

## **Making Work Pay: Consultation on strengthening Statutory Sick Pay**

### **CONSULTATION RESPONSE by Thompsons Solicitors LLP**

**4 December 2024**

Thompsons is the most experienced trade union, employment rights, and personal injury law firm in the country, with 19 offices across the UK. It acts only for trade unions and their members on employment and industrial relations issues.

Thompsons represents most UK trade unions and advises on the full range of employment rights issues through its specialist employment rights department.

#### **Overview**

Government should do more.

In her Foreword, the Minister says, ‘No one should be forced to choose between their health and financial hardship.’ We agree. However, these proposals do nothing for 96% of the UK workforce and must be seen as a quick ‘shot-in-the-arm.’ We hope that the government’s *Plan to Make Work Pay* will result in something with greater reach and more ambition.

SSP is, and has long been, fundamentally broken. It has suffered from silo-thinking and a failure to acknowledge the benefits of a healthy workforce that stretches beyond the factory gates. For decades, policymakers have either been unable or unwilling to grasp the admittedly counterintuitive fact that in order to minimise sick absence, you need to encourage workers to take some sick leave.

As the recent IPPR study noted, ‘our health and our economy can exist in either a vicious or virtuous circle.’<sup>1</sup> We exist with the former but must aim for the latter.

There are 33.37 million people aged 16+ in the UK<sup>2</sup> of which 1 - 1.3 million earn less than the current LEL.<sup>3</sup> These proposals address no more than 4% of the workforce and fail to address the wider problem either holistically or at all.

The SSP system needs to be the subject of a fundamental review that accounts for wider societal benefits and costs and encompasses impacts on the NHS, the economy, the benefits system, and beyond.

## Response to Consultation Questions

**Q1. Which of the following best describes how you are responding to this consultation? Are you responding?**

‘Other – law firm’.

**Q2. Thinking about employees earning below the current weekly rate of Statutory Sick Pay (£116.75 per week), what percentage of their average weekly earnings should they receive through the Statutory Sick Pay system?**

**Number must be between 0 to 100**

We consider that 100% is appropriate.

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<sup>1</sup> Institute for Policy Research, ‘Healthy Industry, Prosperous Economy’, July 2024

<sup>2</sup> <https://researchbriefings.files.parliament.uk/documents/CBP-9366/CBP-9366.pdf>

<sup>3</sup> Impact assessment, paragraph 1.3

We reject the suggestion that a lower figure is a necessary incentive to return to work.<sup>4</sup> That ignores the evidence cited in the impact assessment that an appropriate level of sick pay reduces overall sickness absence.<sup>5</sup> It also ignores the built-in incentive, which comes from an SSP figure that is already 72% below even the lowest MIS figure (see below). If the government is truly serious about tackling presenteeism, then it cannot do so by incentivising it.

### **Q3. Why do you think the percentage rate of earnings should be set to this level?**

The stated aim is to improve productivity, and the proposals rightly identify presenteeism as a key issue. A recent European Commission report notes its substantial adverse impact on creating longer future absences, mental health, physical health, chronic diseases and a loss of productivity.<sup>6</sup> The consultation references an average annual loss of 43.6 productive days per worker, whereas sick absences average just 5.7 days.<sup>7</sup>

The SSP rate is not just one of the most meagre sick pay regimes in Europe<sup>8</sup> it is also meagre on its own terms.

SSP is £116.75 per week and thus equivalent to 8½ - 9 hours work at the real living wage rate. However, the Minimum Income Standard (MIS), which is broadly equivalent to the poverty line, for 2023 ranged

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<sup>4</sup> Consultation, paragraph 22

<sup>5</sup> Impact assessment, Annex 3 and passim

<sup>6</sup> [https://op.europa.eu/en/publication-detail/-/publication/fc7a58b4-2599-11e7-ab65-01aa75ed71a1#:~:text=All%20European%20Union%20\(EU\)%20Member,entire%20duration%20of%20sick%20leave](https://op.europa.eu/en/publication-detail/-/publication/fc7a58b4-2599-11e7-ab65-01aa75ed71a1#:~:text=All%20European%20Union%20(EU)%20Member,entire%20duration%20of%20sick%20leave). See too the studies in Annex 3 of the Impact Assessment

<sup>7</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/labourproductivity/articles/sicknessabsenceinthelabourmarket/2022>

<sup>8</sup> Per footnote 6 and Impact assessment paragraph 1.2

from £420 - £627 depending on circumstances.<sup>9</sup> UK workers in full-time employment on average work 36.6 hours per week<sup>10</sup> and earn £689 doing so.<sup>11</sup> SSP falls well below these levels and cannot be said to support any move against presenteeism.

Although the impact assessment shies away from calculating what saving most of the 43.6 days at an average (or even minimum) wage might look like as a benefit,<sup>12</sup> it does at least recognise that the additional cost of the proposals per employee is merely around an additional £15,<sup>13</sup> or 79 minutes of wages paid at the National Minimum Wage rate; although even this modest figure is likely too high as it does not account for the anticipated drop in sickness absence overall<sup>14</sup> nor indeed the profit earned by those who would otherwise be absent.

In any event, we do not think that any category of workers should be receiving less SSP than they do currently.

The consultation rightly recognises that, under the government's proposals, there are categories of workers whose earnings are just above the Lower Earnings Limit who would receive SSP under the proposals. This is a consequence of the principle of paying the lower of the proposed 'per centage' rate and actual earnings. As the government recognises, at least for lower earners, this reduction will

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<sup>9</sup> <https://committees.parliament.uk/publications/44089/documents/218484/default/>, page 76

<sup>10</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/ybuy/lms>

<sup>11</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/averageweeklyearningsingreatbritain/september2024>

<sup>12</sup> Impact assessment, page 4

<sup>13</sup> Impact assessment, paragraphs 6.2 and 7.6

<sup>14</sup> Impact assessment, paragraph 7.8

not be offset by abolishing the waiting period. For those with extended periods of sick leave the problem compounds.

Workers in these categories are, by definition, going to be vulnerable. They should not be put in a position where they will receive under the proposals than currently, and we think this should be rectified by amendment to the Employment Rights Bill.