

Consider these two quotations from UK government White Papers/Consultation documents:

“Helping employees to combine work and family life satisfactorily is good not only for parents and children but also for businesses”. (Fairness at Work, White Paper, May 1998, para 5).

“The proposals in this document will bring benefits for employers as well as employees, by increasing participation in the labour market while also helping people to balance work with their family and personal responsibilities”. (Consultation on modern workplaces, May 2011).

How effectively has the law since 1997 ensured a ‘work life balance’ for workers with family responsibilities? Answer this question with reference to the relevant statutory materials, case law, legal commentary and social science literature.

Much like the other areas of labour and employment law, the legal framework used to help those in the labour market achieve an effective ‘work life balance’ has had to adapt to new challenges in society, which has in turn affected the realities of the UK workforce.¹ Primarily, this issue has become increasingly more prevalent since the latter half of the 20th century because of societal and legal changes that have meant the traditional model of a male breadwinner and female homemaker has become increasingly unrepresentative of the UK labour market.² The quotations contained in this essay question, although from different UK governments, suggest a firm and longstanding commitment to ensuring employees with familial responsibilities can use the law to achieve an effective work life balance. This essay will discuss and evaluate the various reasons for this commitment. However, it is arguable that since 1997 successive governments have failed to effectively tackle the UK’s long working hours ‘culture’, as well as the ineffective legal framework that seeks to help achieve

¹ Hugh Collins, K.D. Ewing, Aileen McColgan, *Labour Law* (2nd edition, Cambridge University Press 2019) 398.

² *ibid.*

an effective work life balance.³ This essay recognises the fact that there have been some positive advancements since 1997 in the statutory entitlements employees have (or can obtain) that afford them greater flexibility at work in order that they can also fulfil their familial responsibilities.⁴ Examples discussed later include the introduction of shared parental leave and the laws protecting and promoting the rights of women during pregnancy and early maternity.⁵ However, this essay will seek to show how these positive policies have had a limited overall effect in terms of achieving an effective work life balance, especially for women and immigrants participating in the UK workforce.⁶ This will involve a statistics-based criticism, employ case law and a feminist theoretical perspective, as well as give general ideas and propositions as to how the law needs to go further to achieve its aims. I will argue that the law is currently tempered too much by fears of damaging businesses or the UK economy as a whole. Furthermore, the impact of coronavirus will be considered, specifically how new problems have emerged and existing issues have been exacerbated.⁷

The Development of the Law Concerning Work Life Balance Since 1997: Changes and Problems

³ Chris Kerridge, 'How can we overcome the UK's long working hours culture?' (*People Management*, 8 November 2019) <<https://www.peoplemanagement.co.uk/voices/comment/how-overcome-uk-long-hours-culture#:~:text=Employees%20in%20the%20UK%20work,or%2070%20hours%20per%20week>> accessed 15 November 2020.

⁴ Collins (n 1), 399.

⁵ Grace James, 'Family-friendly Employment Laws (Re)assessed: The Potential of Care Ethics' [2016] *Industrial Law Journal* 45(4), 477.

⁶ Sarah Dyer, 'Migrant work, precarious work-life balance: what the experience of migrant workers in the service sector in Greater London tells us about the adult worker model' [2011] *Gender, Place and Culture; A Journal of Feminist Geography* 18.

⁷ Kate Power, 'The COVID-19 pandemic has increased the care burden of women and families' [2020] *Sustainability: Science, Practice and Policy* 16(1), 69.

Although this essay is primarily concerned with the impact of the legal framework developed since 1997, there are some important contextual developments that occurred before this and are worth mentioning. Throughout the 20th century, the UK labour market moved from a *laissez faire* model to one characterised by increased regulation. This was controversial and different governments varied in their commitment to pursuing greater order in the labour market using the law.⁸ This trajectory was reversed in the 1970s and afterwards, wherein the Thatcher government (influenced significantly by the ideas of neoliberalism)⁹ pursued policies of de-regulation and privatisation. Moreover, from 1975 until 2020 the legislature of the UK was required to effectively implement EEC/EC/EU law and directives, which has had a profound impact on the labour market.¹⁰ Furthermore, as previously mentioned the advent of feminism meant that more women than ever were entering (or re-entering) the workforce after having children, whereas before they would have been homemakers.¹¹

In terms of the narrative of legal development this essay's starting point is the introduction of the 'New Labour' government in 1997, led by Tony Blair. This government helped to produce the *Fairness at Work* white paper, Chapter 5 of which contained a number of 'family friendly policies' aimed at ensuring a more effective

⁸ Collins (n 1), 9.

⁹ Jamie Robertson, 'How the Big Bang changed the city of London for ever' (*BBC News*, 26 October 2016) <<https://www.bbc.co.uk/news/business-37751599>> accessed 5 December 2020.

¹⁰ Maria Koumenta and others, 'Occupational Regulation in the EU and UK: Prevalence and Labour Market Impacts' (Department for Business, Innovation and Skills Final Report, July 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343554/bis-14-999-occupational-regulation-in-the-EU-and-UK.pdf> accessed 30 November 2020.

¹¹ Pat Hudson, 'Women's Work' (*BBC History*, 29 March 2013) <http://www.bbc.co.uk/history/british/victorians/womens_work_01.shtml> accessed 25 November 2020.

work life balance for those with families.¹² The New Labour government had a few reasons behind the implementation of such policies, but primarily they were utilised to increase competitiveness in the market to ensure its prosperity¹³ and to implement the 1996 EC Parental Leave Directive.¹⁴ This directive had ambitious aims that even with the margin of appreciation would have been hard for the UK, with its long working hours culture, to achieve. These aims included promoting equal opportunities; flexible working; greater women's involvement in the labour market and; men taking an equal share of the responsibilities associated with family life.¹⁵ Subsequently, Conservative led governments that published the *Consultation on Modern Workplaces*¹⁶ and *Good Work: A Response to the Taylor Review of Modern Working Practices*¹⁷ were also driven by rationales based on economic prosperity. It was thought that this would increase productivity, worker loyalty, the quality of work and reduce the costs associated with high employee turnover.¹⁸

The culmination of this narrative, i.e., the current legal framework governing the work life balance people in the UK labour market can achieve, covers a wide range of situations and involves many protected rights. Yet, despite this scope it also has many failings, primarily because it is fragmented and lacks a unified approach. The focus of this area of law on using skilled workers to diversify and increase

¹² Board of Trade, *Fairness at Work* (White Paper, Cm 3968, 1998).

¹³ *ibid.*

¹⁴ [1996] 96/34/EC.

¹⁵ *ibid.*

¹⁶ Department for Business, Innovation and Skills, *Consultation on modern workplaces* (Consultation, first published 16 May 2011).

¹⁷ HM Government, *Good Work: A response to the Taylor Review of Modern Working Practices* (Department for Business, Energy and Industrial Strategy and Employment Agency Standards Inspectorate, 2018).

¹⁸ Matthew Taylor, *The Taylor Review of Modern Working Practices* (Independent Review, Department for Business, Energy and Industrial Strategy, 2017).

competitiveness within the market means that often those working in more flexible or atypical employment are denied some of these rights and protections.¹⁹ For example, most women require some level of maternity pay to be able to afford to take maternity leave, yet to qualify for it there must have been 26 weeks of continuous employment before the expected week of childbirth as well as a paycheck of at least £116 a week. So, for women without provisions for maternity pay within contracts and who earn less than this because they are employed on a temporary basis, work in the gig economy or other types of atypical work, statutory maternity pay is unobtainable.²⁰ Evidence from the Office for National Statistics found that 55% of the people working on zero-hour contracts (one example of atypical work) were women in its report *Contracts That Do Not Guarantee a Minimum Number of Hours*, which is even more significant because women make up only 46.8% of those employed not on zero hours contracts.²¹ By contrast, 87% of men are in full time work.²² This means that women who are entitled to statutory maternity leave under the Maternity and Parental Leave Regulations 1999 are not always able to take it because the law fails to provide them with an adequate way of surviving financially: the only other option is a very low level of maternity allowance from the government.²³ Additionally, there are many scholars who argue that flexible working for women with family responsibilities is the way forward, yet the right to

¹⁹ Conor D'Arcy, Fahmida Rahman, 'Atypical Approaches; Options to Secure Workers with Insecure Income' (*Resolution Foundation*, January 2019).

²⁰ Collins (n 1), 406.

²¹ *Contracts That Do Not Guarantee a Minimum Number of Hours* (Office for National Statistics, 23 April 2018)
<<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeaminimumnumberofhours/april2018#what-are-the-characteristics-of-people-employed-on-zero-hours-contracts>> accessed 30 November 2020.

²² Trades Union Congress, 'Good Work Plan: Proposals to Better Support Families; TUC Responds to BEIS Consultation' (Consultation Response, 13 December 2019)
<https://www.tuc.org.uk/sites/default/files/2019-12/TUC_BEISConsultation_GoodWorkPlan.pdf> accessed 7 December 2020.

²³ Collins (n 1), 406.

request this also requires continuous employment of at least twenty-six weeks.²⁴

Arguably, this is a cyclical issue: more women are in atypical work because it allows the flexibility to fulfil private domestic obligations, but these women lack statutory and contractual protections and so cannot achieve the same type of flexibility in full time, permanent employment which in turn excludes them from fully participating in the labour market.²⁵

Additionally, the non-profit organisation Trust for London found that migrants were more likely to work “during night shifts and in non-permanent jobs”.²⁶ This means that similarly migrant women who are in types of atypical work, such as zero-hour contract hospitality jobs (which is very common for this demographic), cannot claim maternity pay and cannot have help at home from their husbands who cannot get paternity leave under the Paternity and Adoption Leave Regulations 2002 because this also requires 26 weeks of continuous employment.²⁷ Of course, because of the numerous, inflexible requirements needed for shared parental leave to be available under the current law this is also not a viable option for immigrant families or women in low skilled or low paid areas of work that are atypical in nature.²⁸ All of this demonstrates that the law has little interest in human rights or equality as a justification for an effective work life balance, and that this economic focus has resulted in a legal framework that ignores the problems and experiences of these

²⁴ Employment Rights Act 1996, section 80(G)(1).

²⁵ Trades Union Congress, Good Work Plan: Proposals to Better Support Families; TUC Responds to BEIS Consultation’ (Consultation Response, 13 December 2019) <https://www.tuc.org.uk/sites/default/files/2019-12/TUC_BEISConsultation_GoodWorkPlan.pdf> accessed 7 December 2020.

²⁶ Mariña Fernández-Reino, ‘Migrants in the UK Labour Market: An Overview’ (*Trust for London*, 17 July 2017) <https://trustforlondon.fra1.digitaloceanspaces.com/media/documents/Briefing-Migrants_in_the_UK_labour_market_overview_1.pdf> accessed 4 December 2020.

²⁷ Steve French, ‘Between Globalisation and Brexit: Migration, Pay and the Road to Modern Slavery in the UK Hospitality Industry’ [2018] *Research in Hospitality Management* 8(1).

²⁸ Shared Parental Leave Regulations 2014.

key demographics that make up a significant amount of the population who have both work and family commitments. It will only go so far as not to damage the competitiveness or prosperity of the economy.²⁹

Furthermore, if those working part time in the labour market or in atypical work wanted to make an application based on the Part Time Workers (Prevention of Less Favourable Treatment) Regulation 2000 because they were being excluded from such rights, they would have to use their own resources and time to make a complaint to the Employment Tribunal. Arguably, this is not a particularly effective form of remediation as it only offers compensation for losses incurred because of this “less favourable treatment” and hear that the employer has been recommended to stop this action.³⁰

The Impact of EU Law

The law concerning work life balance has been significantly impacted by EU law both before and after 1997. Unlike the mainly economic rationales behind the UK law, the EU acknowledges these benefits whilst also having a focus on social equality, equality of opportunity between men and women, the socioeconomic rights of individuals as well as dismantling harmful societally imposed gender roles.³¹ This was evidenced clearly by the ambitious Parental Leave Directive.³² It has influenced both the legal framework of rights concerning workers and employees with family responsibilities as well as UK equality law, as the UK legislature and judiciary is

²⁹ Joanne Conaghan, Kerry Rittich, *Labour Law, Work and Family: Critical and Comparative Perspectives* (Oxford University Press 2005).

³⁰ Collins (n 1), 425.

³¹ Nicole Busby, ‘The evolution of gender equality and related employment policies: The case of work– family reconciliation’ [2018] *International Journal of Discrimination and the Law* 18(2), 105.

³² 96/34/EC.

obliged to implement the aims of these directives using domestic law (albeit with a margin of appreciation).³³ However, academic Nicole Busby in her article *'The Evolution of Gender Equality and Related Employment Policies: The Case of Work-Family Reconciliation'*³⁴ has argued that the focuses of the EU are conflicting, "parallel and incoherent".³⁵ The dual focus of both on improving the market as a whole by using policies to allow more people to be involved and using the law to equalise equality between men and women has resulted in "a patchwork of provisions rather than an overarching framework".³⁶

This argument is an interesting one that definitely has its merits, especially the characterisation of familial responsibilities as a form of unpaid work because of its significant contribution to society - it re-frames the way these two goals are thought of.³⁷ Busby argues that this approach means the EU "subordinates gender equality to economic objectives".³⁸ Additionally, Busby makes agreeable statements about how EU law and the Court of Justice has failed to promote the rights and roles of men in the domestic setting.³⁹ However, she arguably fails to account for the numerous and ambitious advancements in work life balance law that has been facilitated in the UK by the EU. The examples of directives that have, even in a de jure way, protected women in the UK workforce from discrimination on the basis of pregnancy or maternity and helped to facilitate a more gender-neutral approach to governing parenting responsibilities. For example, section 18(2) of the Equality Act

³³ Busby (n 33), 106.

³⁴ *ibid.*

³⁵ *ibid* at 105.

³⁶ *ibid.*

³⁷ *ibid* at 106.

³⁸ *ibid* at 120.

³⁹ *ibid* at 112.

2010 which protects women from discrimination or dismissal on the basis of pregnancy or related sickness was influenced by the need to implement the Pregnant Workers Directive⁴⁰ and the Equal Treatment Directive,⁴¹ which formalised the previous case ruling of *Webb v EMO Air Cargo (UK) Ltd* by removing the need for a male comparison in cases of discrimination.⁴² The Pregnant Workers Directive also influenced the introduction of statutory maternity pay and the Equal Treatment Directive ensures a woman has a right to return to work after maternity leave.⁴³

However, it is important not to overstate the influence or importance of EU law, especially because of the fact that the UK is due to leave the EU imminently. There is significant statistical evidence that EU law and UK equality law fails to tackle more “surreptitious” forms of discrimination against pregnant women.⁴⁴ The Equality and Human Rights Commission found in its report *Pregnancy and Maternity Discrimination and Disadvantage: Summary of Key Findings* found that ¾ of mothers surveyed said they had a negative/discriminatory experience during pregnancy and maternity leave, 20% said they experiences harassment or negative comments because of pregnancy or flexible working and 11% felt forced to leave their jobs.⁴⁵ On the side of employers, 84% said it was in their interests to support pregnant women yet 70% also felt women should declare upfront if they were pregnant and 27% felt the cost of maternity leave put an unreasonable burden on them.⁴⁶ Despite

⁴⁰ 92/85.

⁴¹ 2006/54/EC.

⁴² C-32/93.

⁴³ Collins (n 1), 407.

⁴⁴ *ibid* at 404.

⁴⁵ Lorna Adams and others, *Pregnancy and Maternity Discrimination and Disadvantage: Summary of Key Findings* (Equality and Human Rights Commission, Department for Innovation, Business and Skills, 2016).

⁴⁶ *ibid*.

this widespread discrimination, only around 1% of claims are brought.⁴⁷ This demonstrates how the de facto reality is that both EU and UK law fails to protect women from discrimination due to pregnancy, and remedies for this are few and far between because (like many other aspects of this area of law) there is poor take up of such rights.

Furthermore, in 2019 the EU introduced the Directive on Work-Life Balance For Parents and Carers which aims to do everything the current UK legal framework has failed to do: increase the participation of women in the workforce, increase the de facto use of family related leave and flexible working arrangements.⁴⁸ This would be incredibly influential in UK law, especially in terms of strengthening paternity rights and moving towards normalising men taking a more active role in familial responsibilities.⁴⁹ However, because of Brexit and the fact the transition period will not be extended again, the UK would have to choose to implement this directive,⁵⁰ and perhaps they will in the form of the Good Work Plan, which would have various implications in and of itself.⁵¹

The Good Work Plan – Gender Norms and the Legal Framework Beyond Pregnancy and Birth

⁴⁷ Amelia Gentleman, 'Pregnant? Wait Till the Boss Hears' (*The Guardian*, 23 June 2011) <<https://www.theguardian.com/lifeandstyle/2011/jun/23/pregnant-wait-till-boss-hears>> accessed 1 December 2020.

⁴⁸ 2019/1158.

⁴⁹ Rachel Crasnow, Chesca Lord, 'Will the New Radical Work-Life Balance Directive Help UK Parents and Carers?' (*Cloisters – Employment*, 25 June 2019) <<https://www.cloisters.com/will-the-new-radical-work-life-balance-directive-help-uk-parents-and-carers/>> accessed 5 December 2020.

⁵⁰ *ibid.*

⁵¹ Department for Business, Energy and Industrial Strategy, 'The Good Work Plan' (Policy Paper, 17 December 2018) <<https://www.gov.uk/government/publications/good-work-plan/good-work-plan>> accessed 15 December 2020.

In 2018, the UK government produced the *Good Work Plan: Proposals to Support Families*,⁵² which was responding to the earlier *Taylor Review* and reiterated the same economic benefits that would be had from helping individuals to achieve a better work life balance.⁵³ There are definitely benefits to the approach that would be adopted. Recommendation 41 recognises that pregnancy and maternity discrimination remain a problem, and that an inherent cultural shift is needed to change this that the law should support and facilitate.⁵⁴ Overall, the idea of a “balance between flexibility and worker protections” sounds positive.⁵⁵ Arguably one of the most positive aspects of the Good Work Plan is that it recognises how the rights of atypical workers are often subverted under the current law and the fact that this needs to change. However, the reality is that the EU directive would have gone further because the UK still lacks a fundamental concern for a regulatory framework that is genuinely concerned with the rights of workers and not just the economic benefits of having more women in the workforce. Additionally, it does not directly relate the current law concerning pregnancy/maternity discrimination and an effective work life balance with the subversion of atypical worker’s rights, which would be a significant step forward in and of itself.⁵⁶ Furthermore, the Trades Union Congress (TUC) has essentially argued that the Good Work Plan does not go far enough.⁵⁷ They point out that the reality is that the current legal framework reinforces harmful gender norms that continues to reproduce patriarchal ideas regarding gender roles.

⁵² *ibid.*

⁵³ Taylor (n 18).

⁵⁴ Department for Business, Energy and Industrial Strategy, ‘The Good Work Plan’ (Policy Paper, 17 December 2018) <<https://www.gov.uk/government/publications/good-work-plan/good-work-plan>> accessed 15 December 2020.

⁵⁵ *ibid.*

⁵⁶ Trades Union Congress, Good Work Plan: Proposals to Better Support Families; TUC Responds to BEIS Consultation’ (Consultation Response, 13 December 2019) <https://www.tuc.org.uk/sites/default/files/2019-12/TUC_BEISConsultation_GoodWorkPlan.pdf> accessed 7 December 2020.

⁵⁷ *ibid.*

They quote an article by Helen Norman (*‘Does Paternal Involvement in Childcare Influence Mother’s Employment Trajectories During the Early Stages of Parenthood in the UK?’*) which essentially found that “mothers with preschool children are twice as likely to return to employment at nine months and at three years’ post-childbirth if the father is involved by sharing or doing the most childcare at these times”.⁵⁸ This area of law simply does not want to concern itself with supporting mothers in the workforce, which is yet again one of its primary downfalls.

This is significant in terms of establishing one of the least talked about but most problematic aspects of the current law concerning work life balance: it has a significant number of statutory rights and protections for during pregnancy and immediately after birth but fails to provide long term support for mothers.⁵⁹ This is because the law refuses to tackle the bigger issue of gendered norms in society that would allow women to be more active in the labour market and normalise men taking a more active role in the domestic sphere of life.⁶⁰

Shared Parental Leave and the Feminist Perspective

Another important and influential source of criticism of the system governing work-life balance is the feminist perspective on how women are disproportionately affected and pushed out of the labour market as a result.⁶¹ Primarily, feminist scholars of sociology argue that women, far from being freed from the oppressive nature of

⁵⁸ Helen Norman, ‘Does Paternal Involvement in Childcare Influence Mother’s Employment Trajectories During the Early Stages of Parenthood in the UK’ [2019] *British Sociological Association* 54(2).

⁵⁹ James (n 5), 480.

⁶⁰ *ibid.*

⁶¹ Emily Grabham, ‘The Strange Temporalities of Work-Life Balance Law’ [2014] *feminists@law* 4(1).

gender norms in society, now have a dual burden.⁶² This is because the law concerning work life balance has failed to tackle these gender norms, which means the unpaid labour burdens of the domestic sphere and childcare is still disproportionately placed on women rather than men; women have the burden of paid work as well as those roles “associated with femininity and motherhood”.⁶³ This is because, as this essay has previously mentioned, the law concerning work life balance in both the UK and Europe has failed in substantially tackling these gender norms despite the fact societal changes have significantly decreased the relevance of the male breadwinner and female homemaker model.⁶⁴ Moreover, there are feminist scholars who argue that women have poorer long term career prospects because they need to be in part time/atypical employment to manage their familial responsibilities because the law has not created an effective system where they would be able to do this in full time employment.⁶⁵ This is another way in which the law concerning work life balance fails to support mothers in a long-term sense beyond pregnancy and its immediate aftermath.

However, there has been some argument amongst legal scholars and officials about whether such arguments have been abated by the introduction of Shared Parental Leave in 2014. This new regulation, in theory, “makes it possible for partners to share the entitlement to maternity leave and maternity pay between them”.⁶⁶ As

⁶² Gaëlle Farrant, Luca Maria Pesando, Keiko Nowacka, ‘Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes’ (OECD Development Centre, 2014) <https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf> accessed 2 December 2020.

⁶³ *ibid.*

⁶⁴ Mick Cunningham, ‘Changing Attitudes toward the Male Breadwinner, Female Homemaker Family Model: Influences of Women’s Employment and Education over the Lifecourse’ [2008] *Social Forces* 87(1).

⁶⁵ Collins (n 1), 422.

⁶⁶ Collins (n 1), 409.

Grace James put it in her article *'Family-friendly Employment Laws (Re)assessed: The Potential of Care Ethics'* this has been added to the existing framework of rights for working parents and reiterates a commitment by the law to dismantling the gender norms that are keeping women from effectively and substantially engaging with the labour market.⁶⁷ Despite this, Grace James is right when she points out that this "package of rights" (including shared parental leave) is fundamentally flawed.⁶⁸

Firstly, this shared parental leave package fails to deal with the continued discrimination against pregnant women and mothers that statistically feel pushed out of the labour market.⁶⁹ Furthermore, the refusal by the law on work life balance to place too much of a financial burden on the employers means that only a small proportion of the workforce are even eligible for this.⁷⁰ Both parents must be employees and pass the relevant statutory and common law requirements to be categorised as such, i.e., they must have a contract of employment under s.230 of the Employment Rights Act 1996, be able to satisfy the control test;⁷¹ have their activity be an integral part of the business;⁷² as well as the tests of economic reality;⁷³ mutuality of obligations and;⁷⁴ continuity of employment. Beyond these already numerous requirements, both parents also must have earned at least £390 in thirteen out of the sixty-six weeks of employment.⁷⁵ Additionally, as couples are likely to work for different employers there is a great deal of organisational effort that goes

⁶⁷ James (n 5), 480.

⁶⁸ *ibid* at 478.

⁶⁹ *ibid*.

⁷⁰ Collins (n 1), 410.

⁷¹ Established by *Yewens v Noakes* [1880] 6 QBD 530.

⁷² Established by *Stevenson Jordan v Macdonald and Evans* [1952] 1 TLR 101.

⁷³ *Stringfellow v Quashie* [2012] EWCA Civ 1735.

⁷⁴ *Carmichael v National Power plc* [1999] UKHL 47.

⁷⁵ Collins,(n 1), 410.

into organising shared parental leave.⁷⁶ Again, this means that those working in atypical work are automatically not covered by such provisions. Furthermore, the slow uptake on this due to the law's failure to tackle traditional gender roles in society effectively enough has severely limited the de facto effectiveness of shared parental leave in dealing with the problems facing people with work and family responsibilities in the UK.⁷⁷ Moreover, this article offers an interesting contextual background about how remedies for people whose employers deny them such rights are limited because of cuts in "legal aid funding and the closure of many legal advice centres".⁷⁸ Arguably, this helps us understand how developments outside of the immediate legal framework also affect work life balance in a significant way which need to be remedied in the future if it is to be effective.

Jamie Atkinson offers an interesting perspective on shared parental leave in their article '*Shared Parental Leave in the UK: Can it Advance Gender Equality by Changing Fathers into Co-Parents?*' by comparing it with similar policies in Nordic countries that have much higher levels of gender equality.⁷⁹ To summarise, she argues that generous levels of compensation to parents, flexibility about how the leave is taken, wide reaching eligibility requirements and "other incentives to get the father to take leave" are the most important elements in ensuring the success of such policies (which she measures by the amount of people who make use of it).⁸⁰ Although she rightly identifies that these Nordic countries are also not perfect, it

⁷⁶ *ibid* at 411.

⁷⁷ James (n 5).

⁷⁸ *Ibid* at 485.

⁷⁹ [2017] *International Journal of Law in Context* 13(3).

⁸⁰ Jamie Atkinson, '*Shared Parental Leave in the UK: Can it Advance Gender Equality by Changing Fathers into Co-Parents?*' [2017] *International Journal of Law in Context* 13(3), 361.

provides an interesting perspective for how shared parental leave in the UK can improve on itself to further gender equality.⁸¹

Impact of Coronavirus: Problems Old and New

The feminist narrative of women being disproportionately affected by poor regulation of work-life balance in the UK has only been strengthened by the impact of coronavirus.⁸² Within the private sphere of unpaid work, women are already doing the majority of this work and school closures combined with millions of people working from home has meant this burden has only grown.⁸³ In her article '*The COVID-19 Pandemic has Increased the Care Burden on Women and Families*', Kate Power cites a statistic that 41% of women currently inactive in the UK labour market are so because of their unpaid care responsibilities.⁸⁴ It is very unlikely that the law will recognise this problem or endeavour to solve it, because it is occurring in the private sphere.⁸⁵ These are the problems that coronavirus has exacerbated.

Additionally, the coronavirus pandemic has created new issues in the UK workforce because many people, most notably women and immigrants in atypical work, have lost their jobs due to the economic downturn and the law has failed to recognise that the issues facing men and women during this pandemic are different in many ways.⁸⁶ Women are more likely to be frontline healthcare workers, which additionally will have only increased their already substantial burden in terms of balancing

⁸¹ *ibid.*

⁸² Power (n 7).

⁸³ *ibid* at 68.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ Jenna Norman, 'Gender and COVID-19: The Immediate Impact the Crisis is Having on Women' [2020] British Politics and Policy at LSE.

professional work and private life responsibilities.⁸⁷ Furthermore, immigrant women (who like all other women are bearing a lot of the economic brunt of this crisis) because of the “no recourse to public funds’ condition stamped on many non-EU visas”.⁸⁸ Additionally, undocumented women face even more issues because they are fearful of making use of social security or NHS services.⁸⁹ The response from the UK government in terms of labour law has failed to account for these differences. Furthermore, arguably this is more evidence of how the law is unconcerned with assisting women beyond pregnancy and childbirth because it demonstrates their unwillingness to get too over involved with the private sphere of life that would bring about a significant change in terms of the position of women within society.

Conclusion

This essay has demonstrated how UK law since 1997 has failed to ensure an effective work-life balance for those with familial responsibilities, an issue that has disproportionately affected women, as well as immigrants in the labour market. Additionally, it has shown that feminist perspectives are extremely useful in helping us to understand how women are still excluded from the UK workforce because the law refuses to go far enough to tackle harmful gender roles within society.⁹⁰ This is because the law is purely concerned with increasing competitiveness in the market and benefiting the economy and so ignores concerns about equality and human rights that EU law has adopted in its own rationales.⁹¹ Women and immigrants in atypical or part time work are therefore often excluded from such benefits and

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ James (n 5).

⁹¹ Board of Trade, *Fairness at Work* (White Paper, Cm 3968, 1998).

arguably the Good Work Plan does not go far enough in the future to deal with these issues in the same way that perhaps the Directive on Work-Life Balance For Parents and Carers could if Brexit was not happening.⁹² Furthermore, whilst the government response to coronavirus has been much more regulatory and helpful than predictions suggested, it has ignored the fact that women and men are experiencing different adverse effects because of the pandemic and worsened the dual burden women have to bear of paid and unpaid responsibilities.⁹³

⁹² 2019/1158.

⁹³ Alison Andrew and others, 'How are mothers and fathers balancing work and family under lockdown' (*Institute for Fiscal Sciences*, 27 May 2020) <<https://www.ifs.org.uk/publications/14860>> accessed 12 November 2020.

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Truelove v Safeway Stores plc [2005] ICR 589 (EAT)
Yewens v Noakes [1880] 6 QBD 530

European Union Legislation

Equal Treatment Directive 2006/54/EC
Parental Leave Directive [1996] 96/34/EC
Pregnant Workers Directive [1994] 92/85
The Work-Life Balance Directive for Parents and Carers EU/2019/1158

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