citizens advice bureau

CAB evidence briefing November 2005

Hard labour

Making maternity and paternity rights at work a reality for *all*

Summary

The Work and Families Bill, published on 19 October 2005, includes a number of measures to enhance the statutory employment rights of working parents.

With one key exception – the Bill's provisions for up to three months of any statutory paid maternity leave not taken by the mother before she returns to work to become available to the father as statutory paid paternity leave – Citizens Advice has warmly welcomed these new measures. However, we have suggested that, for many low-income families, the daily juggling of their caring and working commitments is less a case of enjoying a good 'work-life balance', than of enduring a work-life compromise. This is not least because a great many low-paid workers – most of them non-unionised and working in small workplaces – are simply not receiving the basic rights that the Government now seeks to enhance.

In this report – which is published with the endorsement of Fathers Direct, The Maternity Alliance and Working Families – we urge the Government to abandon the Bill's provisions for unused paid maternity leave to become available to the father as paid paternity leave and instead enhance the individual rights of working fathers to take time off to be with and care for their children *at a time of their choosing*. And we argue that the Government's strategy in relation to these and other statutory workplace rights must include steps to ensure more universal compliance by small employers, including more pro-active enforcement against rogue employers. Otherwise, many of the most needy and vulnerable workers in the UK economy may simply not benefit at all from the Work and Families Bill.

fathers direct

THE MATERNITY ALLIANCE

working families
changing the way we live and work

Inside

Introduction

Sue was 19 years old and five months pregnant when she sought advice from her local CAB. Her employer of four years – a contract cleaning company – had refused to allow her to take paid time off to attend ante-natal appointments. She had now been told that she would not be getting any statutory maternity pay, and that if she wished to take maternity leave, she would have to resign from her job and re-apply for it when ready to return.

Nadia was four months pregnant when she approached her local CAB. Her employer of three years – a newsagent – had summarily dismissed her the day after she had notified him of her pregnancy.

Debbie was three months pregnant when she sought advice from her local CAB. She had been working as a cashier in the local branch of a national chain of petrol stations for 12 weeks when she realised that she was pregnant. A few days after informing her manager of her pregnancy, she had been told not to "bother coming into work again", as there was "not enough work" for her. However, within one week of her dismissal another woman had been recruited to do the same job.

Every year, tens of thousands of mostly low paid, non-unionised women workers like Sue, Nadia and Debbie seek employment advice from a Citizens Advice Bureau (CAB) in relation to their pregnancy and work. Hundreds have been illegally dismissed or threatened with such dismissal by their employer for no other reason than that they are pregnant, and wish to take up their legal rights to statutory maternity leave and pay. Some have, like Sue, Nadia and Debbie, been dismissed immediately after informing their employer of their pregnancy, whilst others have suffered harassment, abuse and/or deliberate exposure to health and safety risks, all aimed at forcing them to 'resign' from their job.

Kathy sought advice from her local CAB when three months pregnant. She was extremely anxious about whether she would get maternity leave and pay from her employer of eight months – a recruitment agency – as, when she had informed her manager of her pregnancy, he had sworn at her and shouted "this is why we should employ men".

Deepta, a mother of an eight-month old child and now pregnant again, had been working shifts in a local pizza restaurant for the past 18 months when she sought advice from her local CAB. Since Deepta had informed the restaurant's owner/manager of her pregnancy, he had been re-arranging her shifts at very short notice and pressurising her to work at weekends, which he knew full well she was unable to do for childcare reasons. Deepta told the CAB that this had happened before to fellow workers who had become pregnant, and was the owner/manager's way of "getting rid of pregnant women".

Joy was six months pregnant and working in the local branch of a high profile, national chain of fashion shops when she sought advice from her local CAB. Her manager had been "unsympathetic" to her pregnancy, had conducted a health and safety risk assessment but had since refused to share or discuss it with her, and was insisting that she work on the sales floor, standing up, for four hours at a time without any rest break.

Many other women have simply faced indifference to their condition and/or a lack of understanding of and support for their changing health needs – including denial of

their legal right to paid time off to attend ante-natal clinics, and a failure to conduct a health and safety risk assessment. Employers are required by law to conduct a risk assessment in relation to a pregnant worker, and to take steps to prevent exposure to health and safety risks through the removal of hazards, transfer to alternative suitable work or, if necessary, maternity suspension on full pay. But the evidence from Citizens Advice Bureaux indicates that many employers fail to comply with these obligations.

> The employer of a woman who sought advice from a CAB in Kent – a large paper-making company – was insisting that she work extra hours to 'make up' for time taken off to attend ante-natal appointments.
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> A CAB in Berkshire reports being approached by a pregnant woman working for a dry cleaning company, and worried about the effect on her baby of the fumes from the dry cleaning chemicals. Her employer had refused to listen to her concerns, and was refusing to carry out a health and safety risk assessment.
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> A young woman, three months pregnant, who sought advice from a CAB in Kent was working as a shop assistant in a petrol station. Her manager had refused to allow her to take time off (even unpaid) to attend ante-natal appointments, was insisting that she continue to lift and carry heavy boxes of goods up a ladder, had refused to carry out a health and safety risk assessment, and was being "difficult" about her need to take frequent short breaks to go to the toilet.

Others have run into difficulty only upon their return to work from maternity leave. Some of these women have returned to find that their job has changed beyond recognition since going on maternity leave, or that their job has simply been given to someone else. And many others have had their reasonable requests to work fewer, different, or more flexible hours denied without good reason or due process by their employer, and so find it impossible to balance work and the demands of caring for their young child (or children).

> A woman who sought advice from a CAB in Staffordshire was shortly due to return to work from maternity leave. Her employer of 16 years – a small engineering firm – had summarily rejected her request to reduce her working hours in order to spend time caring for her child, without reasons and without the meeting with her required by the 'flexible working' regulations introduced in 2003.
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> A CAB in Warwickshire reports advising a woman who had recently returned to work after maternity leave. Her employer of four years – a window manufacturing company – had summarily rejected, without reasons and without the required meeting, her formal request under the 'flexible working' regulations to reduce her working hours. The CAB reports that the client was "angry and frustrated because she is willing to work but feels she is being discriminated against because she has childcare commitments. Two of her former fellow workers have not returned after taking maternity leave, due to the employer's unwillingness to offer part-time work".

Often low skilled and nearly always low paid, many of these women are performing relatively unglamorous but often vital work in mostly small workplaces such as care homes, hairdressers, restaurants, hotels, retail outlets, factories, and contract cleaning companies (including those servicing hospitals and other essential public services). Many are working part-time, and/or at night or weekends, in order to meet family or other caring commitments. Indeed, for many, the daily

juggling of such commitments with their need to earn an income is less a case of enjoying a good 'work-life balance', than of enduring a work-life compromise.

Very few of these workers belong to a trade union, and most lack a full understanding of their statutory workplace rights – let alone how to enforce them. In two out of three private sector workplaces in the UK there is no trade union presence, and the New Policy Institute has estimated that only one in six low paid workers belongs to a trade union.[1] Recent Government-sponsored research has concluded that "[trade] union involvement in pay setting and the joint regulation of the workplace [is] very much the exception in smaller workplaces".[2] As a result, such workers are particularly vulnerable to pregnancy-related discrimination and other unfair treatment by their employer.

Such workers make up a significant proportion of the UK labour market, and will continue to do so in the years ahead. The Government has noted, "an increasing number of services are being provided on a 24/7 basis … and information technology is opening up new forms of access and provision. As people experience greater choice and flexibility throughout their lives, they are likely to want more choice and control over their work and family lives".[3] This is undoubtedly true, but someone has to work for the businesses that *provide* these 24/7 services. In the words of the Prime Minister, Tony Blair MP, these are "the millions of hard working, low paid families who do the jobs that we all rely on".[4]

Across the economy as a whole, recent research by the Equal Opportunities Commission (EOC) suggests that, each year, some 30,000 working women are dismissed, made redundant or treated so badly that they decide to leave their job as a result of their pregnancy. This amounts to one in 15 of the some 440,000 women who are pregnant at work every year. Overall, almost half (45 per cent) of the women surveyed for the EOC research said that they had experienced some form of discrimination by their employer because of their pregnancy, and a fifth (21 per cent) said that they had lost out financially as a result of this discrimination.[5]

This situation is far from new. As long ago as June 1992, in our report *Not in labour*, we described "a consistent pattern of women [being] dismissed because of pregnancy", together with "hostile and uninformed employer attitudes to pregnancy". And in our March 2001 report, *Birth rights*, we concluded there was still "widespread incidence of unlawful pregnancy-related dismissal or detrimental treatment", especially amongst small employers in low profitability sectors of the economy. *Birth rights* suggested that there was much more that the Government could do to safeguard the health of new mothers and their babies, to ensure equal opportunities in the labour market, and to encourage and assist more working fathers to take an active role in the care and development of their children.

In February 2005, the Government published a consultation paper on proposals to further enhance the workplace rights of working parents.[6] The consultation noted that "helping hard-working parents give their children the best start and give carers greater help is not only good for families but is good news for our economic growth and prosperity", and that "many families often struggle to balance their caring and working commitments". The consultation paper set out a number of proposals:

1 *Trade Union membership*, Department of Trade and Industry/National Statistics, April 2005; and Howarth, C. and Kenway, P., *Why worry any more about the low paid?*, New Policy Institute, October 2004.
2 *Inside the workplace: first findings from the 2004 Workplace Employment Relations Survey*, DTI/ESRC/ACAS/Policy Studies Institute, July 2005.
3 *Work and families, choice and flexibility: a consultation document*, Department of Trade and Industry, February 2005.
4 Rt Hon Tony Blair, MP: speech to Labour Party conference, 28 September 2004.
5 *Pregnancy discrimination at work: a survey of women*, Working Paper Series No. 24, Equal Opportunities Commission, February 2005.
6 *Work and families, choice and flexibility: a consultation document*, Department of Trade and Industry, February 2005.

- an extension of statutory maternity pay, statutory adoption pay and maternity allowance from six to nine months from April 2007 (and to 12 months by the end of the next Parliament)
- a new right for mothers to transfer some of their statutory maternity leave and pay to the baby's (or babies') father
- new measures to improve communication between workers and their employers both before and during maternity leave, and
- an extension of the existing right of parents of young and disabled children to request flexible working, to cover carers of sick or disabled adult relatives, and possibly also parents of older children.

With one key exception – the proposed new right of mothers to transfer some of the maternity leave and pay to the father – Citizens Advice warmly welcomed and supported these proposals, most of which are now set out in the Work and Families Bill. We wholly endorse what the consultation paper defined as the Government's "key principles" in this area of policy: "to ensure that every child gets the best start in life and to give families more choice about how to balance their work and caring responsibilities".

However, we recognise that the implementation of these measures will intensify the already significant compliance challenge for employers – and especially for small employers in low-profitability sectors of the economy. Small businesses tend not to employ a 'human resources' specialist who can assist with the administration of pregnancy-related absences and related matters (such as health and safety risk assessments, or flexible working). As illustrated by the case examples, there is a deeply disturbing level of non-compliance by employers with the existing statutory provisions, and it is disappointing that this was not addressed in the consultation paper. Those employers who are not meeting their *existing* statutory duties to their workforce are unlikely to comply with the more generous provisions now proposed.

Many of these employers simply lack the means and resources to adopt and follow the personnel policies and procedures necessary to ensure full compliance with statutory provisions. The consultation paper acknowledged that these procedures are extremely complex and difficult to comprehend. However, the evidence from Citizens Advice Bureaux also demonstrates that much non-compliance by employers is deliberate, and that such rogue employers can deny their workers their proper legal entitlement with the threat of dismissal for those who object.

They can do so in the knowledge that the Employment Tribunal process – the only means of enforcing most employment rights, – is unduly legalistic and adversarial, and thus extremely daunting, especially to pregnant women, new and lone parents, very young and elderly workers, those with caring responsibilities, people with mental health problems, and other vulnerable or hard-pressed individuals.

In the case of pregnant women and new mothers, the Equal Opportunities Commission (EOC) has concluded that "the odds are stacked against them [pursuing an Employment Tribunal claim] at a time when they need to protect their own and their baby's health, their career, and their income".[7] Being non-unionised, the great majority of low paid workers do not have access to the support, advice and representational services of a trade union, and 'legal aid' for basic advice is not available to all but the very lowest paid workers.

Furthermore, under new statutory provisions introduced in October 2004 with the aim of reducing the number of Employment Tribunal claims, in most cases a claim cannot be made

7 *Tip of the iceberg: interim report of the EOC's investigation into discrimination against new and expectant mothers in the workplace*, Equal Opportunities Commission, September 2004.

to an Employment Tribunal until the worker has used and fully exhausted the employer's grievance procedure. This involves submitting a written grievance to the employer and, where appropriate, attending hearings, or waiting 28 days without a response from the employer.

There is now a growing consensus that these well-intended but highly complex and legalistic new provisions have "made it far more difficult for workers to benefit from [the employment rights introduced or enhanced by this Government], especially low-paid, non-union members".[8] The Equal Opportunities Commission, for example, has expressed concern that the new provisions are "proving an additional obstacle to women", as "pregnant women face particular difficulties in complying with [them], especially if they are absent from the workplace or concerned about the effects of stress on their pregnancy or care of their new baby".[9] At the same time, the CBI has suggested that, by "elevating procedure over substance" and "formalising disagreements at a much earlier stage", the new provisions have "created an artificial situation in which to resolve conflict".[10]

For those low paid, non-unionised workers who do proceed as far as making an Employment Tribunal claim, having complied with the new provisions in respect of exhausting internal grievance procedures, the financial cost of legal representation at the Tribunal hearing is likely to be prohibitive. There is no legal aid at all for such representation, and the resources of Citizens Advice Bureaux and other sources of *free* representation (such as community law centres) are thinly spread. Increasingly, claimants face intimidation from some employers' legal representatives, in the form of unjustified threats to ask for 'costs' of up to £10,000 in the event that the claim is dismissed by the Tribunal.[11]

For the most vulnerable workers pursuing an Employment Tribunal claim to a full hearing represents a significant challenge, and one that is likely to involve considerable investment of time and energy – resources that pregnant women, new parents and carers tend not to have. Every year, about one-third of all Employment Tribunal claims are withdrawn by the claimant before the case reaches a hearing, and research by the Department of Trade and Industry has found that in 51 per cent of such cases this is because the claimant considers there to be too much stress, difficulty, fuss or expense involved in continuing.[12]

Even where an Employment Tribunal claim is successfully pursued to its conclusion, a favourable ruling and the making of a financial award by the Tribunal can prove to be a hollow victory. In at least one in 20 such cases, the employer against whom the claim has been successfully brought simply fails to pay the resultant award.[13]

In our view, the Government's vision of a 'flexible' labour market underpinned by "an infrastructure of decency and fairness" will remain exactly that – a vision – so long as this reality persists for the millions of low paid, non-unionised workers in the UK economy. We believe that the measures to be implemented through the Work and Families Bill must be accompanied by the creation – alongside the Employment Tribunal system – of a more accessible, pro-active and efficacious system of ensuring employer compliance with these and other statutory employment rights.

8 Reed, H. (2005) "Barriers to workplace justice?", *Legal Action*, July 2005.
9 *Greater expectations: final report of the EOC's investigation into discrimination against new and expectant mothers in the workplace*, Equal Opportunities Commission, June 2005.
10 *A matter of confidence: restoring faith in employment tribunals*, CBI, September 2005.
11 For further information, see: *Employment Tribunals: the intimidatory use of cost threats by employers' legal representatives*, Citizens Advice, March 2004.
12 *Findings from the 2003 Survey of Employment Tribunal Applicants*, Department of Trade and Industry, August 2004.
13 For further information, see: *Empty justice: the non-payment of Employment Tribunal awards*, Citizens Advice, September 2004; and *Hollow victories: an update on the non-payment of Employment Tribunal awards*, Citizens Advice, March 2005.

At the same time, we believe that more pro-active enforcement of statutory employment rights must be combined with more meaningful assistance – in the form of practical business support services – for those employers who face the greatest challenge in meeting their statutory duties to their workforce. For, as already noted, it is clear that much non-compliance by employers stems from their ignorance or less than full understanding of the (complex) statutory provisions, and/or from a real or perceived lack of means to adopt the necessary policies and procedures without damaging the profitability of the business. Whilst many (mostly large) employers have, as the February 2005 consultation paper noted, responded to "changes in the labour market and family life" by recognising that "the success of their firm depends on being able to recruit and retain people from the widest possible pool of talent, and to develop the skills, creativity and imagination of all their staff", a great many more have not.

These concerns are especially acute in relation to the Work and Families Bill's provisions for up to three months of any statutory paid maternity leave not taken by the mother to become available to the father as statutory paid paternity leave. For the evidence available suggests that, whilst in recent years there has been much welcome improvement in the attitude of employers to the maternity and parental rights of women, there has been markedly less improvement in the attitude of employers to the paternity and parental rights of *men*. Since the introduction in 2003 of the statutory right of new fathers to two weeks of paid paternity leave Citizens Advice Bureaux have reported dealing with a steady stream of enquiries from men who have been denied such paternity leave by their employer or who, due to their employers negative attitude have been too afraid even to ask for it. This right represents a minimal compliance challenge, even to small employers.

Our detailed comments on the Government's proposed new measures in respect of maternity leave and pay, and in respect of flexible working, were set out in our formal response to the February 2005 consultation paper.[14] In this report we set out our outstanding concerns in relation to the issue of time off work for fathers. And we re-iterate our proposals for a more joined-up system of advice and practical business support for small employers, together with the establishment of a more pro-active (but educational rather than punitive) approach to compliance and, where necessary, enforcement of maternity, paternity and other basic workplace rights.

Time off work for fathers

We applaud and strongly support the Government's aim of making it easier for working fathers to take time off work to be with and care for their children. However, we are not at all convinced that the the Bill's provisions for unused paid maternity leave to become available to the father as statutory paid *additional* paternity leave are the best way of achieving this aim, for several reasons.

Firstly, we note that the provisions would be of no value whatsoever to those working fathers whose partner (i.e. the mother) is not working at the time of the child's birth, and so does not have any maternity leave that could be converted into additional paternity leave. One analysis of the available data suggests that at least 40 per cent of the women who give birth every year are not in employment at the time of the birth, and so have no statutory maternity leave and pay that could be converted into paternity leave by the father.[15]

Secondly, under these provisions, working mothers and fathers would not be able to take time off work *together*, i.e. at the same time or for overlapping periods of time. To our mind, this would represent an unjustified

14 *Labour pain: response by Citizens Advice to the DTI's February 2005* Work and Families *consultation paper*, Citizens Advice, May 2005.
15 Wathan, J. (2003) *Unpublished analysis of the General Household Survey 1996, 1998 and 2000*, Centre for Census and Survey Research, University of Manchester.

restriction on parental choice – which, according to the consultation paper, the Government wishes to maximise. More significantly, it would prevent working mothers and fathers taking an extended period of paid time off work together (i.e. longer than that which might be achieved by using paid holiday entitlement) in order to care for a baby unexpectedly born with a disability, or to cope with the onset and consequences of one of the various serious illnesses (such as meningitis) that are most common in young babies.

Thirdly, we fear that the complexity of the process for the taking of unused maternity leave by the father – a process that would, in the vast majority of cases, involve liaison between at least two employers – would simply present too great a compliance challenge to many small employers.

We warmly welcomed the introduction, from April 2003, of the right to two weeks' *paid* paternity leave and the right of fathers as well as mothers to request flexible working hours. However, it is clear that, since April 2003, take-up of the right has been disappointingly low.[16] And yet, as the Government noted in its February 2005 consultation paper, it is evident that "many fathers want to be able to spend more time helping to bring up their children" and to have "greater choices about balancing their work and caring responsibilities".

The evidence from Citizens Advice Bureaux suggests that two key factors in the low take-up of the right to statutory paid paternity leave are the relatively low, flat-rate at which it is paid – just £106 per week – and the extent of both explicit and implied non-compliance by employers.

A new, first-time father who sought advice from a CAB in London was working as a chef at a large private hospital. He had recently asked to take statutory paid paternity leave, but had been told that any time off he took would be unpaid.

A CAB in Wales reports being approached for advice by a new father who had been told by his employer of 20 years that he was entitled to only three days of statutory paid paternity leave.

A man who sought advice from another CAB in Wales had been told by his employer of two years that if he wanted to take time off work following the birth of his child, he would have to use some of his paid holiday entitlement.

A father of three children, including a new baby, who sought advice from a CAB in North Yorkshire had received only one week of statutory paid paternity leave from his employer of ten years, who had also refused to consider his request to work reduced hours (so as to enable his wife to return to work part-time at the end of her maternity leave).

The contract of employment held by a man working for a central heating manufacturer who sought advice from a CAB in Hampshire stated that 'paternity leave' must be taken from the worker's annual paid holiday entitlement, or as unpaid leave. In its report to Citizens Advice, the bureau notes that "to exercise his right to paid paternity leave, the client must use the grievance procedure and then if still necessary make a claim to an Employment Tribunal, but all that is extra stress and hassle with the risk of dismissal at a time when he is busy with the new baby".

16 Based on statutory returns from employers, the Inland Revenue estimated in 2004 that only some 20 per cent of working fathers take up their right to statutory paternity leave. Yet in 2003, the DTI predicted a take-up rate of 80 per cent. See: "Paternity leave taken by only fifth of fathers", *Financial Times*, 26 July 2004. More recently, an EOC-commissioned survey found that only 17 per cent of fathers are taking all of their statutory paternity leave at the statutory rate of pay.

In the vast majority of these cases, the client, when advised of his statutory right to paid paternity leave and how to enforce it (by following internal grievance procedures and then, if still necessary, by making and pursuing a claim to an Employment Tribunal) has decided not to pursue the matter. However great their disappointment at not being able to fully exercise their right to paid time off following the birth of their child, most simply do not feel that it is worth risking their relationship with their employer – and perhaps even their job – for the sake of just two weeks off work that, more often than not, would in any case involve a less than welcome reduction in family income at a time of added expense.

This and other evidence suggests to us that, whatever welcome progress has been made in recent years in terms of the attitude of employers to the maternity and parental rights of working women, there is significantly less acceptance by employers (and especially *small* employers in low profitability sectors of the economy) of the paternity and parental rights of working *men*.

Against this background, we are concerned that the necessarily complex process for the taking of unused maternity leave by the father would not only be poorly understood by both employers and working fathers, but would be less than warmly embraced by many small employers. We note that, in the draft Regulatory Impact Assessment appended to the February 2005 consultation document, the Government itself predicted a negligible take-up rate of just one per cent.

We believe that the aim of enabling more working fathers to take time off to be with and care for their children would be better achieved by increasing both the amount of statutory paid time off available directly to working fathers themselves, and the rate at which such time off is paid. And we believe this would be best done in one or both of the following ways:

- Increasing both the duration of statutory paid ordinary paternity leave and, most importantly, the rate at which it is paid. The Maternity Alliance has recommended that statutory paternity pay (as well as statutory maternity and adoption pay) be increased to "a living wage of £224 per week, based on a 35-hour week".[17] We urge the Government to set this as its initial target for increasing the *flat* rate of statutory paternity pay over time. In the longer term, we believe the Government should be aiming to pay statutory paternity leave on an income replacement basis (subject to a reasonable earnings cap). As Fathers Direct noted in its response to the February 2005 consultation paper, "only leave that is well paid can be used by families to give fathers time in caring [for their children], because of fathers' greater earning responsibilities and the critical importance of the father's income at the time of birth".
- Transforming the current statutory entitlement of working fathers to 13 weeks of unpaid *parental* leave (or 18 weeks in the case of a disabled child), to be taken between the child's birth and its fifth birthday (or 18th birthday in the case of a disabled child), into an equivalent (but more flexible) entitlement to *paid* parental leave. Clearly, this would require the current entitlement to parental leave of working *mothers* to be transformed in the same way. And, in the longer term, we believe the Government should be aiming to extend the duration of such paid parental leave to 26 weeks (i.e. six months).

But whichever way of enabling working fathers to take more time off to be with and care for their children is preferred, we believe that the Government needs to do much more to improve employer compliance with the

17 In: *baby manifesto*, The Maternity Alliance, March 2005.

relevant rights in the first instance, and to facilitate enforcement where this is necessary. As already noted, we believe that this requires the establishment of a more accessible and pro-active enforcement mechanism alongside and complimentary to the Employment Tribunal system (including ACAS). Our proposals for such a mechanism are set out in the next section of this report.

The notice period for paternity leave

We also urge the Government to use the Bill to reduce the amount of notice that men are required to give in order to take their entitlement to statutory paid paternity leave. Currently, the regulations require men to give their employers the same amount of notice that expectant mothers must give to their employers of their pregnancy in order to take maternity leave, i.e. by the fifteenth week before the expected week of childbirth. In electing to impose this particular notice period, the Government had good intentions: to simplify the system of maternity, adoption and paternity rights as much as possible (and so maximise the understanding of employers and workers alike) by harmonising the respective notice periods wherever feasible.

This means that men have to give their employer the same amount of notice of their intention to take just two weeks off work that expectant mothers have to give of their intention to take up to 12 months off work. It is clearly much easier for employers to manage/cover an absence of two weeks than it is one of up to 12 months. In contrast, in the case of paid holiday, the law requires a worker to give his or her employer no more than two weeks' notice of an intention to take a two-week holiday.

Furthermore, the evidence from the advice work of Citizens Advice Bureaux indicates that this disproportionate notice period is resulting in some men losing their entitlement to statutory paid paternity leave, simply due to their poor awareness and/or understanding of the notice requirement and its rigid application by their employer.

> Not being aware of the 15-week notice period required by law, a man who sought advice from a CAB in East Sussex had given his employer of 12 years only one month's notice of his intention to take statutory paternity leave. The employer had denied him any such leave, on the grounds that he had not given the required 15 weeks' notice.
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> Similarly, a man who sought advice from a CAB in Staffordshire had approached his employer about taking paternity leave 13 weeks before the expected birth of his child, but had been denied any such leave on the grounds that he had not given the required 15 weeks' notice.
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> A CAB in the West Midlands reports being approached by a man who had first become aware of his right to statutory paternity leave only a few weeks before the birth of his child. His employer had refused his subsequent request to take just one week of paternity leave on the grounds that he had not given the required 15 weeks' notice.
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> A man who sought advice from another CAB in the West Midlands had been unaware of his right to statutory paternity leave and so had failed to give the required notice. In its report to Citizens Advice, the bureau notes that the client "will therefore have to use some of his paid holiday entitlement, or take unpaid time off".
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> Reporting the case of a man who had telephoned to enquire about paternity leave entitlement the week after his wife had given birth to their first child, a CAB in Wales notes that "there seems to be a widespread lack of awareness of the rules relating to notice, with many men

contacting us for information on how to apply for statutory paternity leave when it is already too late".

Whilst we recognise the original case for the harmonisation of paternity and maternity notice periods, so as to keep the system as simple as possible, we are not persuaded that this has brought any significant benefit to employers. We believe there is now a strong case for substantially reducing the length of the notice period in respect of statutory paid paternity leave. We would suggest that the notice period for such leave should be harmonised with the law in respect of paid holiday, so for example a man wishing to take two weeks of paternity leave should have to give at least two weeks notice to his employer. In this way, any benefit from 'harmonisation' might well be retained.

Paternity leave: flexibility

In 2002, when the Government was consulting on the then proposed new right to two weeks of statutory paid paternity leave, we were disappointed by the rejection of our suggestion (and that of others) that men should be able to take such paternity leave as two separate one-week periods. Since the introduction of the right to paid paternity leave in April 2003, the law has provided that men must take such leave in one single block (of one week or two, with the second week being forfeited if only one week is taken).

Whilst we recognise that the Government's aim was to minimise the administrative burden on employers, and in particular on small employers, we consider there to be many situations where the flexibility to take two separate, one-week periods of paternity leave would be greatly advantageous to the father and, indirectly, to the mother and baby. Furthermore, the relatively minor additional administrative burden to a small employer may well be offset or even outweighed by the benefit to the employer of spreading the worker's absence from the workplace. We therefore urge the Government to remove this limitation on the taking of statutory paid paternity leave.

Time off to attend ante-natal appointments

We were surprised that the February 2005 consultation paper did not include any proposal to extend to fathers the existing right of working mothers to paid time off from work to attend ante-natal appointments. As long ago as January 2003, the Government stated that it was considering "whether to allow fathers time off to attend ante-natal care", and it is deeply disappointing to us that the Government has so far not taken the opportunity provided by the consultation paper and the Work and Families Bill to move forward on this issue.[18]

As the EOC noted in August 2003, "allowing fathers paid time off to attend ante-natal care [would] enable them not only to support their partners by sharing problems, anxieties and concerns, but [would] also help them to become emotionally involved with the baby from the earliest stages of development".[19] In taking this view the EOC cited a research study in the USA that found a positive correlation between attendance by fathers at ante-natal appointments and their continuing active involvement in the lives of their children three years after the birth.

Pro-active enforcement of employment rights

As described in earlier sections of this report, there is overwhelming evidence that, faced with a deliberately exploitative or determinedly non-compliant employer, using the Employment Tribunal system to enforce their rights is simply not a credible option for many low paid and non-unionised or otherwise

18 *Balancing work and family life: enhancing choice and support for parents*, HM Treasury/DTI, January 2003.
19 *EOC response to 'Balancing work and family life: enhancing choice and support for parents'*, Equal Opportunities Commission, August 2003.
20 For further information on the specific issue of migrant workers, see: *Nowhere to turn: CAB evidence of the exploitation of migrant workers*, Citizens Advice, March 2004.

especially vulnerable workers.[20] Along with other organisations, we have repeatedly suggested that there should be an alternative remedy for those workers who are too afraid of victimisation or dismissal to even raise the matter with their employer, or who know only too well that they will simply be ignored and yet are daunted by the prospect of a lengthy, stressful, legalistic and quite possibly fruitless confrontation with their employer.

We and others have suggested that the simplest way to do this would be to extend the more accessible and pro-active compliance regime for the National Minimum Wage (NMW). Under this regime workers can, as an alternative to making a claim to an Employment Tribunal, make named or even anonymous complaints to the HM Revenue and Custom's NMW enforcement agency. Tax credit and other data is used to conduct *carefully targeted* investigations and on-site inspections of employers suspected of non-compliance. This could be achieved through the establishment of a Fair Employment Commission.[21]

Working closely with ACAS, the Small Business Service, the Health and Safety Executive (HSE), the forthcoming Commission for Equality and Human Rights (CEHR) and other governmental agencies, such a Fair Employment Commission could ensure a more joined-up system of advice, guidance and practical business support for small employers, as well as a more pro-active (but educational rather than punitive) approach to compliance and, where necessary, enforcement.

The Government has stated that it established such an accessible and *pro-active* approach to compliance with the National Minimum Wage because it did not want workers "to have to rely on taking action against their employer themselves, as intimidation or fear of losing their job could prevent a worker from making a complaint".[22] Clearly, this argument applies as much to maternity, paternity, adoption and parental rights – and, indeed many other statutory workplace rights – as it does to the National Minimum Wage.

And, despite the HM Revenue and Custom NMW enforcement agency's narrow brief and extremely limited resources there is broad support for the Government's view that the agency's work since 1999 in ensuring compliance with the National Minimum Wage has been "a great success".[23] For example, in their oral evidence to a recent enquiry by the Trade andIndustry Committee of MPs, both the TUC and CBI characterised the NMW enforcement machinery as "a huge success story as an example of regulation". The Committee itself concluded that the NMW enforcement regime "would seem a model that might be extended beyond enforcement of the NMW to other areas of regulation".[24]

Since 1999, the HM Revenue and Customs NMW enforcement agency has dealt with some 15,000 complaints from workers and third parties, has conducted over 25,000 targeted investigations and inspections of employers, has revealed non-compliance with the National Minimum Wage by more than 10,000 employers, and in doing so has secured more than £20 million in arrears of wages for workers.[25]

As with the National Minimum Wage, a more broadly-based Fair Employment Commission, charged with ensuring compliance with a range of statutory workplace rights, would help ensure that *good* employers are not unfairly undercut by rogue employers, able to offer a cheaper product to their customers only by neglecting their legal obligations to their workforce. As the Hampton Review of regulatory inspection of employers noted

21 Other examples of such a pro-active approach to compliance and enforcement include the work of the Health andSafety Executive (HSE), and that of the DTI's Employment Agency Standards Inspectorate.
22 *National Minimum Wage Annual Report 2003/04*, DTI/Inland Revenue, January 2005.
23 See, for example: Paragraph 5.19 of *The National Minimum Wage: Fourth Report of the Low Pay Commission*, Low Pay Commission, Cm 5768, March 2003.
24 Paragraph 36 of *UK Employment Regulation*, Seventh Report of Session 2004-05, House of Commons Trade and Industry Committee, HC 90-1, March 2005.
25 Source: *Hansard*, House of Commons, 27 October 2004, col. 1244-5w; and more recent information provided direct to Citizens Advice by HM Revenue and Customs.

recently, "the elimination from gain from law-breaking is essential if businesses are to be allowed to operate on a level playing-field".[26]

And, as the New Policy Institute has emphasised, "enforcement, which impacts on the 'rogue' end of any industry, is not the same as 'more regulation', which impacts on all".[27] Only those employers that are in breach of one or more of their legal obligations to their workforce, and yet do not respond positively to the (even-handed and educational) intervention of the Commission's compliance officers, would have any reason to fear *enforcement* action by the Commission.

A key benefit of such a pro-active approach to enforcement is that, acting at the level of the employer rather than the individual worker, it is capable of improving the lot of *every* worker in a workplace, rather than just the one who happens to complain. In our experience, a worker who is not being paid at least the National Minimum Wage, for example, is also likely not to be receiving his or her full entitlement to paid holiday, and to have received a written statement of his or her terms and conditions. And it is likely that many if not all of his or her co-workers are being similarly treated.

At the same time, as some but not all trade union leaders appear to have recognised, the trade union movement would benefit from the associated extension of a culture of enforceable rights, in which trade union membership is arguably more likely to flourish. The shift in jobs from manufacturing to service industries, and from larger to smaller workplaces, is – as the Secretary of State for Trade and Industry, Patricia Hewitt MP, has noted – "creating a tough challenge to unions to increase their membership, even when employment is increasing".[28]

William Brown, Professor of Industrial Relations at Cambridge University and a member of the Low Pay Commission, has suggested that a Fair Employment Commission, charged with ensuring compliance with a basket of statutory workplace rights, would "help to maintain a floor of rights in areas of employment where unions have difficulty winning members, but which have employers who undercut and thereby threaten those workers in the same areas who *are* members. The enforcement of labour standards for the unorganised is an essential buttress for the labour standards of the organised. In short, British trade unions should see [a Fair Employment Commission] not as a potential rival, but as an essential complement."[29]

Conclusions and recommendations

Citizens Advice welcomes and supports the Government's evident commitment to enhance the existing, statutory employment rights of working parents. There can be no doubt that substantial numbers of working parents – and, just as importantly, their children – will benefit from the proposed enhancements. We also believe strongly that there will be significant gains for individual employers and, in turn, the economy as a whole.

With regard to the Work and Families Bill's provisions for up to three months of any statutory paid maternity leave not taken by the mother to become available to the father as statutory paid paternity leave, however, we urge the Government to abandon this proposal and to consider instead how it might best enhance the individual rights of working men to take time off work to be with and care for their children at a time of their

26 Hampton, P., *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, March 2005.
27 Ibid, note 1.
28 Hewitt, P. (2004) *Unfinished business: the new agenda for the new workplace*, IPPR.
29 Brown, W., "The Future of Collectivism in the Regulation of Industrial Relations", lecture to Manchester Industrial Relations Society, 6 May 2004.

choosing. More specifically, we urge the Government to:

- substantially increase the current flat rate of statutory ordinary paternity pay (as well as that of statutory maternity and adoption pay), and
- increase the duration of statutory ordinary paternity leave and pay, from the current two weeks to at least four weeks.

In addition, we urge the Government to:

- reduce the current notice period for taking statutory paid ordinary paternity leave, so as to bring it into line with the law in respect of paid holiday
- increase the flexibility of statutory paid ordinary paternity leave; and
- introduce a right for men to take paid time off to attend ante-natal care.

More generally, we urge the Government to recognise that its otherwise entirely laudable and welcome strategy to enhance the statutory employment rights of working parents (and carers) must include steps to ensure more universal compliance by employers, and more effective enforcement against rogue and deliberately-exploitative employers. Otherwise, many of the most needy and vulnerable workers in the economy may simply not benefit at all from the basic rights that the Government is now seeking to enhance.

More specifically, we urge the Government to extend the more accessible and pro-active compliance regime associated with the National Minimum Wage to these and other statutory employment rights, through the establishment of a Fair Employment Commission.

In doing so, we do not suggest that such a Fair Employment Commission could identify and inspect *every* non-compliant small employer in the UK. Clearly, given the realities of public expenditure, it could not. But that is not an argument for doing nothing. And, as the Work and Pensions Committee of MPs has noted recently, the available evidence suggests that the very existence of a *pro-active* enforcement regime considerably strengthens the incentive for self-compliance.[30] A Fair Employment Commission would help achieve the Government's stated aim of encouraging small employers to "think pro-actively about the benefits of good practice and compliant human resources [policies]".[31]

Nor do we suggest that a Fair Employment Commission could effectively cover *all* statutory employment rights (let alone *contractual* rights), or that it might somehow make the Employment Tribunal system unnecessary. On the contrary, a Fair Employment Commission would sit alongside the Employment Tribunal system (including ACAS), just as the National Minimum Wage compliance regime does now.

The more accessible and pro-active approach to compliance of a Fair Employment Commission would provide an alternative remedy for non-unionised and other especially vulnerable workers who are too afraid of victimisation or dismissal to even raise the matter with their employer, or who know only too well that they will simply be ignored. But it would still be necessary and appropriate for many disputes and grievances – and especially those involving alleged breaches of *contractual* as well as statutory rights, or those involving allegations of discrimination – to be resolved by an Employment Tribunal or the

30 *The Work of the Health and Safety Commission and Executive*, Fourth Report of Session 2003-04, Work and Pensions Committee, HC 456-1, July 2004.
31 *Final report of the shared human resources pilots*, DTI, August 2004.

civil courts. In this context, a Fair Employment Commission would need to work very closely with the forthcoming Commission for Equality and Human Rights (CEHR).[32]

In short, a Fair Employment Commission would form just one part of a multi-layered approach to compliance and, where necessary, enforcement that could help make a reality of the assertion by the Chancellor of the Exchequer, Gordon Brown MP, that "the modern route to prosperity is not exploitation in the workplace, but *fairness* in the workplace".[33]

32 The CEHR – which the Government has said will begin operations in 2006/07 – will bring together the work of the existing equality commissions: the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC), and the Equal Opportunities Commission (EOC). It will also take responsibility for new laws outlawing workplace discrimination on religion or belief, sexual orientation, and age.

33 Rt Hon Gordon Brown, MP: speech to Labour Party conference, 27 September 2004.

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