



# NORTH WEST LONG COVID-19 CHARTER

## TAKING ACTION ON LONG COVID-19

What trade unions, safety reps and workers need to know about Long Covid-19, where to get information from and the demands needed to be made to your employer about Long Covid-19

Compiled by the North West Trade Union Covid Action Group

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Online version: <https://gmhazards.org.uk/wp-content/uploads/2022/10/Long-Covid-Charter-2022-online-version-3.pdf>

# Long Covid-19 Charter Guidance

## What every worker should know?

Thousands of workers who have been infected with Covid-19 have been left with long-term and life-impacting ill health. It doesn't seem to matter how ill the person was when they contracted the disease. Some people were fine initially, but recurrent infections have now left them disabled or some people have it mildly and recover initially but then develop more severe ill-health in subsequent weeks.

In a landmark legal case involving a school caretaker, an Employment Tribunal recently ruled that symptoms brought about by Long Covid may be classed as a disability under the Equality Act 2010. It is important for employers to consider this decision and provide reasonable adjustments and support for employees with symptoms.

The National Institute for Health and Care Excellence (NICE) defines Long Covid as on-going symptomatic covid (signs and symptoms from 4-12 weeks) and post covid syndrome (signs and symptoms that develop during or after an infection and continue for more than 12 weeks).

Symptoms can include viral fatigue, aching muscles and bones, blinding headaches, impaired vision, breathlessness, abdominal pains, nausea, vomiting, diarrhoea, skin rashes, dizziness pins and needles/numbness; brain fog (including lack of concentration), chest tightness and associated symptoms of anxiety and depression. In some cases, apparent organ failure or malfunction. Some people develop organ damage including damage to their heart, lungs, kidneys, pancreas, and liver. Conditions can also include difficulties swallowing and changes to the voice, severe weakness and PTSD impacted by treatment or hospitalisation.

A snapshot of the challenges frontline NHS staff with Long Covid face as they try to return to work was revealed in research published by UNISON at a health conference in Liverpool. Staff reported returning to work early because they're afraid of losing their jobs.

In a wider survey of health workers, 1,900 of the respondents reported having had or still having Long Covid symptoms. The respondents included healthcare assistants, nurses, porters and clinical support staff.

- More than two in three (68%) were back in the workplace while suffering with symptoms including breathlessness, fatigue, brain fog and aching joints.
- Eight per cent of those surveyed have been so poorly they've not been able to go back to work at all.
- More than four in 10 (46%) said that although their employer was initially supportive, this changed as time went on.
- Almost one in 10 (9%) had been asked to attend a formal absence hearing and
- 2% report being threatened with disciplinary action or even the sack.

## Strengthening the link between equality and safety

Long Covid can impact on your ability to return and/or remain in your post. Workers' organisations want employers to do more to support staff to prevent re-infection, remain on supportive absence, access ill-health early retirement or return to work.

For staff who want to return to work its crucial reasonable adjustments to their roles take place prior to any return. Long Covid adjustment plans can help members remain in work as well as protecting them

from further reinfection. Adjustment plans can be made under the Equality Act 2010 to protect workers from disability discrimination if the symptoms meet the legal definition of a disability. Even if the member doesn't meet the formal criteria under the Act many unions are still making successful adjustment requests to protect their members. It may also be helpful to ask public sector employers to carry out an Equality Impact Assessment to determine what systematic barriers disabled workers face. In addition there other parts of the Equality Act 2010 which may be relevant in ensuring that workers are supported properly at work - **Harassment and Victimisation on Disability Discrimination see appendix 4.**

It has been shown in a number of research documents that there has been a disproportionate impact on some workers from Covid-19 infections. In particular, women and black workers have been exposed to the virus more because of the work they do, because of the contracts they work under, because of the lack of PPE available or because of the systemic racism and sexism they face at work. This has resulted in them being infected in a higher proportion, infected more times and then they have died in higher numbers and more likely to experience Long-Covid.

Employers also have a legal duty under the Health and Safety at Work Act 1974 to ensure the physical and mental health of workers. The collective and individual risk assessment process will be vital in supporting all staff, especially those who are suffering from Long Covid. **See Appendix 3 for further information.**

This charter has been compiled to provide advice to workers and employers. It will call on managers to be given training on what Long Covid-19 is, how workers can be impacted and what reasonable adjustments can be made to keep them in work.

### **Identifying occupational exposure and pursuing Covid claims**

One issue for workers is whether their employer has been negligent in them contracting the virus and whether they are able to legally challenge them for compensation to improve their quality of life. This is known as a Personal Injury claim. To do this, individuals and trade union reps need to prove that the employer's breach of duty caused the infection on the balance of probability. Unions who are looking to consider claims will need to record and gather information about what was happening in the workplace. **See appendix 1** for further information.

Another issue for workers with Long-Covid, is that of potential discrimination cases and it is important that trade union representatives actively seek out help and advice, to identify and establish cases that can challenge discriminatory and unfair practices.

In addition, Whistleblowing cases, where a worker has disclosed to their employer that they are infected and the employer is forcing the worker to attend work and potentially exposing others to the virus and then treats the worker to detriment if they tell others. **See appendix 5** for more information

# Bargaining for Improvements - Charter Demands

This Charter has been compiled in response to the Covid-19 health emergency and the Government's failure to support workers who have been infected or to prevent re-infection.

## Employer Charter Commitments

1. **Engage with trade unions and workers on Long Covid-19 prevention and management planning** – Engage with safety and equality representatives in Long Covid-19 policy discussions. Establish Long Covid-19 as a standing agenda item on safety committees and as an agenda item on consultation and negotiation forums.
2. **Control risks of infection and re-infection** - Continue to assess and control the risks of infection and investigate underlying causes where workers have become infected. Maintain organisational covid assessments and establish individual Long Covid assessments.
3. **Identify infection levels to support assessment and control** – Establish proactive systems such as:
  - a. In-house access to free Lateral Flow Test for individual use
  - b. Transparently record positive cases in the workplace, including mapping infections to departments, jobs, buildings etc.
  - c. Share infection rate data with workers, trade unions, safety committee
  - d. Share workload/productivity impact assessments
  - e. Share other data which is relevant to occupational exposure of Covid-19
  - f. Agreeing, signing and displaying the [Covid Safety pledge](#)
4. **Support Long Covid adjustment requests** – Consider requests reasonably whether or not they fall under the Equality Act. Be proactive and work with Equality and Safety representatives to identify workers who may be eligible in advance. Ensure that reasonable adjustments are put in place in a timely manner and that timescales are agreed with the individual.
5. **Prioritise symptom focussed adjustments** –Undertake timely actions prior to workplace returns. Review existing duties and adjust to support individual needs, including:
  - different working hours
  - working from home or moving workplace location
  - support with workload
  - temporary redeployment to a more suitable role
  - physical adjustments to the working environment
  - assisted equipment
  - flexible working
  - alternative work where necessary
6. **Establish supportive rehabilitation programmes**– Prioritise personal rather than operational needs:
  - a. Enable individuals to return on a supportive phased return basis. Return plans should aim to prioritise reducing relapses and not lengthening the recovery process. Recovery

for some workers can last up to 2 years and may involve several reviews and changes to the original return to work plan.

- b. Support medical appointments and or disability leave for ongoing treatment and recuperation.
  - c. Utilising Occupational Health services to support Long Covid adjustment plans – provide workers with easy quick or self-referral access to occupational health for an individual assessment of reasonable adjustments needed along with dates for review and record this in a ‘reasonable adjustment’ passport type document:
  - d. Ensure individual risk assessment and reasonable adjustment plans are part of return-to-work discussions. With arrangements being agreed and established prior to the workers return.
  - e. Utilising [Access to Work](#) where appropriate. Through Access to Work, workers can apply for:
    - i. a grant to help pay for practical support with their work
    - ii. support with managing their mental health at work
    - iii. money to pay for communication support at job interviews
7. **Not act punitively** - Identify policy and actions that directly and inadvertently cause detriment
- a. Review relevant policies and any Equality Impact Assessment actions
  - b. Support workers isolating without any repercussions when they are infectious/infected
  - c. Disregard Covid-19 related illness and self-isolation in sickness absence records that contribute to trigger points within the sickness absence policy
  - d. Suspend performance management arrangements relating to Long Covid absences or reasonable adjustments
  - e. Support workers caring for people with Long Covid and/or Covid
8. **Engage with workers and trade unions** – work collaboratively to identify and remedy potential occupational exposure and disability discrimination cases. Work to reduce the stress associated with Covid claims.
9. **Monitor and audit coverage** - Keep auditing systems to enable the recording and identification of:
- a. Infection rates and health impacts within work locations and activities.
  - b. Staff shortage impacts on workload structures and policy.
  - c. Risk Assessment coverage and application
  - d. Reasonable adjustment coverage and application
10. **Inform, Educate and Instruct** – Provide **information** about infection control and current transmission rates as accurate as possible. **Educate** on how to ensure inside spaces are ventilated and how air filtration supports better air quality and impacts positively on health. Provide **instructions** on acceptable air quality, use of FFP2/3 masks and other public health measures such as staying at home if unwell or working from home if in close contact with someone else who is infected.

## Appendix 1: Covid Claims - Checklist of questions for workers to help pursue personal injury claims

Covid personal injury claims can be broken down into 3 elements any claim requires success at all of the 3 elements. We've identified the types of questions you may wish to consider to help pursue a claim under each stage. It's important to identify as much independent evidence as possible such as witness statements and Assessments. Also record dates where applicable. This is not an exhaustive list.

Covid Claims - Checklist of questions for workers to help pursue personal injury claims		
<b>1</b>	<b>On the balance of probability the member was infected at work</b>	
1.1	Is there clear exposure to symptomatic or positive individuals?	
1.2	What workplace location and activities allowed Covid-19 to be caught?	
1.3	What care was taken while undertaking such activities?	
1.4	Did the exposure take place within the incubation period?	
1.5	How are non-workplace exposure routes less likely to be the cause of the infection?	
1.6	Is there a record of testing positive and was this declared to the employer at the time?	
1.7	Have you a diagnosis from a medical professional?	
1.8	What is the short- and long-term prognosis?	
1.9	If you are taking medication what would happen if you stopped? Have you informed your employer of your Covid-19 diagnosis and symptoms?	
1.10	What mitigation was in place, at the place of work to control transmission and infections? – i.e. distancing, improved ventilation, air filtration, hybrid and remote working, PPE – and what monitoring and reviews were carried out to ensure that mitigation was working? (See Appendix 3 for more detailed questions)	
<b>2</b>	<b>The employer (or some other party who owes a duty) has breached their duty of care in some clear way</b>	
2.1	Which specific Covid-19 health guidance was breached?	
2.2	Which collective and individual risk assessments were not sensible, or if they were sensible weren't followed?	
2.3	Has there been an outbreak of cases at work and there was failure to take steps?	
2.4	Did your employer fail to apply a reasonable adjustment plan that increased the chance of reinfection?	
2.5	Did you submit any complaints to the employer and/or relevant body regarding safety controls and/or failed reasonable adjustments?	
2.6	Did your employer undertake an equality impact assessment?	
2.7	Was it an adequate equality impact assessment?	
2.8	Did you receive adequate support from Occupational Health?	
<b>3</b>	<b>The breach identified above, on the balance of probability caused the infection:</b>	
3.1	To what extent did the breach stop covid controls reducing the infection?	
3.2	Did the worker need higher levels of protection?	
3.3	Should the worker have been moved to a less risky environment due to personal risk factors such as pre-existing high risk health issues?	

## Appendix 2 : Additional information

- **Timelines of Govt action:**
  - [Scotland](#) - Scotland timeline of key milestones from Dec 2019
  - [UK](#) - March 20 - March 21
  - [UK Parliament](#) - HofC Lockdowns up to Dec 21
  - [Wales](#) - Wales Gov timeline from Dec 2019
  
- **Case law**
  - [Burke v Turning Point – ET case](#)
  
- **Trade Union Information:**
  - [GMB](#)
  - [NEU](#)
  - [UCU](#)
  - [USDAW](#)
  - [UNISON](#)
  - [UNITE](#)
  - [Teaching Unions](#)
  - [TUC](#)
  
- **Long Covid-19 support groups:**
  - [Long Covid SOS](#)
  - [Long Covid Support](#)
  - [Long Covid Kids](#)
  - [Manchester](#)
  - [Merseycare](#)
  - [Warrington](#)
  
- **Supporting Initiatives/information:**
  - [Covid Action](#)
  - [Covid Safety Pledge](#)
  - [Hazards Magazine](#)
  - [Hazards Magazine Ventilation](#)
  - [Independent Sage Scores on the Doors](#)
  - [Hazards Campaign Ventilation Presentation](#)
  
- **Other relevant information:**
  - [Access to work](#)
  - [British Heart Foundation](#)
  - [British Medical Journal](#)
  - [CIPD](#)
  - [NICE](#)
  - [Public Inquiry](#)
  - [Protect Covid 19](#)
  - [Society of Occupational Medicine](#)
  - [WHO](#)



### Appendix 3: Assessment Mitigation Questions about Employer actions

	Questions	Notes
1	Are the people assessing the risks from Covid-19 <u>competent</u> ?	
2	Has a Covid-19 <u>Risk Assessment</u> been carried out and when? Has it been reviewed?	
3	Is a <u>control hierarchy approach</u> taken to controlling the risks?	
4	Is the Covid-19 Risk Assessment still in place and if not when was it revoked?	
5	Has ventilation been improved? If so when and how? How is this monitored?	
6	Is the air filtration system maintained and improved to ensure 100% outside air and adequate for the space? If so, how and when? If not, why not?	
7	Is physical distancing used to support dissipation of virus? Is it still in place? If not when was it removed?	
8	Are CO2 monitors in place to monitor air quality? Who monitors and what is in place to react to high levels? What dates were they introduced and are they still in place?	
9	Was hybrid or remote working introduced and when? If so, are they still in place and if not when was it changed?	
10	What policies/procedures are in place and when for testing? Has this changed and if so from when?	
11	What sickness absence procedures are in place for Covid-19 infections and when? Has this changed and how? If so when did it change?	
12	What standard of PPE or face masks were or are used and when?	
13	What information is shared with Safety Reps about Covid-19 infections? Are these investigated for work-related transmission? If so, is there evidence of improvements made?	
14	Are infections mapped to buildings/departments etc?	
15	Has there been any Covid-19 deaths in your workplace and when? And were they reported through RIDDOR? If not why not?	
16	Are Covid-19 infected workers able to stay home and isolate if they test positive, have symptoms or are in close contact with someone who has tested positive?	
17	Are workers who care for someone or live with someone who is vulnerable to Covid-19 infections, able to work remotely? If not why not?	



If disability PCP sustained disadvantage – duty to make reasonable adjustments

‘What does the act outlaw?’

Direct discrimination is when someone is treated less favourably because of disability. Unlike other discrimination legislation, it is not considered to be unlawful direct discrimination to treat a disabled person more favourably than a non-disabled person.

In order to determine whether someone is directly discriminated against, a comparison has to be made with someone who does not have a disability, but whose abilities and circumstances are the same or not materially different.

The definition is wide enough to cover those who are also discriminated against because they are perceived to have a disability, or because they are associated with someone who has a disability.

Examples of direct discrimination include:

- Someone who is not promoted because they are a wheelchair user
- Someone who is refused flexible working to look after their disabled child where flexible working has been granted to other workers who do not have a disabled child
- Someone who is refused a transfer because they are perceived to have a disability which means they are unable to perform their full duties. Note though the fact that someone is unable to perform their full duties does not necessarily mean that they have been discriminated against.
- Someone who is not disabled cannot claim direct discrimination with a disabled person who has been treated more favourably because the employer has made a reasonable adjustment, for example.

Indirect discrimination arises when an employer applies a provision, criterion or practice (PCP) which puts those who share a disability at a particular disadvantage compared to those who do not share it and which the employer cannot justify.

Employers can only justify indirect discrimination if they can show that it was 'a proportionate means of achieving a legitimate aim'. This essentially requires an objective assessment balancing the needs of the business as against the discrimination to the worker with a disability.

Discrimination arising from disability occurs when an employer treats a disabled person unfavourably 'because of something arising in consequence of' the disabled person's disability. An example would be where a worker is disciplined because of aggressive behaviour in the workplace where the aggressive behaviour is related to their disability. The reason for the disciplinary action (the unfavourable treatment) is because of aggressive behaviour which is something arising from their disability. As with indirect discrimination, employers can justify the treatment if it can be shown to be a proportionate means of achieving a legitimate aim.

Similarly, an employer can defend a claim on the grounds that they did not know, or could not be reasonably expected to have known, that the person had a disability.

**Duty to make adjustments** When an employer knows or reasonably ought to know of a person's disability, they are under a duty to make a 'reasonable adjustment'.

The duty arises when a PCP or physical feature of the premises places a disabled person at a substantial disadvantage in comparison to those who are not disabled.

The duty also applies when a disabled person would be put at a substantial disadvantage because an auxiliary aid was not provided. In that case, the employer must take reasonable steps to provide the auxiliary aid.

The duty on the employer is to take reasonable steps to avoid the disadvantage. What is reasonable may depend on whether the step has the prospect of removing the disadvantage, the cost and whether there was any financial assistance available, for instance from the government run Access to Work scheme. An employer cannot require a disabled worker to pay for the cost of any reasonable adjustment.

Examples of reasonable adjustments include:

- Altering working hours
- Allowing time off for rehabilitation or treatment
- Allocating some of the disabled person's duties to someone else
- Transferring the disabled person to a vacancy or another place of work
- Giving or arranging training for the disabled person or others
- Providing a reader or interpreter
- Acquiring or modifying equipment or reference manuals
- Adjusting the premises
- Providing supervision or other support
- Providing information in accessible formats.

An employer who fails to comply with the duty to make a reasonable adjustment will be discriminating against a disabled worker. An employer cannot argue that they were justified in not making the reasonable adjustment where the duty arises.

**Harassment occurs** when one person subjects another to unwanted conduct related to disability that has the purpose or effect of violating a person's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. Unwanted conduct includes spoken or written word, jokes, graffiti or other behaviour.

The definition of harassment also applies to those subjected to unwanted conduct because of another person's disability. So, for example, an employee who is subjected to offensive comments about their disabled daughter will be protected under the act.

Those who are perceived to be of a certain age group and who are subject to harassment related to that perception are also protected. In determining whether the conduct amounts to harassment, the tribunal will take into account the perception of that person, whether it was reasonable for them to consider the comments or behaviour to amount to harassment and all the circumstances of the case. For example, taking into account the Equality and Human Rights Commission's Employment Code.

**Victimisation occurs** when an employer subjects a person to a detriment because they have done or may do a protected act.

A protected act includes:

- Bringing proceedings under the act
- Making allegations of a breach of the act
- Giving evidence or information in connection with proceedings that someone else has brought
- Doing anything else under the act such as raising a grievance or giving evidence in someone else's grievance.

The person complaining of victimisation does not need to show they have a disability in order to bring a claim. However, they do have to have acted in good faith when doing a protected act. A false allegation will not amount to a protected act.'

## Appendix 5 – Whistleblowing Extract – [Thompsons Solicitors Guide to Whistleblowing](#)

### ‘What is whistleblowing?’

Whistleblowing is when a worker exposes illegal, illicit or dangerous activity happening in their workplace.

It is also known as ‘blowing the whistle’ or ‘making a protected disclosure’.

If you are a worker and you report certain types of wrongdoing, you can be classed as a whistleblower and covered by whistleblowing law.

### What is an example of whistleblowing?

Disclosing or reporting any of the following counts as whistleblowing:

*Failing to comply with legal obligations*

*Dangerous health and safety practices*

### Are whistleblowers protected by law?

In the UK, whistleblowers have legal protection under the Public Interest Disclosure Act 1998, or the Public Interest Disclosure (Northern Ireland) Order 1998.

To benefit from this legal protection, you must:

*Reasonably believe that the disclosed information is true;*

*Reasonably believe that wrongdoing has happened or is likely to happen;*

Be classed as a worker; and

Make the disclosure through the correct channels.

### Who is protected as a whistleblower?

To be legally protected as a whistleblower, you must be classed as a worker.

### How do I make a whistleblowing disclosure?

In most cases you should make a whistleblowing disclosure to your employer.

Many organisations have a whistleblowing policy which outlines how to make a disclosure. The policy should also highlight how internal whistleblowers are protected.

### How am I protected as a whistleblower?

*As a whistleblower, you are legally protected from unfair treatment following your disclosure.*

If you have been subject to unfair treatment or unfair dismissal after making a protected disclosure, you can bring a claim against your employer at an employment tribunal.

If you are treated unfairly after whistleblowing, make sure you seek legal advice as soon as possible. A claim to the employment tribunal has to be made in within three months less one day of the unfair treatment or dismissal occurring.