

COVID-19 and Labour Law: United Kingdom

Tonia Novitz *

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Abstract

The UK Government provided a tardy response to the coronavirus pandemic, which would seem to have led to widespread community transmission and a high death toll. The measures taken in relation to the labour market were disappointing, being predominantly concerned with protecting business, while limited assistance was provided to the most vulnerable, precarious workers. Jobs have been preserved by such measures, but it is unclear what will happen as the Government schemes are phased out. Crucial issues relating to health and safety at work have been downplayed during the crisis, racial concerns have emerged and gender-related inequalities are being given little attention by the Government. The Trades Union Congress (TUC) has engaged with the Government on policy matters, resulting in some significant alterations to measures taken. Unions have also been prominent in discussions regarding the terms of return to work. This report was originally submitted on 10 April and has now been updated, being accurate up to 7 June 2020.

Keywords: Covid-19; Labour Law; Statutory sick pay; Unemployment benefits; Job retention scheme; Health and Safety; Gender-related issues.

1. General Framework: An Introduction to the UK Situation.

Initially, the UK Government message was that the priority was to keep the economy going, build 'herd immunity' in the bulk of the population, ask those who were ill to self-isolate and accept that there would be casualties (affecting predominantly the elderly 'with underlying health conditions')¹. It was only when academic modelling predicted that unconstrained transmission could lead to more than 500,000 deaths and the current policy to 250,000 deaths, that significant further measures were taken².

* Tonia Novitz, Professor of Labour Law, University of Bristol, UK.

¹ Bosley S., 'Coronavirus: health experts fear epidemic will "let rip" through UK', The Guardian 15 March 2020, <https://www.theguardian.com/world/2020/mar/15/coronavirus-health-experts-fear-epidemic-will-let-rip-through-uk>, accessed 10 April 2020.

² Grey S., MacAskill A., 'Special Report: Johnson listened to his scientists about coronavirus - but they were slow to sound the alarm' Reuters 7 April 2020, <https://www.reuters.com/article/us-health-coronavirus-britain-path->

On 19 March it was formally announced that the elderly and those vulnerable due to pre-existing health conditions or pregnancy should ‘shield’ at home for a period of 12 weeks. On 20 March schools were closed (apart from to children of critical workers and vulnerable children receiving free school meals) as were all ‘non-essential’ businesses³. Everyone was required to stay home on ‘lockdown’ from 23 March, if not engaged in critical work. Children could be moved between custodial parents, but the message has been to go out only for personal exercise, shopping, for medical needs or to assist others. If anyone had to go out, they should stay 2 metres (6ft) away from other people at all times and wash their hands on return home⁴. These instructions would not apply to ‘critical’ or ‘frontline’ workers in health and social care, schools and childcare, key public services, local and national government, food and other necessary goods, public safety and national security, transport, utilities, communication and financial services⁵.

When a global pandemic was declared on 11 March 2020 by the World Health Organisation (WHO), there were at that time in the UK only 460 identified cases of coronavirus and 8 Covid-19 related deaths. On 20 March, at the time of lockdown, total coronavirus cases reached 3,269 and the number of deaths had jumped to 177. At the time of writing as at 5pm on 7 June 2020 there were 286,194 positive tests in total, 1,326 new cases that day and there had been 40,542 deaths (of those who had tested positive for coronavirus)⁶.

This is currently the highest reported number of deaths to date of any country in Europe and the second highest in the world (after the United States). There are however more UK deaths, if one counts those who did not test positive or (more significantly given the scarcity of tests for most people until June 2020) were not tested. The Office for National Statistics has recorded that as early as 22 May 2020, there were already 43,837 deaths involving Covid-19 as reported on the death certificate (including those not tested),⁷ which would indicate that there may be over 50,000 deaths by now. The *Financial Times* has estimated that if one merely engages in a comparison with the average number of deaths for the past two years, by 26 May 2020 there were over 60,000 ‘excess deaths’⁸.

From 12 March 2020, testing was largely limited to hospital admissions, but has been gradually been expanded. Initially, testing was extended to all symptomatic ‘frontline’

[speci/special-report-johnson-listened-to-his-scientists-about-coronavirus-but-they-were-slow-to-sound-the-alarm-idUSKBN21P1VF](#), accessed 10 April 2020.

³ The list of businesses and venues shut is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876905/300320_Revised_Guidance.pdf, accessed 10 April 2020.

⁴ <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>, accessed 10 April 2020.

⁵ <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>, accessed 10 April 2020.

⁶ <https://www.gov.uk/guidance/coronavirus-covid-19-information-for-the-public>, accessed 8 June 2020.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/conditionsanddiseases/articles/coronaviruscovid19roundup/2020-03-26#covidddeaths>, accessed 8 June 2020.

⁸ Giles, C., ‘UK excess deaths reach almost 60,000’ *Financial Times* 26 May 2020,

<https://www.ft.com/content/4a91a414-4937-4c54-aa78-6d231f4a4e43>, accessed 8 June 2020.

workers and their families⁹, but is now available to all those with symptoms. Whether the Government has provided sufficient testing has been the subject of controversy¹⁰. A track and trace ‘app’ for smart phones to assist in detecting community transmission, which was trialled in the Isle of Wight by the Government, has not yet been introduced.¹¹ Instead, a more complex manual reporting system came into operation from 1 June 2020. This has attracted criticism from scientists and health officials who worry that lockdown is easing prematurely, with additional concerns that the actions of one key Government adviser has diminished faith in the standard instructions regarding self-isolation¹².

Different rules now apply in England, Northern Ireland, Scotland and Wales (which make up the UK), with complex guidance made available on the Government’s website. In England, those who cannot work from home have been encouraged to return to work, primary schools have opened for nursery, year 1 and year 6 students, non-essential shops are re-opening and restrictions on meeting outside have been eased considerably to a limit of six persons¹³. New advice has also been issued in respect of those who have been shielding due to age or pre-existing health conditions, for example that they are now able to meet with one other person. However, in the context of a general return to work, it seems that even when advised to shield, a worker’s ability to retain their job while remaining absent from the workplace will depend on employer discretion, subject to UK statutory provisions relating to annual leave, dismissal and redundancy, which offer limited coverage and protections¹⁴.

2. The impact of the spread of the Covid-19 disease and UK Government measures on employment relations and working conditions.

The first empirical study undertaken as to the social effects of the virus was published on 1 April 2020, covering the period up until 25 March 2020 (two days after the lockdown).

⁹ See <https://www.gov.uk/government/news/further-expansion-of-access-to-coronavirus-testing-helps-protect-the-most-vulnerable>; and <https://www.gov.uk/guidance/coronavirus-covid-19-getting-tested>, accessed 3 May 2020.

¹⁰ Carding, N. ‘Government counts mailouts to hit 100,000 testing target’, HSJ 1 May 2020, <https://www.hsj.co.uk/quality-and-performance/revealed-how-government-changed-the-rules-to-hit-100000-tests-target/7027544.article>, accessed 3 May 2020; and reported by Politics Live, ‘Statistics watchdog blasts Matt Hancock over ‘inadequate’ figures on coronavirus testing’ 3 June 2020, <https://www.politicshome.com/news/article/statistics-watchdog-blasts-matt-hancock-over-inadequate-figures-on-coronavirus-testing>, accessed 2 June 2020.

¹¹ Reported by the BBC at <https://www.bbc.co.uk/news/health-52521526>, accessed 3 May 2020.

¹² ‘Covid-19 news: Health experts say UK contact tracing not robust enough’ New Scientist, 1 June 2020, <https://www.newscientist.com/article/2237475-covid-19-news-health-experts-say-uk-contact-tracing-not-robust-enough/#ixzz6OEA3redE>, accessed 2 June 2020; Booth, R., Pidd, H. and Walker P., ‘Health officials make last-minute plea to stop lockdown easing in England’ 1 June 2020, <https://www.theguardian.com/world/2020/may/31/health-officials-make-last-minute-plea-to-stop-lockdown-easing-happy-monday>, accessed 8 June 2020.

¹³ The guidelines are made available (as revised) at: <https://www.gov.uk/coronavirus> and <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>, accessed 8 June 2020.

¹⁴ <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>, accessed 8 June 2020.

That study found that 57% of workers engaged in less paid work over the past week than usually and that 8% of workers in employment a month ago had already lost their job due to COVID-19. It was the youngest and most precarious low-income workers who were disproportionately affected¹⁵. In a follow-up report by the same authors using data up to 14 April 2020, it was found that 15% of individuals had lost their jobs, a disproportionate number of whom were women and young people¹⁶. Precarious workers on zero hours contracts (especially café, restaurant and bar workers) have suffered particularly in the current crisis and are experiencing destitution, despite Government determination to act on this issue by establishing a new homelessness taskforce¹⁷.

It should also be noted that since 23 March 2020, employment tribunals have provided only preliminary and case management hearings, with substantive matters put on hold for the time being¹⁸. Employment tribunal hearings for 29 June onwards are currently expected to proceed¹⁹, although this will depend on ongoing Government plans for adjusting lockdown. The employment tribunal system has also been the subject of review by the UK Law Commission, which published its findings on 28 April 2020²⁰. It remains uncertain what Law Commission proposals will be implemented and at what pace.

2.1 Government measures taken and their effects to date.

2.1.1 Statutory sick pay and access to unemployment benefits.

UK statutory sick pay is set at a very low level (£95.85 per week from 6 April 2020) which is less than 30% of the national minimum wage²¹. It is only available to ‘employees’, so not usually those in precarious forms of employment and only those who would normally earn at least £118 per week²². Only agency workers who are ‘employees’ of an agency can claim²³. Of concern is the ineligibility of those hired under precarious contracts to claim sick pay, notably care workers who do not satisfy the statutory definition of an ‘employee’.

¹⁵ Adams-Prassl A., Boneva T., Golin M., Rauh C., *Inequality in the Impact of the Coronavirus Shock: New Survey Evidence for the UK*, in *Cambridge-INET Working Paper Series*, No: 2020/10, 2020.

¹⁶ Adams-Prassl, A., Boneva, T., Golin, M. and Rauh, C., *Inequality in the Impact of the Coronavirus Shock: Evidence from Real Time Surveys*, IZA DP No. 13183, <https://covid-19.iza.org/wp-content/uploads/2020/04/dp13183.pdf>, accessed 1 May 2020.

¹⁷ Laval, D. and Hatterstone, S., ‘The government hasn’t “ended homelessness”, no matter what it says’, *The Guardian* 29 April 2020, <https://www.theguardian.com/commentisfree/2020/apr/29/homelessness-streets-hostels-coronavirus>, 3 May 2020.

¹⁸ <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-presidents-of-the-employment-tribunals-in-england-wales-and-in-scotland/>, accessed 10 April 2020.

¹⁹ <https://www.judiciary.uk/wp-content/uploads/2020/05/FAQ-edition-date-30-April-2020.pdf>, accessed 3 May 2020.

²⁰ <https://www.lawcom.gov.uk/project/employment-law-hearing-structures/>, accessed 1 May 2020.

²¹ John Hendy QC, *The Gaps in the Government’s Coronavirus Income Protection Plans*, Institute of Employment Rights, 2020, 1-2.

²² See the UK Employment Rights Act 1996, s.230 for the distinction under UK law between ‘workers’, ‘employees’ and (by implication) the self-employed.

²³ See the Government guidance which does not acknowledge how rare this is: <https://www.gov.uk/statutory-sick-pay/eligibility>, accessed 8 June 2020.

Their inability to take time off when sick, due to the financial cost of doing so, is seen as injurious to them, those they care for and also a larger public health risk²⁴.

The right arises from day 1 (not day 4 as previously normally be the case) in relation to those whose claim is related to coronavirus²⁵. This applies to those employees sick with Covid-19, any employee self-isolating due to notification of contact with someone with coronavirus or employees who are ‘shielding’²⁶. Statutory sick pay can be paid for up to 28 weeks.

Anyone not eligible for statutory sick pay and without work can claim for ‘Universal Credit’, the standard unemployment benefit. The Government has changed official guidance so: ‘those affected by coronavirus ... can receive up to a month’s advance up front without physically attending a jobcentre’²⁷. The usual threshold income level has also been temporarily changed to enable readier access for precarious workers, whether termed ‘workers’ or self-employed. The Government has also changed requirements for those already covered by the scheme but having to self-isolate due to coronavirus. However, levels of income under this scheme (although increased from a standard rate of £317.82 to £409.89 per month) remain very low. A campaign to enhance payments for persons with disability by at least £20 per week, in line with the increase in basic Universal Credit support, has not yet succeeded²⁸. The Government reported that almost 3 million people had applied for Universal Credit between 16 March and 26 May 2020²⁹. The UK has a full-time working population of approximately 25 million, but many more in forms of part time and precarious employment³⁰.

2.1.2 Coronavirus Job Retention Scheme.

On 17 March 2020, the Chancellor set out various measures for business to assist them in a package totalling £330 billion³¹. On 20 March, he announced a further Coronavirus

²⁴ Hayes, L., Tarrant, A. and Walters, H., *Care and support workers’ perceptions of health and safety issues in social care during the COVID-19 pandemic: Initial findings*, 15th April 2020, <https://media.www.kent.ac.uk/se/11148/CareworkersHealthandSafetyreport15042.pdf>, accessed 3 May 2020.

²⁵ See the Social Security Contributions and Benefits Act 1992 (amended by the Coronavirus Act 2020); and the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020.

²⁶ See <https://www.gov.uk/statutory-sick-pay>, accessed 8 June 2020.

²⁷ <https://www.understandinguniversalcredit.gov.uk/coronavirus/>, accessed 8 June 2020.

²⁸ ‘Disability Rights UK promotes petition to increase disability benefits’ 29 April 2020, <http://www.ekklesia.co.uk/node/29552>, accessed 3 May 2020.

²⁹ See <https://www.gov.uk/government/publications/universal-credit-declarations-claims-and-advances-management-information>, accessed 8 June 2020.

³⁰

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/march2020>, accessed 8 June 2020.

³¹ <https://www.gov.uk/government/speeches/chancellor-of-the-exchequer-rishi-sunak-on-covid19-response>, accessed 8 June 2020.

Job Retention Scheme,³² which enables an employer to ‘furlough’ its workers, namely to suspend them so that they do no further work (partial reduction of hours or tasks under the scheme was not possible initially). The Government would then pay 80% of wages up to a maximum of £2500 per month (and additional tax-related costs). The furloughed worker had to be an ‘employee’ under UK tax laws (a different definition to that determining eligibility for statutory sick pay).

Initially there was a requirement that, to be eligible for furlough, the worker also had to have been hired by that employer on or before 28 February 2020. That date was later shifted by three weeks to 19 March 2020 to cover those who had recently moved jobs, enhancing coverage of the scheme. The General Secretary of the Trades Union Congress (TUC), Frances O’Grady, claimed this as a victory for the TUC, which had campaigned for this change³³.

Much was also made of the fact that this could include precarious workers on zero hours contracts, or casual or gig workers (an earlier concession to TUC demands), although it has been pointed out that this is in practice highly unlikely³⁴. Moreover, this is not simply a job protection scheme. It enables the employer to *choose* whether to furlough, retaining the option for the sake of convenience to dismiss an employee (or initiate redundancies). The limitations of UK dismissal laws have been exposed in this process³⁵.

The Job Retention Scheme was not initially placed on a statutory footing and was altered repeatedly, but is now covered by an (amended) Treasury Direction under the Coronavirus Act 2020,³⁶ and the official Government Guidance has been revised accordingly³⁷. The webpage enabling employers to make a claim for the costs of furloughing employees opened on 20 April 2020. As of 31 May 2020, it has been estimated that the overall cost of the United Kingdom’s job retention scheme is £17.5 billion covering the wages of 8.4 million jobs³⁸. The deadline for furloughing an employee is now 10 June and the last date for applications will be 30 June. The scheme itself will be phased out with the introduction of part time work for furloughed employees and a gradual increase in the costs for the employers. ‘For the average claim, [the government subsidy in October 2020] represents 23% of the gross employment costs the employer would have

³² <https://www.gov.uk/government/speeches/the-chancellor-rishi-sunak-provides-an-updated-statement-on-coronavirus>, accessed 10 April 2020.

³³ <https://twitter.com/FrancesOGrady/status/1250504222711390210>.

³⁴ Hendy, n.21 above, 8 – 10.

³⁵ For three excellent blogs on the subject by Bogg, A., Ford, M.:

<https://uklabourlawblog.com/2020/03/23/legislating-in-times-of-crisis-the-coronavirus-job-retention-scheme-by-alan-bogg-and-michael-ford/>; <https://uklabourlawblog.com/2020/03/31/not-legislating-in-a-crisis-the-coronavirus-job-retention-scheme-part-2-by-michael-ford-and-alan-bogg/>; and <https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>.

³⁶ The Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction revised as at 20 May 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886959/CJRS_DIRECTION_No2__20_05_2020.pdf, accessed 8 June 2020.

³⁷ <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>; and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881800/Coronavirus_Job_Retention_Scheme_step_by_step_guide_for_employers.pdf, accessed 8 June 2020.

³⁸ <https://www.statista.com/statistics/1122100/uk-cost-of-furlough-scheme/>, accessed 8 June 2020.

incurred had the employee not been furloughed³⁹. Now that the scheme is due to close, a large number of redundancies have been announced⁴⁰.

2.1.3 Self-employed Income Support Scheme.

The Self-employed Income Support Scheme (SISS) was announced on 26 March 2020. It was intended to be formally comparable to the Job Retention Scheme in that 80% of a self-employed person's profits can be paid by the Government initially for a period of three months, capped at £2,500 per month. This required the claimant to have received less than £50,000 in profits either the previous year or averaged over three years and to have been self-employed for three years. The Inland Revenue has contacted those eligible and is committed to making a payment in June 2020. While this might seem to help those precarious workers who do not qualify for protection as 'employees' under the Job Retention Scheme, those on low incomes and without savings were disproportionately affected by the lack of payment for three months⁴¹. Moreover, the Scheme has not applied to those who do not make more than half their income through being self-employed or who have changed the basis on which they work in the past three years. It was predicted that this would mean that the scheme could cover only 62% of self-employed people⁴².

The SISS is also being phased out. The Government reported at the end of May that there had been 2.3 million totalling £6.8 billion, and that there would be a possibility to claim a second final grant to be paid out in August, which would be worth 70% of average monthly trading profits, 'paid out in a single instalment covering three months' worth of profits, and capped at £6,570 in total⁴³.

2.2 Government omissions.

Government spending has therefore been extensive, but despite attempts at modification throughout the crisis in response to emergent needs, measures taken have not necessarily provided effective protection for all those at work. There have also been

³⁹ For full advice on the gradual step changes, see the Chancellor's announcement on 29 May 2020, summarised at: <https://www.gov.uk/government/news/chancellor-extends-self-employment-support-scheme-and-confirms-furlough-next-steps>, accessed 8 June 2020.

⁴⁰ As at 18 May 2020, a survey revealed that more than a fifth of UK firms planned redundancies: <https://www.ft.com/content/95ca952a-b48b-42ae-8118-287e5768df54>, accessed 8 June 2020. On 4 June 2020, the Prime Minister was predicting 'many job losses', reported at <https://www.itv.com/news/2020-06-04/uk-warned-to-brace-for-many-job-losses-as-deaths-pass-50-000/>, accessed 8 June 2020. As at 3 June 2020, claims for 'unfair' redundancies were also predicted by the President of the Employment Tribunals, <https://www.lawgazette.co.uk/news/tribunal-braced-for-redundancy-claim-surge-once-furlough-scheme-ends/5104490.article>, accessed 8 June 2020.

⁴¹ Hendy, n.21 above, 13 – 17.

⁴² Discussed in Hirst D et al, '*Coronavirus: support for businesses*', House of Commons Briefing Paper, 3 April 2020, 13-14.

⁴³ See n.39 above.

notable omissions in regulatory engagement, including health and safety, race and gender-related issues.

The most prominent health and safety concerns have arisen for critical frontline workers. A significant number of nurses and doctors started dying from Covid-19, having raised concerns regarding shortages of adequate personal protective equipment (PPE)⁴⁴. The availability of PPE was a considerable problem with reports of crisis within the NHS, corroborated by a recent BBC documentary⁴⁵. For 10 weeks, with a call for ‘clap for carers’ at 8pm every Thursday night, the public demonstrated considerable sympathy for those working in health care and being exposed to illness⁴⁶. The Government has made a £60,000 lump sum payment to NHS workers who have died due to Covid-19, but this does not satisfy the families affected⁴⁷. An ‘immigration health surcharge’ usually required of all migrant workers was removed for all NHS staff and care workers, in response to the pressure of public opinion⁴⁸.

PPE is also an issue for care workers, and evidence soon emerged of an increasing incidence of coronavirus in residential care homes⁴⁹. Care workers also feared that, with a lack of PPE, they were spreading the virus as agency workers across care homes and when working (in any number of ways) in private homes⁵⁰. Unfortunately, they were proven correct⁵¹. There have been disproportionate numbers of deaths additionally among transport workers, including London bus drivers⁵².

A further issue is the over-representation in intensive care and deaths of Black, Asian and other minority ethnic (BAME) workers⁵³. This was confirmed by an official ‘Public Health England’ report on 3 June 2020, but which did not contain recommendations as to

⁴⁴ Weaver M., ‘*Doctor who pleaded for more hospital PPE dies of coronavirus*’ *The Guardian* 9 April 2020, <https://www.theguardian.com/world/2020/apr/09/consultant-who-pleaded-for-more-nhs-hospital-ppe-dies-of-coronavirus>, accessed 10 April 2020.

⁴⁵ Screened on 27 April 2020, the Government and public reaction prompting a BBC statement available at: <https://www.bbc.co.uk/mediacentre/statements/panorama-mon-27-apr>, accessed 3 May 2020.

⁴⁶ <https://www.bbc.co.uk/news/av/uk-52494308/coronavirus-uk-s-weekly-clap-for-carers>, accessed 3 May 2020.

⁴⁷ Marsh, S, ‘Grieving NHS families say £60,000 cannot make up for loss’ *The Guardian* 27 April 2020, <https://www.theguardian.com/world/2020/apr/27/families-of-nhs-and-care-staff-who-died-from-covid-19-to-get-60000>, accessed 3 May 2020.

⁴⁸ Reported on 22 May 2020, <https://www.nhsemployers.org/news/2020/05/immigration-health-surcharge-to-be-removed-for-all-nhs-staff-and-care-workers>, accessed 8 June 2020.

⁴⁹ Booth R., ‘Hundreds of UK care home deaths not added to official coronavirus toll’, *The Guardian* 9 April 2020, <https://www.theguardian.com/world/2020/apr/09/covid-19-hundreds-of-uk-care-home-deaths-not-added-to-official-toll>.

⁵⁰ Hayes L., ‘They Don’t Really Care About Our Carers’, in *Tribune* 27 March 2020, <https://tribunemag.co.uk/2020/03/they-dont-really-care-about-our-carers>, accessed 10 April 2020.

⁵¹ Clarke, S. ‘Higher COVID-19 rates found among health and social care workers than other employees’ *HomeCare Insight*, 1 June 2020, <https://www.homecareinsight.co.uk/higher-covid-19-rates-found-among-healthcare-workers-than-other-employees/>, accessed 8 June 2020.

⁵² Reynolds R., ‘London bus drivers are dying from coronavirus. Demands to protect them better are growing’, in *CNN* 8 April 2020, <https://edition.cnn.com/2020/04/08/uk/coronavirus-london-bus-driver-deaths-gbr-intl/index.html>, accessed 2 April 2020.

⁵³ Croxford, R., ‘Coronavirus: Black African deaths three times higher than white Britons – study’ *BBC* 2 May 2020, <https://www.bbc.com/news/amp/uk-52492662>, accessed 3 May 2020.

how to prevent these outcomes.⁵⁴ The same study also revealed that this vulnerability was compounded for male and female care workers and especially male ‘security guards, taxi drivers and chauffeurs, bus and coach drivers, chefs, sales and retail assistants, and ... in construction and processing plants’.⁵⁵ The Government had been reluctant to release this information on the basis that it could further inflame the ‘Black Lives Matter’ protests taking place across the UK in June 2020⁵⁶.

Concerns regarding the viability of social distancing at a range of worksites has been raised, including the House of Commons following the diagnosis of the Prime Minister, Boris Johnson, with Covid-19⁵⁷. For a time the UK Parliament operated with a mixture of social distancing for those present in the chamber and also virtual participation online⁵⁸, but has now returned to debating and voting only in person despite risks for those MPs and peers who need still to ‘shield’ for underlying health reasons. This has caused considerable controversy, due to its democratic impact on representation of certain electorates⁵⁹. The reason given was that if the Government was asking others to return to their workplaces, Parliament should do the same,⁶⁰ although this is a flawed piece of logic since the requirement is (at the time of writing) only to return to work if one is unable to work from home and it had been demonstrated that Parliament could operate virtually.

As the return to work gets underway, it is relevant that only those defined under UK statute as ‘employees’ can refuse to work on health and safety grounds, and nothing has been done by the Government to extend this entitlement to more precarious workers and the self-employed, or indeed to facilitate such refusals where appropriate⁶¹. Notably, the Independent Workers Union of Great Britain is bringing judicial review proceedings to challenge the inadequacy of the Government schemes for those in precarious work, as well as the Government’s treatment of health and safety at work⁶².

There are also gender-related issues that have not been addressed⁶³. When the schools closed and everyone who could do so was told to work from home, many parents (especially women) ended up carrying a double shift of home-schooling and working

⁵⁴ Public Health England, *Disparities in the risk and outcomes of COVID-19* (2 June 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890258/disparities_review.pdf, accessed 8 June 2020.

⁵⁵ *Ibid.*, 51.

⁵⁶ <https://metro.co.uk/2020/06/02/review-bame-coronavirus-deaths-delayed-amid-george-floyd-protests-12791419/>, accessed 8 June 2020.

⁵⁷ ‘Coronavirus: Calls for better workplace social distancing guidance’ BBC News, 28 March 2020, <https://www.bbc.co.uk/news/uk-52076504>, accessed 10 April 2020.

⁵⁸ From 21 April, <https://www.bbc.co.uk/news/uk-52260757>, accessed 3 May 2020.

⁵⁹ <https://www.theguardian.com/politics/2020/jun/02/mps-join-90-minute-long-queue-to-vote-to-end-virtual-voting>, accessed 8 June 2020.

⁶⁰ <https://www.independent.co.uk/news/uk/politics/jacob-rees-mogg-coronavirus-mps-work-westminster-virtual-parliament-a9511936.html>, accessed 8 June 2020.

⁶¹ See the Employment Rights Act, ss 44 and 100; also Bales, K., ‘COVID19 and the Future of Work’, <https://legalresearch.blogs.bris.ac.uk/2020/04/covid19-and-the-future-of-work/comment-page-1/>, accessed 10 April 2020.

⁶² <https://www.iwgb.org.uk/en/post/iwgb-and-uber-drivers-suing-uk-government-over-its-failure-to-protect-millions-of-precarious-workers>, accessed 8 June 2020.

⁶³ Conaghan, J., ‘COVID-19 and Inequalities at Work: A gender lens’, <https://futuresofwork.co.uk/2020/05/07/covid-19-and-inequalities-at-work-a-gender-lens/>, accessed 8 June 2020.

responsibilities. Of these, single parents and those who have smaller accommodation experience greater difficulties⁶⁴. Pregnant women have also been placed in a difficult position because they have been instructed to stay home. The evidence is that it is harder to perform lower income jobs at home, so that those who are poorest may have reduced entitlements to maternity benefits as a result⁶⁵. The TUC is calling for improved access to sick pay, but also ‘support for parents who need to take time out of work to care for kids’ and ‘more help for families’⁶⁶. Action has been taken by the Government on significantly higher rates of domestic violence during lockdown⁶⁷, but otherwise the disproportionate effects on women were not addressed by the Government.

3. The Role of the Social Partners

When announcing the Job Retention Scheme, the Chancellor put on record his ‘thanks to the Trades Union Congress, the CBI and other business groups, for our constructive conversations’⁶⁸, and the TUC certainly did welcome the Scheme at the time⁶⁹. It was also announced that the SISS was ‘designed after extensive engagement with stakeholders including the TUC’ and representatives of small business⁷⁰. However, the limitations of these schemes may indicate the limited influence the TUC wields with this Conservative Government. These remain measures which, like most of the current Government policies, are primarily aimed at maintaining business confidence, not protection for the most vulnerable at work. Nevertheless, the TUC has had success regarding the Job Retention Scheme, namely its extension to those in employment on 19 March 2020 (rather than 28 February), and more recently in persuading the Government to extend the scheme and accept phasing in of part time work to enable a gradual return to employment⁷¹.

The TUC launched its own report on ‘Preparing for the return to work outside the home’⁷². The TUC also argued for a ‘national council for reconstruction and recovery’ to plan for the adjustment of lockdown and a return for work⁷³. However, the Government

⁶⁴ Day A., ‘*This Is How Coronavirus Is Affecting Single-Parent Families*’, in *Huffpost* 23 March 2020, https://www.huffingtonpost.co.uk/entry/coronavirus-single-parents-hit-hard-financially_uk_5e75062bc5b63c3b64900ef6, accessed 10 April 2020.

⁶⁵ Adams-Prassl et al ns 15 and 16; and Ferguson, D. ‘FAQs: Coronavirus Job Retention Scheme’ House of Commons Briefing Paper, 9 April 2020, 19 – 20.

⁶⁶ <https://www.tuc.org.uk/CoronavirusProtectingWorkers>, accessed 10 April 2020.

⁶⁷ Government Guidance ‘Coronavirus (COVID-19): support for victims of domestic abuse’, 14 April 2020, <https://www.gov.uk/government/publications/coronavirus-covid-19-and-domestic-abuse/coronavirus-covid-19-support-for-victims-of-domestic-abuse>, accessed 4 May 2020.

⁶⁸ <https://www.gov.uk/government/speeches/the-chancellor-rishi-sunak-provides-an-updated-statement-on-coronavirus>, accessed 10 April 2020.

⁶⁹ See Ferguson n.63, 4.

⁷⁰ <https://www.gov.uk/government/news/chancellor-gives-support-to-millions-of-self-employed-individuals>, accessed 10 April 2020.

⁷¹ <https://www.tuc.org.uk/blogs/union-win-covid-19-furlough-scheme-extended>, accessed 8 June 2020.

⁷² <https://www.tuc.org.uk/research-analysis/reports/preparing-return-work-outside-home-trade-union-approach>, accessed 1 May 2020.

⁷³ <https://twitter.com/FrancesOGrady/status/1254683150158114817>, accessed 1 May 2020.

has not been willing to act collaboratively, offering only minimal consultation on matters such as a return to schools from 1 June 2020⁷⁴.

By way of contrast, in different parts of the UK, local councils have liaised constructively with schools and teachers' unions around the appropriate mode of re-opening⁷⁵. Certainly, on matters such as PPE and return to work, trade union representation has been prominent, with extensive advice and support being offered to members⁷⁶. There has been little industrial action, although there are occasional instances of spontaneous walkouts, for example at ASOS in response to alleged violation of social distancing rules at work⁷⁷. Workers' more general reluctance to take action may be attributed to a sense of civic responsibility during the crisis, or a fear of losing jobs at a time when they are likely to be scarce. It may also be due to the UK's restrictive trade union laws, including the stringent requirements regarding balloting before a strike can be lawfully called, which are difficult to fulfil at the present time⁷⁸. It will be interesting to see how trade unions and their members respond as lockdown continues to ease and issues relating to health and safety at work and redundancies loom larger.

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⁷⁴ <https://www.theguardian.com/education/2020/may/08/not-yet-safe-for-schools-to-reopen-in-uk-coronavirus-crisis-unions-warn>, accessed 8 June 2020.

⁷⁵ Bennet, R., 'Coronavirus: Teachers and councils fight pressure to reopen schools', *The Times*, 18 May 2020, <https://www.thetimes.co.uk/article/coronavirus-unions-say-schools-must-stick-to-2m-distancing-rule-w6b39xkcx>, accessed 8 June 2020; and reported by the BBC at <https://www.bbc.co.uk/news/education-52733452>, accessed 8 June 2020.

⁷⁶ See for example <https://unitetheunion.org/campaigns/coronavirus-covid-19-advice/> and <https://www.unison.org.uk/coronavirus-rights-work/>, accessed 8 June 2020.

⁷⁷ <https://morningstaronline.co.uk/article/b/500-workers-walk-out-of-asos-factory-after-company-fails-to-enforce-social-distancing>, accessed 8 June 2020.

⁷⁸ See the Trade Union and Labour Relations (Consolidation) Act 1992, sections 226 – 234.