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#Buildbackbetter for personal financial wellbeing - insights into policy development priorities for a post Covid-19 environment

Briefing Paper BP3/2020

Extended Briefing Paper

Enhancing Working Age People's Financial Resilience: Reforming Statutory Sick Pay

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One of the many issues relating to working-age people's financial resilience that has gained a new significance in the light of the Covid-19 crisis is the overhaul of Statutory Sick Pay (SSP). As with other forms of social security it has drawn attention to some longstanding concerns over SSP and forced temporary modifications. Calls for change though go much further. Yet they have received less publicity. This paper aims to shed light on these and their significance for household finances. It starts by outlining the origin and structuring of SSP and past attempts at reform, particularly over the last two decades. It then considers the main pressures for change and proposals for reframing SSP, concluding with a review of the government's approach and the restructuring needed to ensure it is fit for a post-Covid-19 world.¹

The Evolution of SSP

Origins

First unveiled in 1980, SSP was integral to the Thatcher administration's agenda for curtailing state welfare and tackling Britain's economic problems by freeing up the labour market, restoring work incentives and fostering private provision. In progressing this it planned to curb what it saw as the overly-generous National Insurance (NI) Sickness Benefit (SB) by off-loading short-term sick pay onto employers and subjecting it to employee tax and NI contributions (NICs). These moves it held would secure more rigorous absence management,

¹ Space pre-empts consideration of the issue of protections for the self-employed.

inhibit both excessive claims and welfare dependency and in the process lift productivity and the provision of occupational sick pay (OSP).²

Its proposition, however, met a barrage of criticisms.³ From the left these centred on the breach of collective risk-sharing insurance and fears that it would affect recruitment of individuals with discernible health conditions. Large employers, particularly those with OSP, saw some gains. But insurers generally were wary of providing cover for the lower paid, while SMEs viewed sickness protection as an individual responsibility and balked at the costs. Forced to backtrack, the government modified its scheme four times before a quasi-privatised version was enacted in 1982.⁴

This instituted employer-administered statutory payments funded by reimbursements from their monthly NICs. They were payable to permanent full-time employees between sixteen and the state pension age (SPA) with earnings above the lower NI threshold. Arrangements for sickness notifications and medical evidence became an employer responsibility, a task eased by the introduction in 1982 of self-certification for the first seven days absence. The entitlement did not, however, create a right to time off due to sickness or to return and dispute management was left to the Department of Social Security (DSS).

While intentionally low in line with SB the payment remained partly-earnings-related and commenced after three 'waiting days' off work. Imposed by the 1971 Barber Budget these reflected the continuing presumption that support during short spells of non-working was not a state responsibility and necessary to pre-empt malingering. Their retention also ensured SSP remained aligned with unemployment benefit.⁵ Payment was claimable for up to eight weeks in any tax year. Continuing the SB rule this included a 'linking' period allowing episodes of incapacity for work two weeks or less apart to be treated as one, with waiting days only applying to the first. Thereafter SB kicked back in for 20 weeks, followed by Invalidity Benefit (IB).

For the government the scheme still promised to meet its objectives, signalling that staying in work or returning quickly 'paid' and alerting employers to the costs of and need for firmer sickness management. With those operating OSP allowed to opt out if it was at least equivalent to SSP and, in effect recouping part of its cost, occupational provision also rose.⁶ Nonetheless, in further bids to stem sickness absenteeism but also to comply with EC/EU requirements, subsequent governments revised the payment, eligibility criteria and its funding.

² DHSS (1980) *Income During Initial Sickness: A New Strategy*, London: Cmnd. 7864. [As a prelude, the SB earnings related supplement introduced in 1966 was removed. Taxation was first mooted in DHSS (1969) *Social Insurance: Proposals for Earning-Related Short-Term and Invalidity Benefits*, Cmnd 4124, London: HMSO].

³ Prest, A.R. (1983) 'The social security reform minefield', *British Tax Review*, 1, 44-53; Dean, H. and Taylor-Gooby, P. (1990) 'Statutory Sick Pay and the Control of Sickness Absence', *Journal of Social Policy*, 19:1, 47-67.

⁴ 1982 Social Security and Housing Benefit Act. [Provision for workers in agriculture and rural industries continued to be governed by the Agricultural Sick Pay scheme established in 1948 in England, 1949 elsewhere, and overseen by the Agricultural Wages Boards].

⁵ Unemployment benefit waiting days were introduced by the 1911 National Insurance Act, initially for seven days, reduced to three in 1937.

⁶ Russell, A. (1991) *The Growth of Occupational Welfare in Britain*, Aldershot: Avebury.

Key Developments c 1982- 2015

From 1986, putting more pressure on employers, SSP was lengthened to 28 weeks, the linking period to eight weeks and reporting obligations strengthened. In 1994 as another disincentive to employees and in contrast to the earnings-related schemes in many other countries it was placed on a minimalist flat-rate basis and SB and IB replaced by the more stringent, taxable Incapacity Benefit. Under the first of a series of EC/EU measures, however, SSP was extended to female employees aged 60 to 65 and in the 2000s to agency workers and employees on contracts of under three months while the age limits were also removed. In addition, equalities legislation established provisions for reasonable adjustments and protections against dismissal for those meeting the legal definition of disability.

Otherwise the management of sickness absence was left to employers as, increasingly, was its funding. After short-lived adjustments, as part of the 1994 measures to toughen absence management, employers became liable for its costs. The many objections ensured this was though tempered not only by the low flat rate, but by a new rebate aimed primarily at small organisations, the Percentage Threshold Scheme (PTS).⁷ In addition, in a wider shake-up, in 1999 its overall management was transferred to the Inland Revenue (HMRC from 2005).

Government anxiety over sickness absenteeism continued however and in 2006 as part of its 'New Deal' the Blair administration heralded a revamp. This was partly aimed at minimising employers' administrative load which, it hoped, would entice them to assist employees who became unwell or disabled to remain in work and thereby stem the flow onto and cost of its new long-term benefit, the Employment and Support Allowance (ESA). Reinforcing this the PTS was to be ditched and the savings recycled to assist small organisations help employees recommence working. The linking days and related requirement too were to be rescinded and, critically, 'waiting days' abolished to support the lower paid.⁸

Echoing past and foreshadowing current debates, these proposals met 'a mixed response', with unions, claimant groups and employers expressing differing views. The TUC, for instance, supported day one payments as protecting the low paid and part-timers who necessarily often budgeted on a weekly basis. But it upheld linking days as an essential safeguard for people with recurrent conditions. As earlier it also saw a state scheme as the best way of both protecting employees and assisting employers. Going further, others promoted the idea of statutory rehabilitation leave and the potential, as in the Netherlands, of compulsory organisational return to work provisions. Employers, particularly SMEs, welcomed removing the linking and related rules, but saw repealing waiting days as too costly and facilitating unwarranted absenteeism.⁹

⁷ Activated when SSP amounted to over thirteen percent of their gross NICs in the same tax month.

⁸ DWP (2006) *A New Deal for Welfare: Empowering People to Work*, Cm 6370, London: TSO. [ESA replaced Incapacity Benefit and Income Support].

⁹ DWP (2008) *Explanatory Memorandum to the Statutory Sick Pay (General) (Amendment) Regulations 2008*, 2008 No. 1735, www.opsi.gov.uk/si/si2008/em/uksiem_20081735_en.pdf; TUC (2006) *A Positive Agenda for Work and Welfare The TUC Response to A New Deal for Welfare*, www.tuc.org.uk/research-analysis/reports/positive-agenda-work-and-welfare; TUC (2007) *Statutory Sick Pay Reform: Fairness to Employees*, www.tuc.org.uk/research-analysis/reports/statutory-sick-pay-reform; DWP (2006) *A New Deal for Welfare: Empowering People to Work Consultation Report* (Cm 6859), London, TSO; HoC Work and Pensions Committee (2006) *Incapacity Benefits and Pathways to Work: Third Report of Session 2005-06*.

In response Labour jettisoned its day one proposal and appointed a major review of SSP in 2007. This concluded radical change was not feasible, though it recommended administrative simplification which were accepted.¹⁰ Alongside it, Labour also commissioned the wider Black Review on workplace health care. Following this, in another attempt to inculcate a more pro-active use of SSP and enable people with health conditions to stay in work, in 2010 it introduced a new form of medical certification, the fit note¹¹

Amidst continuing disquiet over absenteeism levels and their economic and fiscal costs Labour's successor, also took up the issue. True to its neo-liberal austerity tenets it floated the notions of cutting the length of SSP and also replacing it with a private income protection insurance scheme, referring the latter to a wholesale review of sickness absenteeism and job loss prevention.¹² Whilst rejecting the insurance notion, it recommended further cutting employers' administrative burden and abolishing the PTS, viewing it as a perverse incentive to sickness management.

Both were implemented in 2014.¹³ In consequence employers were allowed to maintain SSP records suited to their business needs.¹⁴ Most critically, SSP was finally fully privatised, differentiating the UK from comparable countries. Here, apart from the Netherlands, employer funding is generally under ten weeks, with tax or social insurance financed sickness benefits commencing thereafter. Its structure, however, remained unchanged.

The SSP Scheme

This continued to provide a flat-rate amount (currently £95.85 per week) for employed earners irrespective of age working for employers liable for Class 1 NICs who have conducted some work under their employment contract. To qualify they must be ill for at least four consecutive full days (including non-working days) and have average weekly earnings equal to/above the NIC lower earnings threshold (£120). Employers must also be informed within seven days or their stipulated notice period. Payment, commencing after the three waiting days and subject to tax and NICs is for a maximum of 28 weeks. It can be accrued because of a continuous period of incapacity to work or encompass separate occurrences.¹⁵

¹⁰ DWP (2008) op. cit. [It also rejected proposals for rehabilitation leave as too expensive].

¹¹ Black C (2008) *Working for a Healthier Tomorrow*, London: TSO.

¹² Smith, N. (2011) *Cutting Statutory Sick Pay will increase the benefits bill, not employment*, 10th Jan, www.touchstoneblog.org.uk/2011/01/cutting-statutory-sick-pay-will-not-increase-the-benefits-bill-not-employment/; accessed 13/1/11; Black, C and Frost, D (2011) *Health at Work An Independent Review of Sickness Absence*, Cm 8205, London: TSO.

¹³ The savings were allocated to the (short-lived) Health and Work/Fit for Work Service [As part of the Coalition's cuts the 2013 Enterprise and Regulatory Reform Act eliminated the Agricultural Wages Board, switching new employees in England to SSP with workers elsewhere covered by national statutory employment regulations. It also in 2014 introduced a £500 tax relief for employer spending on rehabilitation].

¹⁴ Records of SSP paid are still needed for PAYE purposes.

¹⁵ While the employee is off work statutory annual leave continues to accumulate, regardless of the time recipients take off and can be taken during sick leave. Eligibility begins on the first day of employment with the employee having to have started work on a contract that is to last for at least 3 months. Provided they meet the qualifying criteria part-timers are entitled to the normal weekly rate and can claim from more than one job. Employees are not eligible if they: have received the maximum SSP (28 weeks); are receiving statutory maternity pay/maternity allowance/are off work for a pregnancy-related illness in the 4 weeks before the week (Sunday to Saturday) the baby is due; were in custody or on strike on the first day of sickness (including any linked periods); working outside the EU and not liable for NICs; received ESA within 12 weeks of beginning or returning to work for their employer.

When individuals are considered ineligible employers are required to inform them as to why.¹⁶ If s/he disputes this or the amount paid, as with much UK employment law, the onus remains on her/him to seek redress. Complaints are handled by HMRC which has no wider, proactive enforcement powers. The general advice is that individuals should first try to sort the issue in the workplace, the fallback being to seek a resolution through the mediation of HMRC's Statutory Payment Disputes Team. If this fails HMRC can make a formal decision, including ordering payment, though with no other sanctions. Both parties can appeal through a further review and take the case to an employment tribunal. Non-payment within the 30-day appeal period, or after a final decision by a tribunal can lead to a fine of up to £3,000. If an employer exhausts the appeal rights and does not pay, HMRC becomes responsible for the SSP.

The Critique of SSP

In the wake of the Coalition government's stance, however, pressure for permanent far-reaching reforms has gathered momentum with an array of stakeholder groups and think tanks from across the policy spectrum pointing to basic flaws in its design. Looked at together these fall into three sets of issues: concern over its adequacy, awareness and governance, and rigidity.

Adequacy Issues

For many critics the prime concern is the inadequate support offered by SSP and the hardships it can lead to. These stem from three inter-related rules, all of which have been thrown into sharp relief by the Covid-19 pandemic. One is the lack of protection for staff least likely to withstand even a temporary loss of income, the estimated two million earning below the NIC base-line, and whose numbers increase as this is raised. As the TUC, among others, has emphasised, this affects people on irregular hours and consequent fluctuating incomes and in low-paid or part-time employment, the majority of whom are women. It also in effect denies the lowest paid an employment right accorded to other employees, with their fall-back being to claim the even lower UC.¹⁷

Beyond this the waiting rules create financial difficulties for low-earners. Many necessarily have to budget weekly, giving them little leeway or resources on which to draw and, as surveys have long highlighted, cannot afford unpaid time off. Instead they tend to use holiday time or, like those who do not qualify for SSP, continue to work, potentially jeopardising their own and others' health – a practice that in the context of Covid-19 has become particularly disquieting.

Thirdly and even more troubling is the meagreness of SSP as a form of income replacement, especially in the light both of provision elsewhere and UK levels of financial resilience.¹⁸ As its

¹⁶ Through an SSP1 form which can be requested if not provided.

¹⁷ Klair, A. (2019) *Millions of Low-Paid Workers Don't Qualify for Sick Pay – and Women Worst Affected*, www.tuc.org.uk/blogs, accessed 4/10/19.

¹⁸ Gaffney, D. (2015) *Welfare States: How Generous Are British Benefits Compared with Other Rich Nations?* Touchstone Extra, tuc.org.uk, accessed 22/11/20; Glassdoor/Llewelyn Consulting (2016) *Which Countries in Europe Offer the Fairest Paid Leave and Unemployment Benefits*, Glassdoor Research Report, www.glassdoor.com/research/app/.../2/2016/.../GD_FairestPaidLeave_Final.pdf; Spasova S., Bouget D. and Vanhercke B.

detractors frequently note, though longer in duration, it is among the least generous among comparable OECD countries, so much so that looking at it relative to average UK weekly earnings the European Committee of Social Rights has regularly deemed it ‘manifestly inadequate’. Indeed, it is estimated SSP amounts to just a fifth of average weekly earnings and under third of 40 hours’ earnings on the minimum wage.¹⁹

As from the outset it may be ‘topped-up’ by an OSP scheme, and support might also be secured through group or individual protection insurance (GIP/IIP) and/or personal savings. But the available surveys suggest OSP provision has fallen steadily since the 1990s, is far from uniform and has complex implications for claimants’ finances.

The most recent government study found only 28 per cent of employers pay OSP or a combination of OSP and SSP. Large entities were more likely to do so than smaller ones (77 and 26 per cent), 20 percent of employers only proffered OSP to some employees and employees in higher- skilled or senior positions and with permanent contracts and working full-time were most likely to be covered.²⁰ Moreover, whilst most (though not all) schemes start from day one, qualifying conditions such as weeks of service, waiting times for new entrants and previous sickness absence vary, with eligibility criteria in some firms also differing between white and blue-collar staff. Exclusions may also apply, for instance for non-compliance with reporting requirements or competitive sports injuries.

OSP has to be at least equal to an individual’s SSP. But schemes may be based on all/part of normal earnings and vary in the time taken to attain full entitlement, the role of managerial discretion in extending it, and seniority. Its duration before SSP kicks in also differs, with public service schemes being the most generous, the median at full-pay being 26 weeks, followed by 26 at half-pay, that in the private sector eight, followed by far less. In the latter it may also be limited to a fixed number of days or one occasion in any year, whilst outsourcing has created greater variation within the public sector.²¹ Overall, and particularly worrying in the context of the risk profile for Covid-19, access appears far less common for the lower-paid,

(2016) *Sick Pay and Sickness Benefit Schemes in the European Union, Background Report for the Social Protection Committee’s In-depth Review on Sickness Benefits*, ESPN, European Commission, Brussels.

¹⁹ European Committee of Social Rights (ECSR) (2018) *European Social Charter European Committee of Social Rights (ECSR) Conclusions XXI-2* (2017), Council of Europe,

<https://rm.coe.int/compilation-of-conclusions-xxi-2-2017-by-country/1680786063>; *ibid* (2014) *European Social Charter: European Committee of Social Rights - Conclusions XX-2* (2013)/(Great Britain)/Articles 3, 11, 12, 13 and 14 of the 1961 Charter, Council of Europe; www.mind.org.uk/news-campaigns/campaigns/statutory-sick-pay, accessed 10/2/20.

²⁰ Bacon, N. and Hoque, K. (2013) *Keeping Pace? Financial Insecurity In The Modern Workplace*, London: UNUM, www.unum.co.uk; DWP/DHSC (2019) *Health in the Workplace: Patterns of Sickness Absence, Employer Support and Employment Retention, One-Off*, London: DWP/DHSC, www.gov.uk/government/statistics/health-in-the-workplace-patterns-of-sickness-absence-employer-support-and-employment-retention; Trinh T., Maguire, K. and Shanmugarasa, T. (2019) *Sickness Absence and Health in the Workplace: Understanding Employer Behaviour and Practice An Interim Summary Report*, DWP ad hoc research report no. 73, London: DWP/DHSC, www.gov.uk/government/collections/research-reports.

²¹ e.g. CIPD (2018) *Reward Management Report*, www.cipd.co.uk; Income Data Research (2019) *IDR Benefits Handbook*, London: IDR, www.incomesdataresearch.co.uk; Labour Research Dept (2013) *Workplace Report, June*, www.lrd.publications.org.uk; Scottish Engineering (2017) *Paying For Absence- Sick Pay Benchmark*, www.scottishengineering.org.uk-content/.../Sick-Pay-Benchmark-Report-2017, accessed 3/1/18; Sharp, R. (2019) *Occupational Sick Pay: 2019 Xpert HR Survey*, www.xperthr.co.uk/survey-analysis/occupational-sick-pay-2019-xperthr-survey/164329/; The Smith Institute (2014) *Outsourcing the Cuts*, London: The Smith Institute, www.smith-institute.org.uk; University and College Union (UCU) (2018) *Response to BEIS Taylor Review Consultation on Enforcement of Employment Rights*, www.ucu.org.uk/media/9443/Taylor-enforcement-of-employment, accessed 1/6/18; UNISON (2017) *Benchmarks for Sickness Absence Schemes*, www.unison.org.uk

employees in customer-facing roles and small entities, many of whom are women and members of BAME groups.

Employees in commercial and civil society entities unable to work may also be supported by employers' tax-advantaged GIP schemes. Traditionally these provided an income, usually a percentage of salary payable after 28 weeks. They now, however, include proactive absence management, preventative and rehabilitative programmes designed to support employees in and back to work. Such 'value-added' services, which also lessen insurers' liabilities are held to reduce both long-term absenteeism and its organisational costs. Coverage, however, hovers around 2.5 million employees, mainly of larger establishments. IIP too can include support services. But it is more expensive, often complex, underwritten by occupation, health and gender and only covers around 1.9 million adults.²²

Reinforcing concern over SSP's adequacy for some critics then are the vagaries of employer-funded support and low levels of self-insurance. While OSP can tide some, especially higher earners through an extended absence, a slew of studies suggest that even for two-four weeks let alone longer for many SSP is the main and a brittle safety net. A decade of stagnant wages and widespread persistent low pay that is not confined to 'atypical' employment mean significant numbers of households have inadequate savings to fall back on and are known to be only one income shock away from financial difficulty.

For them, particularly given the extra costs of ill-health, dependence on SSP especially for over a month can lead to reliance on credit and lasting financial damage. While contributing to the high level of household indebtedness in the UK, it can also intensify the pressure to continue working or return early and for significant numbers mental ill-health.²³ Moreover, while some of those dependent on SSP for a protracted period may be able to claim universal credit (UC). As has been well- documented this too offers minimal support.

Awareness and Governance Issues

For many observers concern over SSP's adequacy is exacerbated by a second set of issues. On the one hand it appears employees tend to underestimate the risks of ill-health and overestimate the support provided by employers and SSP.²⁴ As worryingly numerous studies show poor understanding of SSP as of other employee rights is widespread, especially among low earners, agency and temporary employees.²⁵ In part this is viewed as reflecting low levels of

²² Centre for Economic and Business Research (CEBR) (2015) *The Benefits to Business and the Economy of Early Intervention and Rehabilitation, Report for UNUM*, London: UNUM, www.unum.co.uk; Financial Conduct Authority (FCA) (2017) *Understanding the Financial Lives of UK Adults Findings from the FCA's Financial Lives Survey 2017*, London: FCA; Swiss Re (2019) *Swiss Re Group Watch 2019*, www.swissre.com.

²³ e.g. Bond, N. and Braverman, R. (2018) *Too Ill to Work, Too Broke Not To*, Money and Mental Health Policy Institute, www.moneyandmentalhealth.org; BHSF (2017) *A High Wire with No Safety Net*, www.bhsf.co.uk/reports/sickleave, accessed 19/7/17; Chartered Insurance Institute (CII) (2016) *Building Resilient Households*, www.cii.co.uk; Wallace-Stephens, S. (2018) *Economic Insecurity: The Case for a 21st Century Safety Net*, London: Royal Society of Arts, www.thersa.org.

²⁴ e.g. CAB (2017) *Halving the Disability Employment Gap*, London: CAB, www.citizensadvice.org.uk; Roux, T. (2018) *Understanding the Protection Gap in the UK Consumer Market Research Findings into Protection Insurance Purchasing Decisions*, London: Bdifferent/ Financial Services Consumer Panel, www.bdifferent.co.uk; Wind-Cowie, M. (2014) *Opting-Up How to Increase Financial Resilience*; London: Demos, www.demos.co.uk

²⁵ e.g. Adams L, Oldfield K, Riley C, Duncan B and Downing C (2015) *Understanding the Journeys from Work to Employment and Support Allowance (ESA)*, DWP Research Report No. 902, London: DWP; Gardiner, L. and Gaffney, D. (2016). *Retention Deficit: A New Approach to Boosting Employment for People with Health Problems and Disabilities*, London: The Resolution

financial capability more generally. But it is also attributed to lack of information from employers, low awareness among some, especially small and start-up enterprises and, of most concern, avoidance, non-compliance and a weak redress system.

The 'sharp practices' utilised by 'rogue employers' to skirt SSP have been spotlighted by the CAB in particular for whom sick pay issues form a significant caseload and range from reducing employees' rotas or assignments and pressurising them to leave in other ways to unreasonable dismissal. As others similarly emphasise, these impose costs not only on individuals but the state in terms of out-of-work benefits. Moreover, it is argued, redress hinges on an individually-based system that can be difficult to navigate and depends on employee's awareness of their rights and the process involved.

This partly reflects the complex waiting and qualifying days rules, especially for those in insecure employment or who do not work set days/hours or predictable schedules. These are viewed as being compounded by the limited promotion of HMRC's role and its reactive 'on complaint' remit. Its success rate in this regard, with 90 percent of the 3,000 disputes raised annually resolved at the first stage, is recognised. They are widely seen though as the tip of an iceberg and HMRC's brief along with the low maximum fine as an ineffective deterrent that does not allow, as with the NMW, for pre-emptive enforcement.²⁶

Rigidity Issues and Lack of Future Proofing

Beyond these concerns and for many commentators the most crucial are those arising from the current and, unchecked, potential business and socio-economic price of inaction. Looking at the former they highlight the extent to which, whilst overall absenteeism rates have fallen over the last two decades, employers continue to face high direct and indirect costs in terms of sick pay, replacements and lost productivity. As earlier the most common causes remain minor illnesses followed by musculoskeletal and, increasingly, mental ill-health conditions. Employers' indirect costs, however, have, it is contended been amplified by escalating presenteeism which can not only endanger others but lead to longer absence later on. Whilst this has multiple causes, worries over job security are a major driver and with it the lack of contingency saving and the shortcomings of SSP.

Adding to anxieties over this dimension of the UK's 'productivity puzzle' are the costs to government arising from the structuring of SSP. With payment provided only once employees stops working and no right of return, there is, it is maintained, little incentive for employers to invest in back-to-work schemes or occupational health generally, or for individual participation. Rather, SSP operates as a form of 'dead money', despite extensive research on the importance of early intervention and wider policy shifts from a 'passive' to an 'active' welfare system.²⁷

Foundation, www.resolutionfoundation.org; Judge, L. (2018) *The Good the Bad and the Ugly*, London: The Resolution Foundation, www.resolutionfoundation.org.

Taylor, D. (2017) *Ain't That Typical? Everyday Challenges for An Atypical Workforce*, Acas Policy Discussion Papers, www.acas.org.uk.

²⁶ CAB (2017) *op cit.*; see too UCU (2018) *op cit.*

²⁷ Black and Frost (2011) *op cit.*; CEBR (2015) *op cit.*; Gardiner, L. and Gaffney, D., (2016) *op cit.*; Oakley, M (2016) *Striving for Better: Welfare and a Labour Market that Work for Disabled People*, London: Social Market Foundation, www.smf.co.uk; Wind-Cowie, M. (2012) *Duty of Care Can Employers Help Improve Financial Well-Being?*, London: Demos, www.demos.co.uk; *Ibid* (2015) *op cit.*

This appears most visible from surveys showing the transit from SSP to ESA has remained stubbornly high with the likelihood of returning to work receding the longer someone is absent. Overall, it is suggested most individuals with 20 or more weeks sickness absence end up on benefits, around 460,000 annually move from work onto ESA, whilst the state incurs a further cost from premature retirement.²⁸

For its critics this issue is embedded in a wider concern over the costs of not tackling workforce ill-health more generally, the scale of which has been highlighted by a succession of much cited government and other studies. In the case of mental ill-health for instance the overall annual cost to employers in 2017 was calculated at between £33bn and £42bn a year, of which £8bn was due to absenteeism, £8bn to staff turnover and over a half to presenteeism, that to government between £24 and £27bn and to the overall economy between £74-£99bn (almost 2% of GDP in 2016). An update suggests the annual costs to employers has since risen to £45bn, mainly due to increased presenteeism.²⁹

Beyond these immediate costs reforming SSP is seen as essential for future-proofing the economy and meeting the risks posed by fundamental shifts in the labour market. One, a consequence of demographic change, is the rising average age of employees and an increasingly ageing workforce. Another is the move to longer working lives driven by multiple strains on pension funding, the abolition of mandatory retirement and increases in the SPA. As numerous studies emphasise over-fifties accounted for much of employment growth over the last decade and already comprise almost a third (31%) of the UK workforce compared to a fifth (21%) in the early 1990s. Whilst this trend is set to intensify, the falling proportion of younger employees means securing the labour market participation of older people and avoiding the looming 'demographic crunch' is crucial to the economy and fiscally.

Yet, as is also pointed out, mid-life employees have the highest rate of sickness absence, whilst an ageing workforce portends a higher incidence of chronic illnesses, disability and fluctuating health conditions. These are predominantly those that, whilst not necessarily work-limiting, account for sickness absenteeism generally. For older employees though they can require longer spells for treatment and recovery and precipitate premature retirement. Medical advances moreover denote a rise in the numbers living with progressive illnesses, particularly cancer. Looking ahead some studies predict that by 2030 around 40 per cent of the UK workforce will suffer from at least one long-term illness, whilst the incidence of co- and multiple-morbidity will also rise and mental health problems may well surpass other illnesses. For many these will be intermittent conditions, an aspect of ill-health that again affects a not insignificant proportion of current employees of all ages.³⁰

²⁸ Davies, B., Dromey, J., McNeil, Snelling, C. and Thorley, C. (2017) *Working Well: A Plan to Reduce Long-Term Sickness Absence*, London: IPPR, www.ippr.org.uk; Wind-Cowie, M. (2012) *op. cit.*

²⁹ Stevenson, D. and Farmer, P. (2017) *Thriving at Work: The Independent Review of Mental Health and Employers*, www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health; Monitor Deloitte (2017) *Mental Health and Wellbeing in Employment A Supporting Study for the Independent Review*, www.deloitte.co.uk/MentalHealthReview; *Ibid* (2020) *Mental Health and Employers Refreshing the Case for investment*, London: Deloitte LLP, www.deloitte.co.uk.

³⁰ Steadman, K., Shreeve, V. and Bevan, S. (2015) *Fluctuating Conditions, Fluctuating Support: Improving Organisational Resilience to Fluctuating Conditions in the Workforce*, Lancaster: The Work Foundation; Vaughan-Jones, H. and Barham, L. (2010) *Healthy Work: Evidence Into Action*, Oxford: Bupa and The Oxford Health Alliance, The Work Foundation and RAND Europe.

Possible Ways Forward

These manifold concerns have given rise to a plethora of reform proposals. Often advanced as part of broader packages addressing workplace healthcare, they have, as will be seen, gained a new significance in the wake of the Covid-19 pandemic.

Enhancing SSP Support and Governance

Firstly, to reduce financial hardship whilst also spurring pre-emptive employer action, some, particularly civil society groups and unions, have pressed for extending protection to all employees by scrapping the NI threshold. Harking back to the Blair government's plans they have also called for eliminating waiting days and, additionally, upping the payment. Views on the basis for upgrading however vary, ranging from increasing the rate of SSP in line with the minimum or national living wage, aligning it to the real living wage, the basic state pension, or a higher sum to, as in other countries, earnings-related formats, including modelling it on Statutory Maternity Pay (SMP).³¹

Mirroring earlier tensions over squaring viable living standards for claimants, parity with other benefits, deterring possible employee abuse and affordability for employers, others take a different tack. For them, rather than raising SSP, the key way forward is to boost employee's financial resources. To this end a widely advocated strategy is seen as regular government campaigns advertising the need for precautionary savings and the limitations of and constraints on state support. These, it is argued, should be paralleled by promotions targeted at employers spreading the business case for facilitating access to financial well-being services. Through offering gateways to financial education, savings and other schemes organisations, it is argued, could flag the need for and enable greater employee self-protection.³²

For some awareness-raising campaigns should also serve to alert employees to their sick pay rights and employers to their responsibilities. Alongside these and for various reformers more essential is tighter regulation and enforcement of SSP, measures that would also clip the public cost of non-compliance. These are deemed to require mandatory provision of day one statements of employment backed by statutory guidance. In tandem HMRC should be given a more proactive role akin to its oversight of Minimum Wage observance and access to it enhanced. This would both strengthen enforcement and enable higher penalties for non-compliance, which are also seen as vital.

As a further safeguard measures to re-boot protection through encouraging unionisation have also been advanced, along with a shift in labour law to strengthen collective bargaining. Potentially this could secure much-needed improvements in working conditions and hence

³¹ Ewing, K.D., Hendy, J., Jones, C. (eds.) (2016) *Manifesto for Labour Law Towards a Comprehensive Revision of Workers' Rights*, Liverpool Institute of Employment Rights (IER), www.ier.org.uk; *ibid* (2018) *Rolling Out the Manifesto for Labour Law*, Liverpool: IER, www.ier.org.uk; MIND (2020) www.mind.org.uk/news-campaigns/campaigns/statutory-sick-pay/; accessed 10/2/20; TUC (2019) 'Health is Everyone's Business' TUC Submission to the Department of Work and Pensions and the Department of Health and Social Care Consultation www.tuc.org.uk/research-analysis/reports/health-everyones-business, accessed 6/11/19; TUC (2020) *Sick Pay For All*, London: TUC, www.tuc.org.uk/research-analysis/reports/sick-pay-all, accessed 4/3/20.

³² Association of British Insurers (ABI) (2014) *Welfare Reform in the 21st Century*, London: ABI; www.abi.org.uk; CII (2016) *op cit*.

employee health. It could also reverse the insecurities arising from stifled wages and elevate SSP rates.³³

Additionally, there have been calls for recognising terminal illness as a protected characteristic covered by a separate recoupable scheme, supplementing SSP through subsidising or encouraging employer-provided disability leave for medical and related appointments, and short-notice 'wellbeing days' to minimise absenteeism and presenteeism.³⁴ Across the advisory and stakeholder spectrum, the paramount reform proposal however, is to refashion SSP on flexible lines attuned to ongoing workforce changes.

Re-Fashioning SSP

Depending on the proponent this entails encouraging or imposing a lengthier SSP (preferably doubling it) along with a new right to return and for some the elimination of waiting days. If made compulsory, these reforms would bring SSP into line with statutory maternity leave. Measures to enable employees to continue or resume working are also deemed essential. If mandatory these comprise the institution of back-to-work plans after a month's absence and an entitlement to stepped returns, in effect creating a right to rehabilitation. Though to pre-empt any abuse such proposals are generally predicated on formal return-to-work agreements.

In recommending repurposing SSP in these ways its many protagonists point to the well-attested effectiveness of early intervention schemes run by some UK employers and other countries, in sustaining employment and lowering public spending. For them it would also align SSP with successive governments' belief that employment provides the best route to well-being and out of poverty and that ill-health is not necessarily incompatible with being in work. They differ, however, over the place of mandation, ways of both strengthening employee's financial resilience and funding a flexible SSP, particularly if extended, and the roles of employers, employees and the state in this.³⁵

From one perspective the answer lies in variants of a universal national insurance scheme, or possibly bankrolling a second six months from the NI Fund. From another, in the context of continuing fiscal constraints and dwindling state welfare the way forward hinges on extending public-private partnerships to social protection. Suggestions in this vein centre on developing a 'second pillar' to 'top up' and 'flex' SSP through incentivising employers to directly assist their employees rather than just facilitating access to precautionary savings schemes.

One much canvassed suggestion is to stimulate the expansion and rehabilitative role of OSP through tax reliefs. An alternative, again widely promoted, is the introduction of NIC reliefs to spur GIP provision along with removing or lowering the insurance premium tax on it. To

³³ e.g. CAB (2017) *op cit*; [Davies et al \(2017\) op cit](#); Ewing, K. et al (2016; 2018) *op cit*.

³⁴ www.mind.org.uk/news-campaigns/campaigns/statutory-sick-pay/, accessed 10/2/20; Ewing et al (2016;2018) *op cit*; Gardiner and Gaffney (2016) *op cit*;

³⁵ e.g. ABI (2014) *op cit*; Ewing et al (2016) *op cit*; Gardiner and Gaffney (2016) *op cit*; Harrap, A. (2016) *For Us All: Redesigning Social Security for the 2020s*, London: Fabian Society, www.fabians.org.uk; MIND (2020) *op cit*; Oakley (2016) *op cit*; Zurich Insurance Company (2017) *Embracing the Income Protection Gaps Challenges, Options and Solutions*, London: Zurich, www.zurich.com/en/knowledge/topics/workforce-protection/embracing-income-protection-gaps-challenge-options-and-solutions; Wallace-Stephens(2018) *op cit*; Wind Cowie (2012; 2015) *op cit*; *ibid* (2013) *Squaring the Circle*; *ibid* and Wood, C. (2016) *Next Steps for Financial Resilience: How British People Can be Protected from Financial Shocks*, London, Demos, www.demos.co.uk.

further this, it is envisaged consortia should be established to negotiate affordable premiums for small employers and insurers encouraged to develop appropriate products. Expanding GIP with its built-in employer and employee support services and providers' cost minimisation incentive would, it is claimed, provide claimants with an earnings-linked replacement income. It would also enable staged returns and/or reduced hours working over a longer period and, crucially, reduce the seepage onto and cost of ESA.

Conversely these goals, it is affirmed, could be achieved by compelling employers, to provide a separate, flexible form of sick pay alongside SSP. This could be phased in starting with large employers and set through return-to-work plans agreed after four weeks absence with organisations being penalised for not instituting them. Adding to these possibilities are proposals for a state rebate scheme for effective sickness management provisions and support for employees. While the details vary this is usually envisaged as being primarily for SMEs but aimed at cajoling employers generally into providing back to work assistance including combining wages and SSP to enable stepped resumptions. This too would be based on employers and employees committing to return-to-work plans after, typically, a month's sick leave.

Taking a different tack, a case has also been made for maintaining the primacy of personal responsibility by normalising employee self-protection. One mechanism for this is seen as the provision of tax breaks for IIP with its similar support services, reinforced by adjustments to its interaction with UC and a publicity drive highlighting the need for self-safeguards. Another, allowing for both protective saving and insurance, draws on the notion of 'fortune accounts', a possibility apparently contemplated by the Cameron government.³⁶

First promoted in the 1990s and modelled on those in Singapore and American 'sidecar' saving schemes this has come to be promoted as an adjunct to pension auto-enrolment. Whether designed on a one 'pot' general emergency savings basis or as two separate 'pots' for savings and insurance it is seen as an accessible way of enabling employees, possibly with tax relief, to bolster their financial resilience. To maximise take-up some favour fully tethering such accounts to pension auto-enrolment through parallel employer and government contributions. To make the most of the private market in a variant of this compulsory social insurance akin to workplace pensions and funded by employees, employers and the state has also been suggested with organisations providing schemes from regulated suppliers.³⁷

The Government's Strategy

This profusion of reform proposals and the concerns underlying them have fed into a string of intersecting government consultations and parliamentary inquiries in which SSP formed part of wide-ranging considerations of employment and workplace healthcare policies. Their outcomes have been inherited by the current administration and in the case of SSP, as emphasised earlier, gained added traction from the Covid-19 crisis. Following business and union lobbying this has necessitated the temporary suspension of waiting days for eligible employees absent because of coronavirus sickness or self-isolation, supported by an online

³⁶ www.theguardian.com/politics/2015/jul/13/david-cameron-open-to-workers-saving-up-fund-own-sick-pay.

³⁷; Butler, E. and Pirie, M. (1995) *The Fortune Account*, London: Adam Smith Institute; *ABI (2014) op cit*; Oakley, M. (2016) *op cit*.

reporting process. The government is also on an interim basis refunding up to two weeks coronavirus-related SSP for businesses with under 250 employees on all types of contract.

Whether and when these measures will be rescinded is, as yet, unclear. Its possible stance on SSP reform can however be gauged from other changes already in place, in the pipeline, or being assessed. These emanate partly from its predecessor's commissioning of and response to the 2017 Taylor Review of working practices, partly from parallel consultations on workforce health care.

The former's recommendations for countering 'one sided' labour market flexibility included making SSP an explicit basic entitlement comparable to the NMW and a call for the government to ensure employer and employee awareness of this. In responding the May administration pledged that SSP would be clearly recognised as an employee right, though one still subject to the waiting day rules. It also sanctioned including SSP in provisions for compulsory written statements of employment particulars for new workers. Both measures came into force in April, meeting two of the reformers' concerns, though media coverage was overshadowed by the Covid-19 emergency measures.³⁸

Taylor's proposal for a single labour market enforcement body to tackle non-compliance in general was also accepted and forms part of the Employment Bill announced in December 2019. Whether or when it will encompass HMRC's SSP remit however is, as discussed below, still being considered following a separate consultation.³⁹ Incorporating SSP enforcement in an over-arching agency could potentially meet one of the reformers main concerns and has been welcomed in many of the publicly available responses to the government's consultation on this.

Support, however, is hedged by anxieties over resourcing, particularly the possibility of an amalgamated body becoming subject to 'efficiency savings' and the balancing of deterrence and compliance. Some respondents including the TUC, moreover, have pressed for strengthening HMRC's role and building on its expertise. The government's relative silence on unionisation and collective bargaining as means of protecting employees has also been questioned. Meantime, especially in the context of Covid-19 it is argued resources should be made available to ensure SSP entitlements are claimed and fully enforced.

Elements of the Taylor Review have also been taken forward alongside other strategy documents, in the consideration of SSP as part of three consultations and research overseen by the cross-government Work and Health Unit established in 2015. In the context of continuing fiscal austerity these focused on the challenges of securing pre-emptive action to flatten the benefits bill and maximise labour market participation, especially by tackling

³⁸ Taylor, M., Marsh, G., Nicol, D., & Broadbent, P. (2017). *Good Work: The Taylor Review of Modern Working Practices*, <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>; HMG (2018a) *Good Work A Response to the Taylor Review of Modern Working Practices*, www.gov.uk/beis; DBEIS/MoJ (2018) *Good Work The Taylor Review of Modern Working Practices Consultation on Enforcement of Employment Rights Recommendations*, London: BEIS/www.gov.uk/beis; HMG (2018b) *Good Work Plan*, Cm9755, London: HMSO; BEIS/HO (2019) *Good Work Plan: Establishing a Single Enforcement Body For Employment Rights* Consultation, London: BEIS/www.gov.uk/beis; HC Work and Pensions and Business, Energy and Industrial Strategy Committees (2017) *A Framework for Modern Employment*, Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, HC 352.

³⁹ HMG (2019) *Health is Everyone's Business: Proposals to Reduce Ill Health-Related Job Loss*, CP 134, London: HMSO

current and predicted workforce ill-health, mental ill-health and the disability employment 'gap'.⁴⁰

Amongst other propositions, reflecting lobbying by the insurance industry, that in 2016 and its 2017 follow-up raised the possibility of increasing the role of GIP. But other than highlighting the need for new products and SME consortia schemes how this might be achieved was left open. The drawbacks have been well-rehearsed and, with the suggestion receiving conflicting responses, dropped. Nonetheless lobbying for tax-supported GIP expansion has continued and is increasingly being pressed as a cost-effective way forward given the financial burden of the Covid-19 support schemes.⁴¹ In a separate development in 2018, however, NEST launched a three-year trial of a voluntary liquid savings scheme add-on to its auto-enrolment pension. But the Covid-19 crisis has triggered questions about whether a dual 'jar' configuration might be a better way of strengthening employee's financial resilience.

Meanwhile the May government's approach to amending SSP was firmed up, culminating in the 2019 consultation which sought views on what had emerged as its key concerns and 'takes' from various reformers' pitches. As part of a wider policy aimed to reduce ill-health related job loss this again underlined the need for a 'business-friendly' approach avoiding undue burdens on employers, a stance likely to be high on its successor's post-'lockdown' agenda. Correspondingly it made it clear that there were no plans to alter the rate or duration of SSP. Whilst interested in views on their effects on employee behaviour, both were seen as crucial to maintaining the balance between supporting individuals and employers' costs and responsibilities and between the wider welfare and employment systems. Though open to removing the complex qualifying days rules, waiting days too would remain - indicating that their recent suspension may well be provisional.

But, in a different move, building on the Taylor Review, it did endorse extending SSP eligibility to employees earning below the LEL. Where these fell below SSP they would be paid a proportion of their wage, the suggested amount being 80%, of SSP.⁴² Again, in line with Taylor and the wider pressure for reform, the government also put forward proposals for improving enforcement and redress, in the first instance through upping the fines under HMRC's dispute system. But over the longer-term it projected mirroring HMRC's SSP remit on that for the NMW and its possible inclusion in the planned single labour market enforcement body.

Its other propositions centered on crafting a more flexible, work-supporting SSP. Rather than mandation the preferred vehicles here were stronger statutory guidance to galvanise employers into establishing appropriate return to work schemes and allowing pro-rata SSP conjoined with wages for stepped returns. Backed by an on-line calculator this would commence from week three with part-days absence in such schemes not counting toward the 28 week stop-off. In accordance with its general thinking, however, return to work arrangements were to be left to organisational decision-making and not subject to legislation.

⁴⁰ DWP/DoH (2016) *Improving Lives The Work, Health and Disability Green Paper*, Cm 9342, London: HMSO; Stevenson, D., & Farmer, P. (2017). *op cit*; DWP/DHSC (2017) *Improving Lives The Future of Work, Health and Disability*, Cm9526, London: HMSO; HMG (2019) *op cit*; HMG (2017) *Industrial Strategy Building a Britain Fit for the Future Cm9528*, London:HMSO; BEIS (2019) *The Grand Challenges: Ageing Society Policy Paper*, www.gov.uk/government/publications/industrial-strategy-the-grand-challenges/industrial-strategy-the-grand-challenges

⁴¹ e.g. through the 2018 Access to Insurance Working Group and the industry's 2020 Workplace Public Policy Committee.

⁴² It did though reject the much-criticised Taylor recommendation that SSP rights be accrued over time.

To further incentivize these though it heralded the prospect of a conditional SSP rebate for SMEs running effective returner and best practice absenteeism management schemes, inviting views on its feasibility and design.

Where Next?

Other than measures already in the pipeline the Johnson government has yet to publish its views on the consultation, on which like many policy areas its manifesto was silent. The many responses, however, point to the principled and practical complexities of modernising SSP. Employer groups for instance have welcomed the proposed non-prescriptive approach to the inherently individualised tailoring of return to work measures. They have though expressed concerns about securing active employee participation and the developmental, line management training and ongoing costs, especially for SMEs. To mitigate these some hold employee eligibility for support should be conditional on at least two years of employment service and the wage payment capped.

Campaigning groups have been more critical contending that the consultation proposals did not go far enough and pressed for more sweeping changes, the necessity for which has been demonstrated by the Covid-19 pandemic. On both public health and equity grounds three reforms now seem essential. Firstly, the earnings threshold should, as intimated by the May administration, at last be withdrawn. Secondly, the SSP rate should be lifted to at least the equivalent of a week's real living wage. Thirdly, the suspension of the waiting days rule should become permanent.

As has been widely suggested these measures would both help secure the effectiveness of the track, trace and quarantine system and those facing a lengthy recovery from Covid-19 or recurrent related ill-health. They would also strengthen the safety-net for employees, especially women and minority ethnic groups who are the most likely to be lower paid, have limited resources and lack OSP protection.

As an interim measure consideration needs to be given to extending the rebate system to support these reforms. The Covid-19 pandemic has also though exposed deep-seated pre-existing inequalities, the shortfalls of social protection, particularly for the self-employed, and the scale of chronic under-saving across the workforce. These demand a longer-term fundamental rethink of social security policies and SSP's place within them, including shaping sick pay to address concerns over work-force ill-health and, relatedly, the quality and of working life. Whether the crisis will prove a catalyst for such elemental reform remains to be seen. The fear is that in the rush back to 'business as usual' any changes will be low on the government's agenda.

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