

Written evidence submitted by the MS Society (ERB48)

Response to call for evidence on the Employment Rights Bill

1. About MS

1.1 Multiple Sclerosis (MS) is a neurological condition that affects more than 150,000 people in the UK¹. It's unpredictable and different for everyone. It's often painful, exhausting and can cause problems with how people walk, move, see, think and feel.

2. About the MS Society

2.1 The MS Society is the UK's largest charity for people living with MS. We're here for everyone living with MS – to provide practical help today, and the hope of a cure tomorrow. We play a leading role in research. We fight for better treatment and care. We let people with MS know they're not alone and offer advice and support to help them.

3. MS and work

3.1 Most people with MS begin to experience symptoms between the ages of 20-40². Many people are working when they are diagnosed, and either get support to maintain their employment, or leave work – often before they want or need to.

3.2 People with MS face unique challenges in the workplace and often don't get the support and protection they need and deserve from existing employment rights like Statutory Sick Pay. This can contribute to people leaving jobs before they want or need to, missing out on the chance to continue to deploy their skills and experiences and thrive in their roles, and in careers that are important and personally fulfilling to them.

3.3 Many say leaving work was the right thing to do, usually because their MS symptoms had made working too hard. However, others feel forced to stay in work and compromise their health, or exit their job earlier than they want or need to. Often this is because they do not get the right support from their employer or government to maintain their employment whilst managing their condition, or whilst returning to work from disability-related absence.

3.4 People with MS should have the rights and protections to ensure they are treated fairly by employers. The UK Government can and must do more to support those who can, and who want to, work to maintain good quality jobs, flourish in their careers and live independent and fulfilling lives.

¹ MS Society (2024), 'MS in the UK'. <https://www.mssociety.org.uk/what-we-do/our-work/our-evidence/ms-in-the-uk>

² MS Society (2024), 'early signs of MS'. <https://www.mssociety.org.uk/about-ms/signs-and-symptoms/early-signs-of-ms>

4. Statutory Sick Pay

4.1 Many people with MS need to take time off work for reasons related to their condition. As well as being susceptible to fatigue and infection, people with MS are also uniquely impacted by the relapsing and progressive nature of MS and the sudden, significant impact these can have on people's health.

4.2 Some people are supported to take time off when they need by their employer through Occupational Sick Pay (OSP), but many people with MS are not able to get OSP and so are wholly reliant on SSP when they're off sick.

4.3 Employees should receive their usual weekly wage in OSP when they are sick. As a minimum, and in lieu of this ultimate goal being met, we believe employees should receive either their usual weekly wage, or the National Living Wage (whichever is lower), in SSP when they are sick. This should be provided at an hourly rate for 52 weeks in a 3-year period. This is so people who are sick can focus on looking after their health, whilst maintaining financial security. This will ultimately create a better chance of people remaining and flourishing in their jobs when they are well enough to return to work.

4.4 Right now, the SSP system in the UK does not always support people with MS well. Issues with the rate and inflexibility of SSP can contribute to people with MS being forced to leave work before they want or need to, or to not take sick leave and stay at work, compromising their health as a result.

4.5 The Government need to show the strength and leadership to develop, implement and enforce the changes to SSP already set out in the Employment Rights Bill so that they better deliver for people with MS, whilst also driving further changes to modernise the UK's outdated and limited SSP legislation. The ways the Government could do this are set out below.

5. Removal of the 'waiting period' to claim SSP

5.1 Many people with MS experience occasional short periods of absence, rather than extended periods, due to the fluctuating nature of their condition. Those who are off for fewer than four days are currently not entitled to claim SSP, and they can sometimes be forced to take these absences as unpaid leave or annual leave if they are not entitled to any form of OSP. People with a fluctuating condition like MS may have a number of periods where they are off sick for two or three days at a time over a period of weeks or months. This could lead to someone not receiving any sick pay, despite having had a significant number of days off sick in total.

5.2 The Government should press ahead with the removal of the 3-day ‘waiting period’ before people are entitled to claim SSP. This will ensure people are supported from the start of a period of ill health and create a fairer system for those likely to need to take more regular, shorter absences because of their condition.

6. Removal of the Lower Earnings Limit (LEL) and setting a new replacement rate for those earning below the current rate of SSP

6.1 The removal of the LEL and the implementation of a new replacement rate of SSP for those earning below the current rate of SSP will make a significant difference to the wellbeing and financial security of those on the lowest incomes in the UK.

6.2 We welcome the removal of the LEL, and believe the replacement rate set for people currently below the base rate of SSP should be 100% of their average weekly earnings, up to the standard weekly rate of SSP.

6.3 The replacement rate is for the least well-off employees who do not qualify or benefit from OSP. Many people with MS also work part-time, meaning they are more likely to fall under the current LEL. It is only reasonable that this group should be able to maintain their income during a period of ill health. To do otherwise may incentivise them to return to work before they are well or create a perverse incentive for them to leave work and apply for out-of-work benefits instead. Providing people with MS (and especially people with MS on the lowest incomes) with adequate financial support while they are off work will enable them to better manage their symptoms in the long-term, and could support them to stay in work for longer.

6.4 Providing 100% of someone’s weekly earnings up to the weekly rate of SSP would be a cost-effective approach to prevent hardship and support the health of a group of people often already struggling with financial insecurity. It would curtail the pressure on many who right now often struggle through work when they are too unwell to do so, and eventually either compromise their health or face financial hardship. This is a pressure that is especially acute for people with MS, and disabled people in general due to extra disability-related costs they face³. A lower rate would continue to create a perverse incentive for the lowest earners to move onto out-of-work benefits in order to ensure their financial security. This would undermine the government’s intention to reduce economic inactivity and ‘get Britain working’.

³ Scope (2024), ‘Disability Price Tag 2024’. <https://www.scope.org.uk/campaigns/disability-price-tag>

7. Changing the restrictions on how people can claim and use SSP so it is fairer for people with fluctuating conditions

7.1 Current SSP restrictions do not fairly account for fluctuating conditions. Right now, SSP can only be paid for up to 28 weeks in a three-year period, either in one period of sickness, or in several 'linked' periods. Each period must last at least four days in a row and be separated by eight weeks or less. Those with fluctuating conditions like MS, who may need to take repeated short periods of time off due to relapses or MS-related illnesses, can quickly use up their allowance. If they need to take any more time off after they reach the 28-week limit, they have to use their annual leave allowance or take unpaid leave. Some even choose to continue working and risk their health worsening to ensure a stable income, while others end up needing to take a longer period of sickness or needing to leave work altogether and claim welfare support.

7.2 The Government should extend the amount of time someone can claim SSP from 28 weeks to 52 weeks. This will ensure the SSP system better supports more people with MS to stay in work for longer and prevent them leaving employment and needing to claim out-of-work benefits.

8. Making SSP more flexible, by allowing it to be paid as an hourly rate rather than a flat day rate

8.1 At the moment, people either have to work a full day or take the whole day off sick when claiming SSP. This makes it hard to gradually phase a return to work after a period of sickness, or temporarily reduce hours into a period of absence when becoming unwell.

8.2. SSP should be paid as an hourly rather than a flat day rate, so people have the option of receiving part wage and part SSP on return (or exit) from work, and to do so from any day of their absence – to match the unpredictable nature of many people's conditions. This gradual, phased return to work would help people with MS manage the fluctuating nature of their condition, supporting their health and their prospects of remaining in work for longer. The shift to allow SSP to be paid in conjunction with people's usual wages was, along with the removal of the LEL, a recommendation supported by the Work and Pensions Select Committee inquiry on Statutory Sick Pay in 2024⁴.

9. Increasing the rate of SSP so it is paid in line with the National Living Wage (NLW).

9.1 SSP is currently just £116.75 per week, equivalent to an annual salary of just over £6,000. This means most people experience a large drop in income when they go onto it. This can

⁴ Work and Pensions Committee (2024), 'Statutory Sick Pay: Fourth Report of Session 2023-24'. <https://committees.parliament.uk/publications/44084/documents/218444/default/>

cause significant financial pressure for people with MS, leading to worsening health and a possibility that they may leave work altogether.

9.2 Many people with MS experience and communicate to us about issues caused by the rate of SSP, but they are not alone in doing so. Around 62% of employers in a recent Chartered Institute of Personnel and Development (CIPD) poll said they think the rate is too low and should be increased.⁵ Many in the public are also supportive of the move - RSA polling in 2021 showed that 81% of Labour voters and 74% of Conservative voters backed an increase in Statutory Sick Pay⁶. A 2023 poll for the TUC also showed that 69% of people supported setting, "a minimum level of Statutory Sick Pay for all workers, at the same rate as the real living wage," while only 6% of respondents opposed an SSP hike⁷. Paid sick leave also tops the list of benefits and incentives that matter most to British employees: for over two-thirds (67%) of the people polled, sick pay is the employee benefit that they value most.⁸ This proposal also enjoys wide-ranging support, with over 155 MPs giving full public support for the 'Safe Sick Pay' campaign, and a number of trade unions like the TUC, and charities like Mind and Scope, also lending their support⁹.

9.3 An increase in the rate of SSP would also bring us in line with our international peers, where sick pay rates of 70% (Germany, Finland) to 100% (Norway, Iceland, Luxembourg) of usual pay are the norm. In contrast, under the current system, the UK sick pay rate sits around 17% of average earnings for most workers¹⁰.

9.4 The Government should increase the rate of SSP, so it's paid an hourly rate in line with the NLW. This would help to minimise the reduction in income felt by people who receive SSP under the current system. It would mean people with MS would have better financial support to enable them to return to work when they are ready rather than because they can no longer afford to be off sick, and ultimately help them stay in employment longer.

9.5 Whilst current legislation can be interpreted to suggest that the Secretary of State for the Department of Work and Pensions already has the power to increase the flat of SSP, legal advice given by the Department of Work and Pensions to the Centre for Progressive Policy Change has advised that there would need to be an amendment to the Social Security Contributions and Benefits Act 1992 in order to empower the Secretary of State to make

⁵ Chartered Institute of Personnel and Development (2021), 'What should an effective sick pay system look like?' - https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/guides/2023-pdfs/sick-pay-reform_tcm18-104511.pdf

⁶ RSA (2021), 'Three-in-four Conservative voters back big increase in sick pay'.

<https://www.thersa.org/press/releases/2021/conservative-voters-increase-sick-pay>

⁷ Mirror (2023), 'Hike sick pay in line with wages so workers can take time off when ill, voters demand'.

<https://www.mirror.co.uk/news/politics/hike-sick-pay-line-wages-29592088>

⁸ CIPD (2021), 'Almost two thirds of employers say the UK's Statutory Sick Pay rate is too low and should be increased, according to CIPD research'. <https://www.cipd.org/uk/about/press-releases/141221statutory-sick-pay-low/>

⁹ Centre for Progressive Change, (2024), 'Safe Sick Pay Campaign'. <https://www.centreforprogressivechange.org/campaigns/sickpay>

¹⁰ Publications Office of the European Union (2023), 'Sick pay and sickness benefit schemes in the European Union'. <https://op.europa.eu/en/publication-detail/-/publication/fc7a58b4-2599-11e7-ab65-01aa75ed71a1>

substantial changes to the rate of SSP.

9.6 The Government should make an amendment to the Employment Rights Bill to either:

- a) substantially increase the basic rate of Statutory Sick Pay, benchmarking it to the National Living Wage rate for normal working hours, and gradually increasing to this level over the next 5 years;
- b) amend existing primary legislation (the Social Security Contributions and Benefits Act 1992) to give the Secretary of State additional powers, via secondary legislation, to change how the Statutory Sick Pay rate is calculated; or
- c) instigate a statutory consultation, with a timeline, to establish what the new benchmark rate for SSP should be, with government compelled to adopt its recommendation as soon as possible.

9.7 The Office of the Parliamentary Council should be commissioned to advise and draft this change, and should consider clauses to amend section 157, subsection 2 of the Social Security Contributions and Benefits Act 1992 in order to give the Secretary of State the necessary power and flexibility to better set and update the rate of SSP going forward.

10. Stronger enforcement of right to flexible working

10.1 Many people with MS find flexible working can benefit them greatly. This includes having later starting times, working condensed hours and working from home. This can allow people to better manage their symptoms, supporting their employment.

10.2 We welcome the changes set out in the Employment Rights Bill to strengthen employees' right to flexible working.

10.3 Going forward, **the Government must ensure this right is delivered unless there is a credible business reason not to do so.**

10.4 Nonetheless, improved rights to flexible working are not a silver bullet to create fairer and more inclusive workplaces for disabled people. The change in attitudes and legislation related to flexible working does risk becoming a false dawn for disabled people, with an assumption that this shift levels the playing field, when in reality the move to more flexible working poses its own risks and complications for disabled people, and the need for additional legal support and protection (like reasonable adjustments) remains strong.

11. Better enforcement of right to reasonable adjustments

11.1 People with MS often need additional adjustments, like changes to working hours, job

location or other adaptations to their workplace or parameters of their role, to remove or reduce a disadvantage related to disability that they may face when doing their job.

11.2 MS is a protected condition under the Equality Act, and there is a legal duty on employers to put in place reasonable adjustments under the Equality Act unless they can demonstrate there is a business reason not to. However, we hear from many people with MS that the existing legal duty on employers is not effective enough, nor enforced well enough, to make sure people with MS get the adjustments they need, and should the right to¹¹.

11.3 Many people with MS can manage their condition better and stay in work for longer, if their employers make the reasonable adjustments they need. Failure to put in place reasonable adjustments can cause people with MS to struggle with their symptoms at work, and, in some cases, force them to leave work earlier than they want to.

11.4 We hear from our community that some people have had to leave work earlier than they have wanted due to not getting the reasonable adjustments they need, even when recommended by a health professional, Occupational Health, Access to Work or an employment support provider¹².

11.5 People with MS tell us they were not given any useful information about why their reasonable adjustment request was refused, despite this being a legal duty for employers¹³. Currently, employers do not need to give a written response within a certain period to employees who request an adjustment, nor give an estimated timeframe to their employees for how long it will take to put in place adjustments.

11.6 The Government should strengthen the legal duty by requiring employers to give a written response to employees' requests within two weeks and to give them a timeframe for when the adjustments will be put in place.

11.7 To deliver a fair and dynamic employment market, **the Government must crack down on employers who do not provide reasonable adjustments without good reason.** Employees face substantial barriers to challenging their employer for failure to make reasonable adjustments via tribunal (including issues with legal aid, and delays in the employment tribunal system). Thus, the onus is on government to ensure there is a regime that drives action against those who fail to comply to current legal duties.

¹¹ MS Society (2022), 'Employment without barriers'. <https://www.mssociety.org.uk/about-us/how-we-work/our-policies/employment>

¹² APPG for MS (2016), 'Employment that works: supporting people with MS in the workplace.' P.29.

¹³ MS Society (2022), 'Employment without barriers'. <https://www.mssociety.org.uk/about-us/how-we-work/our-policies/employment>

12. Conclusion

12.1 MS is a debilitating condition, affecting hundreds of thousands of people of working age, many of whom are at risk of compromising their health or leaving the workforce before they want or need to unless there is a significant uplift in employment rights.

12.2 The current employment rights offer in the UK is weak and inadequate, lacking the support that people with MS need. The Government has an opportunity to turn the page, start afresh and create protections that will support the health and wellbeing of disabled people, whilst also helping them maintain employment. This can support people with MS to live more independent, more fulfilling lives.

12.3 To achieve this, **the Government must show the strength and leadership to develop, implement and enforce the changes to SSP already set out in the Employment Rights Bill.**

12.4 **The Government must also drive further changes to modernise the UK's outdated and limited SSP legislation (including through government amendments to the Bill as proposed), and also ensure they are enhancing and properly enforcing new and existing employment rights** – like those to flexible working and reasonable adjustments.

12.5 The Government should also stand firm by the principle of involvement, and develop the reforms to SSP and others within the Employment Rights Bill in partnership with those who will be directly affected, and specifically those facing unique issues in the area - like disabled people and those with long-term health conditions, including the MS community.

13. Additional recommendation on changes to current wording of the Bill to avoid unwanted consequences

13.1 The Bill's proposed wording specifies that employees should be paid either SSP or a prescribed percentage of their usual pay, whichever is lower. This creates a group of workers who earn just above the current LEL, who right now receive SSP in full, but would in future potentially receive only a percentage of their wage. We do not believe it is fair or proportionate to grant even less in sick pay under the new arrangements to this group and leave some people worse off than they would have been previously.

13.2 If the Government were to pursue a percentage replacement rate for SSP for people earning below the current LEL, the lower the replacement rate selected, the more employees will be affected. Around a quarter of a million employees would lose out at an 80% rate, and 1.3 million employees losing out at a 60% rate. This would represent a significant weakening of the UK's sick pay regime.

13.3 We recommend that the wording in section 9.2 of the Employment Rights Bill be amended as follows so that it delivers people below the base rate a provision that matches their average weekly earnings, and those above the base rate SSP as standard:

(2) In section 157 (rates of payment)—

(a) for subsection (1) substitute—

“(1) 15 The weekly rate of statutory sick pay that an employer must pay to an employee is the lower of— (a) £116.75, and

(b) the employee’s normal weekly earnings.”

The following segment of section 9.2.1 should then be deleted.

(b) in subsection (2)— (i) omit the “and” at the end of paragraph (a); 20 (ii) after paragraph (a) insert— “(aa) prescribe a percentage, or percentages, for the purposes of subsection (1)(b);”.

13.4 Even if the government were to pursue a percentage replacement rate for SSP for people earning below the current LEL, **the wording of section 9.2.a.1 of the Employment Rights Bill should still be amended** as follows to ensure the legislation is designed to stop rather than create situations where people end up worse off (inserted text is shown in blue text and underlined):

(a) For employees with earnings above the rate of Statutory Sick Pay, the weekly rate of statutory sick pay that an employer must pay to an employee is £116.75

(b) For employees with earnings below the rate of Statutory Sick Pay, an employer must pay the prescribed percentage of the employee’s normal weekly earnings.

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December 2024