

**Consultation
response to Work and
Pensions Select
Committee inquiry
into Statutory Sick
Pay**

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together around 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

We appreciate the opportunity to respond to the Work and Pensions select committee consultation on statutory sick pay (SSP). In 2019 the TUC responded to the Government's consultation - Health is everyone's business, which covered sick pay.

As soon as the pandemic hit the TUC exposed three fundamental problems with SSP: the three days that people have to wait before becoming eligible; the exclusion of workers because they do not earn enough to qualify; and the shockingly low level of the benefit, worth £96 a week then. We stressed the significant financial hardship caused by the policy, as well as the limits it placed on the national coronavirus response.

The Government claim that the pandemic was not the right time to introduce changes to the rate of SSP or its eligibility criteria. In our view this was grossly irresponsible. We said at the time the government abandoned millions of low-paid workers at the worst possible time.

The TUC continues to campaign on sick pay. We call for:

- An increase in the current weekly level of sick pay from £109.40 to the equivalent of a week's pay at the real living wage.
- Removal of the lower earnings limit for qualification for sick pay, to ensure everyone can access it, no matter how much they earn.
- Removal of the waiting period (3 days) for sick pay to ensure that it is available from the first day someone is sick.

Question - Is the current level of Statutory Sick Pay at £109.40 per week sufficient?

Those who do not receive contractual sick pay in the UK may be entitled to SSP. However, SSP is inadequate to meet basic living standards. This is particularly challenging for people who are low paid who have little to no savings to fall back on during periods of unexpected ill health. SSP is currently paid a flat rate of £109.40 a week for a maximum of 28 weeks. This is just 17.6 per cent of average weekly wages, meaning that if an employee on the average wage is off work sick for a week, they lose around four-fifths of their usual earnings.

This is made worse by the three-day wait for the first payment. An employee on SSP working a typical five-day week will take home just £44 (or 7 per cent of their average weekly earnings) for the first week they're off ill. This income replacement level is amongst the lowest of its European counterparts.

A robust sick pay system is urgently needed. It would safeguard the incomes of those who become sick, as well as ensuring that those who are potentially infectious stay away from their workplaces. The Covid-19 pandemic showed shown in stark terms how broken our sick pay system is.

Just over a quarter (28 per cent) of employees receive only basic SSP if they are off work sick. This equates to around eight million employees. 54 per cent receive their usual pay in full, while 10 per cent (almost three million employees) say they receive nothing. A small percentage of workers receive more than SSP, but less than full pay.¹ This varies by income, with low-paid employees much more likely than better paid employees to receive SSP or nothing at all when off sick. 57 per cent of those earnings less than £15k p/a get SSP or nothing, compared to 13 per cent of those earning £50k or more.

The pandemic highlighted how insufficient the current level of sick pay is. The lack of decent, dependable sick pay was a barrier to self-isolation, with financial hardship a key factor in whether people self-isolated². It also affected whether people tested in the first place. A pilot study of mass community testing in Liverpool found that 'fear of income loss from self-isolation was a key barrier to testing'³.

1 Nationally representative polling of 2,204 workers in England and Wales conducted by BritainThinks on behalf of the TUC in May 2022.

2 Adherence to the test, trace, and isolate system in the UK: results from 37 nationally representative surveys, BMJ (2021). Available at: <https://www.bmj.com/content/372/bmj.n608>

3 Covid-SMART rapid antigen community testing evaluations, University of Liverpool (2022). Available at: <https://www.liverpool.ac.uk/research/research-themes/infectious-diseases/coronavirus-research/covid-smart-pilot/>

The government's own testing tsar Dido Harding blamed the lack of decent financial support for deterring people with Covid-19 symptoms from self-isolating⁴. And the then Health Secretary Matt Hancock said at the time⁵, and has said since⁶, that statutory sick pay is too low.

Polling for the TUC at the time found that two-fifths of workers said they would have to go into debt, or go into arrears on their bills, if their income dropped to the level of SSP⁷. Low paid workers were disproportionately affected by inadequate levels of SSP as they are more likely to have this entitlement only. Those on low and average incomes were also more likely than high earners to be unable to cope on SSP without being pushed into debt. Half of those earning less than £15,000 per year and around half (47 per cent) of those earning between £15,000 and £29,000 say they'd be unable to get by on SSP without going into debt.

Insecurity and low pay go hand-in-hand. TUC analysis showed that all categories of insecure worker are paid significantly less than employees in general.⁸ 76 per cent of insecure employees only get SSP⁹. Workers in insecure jobs were forced to shoulder more risk of infection during the pandemic, while facing the "triple whammy" of a lack of sick pay, fewer rights and endemic low pay. And TUC analysis during the pandemic showed that those in insecure occupations faced mortality rates that were twice as high as those in more secure jobs.¹⁰

Additional analysis during Covid by the TUC showed that a third of key workers (33%) said they did not get full sick pay, and a quarter of key workers (24%) said they got only SSP. And one in 12 key workers (788,000 people) did not qualify for SSP – despite many of them being at greater risk from Covid-19 due to the frontline nature of their jobs.¹¹

4 Waugh, P, (6 July 2020). "NHS Test And Trace Chief Admits Workers Fear 'Financial' Hit If They Self-Isolate", Huffington Post www.huffingtonpost.co.uk/entry/dido-harding-self-isolation-financial-

5 Sick pay is too low so people work when they're ill, Hancock tells Covid inquiry, The Independent (2023). Available at: <https://www.independent.co.uk/news/health/coronavirus-uk-statutory-sick-pay-matt-hancock-question-time-covid-19-a9413821.html>

6 Sick pay is too low so people work when they're ill, Hancock tells Covid inquiry, i (2023). Available at: <https://inews.co.uk/news/politics/sick-pay-low-work-ill-hancock-covid-inquiry-2786947>

7 Sick pay and debt, TUC (2020). Available at: <https://www.tuc.org.uk/sites/default/files/2020-09/Debt%20report%20AC.pdf>

8 Covid-19 and Insecure Work, TUC, 2021 - <https://www.tuc.org.uk/research-analysis/reports/covid-19-and-insecure-work>

9 Nationally representative polling of 2,204 workers in England and Wales conducted by BritainThinks on behalf of the TUC in May 2022.

10 Covid-19 and Insecure Work, TUC, 2021 - <https://www.tuc.org.uk/research-analysis/reports/covid-19-and-insecure-work>

11 One in 12 key workers do not qualify for statutory sick pay, TUC, 2021 - <https://www.tuc.org.uk/news/one-12-key-workers-do-not-qualify-statutory-sick-pay>

Question – Many European countries have a higher rate of statutory sick pay but a shorter duration of support when compared to the UK. Would this be a preferable alternative?

Are there any examples of international best practice in relation to Statutory Sick Pay that the UK can learn from?

We believe there should be no trade-off between the rate of pay and the duration of support.

We currently offer much lower rates of mandatory sick pay than other advanced economies. An OECD comparison at the beginning of the pandemic showed that the UK had the lowest mandatory paid sick leave as a percentage of previous earnings.

The higher statutory rate in other countries was rarely at the expense of duration. As the OECD explain: “most OECD countries provide publicly paid sickness benefits that can extend far beyond employers’ liabilities, for up to one year in many OECD countries and even longer than this in some”¹².

Question - Statutory Sick Pay is currently paid from the fourth qualifying day of sickness absence. Should this three-day wait period be changed or removed?

Three unpaid days of absence from work causes financial difficulties, especially for low-paid workers, who often have to budget on a week-to-week basis. As mentioned above, the three-day wait for first payment takes the first week of SSP from an already low £109 per week to a miserly £44 per week.

Such low rates of SSP will force workers into work when they are ill or recovering from illness, and this could cause longer-term health issues. The TUC argue not only for the removal of rules around qualifying days but also waiting days.

The rules around waiting and qualifying days in accessing SSP can be complex to understand, especially for those in insecure work who do not work set days and hours.

Currently SSP is not paid for the first three days (waiting days), it is paid from the fourth day (qualifying day). The qualifying day is used by the employer to work out the days the employee can get SSP. Qualifying days are usually the employee’s contracted working days and hours. For example, if you are sick from Monday to Friday, and you

¹² Paid sick leave to protect income, health and jobs through the COVID-19 crisis, OECD (2020). Available at: <https://www.oecd.org/coronavirus/policy-responses/paid-sick-leave-to-protect-income-health-and-jobs-through-the-covid-19-crisis-a9e1a154/>

normally work from Monday to Friday, you would receive just two days' SSP that week (for Thursday and Friday).

While for those working set days and hours it can be relatively straightforward in working out when entitlement begins, for those whose days and hours vary it can become very complex for the employer and employee to work out.

To add to this issue, people in insecure employment face much more difficulty enforcing their rights. A lack of job security means that many people are afraid of raising workplace issues, as they fear losing their job. With rising forms of insecure work with unpredictable schedules, the TUC are concerned that workers may not be receiving their correct entitlement.

As soon as the pandemic hit, the TUC exposed one of the fundamental problems with sick pay: the three days that employees have to wait before becoming eligible. The government responded to the problem of the three-day waiting period in the March 2020 budget, announcing that those who were self-isolating due to coronavirus would receive sick pay from day one. However, from March 2022 this measure was repealed despite our opposition. The TUC continues to highlight the significant hardship that this causes for people at work.

While it may be claimed that in-work universal credit claimants will be compensated in part for income loss because of days they are sick without SSP, the design of universal credit results in a considerable delay in payments because of the minimum of a five week wait. And many low paid workers do not claim universal credit as they are not eligible.

Question - How effective is the role of the employer in administering Statutory Sick Pay? How could it be improved, including in terms of how employees are supported?

Early intervention by the employer and sustained workplace support during sickness absence is important. Effective absence management is about supporting employees with health issues to stay in or return to work. Statutory guidance needs to be strengthened for employers to encourage early intervention to support a sick employee to return to work.

The focus of any measures intended to reduce ill health related job loss must include the prevention of work-related ill health and sickness absence. Employers should take active steps to prevent work related health conditions from developing. For example, preventing mental ill health linked to excessive workload.

Where health conditions have already developed, employers should remove and reduce any barriers that disadvantage workers.

Employers need to provide good management and training skills for their managers to allow them to do this. Some employees feel managers have no time or the appropriate skills to deal with sickness absence.

Question - Is Statutory Sick Pay well implemented and enforced at the moment? How can this be improved?

In the current system where employers fail to pay within the 30 – day appeal period, or after a tribunal hearing providing a final decision on liability, the employer can be fined up to £3,000 for non-payment of outstanding SSP.

This amount does not act as a deterrent and a stronger penalty is required.

The enforcement regime for the minimum wage can provide some direction for how SSP could be enforced.

The HMRC SSP disputes process is listed on GOV.UK however is not promoted more widely. They only deal with individual disputes to help employees get their legal entitlement and do not carry out more proactive work. The service does not have the powers or resources to conduct targeted inspections of employers, or raise awareness among employers or employees.

The minimum wage model provides two routes. First, workers can take cases to the Employment Tribunal, often with the help of their trade unions. Second, HMRC proactively enforce the minimum wage, taking a risk-based approach which focuses on their assessment of high-risk employers, occupations, industries and locales. This proactive enforcement is additional to HMRC's commitment to investigate first-party complaints received (e.g. those made by named workers or their agents).

Minimum wage enforcement is under-resourced especially against ILO recommended benchmarks, but is supported by an enforcement staff numbering around 500. Even this is producing better results than the reactive approach used for SSP. In 2021/22 HMRC recovered £16.3 million of minimum wage underpayment for 120,000 low paid workers. 696 penalties were issued to non-compliant employers. Recently HMRC has successfully prosecuted some employers for serious breaches.

Our view is that SSP is a vital safety net for workers who are facing loss of earnings through ill health. Sufficient budget should be allocated to allow the HMRC to undertake proactive enforcement to supplement their "on-complaint" work. The agency should also develop a risk-based approach that would facilitate targeting the hidden non-compliance where no complaint has been received.

We also believe employers need to inform employees of their rights, as there can be a lack of clarity on eligibility to sick pay, particularly around the issue of employment status.

In 2017, the TUC carried out an online survey of insecure workers. A large number of respondents worked in the hospitality sector. Lack of awareness of the right to statutory sick pay was prevalent. Despite being eligible for statutory sick pay, many workers were not aware of this right and would not receive any pay whilst off sick. Furthermore, many respondents reported that they were fearful of taking sick leave as repercussions could include losing an assignment or future paid work.¹³

ACAS research from 2014 and 2015, shows that zero hours contract workers and agency workers are often unaware of their employment rights and afraid of raising workplace concerns due to fears over job security.¹⁴

We welcome the decision from the Government to make access to a day one written statement a right for both employees and workers, which includes details of eligibility for sick leave and pay. This became law in April 2020, however many of our unions tell us that insecure workers are not receiving this statement. Rights are only as strong as your ability to enforce them. Insecure workers not receiving this statement have to take the case to an employment tribunal which we know is not an easy process and is currently being made even harder by huge tribunal backlogs.

In the Government response to health is everyone's business Ministers set out their commitment to the development of a Single Enforcement Body which will bring together existing enforcement bodies into a single and recognisable organisation. They set out that the Body would protect workers across the country and help to provide a level playing field for the majority of employers who respect the law. As part of the consultation response on the Single Enforcement Body, government confirmed its intention to include enforcement of SSP within the Body.

Since then, the government plans for a single enforcement body have been scrapped.

Question - How could a phased return to work and Statutory Sick Pay work better together?

A phased return to work is beneficial for the employee. However careful thought needs to be given to eligibility rules to make sure that those on significantly reduced patterns of work do not lose all access to SSP as they phase back into longer hours.

13 TUC Response to the Consultation on enforcement of rights recommendations, 2017 - <https://www.tuc.org.uk/sites/default/files/TUCresponseToTaylorreviewenforcement.pdf>

14 ACAS, 2015 - <https://www.acas.org.uk/latest-news>

Question - Should statutory sick pay be extended to include those earning below the lower earnings limit? If so, what would be a fair balance between support for employees and avoiding the risk of creating a disincentive to return to work?

1.31 million employees miss out on statutory sick pay as they don't earn enough¹⁵. Currently employees earning less than the Lower Earnings Limit (LEL) of £123 do not qualify for SSP or any financial support from their employer.

As the table below shows, it is women, those in insecure work, and younger and older workers, and certain occupations are most likely to miss out. The occupations most likely to miss out on SSP due to the eligibility criteria are low-paid occupations, such as elementary occupations, sales and customer services, and caring, leisure and other service occupations.

Table – numbers earning below the threshold for SSP for different categories.

	Number of employees earning less than £123	Total employees	% earning less than £123p/w
Total	1,314,439	28,419,489	4.6
Gender			
Male	399,346	14,401,409	2.8
Female	915,093	14,018,080	6.5
Ethnicity			
White	1,092,173	24,127,346	4.5
BME	222,266	4,282,381	5.2
Ethnicity and gender			
White men	324,222	12,219,836	2.7
BME men	75,124	2,178,115	3.4
White women	767,951	11,907,510	6.4
BME women	147,142	2,104,266	7.0
Age			
16-24	568,497	3,427,940	16.6
25-34	150,872	6,973,817	2.2
35-49	188,453	9,496,960	2.0
50-64	260,841	7,628,176	3.4
65+	145,776	892,596	16.3

¹⁵ Data on employees missing out on SSP due to the LEL is taken from TUC analysis of Q2 2023 of the Labour Force Survey.

Whether on a zero-hours contract			
On a ZHC	316,116	1,044,491	30.3
Not on a ZHC	998,323	27,367,956	3.6
Occupation			
Managers, directors & senior officials	44,019	2,905,309	1.5
Professional occs	87,326	8,018,923	1.1
Associate professional occs	24,018	4,251,457	0.6
Admin & secretarial occs	135,803	3,036,335	4.5
Skilled trades	22,569	1,847,126	1.2
Caring, leisure and other service occs	189,383	2,313,672	8.2
Sales & customer services	215,810	1,807,564	11.9
Process, plant & machine operatives	78,085	1,323,260	5.9
Elementary occupations	517,426	2,871,398	18.0

While the current system works poorly for the millions of excluded low-paid workers, the Government failed to act even when the pandemic struck. During the pandemic, they relied on a series of half-hearted measures by introducing additional self-isolation payments for low-paid workers, where only a small number were aware or actually able to claim them.¹⁶

Research commissioned by the TUC from the Fabian Society in 2021 showed that the cost of raising SSP to the equivalent of the real Living Wage for employers without an occupational sick pay scheme would be around £110 per employee per year – or just over £2 a week.

The research also shows that removing the lower earnings limit, which prevents those on low earnings from accessing statutory sick pay, would cost employers a maximum of £150m a year.¹⁷

Workers need to take off appropriate time to make a more effective return to work and should not be financially threatened to return to work.

It is wrong to assume that at the full rate for sick pay there is no incentive to return to work. Sickness absence is not out of control in the UK, the latest figures for 2022 show over the last decade they have averaged around 4.5 days per worker.¹⁸

16 TUC, 2021, Self-isolation support payments: the failing scheme barely anyone's heard of-

<https://www.tuc.org.uk/blogs/self-isolation-support-payments-failing-scheme-barely-anyones-heard>

17 TUC 2021- <https://www.tuc.org.uk/news/tuc-accuses-government-abandoning-low-paid-workers-after-it-ditches-sick-pay-reforms> - TUC accuses government of abandoning low-paid workers after it ditches sick pay reform

18 ONS 2023-

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/sicknessabsenceinthelabourmarket>

In its response to the *Health is Everyone's Business* consultation, the Government explained that the majority of respondents (75 per cent) agreed that SSP should be extended to employees earning below the earnings threshold. This measure was supported by small and large employers alike. Respondents felt that by extending SSP to those earning below the LEL, employers would be better incentivised to reduce sickness absence for all of their employees¹⁹. Despite this, the government chose not to expand SSP.

Question – What would be the best way for the Government to support SMEs who may lack resources to invest in best practice measures to help staff return to work?

The cost of SSP can be more difficult to manage for small and medium businesses. A small business could be in the unfortunate position of having eight staff with three off sick at one time. Smaller businesses should therefore be eligible for a rebate, as they should not be out of business through no fault of their own. The rebate also needs to be swift as smaller businesses often operate on smaller budgets.

At the same time however, there does need to be an incentive for smaller businesses to ensure they have adequate return to work plans/support for their employees. The rebate could be tied to the employer demonstrating good practice, a robust framework would be required.

It's worth noting that when SSP was first introduced, employers were reimbursed for payments, and schemes were in place to help employers with payments as recently as 2014.

During the pandemic, small businesses could claim the costs for up to two weeks of SSP per employee that had to take time off because of COVID-19. But this measure was subsequently removed.

19 Consultation outcome - Government response: Health is everyone's business 2021-
<https://www.gov.uk/government/consultations/health-is-everyones-business-proposals-to-reduce-ill-health-related-job-loss/outcome/government-response-health-is-everyones-business#chapter-3-statutory-sick-pay>