



BAR COUNCIL EQUALITY & DIVERSITY GUIDES MATERNITY AND PARENTAL LEAVE

Purpose of this Guide

Pregnancy and parenthood can impact significantly on the career prospects of barristers, especially mothers. This guide aims to inform chambers about the legal protections in place as well as provide practical proposals.

The Bar Standards Board has set out minimum standards and requirements in relation to Maternity and Parental Leave (including Shared Parental Leave) in its equality rules. This guide aims to encourage chambers to adopt good and better practice wherever possible instead of the bare minimum.

This guide explains what a model Maternity and Parental Leave Policy (MPLP) should look like, the key issues it should cover, the rationale for positively engaging with Maternity and Parental Leave / Shared Parental Leave and outlines strategies to avoid misuse.

A basic MPLP appears in Appendix 2, and chambers are encouraged to tailor this document to meet their needs after considering this guide.

Why it's important to support parents at the Bar?

Maintaining a career at the Bar and having a family can be a huge challenge, and the burden of childcare falls particularly heavily on women at the self-employed Bar. Extended periods without earning can very quickly make it difficult to remain in practice. Sometimes barristers can live off deferred income (aged debt) whilst on Maternity and Parental Leave but then struggle on their return whilst rebuilding their practice, waiting for payment for work done, paying childcare costs and meeting the expenses of working e.g., travel, hotel bills etc. at a time when they may not be earning very much money. For other barristers, deferred income is quickly exhausted, and they are left financially exposed. As a result, the Bar loses many talented barristers when they choose to have a family.

It is important that members of the Bar and chambers do all they can to support those who wish to have a family, and in particular that members of the Bar and staff within chambers

work hard to ensure that the detrimental impact of taking a period(s) of maternity leave is minimized in so far as possible.

Important note:

Chambers are cautioned against having a one size fits all policy when it comes to parenthood. Chambers need to make specific provision for different kinds of leave, and ensure that women who are pregnant, experience pregnancy-related illness or become mothers are afforded the many protections required by the Equality Act 2010

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Key terminology used in this guide

- **“Maternity Leave”** refers to the time off taken by a mother around the time of birth. Self-employed barristers, like all mothers, must not return to work for 2 weeks following the birth of their child. Maternity leave is also used colloquially to describe any extended period of leave after the birth of a child, whether it is provided for under statutory maternity leave provisions and/or contract (for employees) or, where it is provided for under regulatory provisions and chambers’ internal policies and procedures (for self-employed barristers).
- **“Parental Leave”** refers to leave taken from practice by a carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex, and includes the married, civil or de-facto partner of a biological or adoptive parent.

It will ordinarily start in the 12 months following the birth or adoption. However, chambers are free to set their rules about when parental leave can start provided that as a minimum it can be taken in the first 12 months.

- The term **“parent”** will be used in this guide to cover those who are applying for leave because they are about to become a parent through pregnancy, adoption or surrogacy.
- The term **“carer”** will be used to describe an individual, whether male or female, who applies under a chambers’ policy for time to care for a dependent.
- A **“dependent”** for the purposes of this guide will include an infant, child, young person or an adult with a disability.
- **“Shared Parental Leave,”** here, simply refers to a situation in which more than one parent are carers for the same dependent during the same period or during consecutive periods of time.

Supporting Pregnant Barristers

The Law – Equality Act 2010

The Equality Act 2010 prohibits discrimination on the ground of pregnancy, sex and maternity (s.4 EqA). For self-employed barristers, the special protection in s.18 EqA in relation to pregnancy, pregnancy-related illness and childbirth lasts from the start of the pregnancy until two weeks after they have given birth. Treatment after this period may be discriminatory if it involves the implementation of a decision taken within the protected period (s.18(5) EqA). Equally, from two weeks after birth, self-employed barristers continue to be protected, in particular there is a prohibition against direct sex discrimination (s.13 EqA), direct maternity discrimination (s.13 EqA) and indirect sex discrimination (s.19 EqA) through the application of s.47 EqA. The relevant statutory provisions are set out in more detail in Appendix 1.

S.18

Importantly, the Equality Act 2010 offers special protection to women who are pregnant and have given birth during their “protected period” in that they cannot be treated “unfavourably”. For example, there might be a breach of s.18 EqA if steps are not taken to accommodate a pregnant barrister who cannot travel to court during the late stages of her pregnancy. The treatment of a non-pregnant barrister who similarly could not travel to court (say, because they have a broken leg) would be irrelevant. The pregnant barrister simply cannot be treated unfavourably.

S.13

Women and women who are mothers cannot be treated “less favourably” than men because of sex or maternity. For example, a silk who chooses not to lead a barrister because she is a mother, since they are worried that mothers are too caught up with their children to attend to cases properly, will be committing direct maternity discrimination and direct sex discrimination as a father would not be treated in that way. Equally, there will be discrimination if a barrister is removed from a “short list” of juniors for an important case in chambers because she has been pregnant in the past since only women could be so treated.

Men are also protected from direct sex discrimination under the Equality Act 2010. However, in deciding whether or not there has been “less favourable” treatment between men and women, no account should be taken of special treatment afforded to women in connection with pregnancy or childbirth under s.18 as explained in s. 13(6)(b) of the EqA). For example, a male barrister is reprimanded by his Head of Chambers for being late to conferences scheduled in the mornings cannot complain that he has been treated less favourably than a pregnant barrister who has also been late due to pregnancy related illness, but who was not reprimanded.

Practical steps to support pregnant barristers

It is important to ensure pregnant barristers are supported to continue to work safely and that their rights are protected so that any negative impact of being pregnant is minimized as far as possible.

Pregnancy and Maternity is a protected characteristic under the Equality Act 2010, and this includes self-employed barristers, who should not suffer a disadvantage because of their pregnancy.

Various practical proposals are set out here, but chambers should bear in mind that they may need to take legal advice on their obligations.

Chambers should carry out a workplace risk assessment and must do everything reasonable to remove or reduce risks. Chambers should ensure barristers are able to continue to work, and may need to put in place additional support, particularly towards the later stages of pregnancy or if there are medical complications related to the pregnancy.

Support may include:

- Considering the impact of travelling on the barrister, and allocating cases on that basis. For example, it may be appropriate to allocate cases to pregnant barristers which involve minimal or little travelling if they have expressed concerns about travelling or to support requests for hearings to take place remotely if that would be appropriate.
- Considering whether it would be possible to allocate non-court-based work to pregnant barristers to remove any disadvantage experienced. For example, it may be possible to prioritise a pregnant barrister who has been suffering from bouts of pregnancy-related illness and is unable to undertake court hearings, for written work and/or junioring and/or devilling work and/or alternative paid work if this will mean the disadvantage caused by her pregnancy is removed.
- Considering whether chambers staff are able to contact courts in advance of a hearing to make them aware that a barrister is pregnant and may need special arrangements put in place, for example, a break during a long sitting and/or adjustments to the seating arrangements in court.
- Accommodating medical and antenatal appointments, and supporting barristers to minimise any negative impact that might arise from such appointments. For example, clerks might need to help move pre-existing commitments to accommodate appointments although the barrister should always be consulted before any contact with solicitors to agree on the messaging.

Fathers/partners rights to attend antenatal appointments should also be accommodated.

Supporting barristers undergoing medical treatment for infertility

It would also be good practice for chambers to support barristers undergoing IVF treatment, and other medical treatments designed to overcome infertility, and provide them with the support that they need so that this does not negatively affect their practices. For example, clerks should be sympathetic to the need for barristers to attend medical appointments, perhaps at short notice.

Supporting Maternity and Parental Leave

The BSB Rules

The Bar Standards Board's Equality Rules¹ require that barristers must take reasonable steps to ensure that their chambers has a policy covering:

- 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 a number of separate periods, of parental leave, provided the total leave 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, or leave following adoption, a minimum of 6 months free of chambers' rent; and
- vii. the procedure for dealing with grievances under the policy; and chambers' commitment to regularly review the effectiveness of the policy.

¹ <https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/>

The importance of a Maternity and Parental Leave Policy (MPLP)

As of March 2022, 26% of female and 10% of male self-employed barristers were the primary carers of children.

In 2020, the Chancery Bar Association published [Voices of Women at the Chancery Bar](#) based on a series of roundtables. Some barristers shared that maternity leave had an impact on their confidence. Others noted that the challenges of childcare and work-life balance affected female members of their chambers disproportionately to men.

In 2015, in focus groups with self-employed female barristers of all levels of Call, the difficulties of balancing family life and a career at the Bar was discussed extensively. These issues were seen as hugely problematic and a real barrier for women in the profession. Success was put down to practice area, luck and the availability of either a partner as the primary carer or other support. Younger members of the self-employed Bar said they could not see how it was possible to have a career and family, and did not see that they had a long-term future in self-employed practice.

These focus groups found that individual chambers' culture and policies had a huge impact on women's experience of bringing up children at the Bar, where supportive chambers made it possible and unsupportive chambers effectively forced women out of the profession or to a different chambers.

The Bar Council believes that it is therefore essential for a modern and forward-thinking set of chambers to have an up-to-date and clearly drafted Maternity and Parental Leave Policy (MPLP). A MPLP is a document setting out in clear terms the circumstances under which a tenant in chambers may apply for Maternity and Parental Leave (or Shared Parental Leave).

Shared Parental Leave

Many self-employed barrister parents will share the main responsibility for the care of a child with an employed person. They may want Shared Parental Leave to give them more flexibility in how they care for their child in the first year after the child's birth, or to give their partner the opportunity to return to work/be the primary carer for a period. Enabling Shared Parental Leave can improve equality, support career development and allow both parents to spend time with their children. It is possible that parents who utilise Shared Parental Leave in the early days will find it easier, later, to continue to share child caring arrangements which will increase the retention rate of self-employed barrister parents.

Communication with clients about pregnancy and leave

Chambers should have clearly understood arrangements in place governing how chambers communicate with clients/solicitors in advance of Maternity and Parental Leave and during that leave.

Chambers arrangements should cover what information will be provided to clients/solicitors about the barrister's pregnancy and / or leave. Communications with clients/solicitors will likely include information about the barrister's time away from chambers, the arrangements in place to provide cover for that barrister's cases and the anticipated return date (although it should be recognised that this may change).

Chambers should approach this issue sensitively. Chambers should keep details of the barrister's pregnancy confidential unless and until the barrister in question has expressly consented to this information being shared with others in chambers and/or with her professional or lay clients. Chambers should be aware that not all barristers will want their clients/solicitors to be aware that they are on leave, and may just want to tell a few select clients themselves.

Ideally all of these arrangements should be in writing and accessible to all members of chambers and staff.

Practical steps to support barristers keep in contact during leave

It is important to ensure that a barrister on leave is not disadvantaged because of their absence from the workplace, and chambers will need to take appropriate steps to ensure that this is not the case.

It would be good practice before the barrister starts their leave to seek their views as to how much contact they would like during their leave and how they would like to be contacted, for example, by text message/WhatsApp, telephone, e-mail or post. Some barristers may wish to be contacted about all work opportunities whilst they are on leave, and may wish to undertake regular work whilst on leave. Others may want to do no work at all and ensure that there is no contact with chambers.

It would also be good practice before the barrister starts their leave to seek their views as to how they would like chambers to communicate the birth of their baby, or whether the barrister would prefer to communicate this themselves.

Barristers who are on leave should continue to be included on the distribution list for Chambers news bulletins, marketing events, information about and invitations to work social events and training courses, unless they request otherwise. Barristers may want to have any regular publications sent on to their home addresses whilst they are away.

Barristers should not be excluded from social, marketing or training events during pregnancy or leave. There should be an open and constructive dialogue between a barrister and chambers in which an agreement is reached as to how and when a barrister will be informed about social, marketing or training opportunities whilst they are away. Some people will want no contact at all, whereas others may well want to be kept up to date about events.

Chambers should also ensure that barristers do not miss out on the opportunities to interact with silks and clients which can lead to junioring briefs and/or instructions because of their childcaring responsibilities.

Ideally all of these arrangements should be in writing and accessible to all members of chambers and staff.

Keeping In Touch (KIT) Days

KIT days are a useful way for Barristers to keep their practice ticking over, or staying in touch with life in chambers while on Maternity or Parental Leave². Those on leave can work up to 10 KIT days per year. What a barrister does on their KIT days is up to them but if they are working on cases or representing clients, they will need a current Authorisation to Practice Certificate and insurance. See [Family Career Breaks Action Pack](#) for more information

Allocating cases when a barrister is on leave

Chambers should have clearly understood arrangements in place governing the transfer of a barrister's cases to other barristers whilst they are on leave. The transfer of any cases to another barrister should be done with the involvement of the barrister, who may want to arrange this with their professional clients themselves. Chambers should provide all practical support necessary to ensure the smooth transfer of cases, for example preparing copies of additional sets of papers or speaking to solicitors if this is required. Chambers should ensure that policies and practice do not result in transferring cases permanently to another barrister unless there is a good reason to do so.

Developing a Maternity & Parental Leave Policy (MPLP)

Before you start formulating a Maternity and Parental Leave policy, we recommend that chambers:

- Consult members on what they would have liked/would like to see in any policy. This will afford tenants an opportunity to comment on any proposals and air any concerns. Such a consultation, as well as providing potentially useful information for those who

² <https://www.gov.uk/employee-rights-when-on-leave>

will be engaged in drafting, may well go some way to ensuring acceptance of the policy and its ethos.

- Build support for your policy before you take any proposal to your management committee (identify key opinion formers and ensure they support your proposals).
- It may assist as part of the consultation to establish how often the policy is used, how long parents have taken off and how many have come back (and whether part-time or full-time). This can help build the financial case for the policy and dispel some of the myths that can exist regarding the cost to chambers.
- Consider carefully (and consult on) who the MPLP is intended to assist and in what scenarios. This will enable chambers to formulate policies that are carefully drafted to avoid misuse or misunderstandings.

The new MPLP, or any final amendments to the MPLP, should be incorporated into chambers' constitution. Once a new policy is in place, it is important to publicise it within chambers and make sure that it is always readily accessible. Tenants are likely to need access to the MPLP at a time that is personally sensitive or confidential, for example, they are planning to get pregnant, or it is the early stages of their pregnancy. It follows that the MPLP should be accessible without needing to request it from another person in chambers. It will usually be possible to ensure that a copy of the MPLP is available online or on a shared drive.

Essential elements of a MPLP

As a very minimum, chambers should have a policy which contains in clear terms the following:

- A clear description of who can apply for Maternity and Parental Leave (or Shared Parental Leave);
- The right to return following leave;
- Who the tenant should apply to for Maternity and Parental Leave (or Shared Parental Leave) and when (with appropriate limitations e.g., to mirror the compulsory maternity leave period) and where periods of leave/return should be arranged between chambers and tenants in a way that is mutually convenient;
- Whether there are any restrictions on the ability for tenants to take Maternity and Parental Leave (or Shared Parental Leave) so that it cannot be misused;
- How long a tenant can remain on leave;

- Whether the tenant will be entitled to a rent-free period during the term of the MPLP or a rebate, depending on chambers' arrangements for calculating rent;
- If the tenant is eligible for a rebate, how this will be calculated;
- Whether the tenant is required to contribute to any other element of chambers' rent and expenses during leave and, if so, how that is calculated;
- How chambers will deal with grievances under the policy, and how it will review the effectiveness of the policy;
- A right to work during parental leave; and
- An explanation of how any work undertaken will impact on the calculation of the six-month rent-free period.

Additional good practice elements in a MPLP

Desirable additional terms in a MPLP include:

- Provision for what kind of contact should be maintained between chambers and the tenant during the period of leave. Some tenants will want to be contacted regularly; others will want as little disturbance as possible. An agreement should be reached about how much contact there will be, on what topics and who will communicate with the tenant.
- Provisions for tenants to choose to come back to chambers for "keeping in touch days" or KIT days.
- Provision for the return of briefs allocated to the tenant before they commenced leave.
- Provision for the forwarding of mail and other notices delivered to the tenant at their chambers address.
- Discussion as to how the tenant's return to work will be managed and notified to the rest of chambers and to professional clients.
- Provision for additional support for tenants returning to practice after any significant amount of time away from their practice which may include support with re-building their practice, resuming relationships with key clients and being given access to appropriate opportunities.

- Provision for the tenant to apply under the policy, for a longer extended period of leave following the 12-month minimum, up to a stated maximum, in order to care for their child on a full-time basis, with a return to chambers within that stated period without a formal application procedure.
- How chambers will address flexible working by tenants outside of formal parental leave including, but not limited to, its approach towards tenants who require restrictions in their diary or time away from chambers for fertility treatment.
- The policy should ideally extend to pupil members of chambers and to prospective pupils.
- The policy should ideally set out what a tenant is entitled to if their baby is stillborn or dies shortly after birth (in an employment setting, full maternity rights are available to a woman in this situation).

Calculating rent and expenses when a barrister is on leave

Flat rate rent

The BSB Equality Rules require, as a minimum, that there is a rent-free period of 6 months, but this is only where rent is paid on a flat rate basis.

Example 1

Oakwood chambers charges tenants a (i) fixed rental contribution of £1,000.00 per month; and (ii) a percentage rent calculated as 15% of receipts excluding VAT. To comply with the equality rules, Oakwood must waive the requirement for tenants on Maternity and Parental Leave or Shared Parental Leave to pay the fixed rent of £1,000.00 per month for six months. Chambers can opt to continue to charge the 15% on receipts for those six months.

The Bar Council strongly recommends that chambers go beyond the bare minimum. There is a variety of ways in which a chambers might make it easier for tenants to return to work, for example, by:

- i. Extending the rent-free period (or collecting a reduced rent) beyond 6 months;
- ii. Deferring payment of chambers' expenses (or removing the requirement to pay them at all) for a period of time; and / or
- iii. Some form of rebate (an example of which is as set out later in this Guide).

Other rent systems

Where a chambers uses a method of calculating rent other than on a flat rate basis, they are not obliged to offer the rent-free period. However, chambers are strongly encouraged to formulate strategies which create a minimum 6-month rent-free period as it may make the difference between parents returning to the Bar or abandoning their careers. Examples 2, 3, & 4 below are in the BSB Guidance.

Example 2

Greenway chambers offers a £10,000.00 credit for all barristers and pupils returning to chambers from a period of Maternity and Parental Leave. The credit can be used against all chambers expenses rather than solely against the flat rate element of the rent.

Example 3

Redway chambers operates a percentage system for rent based on an individual's previous year's receipts. Even though Redway chambers operates a percentage-based system it offers those taking a period of Maternity and Parental Leave 6 months free of rental payments. It also permits the deferral of rental payments after the 6-month relief period for a further 6 months effectively entitling new parents to a year's rent relief.

Example 4

Orangewood chambers calculates rent on a percentage of receipts basis. It allows members taking a period of Maternity and Parental Leave to pay only 5% on all receipts for up to 6 months of leave. Normally members pay 10% so those on Parental Leave receive a 50% discount.

Rent rebates

Chambers can also help parents by introducing a rent rebate which is either payable at the start of Maternity and Parental Leave / Shared Parental Leave or upon a barrister's return.

Example 5

Blueforest chambers charges rent to tenants on a variable percentage basis depending on receipts. The first £50,000.00 in receipts (excluding VAT) during the calendar year is rent free. Thereafter, rent is charged on receipts (excluding VAT) as

follows: (i) 30% on the next £100,000.00, (ii) 10% on the next £50,000.00 and (iii) 5% on the balance. A rent rebate is paid in monthly instalments for 12 months beginning with the first month of Maternity and Parental Leave / Shared Parental Leave. The rent rebate is calculated by looking at the average rental contribution in the previous calendar year. Any receipts during the 12-month period during which the rent rebate is paid, is charged at the normal percentage.

Barrister A earns £200,000.00 in 2017 which means that she pays rent overall of £35,000.00 ($£100,000.00 \times 0.3$) + ($£50,000.00 \times 0.10$) or an average of £2,916.67 per month. During her Maternity and Parental Leave, which lasts for 12 months, she receives a rent rebate of £2,917.67 each month. However, she also receives £100,000.00 in receipts over this period and so she pays rent, as normal, in the sum of £15,000.00 ($£50,000.00 \times 0.3$).

Avoiding misuse

It is important that Maternity and Parental Leave Policies only protect tenants who are genuinely caring for their children. To this end the Bar Standards Board has confirmed that it may be a breach of Core Duty 3 to misuse a Maternity and Parental Leave (Shared Parental Leave) scheme contained in the equality rules³. Chambers should ensure that MPLPs are carefully constructed to avoid the potential for abuse, and should tackle misuse if it happens.

Example 6

Barrister B becomes a father in February 2018. His partner does not work and will be shouldering the vast majority of the childcare. However, Barrister B tells his chambers that he is taking a period of Shared Parental Leave (up to 12 months) although he continues to work at a similar level before and does little childcare. He claims that he is entitled to at least 6 months' rent free.

A MPLP which makes it clear that a barrister must be the carer / primary carer of the dependent (other than in comparison to the other parent) and / or imposes a cap on billings during the Shared Parental Leave / Maternity and Parental Leave period should avoid this abuse.

Example 7

Barrister D becomes a parent in April 2018. For some time, he has wanted to write a new practitioners book on his particular area of specialism, but he has been

3

https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf
(page 34, para 6)

discouraged because he knows that it will take around 6 months to write and he cannot afford to lose out on billings for such a long period of time. He tells his chambers that he is going to take on 50% less work for 12 months after the birth of his child, which should be classed as parental leave. He also claims that he should enjoy an equivalent rent-free period. In fact, he plans to not look after his child very much and instead wishes to use the additional time generated by scaling back his practice to write his new book.

A MPLP which makes it clear that a barrister must be the carer / primary carer of the dependent (other than in comparison to the other parent) during the Shared Parental Leave / Maternity and Parental Leave period should avoid this abuse. This conduct potentially amounts to dishonesty and if proven, is likely to amount to a breach of Core Duty 3.

Example 8

Barrister E becomes a parent in May 2018. He is not the primary parent to his new child as his wife has given up her job and wants to do all the childcare. Barrister E has had an extremely successful and exhausting few years in his practice where he has been working 80 hours plus each week. After the birth of his child, he tells his chambers that he is taking 12 months parental leave during which time he will work but will scale back his practice to around 60 hours a week. He does not plan to use this additional “free” time to look after his child and instead wishes to catch up on his hobbies and interests. However, he still asks for a rent-free period because he attributes the decrease in his billable hours to parental leave.

A MPLP which makes it clear that a barrister must be the carer / primary carer of the dependent (other than in comparison to the other parent) and / or imposes a cap on billings during the Shared Parental Leave / Maternity and Parental Leave period should avoid this abuse.

Supporting barristers returning from leave

The Law – Equality Act 2010

S.13

After the “protected period,” women and women who are mothers cannot be treated “less favourably” than men because of sex or maternity. For example, a silk who chooses not to lead a barrister because she is a mother, since they are worried that mothers are too caught up with their children to attend to cases properly, will be committing direct maternity discrimination and direct sex discrimination as a father would not be treated in that way.

S.19

Men and women are also protected against indirect sex discrimination. Sometimes chambers may make decisions which they believe are neutral, but which negatively impact on particular groups especially mothers (who tend to take longer periods of continuous leave associated with motherhood and bear more of the load of childcare thereafter) in comparison to fathers (who tend to take no or shorter periods of continuous leave and have fewer caring responsibilities after) leading to indirect sex discrimination unless there is an objective justification.

For example, if a solicitors firm asked for a barrister to come into their office to conduct a training session, and the business development team decided to offer that opportunity only to barristers who had worked regularly for the firm in the past 12 months, this might well negatively impact on women if they are more likely to have been absent during that period of time due to motherhood in comparison to men who may have taken no or shorter periods of paternity leave. Changing the rule so that anyone who has worked for the firm over the past 3 years might be sufficient to overcome any such disadvantage.

In short, one size fits all policies can carry with them the risks of discrimination. Thought should always be given to the impact of decisions on parents, and in particular mothers, who will often find themselves in a different and more disadvantageous position to fathers since they frequently carry a greater burden of childcare and related responsibilities.

S.158

Chambers also need to be aware that the Equality Act 2010 permits more favourable treatment of people with protected characteristics in certain situations (s.158 EqA). However, chambers should always take decisions about positive action having reviewed the available evidence carefully and thinking through the need to objectively justify the measure. Again, one size fits all policies can carry with them the risks of discrimination.

Mothers face different challenges to fathers at the Bar

A one size fits all approach to supporting returners may not be appropriate, some barristers may only take a few weeks leave and some may take a year or more, with women currently tending to take longer periods. A chambers policy should recognize this, and provide appropriate support for those barristers who are more need in support with their return to work. For example, a woman returning to work after one year may need a specially organized practice meeting to plan how she will minimize any negative impact due to a long period of time away from work, but it may not be necessary to hold such a meeting for a man who has been away for only a few weeks.

Chambers should also be alive to the negative stereotypes that exist in relation to working mothers which aren't experienced by fathers. There are some members of chambers or staff who might – unconsciously or consciously – believe that working mothers are somehow less suitable for demanding cases. These views – if they exist – should be challenged.

Arrangements to support a barrister returning from leave

It will be appropriate to support barristers to build back their practice after a period of leave, in particular if they have taken significant time off (3 months or more) so that they can overcome any detrimental impact to their career. What amounts to a significant amount of time off will depend on the barrister's practice area. For example, a 3 months' absence might be significant for an employment barrister with a heavy court-based practice.

It is good practice for chambers to keep in touch with a barrister on leave about the date when they expect to return to work. Chambers should be sensitive to the fact that this date may change according to the barrister's wishes and their experiences during leave.

It is good practice for chambers to organize a meeting for at least six weeks before the confirmed date of return in order to discuss the arrangements. This may include updating the barrister on changes that have occurred whilst they've been away such as new office practices or new colleagues, as well as discussing how chambers will support that barrister with returning to practice after a period of leave including resuming work on cases which have been covered by colleagues.

Chambers should ask the barrister if there are any other arrangements, they might need on return to work. A mother might, for example, need facilities for breastfeeding or expressing milk and storing it during the working day. Chambers should ensure that such facilities are made available.

Support for parents returning from a significant period of leave, which is likely to be detrimental to their practice, might include:

- A mentor to help the barrister re-build confidence and networks after their period of leave.
- A return to practice meeting where the barrister and practice manager carry out a full review of the practice, identify opportunities to rebuild relationships with clients and agree ways of working if the barrister is returning with different flexible work arrangements.
- Chambers should continue this dialogue about rebuilding their practice with the barrister in question. It is unlikely to be sufficient to just have one discussion about their return to work, and not continue to discuss the support that is in place for rebuilding their practice and related matters.
- Chambers should be aware of the emotional burden for parents of returning to work, and be sensitive to that. Chambers will want to provide support that recognizes this especially on the first few days of the barrister returning to work on their practice.
- Proactive marketing and support to promote the barrister's practice and availability in order to reduce the negative impact of an extended period of absence.

All chambers operate in different ways with varying clerking practices, for example, some clerks are deeply involved in business development, whereas some clerks merely manage diaries. Depending on the nature of the chambers, staff may be able to do the following so as to ensure a level playing field for barristers who have been absent for an extended period of time:

- Write a business plan in conjunction with the barrister outlining steps to assist the barrister with their return to work.
- Contact solicitors that the barrister has worked for in previous years to tell them that the barrister has returned to work (as long as the barrister has agreed).
- Chambers could encourage solicitors to have coffees, lunches or dinners with the barrister.
- The barrister's clerk could have coffee with solicitors with whom the barrister is particularly keen to work with ahead of the barrister's return to work, in order to help promote their practice.
- Chambers could proactively mention the barrister's return to work when they speak to "top" solicitors who instruct chambers.

- Chambers could organize a marketing/business development event which would promote the practice of the barrister who has been on leave.
- Chambers could look for external speaking engagements for the barrister to increase their profile.
- Chambers could ensure that all silks or senior members of chambers are aware that the barrister is or is about to return to work, and should be considered for any interesting junior briefs which are coming up.

Flexible working for returning barristers

Chambers should consider offering barristers returning to work the ability to work flexibly after their return. This has to take into account the different sizes and economic realities faced by chambers. For example, some barristers may want to initially restrict the cases they take on, or only take on a set number of cases a week. Some barristers may not be able to take on cases that involve being away from home overnight for a year or more after they return to work. This may particularly be the case if the barrister in question is breastfeeding. Some barristers may also not be able to have any meetings after 5.30pm, as they need to collect their children from nursery. A failure to offer flexibility, insisting instead on rigid working practices, may indirectly discriminate against female barristers since they tend to carry more of the burden of childcare.

Positive Action

Under the Positive Action provisions of the Equality Act 2010, if chambers identify that barristers returning to practice after a period of leave require more support, they may be able to introduce preferential briefing for a limited time to reduce the impact of the break in practice⁴.

Example 8

Ledbury Chambers gathered earnings data which showed women who returned from maternity leave had not caught up with their contemporaries within 18 months. They introduced a positive action measure where any tenant who had taken 6 months or more parental leave would be offered 1 in every 3 appropriate unallocated briefs which came into chambers for a 3-month period.

⁴ <https://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Positive-Action-Guide-Bar-Council-2020-1.pdf>

More information and resources

The Bar Council's [Family Career Breaks Advice Pack](#) contains advice and support for barristers.

The Bar Council offers a confidential equality and diversity helpline to all pupils and members of the Bar. Email equality@barcouncil.org.uk or call 020 7611 1426.

EDO Network

- Supports/assists EDOs and Data Diversity Officers (DDOs) in carrying out their roles
- Share good Equality & Diversity (E&D) practice between chambers, and
- Identifies and addresses emerging E&D issues at the Bar

For more details email equality@BarCouncil.org.uk

Bar Council Guides to Equality & Diversity

The Equality, Diversity & Social Mobility Committee regularly produce specific guides to support the profession on Equality & Diversity.

All guides can be found [here](#)

Other Useful Links:

- <https://www.gov.uk/maternity-allowance>

The Bar Council
January 2023

APPENDIX 1: Key Provisions in the Equality Act 2010

Section 4 Protected Characteristics

- (4) The protected characteristics. The following characteristics are protected characteristics—
- age;
 - disability;
 - gender reassignment;
 - marriage and civil partnership;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.

Section 13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) If the protected characteristic is sex—
- (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;
 - (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.
- (7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).
- (8) This section is subject to sections 17(6) and 18(7).

Section 18: Pregnancy and maternity discrimination

18 Pregnancy and maternity discrimination: work cases

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.
- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —
- (a) because of the pregnancy, or

(b) because of illness suffered by her as a result of it.

(3) ...

(4) ...

(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).

(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

(a) ...

(b) ..., at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph

(a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).

Section 19: Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

age;

disability;

gender reassignment;

marriage and civil partnership;

race;

religion or belief;

sex;

sexual orientation.

Section 158 Positive action: general

- (1) This section applies if a person (P) reasonably thinks that—
 - (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,
 - (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or
 - (c) participation in an activity by persons who share a protected characteristic is disproportionately low.

- (2) This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
 - (a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
 - (b) meeting those needs, or
 - (c) enabling or encouraging persons who share the protected characteristic to participate in that activity.

- (3) Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.

- (4) This section does not apply to—
 - (a) action within section 159(3), or
 - (b) anything that is permitted by virtue of section 104.

- (5) If section 104(7) is repealed by virtue of section 105, this section will not apply to anything that would have been so permitted but for the repeal.

- (6) This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

APPENDIX 2: MODEL MATERNITY & PARENTAL LEAVE POLICY

INTRODUCTION

1. This policy applies equally to members of Chambers who are parents or carers of children and other dependents. It should be read in conjunction with Chambers' Constitution.
2. Chambers will ensure that its staff are familiar with this policy through appropriate training.
3. "Parental Leave" refers to leave taken from practice by a carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex, and includes the married, civil or de-facto partner of a biological or adoptive parent.
4. The term "parent" will be used in this policy to cover those who are applying for leave because they are about to become a parent through pregnancy, adoption or surrogacy.
5. The term "carer" will be used to describe an individual, whether male or female who applies under this policy for time to care for a dependent.
6. A "dependent" for the purposes of this policy will include an infant, child, young person or an adult with a disability.
7. "Shared Parental Leave" simply refers to a situation in which more than one parent are carers for the same dependent during the same period of time or during consecutive periods of time.
8. Any barrister member is entitled to up to twelve months leave of absence from Chambers for the purposes of Parental Leave or Shared Parental Leave to care for their dependent. They must be the primary carer of the dependent other than in comparison to the other parent during the period of Maternity and Parental Leave or Shared Parental Leave. The period of Maternity and Parental Leave or Shared Parental Leave may be extended by the Management Committee, on application.
9. Such leave is to be commenced within twelve months of birth of the child or the child entering a family (either as a result of, or with a view to the adoption of, that child).
10. During the period of any Maternity and Parental Leave, a barrister member shall be entitled to a period of up to twelve months of [*add in relevant waiver of any flat rate element of rent or rebate etc.*].
11. [*Set out method of calculating rebate if one if being offered*].

PRE-LEAVE

12. Any barrister member of Chambers intending to take time off from Chambers for the purpose of Maternity and Parental Leave or Shared Parental Leave must give written notice to the Head of Chambers. Such notice shall be given at least one month prior to the expected date of birth or adoption of a child (or of a child joining the family with a view to adoption) although the Management Committee may exceptionally agree to a shorter period of notice. Chambers recognises that there will be circumstances in which it will not be possible to give any notice (for example, a premature birth).
13. Chambers (and in particular Chambers' clerks) will accommodate time-off for fertility treatment, ante-natal care and related medical and other appointments.
14. Prior to the commencement of leave, the barrister should meet with the Senior Clerk (or another appropriate clerk) to discuss and where appropriate agree:
 - a. The level and type of contact s/he would like to have during Maternity and Parental Leave or Shared Parental Leave;
 - b. Any outstanding cases and appropriate cover;
 - c. Any outstanding billing;
 - d. A proposed return date;
 - e. How, when and by whom solicitors will be informed of the start and end date of Maternity and Parental Leave or Shared Parental Leave;
 - f. Arrangements for the forwarding of post and paying in of cheques;
 - g. Whether s/he should suspend her/his practising certificate. It should be borne in mind that while suspension means that the barrister member will be free from CPD obligations for the period of suspension, it also means that s/he will not be able to take on any work during the period of leave; and
 - h. Whether s/he will be undertaking work during Maternity and Parental Leave or Shared Parental Leave.

DURING LEAVE

Contact with Chambers

15. In accordance with (*para ref.*) of the Constitution, Chambers through the Senior Clerk (or other appropriate person) will ensure that the barrister member is kept informed of

chambers meetings, important chambers decisions, seminars or conferences to be held by chambers relevant to the barrister's practice and, where possible seminars held by outside organisations.

16. Where possible and with the agreement of the barrister member concerned, seminar materials should be sent to the barrister.
17. Unless otherwise informed by the barrister member, it should be assumed that s/he cannot attend chambers and team meetings and apologies for absence should be reflected in the minutes of those meetings. Minutes should be e-mailed to the barrister member where appropriate.

Management of pigeon-hole

18. The barrister member's pigeon-hole should be monitored by the clerks on a regular basis. Where necessary the contents should be posted to the barrister at least monthly at no cost extra cost to the barrister.
19. Any cheques received during maternity and parental leave should be dealt with in accordance with the arrangement reached under paragraph 14.f above.

Preparation for return to practice

20. The below measures are aimed at ensuring the member's return to Chambers after leave of absence is properly managed and planned and that steps are taken to ensure work is available for the member upon their return and to assist in every way practical in rebuilding the member's practice. This is the responsibility of both the barrister member and Chambers through the Senior Clerk/Practice Manager.

Keeping in Touch (KIT) days

21. KIT days can be used for any work-related activity e.g., training or team events. The content, frequency and number of KIT days should be designed to make the return to work following leave easier for the barrister member. They are taken during leave.
22. Prior to the commencement of leave, the barrister member in consultation with the Senior Clerk should agree the number of KIT days to be used subject to a maximum of 10 days. Agreement should also be reached as to the dates of the KIT days, although this should remain flexible.
23. During the period of leave, the barrister member should be reminded by the Senior Clerk (or other appropriate clerk) by e-mail of the dates of KIT days. These days should not affect the calculation of chambers parental leave benefit.

24. Where possible the agenda for the KIT days should be planned in advance. There should be at least one meeting with the head of the relevant clerking team which would be similar in content to a practice review. Consideration should be given to arranging a meeting with one or more barrister members of the relevant practice team.

Pre-return to practice meeting

25. At least three months prior to the barrister member's return to practice consideration must be given to the following:
- a. Identification and appointment of a mentor who will assist the barrister member in settling back into practice and generally;
 - b. The likely working hours, the type, duration and location of any hearings that the barrister member may undertake. This should include any request for flexible or part-time working (*as per paras ref of the Constitution*);
 - c. Any need for the barrister member to attend a "refresher" course in their relevant practice area;
 - d. Review the barrister member's website profile in conjunction with the Senior Clerk (or other appropriate clerk) and Chambers marketing director, and where necessary update the profile;
 - e. Announce the barrister member's return to practice on chambers' website; and
 - f. Identify a list of solicitors and write to each of them announcing the barrister member's return to practice.

RETURN FROM LEAVE

26. On return to work each barrister member may work part-time or flexible hours or have restrictions on travel to enable them to manage their family responsibilities as per Chambers' Constitution at (*para ref.*). Chambers recognises that some members may have a greater need for flexible working than others – for example, where a child has a disability or a medical condition.
27. Management Committee shall grant the request for such approval to the extent that it considers that it is in accordance with the reasonable needs of Chambers taking into account the Chambers Equality Code and the applicable law.
28. The following adjustments should be made to accommodate the needs of barrister members returning from parental leave:

- a. The timing of Chambers meetings, team meetings and practice reviews should take into consideration childcare needs of barristers, and attendance at evening/weekend meetings should not be expected. Chambers should make childcare provision for Chambers' meetings or any other meeting which take place over the weekend or in the evening and at which a member's attendance is expected or required;
 - b. Support with marketing and rebuilding relationships with key clients/solicitors.
 - c. Remote access should be made available to barrister members wishing to participate in meetings from home; and
 - d. A three-month review should take place, at which the barrister members' career and support needs are identified. Their "mentor," the Senior Clerk (or other appropriate clerk) and, where requested, the team convener, should be present.
29. Barrister members are responsible for ensuring their practising certificates and insurance are current upon return.
30. Positive action measures to support returners will be considered by the [insert appropriate committee] if evidence of disparities emerges.

PUPILS

Prospective pupils

31. Upon application, Chambers may defer the commencement of pupillage of prospective pupils who become pregnant prior to the commencement of pupillage for a period of up to 12 months.
32. Prospective pupils with existing childcare commitments may discuss with the Pupillage Committee how their working hours during pupillage can accommodate such commitments and should be advised of their entitlement to flexible working hours in accordance with this policy.

Current pupils

33. This part of the policy applies to all first and second six pupils who are parents or guardians or carers of dependents. *Paras. Ref.* below (flexible working hours) also applies to third six pupils and squatters.

34. Pupils who become pregnant during pupillage may defer completion of the remainder of pupillage, subject to the requirements of Part V of the Bar Training Regulations.⁵
35. In the event that an exemption from the Bar Training Regulations is required, the pupil's supervisor shall be responsible for obtaining written permission from the Bar Standards Board.
36. Such a deferral shall not affect the overall pupillage award which shall be paid monthly during the period in which the pupil is undertaking pupillage. In the event of a rise in the pupillage award following deferral and prior to commencement of the deferred period the pupil shall be paid at the increased rate during the deferred period.
37. In the event of deferral and during the pupil's 'break' period, the pupil's supervisor shall be their point of contact with Chambers.
38. Chambers shall accommodate pupils' requests for flexible working hours in order to allow for childcare commitments. Such working hours should be discussed with the pupil's supervisor in order to ensure that the pupil is able to complete the work that is required of him or her.
39. The need to work flexible hours for this reason should not, as far as possible, affect the allocation of court work during the practising period of pupillage. Pupils should, however, be aware of the demands of the court schedule and the necessity for evening and last-minute briefs and should arrange childcare with this in mind wherever possible.
40. Pupils should be assured that any need to work flexible hours for reasons of childcare will not in any way affect their prospects of being recruited as a tenant pursuant to the Chambers' policy on recruitment of tenants from pupils.

MISUSE OF THIS POLICY

41. It will be a disciplinary offence under (*add para ref*) of the Chambers' Constitution to abuse this policy. Any individual found to have misused this policy will be referred to the Bar Standards Board on the basis that Core Duty 3 will have been breached.

⁵ i.e., that except with the written permission of the Bar Standards Board: (i) the non-practising period of pupillage must be undertaken for a continuous period of six months (regulation 31); and (ii) the practising period of pupillage must commence within 12 months of completion of the non-practising period and be completed within an overall period of 9 months (regulation 32).

REVIEW OF THIS POLICY

42. The Chambers' Equality and Diversity Officer will review annually the effectiveness of this policy, and where appropriate will make proposals for change to the Management Committee.

Helpful Information

- Barristers should be made aware of Practising Certificate discounts for those on Maternity and Parental Leave⁶
- Bar Council Checklists and other links⁷
- Information about 'keeping in touch days' can be accessed via the Direct.gov website⁸
- Information regarding maternity allowance can be found at the Direct.gov website

⁶ <https://www.barstandardsboard.org.uk/for-barristers/authorisation-to-practise.html>

⁷ <https://www.barcouncilethics.co.uk/documents/family-career-breaks-advice-pack/>

⁸ <https://www.gov.uk/employee-rights-when-on-leave>