

REPORT OF THE STATUTORY SICK PAY REVIEW WORKING GROUP

Introduction

1. The Statutory Sick Pay review group was set up in response to the failure to achieve consensus on proposals to simplify the Statutory Sick Pay (SSP) scheme outlined in last year's Welfare Reform Green Paper. This was against a background of ongoing complaints from employers about complexity. Membership of the group includes representatives from employer and employee organisations and relevant Government departments. A list of members and the terms of reference agreed for the review are attached at Annex A.
2. The group held monthly meetings between November 2006 and June 2007 and now provides this final report. The report includes recommendations for changes to the current scheme which the group would like to see adopted. What follows are the considered, collective views of the members of the group, developed during the course of the review. The external members of the group have informally consulted their membership on the conclusions of the review. Their views have been taken into account in forming final recommendations.

Overview of considerations

3. In considering the case for change the group looked at both radical change (replacement with a new scheme) and minor change (adjustment of the existing scheme). Radical reform of SSP would be acceptable to the full range of interests on the group only if it could deliver real simplification benefits for business whilst maintaining employee rights. Similarly, the terms of reference set for the review limit the outcome to one which maintains rights for employees while imposing little or no additional cost on employers or Government. It has not been possible to devise a significantly altered or replacement scheme that would meet these terms of reference. Broader terms of reference might have provided for more radical options to emerge. However, while SSP is no doubt a burden, especially to small employers and more generally within payroll departments, it does not top the list of employers' complaints about burdens. Therefore the consensus is that the current scheme achieves a careful balance between benefits for employers and employees. The arguments for disturbing that balance are not strong enough to warrant changes. The group is not therefore recommending a further review with expanded terms of reference or radical change to SSP.
4. Employers do find administering SSP complex, especially the record-keeping requirements which they find cumbersome. Adjustments to the existing scheme could address some of this and could meet policy agendas on regulatory burdens and sickness absence. This reflects the findings of the DWP administrative burdens report where SSP emerged 4th in the list with £50m p.a. of burdens on employers. The vast majority of this comes from the record-keeping requirements.

5. The current arrangements for medical certification, while outside the direct scope of this review are of greater concern to employers and employees than SSP, as is absence management, especially for larger employers. The group believe that reform in these areas, supported by changes to SSP administration, could deliver significant benefits.

Findings

Tackling complexity

6. The various rules which require employers to link different spells of sickness together to calculate the maximum period of entitlement to SSP, have emerged as the main cause of complexity. Examination of the detailed application of these rules¹ has highlighted that the provision linking spells of sickness between different employers is little used. Employees rarely wish to advertise previous ill health to a new employer by telling him/her about SSP received from a former employer. It is recommended that this provision is removed as part of any package of SSP changes. This would result in a reduction in employers' administrative burdens of around £0.5m p.a.
7. Beyond this, it has not been possible to identify straightforward solutions for the main linking rule provision². Employer groups wish to retain mechanisms that maintain limits on their liability for SSP, including provision not to make payments for the first 3 days of incapacity (waiting days). Any solution which involves employees re-serving waiting days is not acceptable to employees' representatives.

Reducing Record Keeping/ Opting out of SSP

8. Representatives of both small and larger employers would like to see a reduction in the record keeping associated with SSP. One option would be to provide a more formal scheme to enable employers to 'opt-out' of the existing SSP rules altogether and not keep the required records. This opt-out could be available to any employer whose occupational sick pay arrangements (OSP) were equal to or more generous than SSP. However, establishing the criteria for such an opt-out scheme that would ensure the necessary protections for every employee, and which take account of the variety of OSP schemes provided, was found to be as complex as SSP itself
9. More positively, the introduction of Employment Support Allowance (ESA), replacing Incapacity Benefit (IB) and in some cases Income Support from Autumn 2008 for new customers offers significant scope for a reduction in the information employers are obliged to provide about

¹ Including the use of form SSP 1L

² Spells of sickness separated by 8 weeks or less 'link' together for the purposes of calculating the maximum 28 weeks entitlement to SSP. The 3 'waiting days' at the beginning of a spell of sickness when no SSP is payable, are served only once in a series of linked spells.

SSP to DWP for benefit purposes. At present, employers are required to provide certain information to their employees³ to enable them to transfer to IB at the appropriate rate. The rate of ESA, however, will not depend on the length of sickness, so information currently supplied, such as details of the first day of sickness, the number of weeks/days paid, any relevant linking periods, and similar, will no longer be necessary.

10. Removing the requirement to provide this information would make the existing opt-out provision for employers with good OSP schemes more meaningful. Employers with OSP schemes equal to or better than SSP, (i.e. including all elements of SSP such as linking provisions), would only need to keep a record of periods of sickness absence lasting 4 days or more. There would no longer be a need to maintain records parallel to their OSP scheme for SSP purposes. Other employers operating only SSP would also benefit from a reduction in the administrative burden of providing information and form filling at the point an employee was due to transfer to ESA.
11. An alternative opt-out provision appears unnecessary but should remain an aspiration if future policy development provides an incentive or opportunity. It is recommended that employers should no longer be required to provide extensive information for benefit purposes, leading to a reduction in record keeping and form filling. This change will result in a reduction in administrative burdens of approximately £1.5m p.a.

Percentage Threshold Scheme

12. There are problems with the complexity of the Percentage Threshold Scheme⁴ (PTS) and its policy direction. The scheme is outdated in providing Government support for high rates of sickness (i.e. there is no statistical evidence to suggest that the PTS is crucial to business survival); it is complex and expensive for employers to administer; reimbursement amounts are small and statistics indicate that as few as one tenth of small employers (the main target group) make use of the scheme⁵.
13. Changes to the PTS scheme are inherently difficult but doing nothing because of difficulty is not a satisfactory solution to the complexity and policy direction of the PTS. Ideas to reduce the complexity of the existing system through changes to thresholds and coverage etc would not result in any realistic or worthwhile easements for employers. However, while the scheme is not ideal, the small business community is concerned that it is the only direct subsidy available to small employers and therefore its abolition cannot be recommended without alternative, clearly ring-fenced, funds being available for small employers. HMT have reiterated the need to act with caution in considering any re-direction of

³ On form SSP1

⁴ Through the PTS scheme employers compare SSP payments in a tax month with their total NIC liability in the same tax month. Where SSP payments exceed 13% of NIC liability the excess SSP above the threshold can be recovered (by offsetting these amounts against other liability for tax/NI the employer faces).

⁵ The PTS currently costs Government between £40m and £50m per year.

funds due to the different funding categories involved, hence the group has been unable to consider possible options any further. There was no consensus for a recommendation relating to PTS and the difficulties identified here.

Sickness Absence Management/Medical Certificates

14. Managing sickness absence is a major challenge for employers. Limitations inherent in the current medical certification process exacerbate this. Changes to medical certification which resulted in greater clarity and more detailed and valuable information on an employee's capacity for work rather than reasons to refrain from work would benefit both employers and employees. While this falls outside the terms of the review, the group wishes to encourage Government to ensure that priority is given to work on reforming medical certification and external members asked to be kept up to date on progress.
15. On sickness absence management, the group wishes to see Government Departments do more to recognise the important inter-relationship between SSP and absence management by ensuring employers/employee and other interested parties, such as GPs and local TU/safety officers, have easy access to all sources of guidance through a variety of mediums including simple 1 click links in internet guidance. The group believes that encouraging better sickness absence management remains an aspiration as this would result in significant savings for all parties. Nevertheless, it would be inappropriate to amend legislation to link payment of SSP to management of absence.
16. In making this recommendation, however, there is recognition that some smaller employers do not currently appreciate the full benefits of better management of absence. This is because they are less likely to have the time, resources or specialist skills to apply absence management procedures. Government action in this area must therefore be explained and targeted appropriately.

Conclusion

17. A thorough examination of SSP and related matters suggests that the proposed reform of SSP policy and burdens are less critical to employers and employees than effective attendance management. The Government should concentrate on helping employers to manage attendance more effectively, supporting this with modernisation of medical certification arrangements and facilitating vocational rehabilitation. SSP is an important enabler to help tackle these things, especially for smaller firms. The administrative simplifications to SSP described above, combined with additional clarity and consistency in the SSP scheme, together with appropriate priority being given to wider work on absence management and certification are proposed by the group.

Annex A

Terms of Reference

- ***To review the current SSP scheme and consider the need for change:***
 - ***which achieves simplification***
 - ***giving due regard to the DWP agenda***
 - ***which does not impose unreasonable costs on employers or additional costs to Government***
 - ***and demonstrates fairness for all employee groups***
- ***If change is appropriate, to make recommendations as to the change(s) that should be made.***
- ***To deliver a report on progress to ministers by early 2007***
- ***To deliver final recommendations by mid 2007***

Members of the review group

Neil Carberry	CBI- Confederation of British Industry
Agnes Fletcher	DRC- Disability Rights Commission
David Yeandle	EEF- (The Manufacturer's Organisation)
Victoria Carson	FPB- Forum for Private Business
Lucie Goodman	FSB - Federation of Small Business
Geraint Day	IOD - Institute of Directors
Elaine Gibson	IPP - Institute of Payroll Professionals
Richard Exell	TUC CIPD - Chartered Institute of Personnel & Development
Jeremy Webster	Disability Alliance
Paul Treloar	HMRC -Policy
Des McKnight	BRE -Better Regulations Executive
Arjan Geveke	BERR - Small Business
Henry Marsden	
Sam Whittaker	HM Treasury
Simon Bor	HM Treasury - SME Tax & Simplification
Rupert Lown	DWP - Health Work and Well Being DWP -Improving Working Lives Division
Alison Scott	(Chair)
Shelley Fuller	DWP- Improving Working Lives Division
Ann-Maria Loughman	DWP – Improving Working Lives Division (Secretariat)
Trevor Lowe	DWP – Better Regulation Unit