

# Job security

Saving the jobs of those who cannot work at home, but who have to stay at home

## **Executive summary**

For millions of workers, the coronavirus pandemic changed their working lives overnight, with enforced homeworking becoming the norm across the country for all those whose jobs could be done remotely. However, not all workers have jobs that can be done at home. Some of these workers have been supported under the job retention scheme, while others are already facing unemployment.

The government has now announced a slow phased re-opening of workplaces and are gradually lifting the restrictions put in place to limit the spread of Covid-19. But many workers who are now being asked to return to jobs outside of the home cannot return to their workplaces to the government's timetable.

This report focuses on what the government can do to reduce the financial impact to all workers who cannot work at home, but who have to stay at home, to ensure they do not lose their jobs because health, caring or wider challenges prevent them from attending work and undertaking their usual roles.

These workers cannot simply be left to lose their jobs.

## Summary of key recommendations

The government must take immediate steps to protect the jobs, income and lives of workers who cannot work at home but cannot return to work outside the home because of safety concerns or caring responsibilities.

Without swift action the government will lose the progress and momentum they have built in securing disabled workers, women and carers enhanced participation in the labour market.

Local lockdowns will also place jobs and incomes under significant additional strain.

The recommendations below, if implemented as a package, will prevent this regression.

- 1. Protect workers' income until the Covid-19 crisis has ended: Extend the furlough scheme for workers who continue to have an increased risk if infected with Covid-19, such as those who were asked to shield, workers who live with them, and carers, particularly working mums. This extension must be funded to the same level of support as at present (80 per cent of income on a monthly salary of up to £2,500) and must be available to employers who have not previously used the scheme as well as those who have.
- 2. **Protect the income of workers in an area specific local lockdown**: The furlough scheme must similarly be extended to protect the incomes of workers who, because of an area specific lockdown, cannot work.
- 3. Make it easier for workers to show they have an increased risk from Covid-19: It must be easier for workers to provide proof to employers that they continue to be impacted by the pandemic which could involve, for example, a process similar the one put in place for isolation notes or a process where a clinicians or GPs note is accepted for this purpose.

- 4. Ensure workers whose jobs could be done from home have appropriate support: With support, more working spaces could be adapted to enable 'clinically vulnerable' people to work at home. A one off easy to access payment from Access to Work should be made available to facilitate this.
- 5. Protection from unfair dismissal: The government should introduce emergency protections from unfair dismissal for workers who have been furloughed because of existing and persisting risks who or because of their caring responsibilities. This would provide those on furlough, or recently returned from furlough, with similar protections to those women have during and immediately following maternity leave. This protection gives workers the right to be offered suitable alternative employment (without having to apply for it) in a redundancy situation.
- 6. **Guaranteed home and flexible working for those who are able to**: Give staff the right to work as flexibly as possible from their first day in the job. Flexible working can take lots of different forms, including the right to predictable hours and working from home. This would help disabled workers and carers stay in work. Disabled workers and cares who were able to work from home during the crisis should be legally entitled to continue to do so permanently.
- 7. **Ensure our parental leave is fit for purpose**: Give all workers, regardless of their employment status, a day-one right to 10 days' paid parental leave.

#### Introduction

For millions of workers, the coronavirus pandemic changed their working lives overnight, with enforced homeworking becoming the norm across the country for all those whose jobs could be done remotely.

Our research found that nearly half of businesses had someone working from home and that around 45 per cent of the UK workforce had worked from home at some point throughout the pandemic.<sup>1</sup>

However, not all workers have been able to take advantage of this change.

To protect workers whose workplaces were closed as a result of social distancing restrictions, and who were unable to work from home, unions successfully lobbied for the introduction of the job retention scheme (JRS). This enabled employers to furlough those workers unable to work from home. Employers were able to pay furloughed worker's up to 80 per cent of their salary a month (up to £2,500) and to claim that payment back from the government.

The scheme successfully reduced the transmission rates of Covid-19 by ensuring that workers unable to work from home were not forced to risk exposure to the virus in order to travel to work.

The government has now announced a slow phased re-opening of workplaces and are gradually lifting the restrictions put in place to limit the spread of Covid-19.

<sup>&</sup>lt;sup>1</sup> https://www.tuc.org.uk/sites/default/files/2020-04/Preparing%20for%20the%20return%20to%20work.pdf

But many workers are not be able to return to work to the government's timetable. In some cases, this will be because the virus continues to pose a threat to their lives and the lives of those they live with and care for. While the government has indicated that the shielding scheme will come to an end at the start of August, there will still be workers at that point who cannot work at home but cannot safely return to their jobs outside of the home. There will be others who have caring responsibilities as a result of the pandemic, particularly working mums who find themselves without childcare. These workers cannot simply be left to lose their jobs. Failure to support these groups would have disproportionate impacts for disabled workers and women and would risk significantly exacerbating existing labour market inequalities.

These groups of workers have important existing rights. Firstly, redundancy procedures and the criteria used must not unlawfully discriminate against workers with protected characteristics. The government must make clear that decisions employers take around redundancy processes must not discriminate against those with protected characteristics, and that doing so could amount to direct or indirect discrimination.

Hard-won health and safety rights also continue to apply. This includes requirements set out in the Health and Safety at Work Regulations Act 1974 that all employers must carry out a workplace risk assessment.<sup>2</sup> The law requires employers to consult with workers, and the union where one is recognised, on matters relating to health and safety.<sup>3</sup> The Employment Rights Act 1996 protects workers from detriment for asserting their right to safety, including by removing themselves from unsafe environments where there is a serious or imminent threat to safety.<sup>4</sup> Workers have a legal right to work in a role or workplace which does not place them at high risk of harm.

This report focuses on what the government can do to reduce the financial impact to all workers who cannot work at home, but who have to stay at home, to ensure they do not lose their jobs because health, caring or wider challenges prevent them from attending work and undertaking their usual roles.

# Workers with continuing needs

#### Shielding, 'clinically vulnerable' and 'clinically extremely vulnerable'

Workers asked to shield or who are 'clinically vulnerable<sup>5</sup> or extremely vulnerable<sup>6</sup> have an increased risk if infected with Covid-19. This group of workers are also disproportionately likely to be disabled. At present, many in this group are unable to return to work safely either as a result of socially distancing or through being given an alternative role.

<sup>&</sup>lt;sup>2</sup> <u>www.tuc.org.uk/blogs/can-i-refuse-work-because-coronavirus-we-explain-your-rights</u>

<sup>&</sup>lt;sup>3</sup> www.tuc.org.uk/sites/default/files/BrownBook2015.pdf

<sup>&</sup>lt;sup>4</sup> <u>www.tuc.orq.uk/blogs/can-i-refuse-work-because-coronavirus-we-explain-your-rights</u>

<sup>&</sup>lt;sup>5</sup> www.nhs.uk/conditions/coronavirus-Covid-19 /people-at-higher-risk/whos-at-higher-risk-from-coronavirus/

<sup>&</sup>lt;sup>6</sup> www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-Covid-19 /guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-Covid-19

While shielding restrictions are due to be lifted across parts of the country from 1 August, this change is not being universally introduced. The UK government has set out that in Leicester those who are shielding will not be able to benefit from the looser restrictions (and also that future local lockdowns may reimpose similar conditions in other areas of England), and the devolved administrations are also moving at a separate pace. For example, Scotland had asked those shielding to do so until 31 July when the devolved government will review progress, Wales has asked workers to continue shielding until 16 August while in Northern Ireland they are planning to pause shielding, subject to the rate of community transmissions continuing to be low for 31 July. After 1 August there will still be many people who have been advised to shield for whom official advice remains to stay at home. New guidance published on schooling over the period ahead also sets out that there may be incidences where local transmission spikes lead to the re-introduction of shielding requirements.

Furthermore, among the shielding population, there will be a proportion of people who can return to work but where their employer's Covid-19 risk assessment indicates that they cannot work safely. These may be people who cannot travel to work while maintaining social distancing or whose job roles cannot be adapted to ensure that they can be done safely. In particular this may include those in the 'close contact services', where social distancing with colleagues and customers is not possible for a significant amount of time. The shielding group have been advised by government to continue to minimise contact with others outside their household or support bubble, and adhere strictly to social distancing while outside of the home. The government's safe working guidance sets out that there are instances where if this requirement cannot be followed at work, employers will have to consider whether or not tasks can be undertaken safely. This may involve adapting duties to reduce the need to not adhere to distancing, adjustments to shifts or supporting employees to use transport methods which avoid public transport. Where this is not possible, it may not be possible for an individual to safely attend a workplace.

There will also be people in the shielding group whose particular medical circumstances place them at escalated risk, who receive medical advice from their own clinicians to stay at home.

To protect workers in this group the government must, as a first priority, extend the furlough scheme for workers who fall into this category and are unable to safely work outside of the home or to work from home. This continuation of the job retention scheme should be funded at the same level for those in this position, i.e. 80 per cent of wages up to the value of £2,500 per month.

Additional work is also needed to ensure that those who are in the 'extremely clinically vulnerable' group can easily demonstrate their status to employers and other providers as

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<sup>&</sup>lt;sup>7</sup> www.gov.scot/publications/coronavirus-covid-19-shielding-way-forward-scotland/pages/6/

<sup>&</sup>lt;sup>8</sup> https://gov.wales/guidance-on-shielding-and-protecting-people-defined-on-medical-grounds-as-extremely-vulnerable-from-coronavirus-covid-19-html#section-44082

<sup>&</sup>lt;sup>9</sup> www.nidirect.gov.uk/articles/coronavirus-covid-19-pausing-shielding-extremely-vulnerable-people

 $<sup>^{10} \ \</sup>underline{www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak/guidance-for-full-opening-schools\#section-2-school-operations$ 

<sup>&</sup>lt;sup>11</sup> www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/close-contact-services

the lockdown begins to ease. Being easily able to identify who is within these group is important for employers. It will help them focus on, and identify, additional risks to individuals when conducting risk assessments and take appropriate steps to protect them. However, there is no easy way to understand who, and how many people, are captured within this group.

We know that around 2.2 million people were identified as being 'clinically extremely vulnerable' and at high risk of severe illness from Covid-19 and had been asked to shield. In this group there were around 627,000 people who had previously worked and were advised to shield and that 31 per cent of that group were furloughed and could not work from home. The government also has its list of people who registered as shielding for food deliveries which is useful tool to show the potential volume of people within this group, although it is likely that this list significantly under-reports the size of the shielding population. The size of the shielding population.

The size and membership of the group is not static, and regularly changes as workers come off, or are added to, this list as the status of their medical condition changes or as they receive a new diagnosis.

Consider for example a case we had put to us:

A worker was diagnosed with thyroid cancer during the Covid-19 pandemic. She was, at the start of the pandemic, not required to shield, but after her diagnosis and radiation treatment was considered 'clinically extremely vulnerable.' She was, therefore, post-treatment and according to government advice, required to shield and to work from home. Her status changed during the pandemic and will change again once the effects of the radiation therapy have worn off making it difficult for the government and employer to understand and track what level of risk she has.

The government must make it easier for workers to provide proof to employers that they continue to be impacted by the pandemic. This could involve, for example, a process similar the one put in place for isolation notes or accept a clinician's or GP's note as sufficient for this purpose.

Action is also needed to ensure that the furlough scheme is flexible enough to take account of the shifting composition of the 'clinically extremely vulnerable' group. At present, while some extensions to furlough have been supported by government (for example for some parents returning from leave) employers who have not previously used the furlough scheme are no longer able to furlough workers. Government must ensure that any extension to the scheme for those who are shielding enables employers who have not previously used the scheme to furlough newly shielding workers.

There are also shielding workers who are able to work at home. However, some in this position are only set up to do so on a temporary basis. Their homes are now their place of

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www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/bulletins/coronavirusandshieldingofclinicallyextremelyvulnerablepeopleinengland/28mayto3june2020#employment-situation-of-clinically-extremely-vulnerable-people

<sup>&</sup>lt;sup>13</sup> www.gov.uk/coronavirus-extremely-vulnerable

work and, in the medium term, they will need changes to their home to enable them to continue working there. There will also be other workers who could work safely at home if their employer was able to fund reasonable adjustments. But there is a risk that if employers feel they cannot finance such changes, that many workers in this position will not be able to access this form of employment and could lose their jobs.

To protect these workers' jobs, and allow them to safely and productively continue to work from home, the government should bring in a process that allows for a one-off easy to access payment from Access to Work to make the home an accessible and appropriate place to work from for the medium to long term.

#### Family and friends living with someone with heightened risk

The group of workers with continuing needs also includes workers who live with someone who continues to have a higher risk from Covid-19 because they are 'extremely clinically vulnerable.' This is because these workers cannot go to work outside the home because of the risk they would then pose to the 'clinically extremely vulnerable' people who they live with.

It is difficult to scale who is within this group, although there were 2.2 million people advised to shield during this pandemic, <sup>14</sup> and many of them will live with working people.

For those living with someone in the shielding group the choice is stark. It is either stay at home without pay and ensure the health of those they live with is protected or go to work and risk infecting someone they live with and the potentially devastating impact that could have.

A worker should not have to choose between protecting the health of those they live with or work.

The government must consider what additional ways it can help workers, who are able to work outside the home, protect the health of the individuals they live which who have heightened risk from Covid-19. If no effective ways are identified the government should extend the furlough scheme so it is available to workers who are able to return to work but cannot work at home and who live with someone who is 'extremely clinically vulnerable.'

#### Carers

Carers have faced significant additional work because of Covid-19.

Covid-19 has had a huge impact on working families' lives, particularly the lives of working mums. A big challenge for working mums, before as well as during the coronavirus crisis, has been how to balance paid work with caring responsibilities. These difficulties have intensified since the crisis began and have damaged women's equal access to employment.

 $\underline{www.ons.gov.uk/people population and community/health and social care/conditions and diseases/bulletins/coronavirus and shielding of clinically extremely vulnerable people in england/28 may to 3 june 2020 \# main-points may be a proposed from the proposed from$ 

<sup>14</sup> 

Mums are one-and-a-half times more likely than dads to have quit or lost their job or been furloughed and so will represent a sizable group of those who are unable to return to work because of their caring responsibilities.<sup>15</sup>

The pandemic has had and will continue to have a disproportionately large impact on women, particularly while there is a shortage in care. The necessary measures, such as the mass and prolonged closure of schools and childcare settings and social isolation restrictions that that prevent friends and family providing informal childcare support, have meant working parents have become full-time carers for their children. <sup>16</sup> As and when schools open more widely, localised closures (such as the closures recently announced in Leicester) will take place. Furthermore, before- and after-school care looks set to remain significantly reduced compared to the pre-pandemic position, which will limit the capacity of working parents to travel to and from work alongside childcare responsibilities.

The scale of the childcare squeeze looks set to be unprecedented. For example, childcare providers are currently running at 37 per cent capacity. And a recent report from CIPD found that one in four working carers consider giving up their job entirely as many struggle to balance their responsibilities without employer support.

Union members who are carers, and parents of disabled children in particular, have told us that they are currently experiencing significant financial difficulties because they have had to reduce their hours at work or stop work altogether to provide care.

The government must take steps to protect the jobs and income of working parents. This must include extending the job retention scheme to ensure that parents who are unable to return to work because of childcare responsibilities can remain on furlough until schools and childcare settings are fully reopened. Parents who have not previously been furloughed, including those who work for an employer who has not previously used the scheme, must also be able to access support.

The government should also give all workers, regardless of their employment status, a day one right to 10 days' paid parental leave to further protect their income, jobs and families and give staff the right to work as flexibly as possible from their first day in the job.

# Wider impact

As the government starts to remove the Covid-19 protections put in place to protect workers, and the UK economy goes into recession, steps must be taken to ensure the progress and momentum built over recent years in to increase participation in the labour market among disabled people and women is maintained and protected. Without government action, employment rates risk falling sharply backwards.

Disabled workers were, at the start of the pandemic, already underrepresented in the workforce and paid less than their peers. TUC analysis of the Labour Force Survey found

<sup>15</sup> www.tuc.org.uk/sites/default/files/2020-06/ForcedOut2.pdf

<sup>&</sup>lt;sup>16</sup> www.tuc.org.uk/research-analysis/reports/forced-out-cost-getting-childcare-wrong

<sup>&</sup>lt;sup>17</sup> www.bbc.co.uk/news/education-53168714

<sup>&</sup>lt;sup>18</sup> www.cipd.co.uk/about/media/press/240620carers-giving-up-jobs

that only around 50 per cent of disabled people of working age are employed, a rate that is 30 per cent lower than their non-disabled peers. It also identified a disability pay gap of 15.5 per cent, which is equivalent to disabled workers earning £3,003 less than their non-disabled peers a year.<sup>19</sup>

TUC analysis of the impact of Covid-19 on working families' lives, particularly the lives of working mums, found that not having enough childcare for working parents risks reversing decades of progress women have made in the labour market, and increasing the gender pay gap – as well as having a damaging impact on our national economic productivity.<sup>20</sup>

While an analysis of the 2008/9 recession found that disabled workers, many of whom are shielding,' clinically vulnerable or extremely vulnerable,' were the last to gain employment and the first to be made redundant. It also found that disabled workers were more likely to experience negative in-work changes to terms and conditions and working practices such as wage freezes, reduced overtime, and the reorganisation of work.<sup>21</sup>

These labour market inequalities make it vitally important that, as well as being offered further support under the job retention scheme, that workers from these groups, including workers unable to return to work because of continuing risks, are protected from unfair dismissal and redundancy.

Existing laws and guidance highlight that redundancy procedures and the criteria used must not unlawfully discriminate against workers, which is true for all protected characteristics.

There are, also, additional protections from, and considerations when, making some groups redundant, for example, women are maternity are protected from redundancy for three months after they have returned to the workplace from maternity leave. And the government committed, in July 2019, to extending that protection to six months.

While an employer, in addition to ensuring they do not directly or indirectly discriminate against a disabled worker, must not treat a disabled person unfavourably because of something connected to their disability unless they can show that what it is objectively justified. This is known as discrimination arising from disability.

The government should ensure employers know what their obligations are under equality laws and regulations and that there will be consequences for any failure to meet them.

To protect furloughed workers, who have been identified as furloughing because they are unable to return to work because of existing and persisting risks or because of caring responsibilities – many of whom are disabled workers and women – from unfair treatment or dismissal, the government should introduce emergency, time-limited protections for this group of furloughed workers, similar to the protections women have under the Maternity and Parental Regulations.<sup>22</sup> Specifically, these workers should have the right to be offered any suitable alternative employment (without having to apply for it) in a redundancy

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<sup>&</sup>lt;sup>19</sup> www.tuc.org.uk/sites/default/files/2019-11/Disability%20doc%20%28003%29%20%28003%29 2.pdf

<sup>&</sup>lt;sup>20</sup> www.tuc.org.uk/sites/default/files/2020-06/ForcedOut2.pdf

 $<sup>^{21} \</sup>underline{\text{www.disabilityatwork.co.uk/wp-content/uploads/2020/04/disability@work-COVID-19-recession-briefing.pdf} \\$ 

<sup>&</sup>lt;sup>22</sup> www.legislation.gov.uk/uksi/1999/3312/regulation/10/made

situation. The protections should be in place for up to six months after workers return from furlough. This would ensure workers who have been distanced from the workplace are able to return to work and return their skills to their pre Covid-19 levels.

The government should also give staff the right to work as flexibly as possible from their first day in the job. Flexible working can take lots of different forms, including the right to predictable hours and working from home. This would help disabled workers and carers stay in work.

Disabled workers and carers who were able to work from home during the crisis should be legally entitled to continue do so permanently.

#### **Conclusions**

This report has focused on the key challenges facing workers who cannot work at home, but who have to stay at home, now that the government have now announced a slow phased re-opening of workplaces and are gradually lifting the restrictions put in place to limit the spread of Covid-19.

This group includes workers who are at increased risk if infected with Covid-19, for example those who were asked to shield or who are 'clinically vulnerable or extremely vulnerable,' and carers, many of whom are women. Those impacted by local lockdowns will also be affected.

Workers should not have to choose between protecting their health, the health of those they live with or the provision of adequate care and their job. However, without government action to extend the existing furlough scheme beyond August many will have to do just that.

For many, the pandemic has shown the benefits home and flexible working can bring. Workers, and employers, should continue to benefit from these new ways of working. The government should look at ways it can support these working patterns to continue, particularly where it would benefit workers those with protected characteristics.

And, as we enter a new recession, there should be additional protections put in place for carers and workers who cannot work at home but who cannot return to the workplace. It is vital that workers in these groups are not unfairly targeted for redundancy or dismissal.

# Summary of key recommendations

The government must take immediate steps to protect the jobs, income and lives of workers who cannot work at home but cannot return to work outside the home because of safety concerns or caring responsibilities.

Without swift action the government will lose the progress and momentum they have built in securing workers with protected characteristics enhanced participation in the labour market.

Local lockdowns will also place jobs and incomes under significant additional strain.

The recommendations below, if implemented as a package, will prevent this regression.

- 1. Protect workers' income until the Covid-19 crises has ended: Extend the furlough scheme for workers who continue to have an increased risk if infected with Covid-19, such as those who were asked to shield, workers who live with them, and carers, particularly working mums. This extension must be funded to the same level of support as at present (80 per cent of income on a monthly salary of up to £2,500) and must be available to employers who have not previously used the scheme, as well as those who have.
- 2. **Protect the income of workers in an area specific local lockdown**: The furlough scheme must similarly be extended to protect the incomes of workers who, because of an area specific lockdown, cannot work.
- 3. Make it easier for workers to show they have an increased risk from Covid-19: It must be easier for workers to provide proof to employers that they continue to be impacted by the pandemic which could involve, for example, a process where a clinician's or GP's note is accepted for this purpose.
- 4. Ensure workers whose jobs could be done from home have appropriate support: With support, more working spaces could be adapted to enable 'clinically vulnerable' people to work at home. A one-off, easy-to-access payment from Access to Work should be made available to facilitate this.
- 5. **Protection from unfair dismissal**: The government should introduce emergency protections from unfair dismissal for workers who have been furloughed because of existing and persisting risks who or because of their caring responsibilities. This would provide those on furlough, or recently returned from furlough, with similar protections to those women have during and immediately following maternity leave. This protection gives workers the right to be offered suitable alternative employment (without having to apply for it) in a redundancy situation.
- 6. **Guaranteed home and flexible working for those who are able to**: Give staff the right to work as flexibly as possible from their first day in the job. Flexible working can take lots of different forms, including the right to predictable hours and working from home. This would help disabled workers and carers stay in work. Disabled workers and carers who were able to work from home during the crisis should be legally entitled to continue to do so permanently.
- 7. **Ensure our parental leave is fit for purpose**: Give all workers, regardless of their employment status, a day-one right to 10 days' paid parental leave.