

Health is Everyone's Business: proposals to reduce ill-health related job loss

Closes 11.45pm 7th October 2019

British Safety Council and Mates in Mind joint submission in response to current consultation

The British Safety Council's vision is that no-one should be injured or made ill through their work. We are well placed to drive this agenda through our insight into business and risk management, informed by our members who operate in the UK and internationally, and with 60 years of educational and campaigning experience to improve the health, safety and wellbeing of the workforce.

The British Safety Council Group of Charities now includes Mates in Mind, a sister charity, and our response reflects our wider experience in promoting positive action to tackle mental health in the workplace.

Mates in Mind was set up in 2017 by the Health in Construction Leadership Group, in partnership with the British Safety Council. Its aim is to support employers across construction and associated industries to recognise and address the lack of awareness and understanding of mental ill-health at work, and actively to improve workplace wellbeing by addressing the taboo and stigma and promoting improved cultures of health. To date, nearly 300 employer Supporters are working directly with Mates in Mind, which represents just over 200,000 employees. In many instances, the impact of our work, particularly with larger employers, is further amplified as we are actively supporting them to work across their supply chains and through operational structures.

More than working with employers to help them prevent accidents and physical or mental ill-health, we believe that work can improve people's health and wellbeing. Though the focus of the British Safety Council is more on work-related ill-health, easy distinctions between the 'health' we bring to work and the 'health' we have because of work are becoming increasingly hard to distinguish. Work itself can and should contribute to improving peoples' health. Mates in Mind advocates the definition of the World Health Organisation, that "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". What's needed in the first instance are workplace policies and support – sometimes required by law – that promote the safety, health and wellbeing of the whole workforce, irrespective of whether they are employees, self-employed or contractors.

Health is Everyone's Business sets out the economic basis for action: ill-health which prevents people working costs the economy around £100 billion a year, and sickness absence costs employers £9 billion a year. Some of these numbers also highlight the human cost of ill health. In the UK, there are around 12.7 million working age people with a long-term health condition, including 7.6 million disabled people whose condition reduces their ability to carry out day to day activities. One in 5 people aged 50 to 64 left their last job for health reasons. It cannot be right that people, regardless of age, with disabilities and long-term health conditions, are at greater risk of falling out of work.

Clearly the focus of the consultative document is about keeping people in work, as well as delivering the government's objective to increase the number of disabled workers in work by one million by 2017. Yet, is keeping people in work the same as fostering work that enables people to be safe, thrive and lead healthy, happy lives? Given its background in the *Taylor Review of Modern Working Practices* and *Thriving at Work: the Stevenson/Farmer review of mental health and employers*, is this consultation offering the radical vision that we need change? On this question, the consultation looks narrow.

By focusing on reducing sickness absence there is danger that the consultation's proposals could increase presenteeism. Research suggests that presenteeism, workers coming to work ill, either mentally or physically unwell (or both), is on the increase. Findings from Vitality's 'Britain's Healthiest Workplace' indicate that UK employees lost 13.6% of their 'working' hours each year: 12.5% due to presenteeism, only 1.2% due to absence. This backs up ONS data for 2017 that shows the average number of sick days per year in the UK at 4.1, the lowest number of days taken since records began in the 1980s.

Though seemingly a cause for celebration, this development – as argued by Professor Sir Cary Cooper - is far more likely to be a sign of presenteeism. With new developments in technology or insecurity at work driving us harder to be at work (and work longer), many studies confirm that presenteeism severely undermines productivity, staff morale and engagement, and is of course bad for the health of staff and their colleagues.

The proposed reform to an employee's right to request reasonable adjustment is very welcome. We agree with the consultation that some employees are likely to miss out on support from their employer because they do not meet the definition of disabled, due to having temporary or fluctuating conditions. With poor mental health blighting the lives of too many people and, as the consultation explains, 300,000 people with a long-term mental health condition falling out of work every year, then the new right to request modifications that is proposed in the report is a welcome development.

We do think, however, that 'health grounds' as the conditionality for triggering such a request is still too narrow. For example, research by Carers UK shows that 1 in 7 workers care for a loved one and that 2.6 million have quit their job to care. Those with such responsibilities should also be eligible to request modifications. Furthermore, the 2017 literature review, 'Menopause transition: effects on women's economic participation', shows that menopausal women are the fastest growing workforce demographic and again should be explicitly considered when looking at work modifications.

We agree with the consultation that reform to statutory sick pay SSP to reflect modern working practices is vital. However, the proposals ignore the self-employed who, since the beginning of 2010, have - as an employment type - grown more rapidly than that of employees over the same time-period. The self-employed do not get SSP and given that this can be a driver to be at work when sick, the government should examine ways to better support the self-employed.

Finally, the proposals say too little about prevention which is a core role of good quality occupational health (OH) provision. Any OH provision must deliver best value based on preventing accidents and ill health. Overall, we would agree that there is a clear need for better assurance around the quality of OH advice on working practices that promote safety, health and wellbeing, and are designed to reduce exposures to health risks at work.

On the question of the use of subsidies to encourage workplaces to use OH providers, it is important that the government does not subsidise workplaces that are contributing to the ill-health of the workforce, and that there is a clear evidence base to support any changes proposed. Certainly, there is evidence that some of the basics around occupational health at work are still not understood by employers as something they need to invest in and develop the competence to implement advice on good practice.

A recent survey undertaken by UK Construction Week (2019), with the support of Mates in Mind, showed that 6 out of 10 people (58%) working in construction have suffered from mental health problems due to their work. Most often this stems from financial issues (45%), long hours (41%) and the physical strain of the job (41%), with only 44% of these respondents having actually spoken out about their issues at work. The barrier to addressing such underlying causes is more complex and beyond the frame of this current consultation. However, it is clear that some basic support provision is urgently required, when over half (53%) say that they don't have a dedicated person to speak to at work about any mental health problems that they may have, compared to 37% who do and 10% who don't know.

We welcome the opportunity to engage further with the government in relation to any area of this submission as part of the consultation.

Yours faithfully,

Lawrence Waterman OBE
Chair, BSC Board of Trustees

Steve Hails
Chair, Mates in Mind Board of Trustees

Responses

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

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

Strongly agree.

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

Open question.

There is likely to be some confusion about the basis for support and how to provide support, which to some extent is influenced by the perception of there being direct and associated costs to the business. But fundamentally it comes down to a lack of awareness within employers, even though there is the Fit for Work service, for example. And employees, in many instances, not informing employers of health conditions – the onus on disclosure of a condition is too dependent on the worker.

For example, should an employer provide support for an employee who exhibits minor but regular sickness episodes? Should an employer provide support for conditions like menopause?

The stigma associated with mental health conditions lead to many employees suffering in silence and many employers do not know how to provide support for fear of making things worse. This appears to be a continuing trend as a recent survey Mates in Mind undertook of construction apprentices found that 40% of respondents would not tell their employer that they needed to take time off due to mental ill health, and 68% stating that if they were to reach out for some support regarding their mental health, they would look to have a conversation with someone outside of work. More than two-thirds of respondents felt that their employer or colleagues would be unsure or unlikely to notice the signs of mental ill health in others.

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

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

Yes.

This would be an important development that would recognise the wide-range of health (irrespective of physical and/or mental health) conditions that can impact on an individual's wellbeing and their ability to work. We agree with the consultation that some employees are likely to miss out on support from their

employer because they do not meet the definition of 'disabled', particularly in situations where they may have temporary or fluctuating conditions.

There are a proportion of workers who may be at work with a health condition that is not identified, recognised or addressed (one factor of the broader 'presenteeism' concept). By introducing different and broader criteria for triggering a right to request, then potentially more people should benefit from support. This will help prevent ill health conditions from getting worse and make more visible the health of the workforce to employers.

If this right is introduced, then any impact on existing employees with disability should be closely monitored to ensure that they are not disadvantaged to accommodate others. It is also vital that guidance is provided to both employers and employees so both understand on what basis they can either request modifications or agree/disagree with the request. The consultation is not very clear on what's expected from employers with such a proposed extension to this right. We would advocate for a clearer set of proposals to be presented to employers as we do not want to see an increase in cases appearing at Employment Tribunals.

Clear guidance would need to be provided to employers or clients in relation to the interpretation of responsibilities for any request for workplace modifications that would affect workers within their workplace, as is the current responsibility in respect of health and safety.

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

- Any employee returning to work after a period of long-term sickness absence of four or more weeks;
- Any employee with a cumulative total of 4+ weeks sickness absence in a 12- month period;
- Any employee returning to work after any period of sickness absence;
- Any employee who is able to demonstrate a need for a work(place) modification on health grounds;
- Other, please state.

At the very least, the right to request should be eligible for any employee who is able to demonstrate a need for a work(place) modification on health grounds. There will need to be clear guidance to both employee and employer in terms of how that need can be demonstrated; as well as what can be suitable adjustments (that could be expected by an employee) made by a workplace.

However, there are other reasons than 'health grounds' that should also be considered as the basis for a right to request modifications. For example,

research by Carers UK shows that 1 in 7 workers care for a loved one and that 2.6 million have quit their job to care. Those with such responsibilities should also be eligible to request modifications. Also, the 2017 literature review, 'Menopause transition: effects on women's economic participation' show that menopausal women are the fastest growing workforce demographic and again should be considered when looking at work modifications. Commuting journey times could be another given its impact on the working day.

According to The Work Foundation's Health at Work Report on Fluctuating Conditions (2015), it is estimated that by 2030 around 40% of the UK's working age population will have at least one chronic and work-limiting health condition. For people over 50 in 2014, this figure was already at 42%. One of the features of many chronic conditions is that their symptoms can fluctuate significantly from week to week, and from individual to individual. They can involve chronic pain or levels of fatigue which can be disabling and distressing, and which can disrupt independent living, attendance at work, work productivity and career prospects. Some of the examples of such fluctuating conditions include asthma, depression, multiple sclerosis, rheumatoid arthritis, inflammatory bowel disease and ankylosing spondylitis. It is also the case that many people will experience more than one.

In terms of identifying what can work in relation to supporting someone with a fluctuating condition to remain in work, will vary from person to person, and from job to job. The Work Foundation's Health at Work Policy Unit identified in their report on fluctuating conditions key elements which should underpin any effective supports put in place, which include:

- Enhancing knowledge about fluctuating conditions and their management across key stakeholders – clinicians, employees and employers – and providing clear access to occupational health advice.
- Recognising that the relationship between the employer and the employee is central to this – it demands good people management as well as trust and open communication.
- Given that often such conditions are 'invisible' and highly variable, to make person-centred decisions which provide the most appropriate support for that individual, demand a shared-decision making process that mean that the solutions work for both the employee and the employer.

The latter point in terms of the research showed that in some cases that both the employee and the employer needed to be empowered not only to make decisions but also to make sure they are implemented at work, which sometimes meant going against the grain of company policy. For those searching for solutions and suggesting changes, as well as for the organisations who are asked to implement them, there needs to be creativity, flexibility, and open-mindedness – shifts in attitudes and finding innovative solutions.

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

- 0-4 weeks;
- 5-8 weeks; or
- 9-12 weeks?

No response

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

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

Yes / no / if no – why?

Yes

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

Yes / no / if no – why?

Yes

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

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

Please give further views in support of your response.

No response

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

Yes – no – maybe – don't know

Yes

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

No response

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

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

We believe that employers welcome clear guidance.

There is existing guidance in place, which we advocate with any change, should be aligned and updated, e.g. HSE guidance on RTW or rehabilitation.

Given the range of options facing an employer, it would be helpful for guidance to set out specific actions for employers to take. However, this must be on the basis that an employer still has the discretion to take alternative actions as long as they can demonstrate such actions lead to the objective: successfully supporting employees to return to work.

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

Undertaking a return to work interview that could include a risk assessment that would be advised for a significant period of absence.

Additionally, a template form with checklist of key of questions could be produced to support smaller businesses in undertaking such a return to work interview.

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

- Better quality employer information and guidance;
- More easily accessible employer information and guidance;

- Easier access to quality OH services; or
- Other – please state.

No response

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

No response

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

No response

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

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

Welcome the sense that the responsibility in addressing the situation is incumbent on both parties – employer and employee.

However, given the sensitivities the employee needs to be assured that a fair (appropriate and measured) process in planning a return to work will be facilitated by the employer. This may demand a whistle-blowing process, but for SMEs this is not necessarily an option.

It is still discretionary as to whether the employee chooses to disclose to their employer.

Q16. All respondents: do you think the current SSP system works to prompt employers to support an employee's return to work?

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

No response

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

- Guidance on how to implement a good phased return to work;
- A legal framework for a phased return to work which includes rules on how it should be agreed and implemented;
- Clearer medical or professional information on whether a phased return to work is appropriate; or
- Other suggestions.

RTW process should have clear guidance. It is important that the correct balance is struck between easy to adopt guidance, and relevant but not ‘penal’ requirements.

People management training is vital to support such an approach

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

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

No response

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

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

No response

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

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

No response

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

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

No response

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

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

Yes

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

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

No response

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

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

No response

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

Open question.

No response

Q26. All respondents: at this stage, there are no plans to change the rate or length of SSP. The government is interested in views on the impact of the rate and length of SSP on employer and employee behaviour and decisions.

No response

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

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

No response

Q28. Please provide any evidence that targeted subsidies or vouchers could be effective or ineffective in supporting SMEs and the self-employed to overcome the upfront cost of accessing OH services.

Open question.

No response

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

- Yes;
- No;
- Don't know

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

No response

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

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

For SMEs to have effective OH services, all three elements are essential. These could be offered through direct provision or an alternative financial contribution, which allows SMEs to have appropriate OH support programmes in place.

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

No response

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

There are questions about the quality of OH provision. Members of the British Safety Council have told us that OH advice can be poor and recommendations by the provider leaves both employers and employees in the dark about what to do. The standards set by Safe Effective Quality Occupational Health Service (SEQOHS) might be a model to use when determining if an OH provider is of sufficient quality.

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

Yes – no – maybe – don't know.

No response

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

- time;
- cost;
- confidentiality;
- do not see the benefit;
- other – please state.

No response

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

- Private providers should be more involved;
- Private providers should be more involved but with additional support;
- Private providers should not be more involved.

No response

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

Open question.

No response

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

No response

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

Yes – no – maybe – don't know. Please state reasons for your answer. Q39. If yes, what should its role be?

No response

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

No response

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

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

No response

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

No response

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

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

No response

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

No response

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

- Work outcomes;
- Quality marks;

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

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

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

No response

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

No response

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

No response

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

No response

Q50. If so, what content is missing?

- Legal obligations and responsibilities/employment law;
- Recruiting disabled people and people with health conditions;
- Workplace adjustments, such as Access to Work;

- Managing sickness absence;
- Managing specific health conditions;
- Promoting healthier workplaces;
- Occupational health and health insurance;
- Best practice and case studies;
- Links to other organisations, campaigns and networks;
- Local providers of services and advice;
- Other – please state.

No response

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

- The main government portal (GOV.UK);
- The Health and Safety Executive;
- Jobcentre Plus; or
- Other – please state.

Important to recognise that there is no single source for such advice and information, and by having a clear understanding of pathways that employers and employees will be following, will facilitate the sense that a significant part of the focus needs to be placed on ensuring that information and advice ties up and is consistent across all possible channels.

It is essential for such advice and information to be seamless and integrated. This demands partnership working with key stakeholders across government, industry and employer organisations, third sector organisations and communities – there is no reference in the above list to for example, the NHS website; Fit for Work website or GP surgeries where it is most likely that those individuals seeking help may be visiting and could benefit from understanding their rights better.

The government could also consider engaging with private partners to promote the awareness, with a dedicated and ongoing campaign of awareness (2 to 5-year period) to embed awareness of any significant changes proposed.

The main government portal. The ranges of issues contained within the health at work debate – from prevention through to support for getting back into

work, as well as the impact work itself has on health – means that government as a whole should be co-ordinating work to promote the health of the workforce.

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

- Internet search;
- Professional/personal contact;
- Legal sources;
- HR person (in-house or external);
- Accountant or other financial specialist;
- Other – please state;
- Don't know;
- I don't seek advice or support.

No response

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

- Online questionnaire to help you identify what type of services you could benefit from;
- Toolkit that could include information on OH referral and assessment process;
- Basic online information on the process of buying OH services;
- Provider database;
- Comparison website;
- Information on the value of OH services.

No response

Q54. All respondents: do you agree with the proposal to introduce a requirement for employers to report sickness absence to government?

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

This does give us an opportunity to improve our understanding on the amount of sickness absence and the reasons for it. However, this could be a retrograde step if it leads employers to adopt a narrow and metric-driven approach to sickness absence – for example by encouraging people to work when they are sick (presenteeism).

It would be better if sickness reporting to government is based on time limits (as we see in RIDDOR reporting for example). If this is going to be adopted as government policy, it should also capture information on the reasons for sickness.

Q55. As a small or medium sized employer, would you find it helpful to receive prompts to information or advice when you have an employee on a sickness absence? Yes – no – maybe – don't know. Please give reasons for your response.

No response

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

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

No response