

Government rejects the recommendation to expand discrimination law to cover menopause

The Government has published its response to the Women and Equalities Select Committee report which had recommended significant changes to the law on menopause in the workplace. In this briefing, we outline which reforms the Government has accepted and rejected.

What was the purpose of the menopause inquiry?

On 23 July 2021, the House of Commons Women and Equalities Select Committee (the **Committee**) opened an inquiry into the impact of menopause in the workplace. The purpose of the inquiry was to receive evidence on current workplace practices and views on whether existing discrimination legislation sufficiently protected workers going through the menopause, or whether more needed to be done. Currently, discrimination against workers going through the menopause is only covered by the Equality Act 2010 where it is connected to one of the existing nine protected characteristics such as age, sex and disability. The inquiry also looked at whether employers should be compelled to put in place workplace menopause policies.

The inquiry closed on 17 September 2021 and the Committee published its [report](#) on 28 July 2022. The report made a number of recommendations in the fields of health, workplace

and equality. In this briefing we consider the workplace and equality recommendations only.

The Government published its response on 24 January 2023, setting out which recommendations it would take forward and which had been rejected.

Which recommendations will be taken forward?

Appointment of a Menopause Ambassador

The report said that the Government had a key strategic role in helping businesses and should lead the way in developing and disseminating good practice on managing the menopause at work. The report asked the Government to appoint a “menopause ambassador” to work with stakeholders from business, unions and advisory groups to encourage and disseminate awareness, good practice and guidance to employers. The menopause ambassador should publish biannual reports on the progress made by businesses, including real life examples of good and poor practices.

The Government has accepted this recommendation “in principle”. In practice, it proposes to appoint a “Menopause Employment Champion”, something that it had, in fact, [already promised](#) in July 2022. As yet, no such champion has been appointed.

The response envisages that the champion will spearhead a campaign outlining the benefits of recruiting and retaining menopausal workers. The appointment will be a DWP ministerial

appointment, reporting to and consulting with DWP ministers at regular intervals. The Government says it is supportive of biannual progress reports, but this would need to be determined once the appointment had been made. It is also envisaged that the champion will work with the Women's Health Ambassador on the issue of menopause and employment, with the champion focusing on matters affecting employers and the ambassador engaging with a broader range of stakeholders.

Introduction of Day 1 right to request flexible working

Flexible working was referred to repeatedly in the evidence before the inquiry as being particularly helpful for menopausal employees. Back in February 2021, the Committee had recommended the introduction of a "Day 1" right to request flexible working and later that year the Government opened a consultation on the issue. That consultation closed on 1 December 2021, and the Government's response was published in December 2022. In that response, the Government committed to make the right to request flexible working a Day 1 right, as well as supporting a Private Member's Bill which would make a number of other changes to the flexible working regime. You can read more about that response [here](#).

The report recommended that the Government bring forward legislation before the end of the current Parliament to make the right to request flexible working a Day 1 right for all. In addition, the Government was urged to issue guidance encouraging employers to grant all reasonable requests for flexible working rather than placing the burden on the employees to justify their requests.

Unsurprisingly, in light of the response to the flexible

working consultation, the Government has accepted this recommendation, although no timeline for the new legislation has been provided. New guidance may be introduced but no firm commitment is made.

Publication of new guidance on the law

Despite there being existing legal obligations under health and safety and equality laws, the report noted that neither the Health and Safety Executive (HSE) nor the Equality and Human Rights Commission (EHRC) had published any form of guidance on their websites in respect of the menopause. The report recommended that both the HSE and the EHRC publish new guidance on the legal considerations when supporting employees experiencing menopause.

The Government has accepted the recommendation for the HSE to publish guidance. It refers to guidance on supporting disabled people and those with long-term health conditions which is already due to be published by the HSE. It is said this guidance could apply to menopausal workers.

As far as the EHRC is concerned, the response says that as an independent public body it will be for the EHRC to consider what is needed. The response says it will share the recommendation with the EHRC.

Which recommendations have been rejected?

Publication of model menopause policies

Evidence to the inquiry was divided on whether workplaces should be legally required to have menopause policies. The Committee was not persuaded that a legal requirement for every workplace to have a menopause policy would embed meaningful change. However, the report recommended that the Government produce a model menopause policy for employers, which should cover as a minimum:

- how staff can request reasonable adjustments and other support;
- advice on flexible working;
- sick leave for menopausal symptoms; and
- provisions for education, training and building a supporting culture.

The Government has rejected this recommendation as it does not believe a model menopause policy is necessary at the moment. It asserts that “many organisations” have introduced workplace policies (without providing any indication of the number or percentage of UK employers that have done this). It points to guidance for employers published by the CIPD and Acas and other initiatives being pursued by the Government related to occupational health and women’s health more generally. In light of all of this the Government rejects the recommendation on the grounds it would “*avoid the risk of duplication of efforts*”.

Large public sector employer to trial specific “menopause

Leave”

The report noted that menopausal symptoms can have a significant, and sometimes debilitating, impact on women at work, which often led to periods of sickness absence. The presence of rigid sickness absence thresholds may, in turn, trigger formal absence management processes which lead to women leaving the workplace.

To counter this problem, the Committee asked the Government to work with a large public sector employer with a strong public profile to develop and pilot a specific “menopause leave” policy and publish proposals for a wider roll out within 12 months of the commencement of the scheme.

The Government has rejected this recommendation on the basis that it does not believe it is necessary. It says their policy aim is to support menopausal women remain in the workplace and to ensure that employers are well equipped to support their workforce during the menopause. The Government is focusing its efforts on disseminating best practice and encouraging employers to implement menopause policies and other forms of support such as flexible working. The report asserts, without really explaining why, that specific menopause leave may be “counterproductive” to achieving this goal.

Commencement of the dormant dual discrimination provisions in the Equality Act 2010

Evidence to the inquiry was that because menopause is essentially an “intersectional” phenomenon (i.e. in the main

it affects older women), the dormant dual discrimination provisions in section 14 of the Equality Act 2010 should be enacted. Enacting these provisions would entitle a worker to complain of discrimination arising out of the combination of two protected characteristics, rather than one as is presently the case. This change would help menopausal workers who have typically found it difficult to succeed with complaints based on a single protected characteristic. The Committee took a robust approach on this issue, stating that the current law “does not serve or protect menopausal women” and that section 14 is “shelf ready” and should be commenced immediately.

The Government has rejected this recommendation on the basis that if section 14 were to be implemented, it could have to be done wholesale and could not just be enacted to cover sex and age. The response says this would create 20 dual protected characteristics in addition to age and sex (this is on the basis that pregnancy and maternity and marriage and civil partnership are not covered by section 14). The Government says this would place a significant additional burden on employers and service providers

The rejection of this recommendation is unsurprising. In fact, this is the second time that the Government has rejected the proposed enactment of the dual discrimination provisions as a way of tackling menopause discrimination. In November 2021, the Government-appointed “Roundtable of Older Workers” recommended that the Government enact the dual discrimination provisions. The Government [rejected their recommendation](#), stating that the existing legal framework provided sufficient protection and further changes were not needed.

Consult on making menopause the tenth protected characteristic

in the Equality Act 2010

There was considerable support for creating a new protected characteristic of menopause on the basis that it would provide a direct and clear protection to those experiencing discrimination because of menopause. Some of those giving evidence to the inquiry pointed out the disparity between the way pregnancy and menopause are treated in the workplace. Pregnancy is legally protected, and menopause is not, even though all women will experience menopause but not all women experience pregnancy. Some of those giving evidence also argued that if a new protected characteristic were created this should include a duty to make reasonable adjustments, in the same way that there is for disabled workers.

The Committee recommended that the Government urgently consult on introducing a new protected characteristic of menopause, including a duty to make reasonable adjustments for menopausal workers. The report recommended that this consultation should launch by the end of January 2023.

The Government has rejected this recommendation. Whilst agreeing that women should be “adequately protected from discrimination in the workplace” they were not satisfied that the evidence fully supported new legislation. It is asserted that introducing a new protected characteristic was not necessarily the best approach to addressing discrimination.

It points to alternatives such as expanding the duty to make reasonable adjustments or expanding the definition of disability and/or the age discrimination provisions. Yet, no commitments are made to introduce any such changes.

In rejecting the recommendation, the response highlights the

importance of avoiding “unintended consequences” such as discrimination towards men suffering from long-term medical conditions or eroding existing protections. It is said that any substantial changes to the Equality Act 2010 would require a full-scale review which was a “major undertaking which would necessarily be some years away”.

Conclusion

It is hard to view the Government’s response to the Committee’s report as anything other than paltry. Upon closer inspection, the three recommendations which have been accepted are, in fact, existing commitments. Furthermore, aside from the extension of the right to request flexible working (which, it should be remembered, is a right to request and not a right to have), the other two changes amount to the introduction of guidance and advice only. These commitments do not compel employers to make any changes for menopausal workers and nor do they offer such workers any greater form of legal protection. As the Chair of the Committee, Caroline Nokes MP, noted, the Government’s response is “complacent”, represents “a missed opportunity” and left her “unconvinced that menopause is a Government priority”.

[Menopause and the workplace: Government Response](#)

BDBF is a leading law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Cost of Living Crisis: Tips for Employers

Despite a recent fall, the latest figures show that inflation in the UK is 10.5%[\[1\]](#), close to a 40-year high. As high inflation persists, employees are seeking ways to cut costs and make their pay go further. Financial worries often lead to stress and anxiety which, in turn, can have a negative impact on an employee's performance at work. Employers are increasingly seeing workplace issues due to financial stress, including absenteeism and lower levels of engagement.[\[2\]](#)

One way for employers to tackle this problem is to introduce measures aimed at reducing the financial burden on employees, and the stress associated with financial concerns. This short article details suggestions for employers who are considering helping their employees navigate the crisis.

Financial support

Direct Financial Support

Employers can make a one-off cost-of-living payment to employees. If a one-off payment is to be made, it is important to consider whether it will be a lump sum amount paid to all employees, or an amount linked to salary. Communication around any one-off payment is important. It must be clear that this is an isolated discretionary payment and not one which form's

part of the employee's remuneration package. Where payments are made only to employees on lower salaries, rather than all employees, this may lead to complaints of unfair treatment.

Alternatively, employers could choose to bring forward annual review dates for salary and bonus increases. Where an annual review of salary is brought forward, the date upon which any increase becomes effective can also be brought forward to allow the employee to benefit from the increase for a longer period.

The National Living Wage (NLW), which takes effect from 1 April 2023, will see the NLW increase from £9.90 to £10.42. This increase to the NLW may have a bearing on how, and for what duration, you choose to offer financial assistance.

Indirect Financial Support

Salary sacrifice arrangements (whereby an employee gives up the right to receive part of their salary in return for a non-cash benefit), are one way in which indirect financial support can be provided. An employer will have the flexibility to select the non-cash benefit and, from an employee's perspective, participation in the salary sacrifice scheme can lead to savings on tax and national insurance. One such scheme is the cycle to work scheme, run by the government, which may help an employee save transport costs when commuting by cycling to work. We recommend that any employer considering implementing a salary sacrifice scheme takes advice on the tax and NICs implications.

Discounts and subsidies are other measures which may provide

effective indirect financial support for employees. As an employer, discounts can include staff discounts on your own goods and services. Alternatively, you can enter agreements with other organisations to provide discounts on their goods and services, such as restaurants or gyms. Discounts can usually be run at a low cost to the employer whilst helping to reduce employees' costs. These arrangements, depending on how these are tailored, may also increase the appeal of an organisation to any prospective employees.

Providing lunch, or a lunch allowance, on certain weekdays can be another effective way to lower employee costs. To some extent, the effectiveness of these practices will depend on how they interact with any flexible working arrangements that are in place.

Flexible Working

Flexible working is a term that, amongst other things, encompasses remote, hybrid and part-time working, compressed and adjustable hours, and job sharing.

Introducing, or expanding the scope of, a flexible working policy may help employees in different ways. For some employees, working from home more regularly will be beneficial because this may reduce expensive travel costs, or the amount spent on childcare. In contrast, other employees may wish to attend the office more regularly to minimise electricity and heating bills.

Another potential benefit of a flexible working policy is greater productivity. 93% of those interviewed in a recent

Chartered Management Institute (CMI) survey[\[3\]](#) said they had seen evidence that stress caused by the cost-of-living crisis was impacting the productivity of their employees. A flexible working policy may help to alleviate stress caused by financial concern and, in turn, boost productivity.

Wellbeing

The importance of employer wellbeing practices has increased substantially in recent years, particularly following the Covid-19 pandemic. The impacts of the pandemic, and the increased demand for healthcare which have followed, have contributed to 81% of employers focusing more on employees' mental health.[\[4\]](#)

The 2022 CIPD report on health and wellbeing at work noted that the 51% of organisations taking a strategic approach to employee wellbeing were more likely to report positive wellbeing achievements, at both an individual and organisational level. Wellbeing assistance can take the form of financial assistance, in the form of benefits or subscriptions to wellbeing platforms, or staff communications led by managers within the organisation.

Assisting employees – a balancing act

We recognise that it can be challenging for an employer to know how to help employees with any financial difficulties. There is no 'right' way to assist. With this in mind, when determining how to provide assistance to employees, employers should consider the context in which they are assisting. Where useful, and feasible, employers can look to involve the

employees in this process. For example, an employer can consult with employees about what form of assistance would be most helpful and use any feedback to make an informed decision. In any case, employers should seek legal advice on their proposals and ensure that such proposals are communicated to employees clearly and considerately.

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. If you would like to discuss any issues relating to the content of this article, please contact Anthony Nzegwu (AnthonyNzegwu@bdbf.co.uk) or your usual BDBF contact.

[\[1\]](#) ONS CPI annual rate change over 12 months (released 18 January 2023).

[\[2\]](#) Chartered Management Institute survey of 1000 managers and team leaders on the cost-of-living crisis and workplace stress.

[\[3\]](#) Chartered Management Institute survey of 1000 managers and team leaders on the cost-of-living crisis and workplace stress.

[\[4\]](#) CIPD Health and Wellbeing at Work 2022.

“Brew Monday” – how to reclaim “Blue Monday”

The concept of “Blue Monday” will be familiar to a lot of people. Falling on the 3rd Monday in January, folklore has developed around this being the most depressing day of the year. But is it really?

The phrase “Blue Monday” was first coined in 2005 by a UK travel company, presumably as part of a marketing campaign to encourage sales of holidays. It was said to be based on a formula, where seven variables affected a person’s mood – weather, debt, monthly salary, time since Christmas, time since failure of New Year’s resolutions, low motivational levels and the need to take action.

Since the original press release, there has been much debate about the concept of “Blue Monday” and the formula used to devise it has been largely debunked by scientists. Mental health charities have also emphasised that low mood is not the same as a medical diagnosis of depression (or any other mental illness), which can occur at any time of year and does not have an exhaustive list of causes. Despite this, #bluemonday continues to trend on twitter year after year.

In 2018, the charity Samaritans launched a campaign called [“Brew Monday”](#), which aims to turn the concept of “Blue Monday” on its head. An extension of its [“Small Talk Saves Lives”](#) suicide prevention scheme, “Brew Monday” encourages people to connect with friends, family and colleagues over a hot beverage.

The central aspect of the “Brew Monday” campaign is to encourage people to check in with others and not only ask how they are, but to listen to the answer. The hope is that by doing this, people who are struggling will be able to access support. Importantly, the campaign makes clear that this is not something that should be done only on so-called “Blue Monday”, but throughout the year, recognising that people can struggle with their mental health at any time.

Although positive strides have been made to reduce stigma around mental illness, it still exists, especially in the workplace. It is widely acknowledged that the best way to reduce this stigma is to talk about mental illness. This is to enable employees who are struggling to talk to their managers about mental health and access appropriate support. Therefore, initiatives such as “Brew Monday” can only be positive.

Mental illness is just one factor that can cause employees to struggle at work. The BDBF team frequently advises clients who are experiencing issues in the workplace. Many of our clients feel that they are being [discriminated](#) against. While discriminatory treatment can take many forms, a pattern we see time and again is employees being excluded from accessing the full benefits of the workplace enjoyed by their colleagues because of their protected characteristic (age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation). It is this feeling of exclusion that the “Brew Monday” campaign is aiming to prevent. While it is primarily a mental health campaign, its message can be read across into other aspects of working life and benefit employees dealing with other life events, such as returning to work from parental leave, experiencing the [menopause](#) or undergoing gender reassignment.

Although conversations over a cup of tea will not solve all workplace issues, encouraging employees at all levels to communicate openly with each other and raise any issues or concerns they have at an early stage will go a long way towards creating and maintaining a healthy and productive workforce. “Blue Monday” takes up just one day of the year, but the concept of “Brew Monday” is relevant on every day of the year and is to be encouraged.

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