

Make Work Pay: Strengthening Statutory Sick Pay

Mind's submission to the Employment Rights Bill Committee

December 2024

We're Mind, the mental health charity for England and Wales. We're here to fight for mental health. We change minds across England and Wales by making mental health a priority. We work with MPs from across the political spectrum to ensure that everyone experiencing a mental health problem gets support and respect.

We welcome the opportunity to feed into the Employment Rights Bill Committee call for evidence. It is crucial that the committee considers the mental health perspective to examine how to reform Statutory Sick Pay to better support people who claim it. We urge the committee to include the following reforms in the Employment Rights Bill:

1. Increase the rate of SSP up to the National Living Wage.
2. Introduce a new flexible model of support, to allow people with mental health problems to reduce their hours during periods of mental ill-health, and to return to work on a voluntary phased return and receive wages and SSP on a pro-rata basis
3. Extend SSP so it is available for 52 weeks, instead of 28 weeks

1. Increase the rate of SSP up to the National Living Wage.

The government's commitments to removing the lower earnings limit and the waiting period are welcome, however without increasing the rate of SSP, people with mental health problems will not be adequately protected against financial hardship during periods of mental ill-health. Mind, along with the Centre for Progressive Change and the rest of the Safe Sick Pay Coalition are calling on the government to increase the rate of SSP.

At its current rate of £116.75 per week, SSP is one of the least generous sick pay rates by international standards. It falls far short of providing a safety net, especially for those who receive minimum wage who, if they had to live on SSP, would lose more than 70% of their income.¹ This is particularly acute for people with mental health problems as they are more likely to be in low-income jobs.²

The inadequacy of SSP means people who rely on it are often pushed into hardship due to the reduction in income and are left struggling to pay their bills or buy their food. In 2019, before the Covid-19 pandemic and the cost-of-living crisis, Mind spoke with 1,740 people with mental health problems about their experience of SSP. We found that:

- Two in three people receiving SSP were pushed into financial problems because of the drop in income, and for some this meant going into debt.
- More than one in four specifically mentioned that it had affected their ability to pay their bills or buy food.

¹ Citizen's Advice, In sickness and in health: Why Statutory Sick Pay needs further reform, November 2024

² OHID, 2021 <https://www.gov.uk/government/publications/covid-19-mental-health-and-wellbeing-surveillance-spotlights/employment-and-income-spotlight>

- Three in five people told us that the reduction in income caused by SSP had a negative effect on their mental health.
- One in four stated that this slowed down their recovery.

This situation has only worsened for people since the cost-of-living crisis. Research conducted by Citizen's Advice has found that one of the biggest issues their clients face with SSP is financial hardship. Of all the people they helped with SSP in 2023/24, 1 in 5 (20%) needed access to charitable support, including more than 1 in 10 (12%) who needed access to a foodbank.³ Their research also found that 16% of low-income households would fall into a 'negative budget' where their essential outgoings are not covered by their income, after just one week of SSP, rising to 81% after four weeks. The government's reforms reduce the share of households being pushed into a negative budget after one week by 5%, however 78% would still be in a negative budget after four weeks of SSP instead of earnings.

We know the devastating impact financial difficulties can have on people with mental health problems. Having a decent income has been well evidenced to be closely connected to good mental health, whereas a lower living standard can make it harder to stay mentally healthy. This is because of the two-way link between mental health problems and poverty. Symptoms of mental health problems can lead to difficulties managing money whilst money problems can deteriorate people's mental health.⁴ It is therefore crucial that the government increases the rate of SSP up to the National Living Wage so that no one is forced into hardship that worsens or triggers their mental health problems. We recommend the following amendments to make this possible:

Clause 9, page 26, line 14 for "weekly" substitute "hourly"

Clause 9, page 26, line 16 for "£116.75" substitute "the National Living Wage as defined in regulation 4 of the National Minimum Wage Regulations 2015"

Clause 9, page 26, line 18 for "weekly" substitute "hourly"

However, if the government is not prepared to change the rate of SSP within the Employment Rights Bill, then we join with the Centre for Progressive Change in calling firstly for the Secretary of State to be given additional powers to change how the SSP rate is calculated; and secondly for the government to hold a statutory consultation on the rate of SSP.

2. Introduce a new flexible model of support to allow people with mental health problems to reduce their hours during periods of mental ill health, and to return to work on a voluntary phased return and receive wages and SSP on a pro-rata basis

The current proposals do not respond to the reality of returning to work for people with mental health problems and do not offer a truly flexible model of sick pay. We need a sick pay system which enables a phased return to work after a period of sickness, or a

³ Citizen's Advice, In sickness and in health: Why Statutory Sick Pay needs further reform, November 2024

⁴ Money and Mental Health Policy Institute, 2021. <https://www.moneyandmentalhealth.org/wp-content/uploads/2021/02/MMH-Closing-the-Gap.pdf>

reduction in working hours during periods of mental ill health. This was a recommendation from the Thriving at Work Review 2017 and is yet to be implemented.

Every year, 1 in 4 people will experience a mental health problem in England, many of whom face challenges in the workplace. The Thriving at Work report found that 300,000 people with mental health problems drop out of work every year, in part due to issues with SSP.⁵ We know that some people find it daunting returning to work after a period of mental ill-health and would benefit from a gradual transition, such as working reduced hours or fewer days. Others may choose to reduce their hours during periods of mental ill-health, so they have more time to look after their mental health while also staying connected to their workplace. The current SSP arrangements, however, are too rigid and do not allow for this flexibility. You can either receive SSP payments or your wages, but you can't receive both. This forces people either to carry on working full-time while they are unwell or return to work before they are well enough to do so, risking them becoming more unwell and dropping out of employment completely.

A flexible SSP regime requires SSP to be paid on an hourly basis so it can be offered pro-rata alongside wages. This will enable employees who are unable to work to their full capacity, to stay in work, reduce overall sickness and will lower costs to the employer in the long run by enabling employees to return to work earlier and increase employee loyalty.

International evidence from countries where a flexible SSP exists demonstrates the positive effect it can have. For example, evidence from Finland shows that promoting partial returns to work has proved successful in reducing the time before an employee returns to their normal duties.⁶ The OECD (2022) evaluated graded return-to-work programmes, which involves working part-time and receiving a partial sickness benefit for the hours off work, in Austria, Belgium, Canada, the Netherlands, Norway and Switzerland. They concluded that these “countries show a substantial variation in the use of partial sick pay but return-to-work after the programme is large.” They also note that “in Austria, the Netherlands, and Norway, almost 90% of the participants return to work at the end of the programme.”⁷

Mind, along with other members of the Mental Health at Work Leadership Council (MHaW LC), is calling for a flexible SSP to enable phased returns with wages and paid SSP pro-rata. The Mental Health at Work Leadership Council (of which Mind is the Secretariat) is a group of senior representatives from across industries and sectors, working together to drive improvement in work-related mental health policy and practice. This includes encouraging sign up to, and supporting the implementation of the Mental Health at Work Commitment,⁸ which is signed by more than 3,500 organisations to date who employ 5.8 million people. The SSP system must be reformed so that it

⁵ The DWP, Thriving at Work, 2017. Available at: <https://www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers>

⁶ Kausto et al. (2014) 'Effectiveness of new legislation on partial sickness benefit on work participation: a quasi-experiment in Finland', *BMJ Open*, 4, pp. 1-9.

⁷ OECD (2022) 'Disability, Work and Inclusion: Mainstreaming in All Policies and Practices', pp125-133, https://www.oecd-ilibrary.org/employment/disability-work-and-inclusion_1ea5e9c-en

⁸ Mind, The Mental Health at Work Commitment. Available at: <https://www.mind.org.uk/news-campaigns/campaigns/mental-health-at-work-commitment/>

encourages supportive conversations and phased returns to work after periods of sickness.

To make a flexible SSP a reality, SSP must be paid on an hourly basis. The government should also create an online tool and guidelines on GOV.UK to help employers calculate what they pay their employees during a phased return to work. It should also extend P60 forms to include information on sick pay entitlements and leave to help simplify record-keeping for employers. An example of how it would work in practice is below:

An employee works a 35-hour week earning £9 an hour (a total of £315 per week). The employee agrees to return from sickness absence by working 2 hours a day for 5 days in the first week. Their earnings would be: (2 hours x £9) x 5 days = £90 (less than one week of SSP) For the other 25 hours of their usual 35-hour working week, they would be unable to work due to sickness. The rule changes would enable them to be paid SSP for those 25 hours, which would amount to £67.32. The employee's total pay for that week would be £157.32.

This reform is crucial to properly support people with mental health problems to thrive at work. We recommend the following amendment to do so:

“To move the following Clause-

Hourly statutory sick pay

(1) Part 11 of the Social Security Contributions and Benefits Act 1992 (statutory sick pay) is amended as follows.

(2) After section 151 (Employer's liability), insert-

“151A Hourly statutory sick pay

(1) Where an employee has an hour of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 153 and 154 are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as “hourly statutory sick pay”) in respect of that hour.

(2) For the purposes of this section an hour of incapacity for work in relation to a contract of service means an hour during which the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.

(3) For the purposes of this section, Part XI of this Act is to be read as if for “day” in each place it occurs there were substituted “hour.”

Explanatory statement: This new clause introduces a new defined term “hourly statutory sick pay”, enabling pro rata payment of statutory sick pay by the hour. This will give employers greater flexibility in SSP payments, which can currently only be paid in whole days”

3. Extend SSP so it is available for 52 weeks, instead of 28

The current duration of support from SSP is not enough, often forcing people with mental health problems to return to work before they are well enough or to use their annual leave. People with mental health problems have told us that they need frequent but short periods of sickness absence to manage their mental health and that this can

quickly use up the 28-week allowance. Research by the Money and Mental Health Policy Institute has found that this forces people to use their savings or go into debt to cover their sickness absence, to go back to work before they are ready, or are pushed out of employment and into the benefits system.⁹

In the Spring of 2023, Mind conducted a survey reaching over 600 people with mental health problems who were in in-work poverty. People told us how they had been reprimanded for taking too much sick leave:

“I have had to take time off work due to OCD and depression. I have been issued with a formal warning despite never taking time off for this condition or any other before in 4 years of employment. I am now having to appeal the decision whilst being signed off.”

“My frequent sickness absences affect my Bradford scale that my employer relies upon heavily. I have been told that I will be dismissed if my sickness continues and, this puts me under enormous pressure.”

Entitlement should be extended to 52 weeks to ensure more people with mental health problems can stay in work and return when they are ready.

We recommend the following amendment to do so:

“To move the following Clause -

Statutory sick pay: extending entitlement limit

(1) Part 11 of the Social Security Contributions and Benefits Act 1992 (statutory sick pay) is amended as follows.

(2) In section 155(4) (limitations on entitlement), for “28” substitute “58””

⁹ Money and Mental Health Policy Institute, Too ill to work, too broke not to, 2018. Available at: <https://www.moneyandmentalhealth.org/too-ill-to-work-too-broke-not-to/>