Sarah Albon

Chief Executive

Health and Safety Executive

Dear Sarah Albon

Re: Revised HSE Guidance on the reporting of COVID 19 to RIDDOR.

As the NHS staff side trade unions, representing over one million staff working across NHS organisations in the UK, we are writing to highlight our concern with the current approach to reporting cases of disease and death of health care workers caused by Covid-19 under the Reporting of Incidents, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). To address this, we are asking you to amend your new guidance to ensure clarity over the circumstances in which reporting takes place and to undertake investigations which will support Government learning from the current Covid-19 pandemic.

Given the disproportionate impact of Covid-19 on BAME healthcare workers and wider communities, we also ask that HSE record ethnicity and gender data within RIDDOR reporting.

We are concerned at the reluctance of many NHS organisations to report cases under RIDDOR. Whereas in some parts of the country NHS organisations are reporting every case of covid-19 infection in their healthcare workers, others have taken a decision not to report any cases as there is no "definitive evidence" they contracted it at work. It is particularly worrying that in some areas there appears to be a co-ordinated move not to report any cases as a result of changes to the HSE's guidance. Such variance in practice clearly distorts the picture and inhibits learning.

It is recognised that healthcare workers are particularly at risk of infection, potentially exposed to disease on a daily basis for long periods of time and require close contact with others. [1],[2] . The Secretary of State for Health for England, in a recent statement on face coverings stated *One of the things that we've learnt is that those in hospitals, those that are working in hospital are more likely to catch coronavirus, whether they work in a clinical setting or not.*

For that reason, we believe working in a hospital or other health care environments in the previous fourteen days and having contact with patients who have or are suspected to have Covid-19 is reasonable evidence to say it was occupationally acquired. We contest that "definitive evidence" is required that the disease was transmitted through the workplace, and indeed the HSE's own previous guidance has made it clear that "reasonable evidence" would suffice.

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[1] D, Koh. Occupational risks for COVID-19 infection. Occupational medicine (Oxford, England). 2020 Mar;70(1):3.

[2] Public Health England (2020) Disparities in the risk and outcomes of COVID-19

Employers are also focussing on the wearing of PPE within the HSE's new guidance on reasonable evidence, and making a decision to report based on whether or not the healthcare worker was wearing PPE. If PPE was worn there is no report. However, we know that PPE is not 100% effective in protecting the wearer from exposures, even if worn properly and fit tested, hence it being low down in the hierarchy of controls. It also shows a misunderstanding of the purpose of RIDDOR. It is not about the attribution of blame. It is about enabling both employers and the regulatory authorities to learn lessons from the past, and develop safer working practices.

RIDDOR reporting of cases cannot return an individual worker to health or comfort the families of those who have died. However, if there are inconsistencies in reporting or a lack of follow up by the HSE, subsequent learning, including the disproportionate impact on BAME healthcare workers, from cases of disease and death to healthcare workers will be lost. This has wider consequences and could hinder measures to better protect health care workers from any second wave or future pandemics.

While the duty lies with the employer to decide whether there was reasonable evidence to suggest it was contracted at work, there are too many variables in your new guidance. The previous guidance made it a lot clearer and we note that the HSE in Northern Ireland still use this clear definition.

We do recognise that RIDDOR reporting puts extra pressure on an already under resourced workplace regulator but feel the HSE has an important role in contributing to investigation and subsequent learning from what is the greatest workplace health and safety issue to affect the health care workforce. Furthermore, in the absence of widespread proactive inspection, the HSE requires all the intelligence it can acquire to enable it to target its enforcement activity. Restricting the flow of intelligence from RIDDOR can only hamper this process.

We ask you to reconsider your guidance on RIDDOR and return to the explicit definition of reasonableness for the health care sector so there is consistent reporting. Moving forward we ask you to record ethnicity and gender data within RIDDOR reporting and consider following up on a cross section of RIDDOR reports to identify potential areas where measures to protect workers weren't as robust as they could be and to feed this into learning from the pandemic.

Yours sincerely

Sara Gorton

Chair of NHS Joint Unions

Kim Sunley

Staffside Chair, NHS Staff Council's Health, Safety and Wellbeing Partnership Group