

Health is everyone's business consultation

Q1. Do you agree that, in addition to government support, there is a role for employers to support employees with health conditions, who are not already covered by disability legislation, to support them to stay in work?

Strongly agree, agree, neither agree nor disagree, disagree, strongly disagree.

Q2. Why do you think employers might not provide support to employees with health conditions not already covered by disability legislation to help them stay in work?

Open question.

People with long term health conditions are sometimes seen as being problematic by employers, due to their propensity to take time off work. Moreover, many smaller employers may lack the requisite legal and HR expertise to have a full understanding of their equalities and HR law and how it might apply in a particular scenario. They can be quite fearful of getting it wrong, and ending up with an ineffective sick employee, or on the wrong side of the law. Without expertise in this area, they may be more likely either to take a slightly reactionary line, and/or to stick to their existing written policy and procedure in an inflexible way.

Q3. Do you agree that a new 'right to request work(place) modifications' on health grounds could be an effective way to help employees to receive adjustments to help them stay in work?

Yes / No / Don't know (with reasons)

Yes, on the proviso that there is some manner of enforcement mechanism or public scrutiny of how well an employer is doing on this. Without this, the onus is on the person who has health grounds to make the request to stick up for their rights, with the probably result that many will still end up going long term sick/leaving employment due to lack of capacity to do this.

Q4. If the government were to implement this new right to request work(place) modifications, who should be eligible?

Any employee returning to work after a period of long-term sickness absence of four or more weeks;

Any employee with a cumulative total of 4+ weeks sickness absence in a 12-month period;

Any employee returning to work after any period of sickness absence;

Any employee who is able to demonstrate a need for a work(place) modification

on health grounds;

Other, please state.

Both people with long term sickness absence and cumulative sickness absence need to be eligible. People with fluctuating conditions may be unlikely to have a long period off work, but they are just as in need of workplace modifications as others who have been off sick for a long period. It also makes sense to extend the right to any employee who is able to demonstrate a need for a workplace modification on health grounds as this will promote early intervention – better to nip a problem in the bud than to deal with it once it already starts to become a problem. Moreover, some employees will exhibit presenteeism, working when not well to do so, for a number of reasons such as pride, refusal to assimilate their illness into their identity, lack of entitlement to sick pay, fear of losing their job etc. Such employees need the right to workplace modifications too.

Q5. How long do you think an employer would need to consider and respond formally to a statutory request for a work(place) modification?

0-4 weeks;

5-8 weeks; or

9-12 weeks?

Q6. Do you think that it is reasonable to expect all employers:

To consider requests made under a new 'right to request' work(place) modifications?

Yes / no / if no – why?

Yes, because many workplace modifications are simple to achieve, and because as a country we need to deliver a uniform, simple message that people with health conditions are expected to be accommodated within the workplace as far as possible. If there are major reasons workplace modifications cannot be countenanced, this can be the response, but it is reasonable to expect all employers to consider requests.

To provide a written response setting out their decision to the employee?

Yes / no / if no – why?

This is needed to ensure that employers properly consider the request and can show that they have done so. It is also needed so the employee knows their request has been properly considered. Indeed, the employer should be compelled not only to set out their response in writing, but to provide their reasons for that response.

Q7. Please identify what you would consider to be legitimate business reasons for an employer to refuse a new right to request for a work(place) modification made on health grounds:

The extent of an employer's financial or other resources;

- The extent of physical change required to be made by an employer to their business premises in order to accommodate a request;
- The extent to which it would impact on productivity;
- Other – please state.

Please give further views in support of your response.

Employers should not be able to refuse an employee's right to request workplace adjustments; this should apply to all employers equally. The duty on employers to actually make the modifications requested must be reasonable; employers cannot be expected to go under or change their whole operation. However, it can be expected that all employers accommodate modifications as far as possible/provide alternatives wherever viable to do so e.g. if they cannot make a physical change to their business premises, could the employee work remotely?

Q8. The government thinks there is a case for strengthened statutory guidance that prompts employers to demonstrate that they have taken early, sustained and proportionate action to support employees return to work. Do you agree?

Yes – no – maybe – don't know

Q9. If no, please give reasons for your answer.

Q10. If yes, would principle-based guidance provide employers with sufficient clarity on their obligations, or should guidance set out more specific actions for employers to take?

- Principle-based guidance provides employers with sufficient clarity;
- Guidance should set out more specific actions for employers to take;
- Don't know;

Other – please state.

Whilst it will be impossible to provide comprehensive specific actions that an employer must take, principle-based guidance may be too vague. Perhaps a half way house can be achieved – principle-based guidance with a number of concrete suggestions and things that small/medium/large employers should be doing.

Q11. The government seeks views from employers, legal professionals and others as to what may be the most effective ways in which an employer could demonstrate that they had taken – or sought to take – early, sustained and proportionate action to help an employee return to work. For example, this could be a note of a conversation, or a formal write-up.

We would suggest that the government ought to provide guidance in this area, so that employers are clear about their duties. This could also include pro-forma forms/similar templates for employers to use, with helpful prompts, to help them meet their obligations.

Q12. As an employer, what support would you need to meet a legal requirement to provide early, sustained and proportionate support to help an employee to stay in work or return to work from a long-term sickness absence?

- Better quality employer information and guidance;
- More easily accessible employer information and guidance;
- Easier access to quality OH services; or
- Other – please state.

Q13. As an employee: in your experience, what actions has your employer taken to support your health at work? Please describe how these were effective or ineffective.

Q14. As an employee: what further support/adjustments would you have liked to receive from your employer?

Q15. All respondents: in order for employers to provide effective return to work support, what action is needed by employees? Select all that apply.

- To have discussions with their employer to identify barriers preventing a return to work and to inform workplace support;
- To agree a plan with their employer to guide the return to work process;
- To engage with OH services; or
- Other – please state.

We agree that action by employees is also needed to optimise return to work support; indeed employees need to be partners in getting themselves back to work. Occasionally there are barriers to them having productive discussions with their employers, such as where there has been a break down in the relationship. In scenarios such as this, effective external support may be needed to enable them to have discussions with their employer to identify barriers and how these can be overcome, moving towards agreeing a plan to guide the return to work process.

On engaging with OH services, in principal this seems sensible. However we've heard to employees with neurological conditions having poor experiences of occupational health services, which lack sufficient expertise to be able to provide useful advice and guidance to those with complex neurological conditions. Moreover, unless OH services are properly regulated, ensuring standards and safety, engagement should not be obligatory, particularly for those with complex long term conditions.

Q16. All respondents: do you think the current SSP system works to prompt employers

to support an employee's return to work?

Yes – **no** – maybe – don't know. Please give reasons for your answer.

The SSP system as it stands does not allow easily for a phased return to work – and it excludes those who do not meet the income threshold for National Insurance.

Q17. All respondents: what support would make it easier to provide phased returns to work during a period of sickness absence?

Guidance on how to implement a good phased return to work;

A legal framework for a phased return to work which includes rules on how it should be agreed and implemented;

Clearer medical or professional information on whether a phased return to work is appropriate; or

Other suggestions.

A phased return needs to be tailored to the needs of an individual, and their employer. A legal framework could ensure more employees get a phased return to work agreed. However the legislation would have to be carefully written as the best phased returns to work are necessarily tailored to the needs of the employee and their employer.

Q18. All respondents: would the removal of rules requiring identification of specific qualifying days help simplify SSP eligibility?

Yes – no – maybe – don't know. Please give reasons for your answer.

Q19. Do you agree that SSP should be extended to include employees earning below the LEL?

Yes – no – maybe – don't know. Please give reasons for your response.

We don't think it is right that you can be considered too low paid to be worth SSP when you fall ill. Those earning a low wage often have difficult financial circumstances, which are only exacerbated if they do not receive SSP. While they may theoretically be eligible to claim ESA, realistically many do not, and instead encounter further financial difficulties.

Q20. All respondents: for employees earning less than the LEL, would payment of SSP at 80% of earnings strike the right balance between support for employees and avoiding the risk of creating a disincentive to return to work?

Yes – no – maybe – **don't know**. Please give reasons for your answer.

Not clear to us at what level this should be set. We note that many people want to return to work, as it provides numerous individual personal benefits beyond the purely financial. Those who are disincentivised to return are perhaps more likely to be so due to a poor relationship with their

employer than by the level of pay received. It is important to ensure as far as possible that those who are low paid already don't face undue financial penalty for being sick and needing to have time off.

Q21. Do you agree that rights to SSP should be accrued over time?

Yes – no – maybe – don't know. Please give reasons for your response.

We do not want employers to fear taking on people with health conditions, lest they end up paying long term SSP to someone who has not been in post long. There is already a significant disability employment gap and initiatives which can help reduce this should certainly be countenanced. But we also believe people with long term health conditions need access to sick pay, given they are potentially more likely to need to take sick days, particularly if their reasonable adjustments aren't quickly agreed etc.

Q22. Should the government take a more robust approach to fining employers who fail to meet their SSP obligations?

Yes – no – maybe – don't know. Please give reasons for your answer.

People off sick from work are in a vulnerable position. The government should help prevent employers from overlooking or flouting their responsibilities in regard to the payment of SSP by making compliance higher on their agenda due to the potential consequences of non-compliance. Employers who fail to meet their legal obligations towards their employees ought to face consequences.

Q23. Do you think that the enforcement approach for SSP should mirror National Minimum Wage enforcement?

Yes – no – maybe – don't know. Please give reasons for your answer.

This sounds like a sensible approach, replicating a system that is already working well.

Q24. Do you support the SSP1 form being given to employees four weeks before the end of SSP to help inform them of their options?

Yes – no – maybe – don't know. Please give reasons for your answer.

This would give employees time to consider their options, and to get in contact with their employers to make back to work plans if that is the course of action they wish to take. Ensuring employees are informed about their sick pay coming to an end equips and enables them to make decisions, in a way that is not happening at present.

The consultation document mentions the employee being prompted to discuss with their employer the support they need to return to work, or contacting Jobcentre Plus to seek advice about other suitable job opportunities or retraining options. This entirely overlooks the fact that some employees will be unable to return to work, or look for alternative work, due to being too ill to do so. The SSP1 form should take the opportunity to inform them about ESA/universal credit, and how to make a claim.

Q25. All respondents: how could a rebate of SSP be designed to help employers manage sickness absence effectively and support their employees to return to work?

Open question.

- A rebate of SSP could be given to SMEs who can demonstrate they have adopted sickness absence best practice procedures and are taking steps to attempt to help an employee return to work (even if that employee ultimately cannot return due to the extent of their health issues).
- An automatic rebate of some SSP costs could be created in return for increased expectations of SMEs, such as mandating return to work plans.
- A rebate could focus on certain employees, for example sharing the costs of supporting sickness absence of disabled people, as they are currently most likely to leave work following a long-term sickness absence, and sharing the cost of supporting employees who have recently moved from long-term unemployment into work.
- We do not support making rebates conditional on successfully helping someone to return to work after long-term absence. This is for two reasons. Firstly, given the individual nature of sickness absence, an employer may do their best to support an employee, but the employee may still be unable to return to work due to their poor health. A rebate on this basis would therefore not reward some who have employed best practice, which would demotivate them from doing so again. Secondly, unscrupulous employers could potentially try to use pressure tactics/bullying or similar to try to get the employee back to work, and would still be rewarded.

Q26. All respondents: at this stage, there are no plans to change the rate or length of

SSP. The government is interested in views on the impact of the rate and length of SSP on employer and employee behaviour and decisions.

The consultation document suggests a number of unknowns in relation to employees' motivation, and what might incentivise them/disincentivise them with regard to a return to work. While financial incentives are clearly an important motivator, work (especially good work) can be a source of fulfillment, identity, and socialisation – which can be equally strong incentives for people to return to work. In order to be able to better judge whether a move to higher payments is worth the risk that some employees may not return to work as soon as they are able to, it seems additional research is needed to quantify that risk – and whether the overall benefit would outweigh that risk.

While we would support longer payment of SSP – as many neurological conditions take a long time to recover from – we are equally keen that people with disabilities should not be seen as a potential liability, with the result that employers come less keen to employ them.

Q27. In your view, would targeted subsidies or vouchers be effective in supporting SMEs and the self-employed to overcome the barriers they face in accessing OH?

Yes – no – maybe – **don't know**. Please give reasons for your answer.

We have little knowledge or understanding of the barriers SMEs and the self-employed face in accessing OH, beyond that provided in this document.

Q28. Please provide any evidence that targeted subsidies or vouchers could be effective

or ineffective in supporting SMEs and the self-employed to overcome the upfront cost of accessing OH services.

Open question.

Q29. In your view, would potentially giving the smallest SMEs or self-employed people the largest subsidy per employee be the fairest way of ensuring OH is affordable for all?

Yes;

No;

Don't know

If no or don't know – what would be better?

Q30. All respondents: what type of support should be prioritised by any potential, targeted OH subsidy for SMEs and/or self-employed people?

2 OH assessments and advice;

1 Training, instruction or capacity building (e.g. for managers and leads);

3 OH recommended treatments.

Q31. Please give reasons and details of any other categories of support you think should be included.

According to The Economist and Novartis's The workplace response to neurological conditions report, organisations need to develop or strengthen their existing policies to better support staff with MS, migraine and Alzheimer's Disease; educate staff around the capabilities of those with these conditions to remove negative perceptions; and consider introducing minor workplace adjustments that will help staff stay in work longer.

Part of this will involve occupational health, as well as HR and line managers working closely to find effective solutions to support employees with, or those caring for somebody with, a neurological disorder.

Whilst we are broadly supportive of the proposals to increase uptake of occupational health services by SMEs and self-employed people, there is a slight danger that generic occupational health services will be poorly equipped to provide advice to, and accurate assessment of, people with complex neurological conditions, who really need very specialist advice, assessment and treatments. Therefore targeted OH subsidies ought to be flexible enough that SMEs have the choice to buy-in specialist OH services as and when these are needed, even if they have a usual block contract with one OH provider.

Q32. How could the government ensure that the OH services purchased using a subsidy are of sufficient quality?

The government should establish a regulatory body to monitor OH services. This could potentially be an extension of the existing Occupational Safety and Health Consultants Register (OSHCR) which was set up to assist UK employers with advice on workplace health and safety issues. Currently the

scheme is only voluntary, but consultants who are registered on OSHCR have been assessed by their professional body and have achieved a set standard based on their qualifications and experience. The OSHCR could be strengthened and used as a list of approved OH service providers. Alternatively/additionally, the existing set of standards for OH services - the Safe, Effective, Quality Occupational Health Service (SEQOHS) – could be extended provide accreditation of OH services. Only OH providers that are approved according to whichever scheme is chosen should be eligible to receive subsidies. Crucially, people with complex neurological conditions accessing OH services mustn't be exposed to any misinformation or ill-founded advice and treatments, as this could lead to significant harm.

Q33. As an OH provider, would you be willing to submit information about the make-up of your workforce to a coordinating body? N/A

Yes – no – maybe – don't know.

Q34. If no, maybe or don't know, what are your reasons for not providing your data?

time;

cost;

confidentiality;

do not see the benefit;

other – please state.

Q35. As an OH provider, expert or interested party, what are your views on private OH providers' involvement in the training of the clinical workforce? N/A

Private providers should be more involved;

Private providers should be more involved but with additional support;

Private providers should not be more involved.

Q36. If providers should be more involved but will need support, what additional support would be needed? N/A

Open question.

Q37. As an OH provider, expert or interested party, what changes to the training and development of the OH workforce could support the delivery of quality and cost-effective services? N/A

Q38. As an OH provider, should there be a single body to coordinate the development of the OH workforce in the commercial market? N/A

Yes – no – maybe – don't know. Please state reasons for your answer.

Q39. If yes, what should its role be?

Q40. As an OH provider, what would encourage providers, particularly smaller providers,

to invest in research and innovation in OH service delivery? **N/A**

Q41. What approaches do you think would be most effective in terms of increasing access to OH services for self-employed people and small employers through the market? Please order in terms of priority: **N/A**

- New ways of buying OH;
- New OH service models; and
- The use of technology to support OH service provision.

Q42. If applicable, what other approaches do you think would be effective? Please explain the reasons for your answer. **N/A**

Q43. As an OH provider, expert or interested party, what more could be done to increase the pace of innovation in the market? **N/A**

- Co-funding;
- Access to finance;
- Help with innovation or evaluation;
- Commercial advice;
- Don't know;
- Other – please state

Q44. As an OH provider, expert, interested party, what methods would you find most helpful for finding out about new evidence and approaches that could improve your service? **N/A**

Q45. As an employer, what indicators of quality and compliance arrangements would help you choose an OH provider? **N/A**

- Work outcomes;
- Quality marks;
- Process times;
- Customer reviews;
- Other – please state;
- Don't know;
- Indicators won't help

Q46. As a provider, what indicators of quality could help improve the standard of services in the OH market? **N/A**

- Work outcomes;
- Quality marks;
- Process times;
- Customer reviews;
- Other – please state;
- Don't know;
- Indicators won't help

Q47. All respondents: how could work outcomes be measured in a robust way?

Measuring work outcomes should take place both immediately after the intervention, and a number of months later, to look at whether the outcome is sustained (with the expectation that this is less likely in people with progressive conditions). Measuring the outcome of an intervention needs to take into account feedback from OH, employers and employees – both in order to ascertain the extent to which the outcome was down to the intervention (or not), but also to determine whether the outcome was positive for the individual even if they did not sustain employment. Some people will turn out to simply be too ill to return to work – so their not returning/looking for alternative employment is not the sign of a 'failed intervention'. Indeed for some, leaving the world of employment, but managing to maintain some volunteering activity, could be the sign of a positive and effective OH intervention. This needs to be captured in order to measure interventions in a fair and holistic way.

Q48. All respondents: do you have suggestions for actions not proposed here which could improve capacity, quality and cost effectiveness in the OH market? N/A

Q49. Do you need more information, advice and guidance? N/A

Q50. If so, what content is missing?

- Legal obligations and responsibilities/employment law;
- Recruiting disabled people and people with health conditions;
- Workplace adjustments, such as Access to Work;
- Managing sickness absence;
- Managing specific health conditions;
- Promoting healthier workplaces;
- Occupational health and health insurance;
- Best practice and case studies;
- Links to other organisations, campaigns and networks;

Local providers of services and advice;

Other – please state.

Q51. What would you recommend as the best source of such new advice and information?

The main government portal (GOV.UK);

The Health and Safety Executive;

Jobcentre Plus; or

X Other – please state.

Acas, Business Disability Forum

Q52. As an employer, where do you go for buying advice and support when purchasing, or considering purchasing, OH services? N/A

Internet search;

Professional/personal contact;

Legal sources;

HR person (in-house or external);

Accountant or other financial specialist;

Other – please state;

Don't know;

I don't seek advice or support.

Q53. As an employer, what additional information would you find useful when purchasing, or considering purchasing, OH services? N/A

Health is everyone's business: proposals to reduce ill health-related job loss 75

Online questionnaire to help you identify what type of services you could benefit from;

Toolkit that could include information on OH referral and assessment process;

Basic online information on the process of buying OH services;

Provider database;

Comparison website;

Information on the value of OH services.

Q54. All respondents: do you agree with the proposal to introduce a requirement for

employers to report sickness absence to government?

Yes – no – maybe – don't know. Please give reasons for your answer.

Yes, as this seems a sensible suggestion for a way to target information/advice at SMEs, without additional burden on small employers. However, this information should only be used for this purpose.

Q55. As a small or medium sized employer, would you find it helpful to receive prompts to information or advice when you have an employee on a sickness absence? **N/A**

Yes – no – maybe – don't know. Please give reasons for your response.

Q56. Do you think this overall package of measures being explored in this consultation provides the right balance between supporting employees who are managing a health condition or disability, or on sickness absence, and setting appropriate expectations and support for employers?

Yes – no – **maybe** – don't know. Please give reasons for your response.

There are a number of sensible measures proposed within this document, that should go some way to improving the employment retention of people experiencing ill health. However, there are some important factors that have been overlooked/not sufficiently addressed. These include:

- Often, relationships with employees break down while a person is on sick leave. Services need to be able to address this – and best practice established as to how to prevent this happening.
- At present, many disabled people feel that they are discriminated against at work. This document does not detail sufficient measures to help disabled people seek justice where they are experiencing/have experienced discrimination. Strengthening people's ability to seek redress would provide another incentive for employers to improve their practices.