Consultation Response on Implementing Employee-Owner Status, November 2012

(Claire McCann, Rachel Crasnow, Sian McKinley & Chris Milsom, Cloisters 7th November 2012)

Q1. to Q7.
Not answered.
Q8.
What benefits do you think introducing the employee owner status in with limited unfair dismissal rights will have for companies?
In general terms, we do not consider that the proposal offers any obvious advantages. We can well understand that an employee who feels part of the daily running of his or her employer's activities may be more productive. We struggle to see, however, that the 'employee owner' scheme would contribute towards this objective. The employment relationship is unlike any other. Firstly, there is rarely equality of bargaining power. The best candidates may be suspicious of the scheme and accept employment elsewhere. Those left with the ultimatum of an ill-considered share scheme or no employment at all are unlikely to be the strongest candidates and, upon employment, unlikely to feel entirely comfortable or confident in their role. Secondly, an employment relationship is organic and, one would hope, long-lasting. An OECD survey of 2011 suggests that the average UK citizen of working age spends 1,647 hours at work each year. Any ostensible advantages of the scheme would be undermined by the difficulties an organisation would face when undertaking two different and sometimes conflicting functions – ie, the corporate and the employment. In addition:-

i. As the Consultation paper rightly recognises at the outset "The UK has one of the most lightly regulated labour markets in the developed world and is performing well…". There is no evidence that employment legislation prohibits recruitment. In the absence of any demonstrable data that such 'light regulation' is impairing growth or recruitment we cannot see the benefits of removing the employment protection currently enjoyed by UK employees;
ii. An employee whose job security is in doubt due to relinquishing his or her unfair dismissal rights is unlikely to be a productive worker or a confident consumer;
iii. Restricting the right to request flexible working is likely to be a false economy. Evidence suggests that employers benefit significantly from flexible working:

permitting such requests broadens the talent pool and a more productive workforce leads to increased confidence and flexibility[1];

iv. This is likely to be an inordinately complex scheme to initiate for those businesses who are not already involved in valuing shares. Such complexities are likely to outweigh any short-term advantages;

v. There are real concerns as to the division the scheme may cause amongst the workforce which are far from conducive to a flourishing workplace. Consider the following problematic scenarios:-

   a. It is understood that these proposals would not impair an employee's right to a protective award pursuant to TULR(C)A 1992. Notwithstanding this, however, 'employee ownership' status would invite differential treatment which would be problematic in practical terms. In a collective redundancy process, is it the case that those employees who are employee owners, who have no right to claim unfair dismissal, are excluded from a consultation and selection process whilst others have the full rights to make representations as to why they should be retained? If so, why not dismiss employee owners before all others in such circumstances?

   b. Are employee owners permitted to attend meetings about the performance of the business from which others will be excluded? Will this not, in turn, lead to a situation in which some colleagues are better informed than others?

   c. What of current employees who have not had the benefit of the share scheme at an earlier stage of employment and who may have benefited from an increase in revenue over the course of their employment? If the scheme is offered, grievances will doubtless follow that such shareholding rights should be granted to take account of retrospective benefits;

vi. We understand 'employee owner' status to be akin to a collateral contract i.e. the provision of shares acts as consideration for the forfeiture of certain statutory rights. In all other respects, the employee owner is in an identical position as that of the ordinary employee. It is not clear, at present, what consequences would follow for an employee who voluntarily surrendered his or her shares – whether at a value or otherwise - during the course of employment. Plainly, once shares are surrendered, there is no consideration for the forfeiture of statutory rights and, as such, those rights may well be restored. If an employee owner can adopt this course at a time when dismissal is likely, any short-term advantage that the scheme may have would be circumvented at the opportune moment.

vii. Employers will doubtless feel uneasy about sharing confidential business information with employees and yet any differential treatment between shareholders dependent on whether they are employed or not will fuel nuanced and occasionally well-founded grievances. The workplace risks descending into a daily shareholders' dispute.

Such negligible advantages to an employer must also be placed in the context of the demonstrable disadvantages to an employee. In addition to losing rights which have formed the cornerstone of employment protection for some decades, consider the unfortunate scenario of a company entering

[1] "Flexible Working: working for families, working for business" (A report by the Family Friendly Working Hours Taskforce," 15 March 2010)

administration. It seems that employees in such circumstances would be left with worthless shares and no right to seek statutory payments from the RPO.
We also consider that the withdrawal of any EU derived rights may be open to legal challenge. This would have the effect of creating satellite litigation about the legality of the "employee ownership" scheme.
We conclude that a good employer/employee relationship will not be fostered by this scheme. A sense of fair-play and consideration of an employee's requests to, by way of example, work flexibly, are far more likely to achieve this objective. As such, we regard this proposal as ill-considered and counter-intuitive.

Q9.

Not answered.

Q10.

What impact, if any, do you think the employee owner status will have on employment tribunal claims e.g. for discrimination

The proposal is very much in its infancy and, as such, ambiguities are inevitable. As stated in our response to question 8, the conflicts between the corporate and the employment relationship will most likely create fertile ground for suspicion between employer and employee. This, combined with a sense of insecurity by forfeiture of the right not to be unfairly dismissed, will make litigation more rather than less likely. Moreover, such litigation will invariably be of a more complex – and costly – nature. Unfair dismissal claims will be relabelled as discrimination or whistle-blowing claims, so increasing the breadth of issues to be considered and the costs incurred in the litigation. In addition, we can foresee a new sphere of commercial litigation in the costs-bearing civil jurisdiction. This is particularly so since those employees who take advantage of the share scheme on the basis of informed and genuine consent – especially for the higher values in shares - are more likely to be sophisticated individuals with the means and ability of pursuing county court and high court claims.
The proposals contained in this Consultation paper do not amount to a means of avoiding litigation so much as a starting-point for increasingly complex claims.

Q11.

What impact do you think introducing the employee owner status with no statutory redundancy pay will have for businesses, in particular, smaller businesses and start-up businesses? What negative impacts do you anticipate and how might these be mitigated?

Would an employer be able to bypass all the procedural steps prior to redundancy dismissals such as consultation (collective and individual) and considering alternative employment? It would have to ensure that all employees it deprived of these steps were "employee owners" or it would face unfair dismissal claims as well as claims for redundancy payments. Removing the consultation stage would, we feel, deprive employers of the opportunity of keeping those employees who were best to retain in the business going forward. Often errors in the selection process are only brought to the attention of business as part of the consultation dialogue. Moreover, a business which has no incentive to apply proper selection criteria (in the knowledge that the affected employees have no legal come-back with unfair dismissal or redundancy payment claims) is more likely to select on non-

transparent, subjective grounds, which may be open to challenge on grounds of discrimination, hence avoiding the "flexibility" which was the objective of reducing the level of protection. Of course, discrimination compensation is uncapped, so such an outcome may be no cheaper for the employer (and there would be the additional legal costs of the discrimination litigation).

Would the giving of the shares be a fair trade-off for redundant employees? In a business considering redundancies, there will often be a perception that the shares are not worth what they would be, were there no need for redundancies. Hence disputes about the "market value" of the shares will arise particularly where the dismissed employee believes the shares are worth substantial sums. The Consultation suggests: "*However, to ensure that employees are also protected, the Government will require that if shares are surrendered, the employer would have to buy back the employee's shares at a reasonable value*." What is reasonable? We foresee conflicts arising over the differences between the "unrestricted market value at the time that [shares] are **awarded**" and the time they were **surrendered**. Disputes on value, often at High Court level, will not add to the flexibility enjoyed by the business and may take up more time and resources than the redundancy selection consultation process would, had it be conducted according to ACAS guidelines.

So, we see various negative impacts if such measures are introduced. Grievances are particularly likely to arise with long-standing employees who would ordinarily receive sizable redundancy payments, but the value of whose shares have been downgraded.

Current solutions are already in place to mitigate such problems. Any employer is free to offer an employee it wishes to make redundant a termination payment along with a compromise agreement (and a reference if it wishes to make the offer attractive). Of course the employee can refuse and insist on the employer pursuing with the statutory redundancy procedure. But the Government's suggested ways of making redundancies a more flexible process ignore the fact that the greater the degree of unfairness perceived by employees, the more keen they will be to litigate their grievances under some kind of legal challenge: even if the obvious ones of unfair dismissal or a claim for a redundancy payment are not available to them.

In summary, these proposed measures will not reduce the risk of litigation.

Q12.

What impact will this change to maternity notice period have on employers?

The stated aim behind the proposal to introduce "employee owners" as a new status of employee is "to provide additional flexibility to employers, in particular fast growing innovative companies who require adaptable workforces".

In the Consultation document, at paragraph 38, it is stated that "planning for maternity periods is often cited as a concern for employers."

It should be recalled that the requirement on a woman to give notice of her return from maternity leave was increased, in any event, fairly recently (ie, October 2006) from 4 to 8 weeks. The proposals now suggest that, for "employee owners", the requirement to give notice of a return to work should be further increased to 16 weeks. For a woman planning on taking less than the 52 weeks' full maternity leave entitlement, this notice requirement could

potentially oblige her to give notice of her intention to return to work very early in her maternity leave (for example, when her baby is just 3 months old and she intends to return to work when the baby is 7 months old). It can be very difficult for a woman to have much sense of when will be appropriate to return to work when her baby is still so young. Where an employee fails to give the requisite notice of her return to work before the end of the AML period, then her employer is entitled to postpone her return to such a date as will ensure that it has had the requisite notice of her return. During this period of postponement, the employer is under no contractual obligation to pay any remuneration (ie, until the date to which the employee's return was postponed). Consequently, by extending the notification requirement, a woman may be left without remuneration at a very vulnerable time.

It is not at all apparent to us that the early notification proposal would greatly assist employers by providing "additional flexibility" or by encouraging them to take on additional staff. Any maternity cover resource will either be arranged amongst existing employees or by way of a temporary hire. Where existing employees are deployed to cover the maternity leaver's duties, it will make little (if any) difference to an employer whether it has 8 or 16 weeks' notice of a woman's return to work following maternity leave. Where a temporary hire is used to cover the woman's duties, that person will typically have a far shorter contractual notice period for termination of employment than 8 weeks in any event (and only one week's minimum statutory notice). Therefore, an employer already has adequate flexibility to make provision (within the current 8 weeks) for a woman's return to work following maternity leave.

Whilst we are aware that employers often cite planning for maternity leave as a concern, this is in respect of a woman taking maternity leave in the first place (and not the notification process for her return to work).

We envisage very little (if any) helpful impact in relation to the proposed increase to the notification requirements. An additional 8 weeks' notice of a woman's return to work will not encourage employers to employ more staff (or more female staff).

Conversely, whilst on maternity leave, a woman is disadvantaged (ie, vulnerable) in the labour market. Particularly in a recession, she needs the greatest flexibility in relation to her ability to return to work. For example, if her partner/spouse is made redundant, this may require a woman to return to work sooner than envisaged. By requiring her to give 16 weeks' notice of her intention to return to work (rather than 8 weeks), she will be denied the comfort of knowing that she can return to her fully paid employment within a relatively short period of notifying her employer of such an intention. We consider that such a proposal is to be deplored as it further undermines the security for a woman when she is, in any event, financially insecure. We also note that the early notification proposal does nothing to reduce so-called "red tape".

Q13.

What, in your view, would employers do if employees wish to return early without giving 16 weeks' notice?

As with most requests from employees where there is no legal requirement to consider or accede to the request, we envisage that it will largely depend on the good will of the employer towards the employee concerned. If the maternity leaver is well-valued by the employer then, no doubt, the employer

will allow her to return early from maternity leave, even without the 16 weeks' notice. If, however, an employee is less valued by her employer, then a request to return early from her additional maternity leave without having given the requisite 16 weeks' notice may be viewed less generously.

Q.14

Not answered.

Q15.

What effect will a compulsory 16 weeks' early return notice period have on the length of maternity leave that mothers take or adoption leave that parents take?

If applied rigorously by an employer and the employee envisaged taking less than 52 weeks' leave, then the 16 week notification requirement may have the effect of extending the length of that employee's leave (as it brings forward the date on which the employee has to notify her employer of her intention to return to work). In other words, it may extend the length of maternity leave by up to 8 weeks.

Q16.

Do you think 4 weeks is the right period? If not, why not? What would be the impact of a shorter or longer period?

In the Consultation document, it is stated that the Government is committed to encouraging employers and employees to take up flexible working and has committed to extend the current right to request flexible working to all employees during this Parliament. It is also stated that "flexible working is beneficial for employees and employers: employees benefit from the ability to manage their work and personal responsibilities more effectively and employers benefit from increased productivity, and staff retention as well as reduced staff absence". Given these statements, it is surprising and concerning that the "employee owner" proposals restrict the right to request flexible working to the EU minimum (ie, only when returning from parental leave). Furthermore, it is proposed that the request should be made within 4 weeks of a return to work after parental leave.

We fail to see how the proposal chimes with the Government's stated aim to extend the right to request flexible working to <u>all</u> employees. By restricting the right to request flexible working for "employee owners", in fact, the Government is proposing to reduce the general entitlement to request to work flexibly.

The proposal is likely to impact adversely and disproportionately part-time employees and, especially, women. It will also be likely to adversely impact certain age groups who have more onerous caring responsibilities (eg, those with children under 18 years old). In its Impact Assessment, the Government states that the estimated proportion of people that utilise flexible working is "broadly similar across men and women". However, the Government has only provided statistics for flexible working amongst the full-time working population. This is short-sighted and regrettable as it is well-established that many flexible working arrangements are implemented in respect of part-timers.

The Consultation document states that the change "only removes access to an employment tribunal case for those employees who think their request has not been properly considered according to the statutory provisions". This fails

to acknowledge that, by having a statutory process requiring an employer properly to consider a flexible working request, this encourages flexible working. No doubt that is why the Government has so clearly expressed its desire to extend the right to request flexible working to all employees. Furthermore, whilst the removal of the right to request flexible working will also remove the right to make a tribunal claim for an alleged failure by an employer properly to consider a flexible working request, it will not remove access to an employment tribunal for a discrimination claim (eg, by a woman or an employee in a particular age group who has been denied a flexible working request).

Generally, therefore, we deplore the proposal to remove the right to request flexible working from "employee owners" (except in respect of those employee-owners returning from parental leave).

In relation to the proposed 4 week period within which a request must be made by those returning from parental leave, we consider that this is too short. Furthermore, there is nothing in the consultation about a right to repeat a request within, say, the first 12 months after a return from parental leave.

We consider that, when an employee returns from parental leave, it is often not clear to that individual how s/he will balance her/his previous working arrangements with new childcare responsibilities. By only allowing a 4 week period to undertake that assessment, this greatly reduces the ability of an employee properly to evaluate what working arrangements would suit both her/him and the business. A longer period would, therefore, enable an employee to consider what working arrangements would accommodate both her/his childcare duties and the needs of the business. We also consider that the legislation should provide for a right to make a further request within the first 12 months after a return from parental leave. This is because an employee may return from parental leave but his/her partner or spouse may still be taking a period of parental leave so there is no need, at this stage, for the employee to work flexibly. However, once the other parent returns from his or her parental leave, the employee may well need to request flexible working. If such a request can only be made in the first four weeks after the employee's return from parental leave, this will significantly reduce the advantage of the entitlement to request flexible working.

Q17.

What impact do you think this proposal would have on the ability of employee owners to access support for training?

<u>How widely does this right apply?</u>

This right only applies to employees of businesses with over 250 employees.

As of the start of 2012[2], small and medium-sized enterprises (SMEs), defined as having between 0-249 employees, accounted for 99.9% of all enterprises in the UK. SMEs employed 59.1% of the private sector employment (14.1 million people of the 23.9 million people employed by enterprises in the UK).

A tribunal claim for a failure to consider a request for time off for training can only be brought by the 9.8 million people employed by large enterprises.

The government states that "it is envisaged that the employers that might be most likely to employ employee owners would be fast growing companies with a requirement for a flexible workforce." We consider that the government is

[2] www.fsb.org.uk/stats

not expecting that large companies are the "fast growing companies" that the government envisages taking up this policy.

How many claims were brought last year for a failure to consider a request for training?

There are no precise figures but we know that in 2011/2012 there were 321,800 claims brought and of those claims 5,000 fell within the bracket "Other"[3]. Claims which fall under "Other" will include claims for failure to consider a request for time off for training but must also include claims for failure to consider request for flexible working, claims for less favourable treatment on grounds of being a fixed-term worker or a part time employee. Even if we assume that all 5,000 claims falling within "Other" are claims for failure to consider a request for training, this amounts to 1.55% of all claims, though it is likely to be far less than this.

Summary

This scheme is designed to assist fast growing companies which are more likely to be small and medium-sized enterprises. These enterprises are unaffected by the right to request time off for training.

The rarity of these claims makes it unlikely that businesses are put off from hiring people because they are concerned about being brought before a tribunal for a failure to consider a request for time off for training.

To the extent that large enterprises would be put off hiring employees by the perceived risk of being taken to an employment tribunal for a failure to consider a request for time off for training, this could be resolved by better education as to the obligations on a large employer.

This would reduce the impact on employee owners of large companies who will be unable to request time off for training unless their employer decides to consider such requests outside of the statutory scheme.

Q18.

Not answered.

Q19.

The Government welcomes views on particular safeguards what would need to be applied, in order to minimize opportunities for abuse.

We consider that abuse could occur in two scenarios:

1. Employees had this scheme forced upon them (e.g. through a system of dismissal and re-engagement);
2. Employees within the scheme did not receive the true value of the shares upon surrendering them (e.g. when dismissed or resignation).

To avoid abuse, we suggest the following safeguards:

- Employees can only give up their rights and take up employee-owner status once they have taken independent legal advice, similar to the requirements under section 203 of the Employment Rights Act 1996 when compromising rights.
- Shares can only be valued by independent valuations so that the results cannot be skewed or manipulated, or to ensure that the employees have confidence in the valuation of their shares.

[3] Employment Tribunals and EAT Statistics 2011 - 12, Ministry of Justice, produced 20 September 2011

The issue with both of these safeguards is that either the employee or the employer (or potentially both) could incur a cost.

Q20.

Not answered.

Q21.

What impact do you think the proposal will have on labour market flexibility – that is, in relation to hiring and letting people go?

The objective of the suggested new status is to make it easier to terminate contracts of employment on two bases: if procedures are not followed business will save time. If there is no legal challenge for a dismissal business will save time and costs.

We think this is short-sighted for two reasons. Firstly, the procedures adopted in legislation which guide employers along the paths of fair dismissal and redundancy procedures are not only workable and straightforward (as well as very familiar to HR professionals) but also have a positive impact upon the entire workforce going forward. Bypassing long-standing procedures which the workforce has faith in, harms company loyalty and increases suspicion and distrust in the workplace. This in turn has a negative impact upon teamwork and managerial structures.

Secondly, it is ill-advised to believe that removing protection reduces litigation or the threat of litigation. Where an employee has a grievance they wish to take further, where they have lost their job and are uncertain of finding a suitable replacement, they will take the nearest legal challenge to the one they have surrendered upon being issued their shares. There may be fewer unfair dismissal claims, but there will be more whistleblowing and discrimination claims. The end result is business being disgruntled upon facing possibly unmeritorious claims and employees wanting a more just solution than the employer's value of their shares at the time they were awarded.

The current system whereby a compromise agreement accompanied by acceptable payment ends an employment relationship with no risk of litigation works extremely well for all concerned, across the UK and has done for many years.

We do not understand how rights which have a qualifying period of two years attached to them in any event could act as a barrier to hiring employees. Neither have we seen any evidence that "employee owners will potentially have greater attachment to the success of their employer by virtue of the stake that they own in the company, creating a more engaged workforce." The most that such employees would gain, would be a removal of some of their most important legal rights, along with a squabble when they were dismissed, on procedurally unfair grounds, about the value of the shares they now had to surrender.

Q22.

Not answered.

Q23.

What are your views on the take-up of this policy by:

a) Companies?

This scheme is based on the premise that companies want to avoid tribunal claims and are willing to give shares in the business to achieve that objective.

However, not all companies operate the same. Companies have different aims and objectives for issuing shares and have different numbers of shareholders. This means that the impact on each company will be different and will affect how likely that company is to take up this policy.

1. Private limited companies

According to the Equality Impact Assessment, there are around 2.3 million private companies of the 2.8 million businesses in the UK.

In general, limited companies sell shares to raise cash and denote ownership. Those who hold shares own a percentage of the company and, depending on that percentage, may control or contribute to decisions. Shareholders tend to be senior figures within the organisation, founders or outside interests.

In order to be able to give shares to employees to enter into this scheme, those private limited companies may need to change their share capital structure. They will have to undertake a valuation of the company and of those shares (which is less likely to be done than in a public listed company) and those pre-existing shareholders will have to agree to give up, or at least dilute, part of their stake.

This scheme is designed for fast growing and new businesses. We are not convinced that fast growing and new private companies would want to incur those costs.

Furthermore, we consider that fast growing and new businesses may well not wish to give up ownership of their company, and particularly not to employees. It is not uncommon that the interests of shareholders and the interests of employees differ. Giving voting rights to employees may make businesses more restricted in the action they can take, rather than more flexible as envisaged.

Even if employee owners do not have voting rights (for example, if they are preferential shareholders), existing shareholders may have concerns that the dividend pool will be diluted. Furthermore, as shareholders, employee owners would, at the very least, be entitled to General Meeting Minutes and to receive copies of the annual accounts. They also, for example, have rights to apply to the court for a remedy where they consider that the company's affairs are being conducted in a way which is unfairly prejudicial to its members. This may enable them to have access to commercially sensitive data which the employer would ordinarily be reluctant to share with employees.

2. Publicly listed companies

Publicly listed companies will either have to buy back shares from existing shareholders or they will have to issue new shares. Both scenarios will require the publicly listed companies to incur a cost.

Again, for publicly listed companies, there will clearly be times when the interests of shareholders and the interests of employee shareholders differ. For example, there may be circumstances where it is in the best interests of the business to make redundancies. There may be uncertainty that employee shareholders will vote for what pre-existing shareholders would perceive to be the best interests of the company or a perception on the part of pre-existing shareholders that this might be the case.

Publicly listed companies will have the additional issue of the reaction of institutional investors and whether they will be willing to take the risk.

b) Individuals?

We consider that the type of employee who would opt for the status of employee-owner is one for whom the value of the rights to be surrendered is less than the value of the shares.
The take up might be greatest among senior employees. This is because these employees are more likely already to own shares and will understand the benefits which can be gained. These employees are also likely to earn significant amounts so that the cap on ordinary unfair dismissal claims would make claims in the employment tribunal less attractive.
However, new (and, possibly, junior) employees may well also wish to accept an offer of an "employee owner" contract because they would have two years from the start of employment, in any event, before they qualify for entitlements to redundancy pay and/or to claim for unfair dismissal. These employees – as new starters – have no track record with the company. So we consider that there is little attraction from a business perspective to offering such employees "employee-owner" contracts. Fast-growing and innovative businesses (who these proposals are aimed at, according to the Consultation document) are not slow to dismiss under-performing employees and, of course, have a free hand (absent discrimination and whistle-blowing protection) to dismiss during the two-year qualifying period. Therefore, it is unlikely that a start-up business would risk giving shares to new employees with no track record whom they may wish to dismiss a few months down the line.
The policy envisages that "employee-owners will potentially have greater attachment to the success of their employer by virtue of the stake that they own in the company". However, there is a reference in the equality impact assessment that "shares will be valued according to their unrestricted market value at the time that they are awarded". This implies that there will be no potential for making a profit when shares are surrendered if the value of the company increases. The only benefit for individuals would be the dividends paid out by the company.
Therefore whether employees will opt for the policy will depend on the dividend policy of the company. In large established companies, (e.g. a FTSE 100 company) there will be a benefit in owning shares because there is a reliable payout of dividends every year. In smaller companies which want to grow, it may be more likely that the pre-existing shareholders want to reinvest any dividends back into the company. This would be less attractive for any employees.
There is another type of employee who might take up the status of employee-owner. That is the employee who does not understand the value of their rights. Whilst such an employee would be protected if there was a requirement for independent legal advice, we still consider that such an employee would be vulnerable.

Q24.

What are your views on the equality impact assessment? Are there other equality and wider considerations that need to be considered?

<u>Maternity and Pregnancy</u>

The equality impact assessment has considered that "the maternity element of the policy only impacts on women as clearly only a woman can return from maternity leave. In this case however, a woman retains her right to maternity leave or pay; she is only being asked to agree to a procedural change in the

exercise of the leave right. It is important to note that all other rights related to maternity would be the same as those held by an employee."

We consider that this equality impact assessment does not take account of the impact on women in respect of the flexible working proposals, as set out in our answer to Question 16 and below.

Gender

The equality impact assessment concludes that there is no gender discrimination directly imposed by the adoption element because "the change to adoption leave is gender neutral is it applies to either a man or a woman who takes adoption leave". There is, however, no statistical analysis of whether men or women will be disproportionately affected by the change to adoption leave. We consider that it is often women who take adoption leave and, therefore, the adoption element is likely to affect greater numbers of women than men.

Full-time statistics

When assessing the impact of the flexible working proposal, only full-time employees were considered. This leaves out of the assessment a large part of the working population who benefit from flexible working arrangements – ie, part-time employees. As many women are part-time, it would seem to us that the flexible working proposal is very likely to disproportionately and adversely affect more women than men and this should clearly be considered before the proposals are adopted.

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