

## Written evidence submitted by UNISON (CVD0019)

### About UNISON

UNISON is the UK's largest trade union with 1.4 million members. Based on Government data, we estimate that we have up to 200,000 members who are disabled. We are therefore in a unique position to represent working disabled people, a group often overlooked in policy making.

UNISON submitted evidence to the Committee's recent inquiry into the unequal impact of Coronavirus (Covid-19) on people with protected characteristics, which included a focus on disabled workers. This evidence remains valid.

This response to the sub-enquiry on disability will focus on supplying additional evidence now available in relation to some of the points made in our earlier response, in addition to focusing on the key areas of interest for the Committee. However, it is important to acknowledge we cannot look at the impact of the pandemic on disabled people without using an intersectional lens, particularly in terms of Black and women disabled workers.

### Additional disability evidence relating to main inquiry

1. We have previously submitted evidence to the inquiry on disabled workers being forced to go to work; potentially discriminatory decisions on furlough; and a lack of reasonable adjustments for disabled workers at home or in re-deployed roles.
2. We surveyed 10,000 Black members at the end of June and preliminary results included 890 "extremely critically vulnerable" members who had received a letter instructing them to shield and 3,118 members who had an underlying condition and were likely to be in the "clinically vulnerable" category.
3. The majority of these "extremely clinically vulnerable" and "clinically vulnerable" workers are likely to fall under the Equality Act definition of a disabled person.
4. 17% of those who had a letter requiring them to "shield" had continued to work in their usual workplace during the pandemic for all or most of the time, underlining the issue we previously raised.
5. Some respondents who were shielding or had underlying conditions were on unpaid leave or Universal Credit as their employer would not agree to homeworking or special paid leave.
6. 19% of all Black members who thought they or someone in their household had Covid-19, and 17% who were shielding or had an underlying condition, continued to go to work in this period. This was often due to levels of and eligibility for Statutory Sick Pay.

*"The options we were given from our management was either attend work and be subjected to multiple people or go on sick leave - company sick pay was withdrawn and [we were] told all on offer was SSP."*

*"I not only was not able to work from home. No support was given to those who should be shielded or vulnerable. We were told you wouldn't be paid if you didn't work. SSP only if ill."*

*"I'm in the shielding group. They have said I have to take unpaid leave."*

**UNISON disabled members**

7. We also surveyed almost 5,000 UNISON disabled members in mid-June. 50% of disabled workers have been working from home every day during the pandemic and 73% are either as productive or more productive compared to in their workplace.
8. Before lockdown, many disabled workers were in daily pain at work or had to manage the effects of medication around rigid start and finish times. Many faced a long commute with serious underlying health conditions that left them exhausted for the rest of the day, with no opportunity for short breaks. Some faced the constant stress and anxiety of trying to stay close to a toilet at work.
9. Since lockdown, for many disabled workers, these issues are no longer a problem. Many told us that working from home had significantly improved their sickness absence as they could take short breaks and work more flexible hours.
10. However, 53% of disabled workers had not received any reasonable adjustments from their employer to help them to work from home. 54% of disabled workers said they wanted to continue working from home in the future. 37% said their employer was likely to refuse their request.
11. There is a once in a lifetime opportunity to extend the right to home working to those disabled workers who want it and would benefit from it.
12. However, a significant number of disabled workers suffered from a lack of reasonable adjustments while working from home. It appears that for many employers the duty to provide reasonable adjustments was not understood as applying to home working.

*"I have not been able to have my equipment whilst working from home. I isolated at end March and have not had my Dragon software installed on the lap top I am using. I have not been able to use my specialist keyboard and my specialist chair is at work. I also do not have an office area at home (desk etc) so my posture is affected. This also makes my fatigue bad, my body and hands painful and my cognition slower. Not having the right equipment is having a bad effect on me."*

**UNISON disabled member**

### **UNISON is calling for:**

- Increase in Statutory Sick Pay (SSP) and extension to more low paid workers to encourage those who have symptoms or live with someone with symptoms to stay off work.
- New right to home working for disabled workers who choose it.

### **Access to Work**

13. Only 5% of disabled workers in our survey had applied to the Government's Access to Work scheme for help. 41% did not even know about Access to Work and 23% did not think Access to Work could help people with working from home.
14. As a result, many disabled workers have put up with inadequate working arrangements whilst working from home, which have often significantly exacerbated their impairments.
15. Some UNISON members who applied to Access to Work were told their application could not be processed because it was "key workers only" during the Covid-19 pandemic. Although the Access to Work website states key workers

were being prioritised, our members' experience was that only key workers were being helped at this time. This highlights a significant lack of capacity in the system that needs to be addressed urgently in the light of the continued prevalence of homeworking.

16. There were also complaints that Access to Work's remit explicitly excludes adjustments that it would be reasonable for the employer to fund. However, some employers have argued that working from home is not compulsory and therefore it is not reasonable for them to supply basic IT equipment which Access to Work cannot fund.

*"Access to work will not help with equipment at home if you work for a big organisation. I was told that your work should do like for like. However, the workplace states that working from home is not compulsory."*

**UNISON disabled member**

17. Some respondents also reported difficulties in complying with Access to Work requirements during lockdown. Access to Work has been a largely paper based system, requiring hard copy forms and "wet" signatures from managers to agree expenditure. The system was slow to move to online processing under lockdown and its website still makes clear paper systems are the default – electronic options are by request only. Some UNISON members have reported struggling to get agreement to use email and electronic signatures during the pandemic.

#### **UNISON is calling for:**

- A significant investment in Access to Work to support a revolution in home working for disabled people who want it, and to overcome the capacity issues it has faced. A new and separate Access to Work fund to facilitate working from home, including basic IT provision not currently covered by the scheme.
- Significantly increased publicity for Access to Work so that disabled workers are aware of it and that it will fund homeworking adaptations.
- A move to fully online processes for Access to Work, in addition to paper-based options.

#### **Government communications: effectiveness and accessibility**

18. The most recent Government communication relating to risk assessments has not been clear. The advice given has focused on workplace risk assessments, with little detail on assessing at-risk staff. It has not been made clear to employers that they need to undertake an **individual** risk assessment for each staff member in an at-risk group.
19. Many disabled workers have non-apparent impairments that might not be immediately obvious to an employer and may not previously have been declared for fear of discrimination or stigma. However, there has been no guidance to employers on how to ensure all staff who require an individual risk assessment, including those with non-apparent disabilities, are identified.
20. 60% of vulnerable and shielded workers responding to our Black members survey had not had an individual risk assessment.

21. With the Government's focus on creating "Covid-secure" workplaces, it has not been made clear that although the risk of catching Covid can be reduced for all staff, the impact of catching it will still be greater for disabled (and Black) workers. Risk can only be reduced – it cannot be removed entirely – and therefore all staff will still be at (equal) risk of getting Covid. However, disabled and Black staff will remain at an **unequal** risk of then dying from Covid. This is an occasion where equality requires that we treat people differently. To reduce the unequal risk of disabled staff dying from Covid-19, their risk of catching it needs to be reduced even further than their non-disabled colleagues. The Government's use of the phrase "Covid-secure" does not help this, as it suggests there is a one size fits all approach that will make the workplace equally safe for all workers. The workplace may well be generally safe for a non-disabled worker, but equal exposure to risk does not address the additional impact on disabled workers. It has not been made clear to employers that, as per the Equality Act 2010, disabled staff may need additional steps taken beyond the idea of a Covid secure workplace.
22. As outlined in paragraph 4, 19% of Black workers who had been instructed to shield had to continue to go to their normal workplace and the risk assessment guidance will not tackle these employers.
23. In our survey of Black members who were either "extremely clinically vulnerable" or "clinically vulnerable" and likely to be disabled, of those who did receive a risk assessment, over 36% said it did not adequately identify the risks they faced and 34% said no clear steps were taken by their employer as a result of the risk assessment. Only 7.5% had been redeployed to a less risky role. Over 35% felt pressured to go to work when they didn't feel it was safe.
24. Changes to the shielding guidance published on 23 June were also badly communicated. The guidance stated that from 1 August "*you can go to work, **if you cannot work from home, as long as the business is COVID-safe***" [emphasis added]. Many shielded workers and their employers interpreted this to mean that shielded staff **should** go back to the workplace - the syntax sowed confusion for both employers and workers. This advice was updated on the Government website in July, although the original confusing advice was sent by letter to 2 million shielding people.
25. It has also not been made clear that a "Covid safe" workplace may still not be safe enough for a shielded or disabled worker. It is not clear how employers will be supported in helping these staff members to stay at home if home working is not possible and the furlough scheme ends in October. Government's approach may be that inevitably some will lose their jobs and that is where the welfare state steps in. But these workers are likely to be in sectors with the worst employment rights and are also more likely to be Black disabled workers. Leaving these workers without a safety net will significantly exacerbate inequality and is a foreseeable consequence of this failure to act.
26. From the outset of the crisis, Government communication and consultation with disabled people was almost entirely inadequate because Government simply did not recognise disabled people as a group with protected characteristics and with rights under the Equality Act 2010.
27. Instead Government ignored disabled people and established two new groups of people, "*clinically vulnerable*" and "*extremely clinically vulnerable*". Neither of these groups had any basis in equality legislation and they were entirely new concepts for disabled people.

28. UNISON is not aware that disabled people's organisations were ever consulted on the division of disabled people into these two new groups.
29. Workers and employers were unsure of the difference between the two new categories. In particular, disabled workers in the "*clinically vulnerable*" category who had significant health problems were often forced to go to work because they did not belong to the "*extremely clinically vulnerable*" group.
30. Creating these two groups allowed many employers to force disabled workers to go to work when it wasn't necessary, and they could have worked from home or been redeployed.
31. Using the language of vulnerability obliterated disabled people's rights under the Equality Act 2010. Employers simply did not understand that they had a duty to consider reasonable adjustments for those in both the "*vulnerable*" and "*extremely vulnerable*" categories, which could include home working and redeployment. Instead many focused on the need for a shielding letter and did not consider home working and redeployment for those disabled workers in the "*vulnerable*" category.
32. It was only after this was raised by UNISON that the official guidance on shielding was updated on 29 May to include reference to the Equality Act duties on employers. Up to that point, Government and PHE saw "*extremely clinically vulnerable*" people as by definition economically inactive - because they focused on vulnerability. If they had instead used the social model of disability as a lens, they would have realised from the outset that many of those most at risk from Covid-19 were also disabled workers.

*"They were only bothered about the shielding category and not the clinically vulnerable group still at high or very high risk. No support."*

*"I brought letters in from medical professionals. But as I had no shielding letter, they said I was able to work as normal."*

*"Unable to do job from home, I do have underlying health conditions, but I did not get a shielding letter so if I don't work, I don't get a wage."*

*"Because they were unable to facilitate me working from home, I was not paid for 12 weeks. Unfortunately, I was not officially shielded by the Government, but am in vulnerable categories. The NHS trust I work for would not accept a letter from my neurologist stating that I must self-isolate for 12 weeks as I wasn't shielded. Only shielded staff members are fully paid."*

**UNISON members**

### **Specific evidence on the communication needs of Deaf people**

33. The communication needs of Deaf people, whose native language is British Sign Language, have been dangerously ignored during the pandemic.
34. Deaf people are often more reliant on social media. In the absence of official information in BSL, dangerous misinformation circulated on WhatsApp and similar platforms, causing unnecessary fear and distress to Deaf people and hindering efforts to ensure their safety.
35. There is still no live BSL interpreter at UK Government press conferences, in contrast to Scotland for example. Government reliance on broadcasters to add BSL interpretation afterwards is a less effective form of communication. Live BSL

allows greater understanding of the importance and urgency of what is being said and does not leave it down to broadcasters whether to include BSL or not.

36. UNISON has a Deaf workers' group who also reported problems with communication at work during the pandemic. With big decisions on sustained homeworking being taken at high speed, Deaf workers were often left out of the loop, not understanding what was happening at work.
37. On 5 June the Government issued a press release that made it compulsory for all NHS workers to wear a mask at work. This did not take account of Deaf NHS workers. It did not explain how a Deaf worker in an NHS hospital could work safely if they could not see the face of their BSL interpreter (BSL also relies on facial signals) or lip-read instructions from colleagues. Despite the press release promising further guidance, none was produced, save for a document dated 12 June which was cascaded internally within the NHS. This unpublished, un-authored document entitled "FAQs" contains no reference to Deaf staff who will be the hardest hit and may miss important safety information if they cannot lip-read or see their interpreter's face. This lack of clear Government guidance has left Trusts unable to understand their responsibilities when it comes to their duty of care for Deaf staff in light of Government requirements.

*"I went to a work meeting where both myself and my interpreter had to wear a mask. I could only understand about 50% of what was said."*

**UNISON member working in an NHS hospital**

### **UNISON is calling for:**

- Mandatory individual risk assessments for all disabled staff, backed up by spot checks and sanctions.
- Clarity on the relative nature of a "Covid-secure" workplace when it comes to disabled workers; clear guidance on the need for employers to take additional steps to reduce the unequal impact of dying from the virus for disabled workers; and a clear instruction to employers that some disabled staff should continue to be able to stay away from the workplace.
- Clear and unambiguous advice from Government that those who have been shielding should work from home from 1 August if it is possible to do so.
- Extension of the furlough scheme for disabled people (whether they are in the "extremely vulnerable" group or not) where it has not been reasonably possible to facilitate home working or redeployment to a suitably Covid safe role.
- A step-change in the enforcement of disabled people's right to reasonable adjustments, including home working and redeployment as alternatives to returning to an unsafe workplace. This should include clear deadlines for requests for reasonable adjustments and timescales for agreement and implementation.
- The incorporation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) into UK law to protect and underline disabled people's specific rights so that they are not overlooked or over-ruled in a future emergency.
- The social model of disability to be fully embedded in the UK civil service and public health bodies so that disabled people are understood as citizens with

specific additional rights, ensuring future Government guidance does not contribute to the victimisation of disabled people.

- Government to propose a BSL Act, similar to that already in place in Scotland, giving full legal recognition to BSL and ISL, requiring public authorities to promote them, in order to address the dangerously inadequate level of communication with Deaf people.
- A mandatory duty to carry out robust equality impact assessments of Government guidance so that, for example, Deaf workers aren't put at risk by new requirements on face masks.

### **Disabled people's access to healthcare services**

38. At the end of June, the UK apparently had a "world class" test, track and trace facility. However 26% of (mostly public and care sector) respondents to our Black members survey who were in the shielding group or had an underlying condition, and were likely to be disabled as defined by the Equality Act, were not very confident or not at all confident they could access a test for Covid-19.

#### **UNISON is calling for:**

- Access to testing for all disabled workers as a group that is particularly vulnerable to the virus.

### **Mental health of disabled people**

39. Although 73% of the almost 5,000 respondents to our disabled members survey felt more or as productive working from home, almost 20% said that the impact on their mental health and feelings of isolation were an issue.

40. 44% of Black workers in the shielding and in the clinically vulnerable groups had not been offered any mental health support from their employer.

41. UNISON strongly believes that the changes to the Mental Health Act fundamentally undermine disabled people's human rights. Black disabled people are disproportionately detained under the Mental Health Act and the changes were not properly equality impact assessed.

*"My mental health has suffered partly due to my reasonable adjustments not being met."*

**UNISON member**

#### **UNISON is calling for:**

- Clearer Government guidance that the employer's duty of care extends to staff mental health, including while working from home or off work due to risk.
- Mandatory, robust and transparent equality impact assessments of legislative changes.

### **Social care for disabled people in their homes and in residential care settings**

42. Some UNISON disabled workers employ personal assistants (PAs) in their homes in order to access personal care, allowing them to work.

43. These workers struggled to access PPE for their personal assistants. In some cases, their personal assistants, often understandably, did not come to work due to safety concerns and the disabled worker was left without care.
44. There was no clear Government guidance for these workers and their PAs who were not included in Government schemes to distribute PPE.
45. UNISON believes that the that suspension of the Care Act demonstrates categorically that the social care system is broken.

**UNISON is calling for:**

- Emergency funding for our social care system
- A new National Care Service (to include personal assistants employed through direct payment/personal budgets) ensuring a real living wage, standard terms and conditions and training. See [Care after Covid: A UNISON vision for social care, June 2020](#)

*July 2020*