Sarah Newton
Chair, Health and Safety Executive

25 November 2021

By email: Sarah.LNewton@hse.gov.uk

cc: sarah.albon@hse.gov.uk
Andrew.curran@hse.gov.uk
alison.wellens@hse.gov.uk

Dear Sarah,

We write on behalf of the undersigned health professional bodies, experts in or having a commitment to occupational health, with the support of the British Occupational Hygiene Society, to ask for HSE's urgent focus on the worker health crisis in the NHS. As the Regulator entrusted with the protection of worker health and the enforcement of the law, we wish to ensure that the UK's largest employer is properly scrutinised in its current management of the NHS worker health crisis.

We are grateful to the Core Study teams (PROTECT COVID-19 National Core Study), co-ordinated by HSE, for focusing on transmission of COVID-19. Research presented at the COVID-PROTECT conference on 18th November, confirms:

1) that healthcare workers are at risk from exposure to COVID-19 at almost double the rate of those in other settings. There is therefore no doubt that, as well as a public health issue, it is a workplace biological exposure to which COSHH applies;

2) that research by Liverpool School of Tropical Medicine, led by Dr Susan Gould (HCID Research fellow) confirms that the presence of infectious material does not vary significantly between settings where Aerosol Generating Procedures (AGPs) are performed and non-AGP healthcare settings and that therefore all guidance and risk assessments for the use of RPE should be adjusted accordingly;

3) that close range contact with individuals infected by COVID-19 (less than 1m) requires protection from droplet and airborne infectious particles, requiring suitably close-fitting RPE (FFP2 minimum) if the infected individual is not themselves wearing a face mask.

Professor Andrew Curran, HSE's Chief Scientist confirmed to the COVID-Protect Conference on the 18th November 2021 that this research was being shared with those responsible for Infection Prevention and Control Guidance, although its findings do not appear to be reflected in the version published on 22nd November 2021.

Beyond this, there is an urgent and current need as we face a winter of crisis for HSE to review NHS employers' approaches to the management of risk to worker health as a result of COVID-19. This is made especially important as the reissue of Infection prevention and control for seasonal respiratory infections in health and care settings (including SARS-CoV-2) for winter 2021 to 2022 is in conflict once again with basic principles of COSHH in the management of substances harmful to health and does not adequately provide for effective control measures.

In particular our concerns relate to the management of risk assessments, the proper application of the hierarchy of controls and the management and deployment of RPE appropriate to the circumstances of risk. This leaves health workers at significant direct and indirect health risk as we approach winter. Moreover, the guidance does not reflect appropriate management of the risks that arise from airborne transmission, so forcefully reinforced by the HSE-sponsored research from the Core National Study referred to above.

The NHS is not, exempt from the duties of an employer under the Health and Safety at Work Act or secondary legislation notably the COSHH Regulations. While at an early stage of the pandemic, because of shortages and logistical issues, it may have been understandable for public policy reasons that NHS leaders were not held to account for failures to comply with duties under the law, this no longer is a credible excuse.

Infection, Prevention and Control (IPC) guidelines aim to prevent the spread of infection in health and care settings, but do not focus adequately on the prevention of exposure of workers, as required by the law. They explicitly state that they are subject to Health and Safety duties but set the bar lower than those statutory duties and recommend practices in conflict with them. Managers and clinicians are held to account for their maintenance of adherence to guidelines, rather than their compliance with the law.

The mortality rates amongst clinical and non-clinical workers in healthcare indicate a sectoral issue which would prompt further investigation in any other safety-critical industry.

As early as August of last year, the Health Service Investigation Branch of the NHS highlighted the absence of a "safety culture" amongst numerous other failings in its Prospective Report on Nosocomial Infections and COVID-19. We are aware of numerous instances of non-compliance being brought to the attention of HSE inspectors with basic practice which, in other industries, would result in enforcement action.

At a time where HSE is promoting awareness of stress at work, when respiratory health is critical and while HSE is trying to make the most impact with its resources, we believe that the modest investment of time and expertise to provide definitive leadership and help to managers
and clinicians in the NHS is critical to the health of this country and its largest workforce.

We are therefore asking you to:

- Enable HSE to undertake an urgent review of the IPC guidelines on respiratory infection risk to determine their appropriateness and compatibility with Health and Safety law, to

make the review public and to issue further guidance to NHS leaders at all levels dealing explicitly with workplace duties;

- Ensure a focus of inspection resources on health and social care settings, with a particular emphasis on the availability and capability to supply, fit and support respiratory protection equipment and provide NHS-specific guidance for all ongoing respiratory risks to complement and act as a corrective (if required) to IPC guidelines;

- Empower inspectors to call out instances of law-breaking in Health and Social Care settings and to distribute to NHS leaders outcomes of investigations to intensify the learning process required;

- Engage with healthcare leaders on the mental health crisis in the health service and how a full range of approaches, including steps to alleviate the high levels of illness, infection, fatigue and trauma being currently experienced can be managed more effectively;

- Establish a clear link between the ground-breaking research which HSE has led on transmission routes for COVID-19 and the IPC guidance which governs the safety of health workers and more generally those to whom NHS employers owe a section 3 duty.

We appreciate the tireless work undertaken by HSE through this crisis in areas such as market surveillance and in support of the general employment sector in driving down instances of occupational exposure to COVID-19. However, the workers within the NHS need HSE to now give its full attention to what is becoming a National Health Crisis and use all means necessary to support a workforce whose acute and chronic suffering may scar this country for decades to come.

Yours sincerely,

Prof Raymond M. Agius, Deputy Chair Occupational Medicine Committee, and Council Member, British Medical Association

Rose Gallagher MBE, Professional Lead Infection Prevention and Control, Royal College of Nursing

Kevin Bampton, Chief Executive of the British Occupational Hygiene Society

Dr Christine Peters, Consultant Microbiologist FreshAirNHS

Dr Barry Jones, Chair of the Covid Airborne Protection Alliance (CAPA), which includes:

- ARTP - Association for Respiratory Technology & Physiology
- BAPEN – British Association for Parenteral and Enteral Nutrition
- BASP – British Association of Stroke Physicians
- BDA – British Dietetic Association
- BSG - British Society of Gastroenterology
- CBS - Confederation of British Surgery
- College of Paramedics
- CSP – Chartered Society of Physiotherapy
- FreshAir NHS
- GMB Union
- HCSA - Hospital Consultants and Specialists Association
- Medical Supply Drive UK
- NNNG - National Nurses Nutrition Group
- QNI - Queen's Nursing Institute
- RCSLT – Royal College of Speech and Language Therapists
- Unite the Union
- Doctors Association UK
- Trident HS&E