



HM Government

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Proposals to reduce ill health-related  
job loss

Presented to Parliament  
by the Secretary of State for Work and Pensions  
on behalf of the Department for Work and Pensions and the Department of Health and  
Social Care  
by Command of Her Majesty

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# How we consult

## Consultation principles

This consultation is being conducted in line with the revised Cabinet Office consultation principles published in March 2018. These principles give clear guidance to Government departments on conducting consultations.

## Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

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The information you send us may need to be passed to colleagues within the Department for Work and Pensions (DWP) and Department of Health and Social Care (DHSC), published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

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# Ministerial Foreword

Today, a record number of people are in work. More people are experiencing the health benefits that good work can bring.

The world of work is evolving. People are living and working longer. This brings a wider range of skills and experiences into the workplace. To realise the potential of this workforce we need to ensure employers are fully equipped to support those who are disabled or experiencing long-term health conditions. The numbers show that far too many disabled people and people with health conditions are missing the opportunity to showcase their talents – around 300,000 people with a long-term mental health condition fall out of work every year.

Together, government and employers have the ability to revolutionise the world of work, making it more accessible and flexible. We must do more to create the conditions for success by ensuring all employers have access to the right support to act on their responsibilities to their employees. To achieve this, we are proposing to improve the information and advice we provide to employers; improve the occupational health market and look at what financial support government could provide to improve access to occupational health for smaller businesses. These proposals, alongside the NHS' increased focus on prevention and additional £20.5bn a year settlement, aim to deliver a healthier and more productive society.

However, we cannot do this alone. Government must work hand-in-hand with employers who have the ability to change the workplace for disabled people and those with long-term health conditions. Simple, low-cost employer actions and a supportive approach can make all the difference. For example, this could be making flexible adjustments to someone's working pattern, or keeping in touch with people while they are on sick leave. This has benefits for all. When someone becomes ill at work, their employer not only loses a valuable employee but incurs extra costs. For the employee, the longer they are off work due to ill health, the less likely they are to return to employment<sup>1</sup>, and the further their health can deteriorate.<sup>2</sup>

Many employers already see the case for investing in the health and wellbeing of their workforce. However, evidence shows there are marked differences in large and small employers' ability and capacity to act.

This consultation proposes a range of measures to address these challenges. We want to boost the support that government provides and focus on encouraging early and supportive action by employers for their employees with health conditions. Taken together, these proposals will support more disabled people and people with long-term health conditions to remain in work which is sustainable and positive for their health.

We all have a stake in the health and prosperity of the nation. It is by working together to build and sustain workplaces in which everyone can thrive that we will have a real impact.

# Executive Summary

Despite record rates of employment, there remains a gap between the employment of disabled people compared with those who are non-disabled, and disabled people are twice as likely to fall out of work.<sup>3</sup> Significant intervention is required to transform the lives of disabled people and people with long-term health conditions.

In an ageing society, this government is committed to ensuring that people can live and work well for longer. This will benefit individuals' financial and health outcomes, as well as employers and society as a whole. Many people who are in work may also be managing one or more long-term health conditions which can affect their ability to remain in work. Some people leave work for health-related reasons; yet evidence shows that the right support from their employer could help them to stay in work.

## **This consultation sets out proposals which aim to reduce ill health-related job loss.**

There is a case for employers to do more to support their employees who are managing health conditions, or who are experiencing a period of sickness absence. In return, the government can provide more help for employers, recognising the differences in employers' capacity and capability to act.

The benefits of achieving this ambition are great. For employers, investing in employee health and wellbeing can lead to increased workforce productivity and help retain key talent in an organisation. For government, keeping more people in work is good for the economy and reduces spend on out-of-work benefits, and potentially reduces demand on the NHS. For individuals, good work is generally good for mental and physical health and wellbeing.<sup>4</sup>

**Chapter one sets out what needs to change to support people with health conditions to remain in work.** Disabled people and people with long-term health conditions are at greater risk of falling out of work. Once people fall out of work for health reasons, the barriers preventing their return are high – and the likelihood of returning to work reduces the longer the individual is off work sick.

Evidence shows that early and sustained support by an employer is important in reducing ill health-related job loss. While many employers already provide support to their employees who are managing health conditions at work or returning from sickness absence, there are wide differences in employers' ability and capacity to act. Smaller employers in particular face a range of challenges, even when they want to support their employees, including a lack of time, expertise or capital. The proposals set out later in this consultation seek to address those barriers by providing greater government support.

**Chapter two proposes changes to the legal framework to set clear expectations of employers' responsibilities towards their employees.** Changes to an employee's work or working environment can help employees return to work more quickly and enable them to stay in work. Under the Equality Act 2010, employers have a duty to provide reasonable adjustments for disabled employees. However, there are some employees who may miss out on support from their employer, for example because they do not meet the definition of disabled. The government is considering introducing a new right to request work(place) modifications on

health grounds, empowering those employees not covered by the reasonable adjustments duty to seek the support they need from their employer.

Once an employee goes on sickness absence, evidence shows that early and sustained support by their employer is important. There is evidence to suggest that some individuals experiencing ill health may be dismissed before their employer takes steps to reintegrate them.<sup>5</sup> The government believes there is scope to strengthen statutory guidance to support employers to take early, sustained and proportionate steps to support a sick employee to return to work, before that employee can be fairly dismissed on the grounds of ill health.

The system of Statutory Sick Pay (SSP) is inflexible and does not reflect modern working practices, such as flexible working. The government proposes to reform SSP so that it is better enforced and more flexible in supporting employees. This includes amending the rules to enable an employee returning from a period of sickness absence to have a flexible, phased return to work. It also includes extending protection to those earning less than the Lower Earnings Limit (currently £118 per week) who do not currently qualify for SSP, as recommended in the *Taylor Review of Modern Working Practices*. Where employers fail to pay SSP where it is due, the government could increase fines on employers. The government will also consider whether enforcement of SSP should be included within the remit of a proposed new, single labour market enforcement body. To provide clarity for employees of their rights, the government intends to make access to a day one written statement a right for both employees and workers. This would include details of eligibility for sick leave and pay.

This government recognises that smaller employers may need additional support to help them meet their legal obligations, due to limited resources and the challenges of running a small business. The government is interested in how a rebate of SSP, targeted at small and medium enterprises (SMEs), might work to support greater employer action in helping their employees to return to work. The consultation also considers the extent to which the rate and length of SSP drive employer and employee behaviour.

**Chapter three sets out proposals to improve access to high quality, cost-effective occupational health (OH) services for employers and self-employed people.** The government anticipates that encouraging employers to take early action to support employees will result in more employers wanting to purchase OH services. The government recognises that cost is a barrier faced by SMEs when purchasing OH, with small employers five times less likely to invest in OH services than large employers.<sup>6</sup> Through this consultation, the government is seeking views on ways to reduce the cost for SMEs through potential co-funding of OH, for example through a direct subsidy or voucher scheme, so that smaller employers can access the benefits of good OH advice and support.

OH is largely provided commercially. There may be a role for government, and others, in ensuring that the market can respond effectively to increased demand with an increased supply of high quality and cost-effective services.

Shortages in the OH clinical workforce risk limiting what the OH market can offer. To address this in the short term, the government could work with partners to encourage an increase in the numbers of doctors and nurses working in OH. It could also help put in place leadership to oversee the development of the workforce in the future, and improve the information needed to support this. In the longer term, new workforce models and different approaches to training could help providers to make better use of a more diverse range of healthcare professionals and non-clinical staff, ensuring the workforce is fit for future challenges.

Innovation can drive quality and improvements in services, contributing to better outcomes for employers and employees as well as potentially reducing costs. The government is interested in supporting innovation in the ways that employers buy services and in how services are delivered, including harnessing the potential of technology to support service provision.

Research provides a rich base to support innovation in services, but there are signs that the academic research base for OH services is in decline. The government is considering ways to support the prioritisation and coordination of working-age health research and development, as well as ways of strengthening dissemination so that providers are able to make best use of it.

Quality standards and quality marks are useful tools for both providers and employers. Standards can enable providers to benchmark their performance and help them maintain or improve their offer. For employers, standards can help them judge the outputs of the services they receive. Quality marks can help purchasers quickly and easily choose between providers. There is an opportunity to build on existing standards and arrangements to help improve access to appropriate, quality services for employers and employees.

**Chapter four sets out proposals to provide employers with the advice and support they need to understand, and act on, their responsibilities.** It is important that employers feel confident in engaging with their employees, and that they have access to good quality advice to understand and comply with their legal obligations and provide the appropriate support to their employees. Employers often misunderstand or are uncertain of their obligations around workplace disability and sickness absence, or fear 'doing the wrong thing'. Larger employers tend to feel better informed than smaller employers.<sup>7</sup> When purchasing OH services, smaller employers are less likely to have access to in-house support, such as HR staff, to help them make purchasing decisions.<sup>8</sup> The government is seeking views on improving the provision of advice and information to support management of health in the workplace and encourage better-informed purchasing of expert-led advice. This would be promoted by a national, multi-year communications campaign outlining the advice and information available, and particularly targeted at SMEs and the self-employed.

The government is exploring the possibility of employers automatically reporting sickness absence through their payroll system, so that government has the data to be able to provide timely and targeted guidance to employers on how to manage sickness absence.

**By supporting all working-age people with health conditions, the government is driving a preventative approach that will help people to stay in work if they develop a health condition or disability, for the benefit of their long-term employment and health outcomes.**

The government will use the evidence and views gathered during this consultation to develop these proposals further, considering an approach which offers the best value for money and is affordable in the context of the next Spending Review.

The UK Government is committed to working with the devolved administrations to support more disabled people and people with long-term health conditions to stay and thrive in work and will consult with them on the proposals set out in this document.

# Introduction

1. This government is committed to creating an environment where everyone can go as far as their talents will take them. For the working-age population, this means everyone having the opportunity to progress and thrive in work, and taking advantage of the benefits that being in work can bring.
2. Employment rates are at historic highs, and there is higher employment among groups which have typically been underrepresented in the workforce. The number of disabled people in employment has increased over the last five years.<sup>9</sup> This is excellent progress, but there is further to go. The disability employment gap remains too large: around 5 in 10 disabled people are in work, compared with around 8 in 10 non-disabled people.<sup>10</sup>
3. Far too many disabled people fall out of work unnecessarily: 300,000 disabled people leave work every year. **Disabled people are 10 times more likely to leave work following long-term sickness absence than non-disabled people.**<sup>11</sup> The impact on individuals is significant: health conditions which can get worse over time, the risk of being trapped on benefits, and reported lower life satisfaction than those in work. Ill-health which prevents people working costs the economy around £100bn a year, and sickness absence costs employers £9bn a year.
4. The continued strength of the labour market alone will not be enough to support more disabled people to enter and remain in work: **significant new action is required to drive transformational change.**

An individual is defined as having a **long-term health condition** if they report having a physical or mental health condition or illness that lasts, or is expected to last, 12 months or more.

If a person with a long-term health condition or illness reports that it reduces their ability to carry out day to day activities, they are also considered to be **disabled**.

**Long-term sickness absence** is defined as a period of four weeks or more when an employed individual is prevented from working due to illness or injury.

5. The UK has a global reputation as a great place to do business, with high standards, a competitive environment and a dependable rule of law. At the heart of this government's Industrial Strategy is a commitment to maintain and enhance the business environment that is so essential to the success of the UK economy. The flexibility of the UK labour market allows people to participate in work in a way that fits their preferences and circumstances, and that meets the needs of business and the economy.<sup>12</sup>
6. In December 2018, the government published the **Good Work Plan**<sup>13</sup>, setting out the government's vision for the future of the labour market and an ambitious plan for implementing the recommendations from the **Taylor Review of Modern Working Practices**.<sup>14</sup> This important package represents the biggest upgrade to workers' rights in over 20 years. It demonstrates how the UK is leading the way internationally to ensure workers have access to the rights and protections they deserve in the context of a changing world of work. This consultation forms part of that vision.

7. In January 2017, the Prime Minister commissioned an independent review into how employers can better support the mental health of all people currently in employment, including those with mental health problems or poor wellbeing, so that they remain in and thrive in work. Government fully supports the recommendations made in ***Thriving at work: the Stevenson/Farmer review of mental health and employers***, which provides a framework for workplace mental health through the mental health core standards that can be implemented by even the smallest employers.<sup>15</sup>
8. Everyone who can should be able to access and enjoy good work, and the benefits that being in work can bring. The government's ***Prevention is Better than Cure*** vision focuses on how to create the right conditions for good health and wellbeing, in which everyone can stay happy, healthy and independent for as long as possible.<sup>16</sup> This means reducing the chances of health problems arising in the first place and, when they do, supporting people to manage those conditions as effectively as possible. This includes preventing people from falling out of work for health reasons. For employers, it means taking action to create workplaces that support their employees' health.
9. In an ageing population, people are living and working longer, but may also be living with one, or multiple, long-term health conditions. Some may leave work early due to their health condition: one in five people aged 50–64 left their last job for health reasons.<sup>17</sup> Employers will need to adapt to meet the changing needs of their workforce. Rethinking the approach to work and health is a core part of the government's ***Ageing Society Grand Challenge***, which aims to ensure that people can enjoy at least five extra healthy, independent years of life by 2030. This includes helping support people to remain in work for longer.<sup>18</sup>
10. The vast majority of employers understand the importance of investing in employee health and wellbeing, and the associated benefits to their business.<sup>19</sup> At a time of high employment and a changing workforce, retaining and supporting the progression of employees has the potential to help businesses grow and prosper, to maintain or increase productivity, and to retain talent.
11. In ***Improving Lives: the future of work, health and disability***, the government set out an ambitious and comprehensive programme of action to see one million more disabled people in work by 2027.<sup>20</sup> It established the need for action in three key settings: the welfare system, the workplace and the healthcare system. **This consultation focuses specifically on the workplace setting**, and the vital role that employers play in helping disabled people and people with long-term health conditions to stay in and thrive in work.
12. **Through this consultation, the government is seeking views on specific proposals which aim to reduce ill health-related job loss.** These include:
  - Making changes to the legal framework to encourage employers to support employees with health issues affecting work, and to intervene early during a period of sickness absence;
  - Reforming Statutory Sick Pay so that it is better enforced, more flexible and covers the lowest paid employees;
  - Improving occupational health provision by considering ways of reducing the costs, increasing market capacity and improving the value and quality of services, especially for small employers and self-employed people;
  - Improving employers' and self-employed people's access to good advice and support, ensuring that all employers understand and are able to act on their responsibilities to their employees.

13. These proposals are based on the available evidence of what effective workplace practice looks like. The government is conscious of the potential impact on businesses and is therefore seeking feedback on the likely impact and effectiveness of these proposals. This will enable the government to determine what approach is likely to be the most effective, offers the best value for money and is affordable in the context of the next Spending Review. A **complementary package of measures** is likely to be most effective – expecting employers to play a greater role, but at the same time providing more government support.
14. The right balance will level the playing field between SMEs and large employers, by giving the former more support, and ensure that all employers are acting responsibly. It can also incentivise employers to go beyond their minimum duties and do more to support their employees. There are different levers available to government to achieve this. An effective approach is one that uses multiple levers to tackle a variety of issues and challenges – no single policy could tackle them all.
15. **This forms just one part of the government's wider programme of action on work and health.** In *Improving Lives*, the government set out the complementary role of the health system in providing initial support and advice through primary care and fit note discussions, and through referrals to a wide range of relevant treatment. Through the *NHS Long Term Plan*, the government is focused on building an NHS fit for the future by enabling everyone to get the best start in life, and helping communities to live well and people to age well.<sup>21</sup>

**The benefits of retaining people in work are great: for employers, individuals and government.**

16. **For employers, there are a wide range of benefits from investing in employee health and wellbeing.** The benefits of retaining an experienced employee are usually greater than recruiting and training new staff. The costs associated with sickness absence and ill health-related job loss, including arranging temporary cover or recruiting new staff, can be reduced by employers taking action to create workplaces that support employees' health. There are also other, less tangible benefits, such as an enhanced reputation for the organisation or improved employee morale (which can lead to higher productivity).
17. **For individuals, being in employment can have a positive effect on mental and physical health and wellbeing.** Work can give a sense of purpose, help build self-esteem and provide the opportunity to build relationships. The quality of work is also important. The features of good work include good relationships with colleagues, a healthy working environment, job security and adequate pay, as well as skills training with the potential for progression. On average, individuals in employment report higher levels of wellbeing than those who are unemployed.<sup>22</sup> There is clear evidence that unemployment can be detrimental to health. The longer people are out of work, the further people's health can deteriorate: among those aged over 50, even a short period of unemployment increases the risk of mortality and a heart attack as much as smoking.<sup>23</sup>
18. **For government,** enabling more people to work is good for the economy and reduces the amount spent on out-of-work benefits. There is potential to reduce demand on the NHS: moving from employment to unemployment is estimated to increase GP consultation rates by 50%.<sup>24</sup>

**Both government and employers have a role to play in creating the conditions for success**

19. Employers have an important role to play in creating workplaces in which employees with health conditions can stay and thrive in work. Employers are well placed to provide support to their employees: they understand the individual, the type of role they do and the nature of the workplace, and so can act quickly and responsively to issues as they arise. **The right support from an employer or line manager is key to helping people with health conditions remain in work, or supporting people to return to work after a period of sickness absence.**
20. Many employers have already thought through how to proactively and effectively support employees to thrive in work. Existing good practice to improve employee health and wellbeing includes the provision of Employee Assistance Programmes and occupational health services, health and wellbeing promotion, training for line managers on ways to improve employee health and wellbeing, or interventions to prevent common health conditions becoming a problem.<sup>25</sup>
21. SMEs, which account for over 99.9% of all private sector businesses in the UK, make a valuable contribution to creating healthy and inclusive workplaces.<sup>26</sup> For example, half (50%) of all employed disabled people work in small businesses (those with fewer than 50 employees), compared to just under half of non-disabled people (47%).<sup>27</sup> A recent study by the Federation of Small Businesses showed that small employers with a disabled employee, or an employee with a health condition, were more likely to provide flexible working to all of their employees.<sup>28</sup>
22. Despite this evidence of good practice, there is also evidence that there are gaps in the support which is available, and that more can be done to support all employers to act like the best. Almost 10% of small employers do not take action to manage employees' returns to work after long-term sickness absence and only 21% of small employers provide occupational health compared with 92% of large employers.<sup>29</sup> The challenges faced by small employers are discussed in chapter one.
23. Government also has a supporting role to play in creating the right conditions for employees to stay in and thrive in work. The government provides a range of support to employers, for example through schemes such as **Access to Work**, which provides employers with practical and financial support to help more disabled people start or stay in work.<sup>30</sup> The government is promoting best practice through the successful **Disability Confident** scheme, which is helping over 11,000 employers to understand how to reduce the barriers to employing and recruiting disabled people and to draw on the widest possible pool of talent for their business.<sup>31</sup>
24. Government can ensure that employers are operating within a clear legislative framework which strikes the right balance between flexibility for businesses and employment protections for employees. Government can take action to create a level playing field that prevents employers from ignoring their responsibilities. It can provide information and guidance to ensure employers understand and are able to act on their responsibilities to their employees. Going further, government can create incentives to encourage employers to go beyond their duties and demonstrate best practice.
25. **This consultation sets out proposals to boost the government support available and to encourage all employers to take positive action to support employees who are managing health conditions in work, and to manage sickness absence more effectively.** Taken together, these proposals aim to reduce ill health-related job loss.

**Chapter one** sets out what needs to change to support people with health conditions to remain in work.

**Chapter two** proposes changes to the legal framework to ensure it sets out clear expectations of employers' responsibilities to their employees.

**Chapter three** sets out measures to reform the occupational health market to support employers to purchase high quality and cost-effective OH services where appropriate.

**Chapter four** sets out proposals to ensure that small employers and self-employed people have access to the right support and advice in managing health at work.

# Chapter one: what needs to change

## Introduction

26. In the UK, there are around 12.7m working-age people with a long-term health condition, including 7.6m disabled people whose condition reduces their ability to carry out day to day activities.<sup>32</sup> Around half of those living with long-term health conditions say that their health is a barrier to the type or amount of work they do.<sup>33</sup> Of people with physical long-term health conditions, one in three also have a mental illness, most often depression and anxiety.<sup>34</sup>
27. Over the course of a year, around 1.4m working-age people have at least one sickness absence lasting four weeks or longer: this is around 4% of those in work or have been in work in the last 12 months.<sup>35</sup> Most people successfully return to work after a period of long-term sickness absence, and many return relatively quickly.<sup>36</sup> However, disabled people are at much greater risk of falling out of work.<sup>37</sup>
28. Mental health and musculoskeletal conditions are the most common main health conditions of disabled people in and out of work.<sup>38</sup> Aside from minor illnesses such as colds and flu, these conditions are also the most common causes of overall sickness absence, including long-term sickness absence.<sup>39</sup> Around 300,000 people with a long-term mental health condition fall out of work every year.<sup>40</sup> The symptoms of these conditions are often treatable and can often be managed effectively; with the right support and adjustments in place, these conditions do not necessarily result in long-term incapacity to work.<sup>41</sup> **Many people could, with the right support, remain in employment.**
29. Evidence shows that early intervention by an employer for employees at risk of, or on, long-term sickness absence is important in reducing ill health-related job loss. However, there is little in the UK system to encourage employers to take action early in the sickness absence period, or when someone is at risk of going on sickness absence.
30. Maintaining a link to the workplace is important in helping individuals return to work after a period of sickness absence, and in helping employers retain valuable employees. As a person's sickness absence becomes more prolonged, and especially once they are no longer employed, supporting them to return to work becomes more complex.<sup>42</sup> The likelihood of a return to work reduces the longer the individual experiences sickness absence.<sup>43</sup> **Those who fall out of work and become reliant on disability benefits often struggle to return to work.**<sup>44</sup>

## The workplace setting: managing health conditions and supporting returns to work

31. There is a growing evidence base and expert consensus on the key elements of support and best practice to support employees with health conditions to remain in work and reduce ill health-related job loss. These elements are complementary and interdependent.

**Workplace support to stay in and return to work.**

Early and sustained workplace support for employees with health conditions, and during sickness absence, is important and widely endorsed. Early rehabilitation efforts by the workplace during an employee's sickness absence can facilitate returns to work.<sup>45</sup> Key success factors include workplace contact and involvement of line managers, as well as coordination and communication between the employer, the employee and healthcare professionals or occupational health services.<sup>46</sup>

**Workplace adjustments and work modifications.**

Effective work and workplace adjustments can help shorten the length of sickness absences, and can increase the job security of sick or disabled employees.<sup>47</sup> Temporary or permanent adjustments can include physical adaptations to the workplace, changes to the role, tasks or hours worked, and phased returns to work. Under the Equality Act 2010, employers have a duty to provide reasonable adjustments for disabled employees, but not for other people with health conditions.

**Financial and employment protections.**

Employees need to have time off and an adequate income to recover from serious illness. This includes sick pay, which provides financial security and employment protections for individuals.

**Access to expert-led, impartial advice and interventions to help employers provide these elements of support.**

Such advice and support is often referred to as occupational health (OH). Employers that provide OH have said that it helps employees to return to, or stay in, work, and that it has a positive impact on employee morale. OH can also improve business productivity by reducing unnecessary sickness absence.

**What is Occupational Health?**

Occupational health (OH) is advisory support which helps to maintain and promote employee health and wellbeing. OH services provide direct support and advice to employers and managers, as well as support at an organisational level; for example, on how to improve work environments and cultures.<sup>48</sup>

The services delivered by OH providers traditionally focused on ensuring employers were compliant with health and safety regulations. For example, some OH providers offer health surveillance services, which is a system of ongoing health checks required by law for some employees who undertake or are exposed to certain activities or substances hazardous to health. These services also help with general health risk management in workplaces.

As the UK economy has moved towards more service-led industries, OH providers have widened their offer to meet the new challenges facing employers and the workforce today. The most commonly offered services are:

- assessments of fitness for work for ill or sick employees<sup>49</sup>;
- advice about workplace modifications or reasonable adjustments;
- advice to support development of return to work plans;
- signposting to, and in some cases providing, services that treat specific conditions, such as physiotherapy; and
- health promotion or healthy lifestyle schemes.

32. **There are a number of factors which influence whether an employer provides support to employees.** Many employers already provide support to their employees who are managing health conditions or returning from sickness absence. However, **there are large variations in employer capability and capacity to act**, with smaller employers often at a disadvantage.
33. **Resource constraints**  
 Large employers are more likely to have the resources to offer wide-ranging health and wellbeing services to employees, including access to OH services.<sup>50</sup> By contrast, small employers are five times less likely to provide access to OH services than large employers. Small employers often tend to stick to their legal statutory requirements in managing health and disability in the workplace. The most common barriers cited by small employers include a lack of time, staff resources and capital to invest in expert advice.<sup>51</sup>
34. **Sick pay obligations**  
 Statutory Sick Pay (SSP) places clear legal requirements on employers. However, the system does not reflect modern working practices, such as increased use of temporary and part-time work. The rules do not allow for flexibility in returning to work after a period of sickness absence. SSP by itself acts as a limited incentive to employers to support early returns to work. It is focused on the financial support provided to individuals by their employer, but not on wider support.
35. **Employer incentives to invest in supporting employees**  
 Employers generally understand that there is a link between work and employee health and wellbeing.<sup>52</sup> However, a sizeable minority of employers do not believe that the financial benefits of spending money on employee health and wellbeing outweigh the costs.<sup>53</sup> Perhaps unsurprisingly, employer efforts to retain people are skewed towards employees perceived to be valuable. Employees in professional occupations or those on permanent contracts are more likely to have access to OH services provided by their workplace, and are more likely to receive sick pay above the statutory minimum, than employees in elementary occupations or temporary workers.<sup>54</sup>
36. **Awareness and knowledge**  
 Compared to peer countries, the UK's current legislative regime is characterised by relatively limited levels of prescription on how employers should manage sickness absence. Some employers do not fully understand, or are unaware of, their legal responsibilities, for example, making reasonable adjustments for disabled employees or payment of sick pay.<sup>55</sup> Large employers are more likely to have access to comprehensive expert advice when seeking information. By contrast, small employers are more likely to use less formal forms of support, such as internet searches.<sup>56</sup>
37. **Expectations of employers are unclear**  
 Unlike other health services, OH has never been part of the NHS offer. The NHS provides a range of health services to individuals which can help keep them in work (for example, physiotherapy) and GPs are often consulted on work and health issues (for example, in completing fit notes). However, most OH support is bought by employers through a well-established private market worth around £800m a year.<sup>57</sup> Given some relevant support is provided by the NHS, this lack of clarity for employers is likely to be one reason for the limited access to OH for employees: currently only around half of employees have access to OH services through their workplace.<sup>58</sup>

**38. Provision of OH services for SMEs and the self-employed**

There are many examples of excellent provision within the OH market. However, there are two main issues which affect provision for SMEs. First, small scale contracts can mean limited profits and little incentive for providers to target certain employers, particularly SMEs and the self-employed.<sup>59</sup> Second, purchasing decisions are complex: employers consider a wide range of factors such as locality of the provider, speed and efficiency, cost-effectiveness, knowledge of the sector, and regular and multiple communication channels.<sup>60</sup> This makes purchasing OH potentially complex and time-intensive, which also makes it costly. Employers do not necessarily shop around for OH services<sup>61</sup>, and it can be difficult for employers to easily and quickly judge the quality of the provider.

**39. Perceptions of need**

Many small employers consider that a need to provide support arises only when an employee is disabled or is experiencing a period of long-term sickness absence. Small employers therefore often take a more reactive approach to addressing health-related issues in the workplace compared to large employers.<sup>62</sup> This means they are not always ready to act when it is potentially most useful to do so, given the time involved to seek expert help.<sup>63</sup> Instances of disability or long-term sickness absence can be rare occurrences, particularly for small employers, which can lead to a perception that there is no need to provide support proactively.<sup>64</sup> This could be because employees are not advising their employer of sickness or not disclosing a condition.<sup>65</sup> It could also be a result of employers not knowing there is a problem; for example, if they do not collect data on sickness absence.<sup>66</sup>

**40. The proposals set out in this consultation seek to address these issues and aim to ensure all employers, particularly smaller employers, are encouraged and supported to help employees with health conditions stay in and thrive in work.**

**Your views**

**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.*

# Chapter two: a clear legal framework for employers

## Introduction

41. It is important that the legal framework in which employers operate encourages all employers to take positive action to support their employees who are managing health conditions, or who are experiencing or returning from sickness absence.
42. Under the Equality Act 2010, **employers have a duty to make reasonable adjustments for disabled employees** to their workplace or ways of working to avoid putting disabled employees at a substantial disadvantage.<sup>67</sup> Non-disabled employees are not covered by the duty. The **right to request flexible working**, introduced in 2014, may also support those managing health conditions in work.<sup>68</sup> Under the **Health and Safety at Work Act 1974**, employers have a duty to protect the health, safety and welfare of their employees and other people who might be affected by their business. Employers must do whatever is reasonably practical to achieve this.<sup>69</sup>
43. In many circumstances these existing protections can work well, but evidence suggests that there remain gaps in the legal framework which may mean that employees with health conditions, or those on a period of sickness absence, only receive limited support from their employer to help them stay in or return to work.
44. There is evidence to suggest that some individuals may be dismissed before effort is made to reintegrate them.<sup>70</sup> Many employees report not having conversations with their employer about their health condition, and some say that their employer provided limited support once they had disclosed their condition.<sup>71</sup> In comparison, legal systems in many other European countries include more explicit and extensive obligations on employers to reintegrate and rehabilitate sick employees before they can be fairly dismissed on health grounds.<sup>72</sup>
45. Although a voluntary approach has seen some employers take the lead, efforts to help retain and rehabilitate employees with health conditions can often be skewed towards key employees considered to be more valuable.<sup>73</sup> This consultation sets out proposals to improve the support and advice which is available to employers (see chapter four). However, international experience suggests that an approach which continues to rely solely on voluntary action by employers may not have the required level of impact in reducing ill health-related job loss.
46. The government is therefore seeking views on possible **changes to the legal framework to encourage early and sustained employer support, including:**
  - introducing a right to request work(place) modifications for employees not covered under the duty to make reasonable adjustments established in the Equality Act 2010;
  - strengthening statutory guidance for employers to encourage early intervention to support a sick employee to return to work; and
  - reforming Statutory Sick Pay to allow for greater flexibility in returning to work following sickness absence.

47. It is important that any legal changes are **reasonable and proportionate**, not only to retain the flexibility within the UK labour market which has been crucial to its success, but also to recognise the differences in employer capability and capacity to act. The government is seeking feedback on the potential impact of these changes. Any legal changes should be balanced by improved support from government, which also needs to be alert to any potential, unintended consequences which the implementation of these proposals could cause.

## Reasonable adjustments and work(place) modifications

### Duty to make adjustments for disabled employees

48. Under the Equality Act 2010, **employers have a duty to make reasonable adjustments for disabled employees** to their workplace or ways of working to avoid putting disabled employees at a substantial disadvantage. Where adjustments are considered 'unreasonable' by the employer due to cost, **Access to Work** may provide funding.

#### Access to Work

Access to Work is a government-run scheme which provides support for disabled people and people with health conditions to move into or stay in employment. It can offer a tailored package of support, practical advice and grants to meet the additional employment costs resulting from an individual's disability or health condition that are over and above those considered as reasonable adjustments. Employers can also draw on expert advice from Access to Work or OH professionals to inform adjustments. In 2017/18, nearly 34,000 disabled people or people with a health condition received tailored and flexible support to do their job.

During 17/18, Access to Work extended its reach to support record numbers of people with learning difficulties and mental health conditions. To support people with mental health conditions who are experiencing difficulties at work, Access to Work offers nine months of flexible and personalised support through its Mental Health Support Service. This support puts in place a tailored step-by-step support plan to enable the individual to work through issues they are experiencing at work and overcome workplace barriers.

Access to Work continues to work collaboratively with employers to build awareness of the support available, with the ambition of encouraging more employers to employ disabled people or people with health conditions. To strengthen its relationships with local employers, the scheme is working with JobCentre Plus to raise awareness of the support available and of the Disability Confident scheme.

### Work(place) modifications

49. Evidence suggests that effective employer-led return to work planning requires complementary work and workplace modifications. Effective adjustments and modifications are not just those to the working environment, but can also include changes to hours or tasks, or phased returns to work. Such modifications can shorten the length of sickness absences and help employees stay in work.<sup>74</sup> Often the modifications which individuals perceive to be the most helpful in staying in work are those which employers find easiest to implement, such as providing flexible working hours and extra breaks, changing types of task or reducing overall workload.<sup>75</sup> Where this document

refers to **work(place)**, this includes both the way that an employee works, such as their working hours, as well as their physical workplace, such as a raised desk.

50. **There are some people who may not be covered under the duty to make reasonable adjustments because they do not meet the definition of disabled;** for example, those with temporary or fluctuating conditions that have not had a substantial and long-term negative effect on normal daily activities. As a result, not all employees will have access to modifications when they need them – a conclusion supported by evidence.<sup>76</sup> Those with mental health conditions are less likely to receive modifications and more likely to report an unmet need.<sup>77</sup>
51. There is value in employers and employees working together to identify suitable modifications.<sup>78</sup> To be effective, modifications have to be bespoke, flexible, ongoing, agreed collaboratively between employer and employee, and be implemented as part of a package of support for the employee. This can help to encourage positive conversations between an employer and an employee about managing health at work, and make these discussions a normal part of a healthy working relationship.

#### **Case Study: Sainsbury's**

Sainsbury's aim is to be a truly inclusive retailer, where every one of their colleagues can fulfil their potential and where all their customers feel welcome. They are committed to removing barriers that their colleagues may face to help them succeed in work.

Through listening groups, they recognised the need to build greater disability confidence among their line managers. In response to this, they have rolled out new training and support materials, which challenge assumptions that can be made about disabled people, and equip line managers with the tools to have conversations with colleagues about helpful workplace adjustments. Alongside this, they share best practice about workplace adjustments, and how putting the right adjustment in place can be beneficial for both the company and the individual.

Sainsbury's use a centralised budget to cover any costs incurred through making workplace adjustments. However, they find it is often the simplest of adjustments, which a lot of the time are free to implement, that can make the biggest difference, such as changing shift patterns.

Their workplace adjustment programme gives line managers the confidence to be able to put great adjustments in place, and colleagues the confidence to request them. This culture change and removal of barriers supports happier and more engaged colleagues.

52. **The government is seeking views on whether to introduce a right to request work(place) modifications on health grounds. This would empower more employees, who are not already covered under the existing duty, to seek the support they need from their employer.** In a crucial difference to the duty to make reasonable adjustments, an employer would be able to refuse a request for work(place) modifications on legitimate business grounds. The process could potentially be similar in principle to the existing right to request flexible working. However, the government recognises that the implications of these rights for employers may differ, noting the key difference that work(place) modifications may be more likely to be short-term, unanticipated or urgent.

### Right to request flexible working

**Flexible working** means a way of working that suits an employee's needs, for example having flexible start and finish times, or working from home.

In 2014, the government introduced a right to request flexible working for all employees who have worked continuously for the same employer for at least 26 weeks.

An employee makes the request to the employer in writing. The employer considers the request and makes a decision within three months, or longer if agreed with the employee. If the employer agrees to the request, they must change the terms and conditions in the employee's contract. If the employer disagrees, they must write to the employee giving the business reasons for the refusal. An employee can only submit one request a year. Agency workers are unable to make requests.

Employers must deal with requests in a reasonable manner. If they fail to do so, an employee may take their employer to an employment tribunal. An employer can refuse an application if they have a good business reason for doing so.

### Eligibility

53. Through this consultation, the government is seeking views both on whether to introduce this new right to request work(place) modifications and who should be eligible for it if it were introduced.
54. It is estimated that 1.4m people of working age experience a long-term sickness absence every year.<sup>79</sup> To limit the impact on employers, eligibility for a right to request could be restricted to those who have experienced a long-term sickness absence of four or more weeks.
55. Alternatively, eligibility could be extended to include those with a cumulative total of four or more weeks of absence (rather than a single spell of long-term sickness absence). More ambitious options include widening eligibility to include employees returning to work from a period of sickness absence of any length or, wider still, to any employee who can make the case for a work(place) modification on health grounds.

### Design of a new right to request

56. The existing duty to make reasonable adjustments puts the emphasis on employers to be proactive in responding to the needs of disabled employees. A right to request work(place) modifications would mean that employers would also need to be reactive to requests from employees who are not covered under the duty. The two protections should align as far as possible, without causing confusion between the two or increasing the chance of unintended consequences, to complement each other in supporting employees with health-related needs. This approach would build on the existing right to request flexible working.
57. Under a potential new right to request work(place) modifications, the employer and employee would agree between them, where it is reasonable, what the modifications should be. In common with the right to request flexible working, a Code of Practice could support a new right to request work(place) modifications. To support employer decision-making, this would set out more detail on the business reasons that could be appropriate for refusal and could clarify how and in what timeframe an employer would be required to respond to a request.

58. Detailed questions relating to the process for how this could work, including what the qualifying period for this new right could be, will be explored in workshops during the consultation period.

### Types of workplace modifications

59. If this proposal were to be implemented, an employer would determine, in discussion with their employee, what work(place) modifications are possible with reference to the different needs of the individual, and the differing capacity and resources of the employer. Unlike the duty to make reasonable adjustments, an employer could refuse a request for work(place) modifications on legitimate business grounds. Clear communication to both employers and employees explaining the differences between the reasonable adjustment duty and a new right to request work(place) modifications would be essential.
60. Activities or modifications that could potentially be deemed reasonable for employers to undertake or provide to support employees to manage their health at work could include, but would not be limited to:
- having a conversation about the employee's need for a modification;
  - keeping a written record of conversations between employer and employee;
  - seeking expert advice from occupational health services to support decision making; and
  - modifications to working hours/pattern, working task/duties, or to the physical working environment.

**This list is illustrative and not exhaustive.**

61. **Government welcomes views on how much of this support employers currently provide, and the benefits of doing so.**

### Enforcement of a new right

62. The emphasis is on enabling and encouraging better conversations between employers and employees, rather than on enforcement. Where an employee felt their request for a work(place) modification had been unfairly refused, or due process had not been followed, they would be advised to make use of the available grievance procedures to try to resolve the problem before taking legal action. If this were unsuccessful then, in common with the right to request flexible working, it is proposed that employees could use the tribunals process.

### Further guidance for employers

63. The government is mindful of the difficulties that many employers may face when considering requests for work(place) modifications and wants to ensure employers have the right direction and support to consider such requests. Further detail on proposals to improve advice and support for employers is set out in chapter four.
64. **The government is clear that this is not intended to have any impact on the existing protection for disabled people as set out under the Equality Act 2010.** Employers will continue to have a duty to provide reasonable adjustments for disabled people. A new right to request work(place) modifications would be distinct from, and in addition to, existing provision. Its purpose would be to increase the number of employees able to benefit from employer-made work(place) modifications beyond those already covered under existing legislation.

## Your views

**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)*

**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.*

**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?*

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

*Yes / no / if no – why?*

**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.*

## Encouraging early and supportive action from employers during sickness absence

65. As well as supporting employees to manage health conditions at work, there is strong evidence that **early intervention and sustained workplace-based support during sickness absence** is important.<sup>80</sup>
66. Maintaining contact with the workplace and providing transitional work arrangements are important elements to facilitate return to work. Action includes early and considerate contact by the workplace, involvement and training of line managers in the planning of an employee's return to work, as well as coordination and communication between the employer, employee and healthcare or OH professionals.<sup>81</sup> Conversely, there is evidence that a lack of support from an employer can be an important factor in prolonging long-term sickness absence.<sup>82</sup>
67. Although early implementation of these principles should mean that fewer individuals will require more structured (and therefore more costly) interventions<sup>83</sup>, basic, good standards of supporting employees during sickness absence are not universally adopted.<sup>84</sup> This may be due to variations in employer capability and capacity to act, as set out earlier in this document.
68. International precedent suggests that dismissal protections can be an important lever for driving universal early and supportive employer action, and for clarifying the responsibilities of employers and employees. In the UK, dismissal protections are primarily established within the Employment Rights Act 1996.

### Employment Rights Act 1996: Dismissal Protections

Under the Employment Rights Act 1996, the five potentially fair reasons for dismissal are: capability, conduct, redundancy, illegality, and some other substantial reason.

The vast majority of dismissals on the grounds of ill health fall under 'capability' (although they can also fall under conduct and/or some other substantial reason, depending on the nature of the situation or condition). Capability can refer to skill, aptitude, health or any other physical or mental capacity.

The Act provides that whether a dismissal is fair or unfair depends on:

- a. whether in the circumstances (including the size and administrative resources of the employer) the employer acted reasonably or unreasonably in treating the reason relied on for dismissal as a sufficient reason for dismissing the employee; and
- b. equity and the substantial merits of the case.

In practice, the test is further broken down into two questions: (a) did the employer utilise a fair procedure? and (b) did the employer's decision to dismiss fall within the range of reasonable responses open to a reasonable employer?

A substantial body of case law has built up around what the employer is expected to do or consider before dismissal, including issues such as when they would be expected to obtain medical evidence.

**Disabled people are protected from discrimination under the Equality Act 2010, including dismissal which is in breach of the protections under that Act.**

69. Compared to the UK, international models of managing sickness absence management tend to place more prescriptive requirements on employers to provide workplace-led support.<sup>85</sup> This can be an effective way to ensure more structured and timely workplace support for those on long-term sickness absence.<sup>86</sup> The example below of the approach taken in Germany demonstrates how dismissal protections can be used as a lever to drive employer support.

#### German model of employer-led support

In Germany, legislation introduced in 2004 requires all employers to offer an internal occupational reintegration programme to help ensure employers identify barriers preventing a return to work.

If an employee is sick or unable to work for more than six weeks (either continuously, or cumulatively over 12 months), an employer has a legal obligation to offer a conversation to the employee to try and identify work-related barriers, any possible solutions to overcome these, and to draw up a formal return to work plan accordingly.

This obligation applies to employers of all sizes. It also applies to all employees regardless of whether or not they have a recognised disability, and whatever the cause of their illness (work-related or otherwise).

Health-related dismissal is unlikely to be considered legal in Germany without demonstrative evidence of an employer meeting their obligation to identify and take reasonable action to address barriers preventing an employee with a health condition from returning to work.

70. The German model has found widespread acceptance from employers and employee representatives, who consider it a useful way to support employees. Over the years, it has been complemented by a range of government resources and support, especially for small employers.
71. Introducing more explicit requirements in the UK, such as return to work plans, could ensure that minimum standards for sickness absence management are universally implemented. However, the government believes an approach that is too prescriptive could become a 'box ticking' exercise and be burdensome on employers, so is not considering pursuing such changes. Instead, the government is considering a less prescriptive approach which is more in line with existing UK employment law, but which still encourages early and sustained action by employers.
72. The government believes there could be some benefit from **strengthening statutory guidance to encourage employers to take early, sustained and proportionate steps to support a sick employee to return to work**, before that employee can be fairly dismissed on the grounds of ill health affecting their capability. As a first step, the government will look at bringing together and formalising existing employer obligations and best practice. The government is seeking views on the merits of this approach.
73. This guidance would be intended to provide more legal direction than currently exists, particularly on the principle of providing support early during a period of sickness absence, while at the same time respecting the existing and substantial body of case law which has developed over time. The core test of whether an employer had acted reasonably would be maintained to account for the specific and varied circumstances of each employer.

74. The particular focus on employers taking proportionate steps reflects the government's view that, while early conversations with employees and some interventions are likely to be reasonable in most circumstances, more expensive interventions may not be for many employers, particularly smaller businesses. The government believes that many employers are already providing far greater levels of support than this legal change seeks to establish.
75. Strengthened statutory guidance could aid the return to work process by supporting employers to identify and, where reasonable, to remove barriers preventing a return to work. This would promote the principle of good line management support and explore the important responsibility of the employee to meaningfully engage with their employer to facilitate a return to work.
76. This guidance would avoid being too prescriptive, or avoid seeking to create a step-by-step process, but should provide clear direction so that, by embracing it, employers could be confident they had done enough to reduce the risk of legal challenge. It would recognise the different circumstances of each case, and that expectations for providing support should be fair and proportionate, and based on employer capacity to act. Enforcement of the guidance would be through employment protections, specifically claims for unfair dismissal, and considered in relevant tribunal hearings.
77. The *Taylor Review of Modern Working Practices* recommended a 'right to return to work' following a period of sickness absence.<sup>87</sup> The government has considered this recommendation and is keen to build on the principle underpinning it. By strengthening statutory guidance, the government is seeking to ensure that sick employees receive early, proactive support from their employer during a period of ill health, rather than just a role to return to. The government also wants to give employers the flexibility to determine, in discussion with their employees, what that support is and how it is best provided.

## Your views

**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 provide employers with sufficient clarity;*
- *Guidance should set out more specific actions for employers to take;*
- *Don't know;*
- *Other – please state.*

**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.**

**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.*

## Reforming Statutory Sick Pay

78. The government proposes to reform Statutory Sick Pay (SSP) so that it is available to all employees who need it, is more flexible in supporting employees and is underpinned by a suitable enforcement framework. Proposed changes include:
  - amending the rules of SSP to allow for phased returns to work following sickness absence;
  - widening eligibility for SSP to extend protection to those on the lowest incomes; and
  - strengthening compliance and enforcement of SSP to ensure employees are paid what they are due.
79. Alongside these specific reforms, this consultation also considers how a rebate of SSP for SMEs that demonstrate best practice in supporting employees on sickness absence might be designed.
80. The government is also interested in exploring ways to record SSP payments and use this information to provide helpful prompts and advice to employers. Further detail on this is set out in chapter four.
81. The government is not proposing to make any further changes to the structure of SSP beyond the reforms outlined above. However, the government has considered the extent to which the rate and length of SSP drives employer behaviour and is interested in views on this.

### Statutory Sick Pay

In the UK, employees who are off sick from work may receive **Statutory Sick Pay**. To qualify for SSP, an individual must:

- be an “employed earner” working for an employer who has liability to pay secondary Class 1 National Insurance contributions;
- have done some work for the employer under their contract of service;
- have been ill for at least four or more days in a row (including non-working days); and
- earn an average of at least £118 per week.

SSP is paid by employers from the fourth day of sickness absence at a flat rate of **£94.25 per week for a maximum of 28 weeks**. In this way, SSP provides employees with financial support when they are off work sick to allow them time to recover. It is paid from the fourth day of sickness to avoid an employer facing the burden of paying for all minor absences such as coughs and colds. The estimated cost to employers of SSP is £1.5bn a year.<sup>88</sup>

Some employers go further than their statutory requirements and provide **Occupational Sick Pay**. This provides more financial support to employees.<sup>89</sup>

### Your views

**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.*

### Phased returns to work following sickness absence

82. Evidence suggests that a phased or gradual return to work from sickness absence can promote quicker returns to work, reduce the likelihood of falling back out of work, and can result in more time spent at work in the long term.<sup>90</sup> For an employee, a phased return to work can help to maintain a link to the workplace, which reduces the risk of becoming detached from work and not returning.
83. Under current rules, SSP is inflexible and does not allow for returns to work that suit an employee's needs, or as an OH professional might recommend. Payment of SSP stops as soon as the employee returns to work, even on reduced hours. In practice, this means that if an employee wanted to return and work, for example, alternate days or half days, they could be worse off financially than if they did not work at all. This current system may deter employees considering a phased return to work. Alternatively, it may prompt employees to return to work before they are fully recovered, or prompt them to take longer off work.
84. The government has previously consulted on this issue and received broad support for the principle of SSP reform to support fully flexible, phased returns to work.<sup>91</sup> This was also supported by both the *Taylor Review of Modern Working Practices* and *Thriving at Work: the Stevenson/Farmer review of mental health and employers*.
85. **The government will amend SSP regulations to enable an employee returning from a period of sickness absence to have a flexible, phased return to work, working the hours and days that would benefit them.**

86. Under such a change:
- An employee would be able to receive part wage and part SSP (pro rata), instead of the binary approach at present.
  - The rules would allow such flexibility after two or more weeks of absence, as a phased return is less likely to be necessary following a shorter absence.
  - It would be for an employer and employee to decide whether a phased return to work is appropriate after a period of sickness absence, and how to phase the return. They might consider medical advice for the employee, and how business needs can accommodate a phased return to work. Some employers also offer disability leave for disabled employees to ensure adequate time off to recover from sickness arising as a result of a disability. Such a policy may also inform an organisation's approach to phased returns.
87. Where a return is phased, the employer would pay the employee the appropriate rate or wage for the days or hours they can work, plus a percentage of SSP for the days or hours that the employee would normally work, but is not well enough to do so. As SSP is a daily rate, based on a fixed weekly amount, this would need to be calculated pro-rata. Where a full day of sickness is taken during a phased return to work, this would count towards the 28-week maximum. The government proposes that part-days of sickness absence would not count towards the 28-week entitlement, but this would only apply during a phased return to work. The government is only proposing flexibility in returns to work, and not at the start of a sickness absence.
88. The government would create an online calculator on GOV.UK to help employers calculate what they would pay their employee during a phased return to work.

**Example of how the change would work in practice**

An employee works a 35-hour week earning £9 an hour (a total of £315 per week).

The employee agrees to return from sickness absence by working 2 hours a day for 5 days in the first week.

Their earnings would be: (2 hours x £9) x 5 days = **£90** (less than one week of SSP)

For the other 25 hours of their usual 35-hour working week, they would be unable to work due to sickness.

The rule changes would allow them to be paid SSP for those 25 hours, which would amount to **£67.32**.<sup>92</sup>

The employee's total pay for that week would be **£157.32**.

89. To allow flexibility and avoid unnecessary bureaucracy, the government does not plan to legislate for how a phased return to work is requested, or how decisions are made.
90. Employers who pay Occupational Sick Pay should ensure that, where they agree a phased return to work, they calculate pay using the pro rata approach above as a minimum. If an employer provides full pay for returns to work, they can be confident they are exceeding these requirements.

## Your views

**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.*

## Simplifying the rules

91. Any period of sickness lasting four or more days in a row (including bank holidays, weekends and non-working days) is known as a period of incapacity to work (PIW).
92. **SSP is paid from the fourth qualifying day of sickness absence.** The first three days are called waiting days. Qualifying days are used by an employer to work out what days of the week an employee should be paid SSP.
93. Qualifying days are normally an employee's contracted working days. Where, for example, an employee works a varied or alternative working pattern each week, the employer and employee may agree which days of the week will be considered as qualifying days. This excludes days where no employees in the organisation are required to work (such as bank holidays or weekends). The weekly rate of SSP is the same, regardless of how many days a week an employee normally works.
94. The rules around qualifying days can be confusing for employers. The government could remove this rule, which would simplify SSP rules in the following ways:
  - Every day of the week could be considered a qualifying day, rather than an employee's contracted working days, or the qualifying days agreed with their employer (except those days where no employees are required to work).
  - Waiting days could be calculated using the number of days a week that an employee normally works, rather than the specific days of the week that an employee works. Where the number of days worked varies each week, an average could be taken for the last eight weeks of work.
  - For example, if an employee normally works three days a week, and has been sick for four or more consecutive days (PIW) in that week, the employee could be paid SSP from the following week, as this would count as the fourth qualifying day of absence.

### Example – how the rules work now

An employee works three days a week. Their contract states that they can work any pattern, any three days from Monday to Sunday.

The employer and employee have agreed three set qualifying days in the working week: these are Wednesday, Friday and Sunday.

On Monday, the employee notifies the employer that they are unwell. They are still unwell on Monday the following week.

As the qualifying days for SSP are set as Wednesday, Friday and Sunday, the employee would only receive any SSP if they were still sick on the Wednesday of the second week.

**Example – how the changes would work in practice**

An employee works three days a week. Their contract states that they can work any pattern, any three days from Monday to Sunday.

Any day of the week can count as a day of incapacity to work.

On Monday, the employee notifies the employer that they are unwell. They are still unwell on Monday the following week.

As they have been unwell for at least 4 working days, (three days in the first week, and one day in the second), their employer will pay SSP from the second Monday at £94.25 for the week.

**Your views**

**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.**

**Widening eligibility for SSP**

95. Employees who earn less than the Lower Earnings Limit (LEL), which is £118 per week, do not currently qualify for SSP or any financial support from their employer while on sickness absence. This includes employees who may have multiple jobs or employers, each paid below the LEL.
96. By comparison, where an employee does not qualify for Statutory Maternity Pay (for example, because they have only worked for their employer for less than 26 weeks) they can instead claim Maternity Allowance from the government. No specific alternative exists for SSP; however, individuals who meet the necessary criteria may be able to claim Universal Credit.
97. The government is concerned that employees on lower incomes are missing out on the protection that SSP provides. People may be working when unwell, or relying on the benefit system, when remaining attached to their employer is likely to be more beneficial. The *Taylor Review of Modern Working Practices* recommended extending SSP to include those earning below the LEL. This would extend SSP protection to around 2m employees, including over 1m who work less than 16 hours per week. **The government believes there is a case to accept this recommendation.**
98. Many of those earning below the LEL earn less than the current rate of SSP. It would therefore be inappropriate to pay these employees the full rate of SSP, as otherwise they would then be better off when sick than at work. If eligibility were to be widened in this way, the government proposes that those earning below the LEL would be paid a **proportion of their wage as SSP, set at 80%.**<sup>93</sup> Those earning above the LEL would continue to receive a flat rate. A calculator on GOV.UK would aid employers and employees in calculating payments.
99. The LEL is also used to decide eligibility for other statutory payments, such as Statutory Maternity or Paternity Pay. SSP is markedly distinct from the other family-focused statutory payments in terms of its purpose and structural design. The government believes there is merit in removing the LEL for SSP but does not propose making any changes to other statutory payments.
100. Taylor also recommended that SSP be accrued, similar to holiday pay, so that individuals were not entitled to the full 28 weeks of SSP from day one of employment but built up that entitlement over time. That approach would reduce employer costs and enhance

incentives to employ those with long-term health conditions. However, it risks leaving individuals without any income while they are recovering from illness. It would also be more complex for employers to administer and might deter disabled people or people with long-term health conditions from moving employer. The government is not currently persuaded that SSP should be amended in this way but is seeking evidence on the value of the recommendation by Taylor.

## Your views

**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.*

**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.*

**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.*

## Compliance and enforcement

101. The *Taylor Review of Modern Working Practices* highlighted the importance of taking action to ensure that employment protections are enforced and challenging unlawful practices where they occur. Employers who break the rules must expect there to be consequences for their actions, and employees should have confidence that the system will support them when things go wrong.<sup>94</sup> An effective enforcement system is vital to creating a level playing field for businesses, building trust and preventing employers from ignoring their responsibilities to their employees.
102. There are indications that some employees are not receiving SSP when they are entitled to it and are claiming welfare benefits instead. **The government intends to take action to ensure employees are paid what they are due and that there is adequate redress if not.**
103. Employers may not always be clear what the eligibility rules are for SSP.<sup>95</sup> Survey data suggests that there is more of a problem with non-compliance with agency workers, mainly due to a lack of clarity on their contractual status and who is and is not eligible for SSP.<sup>96</sup> Further detail on informing employees of their rights is set out below.

## Disputes process

104. HMRC runs a dispute process for SSP and other statutory payments. When an employee is refused SSP and disagrees with this decision, they can raise a dispute with HMRC. Around 3,000 disputes are raised each year. 90% of dispute cases are resolved at the first stage of the process, and employers pay the outstanding SSP. For the remaining 10% of cases, HMRC will issue a formal decision, which carries the right of appeal. 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. **To increase compliance with SSP in the short term, the government could increase fines for employers under the existing disputes process.**
105. The HMRC disputes process is listed on GOV.UK<sup>97</sup> but it is not promoted in any other way. The volume of calls received may not indicate the scale of employees not receiving

their entitlement. The disputes process is not designed to act as a deterrent to employers to avoid compliance, but instead exists to help employees get their legal entitlement. HMRC pays SSP where an employer has exhausted all appeal rights and still does not pay. By contrast, enforcement of the National Minimum Wage is not just reactive to disputes, but actively looks for and investigates employers likely to be in breach.

## Your views

**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.*

## State enforcement

106. Given the limitations of the disputes process, there is a case for **enforcement of SSP** in a similar way to enforcement of the National Minimum Wage. This would allow for more proactive enforcement to be carried out and provide for penalties for non-compliance to be increased.

### National Minimum Wage enforcement

- National Minimum Wage and National Living Wage are enforced by HMRC. Complaints can be made either through an online form or referred via the Acas helpline.
- HMRC responds to 100% of worker complaints and also conducts proactive, targeted enforcement of 'at risk' employers. In the vast majority of cases, HMRC pursues the civil enforcement route. It has the ability to issue a notice of underpayment for unpaid arrears and penalties of up to 200% of arrears, up to a maximum of £20,000 per worker.
- HMRC's role also includes raising awareness and improving compliance. It has a 'Promote' team which aims to change the behaviour of employers and workers. Naming of employers is also used to raise awareness and act as a deterrent.

107. The *Taylor Review of Modern Working Practices* also proposed that government enforce holiday pay and SSP for low-income employees. In response, the government's *Good Work Plan* sets out the aim to introduce state enforcement of holiday pay for vulnerable workers.<sup>98</sup> As part of the *Good Work Plan*, the government committed to consult on the case for a new, single labour market enforcement body to better ensure that workers are more aware of their rights and have easier access to them, and that businesses are supported to comply. As part of this process, the government will consider whether **enforcement of SSP should be included within the remit of such a body, should an enforcement process for SSP be introduced.**

## Your views

**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.*

## Informing employees of their rights

### Day one statement of rights

108. The government wants to empower employees by ensuring they have access to all the information they need to fully understand their employment terms and conditions. Currently, employees who have worked for the same employer for longer than a month are entitled to a written statement covering details of their employment contract and rights, including details of sickness leave and sick pay. Employees must receive this written statement within two months of starting work.
109. The *Taylor Review of Modern Working Practices* highlighted that this information needs to be available sooner than two months into employment. As set out in the *Good Work Plan*, **the government intends to bring forward legislation to make access to a day one written statement a right for both employees and workers.**<sup>99</sup> The government wants to ensure that the content of a written statement is as useful as possible to both the employee and the employer, and it will include details of eligibility for sick leave and pay.

### Early notification of the end of SSP payment

110. Employers use a form (SSP1) to advise an employee that they are not eligible for SSP, or that their SSP is due to end.<sup>100</sup> For the latter, the form must be issued no more than seven days after the entitlement has ended. The employee is advised to take the form and make a claim for Universal Credit.
111. If the **notification of the end of an employee's SSP could be provided earlier** than it currently is, it could be used as a prompt to the employee to discuss with their employer the support they need to return to work. It could also potentially prompt them to contact their local Jobcentre Plus to seek advice about other suitable job opportunities or retraining options.

## Your views

**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.**

## Use of targeted rebates

112. It is important that sick pay is paid for by the employer to ensure they have incentives to support employees to return to work. However, SMEs are much less likely to have the people, financial resources or expertise to invest in best practice measures. A financial incentive, such as a rebate of sick pay, is one way to provide support for SMEs to meet, or go beyond, their legal obligations and demonstrate best practice. Rebates could also act as a mechanism to share the burden of greater action between SMEs and government to support employees.
113. **To further support SME investment in sickness absence management, the government is interested in how rebates of SSP, targeted at SMEs, might work to drive the right action.**

114. There are a number of ways in which a potential rebate could function:

- It could be conditional on demonstrating a good outcome, such as successfully helping someone to return to work after long-term absence. However, 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 factors outside of their control.
- 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).
- 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, or sharing the cost of supporting employees who have recently moved from long-term unemployment into work.

115. The government is not asking for a view on a particular proposal at this stage but is interested in views on how such a rebate could be designed, in consideration of the following principles:

- The process for claiming a rebate needs to be clear and simple for employers. The government would need to strike a balance between avoiding bureaucracy and ensuring sufficient evidence is provided to claim a rebate. Consideration should also be given to the appropriate timing for paying a rebate.
- The process should give employers certainty to help drive their investment decisions, but avoid a 'tick box' approach, and allow employers to deal with sickness absence in a flexible way.
- The design would need to consider any potential ethical issues associated with linking a financial reward to recovery from sickness.

116. Creating a rebate for employers facing high SSP costs could be seen as creating a perverse incentive and not prompting employers to support sick employees. Until 2014, the Percentage Threshold Scheme (PTS) was in place to enable employers to reclaim any amount of SSP which exceeded 13% of their National Insurance Contributions bill for the month. The scheme was seen as administratively complex and was underused. Any new rebate would need to learn lessons from the PTS and be designed to enable best practice by employers.

## Your views

**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.*

## Longer-term reform of Statutory Sick Pay

### The structure of SSP

117. The rate and duration of SSP have remained the same for a number of years, other than annual uprating. It provides a minimum level of income for individuals and forms part of a wider package of labour market policies which aim to create a business-friendly environment and encourage job creation.
118. By international standards, the SSP rate in the UK is low and the duration of support is long. While the UK offers a flat rate, in most other countries sick pay is related to earnings. Typically, sick pay is provided at the full wage rate or a high percentage of the wage rate but for a much shorter duration – generally less than 10 weeks – followed by sickness benefits funded by statutory insurance or general taxation. This is the case in Sweden and Germany, where employers have duties to rehabilitate sick employees. An exception is the Netherlands where the duration is longer: employers are required to provide 70% of wages for 2 years if necessary. Employers are also responsible for rehabilitating sick employees, including writing a return to work plan, provision of a case manager and evaluation of activities undertaken.

#### The Netherlands Approach

In the Netherlands, before 1996, sickness and disability benefits were funded by employers but financed through collective agreements (pooling risks and resources within industrial sectors). There were limited employer incentives to prevent long-term sickness absence.

A number of reforms have taken place since 1996. Employers were made individually liable for up to two years of sick pay at 70% of previous salary. This stimulated an insurance market and investment in prevention. In 2002, the Netherlands introduced a strict, state-enforced return to work schedule for the employer and the employee over this two-year period. This 'Gatekeeper' approach appears to have reduced disability benefit inflow but increased employer reluctance to recruit disabled people. These reforms were implemented iteratively over the course of a decade, and are still subject to continuous change

A success factor of the reforms is considered to be stronger support for earlier rehabilitation provision among disabled people and people with health conditions. Unintended side effects have included an increased reluctance to hire workers with health problems, as well as employer efforts to circumvent their individual liability by using temporary employment contracts.

119. A fall in earnings when receiving SSP may pose a significant risk to an individual's financial security and ability to recover from serious illness. If their income is reduced when receiving SSP, they may also be eligible to claim Universal Credit (noting that there will be a short period while the claim is being assessed). In cases of serious illness, or where an employee has acquired a disability, the 28-week period of SSP may not be long enough for full recovery. In this case, an individual can claim welfare support. Increasing the duration of SSP could make a significant difference for these employees: it may reduce the pressure to return to work when they are in the middle of recovering from serious illness or coming to terms with a disability and alleviate the stress of potential redundancy.
120. Being able to pay employees at a much lower level than their usual earnings when they are on sickness absence may undermine an employer's commitment to rehabilitating

them. Higher payments of SSP would give employers greater financial responsibility and therefore greater incentive to act to ensure the employee returns to work as soon as they can. A higher rate of SSP might help emphasise that the employee is still part of the workforce and, with stronger enforcement, encourage employers to seek expert occupational health advice. A higher rate might also prompt investment in wellbeing initiatives to prevent sickness absence.

121. The current rate of SSP achieves a balance between ensuring employees receive a regular income from their employer when they are sick and unable to work, while ensuring that the incentive to work remains. SSP is designed to provide a minimum level of income when an individual is off sick and unable to work. The cost of SSP is met in full by employers, and therefore has a business impact. 28% of employers provide Occupational Sick Pay (OSP), or a combination of OSP and SSP. SSP was created as a flat rate for all employees to ensure equity, regardless of earnings or hours worked. A move to higher payments risks some employees not returning to work as soon as they are able to. The increased cost to business could risk disincentivising employers to recruit those they consider more likely to take sickness absence, such as disabled employees.
122. 93% of people who return to work following a long-term sickness absence had an absence lasting 6 months or less.<sup>101</sup> Increasing the length of SSP is therefore unlikely to support significantly more people to stay in work. Evidence suggests it is more important to ensure early action is taken to support employees when they go on sickness absence.
123. Any changes to SSP need to be considered in the context of wider employment and welfare systems. The package of proposed reforms proposed in this consultation is evidence-based and designed to achieve an appropriate balance between supporting individuals and considering the responsibilities of, and the costs on, employers. Making further radical changes risks upsetting this balance and having high transitional costs or implications. If changes to the rate and length of SSP were to be contemplated, the government would also need to consider whether additional measures would need to be introduced to help support or guide employers, as is the case in the Netherlands, for example. As a result, government does not intend to change the rate or length of SSP at this time.

## Your views

**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.**

# Chapter three: occupational health market reform

## Introduction

124. Given the evidence of the effectiveness of occupational health (OH) advice in supporting returns to work, the government wants more employees to have access to it. The government anticipates that the wider reforms proposed in this consultation will result in more employers wanting to purchase OH services.
125. Action is required to ensure employers are able to purchase good quality, cost-effective OH services that meet their needs. Alongside this, complementary improvements will be needed to ensure the OH market has the capacity to respond to greater demand, and is able to deliver quality, cost-effective services to employers of all sizes.

## Addressing cost as a barrier to purchasing OH

126. The majority of employers say that they face barriers in supporting employees to return to work following long-term sickness absence.<sup>102</sup> Compared to large employers, the main issue faced by small employers is lack of resources and capital to support employees.<sup>103</sup> The most frequently cited reasons for not providing OH services are related to cost.<sup>104</sup>
127. Partly as a result, small employers are five times less likely to invest in OH services than large employers.<sup>105</sup> Perceived barriers presented by cost and resource requirements contribute to this substantial difference.<sup>106</sup>
128. Research shows that it is common internationally that SMEs have low access rates to OH services.<sup>107</sup> International responses to this issue have varied. In Sweden, where OH support is provided by a private market, extensive subsidies are available for employers to purchase OH and rehabilitation services.<sup>108</sup>
129. The government recognises that there may be a case for smaller employers to receive greater financial support to purchase OH services, in order to overcome challenges posed by cost. **The government is not committing at this stage that any financial support will be provided, but is interested in the strength of the case to do so.** Through this consultation, the government is seeking evidence and views that targeted efforts to reduce the cost barrier for SMEs could be effective in helping them to access quality OH services.
130. Reducing the cost of OH for SMEs would help to balance any increases in employer responsibilities and legal obligations to support employees at work. It would also help meet the government's aspiration to see more employers purchasing OH through the private market in order to reduce ill health-related job loss.

## Current support for employers

131. Employers normally incur expenditure on employee healthcare for a business purpose and can already deduct this in full when calculating their taxable profits under the longstanding general rules for business expenses. The rules are the same whether or not the employer is obliged by law to incur the expenditure, such as the provision of reasonable adjustments. This means employers already receive full tax relief for these costs. The government therefore does not believe that the existing tax system for business expenses incurred by employers provides a barrier to those wishing to support employees at work.
132. The tax system also ensures employees do not pay income tax or National Insurance Contributions (NICs) on several employer-provided, health-related benefits. Benefits in kind are non-cash benefits provided to employees as part of their remuneration and are therefore normally included in the calculation of a taxpayer's employment income. However, employees can already receive various income tax-free health-related benefits in kind and there is also no corresponding Class 1A NICs liability for employers when there is an exemption for income tax. These include:
- various forms of welfare counselling, including to deal with stress, ill health and problems at work;
  - equipment provided to disabled employees;
  - recommended medical treatment of up to £500 to help them to return to work after 28 days (or if they are expected to be away from work for that period);
  - annual health screening and medical check-ups;
  - medical treatment when an employee falls ill on duties abroad;
  - travel for disabled employees between their home and their permanent workplace; and
  - eye tests and special corrective appliances that are shown necessary by an eye test.
133. The introduction in 2015 of the exemption for recommended medical treatment of up to £500 was intended to help employees return to work. It was targeted at supporting individuals who are expected to reach or who have already reached four weeks of sickness absence. This is because evidence suggested there is an increased likelihood of employees moving on to benefits after an absence lasting four weeks or longer. The £500 cap is in line with the estimated annual cost of the medical treatment that would typically be recommended to help employees return to work. The Department for Work and Pensions estimated at the time of introduction that the average cost of the medical treatment likely to be recommended would be from £150 to £250 per employee. The reform supported the government's objective to widen access to occupational health treatment and encourage employers to engage with the wellbeing of their employees.
134. However, there is limited evidence that making the tax treatment more generous is the most effective lever to incentivise more employers to start offering occupational health provision, if the initial cost is the main barrier for them. In addition, the majority of responses to the consultation on the implementation of a tax exemption for employer expenditure on health-related interventions<sup>109</sup> indicated that the impact of the exemption on an employer's decision to fund recommended treatment will depend often on the employer's perceived benefits in each individual sickness absence case. **As a result, the government has no plans to make further reforms in this area at this time.**

## Future support for SMEs

135. **The government is considering options which reduce the cost for SMEs by co-funding the purchase of OH.** Under such a scheme, SMEs and the self-employed who choose to invest in OH advice could potentially claim, either through a direct subsidy or voucher scheme, a proportion of the cost of their purchase. Any scheme would need to be straightforward for employers to understand and respond to. There are two ways this could potentially work:
- Claimed by the employer when they purchase OH services. This could be either upfront or after the point of purchase.
  - Claimed by the OH provider, so that employers pay a reduced rate when purchasing OH services. The provider would then be subsidised for the cost, reducing the administrative burden on the employer.
136. Any future financial support could be graded according to the size of the employer, providing the most support to the smallest employers, and reducing as the employer size (by number of employees) grows. However, there are other ways in which any future financial support could be targeted; this consultation seeks views on this.
137. There are also choices about what a potential future subsidy or voucher scheme could best cover. Making OH advice and expertise more affordable would help employers to manage sickness absence effectively and support employees at risk of falling out of work. However, a subsidy might be more effective if it extends to the treatment that an OH assessment may recommend. Alternatively, it could be used for OH contracts, which provide more consistent, longer-term support to employers and employees. A new subsidy could also be linked with purchasing OH of a particular quality (in line with proposals set out later in this chapter).

## Your views

**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.*

**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?**

- *OH assessments and advice;*
- *Training, instruction or capacity building (e.g. for managers and leads);*
- *OH recommended treatments.*

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

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

## Increasing the supply of high quality and cost-effective services

138. If the market is to respond effectively to an increase in demand for OH, there will need to be sufficient capacity available. Many OH services call for a range of skills, including those offered by specialist OH clinical staff. However, evidence suggests that numbers are declining in the clinical workforce, with some providers struggling to fill roles, in particular OH doctors and nurses.<sup>110</sup>
139. The government also needs to ensure that this capacity delivers high quality and cost-effective services which directly meet the needs of the future labour market and the future workforce. Experts have emphasised the need for services that cover support for employees experiencing long-term or fluctuating conditions, where the cause might be either work or non-work factors. Services also need to cover light-touch early intervention, as well as specialist support with more complex issues, including advice and referral to appropriate treatment.
140. To achieve this, the market will need to respond in two key areas:
- **Innovation:** there is a lack of effective arrangements in place to support continuous quality improvement and cost-effectiveness, or to support the flow of innovation, including development of new ways to deliver OH.
  - **Standards:** there is a need to improve knowledge of purchasers in ways that will encourage the market to compete on price and quality. Many employers have little experience and knowledge of buying OH services, and providers have few opportunities to compete on the quality of the services they offer. There is scope to build on existing quality standards and compliance arrangements in ways that help providers benchmark and improve their offer, while supporting employers' purchasing decisions.
141. The government's view is that market forces alone are unlikely to be sufficient to respond to these challenges in a timely way, particularly if there is increased demand for OH services as a result of the proposals set out in this consultation. There may therefore be a role for government, as well as others, to help address these issues in ways which improve the availability of high quality, cost-effective services for all employers. Unlocking the full potential of the OH market to support employers and employees could reduce ill health-related job loss, improve business productivity, and potentially reduce pressure on the NHS.

## Improving capacity within the OH workforce

142. Shortages in the OH workforce, particularly shortages of clinical staff, risk limiting the future capacity of the OH market to deliver services. Research shows that 44% of providers are unable to fill roles, typically clinical roles such as nurses and doctors.<sup>111</sup> The majority of OH providers regularly rely on subcontracting to meet their workforce needs. The All-Party Parliamentary Group on Occupational Safety has described the OH workforce as 'in crisis'.<sup>112</sup> Similar concerns have been raised in reports by the Council for Work and Health.

143. OH providers employ a range of healthcare professionals, including specialist OH doctors, nurses, physiotherapists, psychologists and others. The majority of clinical training places are funded through the NHS. This means private providers are, to some extent, reliant on NHS-trained clinical staff to deliver services.
144. The government is concerned that the commercial market (which includes some NHS as well as private providers) by itself will not have the resources or processes to meet future workforce requirements. There may therefore be a role for government to support OH providers to meet this need. The government wants to ensure that NHS and private providers have opportunities to contribute to the development of a sustainable OH workforce. This might involve:
- improved gathering of workforce data;
  - immediate action to increase the flow of OH doctors and nurses in training;
  - longer-term approaches to training and development and workforce models to reduce pressure on highly trained clinical staff, while supporting service quality; and
  - clearer leadership of OH workforce strategy and development that underpins all these elements.

### Improved data gathering

145. No single body collates data on the OH workforce. This makes it difficult to plan for the future needs of the OH workforce and provide strategic leadership to meet these requirements. **The government could facilitate the development of data infrastructure**, for example through:
- Collation and analysis of existing data: this would provide a partial view of the size of the existing registered clinical workforce and help to understand future requirements.
  - Collation and analysis of new data: workforce data could be collected directly from both private and NHS providers. This could be similar to the National Minimum Data Set tool, which is currently used to capture and monitor the workforce within adult social care to support business and workforce planning.

#### Case study – National Minimum Dataset

The National Minimal Data Set for Social Care (NMDS-SC) is a digital service which collects adult social care workforce data across England.

This data helps inform the size and structure of the adult social care sector, including:

- the types of care services that are provided;
- the scale and size of the sector, as well as levels of vacancies and turnover; and
- a detailed picture of the workforce, including demographics, pay, qualifications and training.

NMDS-SC helps inform the strategic planning of the adult social care workforce through: tracking staff retention rates, identifying skills gaps, vacancy promotions, developing engagement tools, promotion of good practice, population forecasting, and workforce modelling and planning up to 2030 at national and local levels for social care services.

## Your views

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

*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.*

## Expansion of clinical OH training

### OH doctors

146. Between 2009 and 2018, the number of OH specialists licensed by the General Medical Council fell by 16% to 569. Up to half of these specialists are predicted to retire over the next decade (53% of OH doctors are over the age of 55).<sup>113</sup> The number of doctors undertaking specialist OH training fell from 178 in 2005 to 69 in 2018.<sup>114</sup>
147. OH providers feel the main reason they were unable to fill OH doctor and nurse roles was due to a lack of clear routes into the OH sector.<sup>115</sup> Expert opinion suggests there is a need to increase the awareness of OH as an attractive career and to increase the opportunities for doctors to become OH specialists.
148. **The government is interested in working with partners to encourage a significant increase in the number of OH specialists.** In particular, this includes ways to increase the opportunities to undertake OH specialty training through OH providers, and opportunities which encourage more doctors to enter the specialty. This has the potential to support NHS and private providers to increase the capacity and quality of the service they provide.

### OH nurses

149. The government is concerned that there are limited opportunities for nurses to undertake appropriate OH training, as well as a lack of awareness of the prospects of a career in OH. The existing training route for OH nurses requires qualified nurses to undertake a postgraduate programme. Courses are often self-funded and several OH nursing courses have closed down in recent years. The number of postgraduate OH nurse trainees has fallen from 200 in 2009 to roughly 80 in 2018.<sup>116</sup>
150. The National School of Occupational Health is currently working with providers to develop an OH apprenticeship programme which offers OH training to qualified nurses. The Specialist Community Public Health Nurses Apprenticeship standard has been developed for specialist nursing roles which are currently required to register on part 3 of the Nursing and Midwifery Council register, namely health visitors, school nurses and OH nurses. This programme would be available to NHS and private providers. **The government is exploring ways to support training opportunities such as this programme, or existing postgraduate courses, to alleviate pressures on the workforce.**

## Your views

**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?**

- *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?**

*Open question.*

## Workforce models and training approaches

151. The OH workforce is made up of a diverse range of healthcare professionals and non-clinical staff. Experts and reports from the Council for Work and Health have suggested that new workforce models, as well as new approaches to training and development, could potentially make better use of this multidisciplinary OH workforce. Reducing the reliance on clinically trained staff has the potential to increase the capacity of the OH market.
152. Workforce models directly match the need for skilled workers at a particular point in time with the availability and preference of skilled workers. The provision of OH services may benefit from a workforce which has greater flexibility and adaptability.
153. OH workforce models could be complemented by refreshed approaches to training and development. For example, the NHS has trialled and implemented the use of competency based training approaches. Competency based training identifies the specific skill sets needed to fulfil a service, in terms of ability, behaviours and characteristics, and matches individuals with those skills. This could mean that staff could be more easily recruited on the basis of their skill set, and not because they belong to one professional group or another. This approach could be applied in developing more attractive career opportunities for the future OH workforce.
154. **The government could work with relevant bodies to scope, deliver, manage and promote an OH workforce model and training and development approaches.** This could support providers to increase the capacity and cost-effectiveness of OH services, while maintaining quality. Organisations such as Skills for Health deliver a range of similar functions.

### Case study – Skills for Health

Skills for Health is a non-profit organisation that helps to inform policy and standards, focusing on health, education and improving the wider wellbeing of public health. It offers a wide range of products and services to help develop a more skilled, productive and flexible workforce.

Services provided by Skills for Health have been developed in conjunction with clinicians and healthcare specialists. They support a number of healthcare organisations with various aspects of the workforce, including:

- Workforce and scenario planning
- Service and role redesign
- Customised career frameworks
- Objective workforce review

- Care pathway analysis and workforce mapping
- Quality assurance solutions

These have helped organisations to: strategically plan their workforce, improve recruitment and retention, improve the use and effectiveness of the support workforce, reduce staff turnover, introduce new standardised roles, improve quality, productivity and health outcomes and raise standards in skills and training delivery.

## Your views

**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?**

## Leadership

155. The National School of Occupational Health, led by Health Education England, leads several initiatives to support the OH workforce, focusing on postgraduate medical training within the NHS. Its work includes supporting NHS providers to deliver OH services to NHS staff. However, there is limited leadership overseeing the strategic development and retention of a sustainable OH workforce in the commercial market. **A collaborative leadership role could help to address this.**
156. Key functions of this leadership role could include developing and implementing an OH workforce strategy, in collaboration with experts and the multidisciplinary workforce, to ensure a sustainable OH workforce is available for NHS and private providers. The role could also assess and monitor current and future workforce needs and training capacity.

### Case study – National School of Occupational Health

The National School of Occupational Health was formed in 2014 to tackle the shortage of skilled OH practitioners. It is a collaboration between Health Education England and the Faculty of Occupational Medicine. It is responsible for improving the quality and consistency of training across England, working closely with medical, nursing and allied health professionals.

The school has developed standard processes for occupational medicine recruitment and annual recruitment competence protocols. It also works closely with the Faculty of Occupational Health Nursing to develop standards for the clinical training of OH nurses.

As well as ensuring the delivery of the national curriculum for occupational medicine, the school also looks at the quality of existing training programmes, identifying training gaps across all OH specialties and working towards providing more collegiate-style support to trainees. This supports the view of the school to focus on OH as a multidisciplinary workforce, representing all professions involved in the delivery of health in the workplace.

## Your views

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

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

**Q39. If yes, what should its role be?**

## Increasing the pace of innovation

157. Businesses innovate to improve the quality of goods or services, increase their market share or reduce the cost per unit.<sup>117</sup> The OH market has often evolved to meet the changing needs of the workplace. For example, the evolution of UK industry from a manufacturing to a service-based economy has been met by OH providers widening their range of services beyond the traditional health and safety offering. Further innovation, such as new ways of delivering services, has the potential to drive quality and improvements in services, and, over time, reduce costs.
158. Evidence shows that the main factors that can limit innovation include lack of availability of finance, high cost, perceived economic risk and a lack of qualified personnel.<sup>118</sup> Positive expectations of market growth are also an important driver of investment in innovation, as they can increase expectations of future returns. The government is concerned that low demand for OH services to date, combined with a marketplace where purchasers are often less informed, may also have driven underinvestment in this area.
159. Government expects that enhanced employer incentives and obligations to support employees with health conditions, as set out in this consultation, will prompt growth in the OH market and therefore help to drive more innovative practice. However, additional support by the government could encourage innovation in the market more quickly. Stakeholder engagement to date has identified several key areas for action:
- supporting new models of delivering cost-effective services, in particular for SMEs and self-employed people;
  - research coordination and partnering; and
  - dissemination of evidence.

### Supporting new models of delivering cost-effective services, in particular for SMEs and self-employed people

160. Some providers report that contracting OH services to small employers and self-employed people can be costly, with fewer opportunities for return on investment. This restricts market access for SMEs and the choices they have when purchasing OH services. Innovation can present opportunities to improve service models and the way providers operate, which could potentially open up new markets for SMEs and self-employed people.
161. **The government is interested in supporting the development, testing and evaluation of new ways of delivering services.** New commercial models that enable the buying and selling of services at scale, or that deliver services more efficiently, could make access to OH services more affordable for employers. For example, these new models could explore innovative models of providing OH, focusing on areas such as early intervention and considering the current methods of payment, opportunities for selling alongside other mandatory employer products, the greater use of brokerage, coordinated purchasing or large employers offering OH services to supply chains.
162. Technological innovation has the potential to drive down costs and improve the quality of services offered to customers. For example, it can be used to encourage consistency of information sharing between employers, providers and workers. However, it often requires a large upfront investment, which can be a barrier for smaller OH service providers and those new to the industry.
163. **To support these aims, the government could dedicate funding to the development and testing of new models of buying and selling services, testing and evaluation of new service models and ways to harness the potential of technology to support service provision.** This would reduce the risk to businesses of investing. If successful, it

could improve access to OH for SMEs and self-employed people, and increase quality and cost-effectiveness of the market. While the government is not committing at this stage that any financial support will be provided, it is interested in the strength of the case to do so.

### **Case studies – use of technology**

#### **EXAMPLE 1**

A company has developed innovative software solutions to support managers to identify how best to support their employees. The software delivers a timely prompt and simple rationale along with support to complete management tasks, such as contact with employees, completion of return to work interviews and the management of referrals to OH or other advisory support.

By enabling better recording of absence and earlier intervention, the company is able to demonstrate improved employee engagement and compliance, which has led to reduced numbers of absences and lost days. The platform enables a business to understand patterns or trends, allowing recognition of measures to proactively avoid absence.

The system is used by small and large organisations and is designed to be intuitive and simple to use. Innovative software has been tested with large corporates, public sectors and larger employers. However, new technology is not systematically tested with SMEs.

#### **EXAMPLE 2**

The construction industry is developing a digital health portal which aims to make it easy and cost-effective for employers to comply with health and safety legislation.

The system aims to catch symptoms of work-related ill health early and create a much-needed consistent approach to workplace health across the construction industry. It will put ownership of digital workplace health records into the hands of employees themselves, enabling them to access their records from mobile devices, and take their records with them if they move jobs.

Major contractors, SMEs and OH professionals are testing the product during development so that it meets the needs of the industry.

### **Strategic research coordination, partnering and dissemination**

164. Innovation is most effective when it draws on a rich evidence base and influences the types and quality of services provided. In the UK, less than 15% of firms use external sources, such as consultants, universities or public research institutes, for information when innovating.<sup>119</sup> In the context of OH, innovation has the potential to enhance the service offer, including quality and cost-effectiveness.
165. Stakeholders have also highlighted the potential of innovation in work and health, including in areas such as the challenges associated with an ageing workforce, new models of service delivery which focus on early intervention, and cost-effectiveness studies which inform what 'good' working-age services look like.
166. There is a significant amount of research underway that is relevant to the provision of OH services. However, research often involves multiple funders and to date it has largely focused on particular conditions or interventions. As a result, research is sometimes not readily translated into improved service provision, and it does not focus on the overall models of OH support. The presence of multiple funders is running the risk that research

in this area is not as effective or efficient as it could be. **Greater coordination** could support the identification of key evidence gaps and ensure a systematic approach to filling those gaps across the different disciplines and expertise.

167. In addition, while the involvement of **multiple disciplines** in health and work research should be welcomed and encouraged, at present this expertise is rarely drawn together to the benefit of service provision.
168. There is also significant concern among stakeholders about declining **research capacity and infrastructure** that helps to sustain collaborative research. Stakeholders have suggested that not enough OH providers have the desire or capacity to release their OH professionals to undertake research to drive improvement. Stakeholders have also identified OH academic capacity as a factor which is reducing the pace of innovation in the OH sector. This reflects longstanding concerns about decline in the OH academic base, as identified by Dame Carol Black in her review, *Working for a healthier tomorrow* (2008).<sup>120</sup>
169. If innovation and research findings are to be implemented, they need to be readily accessible to providers. **Better dissemination of evidence** is an essential component to enable providers to improve provision based on the best available evidence.
170. There are many examples of these issues being addressed in other subject areas. 'What Works Centres' are one example (as set out in the box below). Other examples include the Productivity Insights Network, which acts as a multi-disciplinary network that aims to provide new insights on the productivity puzzle in the UK; and the UK Prevention Research Partnership, an alliance of research funders that have agreed to commit funding to support research into prevention.
171. To address these issues, the **government is considering which new models would work best to support the necessary prioritisation, coordination and dissemination of working-age health research and development. This could take the form of a new Working-Age Health Research and Development Network** that would signal system-wide commitment to improve priorities and evaluate work and health research and innovation.
172. As part of this, the government wants to enable and encourage innovation that is coproduced by providers, employers and academics, and which could help to transform academic evidence into real world change.
173. The network could support research capacity by encouraging multiple and new disciplines to enter the field of work and health research, promoting partnerships between disciplines, supporting efforts to put the current OH profession on a sustainable footing and engaging them with research.
174. A key focus would be on dissemination, as with the current 'What Works' Centres. This new function would give OH providers and other key organisations better access to evidence that supports the implementation of innovative or improved service models. Potential components include:
  - identifying and drawing together national and international evidence;
  - disseminating and promoting proven good practice;
  - acting as a central repository for the relevant evidence on OH;
  - providing resources to inform decision making by OH providers;
  - publishing trusted information and guidance that summarises existing evidence, key developments and emerging themes; and
  - encouraging systematic data collection and sharing to support learning.

**Case study: Centre for Ageing Better**

What Works Centres are different from standard research centres. They enable policy makers, commissioners and practitioners to make decisions based upon strong evidence of what works and to provide cost-efficient, useful services.

The Centre for Ageing Better works with others to stimulate and test promising new ideas. Where there is evidence of what really makes a difference, the Centre supports others to adopt and sustain the most effective ways of working.

The Centre listens to people's experiences and works with them to design new approaches, looks at evidence and practice to identify promising examples, brings fresh perspectives to bear on tough challenges, develops and tests new ideas with the potential to improve people's lives, supports others to adopt proven approaches and implement them at scale, in order to reach as many people as possible and bring together organisations to learn from each other and share good practice.

**Your views**

**Q40. As an OH provider, what would encourage providers, particularly smaller providers, to invest in research and innovation in OH service delivery?**

**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:**

- *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.**

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

- *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?**

## Improving standards

175. Quality standards and quality marks help providers and employers to understand what 'good' looks like. They help providers with continuous improvement, and enable employers to quickly and easily choose between OH providers. The government's aim is to ensure that the standards are closely linked to the quality of the OH services that employers receive and inform the user experience.
176. In 2010, in response to the Dame Carol Black review, *Working for a healthier tomorrow*,<sup>121</sup> the Faculty of Occupational Medicine (FOM), along with major stakeholders, developed a set of standards for OH services called the Safe, Effective, Quality Occupational Health Service (SEQOHS). This was followed by the accreditation scheme developed in partnership with the Royal College of Physicians later that year.

### Safe, Effective, Quality Occupational Health Service (SEQOHS)

SEQOHS is a leader in OH service standards. Since its establishment in 2010, it has since seen the accreditation of 187 occupational health services (as of June 2019).<sup>122</sup> The core standards for SEQOHS include:

- Business probity – business integrity and financial propriety
- Information governance – adequacy and confidentiality of records
- People – competency and supervision of OH staff
- Facilities and equipment – safe, accessible and appropriate
- Relationships with purchasers – fair dealing and customer focus
- Relationships with workers – fair treatment, respect and involvement

In 2010, these clinical standards only applied to NHS OH services. In 2015, an additional set of standards relating to clinical effectiveness was incorporated into the core standards and became applicable for all providers applying for SEQOHS accreditation.

The revised standards now also include:

- Prevention – prevention of ill health caused or exacerbated by work
- Timely intervention – early treatment of the main causes of sickness absence
- Rehabilitation – a process to help staff stay in, or return to, work after illness
- Promotion of health and wellbeing – using the workplace to promote improved health and wellbeing
- Teaching and training – promoting the health and wellbeing approach amongst all staff and ensuring the availability of future OH staff.

SEQOHS standards are due for review in 2020.

177. SEQOHS standards currently focus on process-based standards that look at business integrity; for example, requiring that services are supervised by a qualified professional and ensuring that appropriate audit procedures are in place. These standards help to promote quality by defining the minimum requirements for various aspects of OH services. The associated SEQOHS accreditation scheme aims to simplify the buying process by providing a trusted quality marker.

178. Process based standards can be a useful indicator of quality and may help drive up the quality of OH services. However, they do not necessarily make it easier for employers to judge the outputs of the services they purchase or give providers a full set of information to support quality improvement.
179. The government's ambition is to ensure that employers can easily choose the right provider and services, and that providers can measure their performance. Building on and encouraging the use of standards that focus on the quality and cost-effectiveness of the services that employers receive could achieve this.
180. **There are various potential approaches to developing this ambition:**
1. Build on the existing process-based standards that focus on business probity.
  2. Develop user-centred standards that define the outputs that providers should aim to deliver, for example:
    - the service level agreement between a provider and employer should stipulate the key features of an OH report;
    - a timeframe in which an employer should expect to receive an assessment report.These would allow for performance benchmarking and would also help employers to understand the minimum level of service they should expect.
  3. Compliance arrangements, such as accreditation schemes, where providers are assessed in line with standards by providing evidence demonstrating that they meet the requirements. Accreditation in this area could take the form of a new bespoke quality mark or extension of SEQOHS.
  4. Making financial incentives (as set out earlier in this chapter) conditional on the purchase of a quality service, potentially linked to use of a provider who is accredited under these arrangements.
181. Subject to consideration of responses to this consultation, the government will explore each of these approaches, which could be implemented in combination.
182. Outcome-based indicators would measure the difference in work outcomes that the OH service has made. This could be, for example, a reduction in sickness absence. However, feedback suggests that this approach would be challenging to measure. There are also difficulties in linking work outcomes to specific interventions rather than other, perhaps external, factors.

## Your views

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

- **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?**

- *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?**

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

# Chapter four: advice and support for employers

## Introduction

183. The proposed measures set out in this consultation seek to support and encourage employers to create workplaces which support employees' health, as part of the government's aim to reduce ill health-related job loss. **To be effective, these measures need to be underpinned by good quality advice and information.** Changes to the legal framework and workplace processes will only work if employers feel confident in engaging with employees, and have the information they need to comply with the law. Employer behaviour is key. Managing issues like sickness absence or long-term health conditions needs to be done in a way that is tailored to the individual – a 'one size fits all' approach will not work. Employers therefore need the right guidance to help shape their approach for an individual and their particular circumstances. This will help to build the confidence of line managers in supporting their staff.
184. Evidence suggests that employers can often misunderstand or be uncertain of their obligations around workplace disability and sickness absence, or fear 'doing the wrong thing'.<sup>123</sup> Large employers are more likely to have, and use, an OH provider for support and advice. Small employers are more likely to use less formal routes for information, including internet searches or their personal and professional networks.<sup>124</sup>
185. A range of information, expert-led advice and guidance for employers on workplace health and wellbeing exists. Various expert stakeholders, government agencies and private or voluntary groups produce information and advice for employers. For example, the Health and Safety Executive provides some information on managing sickness absence, and promotes a set of management standards. The Disability Confident scheme contains advice and links to other expert sites. However, guidance is not always relevant or user-friendly for organisations who need it most, primarily SMEs. This can make it harder for employers to understand and fulfil their obligations. Confusion, along with the often fragmented nature of the information available, can be a reason for employers' lack of confidence in dealing with health related work issues. There may be similar issues discouraging employers, particularly SMEs, from purchasing expert-led OH support, as it can be a complex and potentially expensive process.
186. In *Improving Lives*, the government set out its intention to improve advice and support, both at national and local level, for managing health conditions and sickness absence, making sure it works for employers of all sizes, in particular SMEs, and for their employees.<sup>125</sup> The government has since undertaken activities to research and identify how most effectively to bring together information and advice for employers to meet their needs.

### Cornwall Beacon Project

Insight work by government has shown that employers want help to be available locally and from trusted expert sources. Through the 'Beacon Project' work with Cornwall and Isle of Scilly Local Enterprise Partnership, government is exploring ways to engage SMEs in the work and health agenda at a local as well as national level through: local employer networks, small scale digital solutions and effective social marketing in coproduction with SMEs, and a dedicated business engagement manager, recruited from within the Local Enterprise Partnership, working directly with employers.

## Addressing information needs

187. For many employers, improved access to information and guidance on how to create workplaces that support employees' health would help them to understand their legal obligations and provide the expertise needed to support an employee to return to work.
188. **The government proposes to improve the provision of advice and information to support management of health in the workplace and encourage better-informed purchasing of expert-led advice.** The advice and information would primarily be targeted at SMEs and self-employed people. In deciding how to deliver this, the government will take into account existing information sources which it can direct people to, government research into what employers want, lessons learned from the Fit for Work service, and the experience and expertise offered by existing organisations such as the Health and Safety Executive (HSE). The type of advice and information provided could include:
- general information and advice, such as information about employers' responsibilities and obligations;
  - examples of good practice, such as how to implement the mental health standards set out by Stevenson/Farmer;
  - advice on sickness absence management and retention, including adaptations and adjustments to the workplace, and signposting to other sources of information;
  - links to local sources and access to trusted peers and support networks; and
  - information on what forms of medical evidence can be used for the management of sickness absence.

## Your views

**Q49. Do you need more information, advice and guidance?**

**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; [cont.]*

- *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*
- *Other – please state.*

## Supporting employers to purchase OH

189. Although both employers and providers say the OH service they receive or offer is tailored to the needs of the workforce, employers, particularly small employers and self-employed people, are often uninformed purchasers of OH.<sup>126</sup> Small employers are less likely to have access to formal support, such as HR staff, to help with purchasing services.
190. Improving access to advice and information could also include **improving employers' confidence in purchasing expert-led OH services by providing information on how and where to access OH services**. For example, it could help employers determine the right OH services to purchase by providing information about the value of OH to their business, online questionnaires to determine the services they need, or a provider database to support comparisons of providers. It could also provide tools to support employers to evaluate the quality of the OH services they are buying, such as information about what good OH looks like.
191. Improving employer knowledge and buying confidence could reduce the search costs of purchasing OH services and encourage greater competition between providers. This would be likely to increase the quality, and therefore the value, of services. This supports the proposals to reform the OH market set out in chapter three of this consultation.

## Your views

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

- *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?**

- *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.*

## Promotion of advice and information

192. As part of improving the provision of advice and information, the government will need to engage a wide audience of employers and employees. It will not be sufficient to improve the advice and information available without also improving engagement with employers, particularly among SMEs, and making employers aware that such support exists.
193. A number of initiatives have already made progress in this area. The new voluntary reporting framework, which supports organisations to record and voluntarily report information on disability, mental health and wellbeing in the workplace, will help employers to create a more transparent culture in the workplace. The Disability Confident scheme gives employers the confidence and tools they need to recruit and retain disabled people and support them as they progress in their careers. The 'Time to Talk' campaign has been encouraging people to be open about their mental health needs.
194. Evaluations of previous employer advice lines and offers in this area indicate that a perceived lack of need, poor understanding of their purpose and poor marketing have been contributing factors in poor uptake. However, evaluations with users reveal relatively high user satisfaction, and perceptions that the recommendations and advice were useful, expert and easy to access.

### Fit for Work

Fit for Work was introduced in 2014 and offered a free occupational health assessment service that aimed to help employees experiencing long-term sickness absence return to work. The assessment service was withdrawn in December 2017 when take-up and referrals were much lower than expected. However, Fit for Work continues to provide free, general work and health advice to employees, employers and GPs.

Evaluation<sup>127</sup> and feedback from stakeholders highlighted some positive learning from the service. However, a number of issues, including insufficient focus on good communication and marketing, were likely to have been the important factors which resulted in low take up. Lessons learnt from this will help to ensure a new general advice and support service is tailored, delivered and marketed effectively to the right audience.

195. **Promotion of advice and information would initially be supported by a national, multi-year communications campaign outlining what is available, particularly targeted at SMEs and the self-employed.** This would promote the benefits of a healthy and inclusive workplace to employers, offer practical advice on supporting people to stay in, and return to, work if they have been on sickness absence, and signpost to further

advice and support. The communications would support employers in the transition to any new rules by informing them of their roles and responsibilities.

196. A communications campaign would complement targeted messaging through information channels such as trade magazines, HMRC employer bulletins, and Local Enterprise Partnerships and Growth Hubs. Development and marketing of the service would benefit from extensive local engagement and links to key contacts, such as GPs, local government and charities, so that the service is recognised as the primary source of information for work and health issues.

## Targeted and timely interventions

197. Some employers do not think about sickness absence until the problem arises and, when it does, SMEs in particular may not have the capacity or structures in place to manage it effectively.<sup>128</sup> Providing timely, targeted guidance to an employer, as and when they need it, on how to support an employee on sickness absence could minimise the risk of that employee leaving work completely.
198. Currently the government does not collect, or require the reporting of, any data on sickness absences. Many employers already record relevant sickness absence data on their payrolls through recording of SSP payments.
199. **The government is exploring the possibility of employers automatically reporting sickness absence through their payroll system as a way of providing this data.** Using data on SSP payments, the government could provide timely and targeted prompts to SMEs on how best to manage their employee's sickness absence. This could include signposting employers to the appropriate guidance or support on reasonable adjustments, or guidance on how to engage with an employee in a helpful and sensitive way, in line with their legal responsibilities.

## Your views

**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.*

**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?**

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

# Next steps

People are living and working longer, and so the relationship between work and health is more important than ever. Government and employers need to work together to help those who are managing health conditions to live and work well.

Through this consultation, the government is seeking to ensure that employers have the skills and confidence to manage health and wellbeing in the workplace and that they are clear on their responsibilities to their employees. These proposals are intended to form a balanced package of measures which, when taken together, aim to reduce ill health-related job loss.

This consultation draws on a wide range of evidence sources, including primary research commissioned by the government and existing primary and secondary research. It also builds on feedback received following wide-ranging engagement with stakeholders and other interested parties from a number of disciplines and areas of expertise. This includes input from an OH Expert Group established to support policy development in this area, and from a handful of employers of different sizes and employer representative groups. This consultation is a way of widening the sources of evidence and insight, and getting feedback on the specific ideas set out in this document. During the consultation period, the government will carry out workshops to further explore the proposals in detail.

The government will use the evidence and views gathered during this consultation to develop these proposals further and understand the impact of the changes on both employers and employees. This feedback will also help to determine what approach offers the best value for money and is affordable in the context of the next Spending Review.

This is an opportunity to make a valuable contribution to shaping policy design in this important area and helping to transform the lives of disabled people and people with health conditions.

## Your views

**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.***

## Endnotes

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- <sup>1</sup> DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019
- <sup>2</sup> For example, among those aged over 50, even a short period of unemployment increases the risk of mortality and a heart attack as much as smoking. Public Health England. Health and work: infographics, 2018
- <sup>3</sup> DWP/DHSC. Improving Lives: The Future of Work, Health and Disability, 2017
- <sup>4</sup> Waddell, G., & Burton, A. K. Is work good for your health and well-being?, 2006
- <sup>5</sup> For example, almost one fifth of ESA claimants previously in work felt pressurised by their employer to stop working. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015
- <sup>6</sup> DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019
- <sup>7</sup> Ibid.
- <sup>8</sup> DWP/DHSC. Employers' motivations and practices: A study of the use of occupational health services, 2019
- <sup>9</sup> The employment rate of disabled people has increased by 7.5 percentage points in the last 5 years to 51.7%. There were around 3.9m disabled people in employment in the first quarter of 2019. This is an increase of around 950,000 in the last 5 years. Office for National Statistics. A08: Labour market status of disabled people, 2019
- <sup>10</sup> Office for National Statistics. A08: Labour market status of disabled people, 2019
- <sup>11</sup> DWP/DHSC. Health in the Workplace: Patterns of sickness absence, employer support and employment retention, 2019
- <sup>12</sup> BEIS. Industrial Strategy, 2017
- <sup>13</sup> BEIS. Good Work Plan, 2018
- <sup>14</sup> Taylor et al. Good Work: The Taylor Review of Modern Working Practices, 2017
- <sup>15</sup> Stevenson & Farmer. Thriving at work: The Stevenson/Farmer review of mental health and employers, 2017
- <sup>16</sup> DHSC. Prevention is better than cure, 2018
- <sup>17</sup> DWP. Fuller Working Lives: evidence base, 2017
- <sup>18</sup> BEIS. The Grand Challenges: Ageing Society, 2019
- <sup>19</sup> 91% of employers believe that there was a link between work and the health and wellbeing of employees. 90% of employers agree that it was their responsibility to encourage employees to be healthy. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019
- <sup>20</sup> DWP/DHSC. Improving Lives: The Future of Work, Health and Disability, 2017
- <sup>21</sup> NHS. NHS Long Term Plan, 2019
- <sup>22</sup> Evidence shows that on average individuals in employment report higher levels of wellbeing than those who are unemployed. Average ratings for the 'life satisfaction', 'worthwhile' and 'happy yesterday' questions were significantly lower for unemployed people (6.5, 6.8 and 6.8 out of 10 respectively) than for employed people (7.5, 7.8 and 7.4 out of 10 respectively). Evidence from systematic reviews shows that moving into employment from being out-of-work can be beneficial for health. Although this may be partially because healthier people will find it easier to find a job, available studies also suggest that moving into work leads to better health. DWP/DHSC. Work, health and disability green paper: data pack, 2016
- <sup>23</sup> Public Health England. Health and work: infographics, 2018
- <sup>24</sup> DWP. DWP Social cost-benefit analysis framework, 2010
- <sup>25</sup> DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

- <sup>26</sup> BEIS. Statistical release: Business population estimates for the UK and regions, 2018. A small business is defined as a business with 0-49 employees, a medium-sized business is one with 50-249 employees, and a large business is one with 250 or more employees.
- <sup>27</sup> DWP/DHSC, Work, health and disability green paper: data pack, 2016
- <sup>28</sup> 80% compared to 69% for all small employers who provided flexible working to all staff. Federation of Small Businesses. Small Business, Big Heart: Bringing Communities Together, 2019
- <sup>29</sup> Survey respondents were asked, "Has your business/organisation used any of the following to manage these employees' returns to work after long-term sickness absence?" and given options of "Opportunities for employees to return to work in a flexible manner", "Regular meetings", "Develop return to work plans", "Independent assessment of employees work capacity", "External, specialist support to manage the employees return" and "Other". 9% of small employers responded "None of the above". DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019
- <sup>30</sup> <https://www.gov.uk/access-to-work>
- <sup>31</sup> <https://disabilityconfident.campaign.gov.uk/>
- <sup>32</sup> Office for National Statistics. A08: Labour market status of disabled people, 2019
- <sup>33</sup> Ibid.
- <sup>34</sup> Public Health England. Health and work: infographics, 2018
- <sup>35</sup> DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019
- <sup>36</sup> Around 9 out of 10 people return to work, and around two-thirds of workers return within 2 months. DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019
- <sup>37</sup> Disabled people are around 10 times more likely to have a spell of long-term sickness absence and leave work following it than non-disabled people. DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019
- <sup>38</sup> Over half of disabled people report a mental health or musculoskeletal condition as their main health condition – 54% of those in work and 53% of those out of work. DWP/DHSC. Characteristics of disabled people in employment Data for April-June 2017, 2018
- <sup>39</sup> Office for National Statistics. Sickness absence in the UK labour market, 2018
- <sup>40</sup> Stevenson & Farmer. Thriving at work: The Stevenson/Farmer review of mental health and employers, 2017
- <sup>41</sup> Waddell et al, 2008
- <sup>42</sup> Ibid.
- <sup>43</sup> The proportion of those staying in work following their long-term sickness absence (or longest LTSA) decreases as the duration of long-term sickness absence increases. Those whose LTSA spell lasts for 1 year or more are 8 times more likely to leave work following their LTSA than those with a 4-week duration. DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019
- <sup>44</sup> Following the end of their ESA claim, only 4% of people that were previously in the work-related activity group or support group are in employment within 1 month of closing their claim. DWP/DHSC. Work, health and disability green paper: data pack, 2016
- <sup>45</sup> Examples include, but are not limited to: Kuoppala, 2008; Franche, 2005; Dekkers-Sánchez, 2008
- <sup>46</sup> Kuijer W, 2006
- <sup>47</sup> Examples include, but are not limited to: Krause, 1998; Franche, 2005; Andrén, 2012; Høgelund, 2010; Nevala, 2015
- <sup>48</sup> <https://store.mintel.com/occupational-health-uk-may-2019>
- <sup>49</sup> DWP/DHSC. Understanding private providers of occupational health services: An interim summary of survey research, 2019

<sup>50</sup> DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>51</sup> According to a recent employer survey 35% of employers cited cost as a main barrier (too expensive, 22%; or too few cases to justify the expense, 13%) for not providing access to OH services. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019. Smaller employers are more likely to experience financial barriers (perceived and otherwise) to purchasing permanent OH contracts. DWP/DHSC. Employers' motivations and practices: A study of the use of occupational health services, 2019

<sup>52</sup> Overall, employers had positive attitudes towards their role in supporting employee health and wellbeing, with 9 in 10 recognising they had a responsibility to encourage their employees to be healthy (90%), and acknowledging the link between work and health and wellbeing (91%). DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>53</sup> 2 in 5 employers do not agree that the financial benefits of spending money on employee health and wellbeing outweigh the costs. The majority of these are small employers. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>54</sup> DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019

<sup>55</sup> For example, there is evidence of employees having to explain to their employer the duties or definition of disability under the Equality Act 2010, which can be an additional stumbling block for employees, especially for those with less visible conditions. See for example Harwood, 2016 or Bell, 2015. Moreover, research with ESA claimants previously in work suggested employers have been incorrectly withholding SSP from agency workers. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015

<sup>56</sup> Employers most commonly used the internet for information on how to retain employees with long-term health conditions (47%). This source was especially common among small employers than large employers (47% and 25% respectively). Large employers were more likely to say they would access formal, paid-for services such as through an occupational health provider compared to small employers (49% and 7% respectively). DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>57</sup> <https://store.mintel.com/occupational-health-uk-may-2019>

<sup>58</sup> DWP/DHSC. Health and wellbeing at work: a survey of employees, 2014

<sup>59</sup> Research findings show that 6 out of the 10 medium to large providers that responded stated they did not have any services commissioned by SMEs. DWP. Understanding the private providers of occupational health: an interim summary of survey research 2019

<sup>60</sup> DWP/DHSC. Employers' motivations and practices: A study of the use of occupational health services, 2019

<sup>61</sup> Ibid.

<sup>62</sup> Large employers were more likely to take a proactive approach than smaller ones (72% and 44% respectively). DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>63</sup> 46% of small employers and 2% of large employers do not collect sickness absence data. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>64</sup> Only 15% of small employers stated that they have experienced a period of long-term sickness absence in the past year. Over a third of employers that do not provide OH cite a lack of demand as the reason. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>65</sup> Previous research identified a group of people that did not receive sick pay for a period of absence because they did not inform their employer they were sick and a group that took paid holiday to cover sickness (and hence may or may not have informed their employer). DWP. Health and wellbeing at work: a survey of employees, 2014. Research with ESA claimants found that around one-quarter of ESA claimants had not discussed their health condition with either Human Resources (HR) or a line manager (24 per cent). Those with a mental health condition were less likely than those with either physical or other conditions to have discussed their condition with a manager. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015

<sup>66</sup> 46% of small employers and 2% of large employers do not collect sickness absence data. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>67</sup> Government Equalities Office. Equality Act 2010. See also the Public Sector Equality Duty, which places an additional responsibility on some employers to have due regard to the advancement of equality, including by removing or minimising disadvantages and taking steps to meet the needs of people from protected groups (including disabled people).

<sup>68</sup> <https://www.gov.uk/flexible-working>

<sup>69</sup> Health and Safety Executive. Health and Safety at Work Act 1974

<sup>70</sup> Almost one fifth of ESA claimants previously in work felt pressurised by their employer to stop working. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015

<sup>71</sup> For example, 24% of ESA claimants who were previously in work said they did not discuss their health with their line manager. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015. Other research with employees with health conditions or periods of sickness absence highlighted that a third of employees had not discussed it with their employer, of which 30% saw their condition as having an effect on their work. 10% said their employer was not supportive at all when they disclosed their health condition. DWP. Health and wellbeing at work: a survey of employees, 2014

<sup>72</sup> For example, in the Netherlands, employers are individually liable for up to two years of sick pay at 70% of previous salary.

<sup>73</sup> For example, a fifth of employers paying above SSP only pay it to some employees. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019. Other research indicates that the value of an employee to the organisation is a key factor in employers' decisions on whether to invest in costly OH treatment or implementation of adjustments. DWP/DHSC, Employers' motivations and practices: A study of the use of occupational health services, 2019. This is also supported by international research from other countries, for example Seing, 2015.

<sup>74</sup> Examples include, but are not limited to: Krause, 1998; Franche R-L, 2005; Andrén, 2012; Høgelund, 2010; Nevala, 2015

<sup>75</sup> A survey with ESA claimants previously in work found that the adjustments that claimants reported would have most benefited them also tended to be those that employers felt were easiest to implement, such as flexible hours, extra breaks, changing types of tasks, or reducing overall workload. For example, 32% of ESA claimants (previously in work) who did not receive a reduction in their workload said it would have helped them to stay in work longer. DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015

<sup>76</sup> Overall, just under three-fifths of ESA claimants previously in work reported that adjustments had been made for them. DWP. Understand the journeys from work to Employment and Support Allowance (ESA), 2015. 14% of employees with a health condition stated they received adjustments but would have liked them to go further. DWP. Health and wellbeing at work: a survey of employees, 2014

<sup>77</sup> Of a cohort of ESA claimants, those whose main condition was a mental one were less likely to report having had an adjustment made (55% compared with 60% of those with a physical

main health condition and 59% of those whose main condition was of an 'other' nature). DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015. In another survey with employees with health conditions who had received an adjustment, those with a mental health condition are more likely to report an 'unmet need' in terms of further adjustments (22%) than those with a physical health condition (10%). DWP. Health and wellbeing at work: a survey of employees, 2014

<sup>78</sup> Previous research found that helpful adjustments were more likely to be made by employers that the employee had viewed as being supportive when discussing their condition, indicating the value of employees and employers working together to identify the correct adjustments. DWP. Health and wellbeing at work: a survey of employees, 2014

<sup>79</sup> DWP/DHSC. Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019

<sup>80</sup> See for example Kuoppala J, 2008; Franche R-L, 2005; Dekkers-Sánchez, 2008

<sup>81</sup> See for example Kuijter W, 2006; Cullen, 2018

<sup>82</sup> See for example Dekkers-Sánchez, 2008; Etuknwa, 2019

<sup>83</sup> Waddell et al, 2008

<sup>84</sup> DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>85</sup> EU OSHA. Rehabilitation and return to work: Analysis report on EU and Member States policies, strategies and programmes, 2016

<sup>86</sup> For example, research has found the "gatekeeper" element of the disability reforms in the Netherlands reduced disability benefit inflow by between 15-33%. Jong, 2011

<sup>87</sup> Taylor et al. Good Work: The Taylor Review of Modern Working Practices, 2017

<sup>88</sup> Black & Frost. Health at work – an independent review of sickness absence, 2011

<sup>89</sup> Survey evidence shows that 54% of employers pay SSP only, 28% pay OSP or a combination of OSP and SSP. 18% of employers said they did not pay either type of sick pay or did not know what they provided. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>90</sup> See for example Viikari-Juntura, 2012; Simen Markussen, 2012

<sup>91</sup> DWP/DHSC. Improving Lives: The Future of Work, Health and Disability, 2017

<sup>92</sup> Calculated as £94.25 x (25/35 hours) = £67.32

<sup>93</sup> This reflects the ratio of the SSP rate to the LEL, which is the maximum replacement rate in the current system.

<sup>94</sup> Taylor et al. Good Work: The Taylor Review of Modern Working Practices, 2017

<sup>95</sup> DWP. Understanding the journeys from work to Employment and Support Allowance (ESA), 2015

<sup>96</sup> Ibid.

<sup>97</sup> [www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements](http://www.gov.uk/guidance/statutory-pay-entitlement-how-to-deal-with-disagreements)

<sup>98</sup> BEIS. Good Work Plan, 2018

<sup>99</sup> Ibid.

<sup>100</sup> [www.gov.uk/government/publications/statutory-sick-pay-employee-not-entitled-form-for-employers](http://www.gov.uk/government/publications/statutory-sick-pay-employee-not-entitled-form-for-employers)

<sup>101</sup> DWP/DHSC, Health in the Workplace – Patterns of sickness absence, employer support and employment retention, 2019

<sup>102</sup> 3 in 5 employers asked (61%) reported that they had faced barriers in supporting employees to return to work following a long-term sickness absence. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>103</sup> In the survey, small employers primarily reported facing barriers such as lack of time or staff resources (64%), and capital to invest in support (51%). DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>104</sup> Overall, 35% of employers cited cost as the main barrier to supporting employees to return to work following a long-term sickness absence (too expensive, 22%; or too few cases to justify the expense, 13%). DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>105</sup> 18% of small employers, compared to 92% of large employers, invest in OH. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>106</sup> Qualitative evidence indicates that smaller employers are far more likely to experience financial barriers to purchasing permanent OH contracts. DWP/DHSC. Employers' motivations and practices: A study of the use of occupational health services, 2019. Survey data shows small employers reported facing barriers such as lack of time or staff resources (64%), and capital to invest in support (50%). DWP/DHSC, Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>107</sup> Moriguchi, 2010

<sup>108</sup> Ståhl, 2013

<sup>109</sup> [www.gov.uk/government/consultations/implementation-of-a-tax-exemption-for-employer-expenditure-on-health-related-interventions-recommended-by-the-new-health-and-work-assessment-and-advis](http://www.gov.uk/government/consultations/implementation-of-a-tax-exemption-for-employer-expenditure-on-health-related-interventions-recommended-by-the-new-health-and-work-assessment-and-advis)

<sup>110</sup> DWP/DHSC. Understanding private providers of occupational health services: An interim summary of survey research, 2019

<sup>111</sup> Ibid.

<sup>112</sup> All Parliamentary Group on Occupational Safety and Health. Occupational medical workforce crisis, 2016

<sup>113</sup> <https://data.gmc-uk.org/gmcdata/home/#!/reports/The%20Register/Stats/report>

<sup>114</sup> Faculty of Occupational Medicine. Annual report, 2006; Faculty of Occupational Medicine. Annual report, 2017

<sup>115</sup> DWP/DHSC. Understanding private providers of occupational health services: An interim summary of survey research, 2019

<sup>116</sup> Health Education England. Internal communication, 2018

<sup>117</sup> BEIS. UK Innovation Survey 2017

<sup>118</sup> Ibid.

<sup>119</sup> BEIS. UK Innovation Survey: Headline findings 2014 to 2016

<sup>120</sup> The review identified that "occupational health has been weakened by a small and declining academic base. There has been a lack of systematic surveillance and monitoring in the field of health and work. There are few institutions with a research facility or deep interest in workforce health issues, including vocational rehabilitation, and there is little funding available for research." Black. Working for a healthier tomorrow, 2008

<sup>121</sup> Ibid.

<sup>122</sup> [www.seqohs.org](http://www.seqohs.org). Accessed 18 June 2019

<sup>123</sup> 43% of employers who reported facing barriers state a lack of expertise is a barrier to supporting an employee to return to work following a long-term sickness absence. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>124</sup> 49% of large employers used an OH provider, followed by 25% using internet searches. 47% of smaller employers used internet searches, and 27% used their professional networks. DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

<sup>125</sup> DWP/DHSC. Improving Lives: The Future of Work, Health and Disability, 2017

<sup>126</sup> DWP/DHSC. Employers' motivations and practices: A study of the use of occupational health services, 2019

<sup>127</sup> DWP. Fit for Work: Final Report of a Process Evaluation, 2018

<sup>128</sup> DWP/DHSC. Sickness absence and health in the workplace: understanding employer behaviour and practice: An interim summary report, 2019

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## Annex: questions

**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.*

**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)*

**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.*

**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?*

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

*Yes / no / if no – why?*

**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.*

**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.*

**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.**

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.*

**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.**

**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.*

**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?**

- *OH assessments and advice;*
- *Training, instruction or capacity building (e.g. for managers and leads);*
- *OH recommended treatments.*

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

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

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

*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?**

- *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?**

*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?**

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

*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?**

**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:**

- *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.**

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

- *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?**

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

- *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?**

- *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?**

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

**Q49. Do you need more information, advice and guidance?**

**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*
- *Other – please state.*

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

- *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?**

- **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.***

**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?**

***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.***

