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Personal Protective Equipment: Know your rights Guidance from the Royal College of Midwives

Introduction

This guidance advises you of your rights and responsibilities at work, and how the RCM will support you in the event of a shortage of PPE.

Your employer is responsible for ensuring that you and any staff you lead or manage have all the necessary personal protective equipment (PPE) – including protective clothing – and that you have access to current guidance on how and when to use it correctly to minimise the risk of transmission of COVID-19. Your employer is there to help you and your colleagues by managing resources effectively and dealing with risk, so that the safety and quality of care or service you provide for people can be maintained. This includes bank and agency staff, the Health and Safety Executive (HSE) have produced guidance on [health and safety for agency/temporary workers](#).

The Department of Health and Social Care have published a Personal Protective Equipment (PPE) Strategy (England) outlining supply chains (including UK manufacturing to increase resilience of supply chains), distribution, stockpile and improved user experience following reports of practical difficulties with the use of some PPE experienced by women and Black, Asian and Minority Ethnic (BAME) individuals. You can access a copy of the strategy [here](#). The Scottish Government have published a Personal Protective Equipment (PPE) - action plan which can be found [here](#).

Northern Ireland and Wales have not published PPE strategies at the time of writing.

The PPE you require will depend on what you do, where and with whom you are working. [National guidance](#) on the use of PPE has been issued to support you during this time. You should follow this guidance, which covers a range of infection control measures, including hand hygiene and respiratory and cough hygiene, as well as advice on appropriate PPE and best practice. The RCM has also issued [guidance for midwives, student midwives and MSWs](#) on what PPE to use for different maternity care procedures and settings.

We recognise that midwives and MSWs providing community and home-based care during the pandemic face particular challenges around use and availability of PPE. Accordingly, we have issued [specific guidance](#), which sets out the requirements on employers around provision of PPE and training in infection control procedures and what midwives, student midwives and MSWs need to do, particularly when visiting women's homes. Please refer to this guidance before undertaking any home visits.

What if there is a shortage of PPE?

Employers have a duty of care to their staff not to place them in harmful situations. The current COVID-19 crisis only serves to reinforce the importance of this duty.

If situations arise where suitable equipment is not available difficult decisions may need to be made quickly about the safest and best course of action.

If you do not have access to the right PPE or have concerns about its quality, then you should raise these concerns with your manager as a matter of urgency. Ideally put your concerns in writing and, where possible, use your organisation's reporting procedures to do this (including photos of



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equipment where relevant). There should already be procedures in place that will enable you or your RCM representatives to quickly bring to the attention of your employer any concerns that you or your colleagues have about PPE and related policies and procedures.

You should also let your RCM health and safety and/or workplace representative know of your concerns. You may also consider contacting infection control or other dedicated staff – where available – for advice on PPE.

Where there are problems with the supply of equipment your manager should contact the NHS National Supply Disruption Line to obtain the identified PPE. This has been established to resolve PPE availability issues where care must stop or change due to a lack of supply.

If your manager doesn't respond in a timely manner or your concern is still not resolved, you should normally escalate to the clinical lead, medical director, another senior clinician or, ultimately, the member of your employer's board entrusted with health and safety matters. You will need to make it clear that you have raised legitimate safety concerns and that you have not received an adequate response.

Where there are shortages, Trusts and Health Boards are required to have an agreed action plan to support the implementation of PHE guidance on use of PPE in extreme cases. This covers the reuse of PPE and alternatives to using fluid-resistant gowns in high risk areas. The agreed action plan should be publicly and immediately accessible and should be used to inform your risk assessment. In the absence of appropriate PPE, the factors to take into consideration when making decisions about whether to continue providing care include:

- whether care can be delayed or provided differently (for example, remotely);
- the availability of different levels of PPE that may offer enough protection to you and others in particular care activities;
- whether some members of the wider team are at a higher risk of infection than others;
- whether different care and treatment decisions might be appropriate to minimise the risk of transmission in accordance with local and national advice;
- what course of action is likely to result in the least harm in all circumstances, considering your own safety, the safety of others and the people in your care?

When considering the weight to be placed on your own safety, bear in mind the consequences if you become unwell as a result of providing care without adequate PPE. You will not be able to provide care to others, and you will risk transmitting the virus to friends, family, colleagues and the families you are caring for.

You should make a record of your decisions regarding how you handle any safety concerns. You should describe how you used your own professional judgement, the role of other members of the team in decision making, and the outcome.

What is the legal position?

You should never be placed in a situation where you might endanger yourself and others while doing your job. Putting you in that situation is a breach of health and safety law. All staff, whether registered or not, have employment law protections that allow them to consider their own safety.



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Employers are under a duty to ensure 'so far as is reasonably practicable' the health, safety and welfare at work of all their employees. This includes providing a safe system of work and the provision of information and training and supervision as is necessary to ensure the health and safety at work of employees. Employers are required to carry out a 'suitable and sufficient' risk assessment to identify the risks to health and safety and take 'reasonably practicable' steps to eliminate or reduce that risk. Employers must consult employees in good time on health and safety matters including what the risks at work are, the steps taken to manage and control those risks and how information and training will be provided.

In summary employers should:

- assess the risks at work of COVID-19;
- implement preventive measures, where risks are identified;
- inform staff of the risks and preventative measures taken.

NHS Staff Council [guidance](#) also states that effective procedures should be put in place to allow staff and representatives to raise any concerns at the earliest opportunity in relation to equipment, policies and processes for managing COVID-19. Staff should be able to do so without fear of detriment, and feedback should be given on the outcome.

As an employee you are also under a duty to take reasonable care for the health and safety of yourself and others who may be affected by your actions or omissions at work. For example, this includes not coming into work if you have been advised to self-isolate.

Risk assessments

Guidance is available for employers on how to carry out risk assessments, particularly for vulnerable groups including Black, Asian and Minority Ethnic (BAME) staff, to understand the specific risks staff members face from exposure to COVID-19 and actions which employers can take to keep staff safe. This includes staff returning to work for the NHS, and existing staff who are potentially more at risk due to their ethnicity, age, disability or pregnancy. Risk assessment guidance from NHS Employers for vulnerable staff can be found [here](#) and RCM wrap around guidance [here](#). The Scottish government has published occupational health risk assessment guidance which can be found [here](#). The NHS trade unions have also developed principles on health and safety risk assessments and vulnerable workers which can be found [here](#). Consideration must also be given to the assessment of bank and agency staff and, where necessary liaison with and assurances from agency employers on the measures necessary to keep vulnerable staff safe

Risk assessments should be done in discussion with staff. Staff who have concerns should be able to self-refer to occupational health and line managers should consider occupational health advice. Trade unions should be involved in the development of local processes. All staff should feel their employer will respond positively and proactively to disclosure of a disability. However, we know that the disclosure of disability across the NHS through the Electronic Staff Record (ESR) is low with only 3% of staff declaring a disability compared with 20% through the NHS Staff Survey. Active Government advice on vulnerable workers and shielding should be followed and every effort made to encourage all staff to disclose a medical condition that might compromise their health.



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We would remind all members to use the risk assessment process locally, seek advice and support from clinical leads and organisational health and safety officers as well as involving infection control teams to support the decision-making process.

Where a risk assessment process has been carried out and the required PPE is not available to enable you to undertake care safely, the RCM is clear that you should not be placed in the position of providing care that is unsafe.

An equality impact assessment should be carried out on any new practices and policies introduced that relate to Covid19. RCM Workplace Representatives should work with their local staff-sides to make sure an equality impact assessment is carried out and investigate the findings.

What does the NMC advise?

The NMC recognises the enormous challenges that you face currently, particularly if you are in a situation where there is insufficient PPE available. [The Code and Standards](#) support midwives in these difficult situations by setting out the key principles to follow to keep you, those you lead or manage and those you care for safe.

The Code makes clear that you must raise any concerns about the availability or use of PPE with your manager as soon as possible, to make sure that they are aware of the issue and can take action to support you. The Code effectively empowers you to speak up and promote the safest way forward and, in doing this, you should refer to the NMC's [raising concerns guidance](#) as well as the RCM's [guidance on raising concerns at work](#) (behind member login). You should feel able to raise concerns without detriment and should receive timely feedback on your concerns.

The Code states that to preserve safety you must take account of your own personal safety, the safety of others and the availability of other options for care. So, you should not feel that when making decisions, you have to place yourself or others at risk, or that you need to make these decisions on your own. The Code goes on to advise that you should:

- work with colleagues, where possible, to find the best way forward in the circumstances;
- take into consideration the balance of risks in relation to the women and babies who are dependent on your care, as well as the requirement to protect yourself and other staff so that they can provide ongoing care; and
- take account of local and/or national clinical guidance, advice and protocols.

There is still not enough PPE, even after alerting management. What should I do?

When faced with a dangerous working environment which you cannot reasonably be expected to avert, every employee “has the right not to suffer detriment if they leave, or refuse to attend their place of work (or any part) in circumstances where they reasonably believe that they are being exposed to serious and imminent danger”.

So, if you still cannot obtain the correct PPE for the care you provide, then you can decline to offer this care until your employer provides the appropriate equipment. We recognise that this will be an incredibly difficult decision for you to make. We will be there to advise and support you.



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Keep a record of your decisions, the reasons behind them and how you sought to manage safety concerns. You should also use local incident reporting procedures.

Wherever time permits, contact the RCM before making your decision. Our representatives and regional/national officers can talk you through these difficult judgement calls.

It may be tempting to alert the media to the situation in your workplace or to post details online. Our strong advice would be NOT to do this but instead to follow your employer's policies on media and social media engagement. If in doubt, speak to your RCM representative.

You should not face a disciplinary process or detriment if you are confronted with serious or imminent danger in your workplace. We will robustly defend your employment rights to ensure your protection.

This is supported by the NMC which acknowledges that in exercising your professional judgement in line with the Code you may decide that you need to refuse to provide care or treatment to an individual because it is not safe for you to do so.

In the event that you refuse to provide care to a woman and/or baby because you are concerned about inadequate PPE or being responsible for service delivery in the absence of PPE, and a concern is raised about you, the NMC will follow the approach it has set out in this [joint regulatory statement](#):

*"We recognise that the individuals on our registers may feel anxious about how context is considered when concerns are raised about their decisions and actions in very challenging circumstances. Where a concern is raised about a registered professional, it will always be considered on the specific facts of the case, considering the factors relevant to the environment in which the professional is working. We would also take account of any relevant information about resource, guidelines or protocols in place at the time."*¹

As part of this approach, the NMC would consider the context of the current pandemic, including the risks that you were exposed to and how you exercised and recorded your professional judgement in line with the Code.

How the RCM can support you

The RCM will be there to support you, and all our members, in these unprecedented and challenging times.

RCM Workplace Representatives are your first port of call if you have issues at work. They negotiate with employers on policies and procedures, represent you at work and create a supportive atmosphere.

Nationally, the RCM is lobbying UK governments and employers at all levels to ensure adequate supplies of PPE. The RCM signed a joint statement with the TUC calling the lack of PPE for health and social care workers a "crisis within a crisis". Midwives and MSWs should not be exposed to unreasonable and unnecessary risk by not being provided with the correct PPE.



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Should it be required, we will advise and support members not to carry out procedures without the appropriate PPE in line with the Health and Safety at Work Act 1974. If you are subjected to bullying or harassment, victimisation, disciplinary proceedings or any other detriment, we will advise and represent you, provide legal representation and other assistance in support of your cause. Do not hesitate to contact the RCM if you need support with any of these issues.