



Employee Owner Status

Fawcett Society consultation response – November 2012

About Fawcett

The Fawcett Society is the UK's leading campaign for gender equality. Our vision is of a society where women and our rights and freedoms are equally valued and respected and where we have equal power and influence in shaping our own lives and our wider world.

We advance women's equality and women rights through campaigns that:

- Raise awareness and change attitudes and beliefs
- Influence changes to legislation and policy
- Promote and support better practice
- Increase women's power and influence in decision making

For more information on Fawcett and our work visit www.fawcettsociety.org.uk

1. Introduction

Fawcett's response to the Government's consultation on the Employee Owner Status (EOS) highlights the gendered impact of proposals and focuses on the risks and threats to women's workplace rights as we see them. Fawcett supports the consultation response submitted by Working Families.

The Fawcett Society does not support the introduction of the EOS for the following reasons:

- The measures outlined in the consultation are likely to impact negatively and disproportionately on women's existing workplace rights.
- The ethos of the proposals position basic employment rights as '*red tape*' which should be reduced in order to enable growth. The current impact of austerity on women matters; in particular the shrinking of the public sector means women are finding it increasingly difficult to access adequate work opportunities and Fawcett is extremely concerned that EOS proposals will make it harder still for women to access and stay in work in the private sector.
- Fawcett has serious concerns about how current proposals will actually work in practice. Employers will need very detailed advice about the new scheme as only a limited number of rights are to be waived and consideration should be given to how much more '*red tape*' will be created for employers through introducing an additional employee status and in

offering appropriate and robust information and guidance for employees wishing to take up EOS.

- We are particularly concerned that an unintended consequence of the proposals will be an increase in the prevalence of discrimination against women in the workplace, with the Government's own Equality Impact Assessment acknowledging that proposals may inadvertently encourage discriminatory behaviour in the recruitment process for protected groups, including women, who are more likely to exercise the rights that will be waived through the EOS.
- The impact of current proposals is likely to have a negative impact on both women's access to work, advancement in the workplace and on business' access to the widest talent pool available.
- Proposals to extend maternity leave notice periods clearly impact disproportionately on women and proposals do not suggest equivalent notice periods for fathers or partners on extended periods of leave such as Additional Paternity Leave.
- The Government is sending employers mixed messages about whether certain rights, such as the right to request flexible working, will enable labour market flexibility or will hinder growth. Government's *Modern Workplaces* consultation proposes to extend the right to request flexible working to all employees as it cites a robust business case for doing so, however in Government's latest EOS consultation, the right to request flexible working is presented as a forfeitable employee right that hinders growth.

2. Process of consultation

The Fawcett Society has concerns regarding the process around Government policy proposals to establish a new employment status, Employee Owner Status (EOS) in which an '*employee owner*' will not have all the employment rights of an employee but will have shares in the company they work for that will not be subject to capital gains tax (CGT). In particular, we are concerned that Government is not consulting on *if* they will implement proposals, rather *how* they will implement proposals. Further to this, the consultation is running for only three weeks, as opposed to 12 weeks which is the norm for Government public consultation exercises. Government intends to bring forward legislation through the Growth and Infrastructure Bill to implement the Employee Owner Status and the associated capital gains tax exemption will be legislated as part of the Finance Bill 2013. Fawcett finds the pace at which these measures are being implemented alarming and believes that the rapid rate of reform does not allow for considered and responsive consultation with stakeholders. We are also concerned that the format of the questions in the consultation response form is designed to gather information predominantly from business but does not also provide space for robust assessment of the impact of the proposals on equality between women and men, as required by section 149 of the 2010 Equality Act.

3. Ethos of proposals

Fawcett has concerns about the overarching ethos of the proposals that positions employment rights as '*red tape*' and necessary to reduce in order to enable growth. Particularly in a climate where women's access to work is already precarious, it is increasingly important that measures are in place that *enable* rather than *prevent* women from working and that the right infrastructure is in place to both protect women and enable them to flourish when at work. The UK is already one of the most lightly regulated markets in the developed world; Fawcett does not believe that deregulating further will inspire growth or keep women adequately protected at work. The message that Government is sending through current policy proposals is particularly concerning; that employment rights can be exchanged for shares.

Fawcett has consistently highlighted the impact of current austerity measures on women; in particular that women are bearing the brunt of current Government cuts. Women's unemployment

particular that women are bearing the brunt of current Government cuts. Women's unemployment is at a 24 year high and women are being disproportionately affected by welfare and public sector job cuts. This context matters; women are finding it ever more difficult to find adequate work opportunities and therefore ensuring there are measures in place that support and protect women at work cannot be seen as '*red tape*'. Measures that are detailed in the consultation document are basic workplace rights and measures that ensure women are supported and protected at work.

Fawcett has consistently highlighted the benefits for women, business and the economy of implementing progressive measures such as flexible working. Such measures allow business to widen their talent pool and enable women to enter and progress in the workplace which ultimately brings benefits for the economy and the exchequer. The Department for Business, Innovation and Skills (BIS) has itself produced research that supports the case for flexible working as an integral part of the way business works, not something to be seen as an '*add-on*' but rather, an integral part of modernising the UK's workplaces in line with the 21st century. Fawcett has concerns that current Government policy and rhetoric is positioning flexibility for employers at the expense of employee rights. All the evidence from both Government and expert organisations, such as Working Families, suggests that trust and treating people well are key to high motivation and performance and there is little evidence from employers themselves that employment law is the burden that prevents them taking on staff.

Moreover, Government's message to business on implementing measures such as flexible working appears to be mixed, with parts of BIS's programme citing flexible working as having a clear and robust business case for increasing flexibility in the labour market, whilst the latest consultation positions flexible working as a measure that could potentially burden business and prevent growth. This is particularly worrying as this sends a mixed message to business and undermines a body of research undertaken by Government and others to robustly evidence the business case for measures such as flexible working.

4. Shares for rights: a flawed model

The consultation document outlines the Employee Owner Status as having two defining characteristics- an equity share and different employment rights. Under this new arrangement, an employee owner will be given between 2,000 and 50,000 pounds worth of shares. In return, the employee owner will have reduced rights compared to an employee including:

- Unfair dismissal (except for reasons that are automatically unfair or that relate to discrimination);
- The right to statutory redundancy pay; and
- 16 weeks' notice of the intention to return early from maternity or adoption leave (compared to 8 weeks' notice for other employees).

Any gain on the shares (however large) linked to the status will be exempt from Capital Gains Tax (CGT).

Fawcett has serious concerns about the proposed model of forfeiting certain employment rights in exchange for shares. The ethos of exchanging rights for shares challenges the underlying principle of ensuring equality and protection for employees in the workplace. The evidence base for benefits related to employees having a financial and personal stake in the companies they work for are associated with those companies who offer both a full set of rights *and* shares. Therefore, though there may be benefits in employees having a stake in the company they work for, this should not come at the price of forfeiting certain employment rights.

Furthermore, the volatility of the market means that the worth of shares will fluctuate accordingly; there is no guarantee that employees will benefit from purchasing shares and could find themselves in the precarious position of having forfeited certain employment rights and owning devalued/worthless shares.

An employee's life circumstances could also change such that certain rights that they would have forfeited as part of the EOS might be more relevant and needed at a later stage in their career. For example, for an employee who initially took up the EOS without family responsibilities but later finds that they have to juggle family and work responsibilities, access to the right to request flexible working could be integral in supporting them at work.

It will be difficult for employees (especially those starting out in work) to gauge what rights they might require as their careers evolve, and the employee-owner model is one that creates a short sighted perspective for both employers and employees. For employees, they may find that this model no longer suits their lives; for employers, they will not be retaining staff who are highly motivated and skilled if they are not supported and protected in their jobs.

The consultation states that the employer would be allowed to include a clause in employees' contracts requiring the employee to surrender the shares when they leave, are dismissed or made redundant. It then states that the Government will require the employer to buy back the employees' shares at a reasonable value. Fawcett has concerns that this approach might have unintended consequences where employees could find themselves being dismissed and having their shares repurchased by their employers at a lower rate than their original value.

Moreover, Fawcett has concerns about how these proposals will actually work in practice. Employers will need to understand how rights that can be forfeited under EOS interact with other rights directed by EU legislation or governed by domestic anti discrimination legislation. In particular, employers will need to clearly understand they will still have to adhere to anti discrimination legislation. An unintended consequence of the EOS proposals may be an increase in discrimination claims, as employers and employees navigate through an unwieldy interaction of rights that pertain for certain employees and not others. For example, in some circumstances a woman with childcare responsibilities who is dismissed for requesting a change of hours may have a claim of indirect sex discrimination at employment tribunal.

Current proposals present real risks for employees' rights *and* crucially also for enabling business to grow.

In terms of employees' rights, proposals risk creating a system in which two tiers of employees exist; those with a full set of rights and others with reduced rights. Having two types of employees entitled to different sets of rights will not deliver a highly motivated and cohesive workforce, which in turn could have a negative impact on staff morale, productivity and retention.

From employers' perspectives, the EOS will effectively limit the available talent pool that they can recruit from, as it is unlikely that all employees will have access to equal choices around forfeiting certain rights for shares. In particular, parents, and women who rely more heavily on measures such as flexible working, will find it more difficult to take up EOS and are more likely to be discriminated against in the recruitment process as a result.

5. Information and guidance

The quality and availability of information and guidance is of paramount importance; not all employees will have the same baseline knowledge of their rights and available choices and there will be a variety of different '*push*' factors at play that affect an individual employee's decision to take on the new status. For example, it may be that some employees face difficult financial circumstances and will be motivated to take up EOS without being fully aware of the potential impact on their future working conditions as their life and career evolves. It may also be that younger employees with limited experience of work are more likely to take up EOS as they are motivated by financial gains and do not have a robust understanding of market shares, employment rights and the potential impact of EOS on their future involvement in the labour market.

Fawcett recommends that robust free legal advice and guidance is provided to employees

Fawcett recommends that robust legal advice and guidance is provided to employees who are offered EOS, in order that all employees are equally and fully informed about their choices.

6. Gendered Impact of Proposals

a) *Women are likely to be disproportionately affected by proposals*

Fawcett has concerns that the impact of proposals may encourage more discrimination against women in the workplace. We are concerned about the quality of the consultation's accompanying Equality Impact Assessment (EIA), in particular, that it does not robustly consider the impact of proposals on equality between women and men. The EIA itself acknowledges that the proposals may inadvertently encourage discriminatory behaviour of certain protected groups:

“Companies may be more inclined to offer an employee owner contract to those who are more likely otherwise to exercise the specific rights that are not part of the employee owner status. If these characteristics were more frequently occurring in certain protected groups, this could indirectly encourage discriminatory behaviour during the hiring process for jobs offered subject to this status. Although discriminatory behaviour might be encouraged, it is important to consider that this is an indirect effect of the policy”.

Measures such as flexible working and enhanced and robust maternity provision have been key drivers of enabling women into the workforce in unprecedented numbers and driving economic growth. Fawcett is concerned that women, particularly those with caring responsibilities, are likely to be disproportionately affected, as they are likely to comprise the group who may well exercise the specific rights that are part of the employee owner status.

The EIA asserts that the estimated proportion of people that utilise flexible working is broadly similar across men and women and their corresponding assessment is that proposals will not have a disproportionate effect on either sex. Fawcett would like to highlight that the EIA only considers *full time workers* in its analysis of the take up of flexible working by men and women. The same Fourth Work Life Balance Survey as cited in the EIA shows that *50% of women*, compared with *27% of men*, had taken up part-time working in the last 12 months. Similarly, tables in the Fourth Work Life Balance Survey show that 48% of men with dependent children take up flexible working options compared with 59% of women with dependent children, and when deciding whether to work for an employer, the survey found that 53% of women consider the availability of flexible working to be important or very important, compared with only 31% of men.

The omission of this analysis from the Government's EIA is an important and alarming oversight and could have real implications for women's working conditions. Not only are women much more likely than men to take up measures such as part-time working, women- and in particular those with caring responsibilities - are more likely to consider flexible working measures important and necessary to stay in work. Fawcett is concerned that that the impact of waiving the right to request flexible working is likely to have a significantly greater impact on women than men. Women who rely more heavily on measures such as accessing part-time work, will find it more difficult to take up EOS and are more likely to be discriminated against in the recruitment process by either being pressured by employers to take up EOS as a condition of their job offer, or being disregarded from talent pool due to their likelihood to exercise these very rights.

This is likely to impact negatively on women's access to work in an already austere climate but will also have negative implications for business. Simply put, making it more difficult for women to access jobs and job security will limit the talent pool available to employers.

Rather than exchanging shares for rights, Fawcett would encourage Government to implement a dedicated women's employment strategy that enables more women to access to well-paid, secure work with robust workplace protections in place.

a) Extension of notice from maternity/adoption leave

One of the rights proposed to be changed by employee owner status is the requirement to give 16 weeks' notice of an early return from maternity or adoption leave, instead of eight weeks. For many women, planning their return to work can be a stressful experience, in particular, organising childcare and negotiating patterns of work with their employers upon their return.

The consultation document is not clear as to what quantifiable benefits an extension in the notice of maternity leave return will bring business and Fawcett has concerns that increasing the notice period will be onerous for many women having to begin planning for their return to work much earlier than they are currently required to.

It will also be key, in this context, that employers understand that EOS only allows the right to waive certain rights to request flexible working and that under the EU Parental Directive, parents will still have the right to request flexible working when returning from maternity/parental leave.

Fawcett is particularly concerned that proposals around extending maternity leave return notice only apply to women rather than apply equally to father/partner's existing rights to take extended periods of leave under Additional Paternity Leave (APL). The implication of current proposals is that the notice period fathers/partners should give when returning from leave taken under APL will remain at 8 weeks.

Fawcett recommends that there should be consistency and equality in terms of notice periods for both men and women taking leave, and that the requirement for giving ones employer notice to return from maternity/parental/adoption leave should remain at eight weeks.

Moreover, Fawcett is concerned that framing maternity provision as '*red tape*' will further entrench pregnancy discrimination against women in the workplace. Maternity rights and employment regulation that enables parents to balance work and family responsibilities have been key drivers in giving women greater access to work and an independent income.

Yet there is still far to go; our workplaces have not adapted to meet the needs of this changing and gender diverse workforce. Women pay a penalty in the workplace as a result of spending time away from the labour market to have and care for children, and this time away often negatively affects future career prospects and earnings in the labour market.

This '*motherhood penalty*' helps holds the glass ceiling intact. It reproduces gender stereotypes about women as the 'caring sex' that fuel occupational segregation – jobs being characterized as men's or women's work. For too many women, it still culminates in pregnancy discrimination in the workplace.

Even before the recession began, it was estimated that up to 30,000 women had lost their jobs due to pregnancy discrimination . There has been no national research into the incidence of pregnancy discrimination following the economic downturn, but all the indications are that it has increased significantly. In times of austerity, when employers cannot afford to take any perceived risk to making profit and growing business, discrimination against women in the workplace is likely to rise as women, particularly of child bearing age, appear to be the riskier and less affordable choice for employers where maternity provision and flexible working measures are considered '*red tape*'.

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