

The Ambulance Service Dispute

Unite has sought expert legal advice on the changes imposed to Annex E and believes that all Unite members across the ambulance service need to be informed of the facts of this dispute.

History of the dispute

The NHS employer sought to make cuts to your terms and conditions. Through talks, they reduced the list of areas to include:

- Removal of unsocial hours for staff when they were off sick, except for those on pay points 1 – 8 (i.e. bands 1, 2 and bottom of 3) or for those who are off due to a workplace injury or disease
- The move to performance pay progression
- The option to move staff on Bands 8c, 8d and 9 on to spot salaries
- The removal of accelerated progression through preceptorship at the bottom of Band 5

Unite opposed these changes through the talks, although were not allowed to participate in the 'corridor' talks on these proposals.

The proposals then went out for consultation. Our members gave a resounding rejection to these proposals.

By the time we reached the NHS Staff Council on 26 February 2013, five unions rejected the proposals – Unite, GMB, SoR, FCS and SoCP. All the other unions voted for these cuts, and therefore the NHS Employers introduced these changes on 31 March 2013. It was this decision which created the legal position that these changes applied.

Removal of unsocial hours for staff off sick

Unite established that consideration as to how unsocial hours would be removed from staff on Annex E were not discussed during the negotiations. Therefore in the Pay Circular (2/2013) in paragraph 6 it states:

The current definition of full pay in paragraph 14.4 includes regularly paid supplements e.g. unsocial hours payments. The new definition in Section 14(a) (England), applying to staff on pay spine points 9 to 54 with effect from 31 March 2013, includes only basic pay and high cost area supplements.

The legal advice which we have received is that it is absolutely clear that the unsocial hours payments will be applied to all staff, as it is on their pay spine point, however it

does not say how it will be applied. This means that staff on Annex E will also experience these cuts.

At the time of the consultative ballot on the proposals at the end of last year, Unite balloted on the basis that the changes would apply to all staff on Section 2 and Annex E unsocial hours arrangements, as no distinction was made that it would not apply to everyone in the consultation proposal. The fact that the other unions supported these cuts, we believed meant that the terms to all our members on Section 2 and Annex E arrangements would be cut.

The NHS Employers, in their pay circular of 27 March 2013, did however note that:

There is still further work to do to clarify what the sections of the Agreement relating to unsocial hours means for employers who operate the prospective arrangements for payment of unsocial hours as set out in Annex E. This will be dealt with as a matter of urgency.

This therefore noted the different arrangements for Annex E and the NHS Employers set up a series of meetings to address the implementation of the new arrangements to staff on Annex E.

Talks on Annex E

There was some dispute in the discussions as to whether the cuts to terms and conditions should be applied to staff on Annex E. Unite obviously worked hard to try and ensure that our members did not receive a detriment through these talks.

At the end of the talks, one of many possible options as to how the cuts to unsocial hour payments could be deducted from pay of staff off sick within the criteria went out for consultation. This process was agreed by the NHS Staff Council. We considered this to be the least worse option.

The methodology of the deduction meant that for every unsocial hour worked that the member was off sick, then s/he would lose the equivalent of the unsocial hours payment for that period of absence. If they were sick during the day, then they would not lose any enhancement. This was deemed to be the fairest model.

Unite, and the other unions balloted its membership on the proposals. Again Unite had an overwhelming rejection, and a very clear mandate that members wanted to progress to industrial action.

On declaration of the outcome of the consultation, the NHS Employers immediately said that they were going to impose the agreement without discussions with the unions.

Breach of Partnership

The NHS Employers did not even pay lip service to the consultation process. With all three unions having an overwhelming rejection, instead of the NHS Employers convening a meeting to discuss the outcome of our ballots, they moved straight to imposing the changes. The behaviour of the NHS Employers is in breach of Section

1 of the Agenda for Change Handbook and their obligations to work in partnership with the unions, and shows utter contempt for the staff.

The NHS Staff Council signed off a consultation process, and yet the employers did not want to listen to what the staff had to say about the changes. Unite is demanding a removal of the imposition to enable the unions and the NHS Employers to have a full discussion about these issues. We are therefore in dispute with the NHS Employers on:

1. The way that they have run roughshod over the staff across the Ambulance Service in England
2. As consulted upon, the way in which they intend to make deductions to accommodate their changes to Agenda for Change in March.

Until these issues are addressed, Unite will be calling for an immediate withdrawal of the imposition and for a move to re-open negotiations. This would mean all staff who have been affected since the imposition on the 1st Sept 2013, would be immediately reimbursed any unsocial hours payments they have had deducted.

Further developments

Following the unions' request for a meeting with the employer, all the unions met with the ambulance trusts and NHS Employers on 11 October 2013. It was at this meeting where it was revealed that the ambulance employers were not making deductions on the basis of those consulted on, but had determined privately that they would make deductions whether staff were off sick during the day or during the period for unsocial hours. We believe that should deductions be made during periods of plain time working, that there is a strong probability that this would constitute an unlawful deduction of wages, since you are being penalised when not working unsocial hours.

Example of unsocial hours allowance converted to an hourly rate:

Annual Salary £27,901

Rate per hour £14.27

Unsocial hour 25%

Unsocial hours sickness deduction per hour £3.57

So for every hour you are off sick, whether for a period of unsocial hours or plain time you will lost £3.57.

However the Agenda for Change Handbook now says that unsocial hours payments will be deducted. If you are only sick during plain time working no deduction should be made.

These changes have been implemented from 1 September 2013 and the first deductions are being made in the October pay.

It has also come to light that deductions are being made even in cases where it is clear that the sickness is due to a work related injury or illness and members have to prove their case to a panel before any money is reimbursed. This, again, totally contravenes what was discussed in the national talks.

The management behaviour has shown further contempt of the unions and their members and has now created a clear arena where challenge can be brought.

Is there a legal challenge?

Because of the agreement reached at the NHS Staff Council in February 2013, which Unite and GMB opposed, the legal advice that we have received has clarified Unite's belief that the cuts to unsocial hours do apply to staff on Annex E.

The NHS Employers can therefore make changes to your terms and conditions to remove unsocial hour payments from you when you are off sick if you are on pay point 9 or above or if you do not have a work related injury or disease.

However due to the employers now implementing a scheme that could result in unlawful deduction of wages, there is a strong legal case for members having deductions for absences during periods of plain time working.

Secondly the NHS employers have imposed these changes, without agreement are possibly in breach of the Agenda for Change handbook, since decisions should be made in partnership. They are therefore making changes to your pay, which is in conflict to the Agenda for Change handbook, i.e. your contract of employment. A further challenge may be taken on this basis.

Is there an industrial dispute?

There is a very clear industrial dispute with the NHS employers. This dispute based on the:

1. Behaviour of employers

The employers refusal to abide with the consultation process, and now to implement their own methodology for making deductions has resulted in a dispute between the unions and the employer. The employers have treated the union and their staff with complete contempt in their management of this process.

2. How the deductions have been made

The methodology that the NHS employers have deployed in deducting your unsocial hours, even for absence which is not defined as unsocial hours in the Agenda for Change handbook.

3. Interpretation of 'work related injury or disease'

NHS employers are redefining what constitutes a work related injury or disease, which would bring exemptions to the deductions, to deduct the unsocial hours regardless, even if a member of staff's GP has testified that it is a work related injury or disease.

Can we take industrial action?

Yes.

Unite's consultation of its members demonstrated that staff were very angry. We know that this anger has escalated due to the behaviour of the management. Unite

will therefore be moving to an industrial action ballot to commence on 19th November 2013 and recommending that you vote in favour of strike action.

We will continue to work closely with your ambulance national committee over these issues.

From the start of this issue, Unite has come out clearly for all its members across the NHS that we will not accept cuts to your terms and conditions. We will continue to take this position.

Do remember how you record sickness absence is important and should you be absent due to a work related injury or disease, be clear to state that this is work related. Also state that you have followed your Trust's procedures for reducing risk, i.e. with manual handling and ensure all work related illness or injury is reported accordingly.

Actions you must take immediately

1. Check your membership details are completely up to date.

We need to ensure that your union subs are up to date and your membership details:

Workplace – this is your ambulance station or office

Employer – this is the official name of your ambulance trust

Job title – this is the job title you have for your role

Your personal details – especially your home address and email

You can do this on-line from the top right hand corner of the website and the 'members login box' then 'your account' or through speaking to your rep and making sure that you have the most up to date information on their membership list.

2. When the ballot paper arrives, **vote yes for industrial action**

3. If you are off sick and on pay point 9 or above:

a. Record your period of absence and note the periods of absence which are during normal working hours and those during unsocial hours.

b. Record whether your absence was as a result of a work related injury or disease.

Staff who come into contact with patients who have potential communicable illnesses such as D&V, flu-like symptoms and childhood illnesses are encouraged to report such cases. Also, any serious untoward cases that may cause stress or manual handling incidents that cause musculoskeletal injury should all be reported through the Trust's reporting mechanisms. This will help your case if you are subsequently off work with any work related injury or disease.

It is of the utmost importance that you follow the Trust's guidelines for dealing with infection, prevention and control issues in regard to patients with potential communicable illnesses. Also, in regard to manual handling, please ensure you use the appropriate equipment and in the way you have been trained to use such equipment. Any equipment not available on vehicles should be reported to a line

manager and if on a case, EOC for documenting purposes. It would also be helpful if all of this information is recorded on the patient/case report form in the narrative section.

All incident reports have to have confirmation of receipt and actions, or be responded to by your Line Manager. It is advisable to request or take a photocopy to keep for reference. It is also worth noting the PRF/CRF number on any report forms. If photocopying facilities aren't available take a photograph of the report form number on a smartphone. DO NOT take a photograph of the PRF/CRF and do not take any photographs of patient identifiable information.

Finally, what does a win look like?

1. There needs to be an immediate halt to deductions and the employers must return to the negotiating table immediately. Any monies deducted must be returned.
2. Using the methodology consulted on over the summer, there needs to be agreement as to how this will be implemented through negotiation. Unite believes that staff should be provided with notice prior to deductions being made. Unite are willing to consider other options.
3. There needs to be negotiations over the definition of 'work related injury or disease' and how this will be arbitrated over.
4. Unite demand that all disability and those with long term conditions are explicitly removed from the deductions and this is applied across the service.
5. That there is urgent discussions over the level of absence in the ambulance service and how this can be better managed to reduce sickness levels
6. There are clear processes established over how the employers work with trade unions, including re-recognition where derecognition has been served and all representatives having adequate facilities to undertake their trade union duties.