



*Championing better
work and working lives*

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

Submission to Department for Work and Pensions

Chartered Institute of Personnel and Development (CIPD)

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Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has over 155,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

As the professional body for HR and people development, our response focuses primarily on questions in Chapters 1,2 and 4 rather than reform of the occupational health market. In preparing its response, the CIPD carried out a survey of 516 HR professionals and convened a roundtable of its membership and other key stakeholders

Executive Summary

Employers need to do more to support employees with health conditions who are not already covered by disability legislation to support them to stay in work and bridge the implementation gap for health and wellbeing practices at work.

The current Statutory Sick Pay (SSP) system is not working to prompt employers to support an effective return to work, and its lack of flexibility means it is unable to support people with a long-term fluctuating health condition. To help overcome this barrier, we think it's crucial to change the SSP system so that SSP can be paid on a part-time basis to encourage a phased return to work where appropriate.



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We believe that a new right to request workplace measure could be one supportive measure to empower employees and should be available to any employee who is able to demonstrate a need for a modification on health grounds. The Government should look to develop a framework with common reasons for refusal across different rights, which will aid consistency and make new rights straightforward to implement.

Clear practical guidance that is principle-based will be key, and employers should be encouraged to:

- Provide effective ongoing and effective training and tailored support for line managers
- Encourage collaboration between occupational health, HR and line managers
- Implement a 'health passport' system for employees with a disability and/or long-term health condition
- Use sickness absence procedures that are consistent but flexible enough not to penalise people with a long-term, possibly fluctuating, health condition or illness
- Require line managers to keep a note of any ongoing conversations with the employee who is off sick so that they can be reviewed to help develop an effective return-to-work plan in collaboration with the individual.

Whilst the CIPD welcomes the package of measures outlined in this consultation paper, a key challenge for Government is achieving a joined-up approach on the part of the many agencies and stakeholders whose work impacts on the workplace health and disability agenda.

The support and services available needs to be tailored to meet the needs of different employers, widely promoted, joined up and responsive. The CIPD is committed to working with Government and other stakeholders, and of course its 150,000 members, to build healthier and more inclusive workplaces.

Our response

Chapter 1: What needs to change

1. 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?

The CIPD **strongly agrees** that there is role for employers to support employees with health conditions, who are not already covered by disability legislation, to support them to stay in work.

The CIPD/Simplyhealth [Health and well-being at work 2019](#) survey report provides evidence that more employers are taking people's health seriously. Just one in six (16%) organisations are still not doing anything to improve employee health and well-being. The overall picture shows small but steady improvements on previous years across a number of dimensions; for example, there are signs that more organisations are giving heightened attention to promoting good mental health, and a small increase in training for managers and employees in this area.

2. 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?

Despite the steady incremental progress on support for employee health and wellbeing evident in the CIPD/Simplyhealth [Health and well-being at work 2019](#) survey report (and previous surveys) there remains a stubborn implementation gap for health and well-being initiatives at work. Our findings still represent a very mixed picture in how proactive organisations are in their approach to employee health. Despite the increased focus on mental health, for example, there is still a lack of preventative measures being taken and despite employers' efforts we are still seeing a worrying increase in poor mental health and work-related stress.

This indicates that the steps taken by employers are falling short of what's needed. Overall, organisations still tend to take a reactive approach to well-being, rather than a pre-emptive one that aims to create the kind of working environment that supports people with ongoing health conditions and helps to prevent poor health where possible. The latter demands active commitment and role-modelling by senior leaders on a consistent basis. However only six in ten employers report that employee well-being is on senior leaders' agendas and just 40% say that they have a standalone strategy in support of their wider

organisation strategy. These findings suggest that in many organisations there is a need for more strategic and sustained engagement among boards and senior management teams to support people with long-term health conditions.

Just as important as senior level recognition that employee health and wellbeing is a core driver of business performance and requires a strategic approach, is the issue of line management capability. CIPD's Health and Wellbeing at Work survey finds though that just 50% of employers report that that line managers have bought into the importance of people's health and well-being.

It's vital that more attention is given to the confidence, training and competence of managers to support people with a long-term health condition, given that implementation for many people management and health-related policies are devolved to line managers who should have the day-to-day discussions with employees in their team who may disclose a health condition and need support/adjustments.

Many of the same barriers that organisations experience in relation to supporting people with a disability also apply to those with a long-term health condition – although people with a disability have the protection of the employer's duty to make reasonable adjustments, many people don't disclose a disability or perceive that they have one. Care needs to be taken to develop as inclusive a culture as possible in terms of supporting people with either a disability or health condition. As we pointed out in our previous [response](#) to the Government's Improving Lives Green Paper, the crucial factors from an employer perspective are to:

- recognise that each case is different, be it long-term illness, or disability or impairment, and to manage each case in an individual and tailored way; and
- give managers clear guidance on how to manage someone with either a disability or health condition in a consistent way, including how to ensure they implement appropriate adjustments to support that individual's specific needs, whether it is a disability or an underlying health condition.

The CIPD [Health and well-being at work 2018](#) survey report surveyed more than 1,000 organisations specifically about their approach to managing people with disabilities and long-term health conditions, and found that three-fifths have a supportive framework in place to recruit (59%) and retain (60%) people with a disability or long-term health condition and over two-thirds (69%) said they had a framework in place to manage people with such conditions.

However, around three-quarters of respondents said their organisation experienced challenges in managing people with a disability and/or long-term health condition. We

concur with the challenges many employers may face outlined in paras 33-39 of this consultation. In addition, our 2018 research also identified the following key challenges:

- Developing line manager knowledge and confidence (reported by 56% of employers)
- Developing an understanding about making adjustments (50%)
- Developing clear policies, training and guidance (22%)
- Developing leadership on disability-related and/or health issues (20%)
- Developing an inclusive culture in the organisation (19%)
- Identifying how to access external advice on health/disability-related issues (16%)

Chapter 2: A clear legal framework for employers

Reasonable adjustments and work(place) modifications

3. 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. We believe that far too few people with a disability or health condition are receiving the support and flexibility they need to remain in work and thrive. A new right to request work(place) modifications could be one supportive measure to help empower employees to discuss with their employer the changes that could help them to do so, a view that is supported by the HR profession. In August 2019 the CIPD surveyed a sample of 516 HR professionals on their views regarding this consultation, and **70% agreed or strongly agreed that a new 'right to request work(place) modifications' on health grounds would be an effective way to help employees to receive adjustments to help them stay in work (just 9% disagreed or strongly disagreed).**

We also held a roundtable with senior HR, policy and diversity specialists to help inform the CIPD's response to this consultation. There was firm support for the new proposal, but some concerns and questions were also raised, such as:

- The existing duty to make reasonable adjustments is not consistently and effectively implemented now in many workplaces, and could the new right be inadvertently creating a complex/confusing legislative framework (along with right to request flexible working) for organisations and managers to navigate and implement (particularly in smaller firms with no HR expertise?). Further, it could be that some individuals would need/want to move across the different legal provisions, for example if a health condition became a disability. Careful thought needs to be given to how the new right would interact/align with the existing right to request flexible working, as many requests for adjustments already relate to flexibility.

- Although it is understood that the new right is intentionally distinct from the existing duty to make reasonable adjustments, could introducing the new right to request in effect create a ‘two tier’ approach to disability and health, with the existing right for reasonable adjustments offering a higher standard of protection for those with disabilities compared with the proposed new right relating to health conditions? Several attendees said their organisation does not distinguish on disability or health grounds in policy and practice and follows a good practice approach by making adjustments for anyone who needs them on a case by case basis, whether or not they are able to demonstrate a disability. Attendees emphasised the need for consistency in practice and for adjustments to be kept under constant review as part of ongoing supportive conversation between individual and employer.

Successfully implementing the new right to request in workplaces

Last year we also surveyed HR professionals on the opportunities and challenges that their organisations experience in recruiting, managing and retaining people with a disability and/or health condition. The published CIPD/Simplyhealth *Health and Well-being at Work* 2018 [survey report](#) found that over two-thirds of organisations have a framework in place to manage people with a disability or long-term health condition, but most experience challenges in managing people with these conditions. Building line manager knowledge and confidence and developing an understanding about making reasonable adjustments were by far the most common challenges reported. So there is important learning here for organisations if and when the new right to request work(place) modifications is implemented. A workplace adjustment process that is well communicated to line managers and employees is fundamental to facilitating effective working arrangements for people with a disability or health condition, and yet less than a third said they had adopted this approach.

In proposing this new right for employees, the consultation makes reference to the existing right to request flexible working, and that the process would be similar. There is indeed an overlap with this current employment right as some of the modifications requested by employees with a health condition would relate to flexibility. The CIPD has been working with Government since 2018 as part of its Flexible Working Taskforce to boost flexible working across the economy. In implementing the new right to request work(place) modifications, there is also some learning from how effective the right to request flexible working has been since its introduction. The CIPD’s 2019 [megatrends report on flexible working](#) shows that take up of flexible working across the economy has been broadly flat. It finds that organisational culture, management capability and attitudes towards flexible working can act as significant barriers and are preventing a significant proportion of the workforce being given the option to work flexibly. These findings are worth bearing in mind when implementing the new right to request as its success will depend to a large extent on

employers having the supportive cultures, awareness and line management capability to promote it across their workforces.

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

We asked our panel of 516 HR professionals ‘**If the government were to implement this new right to request work(place) modifications, who should be eligible?** – as a multiple choice question – and the following results show strong support for the new right being as inclusive, and reaching as broad a group of people, as possible:

- 37% - Any employee returning to work after a period of long-term sickness absence of four or more weeks
- 19% - Any employee with a cumulative total of 4+ weeks sickness absence in a 12-month period
- 15% - Any employee returning to work after any period of sickness absence
- **77% - Any employee who is able to demonstrate a need for a work(place) modification on health grounds**

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

We asked our panel of 516 HR professionals ‘**How long do you think your organisation would need to consider and respond formally to a statutory request for a work(place) modification?** – and the results show that there is strong support for making the process for dealing with employees’ requests as quick and responsive as possible:

- **0-4 weeks – 51%**
- 5-8 weeks – 29%
- 9-12 weeks – 12%
- Don’t know – 9%

6. Do you think that it is reasonable to expect all employers to consider requests made under a new ‘right to request’ work(place) modifications and provide a written response setting out their decision to the employee?

We recognise that some employers such as SMEs, particularly those with no HR or diversity expertise, may find it more challenging to deal with employee requests for

work(place) modifications, but it is crucial that all employees are able to access the workplace support they need to help them manage any health conditions, whichever employer they happen to work for. Therefore:

- **Yes** we think that it is reasonable to expect all employers to consider requests made under a new 'right to request' work(place) modifications; and
- **Yes** we think that it is reasonable to expect all employers to provide a written response setting out their decision to the employee.

7. 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

We asked our panel of 516 HR professionals **'What do you think would be legitimate business reasons for an employer to refuse a new right to request for a work(place) modification made on health grounds? – as a multiple choice question – and the results were as follows:**

- 76% - The extent of physical change required to be made by an employer to their business premises in order to accommodate a request
- 57% - The extent of an employer's financial or other resources
- 48% - The extent to which it would impact on productivity
- 5% - Other – please state
- 10% - Don't know

In order to aid consistency in how employers handle requests for adjustments on health or disability grounds, and make the new right as straightforward to implement as possible, our expert roundtable urged the Government to develop a framework with common reasons for refusal across the different rights. Experts also suggested a further ground – 'The extent to which it could impact on other employees/teams'.

Encouraging early and supportive action from employers during sickness absence

8. 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?

We agree 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. This view was supported by our roundtable of experts and senior HR professionals who agreed that guidance (which could be taken into account in any legal proceedings) would place more compulsion on employers to take earlier action to support individuals with health conditions stay in work. Hopefully this would prevent some individuals from falling out of work, who could have remained working if they had received earlier support from their employer.

10. 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?

We believe that the best approach is to provide principle-based guidance, accompanied by practical case studies demonstrating effective actions taken by employers across a range of sectors, both large and small. However, our expert roundtable also felt that the increased expectations placed on employers via this new statutory guidance should be accompanied by providing easy access to high-profile, good quality and timely information, advice and guidance (including occupational health services) to help them meet these obligations and take the necessary steps to support an effective return to work.

In February 2017, the CIPD submitted its [response](#) to the Government's Green Paper 'Improving Lives' in which we urged Government to:

- Launch a major, ongoing and well-resourced publicity and education campaign to raise awareness and encourage a culture of inclusion among employers that is broader than, but aligned with the Disability Confident campaign.
- Establish a 'one-stop shop' for employers to make it easier to navigate the many sources of information, advice and guidance already available.

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

We fully agree with the principle that early intervention and sustained workplace-based support during sickness absence is important. However, we would also like to emphasise the importance of prevention and reforms that encourage employers to put in place health and well-being and disability frameworks to help prevent people with health conditions going off sick in the first place, where possible. This is highlighted as a key principle in the response to this consultation submitted by John Lewis Partnership on behalf of the [‘Working Well’](#) coalition, of which the CIPD is a partner.

We agree that many organisations do not have enough focus on maintaining positive contact with employees while they are off sick. The CIPD/Simplyhealth [Health and well-being at work 2019](#) survey report finds that two-thirds of organisations give primary responsibility to line managers for managing short-term sickness absence (up to 4 weeks) and two-fifths for managing long-term sickness absence – and yet only around half of organisations provide training or tailored support for their line managers in absence-handling.

The longer someone is off sick, the harder it can be for them to return to work, and we strongly support an absence management approach that maintains contact with absent employees. This should be implemented within a culture and framework that positively supports people’s health and well-being and trains line managers to have sensitive and supportive conversations with employees who are ill and off work. This is an area where HR can make a positive difference and create the right culture around health management and sickness absence, so that the individual perceives contact as a supportive measure and line managers feel comfortable and competent to have the right kind of conversations with absent employees.

We agree that it could be too rigid to introduce an overly prescriptive approach in the UK along the lines of the German model of employer support. However, we support the case for strengthening statutory guidance. It could be helpful if Government also suggested the positive, practical steps that employers should take, emphasising that to be effective a ‘keep in touch’ approach to encourage early and ongoing meaningful engagement would need to be embedded:

- within an organisational culture that has a positive and supportive approach to health and well-being
- in the context of a robust rehabilitation framework including an expert and positive approach to making appropriate adjustments to encourage effective return to work
- as part of a training programme for line managers so that they are equipped to have sensitive and supportive conversations with people who are off sick.

In the guidance, employers should be encouraged to:

- provide effective ongoing and effective training and tailored support for line managers
- encourage collaboration between occupational health, HR and line managers within the bounds of patient confidentiality to case manage employees with a health condition
- implement a 'health passport' system for employees with a disability and/or long-term health condition: this approach can be empowering for the individual and can be used to communicate the individual's health and attendance issues over time
- sickness absence procedures that are consistent but flexible enough not to penalise people with a long-term, possibly fluctuating, health condition or illness, for example where a trigger system is used that does not take into account the spells of sickness absence that someone may need to take because they have an ongoing illness or condition.
- require line managers to keep a note of any ongoing conversations with the employee who is off sick so that they can be reviewed to help develop an effective return-to-work plan in collaboration with the individual.

12. 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?

We asked our panel of 516 HR professionals '**As an employer, what support would you need, if any, 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?**' – as a multiple choice question – and the results were as follows:

- 55% - Easier access to quality occupational health services
- 45% - More easily accessible employer information and guidance
- 42% - Better quality employer information and guidance
- 6% - Other – please state.

- 17% - None of these – we wouldn't need any support

These findings show there is only a minority of organisations (17% – less than one in five) who would not welcome further support to help with managing the return to work of people with a health condition and helping them stay in work. There is broad support for all of the types of support suggested by Government, but easier access to quality OH services is considered the type of support organisations would most value.

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

We asked our panel of 516 HR professionals 'In order to provide effective return to work support as an employer, what action is needed by employees? – as a multiple choice question – and the results were as follows:

- 77% - To agree a plan with their employer to guide the return to work process
- 76% - To have discussions with their employer to identify barriers preventing a return to work and to inform workplace support
- 64% - To engage with OH services
- 3% - Other – please state.
- 4% - None of these – we don't feel employees need to take any action

Just 4% of HR professionals think that employees don't need to take any action to work with their employer to support an effective return to work. There is firm support for all of the options provided in the consultation as to how this should best happen in practice, demonstrating the need for a holistic approach to achieving an effective and sustainable return to work.

Reforming statutory sick pay

16. All respondents: do you think the current SSP system works to protect employers to support an employee's return to work?

No. We asked our panel of 516 HR professionals, **Do you think the current statutory sick pay (SSP) system (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) works to prompt employers to support an employee's return to work?** Just under half (48%) said 'no', a quarter (23%) said 'yes' and 29% were ambivalent, replying 'don't know'.

The CIPD does not believe that the current SSP system is working to prompt employers to support an *effective* return to work, ie one that is sustainable and puts in place the right support at the right time to help an employee who may not be 100% fit but who may be fit for some work. There are several factors at play, including the current ineligibility of some employees who may earn below the income threshold, as well as the need for more effective enforcement, barriers that this consultation hopes to address.

Another key barrier is the current rigidity of the SSP system and its lack of flexibility to support people with long-term fluctuating symptoms associated with either a disability or chronic health condition. To help overcome this barrier, we think it's crucial to change the SSP system so that SSP can be paid on a part-time basis to encourage a phased return to work where appropriate – so in principle we are very supportive of the Government's aims here.

As we reported in our previous [response](#) to the Government's Improving Lives Green Paper, part of CIPD's Labour Market Outlook survey (weighted and representative of the UK business population) administered by YouGov, in December 2016 we asked 1,051 senior HR professionals about their views on potential changes to Statutory Sick Pay (SSP) as set out in the Green Paper. Of the 685 respondents who answered the question, 'to what extent do you support or oppose changing the SSP system so that SSP can be paid on a part-time basis to encourage a phased return to work where appropriate?' three in four HR professionals (75%) said they either 'support' (54%) or 'strongly support' (21%) the change.

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

We asked our panel of 516 HR professionals '**What support, if any, would make it easier to provide phased returns to work during a period of sickness absence?** – as a multiple choice question – and the results were as follows:

- 69% - Clearer medical or professional information on whether a phased return to work is appropriate
- 53% - Guidance on how to implement a good phased return to work
- 42% - A legal framework for a phased return to work which includes rules on how it should be agreed and implemented
- 12% - None – we have sufficient information/support

As the findings indicate, the strongest support is for clearer medical or professional information on whether a phased return to work is appropriate, and so access to good

quality occupational health advice would seem very important. But there is also support for the other suggested types of support, suggesting that a holistic approach is needed

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

We agree with the Government's aim to simplify the rules around qualifying days for SSP and also the principle to enable flexibility whereby individuals returning to work on a phased basis are remunerated on a part-wage and part-SSP basis. We appreciate that the Government intends to introduce an online calculator to support employers with the necessary calculations. However, we are concerned that some practitioners and small businesses will find the new approach (an example of a calculation is set out in para 88) complicated and burdensome to administer. If this is the case, implementing the new proposals could have unintended consequences and discourage employers from encouraging phased returns.

This view is also supported by our experience and feedback from practitioners in relation to the introduction of Shared Parental Leave where complexity around eligibility rules and calculating SPL arrangements in practice were one factor acting as a disincentive for organisations to actively promote the new provision. Our practitioners and experts expressed the view that new provision around SSP should start with the premise of being as simple and easy to understand and implement as possible. We understand the challenge of designing an approach that facilitates maximum flexibility with maximum simplicity

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

We agree with the principle set out in the [Taylor Review of Modern Working Practices](#) that 'access to a basic level of income replacement when you are unable to work through illness is part of this fundamental employment protection.' We share the Government's concern set out in this consultation paper that employees on lower incomes are missing out on the protection offered by SSP because they fall below the earnings threshold for eligibility and therefore fully welcome the proposal to extend SSP to include employees earning below the LEL (which would hopefully capture around two million low-income employees).

20. 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?

We concur with the Government's rationale that payment of SSP above an employee's normal earnings level could potentially act as a disincentive for that individual to return to work, and therefore be counterproductive. We agree that payment of SSP at 80% of earnings strikes the right balance between providing basic income protection when an individual is ill and unable to work and avoiding the risk of providing a financial disincentive.

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

On balance we agree with the Government that the existing qualifying criterion for SSP of having 'done some work for the employer' should be retained and not changed so that individuals accrue their right to SSP over time. Although the latter change would undoubtedly reduce employer costs, we feel this is outweighed by the risks to individuals of having no income when they are off sick and unable to work, or feeling they have to work when they are ill. The [CIPD/Simplyhealth Health and well-being at work survey report 2019](#) found that 83% of organisations had observed 'presenteeism' among employees in the past 12 months and a quarter say it is increasing. It is not healthy or productive for the individual or the organisation if people are feeling the need to work when they are unwell.

We also share the Government's concern that introducing an accrual system for the right to SSP could be more complex for employers to administer, particularly in the light of other changes to the SSP framework that are likely to be implemented.

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

We fully agree with the need for effective enforcement of SSP by HMRC emphasised in the [Taylor Review of Modern Working Practices](#) and reiterated in this consultation. Tougher penalties to encourage compliance are to be welcomed and we are broadly supportive of the Government's proposal to increase fines for employers for non-payment of outstanding SSP. However, as the consultation paper acknowledges, the volume of

calls by individuals to HMRC seeking redress may not reflect the number of employees not receiving their entitlement and the HMRC disputes process is not designed as a deterrent. Therefore, the impact of greater fines on the scale of the problem may fall far short of achieving the desired aim of many more people receiving the SSP to which they are entitled.

As we pointed out in the CIPD's [response](#) to the Department for Business, Energy and Industrial Strategy's [Consultation on enforcement of employment rights](#) the majority of non-compliance in this area is hidden and because the current enforcement regime relies primarily on individuals asserting these rights and seeking redress, non-compliance only comes to light when there is a complaint.

We note the statistics from the HMRC statutory payment dispute team but suspect that the real extent of under- or non-payment of SSP is considerably greater across the UK labour market. We believe there is a widespread lack of awareness by employers *and* workers of SSP entitlements as well as both accidental and deliberate non-compliance on the part of some employers. An [Opinium survey](#) of a nationally representative sample of adults by DirectLine in January 2018 found widespread lack of awareness about SSP provision: just 4% of workers knew how much they would receive in SSP if they were off work sick. More punitive action for non-compliance such as fines therefore needs to be balanced by much more high-profile information, guidance and advice for employers and employees to build awareness of individuals' rights to SSP.

For employers, one barrier is at a state level, with HMRC officials unable to carry out calculations for SSP when carrying out calculations for NMW and NLW. We therefore welcome the Government's proposal to establish an online calculator for employers to help them assess SSP entitlements. We also welcome the Government's plans to include details of individuals' statutory rights for SSP to be included in the proposed new written statement from day one to help raise awareness and clarity.

Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, should run a high-profile 'know your rights' campaign (similar to the successful one run previously by Government to promote pensions auto-enrolment), which would set out information on the employment rights people should expect in relation to the NMW, statutory annual holiday and SSP, as well as where to go if they have concerns or want to make a complaint.

23. Do you agree that the enforcement approach for SSP should mirror National Minimum Wage enforcement?

We believe there is a strong case for enforcement of SSP in a similar way to enforcement of the NMW and NLW.

We believe there should be much more proactive, risk-based state enforcement for SSP rather than relying primarily on individual-based enforcement as is currently the case. A key advantage would be that state enforcement could help to overcome the barriers that vulnerable workers experience in enforcing their rights by approaching the HMRC statutory payment dispute team. As such it would provide a more balanced approach to enforcement that covers both individual and state enforcement, with the advantages outweighing any disadvantages such as the additional cost of enforcement to the public purse.

Stronger state-led enforcement of SSP would also hopefully raise awareness and provide greater support for employers to encourage compliance. We agree with the recommendation set out in the [Taylor Review of Modern Working Practices](#) that HMRC 'should take responsibility for enforcing the basic set of core pay rights that apply to all workers – NMW, sick pay and holiday pay' and therefore welcome the Government's consultation on the case for a new, single labour market enforcement body and the potential inclusion of SSP within the remit of such a body.

24. 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; if there was a requirement for employers to give the SSP1 form to employees four weeks before the end of SSP this could help to encourage individuals to think about their options and have a discussion with their employer about an effective return-to-work. The current system only requires an employer to issue the form no more than seven days *after* the employee's entitlement to SSP has ended, which could leave the individual vulnerable, without any income and yet unable to work. Many people may not be aware that their entitlement is about to end, or has ended. As the consultation says, having earlier notification could act as a prompt.

26. 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

We agree with the Government's rationale for not proposing more radical reforms to change the rate or length of SSP at the current time. The proposals already put forward represent significant change for employers to implement, particularly if the reforms, including regulatory changes, put forward in other employment-related Government consultations are introduced. Any consideration of more deep-seated change such as increasing the level of employers' financial liability for SSP would need to be more supported by evidence of the potential positive impact such changes would encourage. As over 90% of people returning from sick leave return within six months it seems unlikely that changes to the length of SSP would prompt significant change, for instance.

This does not mean that there is no merit in Government carrying out further research on the effectiveness of other countries' (beyond the Netherlands) approaches to SSP, including the rate at which SSP is paid – as the consultation document notes, the UK SSP rate is relatively low and not linked to earnings level, although it is paid for longer than most other countries. We are concerned that many individuals with a health condition or disability requiring them to take a longer period off work face financial hardship because the current flat rate of SSP is so much lower than many people's earnings, especially if they don't receive enhanced income via occupational sick pay. This could encourage some people to come back to work much earlier than they are ready to, possibly making their condition worse whilst not adding value to the organisation in terms of their productivity.

It would also be interesting to explore in more depth how some other countries have duties to rehabilitate sick employees, and whether elements of such approaches could be successfully translated into UK practice.

Chapter 3: Occupational health market reform

45. As an employer, which indicators of quality and compliance arrangements would help you choose an OH provider?

We asked our panel of 516 HR professionals **‘What indicators of quality and compliance arrangements would help your organisation choose an OH provider? – as a multiple choice question – and the results were as follows:**

- 60% - Work outcomes
- 49% - Process times
- 47% - Quality marks
- 43% - Customer reviews
- 4% - Other – please state
- 18% - Don’t know

The findings show that organisations would value work outcomes as an indicator to help choose an OH provider over the other indicators, but a significant proportion would also appreciate the other indicators suggesting that most organisations would take a holistic approach to selection.

Chapter 4: Advice and support for employers

**49. Do you need more information, advice and guidance?
50. If so, what is missing?**

We asked our panel of 516 HR professionals **‘Does your organisation need more information, advice and guidance to help it better support people’s health at work? – as a multiple choice question – and the results were mixed – 25% said ‘yes’, 37% said ‘no’, 30% said ‘maybe’ and 8% didn’t know.**

Of the 127 respondents who said ‘yes’, we asked as a multiple choice question, **‘In what areas would your organisation value more information, advice and guidance?’** and the results were as follows:

- 52% - Workplace adjustments, such as Access to Work
- 50% - Legal obligations and responsibilities/employment law;
- 49% - Managing specific health conditions
- 49% - Occupational health and health insurance
- 46% - Managing sickness absence
- 45% - Best practice and case studies
- 43% - Promoting healthier workplaces
- 30% - Recruiting disabled people and people with health conditions



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- 28% - Local providers of services and advice
- 22% - Links to other organisations, campaigns and networks

The findings show there is broad support for most of the areas suggested in the consultation, showing that those organisations who need more information, advice and guidance (IAG) would value a range of enhanced IAG, but more support relating to the legal framework and reasonable adjustments features most strongly. This view chimes with previous research carried out by the CIPD, but we have also found that other factors need to be considered including better promotion to employers of the available IAG.

In addition to the content of the information, advice and guidance available to employers to support them with the recruitment and retention of people with a disability and/or health condition, there needs to be more focus on building awareness of the available support and services. The CIPD [Health and well-being at work 2018](#) survey report surveyed more than 1,000 organisations specifically about their approach to managing people with disabilities and long-term health conditions, including their awareness and experience of Access to Work and Disability Confident. For Access to Work, 60% had heard of it, 32% had used it and 57% of those who had used it found it very helpful. For Disability Confident, 21% had heard of it, 12% had used it and 44% of those who had used it found it very helpful.

As a Disability Confident Leader we are working closely with the DWP and our members to promote awareness of the scheme but we hope the planned communications campaign will build greater understanding and engagement with both these helpful schemes. As part of our 2018 research, we asked organisations which three government-led changes would make the greatest difference to improving how their organisation manages people with a disability and/or long-term health condition and the fifth most popular response was ‘a high-profile national campaign’ - we therefore very much welcome the Government’s plan for a national, multi-year communications campaign and hope that this is high-profile, multi-channel and integrated with other relevant campaigns and organisations.

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

The collective view from our practitioners is that it can be confusing to navigate the many sources of disability and health related advice, guidance and information (IAG) already available. The CIPD [Health and well-being at work 2018](#) survey report surveyed more than 1,000 organisations specifically about their approach to managing people with disabilities and long-term health conditions. Respondents were asked which three government-led

changes would make the greatest difference to improving how their organisation manages people with a disability and/ or long-term health condition. The most highly rated change was an online 'one-stop shop' providing information and practical tools, cited by 58%.

On balance we think a combination of GOV.UK and Acas would best serve the purpose of a 'one-stop' shop approach. Provision of IAG should meet the needs of employers with very different needs and starting points in this area, particularly SMEs. Therefore it's important that online sources of IAG are supported by the provision of local sources of support and services. Further, a range of practical help and guidance categorised into clear topic headings based on the employee journey including case studies, toolkits, simple flow charts and signposting links to other sources of advice and support on specific health conditions/disabilities would be helpful.

Targeted and timely interventions

54. All respondents: do you agree with the proposal to introduce a requirement for employers to report sickness absence to Government?

We asked our panel of 516 HR professionals '**Do you think a new requirement for employers to report sickness absence to government would help more organisations to manage sickness absence if they received signposting to guidance and advice?** – and the results were mixed – 33% said 'yes', 36% said 'no', 22% said 'maybe' and 9% didn't know. There was no significant difference in the results according to size of organisation. However, as this was a survey questionnaire it wasn't possible to fully convey to respondents the rationale behind the Government's proposal and how this could potentially work in practice to support smaller employers in particular to support people with a health condition to achieve an effective return to work. Attendees at our expert roundtable were broadly supportive of this proposal, as it is those who are in receipt of SSP that would be most likely to potentially fall out of work. Although practitioners experts were mindful of the potential burden that such a request could place on HR systems and smaller employers in particular, if this required only a simple digital action with HMRC, the benefits could outweigh any implementation burden.

55. 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?



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We fully support the Government's view that it's not enough to improve the information and advice available about managing sickness absence without also improving engagement with employers, particularly among SMEs, and making employers aware that such support exists. Smaller organisations are more likely to lack the HR, diversity and occupational health expertise and wider resources, compared with larger organisations. Therefore we fully welcome the Government's plans for a multi-year communications campaign to reach the SME sector and encourage effective action via third party intermediaries who already have established relationships with smaller organisations, for example Local Enterprise Partnerships.

We also therefore agree in principle with the Government's proposal to provide targeted and timely prompts to SMEs as a 'nudge' to help them manage their sickness absence. However, careful thought needs to be given to the signposting and format and content of the guidance, to ensure it is relevant to the case in question. Our members emphasised the need for Government-provided information, advice and guidance to be flexible and offered in an accessible format that meets the needs of employers who are at a range of different starting points for developing healthy and inclusive, and disability confident, working practices.

A key challenge is employers' and line managers' lack of awareness, knowledge and understanding of the many different types of disability and health conditions that may affect people in many different ways, in particular knowledge about workplace adjustments. Our members think there's a need for more clear and accessible generic guidance but also more specific information about particular disabilities and health conditions when needed. Clear, accessible and practical guidance for smaller employers and line managers on how to manage sickness absence and have sensitive and supportive one-to-one conversations to develop tailored return-to-work plans based on individual need are vital. Employers need to:

- recognise that each case is different, be it long-term illness, or disability or impairment, and manage each case in an individual and tailored way; and
- give managers clear guidance on how to manage someone with either a disability or health condition in a consistent but flexible way, including how to implement appropriate adjustments to support that individual's specific needs, whether it is a disability or a health condition.

Support and sharing good practice via local networks

Networks could also be particularly useful in supporting SMEs to take an active role; this is a group that is often harder to reach for policy-makers but given their majority share of the labour market, they are vital to achieving a significant increase in the employment of people with a disability and/or health condition. As a Disability Confident Leader the CIPD



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is working closely with the DWP across its regional branch network to promote the Disability Confident Scheme and share and build good practice among employers at a local level.

Using existing local networks and leveraging existing relationships between trusted local institutions and employers could significantly extend the reach of government advice and support. Government could also expand the opportunities to partner with charities, primary health and occupational health professionals, trade bodies and others like the CIPD to ensure IAG is available across the very wide spectrum of different health and disability issues.

Government needs to dedicate enough resources to any information campaign – it needs to be ongoing and reinforced over the long term in order to build momentum and achieve the cultural shift needed to change behaviour on a sustainable basis at a grassroots level. To really move the dial on the discourse around employing those with a disability and/or long-term health condition, we need significant investment in a campaign that uses multiple channels and networks to disseminate IAG.

Finally, there is a need to recognise that providing good quality IAG in itself will not lead more small employers to improve how they manage and support people with disabilities and long-term health problems. CIPD research into building HR capability in small firms (*Building HR capability and ambition in small firms, 2017*) found many small firm owner managers need support to enable them to get the very basics of people management in place such as written employment contracts, terms and conditions, job descriptions and objectives. It found that until these foundations are in place owner managers are unlikely to invest in higher value added activities like training or developing flexible working. Owner managers who are struggling to comply with employment regulation are unlikely to engage with IAG resources on workers health and wellbeing.

Consequently, there is a need to improve the quality of business support to small firms on HR/people management at a local level delivered via key stakeholders such as Local Enterprise Partnerships and Growth Hubs and through providing additional resources to Acas.

Conclusion

56. 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?

We welcome the package of measures outlined in this consultation paper and think it 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. There *needs* to be package of measures because there is no single public policy initiative that will achieve the step change needed in the willingness and confidence of employers (particularly SMEs) to effectively manage and retain people with a disability or health condition. We believe the measures put forward can be mutually reinforcing and it's therefore important that they are viewed holistically and equal attention given to implementing them as it's crucial that employers are aware and supportive and capable of effectively putting these reforms into practice.

A key challenge for Government is achieving a joined-up approach on the part of the many agencies and stakeholders whose work impacts on the workplace health and disability agenda. The Joint Work and Health Unit is an important enabler and we need to continue to work together to build momentum on this agenda across employment to achieve a cultural step change in societal and employer attitudes towards people with a health condition or disability. In this vein, we would like to mention that our support for the **key principles** set out in the response to this consultation submitted by **John Lewis Partnership on behalf of the ['Working Well'](#) coalition**, of which the CIPD is a partner.

This will not happen overnight but will only be realised if appropriate and adequately resourced Government services are in place to support employers, supported by the planned multi-year communications campaign. The support and services available needs to be tailored to meet the needs of different employers, widely promoted, joined up and responsive. The CIPD is committed to working with Government and other stakeholders, and of course its 150,000 members, to build healthier and more inclusive workplaces.