.

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