

# *Regulating work and care relationships in a time of austerity: a legal perspective*

Book or Report Section

Accepted Version

Busby, N. and James, G. ORCID: <https://orcid.org/0000-0002-1098-1506> (2016) Regulating work and care relationships in a time of austerity: a legal perspective. In: Lewis, S., Anderson, D., Lyonette, C., Payne, N. and Wood, S. (eds.) Work-Life Balance in Times of Recession, Austerity and Beyond. Routledge. ISBN 9781138926448 Available at <https://centaur.reading.ac.uk/47435/>

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Publisher: Routledge

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# **Regulating Work and Care Relationships in a Time of Austerity: A Legal Perspective**

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## **Introduction**

Recent austerity measures in the UK have led to labour market deregulation alongside cuts to welfare provision. Such reforms have resulted in reduced protection for the large numbers of women workers who combine low paid, precarious work with high levels of care-giving. Furthermore, cuts to public services risk upsetting the finely-tuned arrangements on which those who provide care alongside paid work depend. This chapter considers the impact of austerity on the legal and policy framework surrounding the reconciliation of paid employment and unpaid care. The chapter aims to explore the relationship between gender and care in order to identify the limits of the current framework for addressing the needs of those who provide unpaid informal care alongside paid work.

The resulting analysis will highlight how, despite political claims to the contrary, budget cuts and the reduction in access to legally enforceable rights have detrimentally affected many women's work-life balance by negatively impacting on employment prospects, personal wellbeing, and social and economic security throughout the life course – from the years of family formation to retirement. The negative effects of care-giving have always impinged on women's life experiences. However many of the gains made to gender equality through incremental improvements to law and policy over several decades are now lost or threatened due to the changes wrought in the name of austerity. As well as the obvious effects on individuals, such slippage has wider long-term implications as a failure to care for the carer impacts on all aspects of society, on families and employing organisations and also threatens economic success.

Our focus on the paid work/unpaid care equation which is central to most women's lives does not mean that we wish to exclude carers who do not or cannot undertake paid work alongside their care commitments. We certainly do not consider such individuals as less worthy subjects of labour law than those who engage in paid work, but our overriding aim is to explore the effects of state attempts to rebalance the relationship between paid work and welfare and the place of law and policy in achieving this. Taking a life course trajectory, the chapter will identify specific pressure points where improvements to the law and policy framework could alleviate the many difficulties experienced by worker/carers. By highlighting the effects of the austerity agenda at different stages in the life course, we aim to illustrate the often devastating individual and cumulative effects of a failure to prioritise and protect gender equality from the programme of budget cuts and deregulation. Our central argument is that gender equality should be protected against political expediency,

especially in times of economic downturn. The chapter concludes by considering how such protection could be guaranteed in the future.

### **Women's Lives, Carers' Lives: Gender, Unpaid Care and Labour Law**

In all industrialised societies unpaid care for family members and other dependent individuals is overwhelmingly provided by women whether they engage in paid work or not (Busby 2011). However, the traditional labour law framework has never accommodated such work adopting a marketised conceptualisation of 'labour' which encapsulates most forms of paid work but which excludes work which is unpaid and consequently viewed as being of no market value (Busby 2011). Furthermore such unpaid work only attracts specific legal protection insofar as it impacts on the individual's ability to perform paid work and is not explicitly accounted for in the regulatory regime so remains hidden from view (Busby 2011; Fudge 2013). The assumptions that underpin this approach have always been flawed (Busby 2011, Fudge 2015) but appear particularly incongruous in the contemporary workplace where the protection of work-life balance is the focus of much attention. Despite the adoption of a more holistic approach to workers' wellbeing through the development of 'family friendly' policies which are intended to facilitate family responsibilities and associated requirements, legal protection is still largely focused on the 'paid employment' part of the equation so that workers who also provide unpaid care are viewed as 'the other' in contrast to the normative paradigm, i.e. the full-time, permanent, unencumbered (male) worker.

In the UK, the rationale underpinning law's provision has been slow to catch up with social changes such as the post-war rise in women's labour market participation, the growth in the number of lone parent families and other less 'traditional' family forms. Thus the resulting law and policy framework takes a heteronormative approach to balancing personal and paid work responsibilities. By viewing those who provide high levels of unpaid care alongside paid employment as exceptions to the norm, the law seeks to provide remedial measures which are primarily aimed at enabling such workers to remain in the labour force through, for example, anti-discrimination laws, maternity rights and protection for part-time workers. These generally depend on a high degree of market regulation. Such employment rights have been incrementally bolstered by associated welfare measures and tax credits and the provision of public services which, in various combinations depending on personal circumstances, are aimed at providing individuals and their dependants with an adequate standard of living. Whilst such a welfare/work mix may be capable of facilitating a necessary degree of flexibility for individual care arrangements, its reliance on economic and social policy does not provide any guaranteed protection, leaving worker/carers vulnerable and particularly susceptible to changes in political ideology.

The sweeping changes introduced by the UK's Coalition Government (2010-2015) and carried forward by the current Conservative Government in the name of austerity are the specific focus of this chapter. Driven by a neo-liberal agenda, many of the changes enacted are, on their face, 'gender blind' as they were not specifically targeted at women or those who perform unpaid care. However, their impacts reveal unintended consequences which could have been avoided if equality impact assessments had been carried out and alternative courses of action considered. Some of these measures are indicative of a deregulatory approach to employment law, such as the increase in the unfair dismissal qualifying period from one to two years introduced in April 2012 (see Employment Rights Act 1996, amended s. 92(3)(2)). The impact of this amendment will be felt by those women who work in precarious and unprotected areas of the labour market who will find it difficult to build up the longer service requirement due to the demands of balancing care commitments with paid work. The Coalition Government's non-enactment of certain provisions under the Equality Act 2010 has had similarly disproportionate effects on groups of women workers. The 'new approach' to equality (May 2012) led to the shelving of the Act's fledgling attempt to address intersectionality (Crenshaw 1991) by enabling actions based on two grounds of discrimination to be brought (s.14) and the prohibition of third party harassment (s.40) as the estimated annual costs to businesses of £350m were deemed too high (HM Treasury 2011). However, no account was taken of the personal and financial costs to the individual resulting from a loss of employment because you happen to be black and a woman (*Bahl v The Law Society and others* [2004] IRLR 799) or subjected to workplace discrimination by an individual who happens to be outside of your employment contract (*Burton and Rhule v De Vere Hotels* [1996] IRLR 596).

Furthermore, the socio-economic duty (s. 1) which would have required public bodies to assess their approach to inequalities caused by class factors encouraging improvements in, for example, health and education outcomes in more deprived areas was also abandoned. Announcing this decision, Home Secretary and (then) Equalities Minister Theresa May stated,

"Even as we increase equality of opportunity, some people will always do better than others... I do not believe in a world where everybody gets the same out of life, regardless of what they put in. That is why no government should try to ensure equal outcomes for everyone." (May 2010)

The overt rejection of equality of results is not new to the UK's law and policy framework which has always aimed at the achievement of formal equality through the provision of equal treatment. However, this explicit retreat to the traditional position from what appeared, at least ostensibly, to be the beginnings of an alternative means of overcoming inequalities, surely amounts to a retrograde step. In addition, the withdrawal of the means of challenging breaches of the Equality Act and other employment protection provisions through the assertion of statutory rights has severely threatened workers' access to justice.

In the remainder of this chapter, we will consider the effects of these and other measures on work-life balance and, in particular, the regulation of paid work and unpaid care relationships.

### **Pregnancy and Maternity**

For many women the gendered implications of care-giving for labour market participation are often directly experienced for the first time when they are pregnant or have recently given birth. It is a time when women need to leave the labour market for a period of time, in order to give birth, physically recover and, if they choose to, care for the new born during his/her first year. UK employment laws provide fairly generous leave entitlements for mothers. Available under S71-75 ERA 1996 and regulations 4-12A of the Maternity and Parental Leave etc. regulations 1999 (SI 1999/3312), employees are entitled to a maximum period of 12 months leave. To those who qualify leave is paid for 9 months: earnings related for the first six weeks at 90% of her weekly earnings and then payable at the national statutory maternity pay (SMP) rate, or 90% of average earnings if that is less, for 33 weeks, leaving 3 months unpaid. New mothers report taking an average 9-10 months of leave, with those working in certain sectors taking more (manufacturing industries) and others less (education) (see EHRC/BIS 2015, p33). Those who do not qualify for SMP may claim maternity allowance. Interestingly, given the core focus of this book, New Labour, when they came to office in 1997, had intended to extend the payment of SMP to a full year but this was shelved due to economic instability caused by recession, reflecting the vulnerability of such social policies to economic hardship (see Rubery and Rafferty 2013).

Recent legislation has been extended to include those who have a baby through a surrogacy arrangement (The Children and Family Act 2014). It also allows parents to share care-giving responsibilities during this initial period (see Mitchell 2015). Laws are also in place to protect working women from unfavourable treatment during pregnancy and maternity leave. The Equality Act 2010 s.18 prohibits unfavourable treatment because of pregnancy or illness suffered as a result of it or because she is seeking to exercise or has exercised her entitlement to maternity leave. Protection is from when the pregnancy begins to until the end of maternity leave (the 'protected period') and if the treatment is unfavourable it is likely to be automatically unfair, contrary to the Employment Rights Act 1996 (ERA) S.99. EU legislation also provides protection (see The Equal Treatment Directive 76/207/EEC (now, Recast Directive 2006/54/EC) and the Pregnant Workers Directive 92/85/EEC). A body of EU case law has been developed over the years, extending the rights and protection to mothers, albeit in a disjointed way that has often been criticised for failing to promote more equal parenting (see for example, Busby and James 2015; Caracciolo Di Torella and Masselot 2001; McGlynn 2001).

Despite this fairly robust legal framework, tens of thousands of women annually experience pregnancy and maternity related discrimination at work. A recent investigation headed by the Equality and Human Rights Commission (EHRC) and the Department for Business,

Innovation and Skills (BIS) estimates that as many as 54,000 women are annually dismissed, made compulsorily redundant while others are not or are treated so poorly that they feel they have to leave their jobs (EHRC/BIS 2015). Many, around 100,000 women a year, experience harassment and negative comments relating to pregnancy and flexible working from employers and colleagues and a third felt unsupported by their employer at some point when pregnant or returning to work, whilst one in ten were discouraged from attending antenatal appointments. This confirms equally disappointing figures from a previous investigation (see Equal Opportunities Commission, EOC 2005) and underscores the fact that very little is being done to effectively tackle the problem (see James 2009). Indeed the only current method of challenging this unlawful behaviour is through individual legal action – a means of legal enforcement that has always been flawed (see Dickens 2012) but which, as will be highlighted below, has been severely restricted as a result of recent measures. In the remainder of this section we demonstrate how an already fragile system for enforcing employment law rights and protections is now severely flawed, making it incredibly difficult for this group of claimants to access justice following pregnancy and maternity related discrimination. Tens of thousands of women annually experience pregnancy or maternity related discrimination and in what follows we discuss three key ways in which austerity focussed reforms have detrimentally affected their ability to pursue a legal action against offending employers.

First, certain funding cuts have made it very difficult for any claimants to access legal advice when they suspect that their treatment at work is unlawful. The availability of free legal advice for employment related disputes has always been precarious but cuts to advisory services and the abolition of nearly all civil legal aid in 2013 has crippled the system. Approximately £320 million was cut from the legal aid budget, with further cuts, of approximately £220 million annually, planned until 2018 (Legal Aid, Sentencing and Punishment of Offenders Act 2013; Bowcott 2013). The EHRC, an important provider of information and advice for claimants who have suffered discrimination, has had its budget cut from £70 million to £17.1 million and many providers of free legal advice are closed or struggling to stay open and /or meet demand (Bowcott 2013). At Maternity Action, a charity, ‘demand for telephone advice consistently outstrips... capacity’ (Maternity Action 2012, p4).

The importance of legal advice at this initial stage is beyond doubt. It is key in helping individuals navigate the law to determine whether their personal experience might have some resolution in law (see Busby and McDermot 2012). For claimants who are pregnant or have recently given birth and are therefore caring for a new born, it can mean the difference between raising grievances and accessing justice or not. In addition, legal advice can help an individual to understand the true scope of her claim – for example, including a claim for unfair dismissal where relevant (see James 2009).

The second hurdle that these claimants now face, as a result of recent measures introduced by the Coalition government to reduce the number of claims being taken to employment tribunals, is compulsory early Advisory, Conciliation and Arbitration Society (ACAS) conciliation. Since May 2014 all potential claimants are required to notify the ACAS, of any disputes and having done so, will be contacted by a conciliation officer whose primary role is to 'act as broker' (see Dickens 2012: 37) rather than advisor and to help the parties resolve the dispute, and agree a binding settlement where relevant, without going to tribunal. Time limits for bringing claims to tribunals are paused for a calendar month in the first instance and a further 14 days if both parties consent. Only if no settlement can be reached will a certificate be issued allowing a claim to be lodged at tribunal.

During the first year of operation 83,000 cases were dealt with by early conciliation and 63% of these did not proceed to tribunal – and of those that did, the majority of cases were settled prior to full tribunal hearing (ACAS 2015). In many ways this new procedure is fulfilling its mandate and keeping the tribunal's case load down. However, the process is fairly formal and its ability to deliver an effective service to individuals has been questioned (McDermont and Busby 2012). In addition, it elongates the timeframe and, for those claimants who are pregnant or have recently given birth, can present an additional stress, especially as they will receive no support from ACAS in terms of evaluating or articulating their claim within the legal framework. Interestingly research suggests that claimants spend an average of 27 hours on the dispute (ACAS 2015): a considerable time commitment for most claimants, but a potentially mammoth undertaking for women with new born babies. It is ironic that the law insists a woman takes 2 weeks compulsory maternity leave for health and safety reasons (ERA 1996 S.72), yet we remain 'blind' to the potential impact of childbirth and care-giving upon *her* ability to access justice in this context. As discussed elsewhere, the process was not designed with pregnant and new mothers in mind which epitomises their invisibility in this context,

'the very act of treating these claimants as though they are the same as all other claimants privileges an assimilation model that has proved to be inadequate in terms of the standards we set through legislation relating to pregnancy. Yet it is, oddly, considered an acceptable approach in terms of the mechanics of the law' (James 2009, p101; see also James 2007).

The third measure to severely hamper potential claimants' ability to access justice was also introduced under the Coalition government. In 2013, employment tribunal fees were introduced, designed to reduce the number of vexatious claims that were thought to be overburdening the tribunal system (although no sound evidence was ever presented to support this claim) and to remove the cost burden 'from hardworking taxpayers' (Shailesh Vara, Justice Minister quoted in 'Employment tribunal fees a 'victory' for worst employers' Financial Times, 28<sup>th</sup> July 2014). The level of fee is determined by the type of claim: Type A claims are the fairly straight forward cases and require an issue fee of £160 and a hearing



fee, if needed, of £230. Type B claims are the more complex cases and impose an issue fee of £250 and a hearing fee of £950. If, in due course, the claimant wants to appeal the decision a further fee of £400 is charged to lodge the case at the Employment Appeal Tribunal (EAT) and an additional £1,200 is charged for the hearing (Employment Appeal Tribunal Fees Order 2013 SI2013/1893). The fees apply to all claimants unless they qualify for remission, which analysis suggests very few households do (TUC 2013 cited in Dunstan 2013 at p10).

Evidence suggests that a large number of claimants are, since the introduction of fees, unwilling to register an action at an employment tribunal. There was a 79% drop in the number of applications lodged from October to December 2013, compared with the same period in 2012 (MOJ 2014) and there has been a gradual ongoing reduction ever since (MOJ 2015 and ACAS 2015). Interestingly, within a year of the introduction in July 2013 of employment tribunal fees for claimants, sex discrimination claims had fallen by 91%. The recent ACAS research found that 45% of claimants whose cases did not result in a settlement decided against submitting a claim to an employment tribunal and 26% of those stated that fees were the reason for not doing so (ACAS 2015).

When these fees are placed in the context of a significant rise in the cost of living, widespread pay freezes, cuts to social security benefits (such as child benefit) and plans for further significant cuts to welfare expenditure, the decline in tribunal claims is unsurprising. As the Chief executive of the Citizen's Advice Bureau (CAB), Gillian Guy, put it when calling on the government to review its policy on tribunal fees,

‘the risk of not being paid, even if successful, means for many the employment tribunal is just not an option. The cost of a case can sometimes be more than the award achieved and people can't afford to fight on principle any more’ (Gentleman 2014).

For a potential claimant discriminated against because of pregnancy or maternity leave the fees are an even greater deterrent as she faces additional costs associated with a new baby, including baby merchandise, the prospect of leave without pay and concerns about future employment and childcare costs (in relation to the latter, see Family and Childcare Trust 2015). Indeed, as highlighted by Maternity Action during initial consultations, the fees impact on the number seeking redress through the tribunal system – a number which is already very low - but also significantly reduces the deterrent effect of the law which could result in increased incidence of discrimination (Maternity Action 2012).

Overall, these recent modifications to the dispute resolution system have had a huge impact on all those who face disputes at work and the impact on pregnant and new mothers at work is specific to them. Very few women who experience pregnancy and maternity related discrimination at work actually pursue a legal action. According to 2005 research, about 71% of those who experience problems of this nature at work take no action (formal or informal) at all (EOC 2005). Whilst we ought not to assume that litigation is necessarily the best or

most rational route for all women who experience discrimination, especially given the potential stress and financial implications, it is fundamentally important that we provide these women with a realistic means of legal redress and begin to research and address the reasons and rationale for this 'litigation gap' (James 2009). In 2005, the EOC inquiry concluded that

'The current law protecting pregnant women and women who have been pregnant operates remedially. A woman who is wronged by any failure to comply with the law must take enforcement action. The majority do nothing. No government or other body intervenes on a woman's behalf and there is currently no duty upon employers to demonstrate compliance with the law. There is therefore little incentive for employers to comply with the law and little deterrent for them not to comply. As a result most pregnancy discrimination is going unchallenged and unmonitored' (EOC 2005, p91).

Ten years later, we are still failing to adequately support the growing number of women who are treated unlawfully at this critical point in their life-course. The impact on worker/carers is significant as illegal workplace practices and behaviour are no longer subject to the requisite degree of scrutiny and too often go unchallenged and unpunished, enabling and encouraging bad practice to flourish.

### **Informal Care Provision and Women's Employment**

The difficulties outlined above in relation to the assertion of what are, after all, statutory rights, are not confined to the period preceding and following childbirth. Most women continue to provide unpaid care far beyond the years of childbearing. Many move from one care commitment to another, from caring for children to caring for elders, and women's paid work experience is profoundly affected by this 'second shift' (Hochschild and Machung 1989). It is estimated that over 6.5 million people currently provide care for adults who are ill, frail or disabled and that figure is predicted to rise substantially in coming years (Carers UK 2012 and James and Spruce 2015). Women are more likely than men to be carers for elderly dependants and more likely to be dual-carers, caring for their children and elderly dependants (Agree, Bisset and Rendall 2003). Women more often provide such care at the point in their life course when it 'is likely to have the most significant impact on their careers and earning power' (Carers UK 2013 at p57). As a result of their disproportionate share of care commitments, women are far more likely than men to be reliant on the welfare state, whether they are 'in work' (i.e. paid employment) or not, so that state intervention has been central in improving women's lives on their own terms and, in this respect, has been identified as a 'key plank of second wave feminism' (Conley 2012, 16). However, the advent of the austerity agenda in 2010 has seen a whole raft of supportive measures swept away by the incoming tide of budget cuts based on the 'cut fast, cut deep' approach to fiscal management which favours disinvestment by the state over revenue raising through taxation.

Following the general election in 2010, the Coalition Government's Emergency Budget claimed that deficit reduction would be achieved at a ratio of 77:23, that is, roughly 77 per cent through cuts in spending and 23 per cent through higher taxes (Osborne 2010). However, subsequent analysis by the Institute of Fiscal Studies (IFS) calculated that by 2013 the ratio was actually 85:15 in favour of cuts (Paul Johnson, Director of the IFS quoted in 'IFS analysis of spending review highlights tax shortfall', the Guardian 27<sup>th</sup> June 2013). The Coalition's strategy has required large-scale cuts to social security and tax credits as well as to public service provision. Evidence, drawn from a range of sources, has shown that the cumulative impact of this strategy has been detrimental to gender equality in terms of income, services and jobs (Women's Budget Group 2011; Institute of Fiscal Studies 2011: House of Commons' Library 2013).

The effects of such an approach to deficit reduction have been particularly harsh for those women who have, or have had, high levels of care commitments, such as lone mothers or single female pensioners. Since June 2010 the House of Commons Library has calculated the source of Treasury revenue both from cuts in expenditure and changes in direct taxation. This analysis, which highlights the impact of each measure on an individual's income and then calculates the gender split of that measure, has consistently found that around three quarters of Treasury income comes from women, despite the fact that their incomes tend to be lower than men's. By the 2013 Budget this data showed that since 2010 a total of £11,454m (79 %) had been raised from women compared with £2,956m (21 %) from men (House of Commons' Library 2013).

The Women's Budget Group has analysed how the changes to indirect taxation have affected the incomes of different types of households as a proportion of their income, finding that increasing VAT had a particularly harsh effect on the incomes of lone mothers, workless households with children and women living on their own. An interesting comparison can be drawn between this policy and the Chancellor's fuel duty tax giveaway which benefited single men and households with male earners the most, and women lone parents and single female pensioners the least (Women's Budget Group 2011). Tax (break) incentives have little impact on women's lives as nearly 4 million people earn too little to pay tax, 73% of whom are women (Women's Budget Group 2011: 3). Research by the IFS, commissioned by the Fawcett Society, analysed and projected the cumulative impact of tax and benefits changes between 2010–11 and 2014–15, finding that lone mothers are set to lose the most as a proportion of their net income when compared with all other types of household (Institute of Fiscal Studies 2011).

While there is no suggestion that worker/carers are necessarily the intended targets of the austerity cuts, the particular ideology on which the current strategy is founded is worthy of consideration. As outlined at the start of this chapter, labour law's failure to acknowledge unpaid care provision as 'work' has left it outside of the law and policy framework. As well as leaving many worker/carers without adequate employment protection, this exclusion has

resulted in a lack of recognition of the contribution made by such labour which goes far beyond the immediate recipient of care as it is also of undeniable benefit to employers, the state and society as a whole. Employers benefit directly because, for every (male) worker who is able to comply with the normative paradigm of the unencumbered worker, there is likely to be one or more (female) carers providing varying degrees of support for children, elders and others. The state benefits in obvious ways through the sharing of the 'burden' of care, by which the free labour provided enables resources to be allocated elsewhere. In fact, it can be argued that, without the effort expended by carers in nurturing and supporting others, capitalism would founder (Busby 2011: chapter 3). The benefits to society are, thus, manifold as, through the giving of their time, and emotional and physical support, carers make an intrinsic and critical contribution to the very fibre of what binds individuals together (Herring, 2013). However, rather than being recognised as an asset, the sense of solidarity and interconnectedness that lies at the heart of the care relationship poses the greatest threat to any sustained state support for worker/carers. This is because of the general shift away from what is deemed to be state dependency towards a greater emphasis on the free market as provider. Neo-liberalism's focus on individual autonomy is detrimental to care relationships and the mechanisms and frameworks that support them. Although by no means a new development, the high value attributed to individualism has been fast-tracked by the austerity agenda.

The provision of care is often dependent on the existence of a personal relationship, or affective dimension by which we are all bound together in mutual ties of love and affection (Kittay 1999). This personal requirement makes care impossible to commodify so that it is difficult to place within a market structure. However, care also entails a task-centred approach encompassing less profound, more mundane but equally crucial and demanding 'body work', which incorporates the cleaning, the feeding, the assistance with bodily functions and the administration of medication (Stewart 2013). This work is crucial but is grossly undervalued even where it is performed in return for payment (Pennycook 2013). Even without austerity, it is women who disproportionately bear the costs of care, be it through the 'motherhood penalty', which results in lower earnings and reduced job security throughout pregnancy and beyond, through the precariousness of paid work and consequent impacts on individual work-life balance in employment, or through the likelihood of living – and supporting others – in poverty due to gendered pay gaps or reduced pension entitlement in old age. It is revealing that the exponential growth of the paid care sector in recent years has not been accompanied by an improvement in pay and other conditions for care workers who continue to be among the most precarious workers in the UK and elsewhere (Pennycook 2013). That the majority of such workers are female migrants is, perhaps, unsurprising but this fact also points to a number of interrelated solutions which will be set out in the concluding section.

## **Conclusions**

This chapter has explored the impact of austerity policies on work/care relationships. As our analysis has shown, the provision of unpaid care exacts a high price from women throughout their working lives, from experiences of pregnancy discrimination and the motherhood penalty through to retirement with many poorly served by length of service-based or final salary pension arrangements. Such experiences pre-date the current austerity agenda but recent policy choices have undoubtedly led to a reduction in the levels of employment protection available as well as in other areas of state support with negative impacts on work-life balance.

In closing we offer some suggested solutions to the individual problems outlined here, which together provide an alternative strategy to the current austerity agenda. These proposals offer an alternative feminist response capable of guarding against the reversal of gains made in gender equality on the grounds of political ideology. They do this by challenging the notion of 'austerity', at least in its current conceptualisation which characterises those who depend on state support (in its various guises) as a means of providing for themselves and their dependents as somehow irresponsible and/or feckless and thus part of a 'problem' that needs to be eradicated (Busby 2014).

The first and most important solution is a general recognition of the social benefits and economic contribution of care-giving whether it is paid for or unpaid and provided alongside paid work or not. As well as being accompanied by a comprehensive system of publicly funded and affordable childcare and other types of respite suited to the needs of carers and recipients, such recognition should be supported by accessible statutory rights which can be effectively enforced. As the consideration of pregnancy and maternity has shown, without access to justice, bad employment practices, including discrimination, flourish. However, legal solutions which aim to compensate victims for the effects of such practices are not enough. In isolation such redress does nothing to challenge the root causes of inequality and neither does it help to 'normalise' the personal characteristic or condition underlying the disadvantage (Busby 2013). Alongside its traditional reactive approach law should act as an agenda-setter, capable of challenging stereotyping and stigma by establishing and supporting alternative normative behaviours. In order to achieve this in the current context gender equality and access to justice must be guaranteed rather than open to the threat of future political expediency.

Furthermore, the currently dormant provisions of the Equality Act outlined at the start of this chapter should be enacted and the rationale which originally underpinned the development of the Act (Hepple 2015: 6-10) reasserted and extended so as to provide a focus on the achievement of equality of results rather than opportunities. Such an approach would recognise the historical disadvantage suffered by women carers and the persistent and pernicious effects of this on employment and other life experiences. The impact of the cumulative effect of a range of personal characteristics on women's lived experiences should be addressed and, rather than the narrow focus on dual discrimination originally

provided by the Act, the concept should be broadened out to encompass the concept of intersectionality. All policies aimed at reducing state involvement in social provision should be gender impact-assessed and alternative measures taken where necessary. Finally, and crucially, employers and the state must take whatever measures are necessary to achieve a shift away from women's current position as the primary providers of care towards a more equal allocation of responsibility so that men are encouraged and enabled to share equally in shouldering the burdens and reaping the benefits of care-giving.

## **References**

ACAS (2015) Research Paper: Evaluation of Early ACAS Conciliation 2015 available at <http://www.acas.org.uk/media/pdf/5/4/Evaluation-of-Acas-Early-Conciliation-2015.pdf>.

Agree, E., Bissett, B and Rendall, M (2003) 'Simultaneous Care for Parents and Care for Children Amongst Midlife British Women and Men' 112 *Population Trends* 29

Bowcott, O (2013) 'cash-strapped law centres turn clients away as legal aid cuts bite' *The Guardian* 18/09/2013 available at <http://www.theguardian.com/law/2013/sep/18/law-centres-clients-legal-aid>

Busby, N (2011) *A Right to Care: Unpaid Care Work in European Employment Law*, OUP, Oxford.

Busby, N. (2013) 'Labour law, family law and care: A plea for convergence' in Wallbank, J. and Herring, J. (eds.) *Vulnerabilities, Care and Family Law*, Routledge, Oxford, 181-198.

Busby, N (2014) 'Unpaid care, paid work and austerity: a research note', *Feminists@Law* 4, 1-12

Busby, N and James, G (2015) 'Regulating Working Families in the European Union: A History of Disjointed Strategies' *Journal of Social, Welfare and Family Law* (forthcoming).

Caracciolo Di Torella, E. and Masselot, A. (2001) 'The ECJ case law on issues related to pregnancy and maternity: an attempt of classification', *European Law Review*, 26: 239-260

Carers UK (2012) *Facts about Carers 2012* Carers UK, London available at [http://www.carersuk.org/media/k2/attachments/Facts\\_about\\_carers\\_Dec\\_2012.pdf](http://www.carersuk.org/media/k2/attachments/Facts_about_carers_Dec_2012.pdf)

Carers UK (2013) *Carers and Family Finances Inquiry* Carers UK, London.

Conley, H. (2012) 'Economic crisis, austerity and gender equality – the UK case', *European Gender Equality Law Review*, 2: 14-19.

Crenshaw, K. (1991) 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', *Stanford Law Review* 43, 6: 1241-99.

Dickens, L (ed) (2012) *Making Employment Rights More Effective: Issues of Enforcement and Compliance* Hart Publishing, Oxford.

EHRC/BIS (2015) *Pregnancy and Maternity-Related Discrimination and Disadvantage First Findings: Surveys of Employers and Mothers* (BIS Research Paper No 235), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448162/BIS-15-447-pregnancy-and-maternity-related-discrimination-and-disadvantage.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448162/BIS-15-447-pregnancy-and-maternity-related-discrimination-and-disadvantage.pdf).

EOC (2005) *Greater Expectations: Final Report of the EOC's Investigation into Discrimination Against New and Expectant Mothers in the Workplace*, Manchester: EOC available at <http://www.maternityaction.org.uk/wp/wp-content/uploads/2013/09/eocpregnancydiscrimgreaterexpectations.pdf>

Family and Childcare Trust (2015) *Childcare Cost Survey 2015* available at <http://www.familyandchildcaretrust.org/childcare-cost-survey-2015>

Fudge, J. (2013) 'From women and labour to putting gender and law to work', *The Ashgate Research Companion to Feminist Legal Theory*, Davies, M., and Munro, V. (eds.) Ashgate, Farnham, 321-329.

Fudge, J. (forthcoming 2015) 'A new vocabulary and imaginary for labour law: Taking legal constitution, gender, and social reproduction seriously' in Brodie, D., Busby, N., and Zahn, R. (eds.), *The Future Regulation of Work*, Palgrave Macmillan.

Gentleman, A (2014) 'Priced out of Court: Why Workers can't fight employment tribunals' *The Guardian* Sunday 17<sup>th</sup> August 2014.

HM Treasury (2011) *Plan for Growth*, available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/221514/2011budget\\_growth.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221514/2011budget_growth.pdf)

Hepple, B. (2015) *Equality: The New Legal Framework* (2<sup>nd</sup> Ed.) Hart, Oxford.

J Herring (2013) *Carers and the Law* Hart Publishing, Oxford.

Hochschild, A and Machung, A (1989) *The second shift: Working families and the revolution at home*, Penguin, New York.

House of Commons' Library (2013) *Estimating the costs of tax and benefit changes by gender*, 19<sup>th</sup> November 2013.

The Institute of Fiscal Studies (2011) *The impact of tax and benefit reforms by sex: some simple analysis*, available: <http://www.ifs.org.uk/bns/bn118.pdf>

James, G (2007) 'Law's response to pregnancy/workplace conflicts: a critique' *Feminist Legal Studies* 15: 167-188

James, G (2009) *The Legal Regulation of Pregnancy and Parenting in the Workplace* Routledge, London

Kittay, E. Feder (1999) *Love's Labor, Essays on Women, Equality and Dependency* Routledge, New York.

Maternity Action (2012) *Maternity Action response to the Ministry of Justice consultation CP22/2011 Charging fees in Employment Tribunals and Employment Appeal Tribunals* available at <http://www.maternityaction.org.uk/sitebuildercontent/sitebuilderfiles/maternityactiontribfrees2012.pdf>.

May, T (2010) *Equality Strategy Speech*, available: <https://www.gov.uk/government/speeches/theresa-mays-equality-strategy-speech>  
Accessed 20th August 2015.

McDermont, M and Busby, N (2012) 'Workers, marginalised voices and the employment tribunal system: some preliminary findings' *Industrial Law Journal* Vol. 41(2) 2012 166-184

McGlynn, C. (2001) 'European Union family values: ideologies of "family" and "motherhood" in European Union law', *Social Politics*, 8(3): 325-351

Mitchell, G (2015) 'Encouraging Fathers to Care: The Children and Families Act 2014 and Shared Parental Leave' *Industrial Law Journal* 44, 123-133.

MOJ (March 2014) *Tribunal Statistics Quarterly: October to December 2013* available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/289342/tribunal-stats-oct-dec-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289342/tribunal-stats-oct-dec-2013.pdf)

MOJ (June 2015) *Tribunal and Gender Recognition Statistics Quarterly* available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf)

Osborne, G (2010) *Emergency Budget Statement*, 22<sup>nd</sup> June 2010, available: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100622/debtext/100622-0004.htm#10062245000001>

Pennycook, J. (2013) Does it pay to care? Under-payment of the National Minimum Wage in the social care sector, Resolution Foundation.

Rubery, J and Rafferty, A (2013) 'Women and Recession Revisited' *Work, Employment and Society* (2013) 27(3) 414-432



Stewart, A (2013) 'Legal constructions of body work' in Wolkowitz, C., Cohen, R., Sanders, T. and Hardy, K. (eds.) *Body/Sex/Work: Intimate, embodied and sexualised labour: Critical perspectives on work and employment*, Palgrave Macmillan, Basingstoke, 61-76.

Women's Budget Group (2011) *The impact on women of the Budget 2011*, available: [http://www.wbg.org.uk/index\\_7\\_282363355.pdf](http://www.wbg.org.uk/index_7_282363355.pdf)