



# Family Career Breaks



Advice Pack 2023

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## 1. Introduction

Maintaining a career at the Bar and having a family can be a challenge, which is why policies and guidance to support maternity and parental leave and flexible working have been introduced.

Knowing what you're entitled to and understanding the rules is vital if you are to make the most of your leave and make a smooth transition back into practice.

This guide sets out the law, the rules chambers have to follow and information about taking leave, maintaining your practice throughout leave and returning to work. It also shares the experiences of barristers who have taken maternity and parental leave, what worked well for them and what could have been better.

At the end of this guide there are links to support and information. Do not hesitate to get in touch.

## 2. The Law

The Equality Act 2010 prohibits discrimination on the grounds of pregnancy and maternity (s.4 EqA). For self-employed barristers this protection lasts from the start of the pregnancy until 2 weeks after they have given birth (s.18 EqA). Treatment after this period may be discriminatory if it involves the implementation of a decision taken within the protected period (s.18(5) EqA); or if it amounts to discrimination on other grounds e.g., sex, through the application of s. 47 EqA:

- (2) A barrister (A) must not discriminate against a person (B) who is a pupil or tenant—
- a) as to the terms on which B is a pupil or tenant;
  - b) in the way A affords B access, or by not affording B access, to opportunities for training or gaining experience or for receiving any other benefit, facility or service;
  - c) by terminating the pupillage;
  - d) by subjecting B to pressure to leave chambers;
  - e) by subjecting B to any other detriment. ...
- (6) A person must not, in relation to instructing a barrister—
- a) discriminate against a barrister by subjecting the barrister to a detriment;
  - b) harass the barrister;
  - c) victimise the barrister. ...
- (8) The preceding provisions of this section (apart from subsection (6)) apply in relation to a barrister's clerk as they apply in relation to a barrister; and for that purpose, the reference to a barrister's clerk includes a reference to a person who carries out the functions of a barrister's clerk.

As set out above the prohibition against discrimination by subjecting a barrister to a detriment applies to other barristers, instructing professional and lay clients as well as clerks.

### Positive Action

Section 158 of the Equality Act allows for positive action measures to remedy an under-representation of disadvantage. Chambers may be able show with workforce and earnings data that those returning from extended periods of leave find it harder to rebuild their practice. In this case chambers would be able to put in place proportionate measures to alleviate disadvantage which may include proactive marketing support, preferential briefing or extended rent breaks etc.

## 1. BSB Rules

The [BSBs Equality and Diversity rules](#) cover how barristers should be treated when on parental leave<sup>1</sup>.

rC110 You must take reasonable steps to ensure that in relation to your *chambers* or *BSB authorised body*:

- .1 there is in force a written statement of policy on equality and diversity; and
- .2 there is in force a written plan implementing that policy;
- .3 the following requirements are complied with:

### Parental leave

.k *chambers* has a *parental leave* policy which, in the case of a *chambers*, must cover as a minimum:

- .i the right of a member of chambers to take parental leave;
- .ii the right of a member of chambers to return to chambers after a specified period, or number of separate periods, of parental leave, provided the total leave taken does not exceed a specified maximum duration (which must be at least one year);
- .iii a provision that enables parental leave to be taken flexibly and allows the member of chambers to maintain their practice while on parental leave, including the ability to carry out fee earning work while on parental leave without giving up other parental leave rights;
- .iv the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;
- .v the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;
- .vi where any element of rent is paid on a flat rate basis, the chambers' policy must as a minimum provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers' rent;

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<sup>1</sup> See [here](#)

.vii the procedure for dealing with grievances under the policy;

.viii chambers' commitment to regularly review the effectiveness of the policy;

### Flexible working

.1 *chambers* or *BSB authorised body* has a flexible working policy which covers the right of a member of *chambers, manager* or *employee* (as the case may be) to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable him to manage their *family responsibilities* or disability without giving up work;

### **Key to note – the rules allow:**

1. Up to 12 months leave – some chambers may allow a longer period
2. Flat rent holiday only (most chambers have more complex rent arrangements)
3. Encouragement to 'keep your hand in' and do some work whilst on leave/prior to immediate return (KIT days)
4. Returning to cases covered during leave (where appropriate)
5. Support to rebuild practice after a longer period of leave

**More information about the BSBs diversity rules and Bar Council guidance for barristers and chambers can be found on the Bar Council's Ethics Hub [here](#)**

### 3. Checklists

#### Before you take maternity or parental leave

- Check your chambers' **career break/parental leave/flexible working policies** (and/or BSB Handbook).
- Hold a **practice meeting**.
- Put a return/update **practice meeting** in your diary.
- Practising Certificate Fees** - you may be entitled to a partial refund or a discount on your practising certificate.
- Amend or cancel your **Professional Indemnity Insurance** (BMIF) – you should only cancel if you are suspending your practising certificate. BMIF allow barristers taking parental leave to change their cover at no extra cost.
- Check **CPD** requirements - you may be entitled to an exemption but only if you are suspending your practising certificate at the same time.
- Bank/Accountant** - let them know what is happening.
- Chambers **Rent** – alter or put direct debits on hold.
- Accounts** – make sure they are up to date & provision for tax/year end/pension provision.
- Allow for **VAT** - it is probably best not to de-register if you intend to return before all your aged debt and outstanding work has been billed and paid.
- Apply for **maternity benefit** – if eligible (the timing is important).
- Legal **online library** subscription - decide whether to maintain or suspend.
- Amend email addresses/**out of office** messages/voice mail message.
- Nominate a chambers **buddy** – someone to check your email, pigeon-hole and liaise with clerks, or members of chambers in your absence.
- Decide how you want to **stay in touch** – do you want to be told about chambers meetings, parties, seminars, solicitor events, changes to management committee, staff, recruitment?
- Make sure you have full **access** to everything you need at home including your files and online platforms.
- Agree the list of solicitors/clients to be **told** about your going and events during your break – who do you want to be informed about the birth of your child and plans for coming back etc?
- Agree the **contact details** - for your support network, buddy, to given to clerks etc.

## Before you return to practice

- Check your Chambers career **break/parental leave /flexible working policies** (and/or BSB Handbook).
- Hold a **practice meeting** well in advance of your return with your clerk.
- Renew your **Professional Indemnity Insurance** (BMIF) and allow sufficient time to do so.
- Check **CPD** - you may be entitled to an exemption.
- Apply for your **Practising Certificate** if you cancelled it and allow sufficient time to do so - you may be entitled to a reduction.
- Inform your **Bank/Accountant**.
- Check your **Inn/SBA/Circuit/Bar Mess** - see what courses they run for returning barristers.
- Chambers **rent** – restart direct debits etc.
- Accounts** – make sure they're up to date & provision for tax/ year end/pension provision is in place.
- Re-register for **VAT** - if appropriate.
- Renew your legal **online library** subscription.
- Amend your **email addresses/out of office messages/voice mail message**.
- Set up your **home working**.
- Inform **solicitors/clients** about your plans for coming back.



## 4. Useful Information

### Practising Certificate

Steps have been taken to reduce the cost of a practising certificate for those on parental leave and for those returning from maternity and parental leave.

Band 1 is the lowest practising certificate rate which returning parents may be entitled to pay for up to two years. This is intended to encourage barristers to retain their practising certificate so that they are able to work if they wish during parental leave including on KIT days, and to make it easier to return to work.

There are 2 options for barristers taking maternity and parental leave

Parental Leave package	Standard package
Leave over 3 months and under 6 months. Pay Band 1 PC renewal (April) immediately after birth or adoption of your baby	If you cancel your PC, you return at full rate
Leave over 6 months. Pay Band 1 PC renewal immediately after birth or adoption of your baby and for the subsequent renewal.	You can get a rebate for any months not working due to parental leave but then cannot access the discount package
Benefit applies only to those who do not cancel their PC	Rebate will only be payable if you contact Records within 28 days of taking leave and during this period your PC will be suspended.
10 days' work (KIT days) are allowed (over 12 months pro rata).	You cannot undertake work that requires a PC during any period you have suspended your PC
In the event of having another baby within the period covered, the benefit resets based on the last baby.	

## ATP Discount Examples:

### EXAMPLE 1

Penny goes on maternity leave in May 2022 and takes 8 months leave, maintaining her practising certificate during her leave to enable her to do small pieces of paperwork for a couple of clients. Penny paid Band 3 at her ATP renewal in April 2022. She is taking more than 6 months leave so pays Band 1 in April 2023 and Band 1 in April 2024.

### EXAMPLE 2

Zoe has her baby in March 2023. She renews her practising certificate in April 2023 while on maternity leave and pays Band 1. She returns to work in November 2022 and pays Band 1 in April 2024 as she took more than 6 months leave.

### EXAMPLE 3

Mike adopts a baby in September 2022 and takes 5 months parental leave, returning to work in February 2023. Mike pays Band 1 when he renews his practising certificate in April 2023 and pays the full rate in April 2024 as he took less than 6 months leave.

### EXAMPLE 4

Geoffrey's partner has a baby in December 2022, and he takes 2 months leave, 3 months after the birth. Geoffrey renews his practising certificate in April 2023 at the full rate as he took less than 3 months leave. Geoffrey may be entitled to a refund for the period he didn't practice.

### EXAMPLE 5

Allison has a baby in June 2022 and takes 12 months leave. When she renews her practising certificate in April 2023, she pays Band 1. She is due to take a second 12 months maternity leave starting in September 2023. In April 2024 and April 2025, she pays Band 1 as she took more than 6 months maternity leave. Allison pays full price in April 2026.

Queries on this should be referred to Bar Council's [Records Dept](#)

## FAQs

### **Q: Should I maintain my Practising Certificate?**

#### *Pros*

- You will be available to work during your leave if you wish to
- It saves the effort of suspending/reapplying
- It entitles you to an additional year at Band 1 if you take 6 months or more leave.

#### *Cons*

- Cost
- CPD requirements

### **Q: What is the process to reinstate your practising certificate?**

Simply log into MyBar and complete the 'New or Returning Authorisation to Practise' application, which can be found in the 'My practising certificate' section on the left hand side of the homepage.

### **Q: How long does that process take?**

Once you have submitted your application via MyBar, it can take up to 3-4 working days to be processed by the Barrister Records team. Should more information be required to process your application, this will be requested, otherwise confirmation of the issuing of your practising certificate will be provided. Please note during the Authorisation to Practise period in February/March it can take longer as the Barrister Records team is very busy.

### **Q: Is there a period of time after which there are additional hurdles or requirements associated with regaining a practising certificate?**

There may be additional hurdles if you haven't practised for 5 years (see rS45 in the BSB Handbook below)

**rS45** You are eligible for a practising certificate if:

- .1 you are a barrister or registered European lawyer and you are not currently suspended from practice and have not been disbarred; and
- .2 you meet the requirements of Rules S46.1, S46.2, S46.3 or S46.4; and
- .3 [either:
  - .a within the last 5 years either (i) you have held a practising certificate; or (ii) you have satisfactorily completed (or have been exempted from the requirement

to complete) either the non-practising period of 6 months of pupillage or 12 months of pupillage; or

.b if not, you have complied with such training requirements as may be imposed by the Bar Standards Board.]1

**rS46** You are eligible for:

.1 a full practising certificate if either:

.a you have satisfactorily completed 12 months pupillage; or

.b you have been exempted from the requirement to complete 12 months of pupillage; or

.c on 30 July 2000, you were entitled to exercise full rights of audience by reason of being a barrister; or

.d you were called to the Bar before 1 January 2002 and:

.i you notified the Bar Council that you wished to exercise a right of audience before every court and in relation to all proceedings; and

.ii you have complied with such training requirements as the Bar Council or the Bar Standards Board may require or you have been informed by the Bar Council or the Bar Standards Board that you do not need to comply with any such further requirements; in each case, before 31 March 2012

**Q: In the absence of a Practising Certificate, in what capacity can a barrister remain linked with/a member of chambers?**

You can be a non-practising member of chambers or a door tenant, but it must be clear that you are not currently accepting instructions. You would still be able to engage in chambers life, marketing and events.

**Q: What are the pros and cons of keeping your certificate and insurance, and complying with CPD and not practising?**

In keeping your practising certificate, you are required to comply with CPD and hold insurance with BMIF which will have a cost implication. Additionally, even if you do not practice you are subject to the whole of the BSB Handbook which includes the Cab Rank Rule.

Therefore, if you are approached to take instructions you may be obliged under the Cab Rank Rule to accept the instruction unless rC30.2 applies:

The cab rank Rule C29 does not apply if: accepting the instructions would require you or the named authorised individual to do something other than in

the course of their ordinary working time or to cancel a commitment already in their diary;

It is advisable to block out your diary for the time you are not accepting instructions. It is permitted within the Handbook to block out time when you are not available and therefore the cab rank rule would not apply to instructions asking you to do work during those days.

### BMIF/Insurance

You may be entitled to pay a lower rate if away from work for a period or back at work but working reduced hours. Contact BMIF for more information.

### Keeping in Touch (KIT) days

KIT days are a useful way to keep your practice ticking over, or staying in touch with life in chambers while on Maternity or Parental Leave.

Those on leave can work up to 10 KIT days per year. What you do on your KIT days is up to you but if you're working on cases or representing clients, you will need a current Authorisation to Practise (AtP) Certificate and insurance.

### CPD

Under the CPD regime barristers have flexibility. Some parents on breaks find attending CPD courses during their break useful for keeping their hand in and increasing confidence. Attending chambers seminars or SBA events also provide opportunities to network and find out what is going on.

If you are on the Established Practitioners Programme and retain your practising certificate while you are on leave, you will need to create and retain a record which says that you are unable to complete CPD as you are on leave. Established Practitioners are not required to obtain a waiver or an extension from the CPD requirements.

If you are on the New Practitioners Programme and continue to hold your practising certificate whilst on parental leave, then you are open to apply for a waiver or extension of your CPD requirements.

Dependent on which CPD programme you are subject to, suspending your practising certificate will either automatically reduce or suspend your CPD requirements until you return to practice. If you want to do any billable work during your KIT days, then you will need your practising certificate and CPD Plan to be up to date.

Specialist Bar Associations and the Inns of Court may have useful catch-up courses/information – barristers should be encouraged to keep in touch with them.

The BSB has more information about CPD requirements for those on parental leave on its website <https://www.barstandardsboard.org.uk/for-barristers/cpd/guidance-for-parental-leave.html>

### Chambers Rent – Direct debits

You should check relevant chambers policies covering Maternity and Parental leave and agree to the rent breaks which will be implemented in advance to avoid misunderstandings.

### Practice Meeting before leave

You should have a practice meeting before taking leave. Even if there is uncertainty about the length of leave, you're going to take, it is important to discuss options and prepare your practice for leave with the Head of Chambers/Clerks/Practice Manager as appropriate. Bar Council would recommend minuting the discussion to avoid misunderstandings later.

This meeting should cover:

- How you want your leave to be communicated within chambers and to clients/solicitors.
- How you want to stay in touch with chambers.
- If you want to continue to attend chambers meetings, contribute to newsletters or marketing events.
- If you're intending to retain your practising certificate and undertake billable work during KIT days.

You should be prepared to answer:

- What are your expectations about when and how you would like to return to work?
- How would you like to run your Keeping in Touch days?

- Have you thought about whether you can manage your practice flexibly or on a part-time basis?
- What sort of adjustments should you be thinking about in relation to your practice? For example, do you want to do less travelling, more paperwork etc.?

### Return/update meetings

You should be proactive in setting up update phone calls and a return-to-work meeting and ensuring the right people have it in their diaries. Again, being clear with chambers how you would like to return, any changes you want to make in how your practice is managed and which types of work/clients you would like to focus on for your return is useful.

Be prepared to be flexible, if you're back to work after your first child you may not be certain how you will balance work and caring responsibilities and may need a few goes and trial and error to find a way of working which works for you.

### Accounts

You should check:

- accounts are up to date;
- provision has been made for tax;
- if year-end needs adjusting;
- that pension provision has been made; and
- that your accountant knows what is happening and how to get in touch

### VAT

You need to decide if you:

- will remain registered; and
- if so, how to do returns.

### Maternity Benefit

Maternity Allowance is a payment you can get when you take time off to have a baby. It is one of the few benefits that self-employed barristers are entitled to, so a barrister should claim it.

You can claim Maternity Allowance for 39 weeks if in the 66 weeks before your baby's due, you've been:

- employed or registered as self-employed for at least 26 weeks

- earning (or classed as earning) £30 a week or more in at least 13 weeks - the weeks do not have to be together
- You may still qualify if you've recently stopped working. It does not matter if you had different jobs or periods of unemployment.

You must be registered as self-employed with HMRC pay Class 2 National Insurance contributions.

You can get Maternity Allowance for up to 39 weeks. You can claim it as soon as you've been pregnant for 26 weeks and payments can start up to 11 weeks before your baby is due.

If you lose the baby, you may still qualify if the baby is either:

- stillborn from the start of the 24th week of pregnancy
- born alive at any point during the pregnancy

Information on benefits, both statutory maternity pay and maternity allowance, is available at <https://www.gov.uk/maternity-allowance>

You can work up to 10 KIT days in a year including earning fees without compromising any benefits. Information about this is available at <http://www.workingfamilies.org.uk/>

### Legal online library subscription services

You should consider which services you want to retain during a break. It may be tempting to cancel everything, but it may be useful to keep up to date to make a return easier.

### Email Addresses/Out of Office Messages/Voice Mail Message

You need to think about what message you want solicitors and fellow members of the Bar to get when they try and make contact. If there's no message (and you don't respond to contact) clients and contacts may get frustrated and fed up. It's important to let people know you'll be away for a period and what provision you've put in place to cover your work. Being open about what's happening, and letting some people know when you've had the baby, means contacts can join in the excitement and look forward to your return.



**For example: Allen & Overy state:**

Solicitors at [Allen & Overy](#) are keen to be kept in the loop about barristers' parental leave and are proactive in briefing those returning to support them in rebuilding their practice.

Other clients of the Bar are following suit, and barristers are encouraged to let clients know about parental leave.

**Agree how much contact you want**

It's easy to become isolated on a career break, and although you don't want to be bombarded, keeping up to speed on what's happening in chambers is important. Let chambers know how much you want to be told about chambers meetings, parties, seminars, solicitor events and changes to management committee and staff.

**Useful Numbers and Websites**

The Bar Council Records office should be contacted about practising certificate inquiries including fees and the Bar Standards Board about CPD requirements.

The Bar Council **Records Office** (T: 0207 242 0934 or [records@barcouncil.org.uk](mailto:records@barcouncil.org.uk)).

Bar Mutual Insurance Fund (**BMIF**) T: 020 7621 0405 or [www.barmutual.co.uk](http://www.barmutual.co.uk)

**Bar Standards Board** T: 0207 831 9217 or [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk)

VAT Online Helpdesk on T: 0845 010 86500 or, to register for VAT online at [www.online.hmrc.gov.uk](http://www.online.hmrc.gov.uk).

**Information Commissioner** – You will need to ensure you are registered with the Information Commissioners' Office by the time you return to practice. Contact by phoning T:0303 123 1113 and ask for a registration form. The Information Commissioner will send you a copy of your last completed form which will assist in completing the form. At the time of writing the fee for registration is £35.

**The Bar Council Parental Support Hub:**

[www.barcouncil.org.uk/for-the-bar/introduction-to-member-services/parental-support-hub/](http://www.barcouncil.org.uk/for-the-bar/introduction-to-member-services/parental-support-hub/)

**The Bar Standards Board's Handbook Equality and Diversity Rules:**

<https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/>

**Judicial Appointments Commission ([www.jac.judiciary.gov.uk/](http://www.jac.judiciary.gov.uk/))**

## 5. What works?

### Barristers' experiences

Barristers were asked about their experience of returning from maternity and parental leave - the good and the bad. Below are some of their experiences.

When I returned from maternity leave, I found it really helpful that my clerk announced my return to practice to my clients, having told them in advance that I would be taking maternity leave.

However, it would have been better if I had been offered more proactive support in re-establishing client relationships, by being actively suggested for cases to firms for

which I had worked pre maternity leave. Being out of practice for a period of time makes it easy for you to be overlooked when Counsel are being considered.

When I was on maternity leave, I found it really helpful that each month I received a rebate of 100% of the average clerks' fees that I had paid in the twelve months prior to the first day of my maternity leave (in addition to not paying any room rent whilst I was on leave).

However, it would have been better if this financial support had continued for a period after my return from maternity leave, whilst I built my practice back up again.

When I returned from maternity leave, I found it really helpful that my clerk asked who I was particularly keen to work with on my return and got in touch with them personally and either had coffees with them himself or I did or both (admittedly this was zoom coffee because of the pandemic).

In terms of what could be done better, I have heard that at the big commercial sets they keep a special eye out for good junior briefs to go to the maternity returner. It would have been nice to return to work with a silk on an interesting and lucrative case and I've encouraged Chambers to think more about that.

Upon my return to work my clerk was very kind and thoughtful about working around my personal needs day-to-day, always asking me whether I wished to be put forward for various cases if they meant being away from home overnight.

It would have been helpful to have had specific return to work coffees/other meet ups arranged to ensure solicitors knew I had returned, though I believe my clerk would have mentioned this when they phoned him. It would have been good if the silks had been encouraged to bring me in as a junior on their cases on my return. When one of my male colleagues returned from an extended

absence, I noted that he was immediately brought in as a junior on several cases which made me feel quite unsupported in comparison.

When I returned to work, our chambers director was brilliant and was always available to chat to and formulate plans with. Women in my chambers have found different ways to structure their diaries to juggle childcare and chambers is very flexible and accommodating of these different approaches.

Our chambers rent is a fixed percentage of earnings which meant that there was no 'room rent' to pay or pressure to come back within a certain period of time. It was hard with money taking a while to come back in after maternity leave, but the upside was barely any contribution to make to chambers while that went on. There was also good dialogue between female colleagues in similar boats which was helpful and felt supportive.

## 6. Resources

### **Bar Council's Model Maternity and Parental Leave Policy**

See [here](#)

### **Bar Council's Equality, Diversity and Social Mobility Committee**

[EDSM](#) is responsible for developing and taking forward the Bar Council's equality and diversity policy. The Head of Equality & Diversity supports the work of the Committee, provides equality and diversity advice and guidance to members of the profession, those seeking to enter the profession and staff of chambers. The Bar Council also offers a programme of diversity events and training.

**The Bar Standards Board** has its own Equality and Diversity Officers responsible for ensuring the BSB's functions have given due regard to promoting equality and diversity and championing equality and diversity issues.

### **Equality and Diversity Helpline (T: 0207 611 1426)**

Please us for the following:

- confidential advice to members of the profession, staff and members of chambers, employed barristers, pupils and Bar students about equality and diversity, disability, maternity leave or harassment queries or concerns;
- implementing the BSB's Equality rules, including the maternity and parental leave guidelines in chambers;
- making reasonable adjustments and making chambers and services accessible to people with disabilities;
- Diversity monitoring.

## Equality and Diversity Information on the Bar Council's Website

Guides can be found [here](#)

### Maternity and New Family Mentoring Programme

The Maternity and New Family Mentoring Scheme is an opportunity for barristers to have access to advice, guidance and information from a more experienced parent who has been through the whole process and has returned to a flourishing practice. For more information see [here](#).

### Bar Council Training

The Bar Council offers arrange of E&D related training both at Bar Council and bespoke packages for chambers for more information contact our Training and Events team at [trainingandevents@BarCouncil.org.uk](mailto:trainingandevents@BarCouncil.org.uk)

### Bar Council and Bar Standards Board Contacts:

<b>Bar Council</b>	Head of Policy: Equality & Diversity and CSR	Sam Mercer T: 0207 611 1320 E: <a href="mailto:SMercer@barcouncil.org.uk">SMercer@barcouncil.org.uk</a>
	Training & Events	E: <a href="mailto:Trainingandevents@barcouncil.org.uk">Trainingandevents@barcouncil.org.uk</a>
<b>BSB</b>	Head of Equality and Access to Justice	T: 0207 611 1378