A safe return to the workplace

The union approach to keeping workers safe as the UK Government eases restrictions following the third lockdown

April 2021

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1. Introduction

Following the most recent national lockdown due to the Covid-19 pandemic, which began in January 2021, the Government has presented a roadmap outlining the easing of restrictions, including the reopening of sections of the economy.

Around 33 per cent of the UK workforce is currently estimated to be working from home, with approximately 15 per cent of employments furloughed and a significant proportion otherwise unable to work. As restrictions ease, significant numbers of people will need to return to work outside their household.

This paper sets out the TUC's view on managing the return to work at the end or easing of lockdown in a way that supports worker safety and worker livelihoods. Some of these proposals apply to England-only, where devolved powers in Wales and Scotland have set out alternative routes out of lockdown.

Our priority is that any return to work outside the home is managed in a way that minimises the risk to individuals and that working people are not financially penalised or otherwise disadvantaged. Therefore, this paper sets out some principles and approaches that we recommend. Above all, we call for unions to be involved in planning the return to work outside the home. That means unions should be consulted by Government nationally and in the devolved nations as they set their approaches and that unions should be involved in discussions alongside employer representatives and the relevant government departments on a sector-by-sector basis. It also means individual employers are negotiating a return to work policies and agreeing and revising risk assessments with their staff unions.

Even as we look ahead to the return to work outside the home, the TUC remains clear that safe working is not yet being comprehensively and consistently achieved for the significant number of workers who have continued working outside the home during the lockdown. This group includes both essential workers, such as NHS, care staff and emergency services, and local Government, schools, criminal justice, retail, energy and distribution staff amongst others, and workers across the economy whose jobs cannot be completed from home. Unions have heard too many reports of workers expected to work in unsafe conditions, and the number of Covid-19 outbreaks has remained high.

As more people of working age are invited to participate in the Covid-19 vaccination programme, we are clear that this is not a justification for cutting corners on health and safety controls. Even at a point where the great majority of the workforce is vaccinated, this is unlikely to completely stop transmission risks: some people cannot be vaccinated and protection may not last indefinitely. We remain highly concerned by the failure of enforcement agencies to take action against employers putting the health and safety of their workers in jeopardy during this pandemic. We continue to press the Government to strengthen its guidance and to support people to self-isolate. We want to see stricter enforcement action against employers whose efforts have put staff at risk and call on the relevant enforcement agencies (including the HSE and local authorities) to guarantee worker safety. Workers' health is public health: poorly protected workplaces have the potential to be major sites of transmission, taking infections into the community. By protecting workers, we protect everyone.

2. Return to work: what do workers think?

We know that workers are concerned about returning to work. A TUC poll of 2,231 workers, conducted by BritainThinks between 19th and 29th November 2020, showed people continue to be worried about specific issues ahead of the return to work.

Which, if any, of the following are you concerned about when returning to work outside the home?

Reason for concern	% agreeing
Not being able to socially distance from colleagues once at work	38%
That I may expose others in my household to greater risk	32%
Not being able to socially distance from clients or customers at work	24%
That my employer may ask me to return to work outside my home when I don't think it is safe	26%
My workplace not being cleaned adequately	26%
Having to travel to work on public transport	25%
That I will not be given the option to work from home, even though I would like to do so	29%
Not having access to the appropriate personal protective equipment at work	17%
My underlying health conditions that make returning to work riskier for me	12%
Having to travel to other locations once at work (eg to make deliveries)	9%
Other	1%
Don't know	2%

The TUC asked the same questions in July 2020, and workers expressed a higher level of concern this time around.

Of those who are already attending the workplace, many report inadequate safety measures. Only 49% of workers said their employer had enabled social distancing in their

workplace, and 47% said their employer-provided adequate PPE. Alongside this, just 48% are confident their employer has carried out a Covid risk assessment.

The TUC also commissioned Greenwich University to research Covid safety between November 2020 and February 2021. The research surveyed 303 employers, and of those, 14 per cent had not carried out a risk assessment. It also found a stark difference in safety management between workplaces with unions and those without – workplaces with a recognised union were 20 per cent more likely to have adequate PPE[1].

- The Government must ensure that workers' mental health and wellbeing is prioritised alongside physical safety.

- The Government must run a public information campaign to ensure working people can be confident that health and safety are a priority as they return to work.

Union safety representatives

The TUC's affiliated unions have approximately 120,000 trained health and safety representatives, who have the legal right to investigate hazards and be consulted on risk assessment processes. The TUC has carried out a biannual survey of union health and safety reps between November 2020 and January 2021. The report shows:

• In the risk assessment process: A third (33 per cent) of health and safety reps say they were not involved in their employer's Covid-19 risk assessment process, and only 43% could say their employer had published the risk assessment

• On compliance with safety regs: 40 per cent say not enough PPE has always been provided by the employer; 22 per cent say cleaning regimes are inadequate, only 31 per cent say social distancing is consistently implemented, 22 per cent report inadequate ventilation constituting a hazard

• On contact with safety regulators: 14 per cent of safety reps reported HSE or other agencies had contacted their workplace; however, only half that number could confirm that the regulators had also reached the union in their investigations.

• Most union reps have had a colleague test positive for Covid (83 per cent), with most (57 per cent) reporting this as part of an outbreak. More than one in ten (12 per cent) union reps have had a Covid fatality in their workplace.

• Many reps express concern about people's ability to self-isolate: 82 per cent of employers required workers to self-isolate following a positive case, but only 52 per cent paid occupational sick pay.

These statistics represent workplaces where there is established union representation. We know that safety control measures tend to be markedly better in these workplaces than in those with no elected workplace representatives. That significant numbers still report employers failing to meet basic legal requirements and additional guidance is a cause for

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[1] https://www.tuc.org.uk/sites/default/files/TUCHSreport.pdf

concern. Employers must be aware of their legal duty to consult with workers and their representatives as a standard part of the risk assessment process, fostering confidence in and co-operation with safety plans.

3. Ensuring safety in the workplace

No easing of restrictions should occur until adequate measures are in place to protect the health and safety of working people. This section outlines the principles that should guide any return to work outside the home.

Unions are clear that the reopening of sections of the economy must not mean a relaxation of Covid-19 safety guidance in workplaces; on the contrary, effective workplace control measures will help keep transmission and infections low and support the reopening of businesses.

The TUC and affiliated unions have responded to a review of the BEIS *Working safely during coronavirus (COVID-19)* guidance documents, including calls for mandatory control measures to be strengthened.

A robust risk assessment process

As set out in the previous section, too many employers still fail to carry out their essential duties by undertaking a risk assessment in consultation with unions and worker representatives. In other instances, workers report insufficient control measures. We are clear that to keep Covid-19 transmission as low as possible and avoid a further surge in cases and subsequent lockdown, safety controls must be rigorously implemented and adhered to. Risk reduction should follow the hierarchy of controls model. Employers begin by eliminating the possibility of transmission by allowing people to work from home. Where this cannot be done, alter the job role so it can be done in a safer environment; adjust the environment so it is suitably ventilated, socially distanced and so on. Personal Protective Equipment should is a last resort control measure, as it is the least effective. It must be made clear to employers that 'flipping' the hierarchy by starting with PPE simply because it is cheap and easy is not acceptable.

Risk assessment is an ongoing process. A year on, we now know more about how Covid-19 aerosols spread through airborne transmission and the higher transmissibility of certain strains of the virus. Employers must update safety policies to account for aerosols and give greater attention to the ventilation in workspaces and other steps.

These are not business as usual risk assessments, and non-Covid risks caused by the lockdown also need to be considered. For example, maintenance of machinery, changes in access to emergency services and other safety critical functions including absences which may affect safety critical jobs on-site.

Unions must be engaged

A fundamental principle for a safe return to work outside the home is that trade unions and employers must agree on how the return is managed. Employers must consult with unions

and worker representatives. Consulting with the workforce in the risk assessment process is key to its success.

Employers should consult employees, unions, and health and safety representatives to assess workplace hazards and outline steps for mitigation in carrying out a risk assessment. There are approximately 120,000 trained union health and safety reps in workplaces across the UK. This number should be mobilised to help ensure that workplaces are safe, including workplaces with no existing union reps and unions are not recognised. Union health and safety reps should be given a the opportunity to negotiate a roving role to enter workplaces where no union is recognised to ensure compliance. Suppose there are disagreements and a resolution cannot be reached between employers and unions. In that case, employees or their recognised trade union should contact the HSE for advice or make a complaint. The HSE must consider all appropriate enforcement action as necessary, with a prospect that any criminal negligence resulting in a preventable risk at work is subject to enforcement action. Once agreed, risk assessments and action plans must be sent or otherwise effectively communicated to the whole workforce.

Employers also have a legal duty to consult employees or their union representatives on any working practices changes. This includes new equipment, shift changes, training and information. Where existing consultation arrangements with unions exist, these should be used. Where they do not, employers should open conversation with their union. Where standard consultative arrangements do not resolve health and safety issues, employees can raise a grievance. Employers must keep their workforce informed about health and safety at work, using digital methods, posters and other visual aids in preference to face-to-face meetings.

Workers know best how their jobs can be adapted to accommodate risk controls, and union safety reps are typically more highly trained in health and safety than their managers. An engaged and informed workforce is much more able to adhere to safety measures. Regular health and safety meetings must continue to occur: these can either be conducted in a safe, socially distanced way, outdoors, or using online platforms. This may also mean union reps need more time and facilities to allow effective communication with their members.

Union access to workplaces

Unions must be able to continue supporting workers. Some workplaces have introduced restrictions on external visitors as part of social distancing measures. This should not apply to trade union officials attending the workplace for meetings and representations on health and safety. Union reps should able to continue with their union duties, including while furloughed. Any restrictions in place on facility time or release for union duties in the public sector should be set aside. Employers should not unreasonably withhold access to the premises as long as the trade union gives sufficient notice. Any visits must occur in line with social distancing measures and relevant safety precautions in place in the workplace.

A new requirement for a published Covid-19 risk assessment

The TUC believes that the Government must require all employers with more than five staff to carry out a specific Covid-19 risk assessment. This must be available to all employees

before they are expected to return to work. Employers already have a legal duty to assess the risks to employees' health and safety and others not in their employment, such as customers and passengers. Assessments must identify the probability of Covid-19 exposure and outline a health and safety action plan to mitigate against such hazards. The Government advises employers to publish their risk assessments – the TUC wants to see this made a legal requirement to offer transparency to workers and customers, enabling them to check Covid-secure compliance.

Ventilation and temperature

Managing air-flow is a *necessary* control measure in the risk assessment process, not an optional one. TUC research shows ventilation currently appears less often in Covid risk assessments compared to other control measures. Yet, scientific studies show it to be one of the most effective in limiting virus spread.

There are practical steps employers can take to improve ventilation, including using CO2 monitors to find areas with poor ventilation. Current technical guidance recommends 10 litres per second per person of outside air in indoor workspaces. Where possible, periods of non-occupancy should be used to allow rooms to vent.

Risk management includes adjusting ventilation systems, acquiring filtration units, upper room UV disinfectant, and opening windows. Systems that recirculate air must be turned off. On 1 March, the World Health Organization (WHO) released a long-awaited road map to better ventilation. The document sets out specific targets and measures that businesses and other places can improve ventilation and make buildings safer[2].

Employers must also adhere to a minimum working temperature (16 degrees Celsius) to ensure thermal comfort – for example, where it is required to open windows, they may need to consider additional heating.

Studies show that Covid-19 thrives in cooler temperatures, with aerosols remaining suspended in cooler air for longer. Public health data also indicates that a high proportion of outbreaks occur in manufacturing sites where cooling systems operate. Additional risk mitigation, including ventilation, must be factored in for workplaces where cooler air is required.

Social distancing

Employers should enable workers to continue working from home wherever possible. The government guidance requires everyone who can work from home to do so until 21 June 2021. Employs should assess each job role independently, and those who can work from home in sectors that are otherwise allowed to open should continue to do so.

There must be no relaxation of social distancing guidelines, and distancing must be enforced. The spread of Covid by aerosols means keeping a distance from others while working remains one of the most essential and effective control measures. Employers

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[2] World Health Organization. Roadmap to Improve and Ensure Good Indoor Ventilation in the Context of COVID-19 (WHO, 2021); available at https://go.nature.com/3rims9p.

should also consider introducing maximum occupancy to reduce the numbers of people coming into premises like shops, to allow for effective social distancing.

Risk assessments should also consider distancing requirements when entering or leaving the workplace, for example pressure on exits, from security measures or on use of public transport access points and car parks.

Face coverings and face masks

In workplaces where face coverings are required, sub-standard materials are often used, and gov.uk advice still suggests cutting up a T-shirt. This is not sufficient: guidance from the World Health Organisation states three protective layers for face coverings are most effective (i.e. surgical mask standard). Studies have also shown that the fit and fabric of a facemask can significantly affect transmission rates.

The use of face coverings should be required in all indoor workplaces, with allowances for outdoor 'mask-free breaks' factored in avoid fatigue. This requires the facilities and space to do this in a safe fashion.

In occupations where certain controls measures, such as social distancing, have not be met (for example, in construction and some health settings), transmission risk remains high. Face coverings or surgical masks are not sufficient enough as a means of preventing transmission, a minimum of FFP2 of FFP3 standard face masks should be recommended beyond those workers dealing directly with Covid patients. In some European countries, FFP2/3 are required in retail premises: the UK government should also consider their use here.

Some employers allow workers to wear a face shield *instead* of a face covering, even when face coverings are required. This step has become common in the hospitality sector. However, this is not a safe alternative and should only be used when people are exempt from wearing face coverings. On the contrary, evidence shows that face shields create a 'funnel' of air downwards, increasing the likelihood of virus spread to customers, pupils or products, rather than preventing it.

Travelling to work

Without significant changes to travel patterns, it is not possible for social distancing measures to be in place on public transport, especially at peak times. As part of its plan for a mass return to work outside the home, the Government must provide guidance for employers, commuters and transport providers on what measures are needed to safeguard public health. Employers should be encouraged to allow workers to stagger their shift times to avoid overcrowding on public transport.

Refusing to work when it is not safe

Employees have the right to withdraw from and to refuse to return to an unsafe workplace. They also have legal protection from dismissal, disciplinary or any other detriment for raising a health and safety issue. The Government must remind employers of employees' legal protections when dealing with what they reasonably believe to be a serious or

imminent danger in the workplace. Unions will back up our members, refusing to work when it is not safe.

Specific groups of workers

Workers in the 'shielded' category (i.e. those whose health conditions put them at additional risk of serious complications or death) due to their existing health conditions were advised not to leave home, even to work. This group includes cancer patients, those with severe respiratory conditions and others undergoing immunosuppressive treatment.

The Government has since told shielding workers in England and Wales that they should return to the workplace on 1 April if they cannot work from home. This advice is despite the vast majority of shielders having not yet received their second vaccine dose, and one in ten has not even received their first dose. Changing advice to all shielders, regardless of their vaccination status, is deeply irresponsible. Employers have also not been given additional guidance to consider those in the shielded group's specific risks. The TUC believes that the Government should reconsider the decision to end shielding on 1 April.

Instead, the Government should:

- Extend the shielding deadline until everyone in this group has had the chance to get both doses of the vaccine, and set a new date for the end of shielding that accords with the roadmap for reopening, based on infection rates, hospital admissions and the other metrics used to determine other vital steps

- Guarantee that no shielding worker is forced to return to a workplace outside of their home before the end of restrictions on 21 June, and ensure that furlough and individual benefits are available to support this

- Require employers to conduct individual risk assessments that take into account shielding workers' circumstances as they plan to return to workplaces

Employers must not unreasonably attempt to return shielders to the workplace before the end of restrictions on 21 June – regardless of existing government advice.

Pregnancy can suppress the immune system and so extra precautions must also be taken to protect pregnant workers. Pregnant workers and new mothers have explicit additional protections in under the Management of Health and Safety at Work regulations, including a right to regular risk assessments. Employers have a legal obligation to assess the workplace risks for pregnant employees and their unborn children and breastfeeding mothers who have returned to work. Risks must be kept under review as circumstances change and as pregnancy progresses, if applicable. Employers must try to remove or prevent exposure to risks, and if not possible, offer suitable alternative employment at the same rate of pay if available. If pregnant workers cannot work because of health and safety risks, the law stipulates they should be suspended on full pay.

PPE should also be appropriate for pregnant women's bodies and may need to change as the pregnancy develops. Not all PPE is available in appropriate sizes for a pregnant woman, meaning that the risks must be reassessed as the pregnancy develops. Risk assessments also need to consider whether PPE is effective in managing any additional risk associated with pregnancy or to the foetus."

'Vulnerability' to Covid is now being classified not only by health condition but by other factors, including ethnicity. The gendered impacts of Covid-19 intersect with other characteristics such as age, ethnicity, disability, class and migration status. This results in different effects for different groups of workers. Employers should also be undertaking risk assessments on an individual basis for any employee with a heightened vulnerability to Covid and are advised to consult with occupational health teams on any adjustments which risk assessments may require.

4. Regulation and Enforcement

Keeping workplaces safe must not rely on employers' willingness alone – active and effective enforcement is key to ensuring compliance. The TUC wishes to see tougher enforcement action and more pro-active inspections in sectors where the number of Covid outbreaks remains high.

The Health and Safety Executive (HSE) must act quickly to apply sanctions to employers that do not risk assess for Covid-19 or fail to provide safe working arrangements. These are legal duties, and failing to meet them amounts to criminal breach, not just technical failings. While advice might work with the willing, it is no deterrent to bad employers. We know Covid-19 is spread by people displaying no symptoms. The HSE needs to take action – including prosecutions – against employers who do not take safety seriously.

The HSE must run a public information campaign to ensure workers know their rights. To support this, the HSE and local authority regulators who inspect workplaces need additional resources and inspectors to act swiftly on reports of unsafe working practices.

Regulators must also take the need for workforce consultation seriously, including ahead of, during and after any HSE interaction, whether by phone, visit or other method. The outcome of any triage call, spot check, investigation or inspection must be communicated to union reps. Regulations that mandate employers to consult with unions and worker representatives must be enforced. The TUC believes more serious safety breaches could be avoided if more employers were made to fulfil their duty of engaging the workforce in the risk assessment process.

Equally, the Health and Safety Executive must also engage unions – where they are present – when investigating a workplace safety concern, rather than taking an employers' word at face value. The TUC's survey of union health and safety reps suggests that, in many cases, this is not happening:

- Despite the Covid-19 pandemic, fewer than one in four respondents said there had been contact from the regulator to their workplace "within the last 12 months".

- Only 18 per cent of safety representatives whose workplace an HSE inspector had visited told the TUC they were aware of the most recent HSE visit before it took place. Only 15 per cent said they or another safety representative had spoken with the

inspector.

Tougher action required

In 2020, significantly fewer inspections took place compared to previous years, and fewer enforcement notices were issued, too.

As of 25 Marhch 2021, the HSE has investigated 6,309 Covid-related concerns. Of these, only 40 notices have been served to employers. Even in the small number of cases where HSE has taken enforcement action, it has been the lightest touch notices. To date, only two workplaces have been served with prohibition notices, and no employer has been prosecuted for failure to comply with Covid safety measures.

The HSE's position – that the vast majority of employers investigated do not require more than a conversation or a letter –mdoes not match what unions hear directly from workers or the Covid clusters' data. In January 2021 alone, 6,511 outbreaks were reported to Public Health England – the highest number in a single month.

While it is positive that most employers are deemed to be quickly taking HSE advice on board without the need for further action, those who do break the rules must understand that there are consequences for putting workers' lives at risk. The HSE must not rely on employers' willingness alone – active and effective enforcement is key to ensuring compliance and demonstrating to employers that action will be taken when necessary.

Enforcement needs funding

The background to gaps in enforcement is a decade of austerity. The HSE and local authorities (the other primary workplace safety regulator) have suffered colossal funding cuts in the last ten years. In 2009/10, the HSE received £231 million from the Government, and in 2019/20, it received just £123 million: a reduction of 54% in ten years[3].

Less funding means fewer inspections: over the same ten-year period, the number fell by 70%.

The Government's £14million fixed-term grant to HSE has not increased the number of inspectors. Instead, most of these funds have gone to contractors who are unwarranted, lacking a right of entry to workplaces or any enforcement powers, and they do not have the specialist health and safety knowledge of trained HSE inspectors.

Long-term, adequate funding of safety regulation is required if we keep workplaces safe and ensure employers who break the rules face the necessary consequences.

RIDDOR reporting

The TUC is concerned that employers are discouraged from filing reports of occupational exposure from Covid-19 under proper mechanisms: the Reporting of Injuries, Diseases and

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[3] https://prospect.org.uk/news/covid-put-spotlight-on-underfunded-health-and-safety-executive-mike-clancy-tells-commons-committee/

Dangerous Occurrences Regulations 2013 (RIDDOR), and that as a result, potentially thousands of deaths are going unrecorded.

The HSE's database shows just 31,380 occupational disease reports were made for Covid-19 between 10 April and 13 March, including 367 death notifications. This is despite hundreds of thousands of cases of infections recorded in this period and more than 14,500 deaths among working-age adults. What's more, ONS data shows a correlation between certain occupations and Covid-19 exposure and death[4].

There is a requirement on employers under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) to report disease or deaths attributable to occupational exposure.

The HSE says 'the RIDDOR notification system suffers from widespread underreporting[5]. In acknowledgement, employers' duty to report occupational exposure and death must be much more widely promoted.

The HSE suggests that 'work with persons known to be infected' could be considered sufficient evidence to make a report. The TUC believes that workplaces, where there are two or more incidences of Covid-19 and considered by PHE as an 'outbreak', should qualify as RIDDOR reportable, and employers must make backdated reports from the beginning of the pandemic.

Covid classification

The TUC believes the Health and Safety Executive (HSE) must amend its decision to classify Covid-19 as a 'significant' instead of a 'serious' risk in its Enforcement Management Model.

This appears to be based on a misunderstanding of the risk's nature to those of working age. To date, 12 per cent of all Covid-19 fatalities have been among 16-64-year-olds. While Covid-19 may not cause severe complications for most people, it is ultimately a disease with fatal consequences for a considerable number of people in this age group, especially those with underlying health conditions.

The classification change is not merely cosmetic: inspectors within the HSE report that the 'significant' classification limits their ability to issue specific enforcement notices[6], including prohibition notices where necessary. The classification must be designated as 'serious', and inspectors explicitly allowed to use all appropriate enforcement action, including prohibition notices.

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[4] https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/bulletins/coronaviruscovid19relateddeathsbyoccupationbeforeandduringlockdownenglandandwales/deathsregisteredbetween9marchand30jun2020

[5] https://www.hse.gov.uk/statistics/coronavirus/index.htm

[6] https://prospect.org.uk/news/health-and-safety-in-first-half-of-2021/

5. Covid testing

Test, trace, and isolate are crucial in helping keep Covid-19 under control, and unions have welcomed the introduction of testing in many workplaces. However, the TUC is clear: the expansion of workplace testing regimes is not a substitute for effective safety management, nor should testing be considered an alternative for self-isolation. Trade unions must be consulted in the formulation of workplace testing policies, and these must consider:

- If a worker is a contact of a person who has tested positive for Covid-19, a negative lateral flow test is not sufficient to rule out self-isolation given the significant number of false negatives these tests are known to produce.

- Workplace testing should be done in paid work time, and time taken for testing at the request of an employer should count as working hours.

- Workers must be supported to self-isolate as required, with adequate sick pay (see next Section 7 on Certification).

- Testing schemes are not an alternative to safety control measures such as social distancing.

- Voluntary testing schemes must not be used as a means of financial penalising workers.

- Employer contact tracing systems must account for workers who travel between workplaces (for example, contractors and couriers), alerting all sites of positive infections.

- Besides a few exceptions, workers should not be told to turn off the NHS Covid tracing app: Covid control measures do not eliminate the risk of transmission, but reduce it, and negative tests are not a guarantee that the workforce is virus-free.

As more businesses introduce workplace testing schemes, the TUC has concerns about the lack of quality control. There have been reports of poor safety standards at some workplace testing sites. A lack of certification for businesses offering test kits risks a potential use of ineffective, counterfeit or expired products being sold for-profit, with no sampling of the efficacy of tests. We do not wish to see unusable tests being sold in the same way unusable PPE was procured in the first wave of the pandemic.

6. Sick Pay for All

Since the crisis began, unions have been urging Government to fix our abysmal statutory sick pay (SSP) system so that no-one faces the choice between going to work when ill and facing hardship. This is once again even more urgent as millions more people are asked to return to their workplace.

In February 2021, Baroness Harding, head of the Government's test and trace scheme, told a select committee that around 20% of people told by contact tracers to self-isolate do not do so. She added that financial barriers were one of the reasons for this.[7]

Statutory Sick pay (SSP) is worth just £96.35 (from 6 April 6th 2021) meaning those who rely SSP (without any occupational pay top up) are likely to face financial difficulties; the average worker would lose around 80 per cent of their earnings. This rate is extremely low internationally – on average, OECD countries provide support worth around 70 per cent of earnings.[8] In recent polling, we found that less than half (47 per cent) of the private sector businesses that intend to use workplace testing schemes are providing full sick pay and 27 per cent pay only statutory sick pay,[9] meaning that most workers who are asked to self-isolate as a result of a positive workplace test are likely to be on SSP or less.

The TUC has repeatedly pointed out that around two million workers do not qualify for even SSP because they earn too little, including around a third of workers on zero-hours contracts. The ONS found in February that 13 per cent of people receive no pay or sick pay at all while self-isolating[10]. The Government has put in place a self-isolation payment scheme for low-paid workers, but freedom of information requests sent to local councils by the TUC found that seven in ten applicants did not receive support.[11]

In addition, we have heard that many workers are worried about their ability to return to their job if they take a period of leave to self-isolate. Recent polling of private sector employers for the TUC found that only 63% of those surveyed guarantee that workers can return to the same job on the same hours following a period of self-isolation for coronavirus.[12] Additional ONS data shows that among the 14 per cent of people asked to self-isolate who did not comply with the requirements, a common reason for leaving home was to attend work, school or university.[13]

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[7]Politics Home (3rd February 2021) 'Dido Harding admits 20,000 people a day are ignoring calls by NHS test and trace to self isolate' https://www.politicshome.com/news/article/dido-harding-admits-20000-people-a-day-are-ignoring-calls-by-nhs-test-and-trace-to-selfisolate

[8] See Nuffield Trust (12th January 2021) 'To solitude: Learning from other countries on how to improve compliance with self-isolation' at https://www.nuffieldtrust.org.uk/news-item/to-solitude-learning-from-other-countries-on-how-to-improve-compliance-with-self-isolation-1

[9]9 YouGov Plc. Total sample size was 1002 HR decision makers in private companies. Fieldwork was undertaken between 4th - 15th March 2021. The survey was carried out online.

[10] ONS (26th March 2021) Coronavirus and self-isolation after testing positive in England: 1 February to 13 February 2021 at
https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/coronavirusandselfisolationaftertestingpositiveinengland/1februaryto13february2021#ease-and-impact-of-self-isolation

[11]TUC (February 2020) Sick pay that works https://www.tuc.org.uk/research-analysis/reports/sick-pay-works

[12] YouGov Plc. Total sample size was 1002 HR decision makers in private companies. Fieldwork was undertaken between 4th - 15th March 2021. The survey was carried out online.

[13] Of those who left home during a period of self-isolation, 26 per cent did so to attend work, school or university. ONS (26th March 2021) Coronavirus and self-isolation after testing positive in England: 1 February to 13 February 2021 at
https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandwellbeing/bulletins/coronavirusandselfisolationaftertestingpositiveinengland/1februaryto13february2021#ease-and-impact-of-self-isolation

The Government should make it clear to employers that they expect employers to enable anyone who completes a period of self-isolation to return to their job on the same hours, without being penalised for doing the right thing. Additional ONS data shows that among the 14 per cent of people asked to self-isolate who did not comply with the requirements, a common reason for leaving home was to attend work, school or university.[14]

And as the TUC has been calling for the government must fix sick pay, including removing the lower earnings limit so that low paid workers can qualify for pay, raising the level of SSP to at least the level of the real living wage, and abolishing the three waiting days for sick pay (which have been temporarily suspended for coronavirus cases) on a permanent basis.

7. Covid certification

It has been widely reported that the Government are considering a certification programme for people to show their covid status in order to access certain environments – either through proof of vaccination or a recent negative test. Such a scheme is already being discussed for travel within the Europe Union,[15] and is likely to be a key part of any safe reopening of international travel and the aviation sector.

It has also been reported that the Government is considering a covid certification scheme for other workplaces, including offices and factories.[16] Details of such a scheme, and the practical, legal and ethical questions arising from it appear to still be under discussion. For example, it is not yet clear:

- how employees would be able to demonstrate the result of a negative test.

- how data will be used in a way that respects workers' right to privacy.

- how Government will guarantee that such a scheme is open to everyone, including those facing digital exclusion, and incurs no costs for the user.

- how the scheme will ensure employers' continued compliance with Covid health and safety control measures.

- How the Government defines 'vaccinated', how it will manage any required top-up doses, and how this relates to disability and equality discrimination questions.

If these issues can be resolved there are also important conditions that employers will need to meet.

Employers must consult with recognised trade unions at sectoral and workplace level

Joint working between unions and employers has been critical to safe working throughout the crisis, for example Usdaw working with the British Retail Council to agree an approach

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[15] See the following for details of the planned European scheme: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/covid-19-digital-green-certificates_en
[15] See the following for details of the planned European scheme: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/covid-19-digital-green-certificates_en
[16] Financial Times (29th March 2021) 'UK Ministers weigh covid certificates for offices' https://www.ft.com/content/e65b3764-2da7-48dd-9683-4239c68ad57b

to safety in the retail sector. Government should learn from this and ensure that unions are consulted at sector and workplace level on the operation of any scheme.

The success of any system relies on decent sick pay

The success of any testing programme relies on people's willingness to take a covid test, and their ability to self-isolate. The lack of decent sick pay and self-isolation support is currently a major barrier to this.

Before allowing employers to implement a covid certification scheme the government must fix statutory sick pay so that workers who are sick or who need to self isolate get sick pay worth at least the real living wage (£330 a week).

The lack of decent sick pay has been a key failure of the Government's response to the pandemic. Government must fix the sick pay system now – as we set out in section 6.

Employers must provide paid time off for vaccination and any workplace testing must be done in paid work time.

At present, less than half of workplaces are planning to provide workers with paid time off to be vaccinated.[17] Employers should be required to provide paid time off for vaccination and testing, as well as support workers with paid sick leave for any time needed to deal with after-effects of the vaccine. Covid-related absences should be paid, and not be counted in absence monitoring schemes.

For workers who cannot be vaccinated or tested, employers must ensure that no reasonable request for redeployment is refused.

Covid certification is not a substitute for a covid secure risk assessment

Neither a negative Covid test nor a vaccination can guarantee a person is not carrying the virus. While vaccination reduces a person's likelihood of experiencing serious complications from Covid-19 dramatically, it does not eliminate the possibility of infection. It is also not yet clear to what extent vaccination limits transmission.

A recent negative test, or an antibody test, also fail to guarantee a person does not have Covid-19; this is particularly the case with LFT tests which are less reliable than PCRs.

For these reasons, it is vital that vaccination status or test results are not viewed as a means of cutting corners on safety measures, or as control measures in their own right. Adherence to existing guidance on social distancing, ventilation and other safety controls remain vital.

Two doses of the Covid-19 vaccine offers the fullest protection

The vaccines currently in use in the UK require two doses. Individuals who have received the first dose of a Covid vaccine must not be considered 'immune' to the virus. According to

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[17]TUC (22nd March 2021) 'Less than half of companies giving staff paid time-off to get vaccinated – TUC poll'
https://www.tuc.org.uk/news/less-half-companies-giving-staff-paid-time-get-vaccinated-tuc-poll

studies, the first vaccine dose gives 52-75 per cent protection from the virus[18][19], whereas two doses offers up to 95 percent protection[20]. Any scheme which considers a single dose as evidence of an individual being virus-free risks creating a false sense of security and further risk of transmission.

Mandatory vaccination is not the right approach

Government is reported to be considering going further than covid certification towards mandatory vaccination in social care and other high risk sectors.

The TUC is clear that everyone who can have the vaccine should, and that patients and care home residents must be protected. Mandatory vaccination is the wrong approach to achieving these outcomes. It will be damaging to employment relations and efforts to recruit and retain staff, and counterproductive to efforts to encourage vaccine take up. This policy may also be open to legal challenge on the ground of discrimination – for example, pregnant women are currently advised not to be vaccinated.

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[18] https://www.bmj.com/content/371/bmj.m4826
[19] https://www.bmj.com/content/372/bmj.n326
[20] https://www.bmj.com/content/371/bmj.m4978/rapid-responses