

**Submission of Evidence to  
The Taylor Review of Employment  
Practices in the Modern Economy**

**Sylvia Pankhurst Gender Research Centre  
Manchester Metropolitan University  
Business School**

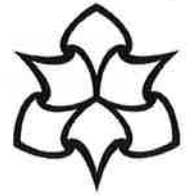
All Saints Building,  
All Saints, Manchester,  
M15 6BH, UK

**1. The rights to maternity and other forms of family leave  
and pay for the self-employed and small business owner-  
managers**

*My expertise:* I have developed expertise in maternity management in self-employment and small business owner-management via a two year longitudinal research project funded by The Leverhulme Trust. I am currently working with Working Families and IPSE to develop an agreed policy statement on family leave entitlements for the self-employed. More generally, I am an expert in women's entrepreneurship - I am the Founder of the Gender and Enterprise Network (GEN), a Special Interest Group of the Institute of Small Business and Entrepreneurship (ISBE), with a membership of 800 scholars and practitioners interested in research on women's enterprise. I am also a member of the Women's Enterprise Policy Group. Allied to my work on maternity in entrepreneurship, I have conducted research on maternity management in small firms funded by the International Labour Organization and the European Social Fund and acted as an advisor to BIS/EHRC on pregnancy and maternity discrimination in small firms.

I focus on people with the employment status of 'self-employed'. However, **in practice it may be sensible for policy makers to simultaneously consider small business owner-managers** who are employed in their own small businesses. In principle, small business owner-managers have the same rights as employees. However, their employment rights are not well synchronised with the practical realities of running the micro businesses that make up the majority of the UK's business stock. In practice, their challenges are more similar to those faced by the self-employed and they may benefit from **having equivalent rights to the self-employed rather than employees.**

***I propose that the self-employed and small business owner-managers require rights that are equivalent to, but different from, the employed, and that policy makers must be bold in creating provisions that enable a range of innovative and***

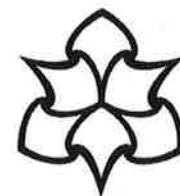


***dynamic solutions to emerge to the tricky and context-sensitive challenge of reconciling entrepreneurship with pregnancy/maternity and family responsibilities.***

**THE CURRENT POLICY/PRACTICE SITUATION:**

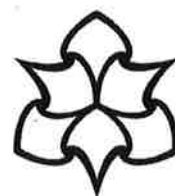
- **Maternity:**

- i. Self-employed women have no right to paid time off to attend antenatal appointments and so suffer loss of earnings or over-work; when women are unwell and have multiple appointments, making back time by working is particularly problematic.
- ii. Self-employed women do not have two key rights enjoyed by employed women: right to maternity leave and right to return to equivalent work after a maternity leave period. Yet, their maternity pay (Maternity Allowance) depends on them taking this leave:
  - o In the absence of a right to maternity leave, self-employed women must sustain their businesses – covering ongoing costs, managing staff, contractors, suppliers, networks, protecting their business from loss of reputation due to pregnancy/maternity and from competition - in order to have a job to return to after a maternity period. My qualitative research suggests that the predominant means of coping is to return to work ***within 2 weeks of birth*** (a practice that is officially illegal) and to touch base with the business on most days, returning to work on a gradual and phased basis (Rouse, 2009). These businesses often create losses rather than profit during this period and so the women may be working but they are not earning. Any earnings that are created are often spent on infant care and accrued through the labour of working and caring simultaneously. These women are doing as much care labour as employed women and deserve compensation for their care labour as much as employed women. They also need maternity pay to cover lost earnings, business costs and infant care costs; they often incur these losses in different combined patterns over time. Officially, though, women are given only 10 'Keeping in Touch Days'. On the 11<sup>th</sup> day they



keep in touch with their business they officially lose entitlement to Maternity Allowance. I suspect that some contravene these rules, claiming Maternity Allowance despite trading. Nevertheless, these rules cause women anxiety at a vulnerable time in life and discourage claiming by some.

- iii. The self-employed do not have the right to 90% pay in the first six weeks of the maternity period, as employed women do, but receive a flat rate of pay throughout the maternity period.
- iv. The self-employed have very uncertain health and safety rights. Official guidance is difficult to come by and oblique; it does not offer clear guidance to the range of circumstances in which self-employed women work (e.g. where customers are businesses or consumers, on contractor premises or in the self-employed person's own business or private space). They have no third party that enables them to suspend work on fully pay if their work is unsafe during pregnancy, as the employed do. My qualitative research suggests that some women have no choice but to persevere with unsafe work and that increasing hours worked during pregnancy, regardless of wellbeing, is a common practice due to anxiety about expected losses during the maternity period and to shore up the risk of being discriminated against as an 'incapable' pregnant woman/new mother (Rouse, 2010).
- v. The self-employed are not protected against pregnancy, maternity and breastfeeding discrimination under The Equalities Act and as a result customers are free to discriminate against them. The Equalities and Human Rights Commission, which is obligated to monitor rights protected under the Equalities Act, therefore excludes self-employed women from their periodic review of pregnancy and maternity discrimination. We have no available evidence about rates of discrimination but my own qualitative research suggests it is every day and common place (Rouse, 2010); I would suggest that as customers are not bound by the various rules of maternity regulations, discrimination is much more



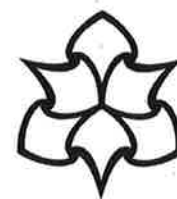
common than in employment. Gaining a new contract when visibly pregnant is very difficult, for example. While reviewing this right is beyond the remit of The Taylor Review, this point indicates the need for other forms of state protection to strengthen the support given to self-employed women to sustain entrepreneurship during pregnancy/maternity because it is practiced under extremely difficult market relations.

- **Paternity:** self-employed men have no right to Paternity Leave or Pay.
- **Shared Parental Care:** self-employed parents of a new baby have no right to Shared Parental Leave or Pay. This relatively new form of policy is designed to enable fathers and civil partners to take longer periods of time to care for infants and for parents to have greater flexibility in organising blocks of shared care during the first year of a child's life. This detriment affects self-employed men and women, therefore. The self-employed also lose the opportunity to work for up to 20 days while retaining Shared Parental Leave and Pay rights.
- **Adoption:** self-employed parents have no right to Adoption Leave or Pay. This means that they lose up to 39 weeks of pay entitlement, amounting to many thousands of pounds.

## **PROPOSED POLICY INNOVATIONS**

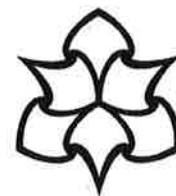
### **Maternity:**

- i. Provide pregnant self-employed women with maternity pay for 5 days to compensate for attending antenatal appointments; in practice this may need to be paid via the first instalment of Maternity Allowance, albeit creating the disadvantage of precluding women who suffer miscarriage.
- ii. As it is difficult to imagine how a right to maternity leave could work for self-employed women (would this mean suspending obligations to staff, landlords, consumers and business clients?). I therefore propose that they



should be supported to sustain their businesses during their maternity period to protect the firm and ensure they have a job to 'return to'. I recommend either: (a) removing the obligation to take maternity leave from the rules of eligibility for Maternity Allowance so that a woman can take maternity pay and use it to pay in a flexible way – often changing over time – for an often mixed strategy of reduced work, trading just to cover business costs or to limit business losses, paying for infant care and trading/caring simultaneously, or; (ii) providing self-employed women claiming Maternity Allowance with the right to Keep In Touch with their business as often as necessary.

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- iii. Consider equalising the right to 90% of pay in the first six weeks of 'maternity leave'. However, keep in mind the complexities this would raise as some women will have new businesses and so will not yet have established their pay via the self-assessment process (which is, anyway, an historical record of pay). Moreover, women's pay in self-employment is often low and this may be particularly so for younger women in new businesses, meaning that many will earn below the standard flat rate Maternity Allowance payment. In practice, this policy innovation may be difficult and I do not judge it to be as important as the others proposed here.
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- iv. Instruct the Health and Safety Executive to make much more clear and extensive comment on obligations to protect pregnant and breastfeeding self-employed workers from harm, including in a range of the diverse scenarios common to self-employment, and commit them to communicating these effectively to self-employed women (perhaps via the Mat B1 form that all women receive from their midwives) and businesses. To enable women to suspend their self-employment on full pay where the trade is deemed dangerous to the pregnancy or baby, a new right to claim Maternity Allowance for an extended period (from suspension to birth), without exhausting the existing right to 39 weeks of maternity pay, must be introduced. Mindful of (ii) above, it would be advisable for women to be permitted to undertake work that sustains their businesses and is considered safe during this period (e.g. networking and marketing) while claiming this 'safe pregnancy pay'. This policy innovation may raise questions around obligations to fulfil contracts undertaken even when the work is deemed unsafe, suggesting wider need for policy analysis.



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- v. Amend The Equalities Act to give self-employed women the right to protection against pregnancy, maternity and breastfeeding discrimination perpetrated by customers. Ensure they have a real means of learning about and enacting this right.

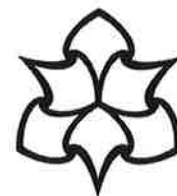
#### **Paternity, Shared Parental Care and Adoption Care:**

- Provide self-employed fathers and civil partners with Paternity, Shared Parental Care and Adoption Care Pay at equivalent rates to those paid to the employed.
- As it is likely to be prove difficult to create a right to paternity, shared parental care or adoption *leave* for the self-employed (as per the discussion above around maternity), ensure that pay to support these forms of care are not dependent on taking leave. As with the argument made at length above in relation to maternity policy, we propose that these new pay entitlements are either detached from any obligation to take leave or are accompanied by the right to Keep In Touch with the business as often as is necessary to sustain the business and have a job to return to.

#### **WHY THE SELF-EMPLOYED CAN'T PROTECT THEMSELVES PRIVATELY TO SUPPORT MATERNITY, PATERNITY, SHARED PARENTAL AND ADOPTION CARE**

The UK economy has experienced a **rapid increase in low-income self-employment** arising from:

- Dramatic rise in self-employment as a main job (up from 3.8 million in 2007 to 4.7 million in 2015) so that self-employment has reached and sustained a 40 year high and accounts for 15% of jobs.
- Particular growth in self-employment among lower earning groups (women and older workers).
- Rapid decrease in self-employment income (down 22% in real terms 2002-12), such that average earnings in self-employment are now just 54% of average wages from employment.



- Significant drag on rates of exit from self-employment - 23% after 5 years (2009-14), down from 36% after 5 years (2004-9), raising concerns of a low income self-employment trap.

(Sources: ONS, 2017, 2016, 2014; Joseph Rowntree Foundation, 2015).

Poverty rates are high: 40% in couples with a lone self-employed worker; nearly 40% for the single self-employed who work part-time, and; 26% for self-employed couples and singles working full-time (JRF, 2015). In the Government's programme to support the jobless or under-employed to start businesses, the New Enterprise Allowance Scheme, over a third of surviving businesses turnover £500 or less per month and 58% turnover £1,000 or less (DWP, 2016). Earnings will be lower than turnover.

In short, many of the self-employed have an income that is too low and too vulnerable to privately fund work adjustments like taking leave or reducing trade to enable pregnancy or infant/new adoption care.

## **WHY AND HOW TO PAY FOR ENHANCED POLICY SUPPORT**

It is probable that some women are claiming Maternity Allowance while working during their 'maternity leave' and so the increased cost of the innovations to maternity pay I propose may be modest. However, there are likely to be some increase in claims and extension of paternity, shared parental care and adoption care pay to the self-employed will create direct costs. We propose that these will be moderated by the continued work undertaken by some self-employed people during the care period; loss of economic productivity to the economy and losses of tax revenues are likely to be lower when compared to when employees taking family leave periods. Nevertheless, some direct costs will be incurred by the state in making enhanced family care payments.

We propose that additional costs will create social benefits to self-employed workers, to child-bearing women and to babies or adopted children, thereby creating an indirect positive effect for the economy. They will also contribute to the social goal of enhancing gender equality by recognising and supporting pregnancy and infant/adopted care labour and by encouraging fathers to take a more equal share of infant/adoptive care and to become more skilled and confident in having a long-term active fathering role.

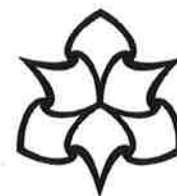


Nevertheless, we recognise some immediate cost implications for enhancing self-employment rights. In part, this simply redresses an inequality suffered by the self-employed under current policies. It also provides support to wealth-creating entrepreneurship or survival self-employment, both of which play an important role in generating growth and jobs in the modern economy.

While it is beyond the remit of The Taylor Review to recommend tax policy, I broadly support the proposed idea of increasing National insurance contributions by the self-employed in exchange for an increased range of rights. The concept of the self-employed as protected only by themselves – and not by the state, the market or an employer – is likely to suit only those well positioned to take advantage of markets due to their strong social position and their freedom from pregnancy and care responsibilities. In other words, it supports a privileged, masculine notion of the entrepreneur. If we are to develop policy that recognises that the self-employed and small business owner-managers are – and should be – people with responsibilities in their families and communities, and modest or low incomes, we need to support their broad role and the challenges that juggling ‘work and life’ create for ‘entrepreneurs’.

In fact, self-employment is a heterogeneous practice, made from multiple and highly varying social situations and practiced in widely varying market contexts. Forming policy to suit all of these context-sensitive and dynamic circumstances is very difficult and that is why my recommendations focus on a call for Maternity, Paternity, Shared Parental Care and Adoption Care pay to be made without a condition of taking an associated leave period. Money is a highly adaptable resource – it can be used to cover household costs when earnings are diminished, to pay ongoing business costs and to purchase infant care services. In other words, it will support a range of strategies for coping with entrepreneurship and new parenthood and a mixture of these, dynamically, over time. This is exactly the kind of flexible support that creative self-employed workers and small business owner-managers need so they can work out the best practice for their business and family. We hope that policy makers could convince the public that the self-employed are not being ‘given something for nothing’ by being given pay without an obligation to take leave. Rather, we hope they could convince the public that they are being given money to be rather heroic in sustaining a business at a busy and important time of family life.





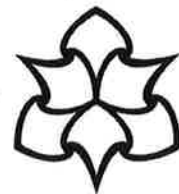
## 2. Policy to help curb the growth of low-paid self-employment

My expertise: As a Professor of Entrepreneurship, I have over 20 years of experience researching low-income self-employment in the UK, evaluating business start-up programmes for the marginalised and researching life course (class/gender) pathways to business start-up and entrepreneur earnings/wealth. This research has been supported by various funders including the Economic and Social Research Council and Oxfam.

I do not focus here on the problem of 'false self-employment' as I expect this to be picked up by bodies such as trade unions, except to note that a hard delineation between enforced and chosen self-employment is false. We know that people may make decisions due to constrained circumstances that they quickly re-interpret as 'choices' and so it depends when in the business life cycle the question of 'choice' is presented. Many self-employed people become accustomed to a status they did not initially choose; this is not the same as saying they thrive in self-employment and, indeed, there is growing evidence that increasing numbers of people are somehow stuck in low-paid self-employment yet not actively searching for a means of exit. We caution, then, care when using the simple duality between 'false' and 'real' self-employment. Instead, ***we focus here more broadly on the problem of low-paid self-employment, poverty in self-employment and how start-up and exit support could help curb low paid self-employment.***

I summarise figures about the growth of low-income self-employment and poverty in self-employed families on pages 6-7 of this submission.

I have been researching business start-up programmes for the disadvantaged for 20 years. My own research (Rouse and Mirza, 2014; Rouse and Jayawarna, 2011, 2006; Jayawarna et al. 2007; Rouse and Kitching, 2006; Rouse and Boles, 2005; Rouse 2004) indicates that ***programmes commonly start businesses with poor resources (money, skills, networks, childcare) or commercial awareness, in markets that are also poor, and that programmes provide far too resources to radically improve the chances of successful trading.*** Moreover, programmes are removed from long-term outcomes which tend to be either business failure or – in some ways more worrying – chronic trading that is only marginally profitable or may even be loss making. Programmes will tend to celebrate a minority of successes but long-term follow-up indicates that even these businesses often struggle or fail.

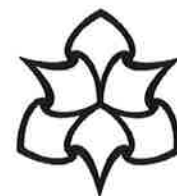


There is very real reason to be concerned that these programmes commonly (although not always) create or aggravate poverty.

I have found policy makers to be highly resistant to engaging with critical evidence about business start-up programmes for the disadvantaged. I suspect this is caused by three factors:

- i. When disadvantaged people write business plans they are effectively writing a very hopeful narrative of a new life that is encouraging for them and for the programmes with which they work. Nobody wants to deny the disadvantaged individual this possibility of hope. When the disadvantaged person struggles they often interpret their problems as highly individualised and personal, or think they just need to persevere and learn how to succeed (hence their chronic low-wage self-employment). They do not draw their circumstances to the attention of policy makers, funders or politicians. Their problems are hidden. Even the academic entrepreneurship research community would often rather not have ideas of enterprise as a route of social mobility questioned: small firms are the route to economic growth, surely? I am afraid that evaluation findings are often not taken seriously.
- ii. Enterprise programmes are an efficient means of moving people out of joblessness to work, particularly when compared with other support processes for people with multiple disadvantages; this is not the same as generating decent work, however.
- iii. The myth that people just need to learn from business failure to succeed in the future enables people to interpret business failure as a form of success. However, there is no credible evidence that resource-poor people who start a new business, with even fewer resources, after a business failure and without business support, are more likely to succeed.

While it is true that the state and associated services are not always well positioned to 'pick the winners' in terms of growth businesses, I would suggest that properly skilled business advisers should be able to 'pick the inevitable losers'. Too often they make too few enquiries into, or turn a hopeful blind eye to, problems of financial under-capitalisation, poor equipment/premises/markets/skills, lack of



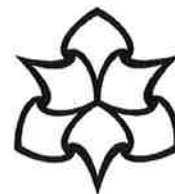
childcare and poor commercial awareness. I am afraid that myself and my research partner have concluded that enterprise policy must either stop supporting business start-up by the most disadvantaged *or* provide significant resource enhancement to give them real commercial opportunity (Rouse and Jayawarna, 2011, 2006).

I note that enterprise programmes are often run by companies contracted to do this work whose knowledge of innovations in entrepreneurship education and entrepreneurship theory is poor. Business planning is still used even though it is widely acknowledged in education and research that ***business start-up must be a time of intensive learning about markets and how (and if) trade can be made with the entrepreneurs' particular set of resources and networks; business plans solidify fantastical presumptions about markets.*** These sorts of ideas must be brought into small business support. We urgently need more **knowledge exchange** between start-up providers and entrepreneurship researchers and educators. Start-up service commissions must be made dependent on this knowledge exchange and renewal of understanding regarding the process of successful small business establishment.

***As well as discouraging poor quality start-ups, intensifying investment for businesses that are supported from a low resource base and enhancing enterprise support through knowledge exchange with universities, we need to provide better routes out of self-employment.*** Self-employment can erode skills when people conduct relatively little trade in poor markets and are isolated from hands-on learning in employment. People can also become attached to the identity and autonomy of self-employment and feel unable to re-adapt to employment, even when their trade is chronically poor. A flexible and skilled workforce needs to be able to productively apply resources to self-employment or employment in different patterns over careers. We need support services or education to help transitions out of, as well as into, self-employment. This must also become an aspect of enterprise education.

I hope this submission is of value.

17 May 2017



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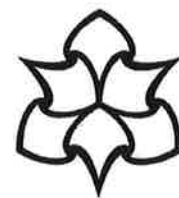
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