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Sarah Owen MP
Chair, Women and Equalities Committee
House of Commons
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8 July 2025

Dear Sarah,

The Employment Rights Bill

I would like to extend my sincere appreciation to the Women and Equalities Committee for its' follow-up report on Misogyny in Music and the accompanying recommendations. Please be assured of the Government's strong commitment to tackling misogyny in the music industry and our serious consideration of the steps outlined to improve support for women working in this sector.

I believe the Employment Rights Bill ("the ERB") represents a comprehensive and progressive set of policies which will improve women's working conditions, marking a significant milestone in improving their lives.

Below, you will find our detailed response to each of the recommendations from the Report you highlighted in your letter, which we hope further demonstrates how seriously we regard this issue. The full follow-up report on Misogyny in Music is currently being carefully reviewed by the Government and a detailed and considered response will follow in due course.

Extension of protections to freelancers

Recommendations: The Government should amend the proposed duty on employers to take all reasonable steps to prevent sexual harassment (clause 19 of the Employment Rights Bill) to ensure freelancers are within its scope.

The Government should amend the proposed new rights to protection from third-party harassment (clause 20 of the Employment Rights Bill) to ensure that they extend to freelancers.

The Worker Protection (Amendment of Equality Act 2010) Act 2023 created a duty on employers to take 'reasonable steps' to prevent sexual harassment of their employees. This came into force on 26 October 2024 and sends a strong signal to employers that they must improve workplace practices and culture across Britain.

As you are aware, this Government is strengthening this duty through Clause 19 of the ERB to ensure employers take 'all reasonable steps' to prevent sexual harassment of their employees. Clause 20 of the Bill will also require employers not to permit third parties to harass their employees.

Finally, it is also enacting a power through Clause 21 enabling regulations to specify steps that employers must take to prevent sexual harassment, where there is a clear evidence base supporting the efficacy of particular steps. Regulations will also be able to specify matters to which employers must have regard when taking steps for the purposes of the sexual harassment provisions.

All three of these clauses in the ERB will already provide a remedy for harassment in employment and other paid work that includes some people who may describe themselves as a freelancer. This is because the definition of employment in the Equality Act 2010 (the Act) is broad and includes a variety of working arrangements beyond the traditional employment relationship, including those engaged on contracts to perform work personally such as subcontractors and agency workers, unless they are genuinely self-employed. Whether a person who describes themselves as self-employed or freelance is protected under the Act will depend on their specific circumstances, and it would be for an employment tribunal to determine.

However, this should not be taken as the end of the Government's work to eradicate sexual harassment at work. The Office for Equality and Opportunity launched a Call for Evidence on Equality Law on 7 April 2025, which closes on 30 June 2025[1]. The call for evidence's questions relating to sexual harassment are seeking evidence on:

- effective steps that can be taken by employers to reduce and prevent sexual harassment in the workplace;
- the scope of protections against sexual harassment;
- any other steps and interventions that respondents believe should be considered to prevent workplace sexual harassment.

We will give responses to the Call for Evidence careful consideration as we consider next steps in tackling workplace sexual harassment and welcome the Women and Equalities Select Committee's contribution to this consideration through this report.

Additionally, the Government is also taking action to provide support more generally to freelancers in the creative industries sector. The Department for Culture, Media and Sport (DCMS) has committed to appointing a Freelance Champion in the recently published Creative Industries Sector Plan[2], to give creative freelancers a voice within Government. The role will work with industry to represent creative freelancers in fora with ministers and officials in relevant government departments, identifying areas where freelancers are underrepresented (e.g. in data collection) and advocate for the sector's creative freelancers within government.

Align Maternity Allowance with Statutory Maternity Pay

Recommendation: The Employment Rights Bill should be amended to bring Maternity Allowance into line with Statutory Maternity Pay. This would remove the inherent unfairness that means that, during maternity leave, women in employment can undertake unlimited self-employed work but restricts the ability for freelancers to do so for any more than their 10 keeping in touch days.

The Government wants new mothers to be able to take time away from work in the later stages of their pregnancy and in the months following childbirth, in the interests of their own and their baby's health and wellbeing.

[1] https://www.gov.uk/government/calls-for-evidence/equality-law-call-for-evidence
[2] https://www.gov.uk/government/publications/creative-industries-sector-plan

That is why the UK has a system of parental leave and pay entitlements which are designed to support parents to take time away from work to care for their children, whilst retaining an attachment to the labour market enabling them to return to work when they can.

You will be aware that there are two types of maternity pay available to pregnant working women which are Statutory Maternity Pay (SMP), paid by employers to qualifying employed women, and Maternity Allowance (MA) paid by the Department for Work and Pensions to eligible women (including the self-employed and women in employment who are not eligible for SMP).

The Government carefully considered the number of Keep in Touch ("KIT") days available to employed and self-employed women on maternity leave and chose a number that would enable a woman to keep in touch with her employer or if she is self-employed, with her business whilst also protecting her right to have time alone with her baby.

The 10 KIT days enable women to do some work without affecting their maternity pay and could also help ease the return to work. There is some flexibility in how the 10 days are used as there is the choice to work for single days, in blocks of two or more days, or 10 days consecutively.

For women receiving MA, it is the number of days that are worked over the 10 days allowed that determines whether there will be any deductions from MA for the days worked or whether MA stops altogether. If a woman's working pattern changes from what it was before she had her baby, for example from full time to part-time, then she could still be paid a proportion of her MA for the remainder of her Maternity Allowance Period. To further clarify, for each day worked over the 10 KIT days, that day will be deducted from the MA payment, until such time as the woman returns to her regular pattern of work, or her Maternity Allowance Period ends.

SMP forms part of a package of employment rights and protections available specifically to the employed. These rights do not extend to the self-employed because of the difference in the nature of the employment. However, the Government does acknowledge and has noted the concerns you have raised about women on maternity leave (in the music industry) and the ability to undertake freelance work.

Additionally, in the Plan to Make Work Pay the Government committed to a review of the parental leave system to ensure that it best supports working families. This review was launched on Tuesday 1 July[3] and provides an opportunity to consider the current framework of parental leave entitlements and how they operate as a system. It will also take the opportunity to establish the objectives for the system and what Great Britain's modern economy needs from it. This has been lacking in recent years as the framework of entitlements has evolved over time.

The Government is also considering the Committee's report on "Equality at work: Paternity and shared parental leave" and will respond in due course. We thank the Committee for your continued work on these topics and welcome further engagement on improvements to the system. We hope you will agree that the review is the right route to consider them.

[3] https://www.gov.uk/government/collections/parental-leave-and-pay-review

Non-disclosure agreements ("NDAs")

Recommendation: The Government should urgently bring forward legislative proposals to prohibit the use of non-disclosure and other forms of confidentiality agreements in cases involving (a) sexual abuse, sexual harassment or sexual misconduct; (b) bullying or harassment not falling within (a), and (c) discrimination relating to a protected characteristic. Doing so would demonstrate decisive leadership by the Government that the silencing of victims of abuse will no longer be tolerated.

The Department for Business and Trade is responsible for the use of NDAs, also known as confidentiality clauses, in the employment context. NDAs can be used in a variety of contexts and contracts, including to protect commercially sensitive information, or as part of a settlement agreement to resolve a dispute at work.

While there are legitimate uses for NDAs, the Government shares concerns raised about the impact that the inappropriate use of NDAs can have on victims of harassment, including sexual harassment, and discrimination.

There are some existing legal limitations on the use of NDAs. For example, NDAs cannot:

- Prevent a worker from making a protected disclosure (i.e. from whistleblowing) under the Employment Rights Act 1996.
- Require an employee to cover up iniquity or something where there is an overriding public interest in disclosure. This is a common law protection developed by the courts.
- Prevent a worker from doing anything that they may be required to do by law, for example where required to give evidence to a court, a tribunal, a regulator or the police.

The use of an NDA by an employer could also amount to a criminal offence, for example, if it is an attempt by the employer to pervert the course of justice or conceal a criminal offence by preventing a worker from reporting a crime to the police or cooperating in a criminal investigation.

The Equalities and Human Rights Commission (EHRC) has published guidance on the use of confidentiality agreements in discrimination cases, and further guidance is available from the Advisory, Conciliation and Arbitration Service (Acas). Both resources make clear that NDAs should not be used to prevent individuals from making certain disclosures. This includes to the police as well as to medical and legal professionals. The guidance is designed to address concerns that workers who sign NDAs, and some employers, are not aware of the legal limitations of these agreements.

As the Committee recognises, the Government has been clear that NDAs should not be used to conceal misconduct in the workplace. This report calls for a ban on NDAs in cases of harassment and discrimination, echoed by key charities such as Can't Buy My Silence and by parliamentarians throughout the passage of the Employment Rights Bill.

We have heard the calls for further reform and we are taking action. Today, we have tabled an amendment to the Employment Rights Bill that will tackle the misuse of NDAs by voiding any provision in an agreement between a worker and their employer that seeks to prevent a worker from disclosing allegations of relevant harassment or discrimination, with powers to make appropriate exemptions such as if the worker requests an NDA.

Employers will no longer be able to take unfair advantage of workers and use NDAs to silence allegations of harassment or discrimination that workers or their colleagues have suffered. This includes allegations of sexual harassment. This amendment will help address the imbalance of power between workers and employers that can affect NDA negotiations. Regulations will be able to set out exceptions where it may be appropriate to use an NDA. These regulations will be able to set conditions with a view to protecting workers, ensuring they have a greater say in whether they want an NDA and better understand the terms of an agreement. Regulations will also be able to expand the definition of "worker" to include other individuals, such as types of the self-employed.

Additionally, we are pressing ahead with plans to commence the provisions relevant to NDAs in the Higher Education (Freedom of Speech) Act 2023 and in the Victims and Prisoners Act 2024.

The Higher Education (Freedom of Speech) Act 2023 includes measures which, when commenced, will ban the use of NDAs in cases of sexual misconduct, bullying or harassment by higher education providers in relation not just to students but to staff, members and visiting speakers.

The Victims and Prisoners Act 2024 contains a measure which, when commenced, will ensure that victims of crime can report a crime, cooperate with regulators and access confidential advice and support without fear of legal action. It does this by providing that confidentiality clauses (including those in NDAs) which seek to prevent this cannot be legally enforced.

I thank the Committee again for its considered recommendations in relation to the Employment Rights Bill and hope you will be satisfied with the Government's actions in response.

I am placing a copy of this letter in the Library of the House.

Yours ever,

JUSTIN MADDERS MP
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Department for Business and Trade