

**Department for Business and Trade consultation
on enhanced dismissal protections for pregnant
women and new mothers**

GENERAL COMMENTS

1. NASUWT welcomes the opportunity to respond to the Department for Business and Trade (DBT) consultation on enhanced dismissal protections for pregnant women and new mothers.
2. NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.
3. NASUWT recognises the need for good jobs and a stronger economy that delivers for *all* working people. It is therefore welcome that the Government is looking at how it can enhance the opportunity for people to find, advance and stay in work, including pregnant women and new mothers, as part of its *Make Work Pay* plan.¹
4. The Union is supportive of any measures that help more people stay in work, such as those aimed at making work more secure and family friendly and ensuring that motherhood is not a barrier to staying in and progressing in work. These include provisions to make it unlawful to dismiss pregnant women mothers on maternity leave, and mothers for at least six months after they return to work — except in specific circumstances.²

¹ <https://www.gov.uk/government/collections/make-work-pay>

² https://assets.publishing.service.gov.uk/media/68fa29fcba1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

5. In the UK, it is estimated that there is in excess of 16 million women aged over 16 in employment, with a female employment rate of approximately 72% compared to a male employment rate of 78%. The sectors with the most women in employment were health and social work, education (12%) and the wholesale and retail trade (12%).³
6. Despite the fact that the overwhelming majority of the teaching workforce is female (76%),⁴ the Union is aware that on becoming pregnant and returning to work following childbirth, female teachers can face difficulties with their employer.
7. NASUWT maintains that addressing this unfair treatment and discrimination is essential to ensuring equality of opportunity for all groups in society and believes that employers have a duty to keep and retain staff, as well as seek to recruit those who wish to return to work after a break in employment, including pregnant women and new mothers.

SPECIFIC COMMENTS

Please indicate whether you are responding as:

- As an individual
- As an academic, or on behalf of an academic or research organisation
- An employer
- A legal representative
- A business representative organisation (please specify)
- A trade union or staff association (please specify) – The National Association of Schoolmasters Union of Women Teachers (NASUWT – The Teachers' Union).
- A charity or interest group
- Other – please specify

Which region are you located in?

- North-East
- North-West

³ <https://commonslibrary.parliament.uk/research-briefings/sn06838/#:~:text=Women%20in%20employment,education%20are%20held%20by%20women.>

⁴ <https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england/2024>

- Yorkshire and The Humber
- East Midlands
- West Midlands
- East of England
- London
- South-East
- South-West
- Wales
- Scotland
- Northern Ireland

What sector are you based in?

- Accommodation and food service activities
- Activities of households as employers; undifferentiated goods and services-producing activities of households for own use
- Administrative and support service activities
- Arts, entertainment and recreation
- Agriculture, forestry and fishing
- Construction
- Education
- Electricity, gas, steam and air conditioning supply
- Financial & insurance activities
- Human health and social work activities
- Information and communication
- Manufacturing
- Mining and quarrying
- Production
- Professional, scientific and technical activities
- Public administration and defence; compulsory social security
- Real estate activities
- Services Sector
- Transportation and storage
- Water supply; sewerage, waste management and remediation activities
- Wholesale and retail trade; repair of motor vehicles and motorcycles
- Other service activities

SECTION 2: Evidence gathering

Questions 7 – 11 regarding the frequency, commonality and ways in which pregnancy and maternity discrimination manifests in the workplace.

8. All women are protected from discrimination when pregnant or on maternity leave. Pregnancy and maternity-related rights have been an important part of the employment landscape in the UK since the 1970s and there are a number of protections in place in employment law, such as the right to take up to 52 weeks' Statutory Maternity Leave and Statutory Maternity Pay (SMP) for eligible employees, protections against redundancy and unfair dismissal,⁵ including enhanced redundancy protections,⁶ and protections against discrimination under the relevant provisions of the Equality Act.⁷
9. In addition, all employees, including those who are pregnant or on maternity leave, have a 'day one' right to make two flexible working requests in any 12-month period which must be considered in a 'reasonable manner' and within a reasonable time period (i.e. two months).⁸
10. However, in spite of this, it is evident that the current structures in place are not working as well as they should for vast swathes of those who are pregnant or new mothers, thereby entrenching gender stereotypes about caring and parental responsibilities that contribute to the 'motherhood penalty' and the persistence of the gender pay gap in the UK labour market.
11. Many pregnant women and new mothers continue to report experiences that suggest unfair and discriminatory practices still exist. Many pregnant women and new mothers also face challenges in relation to job security.
12. Indeed, reports have indicated that women returning from maternity leave are now more likely to face discrimination. For example, the Equality and Human Rights Commission (EHRC) report shows that 77% of mothers reported a

⁵ <https://www.legislation.gov.uk/uksi/1999/3312/contents>

⁶ <https://www.legislation.gov.uk/ukpga/2023/17>

⁷ https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

⁸ <https://www.nasuwat.org.uk/advice/conditions-of-service/flexible-working/flexible-working-great-britain.html>

negative or possibly discriminatory experience at work during their pregnancy or maternity leave and/or on their return to work. The report noted that if this was scaled up to the general population it could mean as many as 390,000 mothers a year.⁹

13. Furthermore, the report found that 11% of new mothers felt forced out of their jobs, either because they were treated so poorly that they felt they had to leave (9%), were dismissed (1%), or were made compulsorily redundant (1%).¹⁰ This includes being dismissed, demoted, refused access to training, or harassed by colleagues or managers.
14. It has been argued that if these figures were to be extrapolated to the general population then up to 54,000 mothers may leave their jobs annually, including approximately 4,100 dismissals each year.¹¹
15. Despite the fact that discrimination against pregnant women and new mothers has been unlawful for over 30 years, less than 3% took a grievance out with their employer and only 1% lodged a complaint with an employment tribunal,¹² with many of those impacted deterred by costs, fear of losing their job, and/or the complexity and delays associated with the employment tribunal system.
16. Given this, NASUWT maintains that the level and scope of maternity discrimination in the workplace may be far greater, especially given that data is not routinely gathered on pregnancy and maternity discrimination in the workplace by the Government or a regulatory body.
17. In addition, Pregnant Then Screwed reported in 2021 that 30% of mothers had experienced discrimination from an employer,¹³ whereas in 2022 it reported that 6,906 pregnant women and new mothers (8.4%) had experienced discrimination at work that had caused them stress during or after their pregnancy.¹⁴

⁹ <https://www.equalityhumanrights.com/sites/default/files/2022/guidance-pregnancy-and-maternity-related-discrimination-and-disadvantage-summary.pdf>

¹⁰ Ibid.

¹¹ https://assets.publishing.service.gov.uk/media/68fa29fcbaf1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

¹² <https://www.equalityhumanrights.com/sites/default/files/2022/guidance-pregnancy-and-maternity-related-discrimination-and-disadvantage-summary.pdf>

¹³ <https://researchbriefings.files.parliament.uk/documents/CBP-9609/CBP-9609.pdf>

¹⁴ Ibid.

18. This is compounded by the findings from the Taylor Review into Modern Working Practices of at least one in ten employers, and possibly as many as one in five, are not supportive of pregnant women and new mothers, with at least a third of the employers and managers interviewed endorsing opinions including:

“During recruitment, it is reasonable to ask women if they have young children”;
“During recruitment, women should have to disclose whether they are pregnant”; and
*“Women who become pregnant and new mothers in work are generally less interested in career progression than other employees”.*¹⁵

19. Of even greater concern to the Union is the fact that many of those interviewed believed that pregnant women ‘take advantage’ of their pregnancy, and regarded pregnancy as putting an ‘unnecessary cost burden’ on the workplace.¹⁶

20. As such, it is not surprising that 50% of mothers felt that pregnancy/maternity had negatively impacted on their career,¹⁷ and that the Women and Equality Select Committee (WESC) inquiry into pregnancy and maternity discrimination expressed shock at the level of pregnancy and maternity discrimination: *‘pregnant women and mothers report more discrimination and poor treatment at work now than they did a decade ago’.*¹⁸

The impact of the 2023/24 extended redundancy protections for pregnant women and new mothers

21. Whilst the 2023/24 extension of redundancy protection for pregnant women and new mothers to six months was welcomed, the evidence detailed in this submission suggests that this has failed to address the fundamental issue of

¹⁵ <https://hansard.parliament.uk/commons/2021-04-28/debates/4BC9ADDB-A994-49B7-9C1B-8155AE6C2BBA/RedundancyProtectionWomenAndNewParents>

¹⁶ Ibid.

¹⁷ <https://assets.publishing.service.gov.uk/media/6712589b8a62ffa8df77b38a/impact-assessment-protections-against-dismissal-for-pregnant-workers.pdf>

¹⁸ <https://researchbriefings.files.parliament.uk/documents/CBP-9609/CBP-9609.pdf>

women returning from maternity leave and being made redundant. The change in the legislation in respect of the 'protected period' for redundancy has not addressed the fact that the law is already being broken, and, worse still, largely being ignored by employers.

22. Maternity Action has argued that, despite the extension in 2023/24 of the scope of protection in Regulation 10 of the Maternity and Paternity Leave Regulations 1999 to cover a period of 18 months following the child's expected week of childbirth (EWC) or adoption, it is '*notoriously difficult*' to prove a tribunal, '*as the failure to comply with Regulation 10 is rarely if ever made explicit*'.¹⁹

23. In addition, the Union contends that there is very little evidence to suggest that extending the redundancy protections for pregnant women and new mothers has provided any significant benefit to those who have recently returned from maternity, adoption or shared parental leave.

24. This is compounded by the fact that there are severe legal costs involved, meaning that for many women, specifically those who are low paid, it is simply not an option or not worth the risk to pursue a legal challenge through an employment tribunal.

25. Pregnant Then Screwed acknowledge that extending the 'protected period' for redundancy still relies on women utilising a 'dysfunctional tribunal system', meaning that many pregnant women and/or new mothers simply give up.²⁰

26. Given this, it is no surprise that the current state of affairs around pregnancy and maternity discrimination has been described as a '*broken system that....does not work and does not protect women*'.²¹

27. Indeed, the Trade Unions Congress (TUC) Equality Audit 2024 reported that pregnancy and maternity discrimination has become noticeably more widespread, with the number of trade union workplace representatives dealing

¹⁹ <https://maternityaction.org.uk/wp-content/uploads/MA-briefing-on-Dan-Jarvis-PMB-v2-October-2022.pdf>

²⁰ <https://researchbriefings.files.parliament.uk/documents/LLN-2023-0013/LLN-2023-0013.pdf>

²¹ Ibid.

with pregnancy and maternity discrimination issues rising from ten per cent between 2018-2020 to 15 per cent between 2020 and 2024.²²

28. As such, the Union contends that the 2023/24 extended redundancy protections for pregnant women and new mothers did not go far enough. For example, women taking maternity leave should be entitled to the right to return to the same job in which they were employed prior to their leave, irrespective of the length of time away from work.
29. Currently, this right is only reserved for those who have taken a period of 26 weeks or fewer leave. Without this reassurance, it is unlikely that the provisions will be used, because the employer can still offer suitable alternative work on their return, rather than the work they were doing prior to their leave. Furthermore, NASUWT would argue that it does not make good business sense to risk losing skilled and experienced workers who would otherwise have returned to work.
30. Furthermore, the 2023/24 broadening of the scope of those eligible for extended redundancy protections did not include new and expectant mothers who work on casual, agency and zero-hours contracts.
31. This is in spite of the WESC explicitly recommending that the Government should review the pregnancy and maternity-related rights available to workers and legislate to give greater parity between workers and employees.²³
32. This is prescient given that new and expectant mothers are more likely to be disproportionately represented in insecure work, such as agency working. As a consequence, they still miss out on key rights and entitlements which enable them to manage the demands of childcare and work and remain in employment.
33. It therefore remains the case that pregnant and expectant mothers working through an agency are unable to access the same rights and entitlements as other employees.

²² [TUC Equality Audit 2024 | TUC](#)

²³ <https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/90/90.pdf>

34. The Union maintains that all those employed, irrespective of whether they are defined in law as ‘worker’ or ‘employee’, should be able to access the same basic rights and protections which employees currently view as standard.

Indirect pregnancy and maternity discrimination

35. NASUWT maintains that it is important to note that pregnancy and maternity discrimination can manifest itself in a number of ways in the workplace. As such, the Union is concerned that the scope of the consultation is limited as the questions focus on the issue of redundancy protections for pregnant women and new mothers without addressing other aspects of discrimination that entrench gender stereotypes and contribute to the ‘motherhood penalty’ and the persistence of the gender pay gap in the UK labour market, such as access to flexible working, pay, and career progression.

36. At the same time, it is important to recognise the particular circumstances pertaining to same-sex parents and the need to ensure equality of treatment for *all* working parents.

37. Whilst the Union acknowledges the intent of the Government to intervene to strengthen protections regarding the treatment of pregnant women and new mothers in regards to dismissal, the Union maintains that pregnancy and maternity discrimination can often manifest in indirect and less obvious ways than just direct dismissals.

- **Flexible working**

38. For example, attempts to make employment practices more flexible and family friendly have failed to deliver the changes to pregnant women and new mothers in the workplace which would have resulted in them achieving a better balance between work and family life, whilst tackling gender pay inequality and challenging gender stereotypes.

39. As such, there continues to be a gendered division of labour within households that is perpetuated by government policies, such as shorter periods of paternity leave and the poor take-up of shared parental leave, which results in women

feeling like there is little choice but to leave the workplace altogether, particularly when returning to work following a period of leave.

40. The development of flexible working should have enabled greater gender equality in both the workplace and at home, as well as playing a role in promoting greater social mobility, by giving families a greater say in how and when they share their caring responsibilities.
41. However, the Chartered Institute of Personnel and Development (CIPD) reported that there are still barriers for workers accessing flexible working, including a hardening of employers' attitudes towards flexible working.²⁴
42. Indeed, reports from the CIPD suggest that taking up flexible working is actively discouraged by managers and supervisors,²⁵ with research undertaken by the TUC showing that one in three requests for flexible working are turned down.²⁶
43. Research by the TUC has further found that 31% of working mothers had not asked for any flexible working, and 36% had only asked for some of the flexibility they needed. Of those working mothers who had only requested some of the flexible working they needed, 73% stated that the reason they did not request all of the flexible working needed was because they believed the request would be turned down.²⁷
44. In addition, 50% of respondents stated that they were put off making a flexible working request due to worries about the harm this could inflict on their future career prospects.²⁸
45. Despite facing significant barriers to accessing the flexible working they need, it remains the case that mothers are still more likely than fathers/co-parents to ask for flexible working.²⁹

²⁴ Ibid.

²⁵ Ibid.

²⁶ <https://www.tuc.org.uk/sites/default/files/2021-07/Flexibleworkingreport3.pdf>

²⁷ <https://www.tuc.org.uk/research-analysis/reports/denied-and-discriminated-against>

²⁸ Ibid.

²⁹ <https://pregnantthenscrewed.com/mothers-are-twice-as-likely-as-fathers-to-ask-for-flexible-working-after-parental-leave/>

46. Where flexible working is available, it is still seen as the preserve of the working mother, with fathers reporting that their workplace is unsupportive.³⁰ The differential uptake of flexible working by men and women has the potential to perpetuate the gender divide, both at home and in the workplace.

47. Indeed, it remains the case that mothers are more likely than fathers to request a change to their employment for childcare reasons (56.2% of mothers compared to 22.4% of fathers).

48. TUC analysis has found that, on average, women are nearly five times more likely to drop out of the labour market due to caring responsibilities, rising to six times more likely for Black and Minority Ethnic women and nine times more likely for disabled women. This can be seen in every age bracket but is particularly high for women aged 25-44, peaking for women aged 25-29, who are 14 times more likely to be out of the labour market due to caring responsibilities.³¹

- **Gender pay gap and the ‘motherhood penalty’**

49. The unequal distribution of caregiving responsibilities is a key contributor to gender inequality in the labour market. For example, estimates suggest that women provide 450 million hours of unpaid childcare each week compared to 186 million by men.³²

50. Furthermore, data from the Office for National Statistics (ONS) shows that there were almost 1.4 million women who were economically inactive from April to June 2025 because they were looking after their family or home, compared to 229,000 men.³³

51. Given this, the gender pay gap currently stands at 13.1% and has only been falling on average by 0.9 percentage points over the last five years. It will not close until 2040 at current rates.³⁴

³⁰ <http://www.acas.org.uk/media/pdf/o/7/Flexibility-in-the-Workplace.pdf>

³¹ [It's Gender Pension Gap Day – and we need to talk about Carers Credit | TUC](#)

³² Ibid.

³³ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/economicinactivity/datasets/economicinactivitybyreasonseasonallyadjustedinac01sa>

³⁴ <https://www.tuc.org.uk/news/tuc-gender-pay-gap-means-women-work-first-48-days-year-unpaid>

52. Indeed, analysis from the Institute for Fiscal Studies (IFS), having accounted for changes to educational attainment, found that there had been very little progress on closing the gender earnings gap over the last 25 years. The same analysis noted that gender gaps in employment and wages substantially increase as soon as parenthood is factored in,³⁵ which contributes to a gender pensions pay gap of 36.6%.
53. Both the gender pay and pensions gaps are driven significantly by the fact that many women have little option other than to work part time or leave the labour market altogether when they start a family.
54. It has been argued that the focus on the 'maternal transfer model' and the absence of a substantive individual, non-transferable entitlement to paid parental leave for fathers/co-parents means that mothers spend less time in paid work and more time working part time than fathers. This has had a detrimental impact on women's careers and long-term earnings and drives the persistent and relatively large gender pay gap in the UK economy.³⁶
55. For example, the average employment hours worked by men barely change after they become fathers, whereas the employment of women falls sharply from in excess of 90% to below 75% following childbirth. Amongst those women who remain in paid work, the hours of work fall from around 40 to fewer than 30 per week. Furthermore, the wages earned per hour stagnate for working mothers, while continuing to grow uninterrupted for fathers.³⁷
56. Given this gap in earnings, women often return to the workplace on a part-time basis following maternity, often in lower paid jobs that lack opportunities for career progression, in order to access the flexibility that enables them to manage childcare responsibilities (the 'motherhood penalty').³⁸
57. Of even greater concern is that women are often forced out of work when they seek to return from pregnancy and maternity leave by the imposition of penalties

³⁵ <https://ifs.org.uk/news/barely-any-change-gender-earnings-gap-last-25-years-once-you-account-increases-womens>

³⁶ http://www.progressive-policy.net/downloads/files/PPP_Parental-Leave-report_June-2023.pdf

³⁷ <https://ifs.org.uk/inequality/wp-content/uploads/2021/03/BN-The-careers-and-time-use-of-mothers-and-fathers.pdf>

³⁸ <https://timewise.co.uk/article/a-question-of-time-whats-happening-with-part-time-working-in-the-uk/> and <https://timewise.co.uk/article/article-real-reasons-behind-gender-pay-gap/>

such as diminished career opportunities and the pressure to take on jobs below their level of skill and experience.

58. The skills of the line manager are also paramount as line managers are often the first point of contact, particularly during pregnancy and maternity leave and in the run-up to a return to work. NASUWT believes that line managers must therefore have the appropriate skills and training to ensure a smooth transition for someone wishing to return to work from maternity leave.

59. Discussing flexible working prior to maternity leave, appointing a maternity coach, encouraging limited but specific contact, and supporting women to make the transition back to work after maternity leave, are all strategies which the Union believes support women during their break and on their return to work.

The Experiences of Teachers

60. As referenced earlier, the overwhelming majority of the teaching workforce is female (75.6%).³⁹ Irrespective of this, the Union is aware that on becoming pregnant and returning to work following childbirth, female teachers can face difficulties with their employer.

61. Indeed, women in their 30s are the largest group exiting the teaching profession each year. For example, in 2023 the 30-40 age group accounted for one in four of the teaching workforce.⁴⁰

62. Losing experienced teachers is catastrophic on a number of levels, not least of which is the impact on the stability of the school workforce felt in schools up and down the country.

- **Flexible working**

³⁹ <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest/#:~:text=0-.Any%20other.chart%20with%205%20data%20series.>

⁴⁰ https://www.newbritain.org.uk/files/ugd/8be189_06c43a81df034e6598475e2b888b0c96.pdf

63. Despite changes to the legislative framework for flexible working from April 2024,⁴¹ as well as those planned in the Employment Rights Act, coupled with the significant benefits of flexible working (i.e. the retention of experienced staff, promoting wellbeing and improving work-life balance), NASUWT maintains that the Government needs to take a much stronger approach to employment flexibility. This will reflect the realities of modern work and childcare needs, especially in education where the uptake of flexible working in education remains stubbornly low.
64. Legislation exists in many European countries that entitles parents to reduce their working hours, specifically during the first few months of parenthood, to combine care and (part-time) employment. For example, Dutch workers have the legal right to request changes to the hours they work (*Wet Aanpassing Arbeidsduur*), as well as the right to request flexible working (*Wet Flexibel Werken*).⁴²
65. Flexible working requests come disproportionately from female teachers as they make up the vast majority (75%) of the teaching workforce. This represents a key factor in the gender pay gap in teaching, as many women teachers are forced to relinquish Teaching and Learning Responsibilities (TLRs) or even break from their substantive contracts of employment and consider employment elsewhere.
66. This includes taking up posts at a lower grade because there is no guarantee of pay portability, as well as working as supply teachers, who are often subject to the vagaries of intermittent, insecure and precarious employment.
67. Where flexible working requests are accepted, teachers report suffering unfair treatment and career setbacks, particularly those teachers in leadership positions, or those with additional responsibilities.
68. Whilst acknowledging the intent and desire of the Department for Education (DfE) to increase opportunities for flexible working, including revising its advice

⁴¹ <https://www.nasuwt.org.uk/advice/conditions-of-service/flexible-working/flexible-working-great-britain.html>

⁴² <https://www.kvk.nl/en/managing-and-growing/flexible-working-act-in-practice/>

and guidance and addressing the negative perceptions of flexible working in schools,⁴³ it remains the case that there are still a number of teachers and school leaders who believe that flexible working is incompatible with a career in teaching.⁴⁴

69. For example, more than six in ten (64%) of those not currently working flexibly, or who only cite flexible working as occasional days off or leaving early, disagreed that they would be confident requesting flexible working arrangements. A further 34% of those considering leaving state education cited lack of flexible working opportunities as a reason for leaving.⁴⁵

70. Despite this, the evidence available to NASUWT confirms that many schools are highly resistant to recognising teachers who wish to benefit from flexible working, regarding part-time and job-share teachers as 'less committed'.

71. A key factor undermining progress remains the open-ended teachers' contract. The failure to specify the maximum working time of teachers continues to contribute to a perception/expectation that a teacher's time is unlimited. Furthermore, it undermines the benefits a teacher may otherwise accrue from part-time or job-share working.

72. The experiences of being a parent and a teacher suggest that the attitude and approach towards flexible working by schools/colleges is still a cause for concern, as demonstrated by research undertaken by NASUWT of 3,298 teachers who were parents in 2020.⁴⁶

73. Just over two-fifths (42%) of respondents said that they had asked their employers for flexible working because of their parental responsibilities. Disappointingly, three in ten teachers (30%) reported that their request was not granted.

⁴³ <https://www.flexibleworkingineducation.co.uk/uploads/toolkit/addressing-the-negative-perceptions-of-flexible-working-in-schools.pdf>

⁴⁴ <https://www.gov.uk/government/publications/working-lives-of-teachers-and-leaders-wave-2/working-lives-of-teachers-and-leaders-wave-2-summary-report>

⁴⁵ Ibid.

⁴⁶ <https://www.nasuwt.org.uk/static/3284d4dc-bd06-4313-b0f5ef72c2209159/Evidence-Submission-to-the-STRB-35th-Report-December-2024-England.pdf>

74. This is compounded by the fact that 37% of teachers who responded to the Union's flexible working survey stated that they were forced to consider alternative employment as a result of their flexible request being refused.
75. Of even greater concern is the fact that just over two-thirds (67%) of teachers reported that they were not given the right to appeal the decision by their employer to reject their request for flexible working, despite this being good practice and recommended in the Advisory, Conciliation and Arbitration Service (ACAS) guidance in relation to flexible working.
76. This resonates with earlier work undertaken by NASUWT which shows that a significant proportion of teachers are being denied the right to flexible working by employers, and that too many schools are still resistant to flexible working. That specifically means part-time working and job-share working, particularly for those teachers in leadership positions or with additional responsibilities.⁴⁷ Only 8% of teachers felt that flexible working requests were encouraged in their workplace.⁴⁸
77. NASUWT's *Wellbeing at Work Survey 2024* shows that a majority of teachers report a lack of flexible working opportunities, with just under three-fifths (58%) reporting that their school does not provide flexible working opportunities.⁴⁹
78. Research into graduate career aspirations continues to confirm that younger graduates are more likely to enter and remain in professional occupations that offer flexible employment practices and permit inclusive and collaborative decision-making, while eschewing crude 'command and control' management structures.
79. Disappointingly, the Union believes that in too many instances schools do not provide working environments of this type. For teaching to compete, it would need to become more attractive in other ways, including higher pay, to

⁴⁷ <https://www.nasuwt.org.uk/static/44c65415-8095-4917-81d661e22fb70e12/eefcd53f-9633-4b01-ae49edaa09a5df1c/Flexible-Working-Survey-Report-2023-England.pdf>

⁴⁸ Ibid.

⁴⁹ <https://www.nasuwt.org.uk/static/17ad7ef2-879e-40d4-96b3c014e605746a/Teachers-Wellbeing-Survey-Report-2024.pdf>

compensate for a lack of work flexibility when compared to opportunities in the wider labour market.

80. Detailed economic analysis and calculations show that the financial benefits of flexible working greatly outweigh any initial costs associated with it. For example, the Pragmatix Advisory Flex Model, published as part of the Flexonomics Report in November 2021, calculated the estimated net benefit to the economy of increasing flexible working in the education sector by 50% to be £5 billion.⁵⁰
81. The same report calculated that the cost to organisations in the education sector of employees leaving their job earlier than they would have is £300 million. This includes the cost to replace staff who leave, as well as the loss of productivity from losing more experienced staff. This cost is a real risk to schools that routinely reject requests for flexible working.
82. Indeed, recent research based on 150,000 teachers across a four-year period has shown that mothers returning to teaching from maternity leave are more likely to stay in their jobs if they work part-time in comparison to their peers (32% leaving rate for those working part-time compared to 45% for those who went back full-time).⁵¹
83. The same study highlighted the importance of the first year back for women returning from maternity leave, with 17% of returning teachers leaving within a year of coming back compared to a leaving rate of 12% for all teachers.⁵²
84. Indeed, the first year back is seen as a time when women are ‘particularly vulnerable to leaving’,⁵³ and, as such, schools and colleges should show greater understanding and flexibility, including in regards to accommodating part-time and flexible working and ad-hoc flexibility.
85. Of even greater concern is the fact that some teachers indicated that the only way to access flexible working arrangements was through dropping out of the

⁵⁰ The categorisation of ‘education’ is from the ONS UK standard industrial classification of economic activities.

⁵¹ <https://thekeygroup.com/news-insights/what-happens-to-teachers-after-maternity-leave>

⁵² <https://thekeygroup.com/news-insights/what-happens-to-teachers-after-maternity-leave>

⁵³ https://www.newbritain.org.uk/files/ugd/8be189_06c43a81df034e6598475e2b888b0c96.pdf

permanent teacher workforce and entering the intermittent, insecure and precarious world of supply teaching, including through outsourced employment agencies.⁵⁴

86. Where there are pockets of good practice operating in some schools, including the much-publicised nine-day fortnight,⁵⁵ these represent the exception rather than the rule, and increases in the proportion of those teachers who can access off-site planning, preparation and assessment (PPA) time and increases in requests for ad-hoc days are often at the discretion of the line manager or Senior Leadership Team.⁵⁶
87. Given the evidence detailed above, NASUWT believes that serious consideration must be given to both financial and non-financial levers that can be used to address the lack of flexible working in schools.
88. The Union would encourage the Government to be bold in this area and consider looking at how additional staff could be employed in subject areas, including the use of supernumerary teachers to address issues of flexible working, as well as emergency supply and time to cover PPA time.
89. In addition, the DfE should look at strengthening its education Staff Wellbeing Charter,⁵⁷ to ensure there is more rigour and accountability in how Ofsted and schools 'champion flexible working', including an action plan and targets. There should be a national deadline set by the DfE for adoption of the Charter by all state-funded schools.
90. The DfE should revisit its guidance and advice on flexible working and consider changing the status of the guidance from optional to mandatory, as well as requiring all schools to have flexible working policies that have been agreed with NASUWT and other recognised trade unions, which provide for a right of appeal if a flexible working request has been declined.

⁵⁴ <https://www.nasuwt.org.uk/advice/supply-teacher/supply-teacher-annual-survey/supply-teacher-annual-survey-england.html>

⁵⁵ <https://www.dixonsat.com/why/flexible-working>

⁵⁶ <https://www.gov.uk/government/publications/working-lives-of-teachers-and-leaders-wave-2/working-lives-of-teachers-and-leaders-wave-2-summary-report>

⁵⁷ <https://www.gov.uk/guidance/education-staff-wellbeing-charter>

91. This could be complemented by a requirement for schools to publish their flexible working policies, which is in line with the recommendations suggested in *Good Work Plan: Proposals to support families*.⁵⁸ This should produce greater transparency and increased detail and clarity, thereby helping teachers make informed choices by allowing them to compare and benchmark schools.
92. Schools should be expected to report annually on the number of requests made and granted, and the number of appeals lodged, much in the same way schools report on the gender pay gap. A comprehensive report, broken down by workforce composition, particularly those groups with protected characteristics, as well as by contract type, could be produced as part of a school's requirement under the SWC.
93. The Union maintains that any such annual report should be shared with and consulted upon by both the workforce and the recognised trade unions, and include details of any action plans to tackle issues such as how the employer intends to tackle the barriers faced by working parents and those wishing to access flexible working.

- **Gender pay gap**

94. The DfE's School Workforce Census (SWC) data demonstrates that:

- just over three in four teachers are women (76 per cent in 2024/25);
- despite the high proportion of women teachers, women are less likely than men to be in senior posts; and
- average salaries are higher for male teachers than for female teachers across all grades.⁵⁹

95. The average salary for all teachers, including those in leadership roles in 2024/25, was £49,205. For male teachers, the average salary was £51,727, whereas the average salary for female teachers was £48,391. The pay premium for male teachers in 2024/25 was £3,336, which represents a gender pay gap of 6.45% in the teaching profession across all grades of teacher in 2024/25.

⁵⁸ <https://www.gov.uk/government/consultations/good-work-plan-proposals-to-support-families>

⁵⁹ <https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england/2024>

96. For male classroom teachers, the average salary in 2024/25 was £46,279 compared to £45,057 for female classroom teachers. The pay premium for male classroom teachers in 2023/24 was £1,222, which represents a gender pay gap of 2.64% in 2024/25.
97. In 2024/25, the average salary for men in school leadership roles, excluding headteachers (Other Leadership), was £68,475, compared to £64,486 for women in similar leadership positions. The pay premium for men in this category in 2024/25 was £3,989, which represents a gender pay gap of 5.83% in 2024/25.
98. For headteachers, the gender pay gap is at its most extreme. In 2024/25, the average salary for men was £90,133 compared to £81,652 for women. The pay premium for male headteachers is £8,480, which represents a gender pay gap of 9.41% in 2024/25.
99. The extent of gender- and ethnicity-based pay inequality within the teaching profession remains a significant concern for NASUWT. The Government's own SWC data clearly demonstrates that a significant gender pay gap persists in 2024/25, which becomes more pronounced in school leadership positions. NASUWT remains deeply concerned that systemic discrimination continues to obstruct progress toward a more diverse and equitable teaching profession.
100. NASUWT research into pay and equalities indicates that the introduction of flexibilities into the teachers' pay system has contributed to inequality. Pay progression reforms introduced from 2013 onwards have given increased discretion to schools over pay progression, replaced statutory pay scales with pay ranges comprising minima and maxima points only, and provided discretion to schools over pay portability (where teachers retain their pay level on the national pay scales when moving to a new school).
101. The Union contends that these reforms impact most heavily on teachers who take career breaks to raise families, who overwhelmingly tend to be women. Prior to 2013, a woman who returned to teaching after a career break would automatically retain her salary level on the main or upper pay scale. Now this is

not the case – schools can exercise discretion to pay the teacher on the minimum of the schoolteachers' main pay range irrespective of their expertise and prior performance, which can lead to a substantial drop in salary. This factor alone will act as a major disincentive to men/fathers seeking to take a break from teaching in order to help raise their children.

102. The Equality Act 2010 places a clear legal duty on schools to monitor the impact of its pay policy on teachers in equalities groups, and take appropriate remedial action to ensure that discrimination does not occur. The DfE has issued guidance on the application of the Public Sector Equality Duty (PSED), including equalities monitoring of appraisal and pay progression processes, including objective setting, success criteria and outcomes.⁶⁰
103. The advice also covers the avoidance of discrimination towards pregnant teachers, teachers on maternity leave and teachers with a disability. Advice is provided on equal pay issues, which stresses again the importance of equalities monitoring.
104. However, despite the clarity of the advice, and the extent to which it springs from a statutory duty placed on schools, the Union is concerned that this is seemingly ignored by a significant number of schools and employers.
105. Concerns relating to the gender pay gap can be further highlighted by the pay progression of part-time staff, the majority of which are women.
106. NASUWT is particularly concerned about the pay discrimination faced by women teachers on the grounds of pregnancy or maternity, which often takes the form of pregnant teachers, or teachers on maternity leave, being advised to wait another year before pay progression can be considered.
107. The Union is concerned that, whilst such an environment exists in teaching, it is highly unlikely that parents will be in a position which permits the father to care for their children and the mother to return to work, without the family suffering a significant financial detriment.

⁶⁰ https://assets.publishing.service.gov.uk/media/66a38172ab418ab055592dc5/Managing_Teachers_and_Leaders_Pay_-_July_2024.pdf

108. Furthermore, there are significant concerns about the burdens faced by carers who already face discriminatory barriers to employment, pay and progression, such as older teachers, Black teachers and disabled teachers. They are not only disproportionately affected by barriers to employment in terms of their protected characteristic but also by the affordability and access to childcare, given that they also face disparities in terms of equal pay. The Union has deep concerns that such vulnerable groups are often not afforded the choice to return to work after time out for caring responsibilities when compared with their counterparts.
109. Research by Warwick University for NASUWT showed that Black teachers are paid less than their white colleagues, are more likely to be employed in temporary posts, are less likely to be promoted and are more likely to be disciplined or dismissed from their jobs.⁶¹
110. Black teachers still face barriers to pay and career progression, as well as covert and overt racial discrimination throughout their careers. In England, there are currently no government targets, programmes or funding to improve ethnic diversity in the teaching workforce, in contrast to both Scotland and Wales.⁶²
111. The Union notes that the equalities analysis provided by the DfE of the performance related pay (PRP) system provides evidence of systematic bias leading to discrimination, together with the failure of the PRP system as a framework intended to reward teachers appropriately. The DfE analysis also supports NASUWT's case for a single classroom teacher pay scale, with automatic incremental progression and *without* a threshold to higher classroom teacher pay levels.
112. In addition, there is compelling evidence supporting the need for more robust equality pay gap reporting to be undertaken and published annually by the DfE, employers and schools, with reference to teachers by gender, ethnicity, disability and age.

⁶¹ <https://www.nasuwt.org.uk/advice/pay-pensions/teachers-pay-research.html>

⁶² <https://www.nfer.ac.uk/publications/ethnic-diversity-in-the-teaching-workforce-evidence-review/>

113. NASUWT believes that, until fundamental issues such as workload and pay — specifically the freedom and flexibility around pay portability — are addressed, then the DfE will continue to fail to tap into the pool of trained teachers currently not working in state-funded schools.

- **Working hours**

114. Teachers in England work longer weekly hours than workers in other professions and are more likely to report wanting to work fewer hours. Teachers in England also work more hours and spend more time on non-teaching tasks than the average teacher in the Organisation for Economic Co-operation and Development (OECD) countries.⁶³

115. Unlike the vast majority of other contracts of employment, teachers and school leaders are subject to the following additional working hours provisions in paragraph 51.7 of the School Teachers' Pay and Conditions Document (STPCD):

'In addition to the hours a teacher is required to be available for work under paragraph 51.5 or 51.6, a teacher must work such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties, including in particular planning and preparing courses and lessons; and assessing, monitoring, recording and reporting on the learning needs, progress and achievements of assigned pupils'.⁶⁴

116. There is no measure of what is 'reasonable'. This, in practice, means that teachers have an open-ended contract and have no upper limit on their undirected working hours. There is no mechanism to measure how much additional work is undertaken by individuals. The Working Lives of Teachers and School Leaders annual survey shows that the average working hours of full-

⁶³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919065/TALIS_2018_research_brief.pdf

⁶⁴ https://assets.publishing.service.gov.uk/media/687a6260312ee8a5f0806bb5/School_teachers_pay_and_conditions_document_2025_and_guidance_on_school_teachers_pay_and_conditions.pdf

time teachers was 51.2 hours in 2024.⁶⁵ The average working hours of teachers has remained in excess of 50 hours for many years.

117. This supports the view that many teachers who are parents struggle to juggle the demands of work with their caring responsibilities, particularly as many teachers work at home in the evening during the week and on the weekend.
118. NASUWT is concerned that excessive workload and working hours do not engender an environment conducive to being a parent and returning to teaching.
119. The largest single reason cited by teachers and leaders for leaving the teaching profession for many years has been too high a workload and the inability to achieve a reasonable work-life balance.
120. For example, unmanageable workload is the most cited reason ex-teachers give for why they left. Over one-third (36%) of teachers and leaders indicated that they were considering leaving the state school sector in the next 12 months, excluding for retirement. This represents an increase from 25% in 2022.
121. Ninety-four per cent of teachers and leaders who are considering leaving the state sector reported high workload as the most common factor.
122. As such, the Union has repeatedly called for the removal of the open-ended clause in the teachers' contract. No other profession carries an unlimited working time expectation of workers. It is clear that without sufficient safeguards in the teachers' contract, teachers' working time will remain excessive and open to abuse.
123. Indeed, the Secretary of State acknowledges that workload is: *'a commonly cited reason for teachers leaving the profession and our evidence tells us that teachers and leaders often work long hours.'*⁶⁶

⁶⁵ https://assets.publishing.service.gov.uk/media/68f11c49e8e4040c38a3cfbf/Working_lives_of_teachers_and_leaders_wave_3_-_research_report.pdf

⁶⁶ <https://schoolsweek.co.uk/ministers-ask-for-three-year-teacher-pay-proposals-and-directed-time-review/>

124. This is compounded by the fact that it is predominantly left to women teachers to choose between parenthood and their teaching career, with significant consequences for pay and career progression.

- **Maternity pay**

125. The Union contends that the inadequate maternity pay provisions for teachers are a major contributing factor to the current recruitment and retention crisis.

126. Maternity leave and pay for teachers in England and Wales is covered by the provisions of the Burgundy Book; these provisions have not kept pay at the levels of maternity pay available to eligible employees in a number of other public sector professions.

127. Research undertaken by NASUWT shows that just over three-quarters (76%) of teachers stated that they would have liked to have taken more time off for maternity/paternity/adoption leave, yet 84% cited financial reasons as the key barrier to taking additional maternity/paternity/adoption leave.

SECTION 3: In what circumstances should dismissals be allowed?

Questions 12 – What kind of test should be used to decide whether a pregnant woman or new mother was fairly dismissed during the protected period?

Question 13 – What should the new test be?

128. Given the evidence provided above, the Union contends that there is a pressing need to reset the approach to provisions around protection from dismissal for pregnant women and mothers on maternity leave. The Union would, indeed, countenance against any tinkering around the edges of a broken system and urge the Government to be bolder in its approach.

129. As such, NASUWT contends that that any scope for employers to dismiss pregnant women and new mothers should be extremely limited, such as that operated under the Maternity Protection Act in Germany, which prohibits

dismissal for those who are pregnant or on maternity or parental leave in all but limited circumstances.⁶⁷

130. The Maternity Protection Act provides redundancy protection as soon as the employer is aware that an employee is pregnant during pregnancy and for at least four months after childbirth (though protections can apply beyond this if parental leave is also taken).⁶⁸

131. If the employer is aware of the pregnancy then any dismissal is unlawful during pregnancy, until the end of four months after a miscarriage after the 12th week of pregnancy, or until the end of a woman's protected period after childbirth (at least until the end of four months after childbirth).⁶⁹

132. In addition, if an employer makes a pregnant worker redundant, not knowing they are pregnant, but this information is disclosed, the worker must be reinstated and the redundancy protections applied.

133. Furthermore, protection does not appear to be reliant on any length of continuous service with an employer, as it also applies during a probationary period, such as those for new starters.⁷⁰

134. Under the German model, dismissal is only allowed in 'special cases' that outweigh the overriding interests of the protected worker, including: closure of the business (and no possibility of continued employment in another part of the company); relocation of the business (and no possibility of any type of continued employment at the new location); when the cost of maintaining the employment is to the detriment of the company; and when the worker refuses an offer of reasonable continued employment in the event of closure or relocation of the business.⁷¹

⁶⁷ <https://www.bmbfsfj.bund.de/resource/blob/191576/beddabe131e1d1c8e67c55b2c44b73f7/leitfaden-zum-mutterschutz-englisch-data.pdf>

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

135. There are also provisions to permit conduct-related dismissals for serious breaches of the employment relationship, including intentional criminal acts, as well as provisions regarding small businesses of ten or fewer employees.
136. Importantly, the Maternity Protection Act provides for each request by an employer to make a pregnant worker or new mother redundant to be reviewed by the local health authority. Whilst the review takes place, the pregnant woman remains in employment.
137. An employer cannot dismiss a pregnant worker or a new mother without permission from the local health authority.⁷² The local health authority will only grant consent to the dismissal in exceptional circumstances, such as those detailed above, and a dismissal without consent is automatically invalid.⁷³
138. NASUWT would go further in suggesting that any proposals to extend protections from redundancy for new and expectant mothers should apply for up to a year after return to work. Taking such action would be a clear signal to tackle discrimination and *‘to change the culture which can exist around mothers and the workplace’*,⁷⁴ which prevents new mothers being forced out when they seek to return to work.
139. Given this, the Union contends that the current ‘potentially fair’ reasons tests, as established in employment law,⁷⁵ provide too much scope for discrimination against pregnant women and new mothers, particularly at a time when they are vulnerable and are likely to require more support and understanding.
140. The Union believes that limiting the scope of dismissal, other than in exceptional circumstances (e.g. gross misconduct or business closure) has the potential to increase employer compliance significantly by providing greater clarity to employers regarding their legal obligations, as well as shifting the onus from women – who currently have to demonstrate that the redundancy is

⁷² Ibid.

⁷³ Ibid.

⁷⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773179/extending-redundancy-protection-for-pregnant-women.pdf

⁷⁵ https://assets.publishing.service.gov.uk/media/68fa29fcbaf1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

discriminatory – to employers, who would have to demonstrate that it is a genuine redundancy situation.

141. In doing so, this would provide a much stronger preventative protection against unfair redundancy and should encourage employers to improve the support and understanding offered to pregnant women and new mothers during pregnancy and on their return to work.

142. The Union maintains that employers should not be allowed to conduct capability procedures for pregnant women and new mothers, such as those relating to poor performance, if an employer has not fulfilled their legal obligations and can provide substantial evidence to that effect.

143. A simpler and clearer approach would also be beneficial for employers, as it would provide clarity for employers and employees and reduce the scope for misinterpretation and misapplication.

144. This is especially prescient if, as in the German model, there is some level of independent oversight from a local health authority (or other relevant body to be decided), as having to apply for permission to dismiss a pregnant woman or new mother to an independent body has the potential to deter unfair dismissals and encourage employers to comply with their existing legal obligations.

145. Oversight and/or regulation by a local health authority have the potential to bring about greater compliance, as well as enforcement, so would avoid being seen as tokenistic.

146. It should be noted that at the root of many cases of pregnancy and maternity discrimination is a lack of regulation and scrutiny governing these arrangements. NASUWT maintains that there are currently no incentives to change workplace culture and ensure employers act differently.

147. In addition, the role played by a local health authority could help in making judgments in more complicated cases that support and guide employers in resolving issues without recourse to an employment tribunal.

148. Furthermore, oversight by a local health authority would enable the collection of more accurate and consistent data in relation to the experiences of pregnant women and new mothers in the workplace, particularly if employers were required to inform a local health authority when they are made aware of a pregnancy, or if they wish to seek permission to make a pregnant woman or new mother redundant during the protected period.

149. NASUWT believes that consideration should be given to the interplay between any local health authority (or other relevant body to be decided) and the Health and Safety Executive (HSE) remit in regards to individual risk assessments, as well as the requirement for large employers to produce gender pay gap action plans.

Question 14 – Thinking about the fictional examples above - and any personal or professional experience you may have - when do you think it should be possible to dismiss a pregnant woman or new mother on grounds of conduct?

150. As stated above, NASUWT believes that the scope for employers to dismiss pregnant women and new mothers should only be allowed in extremely limited circumstances.

151. Whilst NASUWT recognises some of the challenges posed by the examples given in the consultation,⁷⁶ the Union believes that some are lacking in detail on the background and context needed in order to adequately assess if the scenarios merit being seen as examples of gross misconduct.

152. For example, the repeated lateness cited in example C during and after the protected period fails to detail the reason why the individual was repeatedly late, which was likely the failure of the employer to provide flexible working arrangements to enable the individual to manage their pregnancy and subsequent childcare. As such, the failure to provide more detail makes it difficult to determine if this genuinely is a case of gross misconduct, or if the employer has failed in its duties and legal obligations.

⁷⁶

https://assets.publishing.service.gov.uk/media/68fa29fcbaf1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

153. On the issue of gross misconduct, the Union believes that the role played by a local health authority (or other relevant body to be decided) could be useful in reviewing the evidence submitted to determine whether or not it constitutes gross misconduct, as well as to decide if the employer has complied with its legal obligation and followed appropriate processes, including giving access to trade union representation for those involved.

Question 15 – when do you think it should be possible to dismiss a pregnant woman or new mother fairly on the grounds of capability during the protected period?

Question 16 – when do you think it should be possible to dismiss a pregnant woman or new mother fairly on the grounds of redundancy during the protected period?

154. As stated above, NASUWT contends that that any scope for employers to dismiss pregnant women and new mothers should be extremely limited, as under the Maternity Protection Act in Germany.

155. Whilst NASUWT cautiously welcomes the development of a heightened test that would only permit redundancy dismissals of pregnant women and new mothers during the protected period in exceptional circumstances (e.g. where the employer is experiencing or imminently facing financial difficulties so severe that the dismissal cannot reasonably be avoided),⁷⁷ the Union has concerns about the role played by employment tribunals, given the evidence presented previously in this consultation.

156. In addition, as the Union has advocated for the role played by a local health authority (or other relevant body to be decided) in the German model, it would be important to understand its interplay with the employment tribunal service. As such, this may require further consideration.

Question 17 – when do you think it should be possible to dismiss a pregnant woman or new mother fairly on the grounds of statutory prohibition during the protected period?

⁷⁷https://assets.publishing.service.gov.uk/media/68fa29fcba1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

Question 18 – when do you think it should be possible to dismiss a pregnant woman or new mother fairly on the grounds of some other substantive reason?

157. As stated above, NASUWT contends that that any scope for employers to dismiss pregnant women and new mothers should be extremely limited, as under the Maternity Protection Act in Germany.

158. Given this, the Union would be concerned over attempts to broaden the grounds upon which it would be possible to dismiss a pregnant woman or new mother fairly, including on the grounds of statutory prohibition, but especially on the basis of some other substantive reason.

SECTION 4: When the protection starts

Question 19 – When should employees be entitled to the enhanced dismissal protections?

159. As all existing protections against dismissal for pregnant women and new mothers are already 'day one' rights, NASUWT believes that any enhanced dismissal protections should align with this, rather than requiring a qualifying period, such as the 3-9 months suggested in the consultation.

Question 20: At what point should the enhanced dismissal protections start for pregnant women?

160. NASUWT recognises the importance of informing the employer in regards to health and safety considerations, including risk assessments, and appreciates that giving early notice currently provides employees with increased protection against unfair treatment or dismissal.

161. However, the Union believes that consideration should be given to providing protection against dismissal for pregnant women from the first day of employment, or when the woman becomes pregnant, particularly given that some women can experience problems as a result of pregnancy before they are aware of being pregnant.

162. For example, pregnancy can impact on a woman's performance or attendance at work before they are even aware that they are pregnant or have had a chance to notify their employer. As such, limiting the start of any protection to notifying the employer could leave some women vulnerable during a critical early period.

SECTION 5: When the protection ends

Question 21 – When should the protection 'window' for new mothers entitled to maternity leave end?

Question 22 – Should women who are not entitled to Maternity Leave have protection against dismissal for two weeks after the end of their pregnancy?

163. As stated previously, NASUWT contends that any proposals to extend protections from redundancy for new mothers should apply for up to a year after they return to work, as opposed to 18 months from the birth of a child or placement of an adopted child, where there is entitlement to statutory leave.

164. The Union believes that this should apply in situations where women are not entitled to maternity leave, such as those who have experienced a miscarriage before 24 weeks, as every woman who experiences pregnancy loss should be given the time and space they need to deal with their loss and afforded the same levels of protections against dismissal.

SECTION 6: Other parents

Question 26 – Do you think that parents who take long, family leave entitlements (i.e. Adoption Leave, Shared Parental Leave or Neonatal Care Leave) are vulnerable in a dismissal situation?

Question 27 – Do you think the enhanced dismissal protections should also cover employees taking these other types of long family leave?

Question 28 – Thinking about your answer to question 27, should the protection against dismissal start from the first day of the leave?

Question 29 – Thinking about your answer to question 28, how long should the protection against dismissal last?

165. NASUWT can see no reason why other parents taking family leave (e.g. Adoption Leave or Shared Parental Leave (SPL)) should not be eligible for enhanced dismissal protections.
166. Parents who are on leave for extended periods of time may face similar vulnerabilities to pregnant women and new mothers, so it would be appropriate to provide the same protections against dismissal.
167. As stated previously, NASUWT contends that any proposals to extend protections from redundancy for new mothers should apply for up to a year after they return to work, as opposed to 18 months from the birth of a child or placement of an adopted child, where there is entitlement to statutory leave.
168. The Union would countenance against a distinction based on whether or not an individual has taken six weeks or more SPL, neonatal leave or bereaved partner's paternity leave, without a comprehensive understanding of the detrimental impact this could have on those who are forced to curtail their leave and return to work unprotected and vulnerable.

SECTION 7: Awareness of rights

Question 30 – How do we ensure women, including those from minority groups, are aware of the enhanced dismissal protections for pregnant women and new mothers?

Question 31 – How do we ensure employers are aware of these changes?

169. NASUWT believes that access to advice and guidance, coupled with the availability of free legal advice, should be better promoted and more readily available in all workplaces for pregnant women and new mothers.
170. Whilst provision of advice and guidance is helpful, any such advice and guidance must be transparent, consistent and fit for purpose. How the information is explained and the language used is just as important as what is contained in any advice and guidance. Unless the information is presented in a clear and unambiguous way that is easily understood, there is still the potential

for pregnant women and new mothers to be unsure of their rights and the obligations of employers.

171. It is essential that pregnant women and new mothers are able to evidence that they have read and clearly understood the advice and guidance provided. This could be done through a face-to-face meeting with a pregnant woman or new mother.

172. However, the Union would be concerned at any suggestion that discrimination against pregnant women and new mothers can be addressed through the consolidation of advice and information for both women and employers. Advice and guidance cannot be seen as a substitute for legislation and statutory enforcement.

173. Indeed, research by the EHRC⁷⁸ demonstrates that non-legislative measures have not worked, so what reason is there to think that additional advice and guidance will secure the necessary changes in the workplace towards pregnant women and new mothers?

SECTION 8: Supporting businesses

Question 32: How can we best support businesses, including smaller businesses, through this change and to avoid disputes escalating to the Employment Tribunal?

174. Given the evidence presented above, NASUWT believes that serious consideration should be given to utilising as many means as possible to support businesses in addressing pregnancy and maternity discrimination, including all of those identified in this consultation, such as employer training, clear guidance and free advice routes.⁷⁹

175. As referenced earlier, the Union contends that the role played by some level of independent oversight from a local health authority (or other relevant body to be

⁷⁸ <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

⁷⁹ https://assets.publishing.service.gov.uk/media/68fa29fcbaf1f8c92fb5f942/consultation_enhanced_dismissal_protections_pregnant_women_new_mothers.pdf

decided), could be transformative given that it has the potential to monitor and ensure employer compliance, as well as deter unfair dismissals.

176. Consideration should also be given to the Fair Work Agency (FWA) and the role it could play, particularly given the extensive remit it could have under the provisions laid out by the Secretary of State.

SECTION 9: Mitigating unintended consequences

177. NASUWT contends that if the German model is adopted, as detailed above, there is the potential to mitigate any unintended consequences, particularly if other measures are adopted in respect of enforcement and raising awareness.

SECTION 10: Additional changes

- **Tribunal time limit**

178. NASUWT believes that the time scales for bringing a claim to an employment tribunal should be extended, irrespective of the type of case under consideration.

179. It cannot go unnoticed that the standard time limit for bringing an employment tribunal claim is substantially shorter in comparison to all the other areas of the civil justice system, where time limits are usually three or six years.

180. The short primary time limits for bringing an employment tribunal claim and the relatively strict test, in many cases, for extending the primary time limit derive from the concept of tribunals as a forum for the speedy and informal resolution of employment disputes.

181. Employment tribunals are now far more complex, and, as such, the waiting times for hearings are often significantly longer. It may be seen as outdated to adhere to such strict time limits when claimants may have to wait months to have their claim heard.

182. Three months is not a lot of time in practice, especially when an employee has to absorb the situation, recognise they have been wronged, seek representation (if appropriate), go through early conciliation and begin the process of lodging a potential employment claim, including the associated paperwork.

183. The Union therefore welcomes proposals to extend the time limit for employment tribunals from three to six months, as recommended by the WESC Inquiry into Pregnancy and Maternity Discrimination.⁸⁰

184. NASUWT would go further in suggesting that the time limit should not begin until *all* the pertinent information requested by the claimant has been fully disclosed.

- **‘Family friendly’ policies and statutory levels of pay**

185. It is important not to see the proposals in this consultation in isolation to other ‘family friendly’ policies. The Union believes that the UK parental leave system has not kept pace with changes in society.

186. As such, NASUWT acknowledges the intent of the Government to reset the approach and understanding of parental leave and pay, and what it wants the system to achieve,⁸¹ although the Union would countenance against any tinkering around the edges of a broken system and urge the Government to use this opportunity to address the flaws in the system.

187. For example, whilst welcoming the intent behind the introduction of SPL, NASUWT contends that the extremely low take-up of 1% of employee mothers and 5% of employee fathers⁸² suggests that it has failed to provide fathers/co-parents with the ability to take extended leave and support mothers while recovering from childbirth.

188. The extremely low take-up of SPL suggests that the impact it has had on achieving the aforementioned objectives and addressing gender imbalance in

⁸⁰ <https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/90/90.pdf>

⁸¹ <https://questions-statements.parliament.uk/written-statements/detail/2025-07-01/hcws757>

⁸² https://www.employment-studies.co.uk/system/files/resources/files/Parental_Rights_Survey%202019.pdf

the labour market is limited, with the Institute for Policy Research stating that *'the policy has not, on average, led to a greater take-up or longer leave by fathers'*.⁸³

189. Furthermore, the current rates of statutory pay are woefully inadequate and unfit for purpose. Indeed, the Sixth Report of session 2024/25 of the Women and Equalities Committee, *Equality at Work: Paternity and Shared Parental Leave*, noted that the low rates of statutory pay was 'perhaps the most damaging problem across the board',⁸⁴ representing considerably less than half of the National Living Wage (NLW) and out of kilter with the cost of living.⁸⁵
190. Indeed, all statutory entitlements are remunerated at the rate of either £187.18 a week or 90% of an employee's average weekly earnings, whichever is lower, with the exception of Statutory Maternity Pay (SMP) for the first six weeks.
191. This equates to just 44% of the NLW for a 35-hour working week and represents a steady decrease in the relative value of 19% since 2012 – when SMP was worth 63% of the adult rate of the then National Minimum Wage.⁸⁶ This compares with average weekly earnings of £682, based on the ONS as of March 2024, and is equivalent to just 35% of median weekly pay for female employee jobs in the UK in 2024.⁸⁷
192. The situation is compounded when considering that SMP is only paid for the first 33 of the 52 weeks of maternity leave that mothers or the primary adopter are entitled to, meaning that the remaining 13 weeks are unpaid, unless the employer has an enhanced occupational maternity scheme in place.
193. The 39 weeks' duration of paid maternity, parental and home care in the UK falls way short of the OECD average of 51 weeks.⁸⁸ It therefore comes as no surprise that payment rates for maternity leave in the UK are among the worst in the

⁸³ [https://www.bath.ac.uk/publications/shared-parental-leave-did-it-work/attachments/shared-parental-leave-did-it-work-policy-brief\(2\).pdf](https://www.bath.ac.uk/publications/shared-parental-leave-did-it-work/attachments/shared-parental-leave-did-it-work-policy-brief(2).pdf)

⁸⁴ <https://committees.parliament.uk/publications/48254/documents/252625/default/>

⁸⁵ Ibid.

⁸⁶ <https://maternityaction.org.uk/wp-content/uploads/Pushed-into-Poverty-2025-FINAL.pdf>

⁸⁷ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyindustry2digitsticashetable5>

⁸⁸ https://www.oecd.org/content/dam/oecd/en/data/datasets/family-database/pf2_1_parental_leave_systems.pdf

OECD, with UK mothers only being entitled to 11.7 weeks of full pay during their maternity leave.⁸⁹

194. Despite the description of SMP as ‘a measure of earnings replacement’,⁹⁰ the evidence suggests that the current rate of SMP is failing to provide mothers on maternity leave with the ability to maintain for themselves and their children a suitable standard of living, with the recent cost-of-living crisis exacerbating the situation.

195. Research by Maternity Action shows that new mothers are pushed into poverty and debt by the critically low levels of maternity pay. This has a detrimental impact on both their physical and mental maternal health.

196. For example, 65% of respondents stated they were worried ‘a lot’ about money when pregnant or on maternity leave, and 55% stated that they relied on their credit card or borrowed money while they were pregnant or on maternity leave.⁹¹

197. Even more concerning is evidence that mothers are sometimes forced to return to work before they have physically recovered from having a baby (i.e. injuries sustained during labour), with 40% reporting that they had taken 12 weeks or fewer of maternity leave ‘because the pay is so poor’.⁹²

- **Childcare**

198. In addition, the provision of good-quality childcare is critical following a period of leave to enable mothers and fathers/co-parents to return to work and re-enter the labour market. Childcare costs for many families are significant, so it is important to consider what action can be taken to ensure that there is access to affordable and high-quality childcare for *all* mothers and fathers/co-parents, irrespective of income or employment status.

⁸⁹ Ibid.

⁹⁰ <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim76360>

⁹¹ <https://maternityaction.org.uk/wp-content/uploads/Pushed-into-Poverty-2025-FINAL.pdf>

⁹² <https://committees.parliament.uk/publications/48254/documents/252625/default/>

199. Evidence from the OECD suggests that good-quality and affordable childcare is a key driver in achieving better female labour market participation. There was a positive correlation between the provision of childcare services for parents of children under three years old and female participation in the labour market.⁹³

200. Indeed, the United Nations Children's Fund (UNICEF) report, *Where Do Rich Countries Stand on Childcare?*, analysing access to childcare across 41 high- and middle-income countries, ranked the UK 35 out of 41 countries.⁹⁴

- **The vital role of trade unions**

201. Trade unions have a vital role to play in ensuring that workers are better informed and empowered in respect of their employment rights, including those relating to parental leave and pay.

202. NASUWT believes that measures should be introduced to promote and support collective bargaining/collective agreements and the right of trade unions to access workplaces and enhance contractual leave through collective bargaining.

203. Evidence suggests that the involvement of trade unions is crucial in negotiating improved terms and conditions, and putting in place mechanisms to remedy breaches of these terms and conditions.⁹⁵

Matt Wrack

General Secretary

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⁹³ http://praha.vupsv.cz/fulltext/ul_1594.pdf

⁹⁴ https://www.unicef-irc.org/publications/pdf/Family-Friendly-Policies-Research_UNICEF_%202019.pdf

⁹⁵ https://www.employment-studies.co.uk/system/files/resources/files/Parental_Rights_Survey%202019.pdf

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