Statutory Sick Pay Inquiry
Response to Call for Evidence

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Summary

The "summary of questions and answers" at the end of this document provides direct answers to the questions raised in the Committee's Call for Evidence.

- This submission contains **a historical analysis of Statutory Sick Pay** and its relationship to the Committee's Call for Evidence.
- It **explains**:
    - **why** Statutory Sick Pay **took its current form**;
    - **what** Statutory Sick Pay **was designed to do**; and
    - **what needs to be considered** in the design of any future scheme **if Statutory Sick Pay is to be radically reformed** or discontinued.
- It shows **the shift from National Insurance** in the **early 1980s**:
    - **gives vital context**; and
    - reveals how **many of today's debates were present in this period**.
- **The world has clearly changed** since this time, **but Statutory Sick Pay still performs a specific role** within a complex welfare state – this needs to be understood if changes are to be fair and effective.
- Thus, it is important for the Committee to consider **what will be the core purpose of Statutory Sick Pay in the future?** It will need to think about (at least) the following three aspects:
    - Statutory Sick Pay **as wage replacement**;
    - Statutory Sick Pay **as protection for employers**; and
    - Statutory Sick Pay **as a rehabilitative scheme**.

About the author

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Introduction

This submission is **a historical overview of Statutory Sick Pay** and its relationship to the Committee’s Call for Evidence. It shows that many of the questions posed by the committee are not new problems for the Department of Work and Pensions and its predecessors. Indeed, they were present at the birth of Statutory Sick Pay, designed in the 1970s and brought into law by the Conservative government in the early 1980s. By explaining these developments, it aims to provide the committee with:

- a broader understanding of **the historical development of sickness benefits** in the United Kingdom since the 1940s;
- an appreciation of **the relationship between statutory provision for sickness and that provided by private entities**, such as employers and insurance companies;
- an explanation of **how the core purpose of Statutory Sick Pay and the economy** for which it was designed **have changed over time**; and
- the background **to allow the committee to consider what core purposes Statutory Sick Pay should have in the future**.

Why was Statutory Sick Pay introduced?[1]

Sickness benefits existed long before the modern welfare state – from at least the early modern period (Riley, 1987). It was acknowledged that:

- sick workers are unproductive, and may negatively impact those around them (via poor performance, spreading infections, etc.);
- rest is key in rehabilitation; and
- since sickness can affect all of us it is morally unfair
    - to force people to work through excessive pain, or, for those unable to work,
    - to allow people to fall into destitution for something that is not their fault.

This needed to be counterbalanced by considering:

- how such sickness benefits should be funded;
- the potential for excessive absenteeism; and
- difficult questions around how to allow (or force) workers to change employment or undertake a phased return to work in a fair and effective way.

There is a long historical debate about how effectively different schemes balanced these demands in the long term (Gorsky et al., 2011).

1948 National Insurance

The postwar welfare state was built on the premise of National Insurance. Sickness benefits were available to workers with a sufficient number of insurance contributions after the third day of sickness. Payments were made through local benefit offices, and disputes were handled by local National Insurance tribunal systems. It was financed by contributions from the employee, the employer, and the central state.

Experiences with unemployment and poverty in the 1930s favoured a National Insurance system separate from employers and private insurance arrangements. This guaranteed citizens a minimum standard of living. But it also provided incentives to work, since National Insurance benefits would pay at higher rates than National Assistance (which provided means-tested benefits to alleviate the worst cases of absolute poverty). National Insurance covered industrial injuries, sickness, unemployment, and a retirement pension.

Paying sickness benefit through National Insurance made sense on 5 July 1948 when the system was introduced. Few workplaces offered occupational sick pay to blue-collar workers in the 1940s. Industrial work was also not always contracted or secure. A collectivised state insurance system therefore provided better protection for mid-to-low-earning working class people and their families – while (it was hoped) enjoying support from the middle classes who also benefited from these arrangements (Beveridge, 1942).

This system was less suitable for the very poor, disabled people, older people and women, given discriminatory employment practices and the assumption that all “bread winner” workers would be employed consistently on full-time contracts from young adulthood until

[1] For a more detailed analysis, see Millward 2022, esp. pp. 102–24.

retirement (Lewis, 1992; Oliver and Barnes, 2012). This led to a number of debates and reforms to the benefits system over the 1960s and 1970s (Whiteley and Winyard, 1987).

1980s Reforms

By the late 1970s, however, most workplaces offered occupational sick pay. The Conservative Party argued that National Insurance resulted in a duplication of administration. It would be simpler to pay sickness benefits in a worker's regular pay packet, using the same logic as Pay as You Earn (PAYE) taxation.

Most bouts of sickness were very short anyway – a few days at most – and significant time could be saved in benefit offices from not having to handle thousands of sick notes and benefit payments for such trivial illnesses (Department of Health and Social Security, 1980).

Conservative politicians also believed this would improve productivity overall by making businesses more aware of the direct costs of absenteeism. Since they would be paying for sickness benefits directly, they would make more efforts to prevent sickness in their workplaces by improving health and safety and by policing absentee workers more strictly.

There was opposition to these plans. For social democratic pressure groups, there were fears that business owners would be less likely to employ or retain people with chronic health conditions because businesses would see disabled people as a liability.

Businesses were also concerned that being seen as "the bad cop" if they denied illegitimate sick pay claims would harm industrial relations. Until then, disputes were handled by National Insurance authorities, which was seen as a neutral third party, and broadly accepted by unions and employers.

Similarly, employers appreciated the collectivised nature of the National Insurance system. It meant that all businesses had to pay in, but the industries that naturally had higher levels of sickness – such as those requiring heavy manual labour, or in areas with poorer and/or older workforces – were protected. Furthermore, small- and medium-sized businesses benefited, since they faced much bigger financial and logistical problems than larger firms when employees did not show up for work and/or required sick pay.

Despite some difficulties in negotiations, the Conservative government was able to pass legislation and introduced Statutory Sick Pay in 1983. It achieved this by providing a larger rebate on National Insurance than initially planned. It also had to negotiate with doctors over new sick note regulations, eventually agreeing that workers could self-certificate for the first week of illness.

This, again, significantly reduced paperwork, but drew some scepticism from employers (fearing malingering) and social democratic pressure groups and trades unions (who feared that a lack of a paper trail would make it easier for employers to fire people).

Statutory Sick Pay – then and now

It is important to understand why Statutory Sick Pay was introduced and how things have changed since then. Doing so reveals the limitations as well as the strengths of the system. It also explains why changes in the wider economy might mean that certain aspects of the scheme might no longer work as intended – and why removing some aspects to tackle one problem might cause other unwanted effects in other areas.

Employment

The first Thatcher government's logic that employers were now better placed to provide sick pay made sense at the time. Some of the assumptions underlying this change, however, are no longer true.

The number of people who declare themselves **self-employed has increased markedly** since the early 1980s (Chiripanhura and Wolf, 2019). Neither National Insurance nor Statutory Sick Pay were well designed for this since **payments came as a result of being an employee**.

Similarly, part of the reasoning for moving to Statutory Sick Pay was that most decent employers offered sickness benefits anyway. While this is still true, many **more workers** now find themselves **in temporary or insecure employment**, while the rise of the **gig economy** and payment-per-task means that many workers who are de facto employees do not have an obvious regular wage that could be used for sick pay calculations.

Public and private

Statutory Sick Pay was deliberately **designed to provide a mix of private and public** provision. Much like under the National Insurance system before it, **employers could** – and did – **provide benefits over-and-above the statutory minimums**. This was particularly true for middle-class workers.

Employees were also able to take out their own insurance to maintain their incomes. Some of this was a hangover of practices before the War (such as membership of trade union schemes or of mutualist "sick clubs"), some was provided by private companies.

However, more emphasis was placed on private provision from the early 1980s. It was hoped this would **encourage employers to play a more active role** in absenteeism management. Historical evidence suggests this had the desired effect, especially once employers became solely responsible for Statutory Sick Pay in the mid-1990s (Taylor et al., 2010). This is discussed in more detail below.

Return-to-work incentives

Since the 1980s, there has been general shift in industrialised nations' social security policy from "passive" benefits to "active" benefits – which require recipients to take part in activities which increase their chances of remaining or returning to the workplace (Hill, 2016).

Statutory Sick Pay was not per se designed to be an active benefit. **But,** as with the public/private discussion above, the **increased responsibility for employers led the**

private sector to pay more attention to active policies that could help workers return to work faster.

The issue, then, is that **while the government is responsible for Statutory Sick Pay, the actual delivery of return-to-work policy is**, in effect, **a matter for the private sector.**

These policies have included greater provision of physical and psychological therapy, workplace adjustments, back-to-work interviews, and the like. Best practices have been encouraged through human resources publications, consultancy groups, insurance companies, and disability rights legislation.

However, some of these practices (and the way they have been applied by some employers) have been viewed by workers as intrusive and unfair (Taylor et al., 2010). Disability groups have argued that workplaces do not do enough to accommodate sick or disabled employees, in part because enforcement of disability legislation is weak (Oliver and Barnes, 2012). At the same time, overly strict absenteeism policing procedures and workplace cultures may lead to “presenteeism”, creating long-term productivity issues for worker and employer (Hadjisolomou et al., 2022).

Balancing these demands is not a new problem in the short-, medium- or long-term provision of sickness and disability related benefits. Employers have had to weigh up the economic and morale costs of intervention – especially around short-term sicknesses (which represent the majority of absences). Too much causes resentment; too little offers insufficient support to employees and can create productivity problems for the employer.

Medium-term support can be costly, and it is difficult to make blanket statements on how long either employee or employer should “wait” for the situation to resolve.

In both cases, however, it has always been acknowledged that workers (or claimants) require and deserve financial support during this process.

Long-term cases are slightly different, and have traditionally been treated by the social security system. It was acknowledged after campaigning by disabled people that it was not appropriate simply to extend sickness benefit indefinitely until retirement age (Millward, 2015). This led to the introduction of Invalidity Benefit in the early 1970s (later Incapacity Benefit and Employment and Support Allowance).

Disability benefits have also become more “active” since the 1990s as a response to the significant increase in the number claimants over the 1970s and 1980s (Waddell et al., 2005). But, because they are payable to people out of work, the specific incentives and administration of these benefits is necessarily very different to Statutory Sick Pay – even though many of the issues surrounding them are often conflated.

What is Statutory Sick Pay designed to do?

In order to answer many of the Committee's questions, it is first necessary to ask what their vision is for **the future of Statutory Sick Pay**. As the text above and the summary below make clear, this falls into three inter-related categories:

- first, the role of Statutory Sick Pay **as a wage-replacement** for workers and compensation for their employers;
- second, the role of Statutory Sick Pay **as protection for employers** against the risks of sickness among their workforces; and
- third, the role of Statutory sick pay **as a rehabilitative benefit**, designed to facilitate a quick return to the workplace.

Balancing protection and production

These debates are not new. Unfortunately, they can also become paradoxical. In the 1940s, it was understood that workers needed the freedom to take time off to ensure they would come back to work fitter; yet there was a danger that the provision of more generous sick pay would lead to higher levels of absenteeism, creating problems around productivity (Buzzard and Shaw, 1952).

These questions were central to the introduction of Statutory Sick Pay and the debates over how it would eventually be administered. Employers needed protection against the costs of ill health – lost labour hours, sick pay, unproductive presenteeism – but there were questions over whether a collectivised insurance system meant that they were not concerned enough with ensuring the welfare of their employees.

However, it is impossible to say definitively when someone is "too sick" to work, or "well enough" to return. As a doctor wrote in his evidence to a different inquiry: sickness 'comes on gradually and declines gradually' (Schuster, 1914, p. 15). In the 109 years since, doctors have complained simultaneously that they cannot determine their patients' ability to work because they are not industrial experts; and that their views are not taken seriously enough when authorities deny support. Meanwhile, governments and employers have argued that doctors are too soft on their patients, but have also acknowledged that "presenteeism" is a major threat to economic productivity.

Similarly, there has been a longstanding debate about whether sick pay should be given if the worker cannot perform *their own job*, or if they cannot perform *any job in the local economy*. There are obvious economic and psychological difficulties if someone is forced to change employment; yet governments and employers who are responsible for paying benefits have understandably been concerned about who should pay sickness benefits and for how long. This has been a bigger question for longer-term sickness-related benefits, but the boundaries between "short-" and "long-term" cannot be defined objectively in all cases.

Balancing the “passive” and the “active”

This leads to the question of “active” versus “passive” benefit systems.

Ultimately, Statutory Sick Pay is an evolution of older versions of sickness benefit. The underlying principle of this was that the wage of the “breadwinner” should be protected, since it is their wage that determines the economic security of the household. In the 1940s, this was assumed to be a married man with a dependent wife and children (Lewis, 1992).

Obviously, British society no longer operates on these assumptions. But it means that Statutory Sick Pay is a development of a *passive* benefit to provide necessary short-term economic protection to workers and their families.

If Statutory Sick Pay is also to play an *active* role in getting people back to work, then it is being asked to do something outside its original design. As the Conservative government in the 1980s showed, it is possible to use the benefit alongside other aspects of the welfare state and private provision to encourage such behaviours. Yet if the state is to play a more active role, this form of the benefit might not be the correct place to start.

More intervention has been possible in Employment and Support Allowance because it is envisioned as a longer-term benefit and the relationship is solely between the claimant and the state. Statutory Sick Pay sits in an awkward position between employer, employee, and the state. This raises questions about how to help self-employed sick people; and how to protect vulnerable *employers* (such as small- and medium-sized businesses), not just vulnerable *citizens*.

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Below is a summary of the Committee’s questions, with answers based on the evidence presented in this document. However, it seems the core questions it has today are the same faced by governments across the post-war period. How can absolute poverty be avoided? How can the incentives to work be maintained? And, related to this, what can the public and private sectors do to allow people to work even if they are not (yet) at full health, for their own mental and economic wellbeing?

Gareth Millward, Odense, Denmark. December 2023

Summary of Questions and Answers

This provides a summary of the evidence provided above, with elaborations to answer the questions from the Committee's Call for Evidence directly. Answers are based on their relationship to historical debates rather than present-day evidence about efficacy or feasibility.

Q1: Is the current level of Statutory Sick Pay at £109.40 per week sufficient?

Statutory Sick Pay was originally set at a level considered to be the bare minimum employers should offer, knowing that many employers offered considerably more.

It was also designed in an economy where workers were in stable, waged employment. Given the rise of self-employment, flexible working practices, the "gig economy", and the growth of in-work poverty, these assumptions may no longer hold. (See also Q7, Q8 and Q9.)

The question of sufficiency is therefore tied to the broader question of what the Committee believes sick pay ought to be in future years, and who should be responsible for its administration and finance.

Q2: Many European countries have a higher rate of Statutory Sick Pay, but a shorter duration of support when compared to the UK. Would this be a preferable alternative?

As with Q1, this can only be answered by considering the wider purpose of the social security system.

Other European countries might see sick pay as a shorter-term benefit because employees or citizens graduate sooner to other forms of support. Other countries might also put less emphasis on the employer's responsibilities (see Q1 and the case of Denmark in Q10).

They might also differentiate between "sick pay" as a benefit to prevent hardship; and other schemes designed to rehabilitate and facilitate phased return to work (see Q6).

Statutory Sick Pay was originally designed to keep people in employment. The state would not have to be responsible, therefore, for out-of-work benefit payments and administration. Employers, as the main gateway to the benefit, would be more meaningfully involved in the welfare of their employees. This would save on state bureaucracy and create new incentives for employers to improve welfare. This was envisaged as one of its main advantages over the 1948 National Insurance system.

If the availability of Statutory Sick Pay is changed, the relationship between worker and employee within the system will also have to be reappraised.

Q3: Statutory Sick Pay is currently paid from the fourth qualifying day of sickness absence. Should this three-day wait period be changed or removed?

The three-day qualifying period is a hangover from the pre-1948 National Insurance system and has remained. Originally, this was seen as a deterrent against "frivolous" one-day sickness periods. It was also because the bureaucracy involved in processing one-day claims would overwhelm paper-based systems. GPs offices would be clogged with workers seeking certificates, and workers and administrators would spend more time filling in forms than doing their main job.

Since the 1980s, workers do not require certificates for the first seven days of illness; and processing can now be done electronically.

However, many workplaces have allowed employees (in normal circumstances) to take "a day off here or there" without the need for formal sick pay arrangements for years – especially in white-collar jobs.

Therefore, if the reason for removing the waiting period is to provide more support to workers, there might be more substantial structural changes to in-work benefits and wage levels that would help the most vulnerable workers more. Meanwhile, those in more-secure employment have, de facto, enjoyed this situation for many decades.

Q4: How effective is the role of the employer in administering Statutory Sick Pay? How could it be improved, including in terms of how employees are supported?

It has not always been the case that employers administer sick pay. While many white-collar employers provided sickness benefit as standard in the 1940s and 1950s, most industrial employers did not. Even where sick pay *was* provided, this was paid *on top of* National Insurance benefits – very often the worker's full rate of pay minus what they received from the state.

While past systems cannot be replicated wholesale in the modern economy, there might be lessons to be learned from the National Insurance system in terms of its collectivised tribunal, financing, and distribution systems (see Q7, Q8 and Q9).

Q5: Is Statutory Sick Pay well implemented and enforced at the moment? How can this be improved?

This is not a question that can be answered historically.

Q6: How could a phased return to work and Statutory Sick Pay work better together?

As with Q2, this question hangs on the purpose of Statutory Sick Pay.

Businesses have long grappled with the issue of whether to press for workers to return quicker, or to allow them time to recover physically and mentally so that they are more productive when they come back.

Employers have, however, become more concerned with this question for medium-term sick employees as they have become more directly liable for the costs involved. The government has also pushed much harder on rehabilitation and phased return to work with unemployed sick and disabled people through Incapacity Benefit and its successors (such as Employment and Support Allowance).

The question, therefore, is whether Statutory Sick Pay is a short-term benefit for sick people and a protection for employers; or whether it should be a longer-term benefit focused on rehabilitation.

The former was the case with National Insurance Sickness Benefit prior to the 1970s; but it was found that this was unsatisfactory for the needs of people who wanted to return to work and for sick and disabled people who could not work (Millward, 2015).

The introduction of rehabilitative elements that involve both employee and employer have become more prominent, especially since the 1990s (Waddell et al., 2005). But questions remain about whether any meaningful improvement can be made with short term claims; and whether forcing individuals back to work before they are ready is either fair on citizens or in the long-term interests of economic productivity (Hadjisolomou et al., 2022; Shakespeare et al., 2017).

In short, it is (historically speaking) a relatively recent phenomenon that Active Labour Market Policies have been applied to sickness related benefits. It is worth considering if this particular benefit is appropriate for these rehabilitative purposes.

Q7: Should Statutory Sick Pay be extended to include those below the lower earnings limit? If so, what would be a fair balance between support for employees and avoiding the risk of creating a disincentive to return to work?

There have been concerns with potential disincentives to work since the beginning of sick pay. The government and employers were worried that workers who were members of private sick schemes or union sick clubs would actually take home more in benefits when sick than their regular full-time wage. Similarly, differences between schemes' qualifying days sometimes provided an economic incentive to take extra days off. Indeed, another advantage of Statutory Sick Pay for the government was that it could be more effectively taxed, removing some of these incentives.

There was little evidence from investigations in the 1940s that this was happening on a large scale, but it was theoretically and anecdotally possible. Furthermore, when medical certificates were changed so that workers could return whenever they felt ready (rather than waiting for permission from a doctor), sickness absence lengths decreased (Ministry of Social Security, 1967).

For workers paid a "piece rate" – such as many now in the gig economy – people can earn far more from working and earning bonuses than they can from their regular pay. This was known in the 1940s from studies in the Royal Ordnance Factories, where

drivers who were paid a bonus per delivery were less likely to claim sick pay (Buzzard and Shaw, 1952).

Disincentives will therefore depend on the pay structure of those receiving Statutory Sick Pay (and should be considered in relation to Q9).

Extending Statutory Sick Pay to those below the earnings limit is also tied to the issues in Q1 and Q2 around *what is the purpose of Statutory Sick Pay*.

The system was originally designed to ensure that workers had what was considered to be a base minimum. Anyone who would be brought under the Supplementary Benefit threshold would be able to seek support from the Supplementary Benefit Commission (later Income Support and Universal Credit). Thus:

- if Statutory Sick Pay is designed solely as wage replacement, then the questions of upper and lower limits will have to be reassessed;
- if it is a benefit to avoid poverty, the lower earnings limit will have to be reassessed and there will need to be more discussion about how to link it to other benefits (such as Universal Credit) and general wage levels; and
- if it is designed as a rehabilitative benefit (see Q6), then there will need to be discussions on how disincentives to work can be balanced with incentives to recover and getting employers to make reasonable adjustments to the workplace.

Q8: What would be the best way for the Government to support SMEs who may lack resources to invest in best practice measures to help staff return to work?

This is another area where the National Insurance system was known to be helpful and was praised by employers. The collectivised nature of arbitration, administration and payment allowed SMEs to focus on the general welfare and morale of their workforces. A collectivised system of return-to-work support might be logistically difficult, but the principle has precedents.

As with Q2, Q6 and Q7, the question comes back to the central purpose of Statutory Sick Pay, and whether it is a wage-replacement benefit to maintain incomes and/or a benefit to facilitate returning to work.

Q9: Should Statutory Sick Pay be available to people who are self-employed? How might this work?

This has been a question that has remained unanswered since National Insurance sickness benefits in the 1940s. As the Lancet argued in 1946, '*the man who glories in being his own master has such freedom over his own time and the way he works (or directs other people to work) that it is hard to say whether on a particular day he is in fact working or not*' (Anon, 1946).

Coverage for self-employed people was never resolved fully. This was not a major issue when fewer than one in ten workers declared themselves as self-employed. Since the

early 1980s, however, changes in the economy and the structure of employment in the UK have made this an important area of concern (Chiripanhura and Wolf, 2019).

A return to National Insurance would not be appropriate. The old logic of dividing responsibility between employer, employee and state for its finance would force the employee (as also the employer) to pay twice.

However, as with Q8, it might be helpful to view self-employed people as, effectively, "SMEs" for the purposes of discussing sick pay and consider whether forms of collective protection, administration and/or gatekeeping would be appropriate.

The British welfare state understood early on that SMEs and self-employed people contribute significantly to the economy overall. It was, however, known that larger companies could cope with the risks of sickness and economic shocks more easily than smaller ones. *The National Insurance system was therefore not solely to protect employees, but employers as well*.

Q10: Are there any examples of international best practice in relation to Statutory Sick Pay that the UK can learn from?

It is worth briefly explaining the Danish system.

Most Danish workers are members of trades unions, which negotiate pay and conditions with employers. The state only steps in when the two sides cannot reach an agreement. This evolved as a historical compromise between business owners, industrial workers, and the collectivised farming classes (Jespersen, 2011).

This ensures that Danish workers enjoy a high level of pay, even though there is no statutory minimum wage. It also means decisions are made collectively around absenteeism management, workplace sick pay and sick leave.

Sick pay, alongside access to health care, used to be paid using a compulsory private insurance system backed by the state, mirroring the situation in the UK before the Second World War. Since the early 1970s healthcare has been the sole responsibility of the state, financed from general taxation (Petersen, 2010).

Sick pay is paid by the employer for the first thirty days, before becoming the responsibility of the *kommune* (local authority). The *kommune* is also responsible if the claimant is unemployed.

Attempts have been made in recent years to reform the system to encourage people back to work sooner. The *kommune* can recommend treatments or other workplace changes to help a claimant get back to work or find alternative work. After six months, a worker loses their sickness benefit, and then has to either apply for *kontanthjælp* (means-tested subsistence benefits) or longer-term disability related benefits. Some conditions, however, are exempt from this time limit, including life-threatening cancers (Styrelsen for Arbejdsmarked og Rekruttering, n.d.).

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