

Guidance for members: Refusal to treat due to lack of adequate PPE during the pandemic

The RCN is acutely aware that members have reported a lack of adequate personal protective equipment (PPE) in all health and social care settings during the crisis. There will be difficult decisions to be made by nursing staff whether to continue to provide care if it is not supplied.

The RCN has pressed the government to provide appropriate UK guidance about PPE and continues to push the government and employers to provide

the right PPE to all health care staff, whatever the setting.

This guidance takes you through the process to follow in your workplace when deciding if the PPE provided is appropriate for you and what to do if it is not.

The guidance also contains a summary of potential legal consequences if you take a decision to refuse treatment that is later criticised.

The decision route:

1. First read the RCN guidance document *Personal Protective Equipment (PPE) - Are you safe?* Use the link to the UK Infection Prevention and Control government guidelines to work out if the PPE provided to you is the right equipment for the setting in which you work. If it is, then you should continue to work.

2. If you believe, having read through the government guidelines, that the PPE provided to you is inadequate, then utilise the escalation steps set out in the rest of the RCN guidance document *Personal Protective Equipment (PPE) - Are you safe?* to press for appropriate PPE to be provided immediately before you treat patients.

3. If the PPE is still not provided, then you must consider your own safety. Some employers have placed pressure on health care staff to continue to treat without adequate PPE. Under the NMC Code, the safety of nursing staff remains a key consideration alongside patient and public safety. The NMC requires registered nurses to be accountable for the safety of themselves, their patients and the public and this must empower them to speak up and promote the safest way forward. All staff, registered or not, have employment law protections that allow them to consider their own safety.

4. When considering the weight to be placed on your own safety, you are not simply taking your personal wellbeing into account. If you become unwell, you might spread infection through your community, including to high-risk patients. You will not be available to provide care to others. You might put your own family at risk including more vulnerable relatives and you may have a vulnerability yourself that makes infection a greater risk.

5. You must take part in identifying changes to the way that you work that reduce the risk to you short of refusing to provide treatment at all. Can treatment be delayed or provided differently? Can alternative practices reduce the risk of transmission? Can staff with greater vulnerability be placed into roles that carry lower risk? Working with your manager and colleagues, your clinical expertise and knowledge of your patients will be invaluable.

6. Ultimately, if you have exhausted all other measures to reduce the risk and you have not been given appropriate PPE in line with the UK Infection Prevention and Control guidance, you are entitled to refuse to work. This will be a last resort and the RCN recognises what a difficult step this would be for nursing staff. RCN advisers or your local rep can talk to you through these difficult judgement calls. Please visit www.rcn.org.uk/advice or telephone 0345 772 6100.

7. As ever, you must be able to justify your decision as reasonable, so keep a written record of the safety concerns that led you to withdraw treatment using local incident reporting procedures (for example DATIX) where possible.

If you decide not to treat due to a lack of adequate PPE, and your action is subsequently criticised, there are potential legal consequences, as follows:

- **Dismissal:** Under employment law, if there were ‘circumstances of danger which the employee reasonably believed to be serious and imminent and which they could not reasonably have been expected to avert’ then your employer cannot fairly dismiss you.
- **NMC and social care regulators in Scotland, NI and Wales:** The NMC Code requires registered nurses and nursing associates to take account of their own safety, the safety of people in their care and the safety of others. The NMC expects registered nurses to evaluate the situation and balance the needs of these potentially competing groups. Social care regulators in Scotland, NI and Wales which register care assistants and nurses also impose standards. If the NMC or another regulator investigates you, then you must be able to justify your decision.
- **Clinical negligence:** You could be sued for negligence by a patient. Your indemnity provider would pay the damages and other costs if negligence was proven.
- **Inquests:** You could face criticism in the course of an inquest.
- **Criminal and DBS:** There is the potential for neglect or even corporate manslaughter charges to be brought, although these are very rare. Criminal cases and investigations can also lead to entries on your DBS certificate.

Rest assured that if you refuse to treat for lack of PPE, and are criticised subsequently, the RCN will provide you with legal representation and other support in any proceedings that ensue, without judgement. These are enormously difficult circumstances for our members and RCN support will be there.