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Waughray, Annapurna , Davidson, Colin and O'Dempsey, Declan (2022) Menopause discrimination in the workplace: do the protected characteristics of sex, age and disability provide sufficient protection? Briefings, 76. pp. 5-13. ISSN 1759-2925

**Publisher:** Discrimination Law Association

**Version:** Published Version

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DISCRIMINATION LAW ASSOCIATION

# Briefings

# Menopause discrimination in the workplace: do the protected characteristics of sex, age and disability provide sufficient protection?

Annapurna Waughray, Professor of Human Rights Law, Manchester Metropolitan University, Colin Davidson, Head of Employment Law, Edwards Duthie Shamash, specialising in employment and discrimination law, and Declan O'Dempsey, barrister, Cloisters Chambers, review protection for menopause discrimination in the workplace under the Equality Act 2010. They conclude that this is inadequate and argue that a new protected characteristic of menopause should be created. The authors are members of the DLA executive committee which is currently co-chaired by Annapurna Waughray and Colin Davidson. This article draws on the DLA's submission to the Women and Equalities Committee Menopause and the Workplace Inquiry (2021-22) drafted by Declan O'Dempsey. ♦

## Introduction

In *Best v Embark on Raw Ltd* (January 2022) the employment tribunal held that the claimant, Mrs Leigh Best, had suffered harassment under s26 of the Equality Act 2010 (EA) related to the protected characteristic of sex when her boss, Mr Fletcher, directly asked her whether she was menopausal.<sup>1</sup> The ET held that this invaded her privacy and tactlessly broached a highly sensitive topic for her when she had made it clear she did not wish to have any such discussion. Mr Fletcher's pursuit of the topic amounted to unwanted conduct which had the effect of violating her dignity and creating a humiliating environment at work for her.<sup>2</sup>

This case is one of the latest in a line of employment cases concerning unfavourable treatment related to the menopause. However, menopause is not a protected characteristic under the EA, which means that women wishing to bring a claim of menopause discrimination must argue that menopause is covered under the protected characteristics of sex, age or disability. Since February 2017<sup>3</sup> there have been around 44 ET decisions mentioning the words menopause or menopausal, of which 18 have involved an extended discussion of menopause or menopause discrimination on various grounds. The majority of these 18 cases show that menopause has been addressed under disability discrimination, but cases have also involved sex discrimination claims and claims of age and sex discrimination.

This article examines how workers have pursued claims on the basis of treatment in the workplace related to menopause falling within discrimination and harassment on grounds of sex, age and disability. It addresses questions such as choosing comparators and what evidence would be needed to make the case for menopause falling within the ambit of these three grounds. The article also touches on the steps that employers can take and practices they could introduce to remove workplace health and safety risks for menopausal workers, implement accommodations in individual cases, and create a culture in which women feel able to disclose menopausal symptoms at work to their

♦ The article reflects the views of the authors, not the DLA. All errors and opinions are our own.

<sup>1</sup> *Best v Embark on Raw Ltd* [2002] UKET 3202006 (January 5, 2022)

<sup>2</sup> The tribunal also found that Mr Fletcher made comments about Mrs Best's age which had the effect of creating a degrading, humiliating and offensive environment for her at work in violation of s26 EA. However these comments related to Covid, not menopause.

<sup>3</sup> Until September 2021 - the date the DLA submitted its evidence to the Women and Equalities Committee.

employer. Finally, against the backdrop of the recent Women and Equalities Committee (WEC) Inquiry into Menopause in the Workplace, the article considers how well the EA protects women from menopause discrimination in the workplace and whether the legislation should be amended by adding menopause as a new protected characteristic.<sup>4</sup>

## Context

First we offer a brief overview of the nature and extent of discrimination suffered by women experiencing menopause. The authors consider that menopause is not analogous to an illness or impairment, rather, it is a normal and important part of a woman's natural life cycle. However, unlike pregnancy or maternity, menopause and the menopause transition (peri-menopause) is not a well understood life stage in the workplace. On the contrary it has traditionally been a taboo subject which women have been reluctant to raise. Consequently, it is not surprising that it is not well provided for at work, whether in terms of culture, training or policies. To put it in context, the concept of 'the workplace' or 'work' is not gender neutral. Historically, working practices and structures have been designed around the life cycle and working lives of men rather than women. This can be seen, for example, when considering retention rates in work after childbirth or the way in which sickness trigger points are approached.

For most women, menopause is a natural part of the ageing process. The average age of the menopause in the UK is 51 and by the age of 54, 80% of women are menopausal. The peri-menopausal (transition) stage lasts anything between four to eight years. However these averages do not, of course, reflect every woman's experience. The evidence shows that 70% of women are in paid employment and women constitute 47% of the UK workforce (ONS, 2017). There are 4.3 million women aged 50 and above in employment. Over the last 30 years, employment for women aged 55-59 has increased from 49% to 69% and for women aged 60-64 from 18% to 41%. In part this reflects steps taken to eliminate age discrimination in relation to retirement but also the increasing economic pressures on women of all ages to work. According to Atkinson et al, the proportion of women aged 55-64 in the workplace in the UK grew from 39% in 1990, to over 60% in 2017.<sup>5</sup> Thus women can expect a substantial part of their economically active life to be during and after menopause, and the time that women remain economically active after menopause is likely to increase. More than 75% of women will experience menopausal symptoms and 1/3 of women will experience long-term symptoms. According to the organisation Henpicked: Menopause in the Workplace,<sup>6</sup> one quarter of working women aged between 50 and 54 contemplate leaving work due to the menopause.

Respondents to the WEC survey on Menopause in the Workplace in September 2021 (the WEC survey) stated that only 11% of those undergoing the menopause in work asked for adjustments to accommodate their symptoms. Of those who did not request adjustments, the main reason given was '*I was worried about the reaction of others*' (26%). The next most commonly given reason was '*I didn't know who to speak to*' (19%).<sup>7</sup> The problem therefore is not simply the impact of less favourable treatment on women with menopause, it is a problem of the needs of a group in society being different to

4 See <https://committees.parliament.uk/work/1416/menopause-and-the-workplace/>

5 Atkinson, Carmichael and Duberley, *The Menopause Taboo at Work: Examining Women's Embodied Experiences of Menopause in the UK Police Service, Work, Employment and Society* (2021) 35(4) 657-676, 658

6 See <https://menopauseintheworkplace.co.uk/about-us/>. Sally Leech of Henpicked was a contributor to the DLA's Practitioner Group Meeting on menopause in the workplace in September 2021, and provided helpful statistics which were used in the DLA's submission to the Women and Equalities Committee Inquiry on menopause and the workplace.

7 See WEC Menopause and the Workplace Survey Results at: <https://publications.parliament.uk/pa/cm5802/cmselect/cmwomeq/1157/report.html>

Menopause is not analogous to an illness or impairment, rather, it is a normal and important part of a woman's natural life cycle.

those for whose benefit society has traditionally been structured. To avoid the impact of failure to retain women experiencing menopause in the workforce and to ensure that they can be as productive as men of a similar age, accommodations for this life phase need to be made.

### The meaning of discrimination

In determining the impact of ‘discrimination’ on women due to menopause we need to have a clear understanding of what we mean by the concept of discrimination. An understanding of discrimination which is confined to direct and indirect discrimination, harassment and victimisation under the EA is unlikely to capture the true impact of workplace design on women during the menopause. In the DLA’s response to the WEC Inquiry<sup>8</sup> we suggested that the starting point must be the tests laid down in international law relating to sex discrimination, in particular in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which in its Preamble notes:

*Discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.<sup>9</sup>*

The way in which, historically, workplaces and work practices have been designed by and for men creates barriers for women affected by the menopause.

CEDAW defines discrimination against women as any restriction made on the basis of sex which has the effect of impairing the enjoyment or exercise by women on a basis of equality of men and women of human rights in the economic or any other field (Article 1). This is the definition we have used when considering whether discrimination has taken place in respect of the design of work and the workplace.

CEDAW provides that the states parties ‘shall take in all fields, including the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’ (Article 3). It requires states parties to ‘modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’ (Article 5).

Article 5 is an important principle in considering whether work and the workplace are to be considered a neutral starting place, or a starting point predisposed in favour of male life cycles. The way in which, historically, workplaces and work practices have been designed by and for men creates barriers for women affected by the menopause. The model of work has traditionally been based on masculine needs and on the tacit assumption that a worker will be a male worker.

Article 11 requires the elimination of discrimination against women in the field of employment in order to ensure on a basis of equality of men and women the same rights to (a) work; (b) the same employment opportunities; (c) the right to job security; and (d) protection of health and safety in working conditions. It is against these measures that the current legislation should be tested. If this is done it is clear that, in respect of the life cycle of women, these aims are not being achieved. Whilst there is theoretical

<sup>8</sup> See <https://committees.parliament.uk/work/1416/menopause-and-the-workplace/>

<sup>9</sup> See <https://www.un.org/womenwatch/daw/cedaw/>

protection, there is not real practical and effective protection against discrimination based on the life cycle feature of menopause.

A key feature of equality law is that like cases be treated alike and that unlike cases be treated differently. If the fact that the needs of menopausal women are different to the needs of non-menopausal women - and men - is taken into account, the impact of failing to accommodate those needs must also be taken into account. The failure to take account of these different needs must be a form of discrimination.

### **How well does current legislation protect women from discrimination in the workplace associated with the menopause?**

The nature of the discrimination faced by women due to menopause breaks down into two categories: (1) workplaces are not designed to take account of the female lifecycle properly, resulting in ignorance of the menopause, peri-menopause and its effects, and in working practices which create barriers for women at work; (2) less favourable treatment, indirect discrimination and harassment. Although there is plentiful evidence of category 2 discrimination being a problem, it is possible that category 1 discrimination in reality causes more difficulties for women.

#### ***Menopause discrimination as direct discrimination based on sex***

With both sex and age discrimination, a primary issue is the comparator. The claimant must show that they have been treated less favourably than someone of the opposite sex or a different age.

In the case of sickness absence, the comparator would be someone who has an underlying health condition which causes a similar level of absences but who is a different sex or age. To bring a claim for direct discrimination related to menopause it is necessary to show that a man (or, for direct age discrimination, a younger non-menopausal person) experiencing the same symptoms would be treated better. In such cases it is entirely possible that an employee would be dismissed on the basis of these absences - in which case there is no discrimination as both are treated equally. However, this does not take account of the fact that these absences are as a result of a stage in that individual's natural life cycle - accordingly it is an unsatisfactory solution that both are treated the same, yet are in very different circumstances.

The limitations of showing direct sex discrimination in relation to menopause echo the difficulties prior to the case of *Webb* in showing direct discrimination in respect of pregnancy.<sup>10</sup> Because menopause is not treated as a necessary indicator of female sex, women have to show that they have experienced less favourable treatment in comparison with a man in comparable circumstances. In the 2012 case of *Merchant*<sup>11</sup> the ET found that direct sex discrimination had occurred when the claimant was dismissed for capability reasons, where the reason for the reduction in performance resulting in the dismissal was health issues relating to menopause. The claimant had to rely on a hypothetical comparator: a man who had significant performance concerns and an underlying health problem understood to effect his concentration at times and relevant to his poor performance. The manager decided that because his wife and the HR adviser had gone through menopause, no further investigations were needed to understand the claimant's menopausal condition or prognosis. The employer did not refer the claimant for medical reports when he would have done so in the case of a man exhibiting similar symptoms to ascertain whether they contributed to the claimant's

<sup>10</sup> *Webb v EMO Air Cargo (UK) Ltd (No 2)* (1994) C-32/93 in which the European Court of Justice held that dismissal of a pregnant woman during the period from the beginning of pregnancy to the end of maternity leave amounted to sex discrimination.

<sup>11</sup> *Merchant v BT plc* [2012] UKET/1401305/11

poor performance and before making a decision on dismissal. The manager took the view that menopause health problems did not require the same approach as other non-female specific health conditions and thus failed to treat the employee's menopause in the same way as he would treat a man's medical conditions when applying the performance management policy. While this claimant was ultimately successful, this highlights the lack of understanding of discrimination arising from menopause and its related symptoms.

### **Menopause discrimination as indirect sex discrimination**

The claimant who objects to her menopause-related absences contributing to sickness trigger points within an absence procedure raises a claim of indirect discrimination. She must complain that what appears to be a neutral absence policy places her and all women with menopause at the disadvantage of having to take sickness absence for menopause-related symptoms. However, under the model of indirect discrimination it is open to the employer to justify the use of a sickness absence policy as a proportionate means of achieving a legitimate aim (ensuring a certain level of employee attendance necessary to meet business needs). We suggest this is a defect in legal coverage because it does not take into account the menopausal individual's life cycle; it reflects an attendance requirement level which accommodates the likely needs of men and their normal absence patterns, but not those of women who may have need of higher sickness trigger points to ensure that they remain in the workforce. It is questionable whether an employer ought to be able to take into account absences which are for the medical reason of menopause-related symptoms, and to justify the imposition of sanctions on a woman because she is going through this part of the female life cycle. Judged against the standards of international law, referred to above, it is suggested that the ability to justify indirect sex discrimination due to the conflict between an employer's rules and the menopause is not acceptable as it requires a tribunal to treat the current workplace and work requirements of an employer as factors which are not conditioned by gender. We argue that an employer should not be able to justify disadvantaging a woman as a result of menopause unless there are no accommodations which could be made in the individual case to remove the particular disadvantage she suffers as a result of menopause. At present however there is no requirement for an employer to have taken all accommodations for the menopause in the individual case which are reasonable.

**An employer should not be able to justify disadvantaging a woman as a result of menopause unless there are no accommodations which could be made in the individual case to remove the particular disadvantage.**

The 2020 case of *Sokolova v Humdinger Ltd* illustrates the lack of a concept of reasonable adjustment in relation to menopause discrimination.<sup>12</sup> The claim for indirect sex discrimination failed on the basis that the provision, criterion or practice (PCP) (a policy of requiring the wearing of buttoned up overalls) was reasonably necessary to achieve the employer's aim. If the claimant had been able to access the concept of reasonable accommodations for menopause, she arguably would have been able to obtain a remedy.

### **Menopause discrimination as age discrimination**

One of the difficulties of proving direct discrimination on grounds of age is that people experience menopause and peri-menopause at different ages; the assumption that peri-menopause and menopause only affects women above a certain age is erroneous and using a comparator of a different (i.e. younger) age will not be appropriate in all cases. There is no agreed menopausal age range in case law. In *Sloan v Dumfries and Galloway Health Board* a claim of indirect sex discrimination and age discrimination related to menopause failed due to lack of evidence that a PCP applied by the employer requiring

<sup>12</sup> *Sokolova v Humdinger Ltd* (2020) UKET 805866

Claimants may also be reluctant to apply the terminology of disability to the symptoms of menopause, which is simply a natural part of a life cycle.

the claimant to work in a low temperature environment placed females in the 50-65 age range at a significant disadvantage compared with male colleagues and female colleagues outwith that age range. The claimant asserted that 50-65 was the age range for women undergoing menopause, an assertion which the ET did not challenge.<sup>13</sup> In an earlier case in the Scottish ET (*A v Bonmarche*) claiming direct discrimination and or harassment on grounds of age and sex, the claimant did not name a specific comparator but the judge understood her ‘to be comparing her case with another employee who was not a female of menopause age’ and found on the facts that the respondent had treated the claimant less favourably than he would treat someone who was not a female of menopausal age. The unwanted treatment was specifically related to the claimant’s protected characteristic and would not have happened to someone who did not have those characteristics.<sup>14</sup> The claimant’s evidence, which was accepted by the tribunal, was that she felt the respondent had created a hostile environment for her and that this was related to her status as a woman going through the menopause. The judge considered this amounted to unlawful harassment on grounds of age and sex.

### **Menopause discrimination as disability discrimination**

The treatment of menopause as a disability requires women to show that they satisfy the criteria in s6 EA. This requires women to prove they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This is a requirement we suggest which would dissuade claimants from seeking protection from discrimination based on menopause, not least because their intimate and personal details may form part of an online judgment in perpetuity. Claimants may also be reluctant to apply the terminology of disability to the symptoms of menopause, which is simply a natural part of a life cycle.

The test for whether a person is disabled is complex and may involve considerable time and resources being expended in employment tribunals by all parties on the question of whether the claimant is a disabled person. That said, the majority of successful menopause discrimination cases have argued menopause as disability. The advantage for claimants and advisers of treating menopause discrimination as disability discrimination is because it allows the argument that there has been a failure to make reasonable adjustments where the employer has not made changes to the way they operate, for example, or to their performance management procedure.

In the 2020 case of *Donnachie v Telent Technology Services Ltd* the ET found that the effect of menopausal impairment on the claimant’s day-to-day activities was more than minor or trivial, and that the range of her daily activities and her ability to undertake them when she would wish with the rhythm and frequency she once did was markedly affected.<sup>15</sup> In the 2018 case of *Ibolya Kun v Cambridge University Hospital NHS Foundation Trust* the claimant was considered disabled by virtue of menopause-related heat sensitivity.<sup>16</sup> In *Davies v Scottish Courts and Tribunals Service* the ET accepted that Ms Davies’ menopause transition symptoms included very heavy bleeding or ‘flooding’, cystitis, severe anaemia, depression, feeling ‘fuzzy’, emotional and lacking concentration.<sup>17</sup> She was anxious and upset, suffered short-term memory loss and confusion, and needed to attend the toilet frequently to change her sanitary protection, and became weak, dizzy and disorientated because of the anaemia. The

<sup>13</sup> *Sloan v Dumfries and Galloway Health Board* Employment Tribunals Scotland 4100022/2020 (March 17 2021)

<sup>14</sup> *A v Bonmarche Limited (in administration)* Employment Tribunals (Scotland) 4107766/2019 (December 19, 2019) paras. 13-14

<sup>15</sup> *Donnachie v Telent Technology Services Ltd* [2020] 1300005 (August 20, 2020)

<sup>16</sup> *Ibolya Kun v Cambridge University Hospital NHS Foundation Trust* UKET 3201544/2018 (October 16, 2019)

<sup>17</sup> *Davies v Scottish Courts and Tribunals Service* [2018] 5/4104575 (April 6, 2018)

ET held that her employer had failed to protect her when, during the course of its investigating and in making the decision to dismiss, it did not consider that her '*conduct was affected by her disability*'. Her memory loss and confusion were in fact caused by her disability (which was in turn the result of her transition).

In October 2021 in *Rooney v Leicester City Council*<sup>18</sup> the EAT gave its first ruling on the question of whether menopausal symptoms amount to a disability, overturning an earlier ET decision that Ms Rooney, a child care social worker, was not disabled in relation to her menopause symptoms. The ET had dismissed her disability discrimination claim. Her evidence to the ET, which was not contested, was that she experienced severe physical, mental and psychological peri-menopausal and menopausal symptoms in her workplace over several years amounting to a disability, including insomnia, fatigue, light headedness, confusion, stress, irritability, depression, anxiety, dizziness, incontinence, palpitations, memory loss, concentration problems, low self-esteem and confidence, migraines and hot flushes. Specifically, she said that her symptoms led to her forgetting to attend events, meetings and appointments, losing personal possessions, forgetting to put the handbrake on her car and forgetting to lock it, leaving the cooker and iron on and leaving the house without locking doors and windows. She also spent prolonged periods in bed due to fatigue/exhaustion. The EAT held that the ET erred in law in holding that she was not a disabled person at the relevant time and remitted the claim to the ET.

### **Should the Equality Act 2010 be amended by adding menopause as a new protected characteristic?**

While some unfavourable treatment related to the menopause can be met by the existing protected characteristics in the EA, the coverage is inadequate and requires considerable work to establish status. Currently, claims of menopause discrimination are most likely to succeed where the claimant can show that they are a disabled person within s6 EA. However, the authors consider it important that menopause is not viewed as an illness or impairment but is recognised as a natural and important part of an individual's life cycle. From this perspective, the terminology of impairment is not the right terminology to use where what is being described is a natural part of the life cycle, and, because it does not accurately reflect the situation, it may even deter individuals from raising complaints about the way that the workplace operates.<sup>19</sup>

There is therefore an argument for amending the EA by the creation of a new protected characteristic of menopause. This would cover those who experience symptoms caused by the onset of menopause and peri-menopause and those who have the menopause, regardless of the age at which these symptoms occur.

A related question arises, namely how should people who experience the menopause but do not identify as women be supported in relation to menopause and the workplace. The question is predicated on the point that the person experiences the menopause. Medically, peri-menopause and menopause are usually defined in relation to hormone deficiencies affecting the person. In all cases the changes in hormone levels are the marker for the characteristic we describe as 'menopause' (which includes peri-menopause). There is no reason why a person who does not identify as a woman but who experiences the menopause should not have the same protection as everyone else who experiences the menopause. Those who have this combination should receive

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<sup>18</sup> *Rooney v Leicester City Council* EA-2020-000070-DA and EA-2021-0002560-DA; (October 7, 2021); Briefing 1007, March 2022

<sup>19</sup> Adam Pavey, Director of Employment and HR, Pannone Corporate; Women and Equalities Committee Oral Evidence: Menopause and the workplace, House of Commons 602, January 19, 2022

inclusive support in relation to the menopause in the workplace as they too are affected by the male-design of the workplace which does not take account of the needs of those who experience menopause but do not identify as women.

### **Non-legislative measures: what can employers do?**

In the WEC survey respondents were asked what employers could do to support employees experiencing menopause. Responses included having a workplace policy on menopause; providing adjustments such as ventilation, fans, breathable uniforms; information on where women who are struggling at work can seek advice both internally and externally; conversely not penalising individuals with menopause through sickness or absence policies; providing flexibility in working hours and place of work; providing education and training on menopause and its impact in the workplace, and supporting cultural change to de-stigmatise menopause and to normalise discussion of menopause.<sup>20</sup>

At the national level, while guidance on existing law could go some way to addressing workplace menopause discrimination, the history of purely voluntary codes of guidance does not suggest this will be very effective. While existing law can provide a certain level of protection, it does not counteract the impairment of the right of women to enjoy access to the workplace and working practices in the same way as men. The authors consider that this could be achieved by the introduction of a right to reasonable accommodation for menopause without the need to prove that the menopause amounts to a disability. Statutory guidance could be issued by the Equality and Human Rights Commission in the form of a Code of Practice on avoiding menopause discrimination under its powers in s14 of the Equality Act 2006. This could contain provisions designed to ensure or facilitate compliance with the EA or to promote equality of opportunity. A failure to comply with a provision of a code does not of itself make a person liable to criminal or civil proceedings but, by s15(4) of the Equality Act 2006, it is admissible in evidence in proceedings and it must be taken into account by a tribunal in any case in which it appears to the tribunal to be relevant.

Whilst this would make provision for cases in which the symptoms of menopause amounted to a disability within s6 of the EA, and could make provision for indirect sex discrimination based on menopause, or discrimination based on age and sex in respect of menopause, it would not, as matters stand, be able to deal with workplace adjustments that might be needed where menopause does not amount to a disability but has an impact on performance within the workplace. It could not, in other words, meet the need to design the workplace to meet the needs of individual women affected by the menopause. As such, the authors consider that wholly non-legislative means are not sufficient and supports the creation of a protected characteristic of menopause, either via secondary legislation as a deemed disability or by the creation via amendment to the EA of a separate protected characteristic of menopause. The choice of approach is a political question, but the authors support the latter approach as it treats menopause as a normal part of an individual's lifecycle rather than adopting the deficit model which has been used to define disability. Defining menopause inevitably creates a problem of knowledge; this could be addressed in the statutory code via examples for employers, employees and tribunals which would mitigate the risk that only those who are more vocal about the causation of their symptoms are protected, by illustrating situations in which, despite a lack of assertion by the individual with menopause, the employer should have been aware that the individual had this characteristic.

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<sup>20</sup> See survey results, note 8 above

## Conclusion and looking ahead

Issues around menopause in the workplace are being discussed more widely now than ever before, with awareness being raised by a large number of groups doing important work. However, action beyond raising awareness is required. As is set out above, the authors believe that the option which offers the most protection to those experiencing the menopause would be to introduce a separate characteristic under the EA. This could be modelled on a s18 claim (pregnancy) to establish that an individual has been treated unfavourably because of menopause. This would avoid the need to show 'less favourable' treatment as under a direct discrimination claim, thereby foregoing the need for a comparator and so avoiding the problems we have seen with some of the claims above. Direct discrimination claims would remain available on the basis of sex, age or gender reassignment as alternatives. This would provide protection against unfavourable treatment on the basis of menopause

**Further provision is required to grant access to reasonable adjustments and accommodations in the workplace.**

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However further provision is required to grant access to reasonable adjustments and accommodations in the workplace. This new provision would provide a right for a person with menopause to be able to claim accommodations for the effects of menopause. Because the aim of the legislation is to ensure that the workplace and policies are designed to achieve equal access for men and women and others experiencing menopause, the duty should be stronger than the duty to make reasonable adjustments i.e. employers should show that they have taken all reasonably practicable steps which are proportionate (appropriate and reasonably necessary) in order to remove any disadvantage. The duty would arise when the employer knows or ought reasonably to have known that the employee has menopause and that knows or ought reasonably to have known that the employee experiences a menopause related disadvantage as a result of the employer's working arrangements (i.e. provisions criteria or practices applied to the employee).