



The Work Couch

NAVIGATING TODAY'S TRICKY PEOPLE CHALLENGES TO
CREATE TOMORROW'S SUSTAINABLE WORKPLACES

Episode 1 – Menopause in the workplace with Victoria Othen and Lesley Hannah

Ellie

Hi, and welcome to The Work Couch podcast, our brand new, sparkly podcast where we'll discuss all things employment. Brought to you by the award-winning employment team at law firm RPC, we'll be discussing the whole spectrum of employment law with the emphasis firmly on people. Every other week we will be exploring those thorny HR issues that People teams and in-house Counsel are facing right now and we discuss the practical ways to tackle them. My name is Ellie Gelder, I am a Senior Editor in the Employment, Equality and Engagement Team here at RPC and I'm thrilled to be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curve balls that it brings to businesses today. Not only will we be tapping into the expertise of our fabulous employment lawyers, we'll also from time to time hear from individuals about their lived experiences of the particular issue in question from both employer and employee perspectives. This is not just any employment law podcast, it's informal, we want to discuss topics in an accessible and engaging way so that you can digest it easily and come away feeling confident and motivated to address your people challenges. We have a fantastic agenda of future topics. And today, in our very first episode, we are going to talk about menopause in the workplace. So, why did we decide to launch The Work Couch podcast by discussing menopause? Well, put simply, it's something that half the population will go through in their lifetimes, it's also the fastest growing demographic in UK workplaces. And we've heard from a number of people in the public eye, like Davina McCall, Gwyneth Paltrow and Michelle Obama who have shared their experiences of the menopause. So, there has been a welcome shift away from menopause being seen as a taboo subject to something that is now being talked about openly and honestly. Looking at menopause in the workplace then, there's a load of data out there showing that perimenopause and menopause can adversely affect women at work, with many women reporting they feel their performance at work has suffered because of it. And the impact on mental health cannot be underestimated. Tragically the Office of National Statistics reported in 2021 that among females the age specific suicide rate is highest in those aged 45 to 49 years, an age bracket when perimenopause typically occurs. But frankly it's an issue that affects us all, whether you have a partner, relative or colleague who is suffering with symptoms, or maybe you are a business leader or HR professional and you are concerned about losing valuable talent resource - given research by the Fawcett Society, which found that one in ten women who worked during the menopause have left a job due to their symptoms. According to that report, if that ratio is mapped onto the UK population, that would represent an estimated 333,000 women leaving their jobs due to the menopause. The research also found that 14% of women had reduced their hours at work, 14% had gone part time, and 8% hadn't applied for promotion. So, some pretty stark stats there. As we celebrate International Women's Day today, we are going to look at what legal protections there are for employees who are treated less favourably because of their menopausal symptoms, what employers should be doing to support their employees who are affected, and we'll also hear a personal account from one of our RPC colleagues on how the menopause has affected her at work. I am delighted to be joined on The Work Couch today by Victoria Othen, Consultant Employment Lawyer here at RPC and part time Employment Judge and Lesley Hannah, Head of our Resolve Team and member of RPC's Menopause Working Group. Hi both, thank you for joining me today on The Work Couch podcast.

Victoria

Hi Ellie.

Lesley

Hi there.

Ellie

Victoria, if we can start by explaining what we mean by menopause and perimenopause because I think these are used quite interchangeably.

Victoria

They are indeed. Yes, the meaning of these terms does vary and you are right to say Ellie that people often use the term menopausal to cover perimenopause as well. But broadly speaking, menopause is when a

women's periods have stopped permanently for twelve consecutive months and the average age this happens is about 51. But in a very small number of women, around 1%, this can actually happen before the age of 40. Perimenopause, which can last months or even years is the time leading up to menopause. It's actually the phase when women may start to experience some of the negative symptoms we will discuss in a moment. So, this is the time where a woman's periods perhaps become irregular but there is a definite hormone imbalance. They may still be fertile, so periods haven't stopped altogether. And this perimenopausal stage typically occurs after the age of 45 but in a relatively small number of women they will experience perimenopausal symptoms before this age.

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- Ellie** And Lesley, as well as those obvious symptoms that Victoria just mentioned of irregular periods, there's a whole range of other symptoms but the ones I think most often mentioned in relation to the menopause include hot flushes, brain fog, fatigue, joint pain, anxiety, heart palpitations and sleep problems. But do you mind me just asking, what were the first symptoms that you experienced?
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- Lesley** No, not at all. As you say, everyone is different and for me it was headaches, which I had always had on and off since puberty, but they got to a stage where there was no obvious hormonal link, ie to my periods, and they were pretty much a constant. I was having sort of low-grade headaches for four to five, maybe a bit more, days a week.
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- Ellie** Gosh. So, really disruptive. And how did you establish that those headaches were because of the perimenopause because we know that can be a really big challenge for women in getting that diagnosis and that then leads to difficulties in actually getting the appropriate treatment.
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- Lesley** Yeah, absolutely. And the quick answer is I didn't for years. I was diagnosed by the GP with idiosyncratic headaches, which basically doesn't really mean anything, and I was just managing them with a pain relief regime. After a while it became the brain fog, loss of memory, low mood, anxiety, but I was completely in the dark and as far as I was concerned, that was all really related to trying to balance work, my home life, and with those constant low-grade headaches. It wasn't until I started getting hot flushes that the penny really dropped and then, you know, as soon as it did, and as soon as you start googling menopause there's a whole wealth of resources out there, I was able to identify all the symptoms that I had already experienced and I was able to educate myself to the stage that when I was able to go to my GP with a list of all the symptoms I was experiencing I had a really positive experience with him, actually. And my GP agreed to a menopause diagnosis without wanting the troublesome blood test which a lot of GPs are still insisting on now.
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- Ellie** Yeah, I've heard that can be a real problem and that women can go down a completely different route. For example, antidepressants, so it's really great that you had a positive experience. So, can you describe how those symptoms affected you at work, so what were the sort of hardest things you were facing?
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- Lesley** I think actually the hardest thing I was facing was the fact that I had no idea what was going on. The brain fog, the anxiety, all the kind of memory issues meant that I was finding my job really challenging but I had no idea as to why, I had no answers as to why things felt they were starting to fall apart or were falling apart. I didn't have any clue what was going on with me, and I couldn't see an end to it because I didn't have an idea of what it was. And the reality is those statistics you were talking about in the beginning are really not surprising to me because pre-diagnosis the only option I felt I had was removing one of the stress areas in my life which meant resigning. And to be honest, if it hadn't been for Covid and lockdown and some changes that happened then, that's where I would have been.
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- Ellie** It's so sad and I'm sure an experience that many people have faced. So, was it difficult in making that first step in speaking to your manager or your colleagues about your symptoms?

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- Lesley** To be honest it was impossible. So, pre-diagnosis I would have been basically telling my manager, and remember this was pretty much at the same time, I am quite senior in my role, so at the same time as I was exploring promotion, career progression and all those issues I would be telling my manager that I just felt unable to do my job in the same way anymore, but I didn't really know why. Which, it's a difficult thing for anyone to do and, post-diagnosis the, all the ongoing symptoms, plus to be honest, the stigma around menopause just made it untenable. I mean I found it hard enough to speak to my family and my husband, my friends, but to speak to a senior male manager in my office, it just didn't seem an option at that stage. It wasn't until I had managed to stabilise my hormone levels, get symptoms under control, feel a bit more like myself with the possibility of discussing what was going on sort of crept back. And I actually approached someone in our gender workstream first, just in sort of a test. And after that, after I had spoken with one person it did seem gradually to become easier and easier to start talking about it.
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- Ellie** That's brilliant that you did feel equipped to take that first step. And we'll talk in a moment about how RPC has supported you and also the wonderful things we're doing as a firm, but before we do that, Victoria, let's look at how the law protects employees from discrimination or being treated less favourably because of their menopausal symptoms. So, currently the Equality Act 2010 doesn't specifically say that menopause is a protected characteristic. However, there are various routes by which employees may have a claim aren't there?
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- Victoria** Yes, that's right. So, these claims could come under sex or age or indeed disability discrimination, but there are challenges with all of these which may prevent a lot of claimants from seeking legal redress.
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- Ellie** So, what are the potential problems then where somebody brings a claim under the sex discrimination provisions in the context of menopause?
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- Victoria** Yeah, there's an issue with what is called direct sex discrimination. Because how would a female claimant show that a male comparator who has a similar condition wouldn't have been treated in exactly the same way? And essentially that is what you would have to prove for direct discrimination.
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- Ellie** So essentially a real evidential hurdle there. What about age discrimination? What about age discrimination? How would that not work in this kind of context?
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- Victoria** Yeah, so going back to what you said earlier, if you remember we were discussing there were some women who experienced perimenopausal or premature menopause at a younger age, it can be even during 20s or 30s. So these women would find it difficult to successfully claim age discrimination, that is less favourable treatment, because of age.
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- Ellie** And while some people might be surprised or actually even offended to hear menopause being described as a disability, it can nevertheless form the basis of a disability discrimination claim. So, here we would be talking about a failure, the employer's failure, to make reasonable adjustments.
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- Victoria** Yeah, that's absolutely right. So, we now have case law confirming that menopause symptoms can amount to a disability. For example, an ET case called *Rooney v Lester* and this provided that symptoms, which can be found to have a substantial and long term adverse affect on that person's ability to carry out normal day to day activities. So, in other words, that's the statutory definition of disability. And in that particular case it was found that menopausal symptoms did have, or did conform, to that statutory definition. But the problem is disability claims are notoriously complex, and a person experiencing menopausal symptoms will not necessarily meet the requirements for protection, because symptoms are often intermittent, they come and go. And they are not predictable. So, that means if you cannot establish your status as what is called a disabled person, there is no obligation under the Equality Act on an employer to make even reasonable adjustments to support you. And also, as you have referred to or alluded to earlier, there's some really inherent concerns about describing menopause as a disability given that we're talking about half the population potentially.
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- Ellie** That's right. It's not a long-term illness, it's a natural event that happens to all women.

Victoria Indeed, yeah.

Ellie And I think it's important isn't it to point out that there are also intersectional nuances when it comes to menopause. So, some communities are going to be affected by the menopause in very different ways to others, which employers need to be aware of.

Victoria That's right. And it's interesting to think about, but for example the trans community, so menopause doesn't only affect women whose gender corresponds with their sex at birth, it can be an issue for transgender or non-binary or intersex employees, either due to hormonal changes relating to age or because of surgery, or because of hormone treatment, they may not want to tell their employer about their symptoms because they don't want to disclose their status as trans or non-binary or intersex, so really it can be really difficult for them to access the right support. That's one particular example. Another might be where menopause can create kind of additional challenges. So, for example, perhaps black women. So, research from the Study of Women Across the Nation, known by the acronym of SWAN, it has shown that black women may go through the menopause at an earlier age, about eight and a half months earlier than white women. They can have a longer transition period they can suffer from more severe symptoms than white women. And then compounding that is the fact that many reports have found that black women are less likely to receive hormone therapy as well as access to medical and mental health services.

Ellie So, quite a few additional layers of challenge and barriers there that I think it is really important to be aware of. And Victoria, in January earlier this year, the government finally responded to the Women and Equalities Committee's report on menopause in the workplace and the government ultimately rejected the committee's calls to make menopause a protected characteristic. And you actually participated in the Employment Lawyers Association Working Party which submitted a paper in the response to the government's call for evidence that was slightly earlier at the consultation phase. So, before we talk about the government's response, can you just really briefly summarise what did the Women and Equalities Committee's report recommend and why.

Victoria Yes, so the committee asked really for three main things. The first of these was for the government to appoint a menopause ambassador. And that menopause ambassador would champion good practice by, for example, producing model menopause policies or trialling specific menopause leave so that women are not forced out of work by insensitive and rigid sickness policies as they often are. The second thing, the committee said that the current law did not serve or protect menopausal women who suffer menopause related discrimination precisely because of the reasons, or some of the reasons, that I have mentioned earlier. And they asked the government to bring into effect a particular section of the Equality Act, section 14 of the Equality Act, to allow what is called dual discrimination claims based on more than one protected characteristic. So, for example, sex and disability together as dual characteristics. Thirdly, as you mentioned, the committee asked the government to urgently consult on making menopause a protected characteristic of its right under the Equality Act.

Ellie So, while the government did agree to the recommendation of appointing a menopause champion, they've said that they will appoint a menopause champion to drive forward work with employers on menopause workplace issues and to spearhead the proposed collaborative employer led campaign, it did stop short of rolling out policies on menopause leave, crucially it hasn't accepted that recommendation to make the menopause a protected characteristic. And it said that it was rejecting that because that might inadvertently create new forms of discrimination, for example, discrimination risk towards men suffering from long-term medical conditions. I just wondered, what is your view on that response?

Victoria Yeah, so the rejection of the proposed protected characteristic of menopause, that was never about discriminating against men. It was simply about clarifying the existing law to work more effectively. And we have precedent for this, the Equality Act has specifically protected against pregnancy discrimination, recognising that there is no comparable situation. A pregnant woman cannot compare herself to a pregnant man. So, what is not clear, is why the government regards menopause any differently to that. Given the huge numbers of people reporting negative experiences at work linked to the menopause it's really critical that employers and their employees have some clarity over legal rights and responsibilities. This problem isn't going to go away. The government is also concerned that providing specific menopause protection would inadvertently create new forms of discrimination such as "discrimination risks towards men suffering from long-term medical conditions", but all genders, including men, suffering from long-term medical conditions are

already protected to the extent that they are disabled as we chatted about earlier for the purpose of the Equality Act. What the rejected proposal was trying to address is that those experiencing menopause are not always protected despite the widespread challenges presented at work. It's also worth saying there is a kind of innate inconsistency in saying on the one hand, the law already protects against menopause and discrimination, and on the other hand, that adding protection against menopause discrimination would create new legal risks. That just doesn't add up.

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- Ellie** Yeah, it's really interesting, and to hear your view on that, it's disappointing really that the government hasn't accepted the committee's suggested changes to the law. However, aside from the law, there are a whole host of practical things that employers themselves can offer and indeed many are offering now to help employees. Lesley, tell us about what support there is on offer at RPC?
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- Lesley** Yeah, absolutely. So, we have a new menopause policy. We looked at our old policy and in sort of looking, talking to a lot of people in the office who have an interest or a connection to the issue we wrote that and we have launched that in October last year. So, that was outlining the support and guidance the office can provide. We, as a firm, signed the menopause workplace pledge, also in October last year. And that is really RPC saying that it recognises the need to provide support and resources to anyone going through the menopause and whether that is directly themselves or indirectly through a family member. We have Katie Horn who is CPD certified in advancing menopause in the workplace. So, an asset resource that people can contact if they need that. And finally, and this is something I have used quite a lot, all the employees now have access to an app on their phone called Peppy, which offers a lot of support. And that is including access to free and confidential one to one virtual consultation with specialist menopause practitioners as well as virtual seminars, live broadcast events on topics, a whole library of articles, an audio toolkit, it's really a lot of information and resource there.
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- Ellie** That's brilliant, a whole host of different support measures which is fantastic, and I know it has been really well received by RPC employees. So, what have been the most helpful forms of support to you personally would you say?
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- Lesley** I mean, I think first and foremost it has been personal contacts and my friends, my family and my husband, but also in the office, since I was able to talk to people, just immediately finding out a network of people who are happy to talk about the issue and who want to support each other. So that has been really important. And from a knowledge perspective I can't rate Peppy high enough, there's so much information there. It's been really useful.
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- Ellie** Brilliant that you're able to talk to other people experiencing the same thing and as you say, sort of educating yourself on this subject. And you are also a member of RPC's working menopause group which I know does some brilliant work in educating the rest of the firm on the issues to be aware of. So, just tell us about the work the group is doing.
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- Lesley** Yeah, so we launched our menopause internal working group in October 2021. So, that is made up of employees across the firm who have a vested interest in supporting women going through the menopause in RPC. And we have been working really hard to put together a suite of resources and offerings aimed at supporting and educating people around the menopause. So, as well as all the really good things I mentioned just now, we're setting up a hub on our firm's intranet with links to all the resources and access to the RPC menopause community for anyone who wants to chat or ask questions. We've just had a really good training session from a menopause specialist and hopefully we'll be arranging a lot more of those. We are going to be arranging some virtual and in person coffee sessions. I'm hoping that will just encourage even more talking around the subject.
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- Ellie** That's brilliant. So, Lesley, what advice would you give to those businesses who are perhaps embarking on their journey to offer a support package to employees affected by the menopause?

Lesley	It really is to talk to people, talk to the people involved. It isn't always easy the people might not want to talk or might want to talk at different times in their sort of menopause journey. But the people that you will be working with, or your employees, will need different approaches and it's just really key to understand what that need is. Everyone experiences menopause in different ways, everyone has different issues, and you just need to work out what type of support will work for your employees and your workplace.
Ellie	Okay. And Victoria, while the law hasn't changed, there is still a significant legal liability where a workplace culture doesn't support people going through the menopause and perhaps turns a blind eye to banter about the menopause, and we actually saw a first instance Employment Tribunal case on that in 2020 didn't we?
Victoria	We did. So, the case was called Best v Embark on Raw Limited. So, as you say, this was a first instance case, Employment Tribunal case, the key points of that case, so an employee was dismissed after she raised concerns about health and safety and she, she blew the whistle on managers and colleagues who were flouting Covid-19 rules at the time. And as well as whistleblowing though, she also claimed harassment arising from a colleague asking her if she was "on her menopause" during an argument. I should imagine, to be honest, that's not an uncommon term of abuse. Now, the tribunal in that case found that the colleagues' continued pursuit of that topic was, and we're talking about the statute definition here of harassment, so it was unwanted conduct which had the purpose or the effect of violating the claimant's dignity. And of creating a humiliating environment for her to work in. So, therefore, the Tribunal decided in that case it amounted to harassment and that harassment was on the grounds of sex and age.
Ellie	So, a good reminder then really that it is really important to have as an inclusive workplace culture as possible. What would you say, Victoria, to those people who see menopause support as being unfair or discriminatory to others, for example men or anyone not affected by the menopause?
Victoria	It's really nothing like that. So, menopause support in the workplace is actually just one strand of a business's wider diversity and inclusion strategy. So, if you aren't affected by menopausal symptoms, that's great. That's actually a privilege in itself because you are not experiencing the same barriers at work that some people do.
Victoria	And remember, a genuinely equitable workplace culture is one where employers take active steps to remove barriers to help all employees perform at the best level they can.
Ellie	Absolutely. Very wise words. And thank you both so much for joining me today. As Victoria says, this issue continues to be relevant to all businesses despite there being no imminent changes to the law, and Lesley you are a wonderful example of how with the right support in place those affected by menopausal symptoms don't need to suffer in silence, feel like they have no option but to leave their job or reduce their hours. And as Victoria says, this is ultimately going to benefit your whole organisation including those who aren't directly affected. If you would like to revisit anything we discussed today, you can access transcripts of every episode of The Work Couch podcast by going to our website www.rpc.co.uk/theworkcouch . Or if you have questions for me or perhaps Victoria or Lesley or perhaps suggestions of topics you would like us to cover on a future episode, please get in touch by emailing us at theworkcouch@rpc.co.uk . We'd really love to hear from you. And finally, if you enjoyed this episode, we'd be really grateful if you could spare a moment to rate, review and subscribe and please spread the word by telling a colleague about us. Thank you all for listening and we hope you will join us again in two weeks.



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