

The role of unions in NHS suspensions

Summary of this study.

The sample size was small yet the findings were clear.

The three main NHS unions were represented namely the Royal College of Nursing, Amicus and Unison.

Main problems

- 1) No clear policy for dealing with staff suspensions or serious unsubstantiated allegations.
- 2) Little or no accountability of fulltime union officers with no evaluation of services.
- 3) There was a serious issue about trust because of the fulltime union officer's manner and relationship with management.
- 4) The support people had received had been very variable with most comments being negative due to failures with being able to make contact, poor manner, inappropriate advice and lack of knowledge or expertise.
- 5) Some managers were not following policies and the union officers seemed unable to stop them.

Improvements suggested (in random order) were:-

1. Better understanding of the distress caused by suspension/false allegation
2. Increased accessibility and quicker responses from the officers
3. A charter/clear guidelines about the service the union can give
4. Action against managers who failed to follow procedures
5. Use of legal advice from employment lawyers, better levels of knowledge, and specialists to deal with suspensions.
6. Enhanced level of service and payment for staff working at higher grades
7. More officers and more support for them.
8. Better training in understanding and communication,
9. Better training in policies and employment law
10. Establish systems to ensure the independence of the union officer.

The comments about volunteer reps were few in comparison. Their difficult position within the organisation, as an employee was acknowledged.

There were also comments about the absence of protected time for them to fulfil their role and the need for better support and training for them, even payment for their services.

Introduction

Suspension is still being used inappropriately by some managers, who ignore the Directions published by the Department of Health in December '03 and February '05, and the Incident Decision Tree of the National Patient Safety Agency produced in 2004.

For NHS employees other than doctors and dentists, effective union representation is the employee's only hope of defence against managers' poor practice as solicitors' fees are prohibitive and employment law tribunal judgements can be arbitrary.

Some people making contact through the support and information website www.suspension-nhs.org have had good support from their union reps and others have not. This was discussed in the report 'Suspension failure in the NHS' and is available from the support website.

To try and address this situation, a meeting has been proposed between union officials and some of those who have experienced poor management to consider how the situation can be improved for the benefit of all.

As a contribution to the discussion, a small study was undertaken to provide more specific information. This report is a summary of the findings.

Study method.

67 emails with an explanation and copy of the questionnaire (see Appendix 1) were sent to contacts through the web site www.suspension-nhs.org in January 2005. They were asked to reply by the end of the month and there was one mailing only. They were all employees of the NHS the majority, nurses and midwives.

It was not appropriate to send it to all the contacts of the website because some people had made contact on behalf of relatives. Others were ill or still in the early stages of their suspension. 7 emails failed to deliver.

- 28 responses were emailed or sent back in paper form, making a response rate of 47%.
- 3 people sent a reply who were friends or colleagues of these contacts.
- 3 respondents saw the questionnaire on the web site and emailed their response.
- The total number of questionnaires returned was 34.

Question 1. Union membership

Respondents belonged to the following unions with one respondent having dual union membership.

Table 1 Union membership

Union membership	
Royal College of Nursing (RCN)	15
Amicus including Community Practitioners and Health Visitors Association members	9
Unison	8
Royal College of Midwives	1
Membership of a specialist union plus the RCN	1
Total number of individuals	34

1 RCN member subsequently changed to the CPHVA and 2 Unison members subsequently changed, 1 to join the RCN; the other did not say which union they joined.

Question 2. Union representation

People were asked at what stage they received union representation and by whom. Their answers (see Appendix 2) were very varied and volunteer reps were the main people to be involved in a third of cases.

The results suggest that there are no coherent union guidelines or policies for dealing with suspensions.

It might also be that they exist but are impractical or are being ignored.

Question 3. Union independence

People were asked if they thought their union officials acted independently of their employers. See Table 2 for their replies. 2 people did not respond and 2 people had no representation, 1 from choice.

Table 2 Independence of union officers

	Independent	Not independent	Don't know
Volunteer reps	2	4	2

Part-time paid officers	2	2	-
Fulltime officers	6	9	3
Totals	10	15	5

Although a third thought their union rep to be independent, two thirds either did not or were not sure.

Trust, which is destroyed in the act of suspension or in hostile environments, was obviously a problem for many. As well as comments about the independence of union reps, the following additional comments were made.

There was a total of 4 comments about the volunteer and part time reps compared to 22 about the fulltime officers, 6 positive and 16 negative.

3 i) Comments about volunteer reps

understanding 1 excellent 1

serious lack of confidentiality, which the regional officer would not believe 1

3 ii) Comments about part time officers

member of joint staff consultative committee with good relationship with management was seen as helpful 1

3 iii) Comments about fulltime officers

- they were able to stand their ground because independent 5
- professional and good liaison skills 1
- not on the side of the member or even against them 7
- (1 person got a change of rep with difficulty; 1 person requested a different rep and was told by the rep he was the only one permitted by the organisation)
- felt rep had already discussed their case with manager (and in 1 case made decisions) 6
- they look out for own interests 2
- too slow 1

At present, there appears to be little or no opportunity for feedback or evaluation of events. This might provide a rich source of data to improve services.

Question 4. The support received from the union reps/officers

30 people responded to this question.

- 4 people made all positive comments.
- 6 people made all negative comments.
- 16 people made positive and negative observations about the same person.

- 4 people described experiencing a helpful union rep and then a different unhelpful rep.

Some of the replies were very detailed. It was clearly a very important issue.

4 i) Summary of positive comments (numbers refer to the number of people who made these comments)

- supportive 9
- good/excellent 8
- understanding 1
- reliable returning calls and contacting when he said 1

4ii) Summary of negative comments

- very busy; difficult to contact, did not return calls 10
- very poor/unsympathetic/unfriendly/disappointing 9
- advice was not in the member's best interests 9
- lacked expertise/experience/unprepared 4

Quotes illustrating some of these points

'Human, open, honest, professional'.

'At my lowest ebb I found the (fulltime officer) more intimidating than my manager'.

'He was in the office taking other calls and I was assured he would call me back. He did, a week later!'

'I would describe the support I had as minimal despite initial reassurances that she would be there for me. She wasn't and I felt like I should just go away and stop being a pest. I also had other peoples' cases discussed in front of me which made me feel unimportant compared to all the rest of the work she had to do'.

Question 5. Suggestions for improving the union's services

30 people responded, some in detail.

5a) Improvements in the service voluntary reps give

- take advice from fulltime officer 3
- volunteer reps should work outside their area so they can be independent, be paid and have allocated time 1
- need better training 1

5b) Improvements in the service fulltime officers give

5bi) More availability and practical help proposed

- understand that the member is distressed and incoherent and respond appropriately 5
- union reps need to be more accessible and respond quickly 5
- give help with writing reports because the rep knows the jargon and member is distressed 4
- be non-judgemental/believe the member 4

- make the service clear – how much time the member can have and explain procedures 2

5bii) Single comments were:-

- a special counselling service should be offered
- be honest when rep thinks the outlook is poor
- understand the person's area of work

5biii) Better systems proposed

- take action if procedures are not being followed by managers 8
- seek legal advice 4
- better advice/knowledge base 3
- need specialists to deal with suspension 3
- look at outcomes of their advice, especially when advised to challenge bullying behaviour 2
- all communication through the rep/rep to be the case manager 2
- record interviews and disciplinary hearings/make written summaries of all contacts 2

5biv) Single comments

- more reps
- rep to have no other involvement with managers
- rep open to scrutiny from an independent body
- use the media

Quotes illustrating some of these points

'I received excellent support and don't know how it could have been bettered.'

'Involve an experienced full time official at the earliest opportunity in order to, hopefully, nip the whole issue in the bud as soon as possible'.

'Someone will end up taking their own lives if the unions delay their response and immediate support like they did in my case – over 4 months!'

'I was afraid to ask for help even when I was not satisfied with the responses I got because I was reprimanded more than once for troubling them with too many calls and emails. I did not feel I could go elsewhere as I needed the support of my own union and did not want to alienate them'.

'There needs to be a complete overhaul of the service- how this can be achieved when the rep works so closely with the hospital managers I do not know.'

Question 6. Actions needed to make changes

16 replies were made with many suggestions.

The greatest need identified was for more paid officers and better training. Very few comments were made about volunteer reps.

6ai) About union services

- employ more paid officers, (some perhaps at a reduced level of knowledge as with paralegals and solicitors) more resources, more realistic workload, holiday and busy period cover 14

- better training, better support for fulltime reps, be approachable, clear communicators 10
- fulltime reps need to understand the seriousness of the situation and the devastation caused 6
- officials come from outside the region, time limited to two years to prevent corruption and familiarity/ be independent 5
- recognise need for change/review of role and structures in the unions, issue a code of conduct for all to see 4
- be proactive, greater support, keep in regular contact, foster trust 4
- more support and training for volunteer reps 3

6a ii) Single comments were:-

- monitoring of the service, evaluation surveys, supervision and reflection
- offer an enhanced legal service for those willing to pay – like an insurance so they can have legal cover straight from the beginning. 1st level managers need it.
- set up a helpline to deal with problems as they occur
- people who have experienced suspension and unfair treatment to help with training

6b i) About systems and managers

- take away the power to suspend from managers/only use when a patient is in danger 2

6b ii) single comments were:-

- help new managers recognise that risk is unavoidable and needs to be managed appropriately
- hearings that include everyone to prevent misinformation
- employ professional advisers
- record interviews etc using existing IT
- each trust to have a rep working closely with human resources

Quotes illustrating some of these points

‘Presumably Unions do assess their philosophy and function in society periodically.’

‘I think public accountability is the strongest suit the unions have to play.’

‘If they want to provide this sort of service they are going to have to invest a bit more in it.’

‘Unions have lost their way with members – too far removed and not accountable. No evaluation of their services. Start auditing outcomes so lazy officers can be identified.’

Question 7. Poor management practice

An explanation was given before the last question was asked.

Question 7 notes.

- The Department of Health has published Directions which have to be followed and whose principles are supposed to apply to all staff – see the website www.dh.gov.uk/doctorsdentistsdiscipline under Frequently Asked Questions.
- These Directions, based on ACAS best practice, lay down clear timescales and processes.
- Together with the National Patient Safety Agency's *Incident Decision Tree* (see www.npsa.nhs.uk/idt) the Directions make it clear that staff may be suspended and refused contact with their workplace only if they constitute a risk to patients or if it is thought they may tamper with evidence.
- Some managers are ignoring these official procedures and guidelines. Should the unions challenge the managers?

Replies

All but 1 person replied and 31 people wrote comments, some detailed.

7i) Three people replied they were unsure or did not know, the rest replied yes though 2 people understood that employers can ignore the Directions without breaking employment law so it would be difficult to challenge them.

7ii) Actions for the unions to take

- Unions challenge managers, use the press, sue them 7
- Should be the union's responsibility to clarify the reasons for the suspension, get member re-instated if reasons don't fit criteria, they should be notified in advance 4
- Fulltime officers need to be assertive, knowledgeable, have integrity 3
- Make employers sign up to it, flag up best practice with committees, have timescales 3
- Should have legal clout to take to court, use employment law solicitor more 2
- Raise awareness of poor practice among members
- Unions work with trusts to ensure training for managers

7iii) The use of independent bodies

- Be able to involve a really independent body to review and take action/put pressure on Government to take action 3
- Early referral to ACAS/similar independent mediation

Note

1 respondent noted that the Directions don't apply in Scotland where suspensions remain fairly commonplace.

Quotes illustrating some of these points

'I get the impression that managers think that they can do what ever they want and in fact in many ways they can.'

'Investigation into the managers motives need to be taken into account. If everything has been official and above board then there should be no need to act against policies and actions would be justified.'

'Where timescales and processes are not adhered to by managers, they should be challenged on this. In my case it was just accepted as the norm by my union rep.'

'The policy at present appears to be that you are guilty before anything is proven and the fact of being suspended shows to all and sundry that you have made a mistake whether you have or not. Loss of contact with friends and colleagues is not only cruel but can start the employee on the downward slope psychologically.'

'At the end of the day, the union are there for the workers not the management'

7a. Comments to question 7

Comments were invited and 18 people responded.

7ai) There was 1 positive comment about the possibility of becoming a rep themselves because they had such a positive experience (see 1st quote).

7a ii) Some wrote about their own cases and others made general observations. Only new comments have been recorded here.

- use of suspension is not acceptable unless there is real cause 7
- going to change their union membership 4
- staff should learn from incidents (clinical governance a possible tool) but they cannot learn this way 2
- went to a solicitor/barrister and were told they had a case 2

7a iii) Single comments were:-

- essential documents for defence lost or stored by local rep
- reps need counselling skills
- matter settled but left feeling very vulnerable
- has been silenced

Quotes illustrating some of these points

'My experience and the support I have received has encouraged me to consider being involved as a rep myself when I feel that I am up to it.'

'Since when do Regional Officers act as judge and jury? I have seen a lawyer at my own expense, who says that I have a case, and also the Equal Opportunities Commission. But my Regional Officer obviously knows employment law better than anyone!'

'Empathy to patients is what all nurses want to achieve – but what about empathy and support towards their colleagues and workmates.'

'Rotten decisions are made by corrupt management structures who know they can manipulate and control all but the most determined. What happens? The miscreants either stay in post or get promoted out of the way.'

'Union the person's only hope. If they are not up to the job, the member has had it.'

Conclusion

The sample size was small yet the findings were clear and the three main NHS unions were represented namely the Royal College of Nursing, Amicus and Unison with one member of the Royal College of Midwives.

Main problems

1. There is apparently no clear policy for dealing with staff suspensions or serious unsubstantiated allegations, or the policy is being ignored or is impractical to use.
2. There is apparently little or no accountability of fulltime union officers with no evaluation invited or feedback.
3. When staff are suspended or face unsubstantiated serious allegations by their organisations trust is destroyed. Less than a quarter of reps were seen as independent whilst a third were seen as indifferent even hostile. A quarter believed that the fulltime officer had been communicating with their managers and viewed this with disquiet.
4. Only four out of 30 respondents were satisfied with the level of support they had received from their fulltime officer. The causes of the discontent for the remaining respondents were:-
 - Problems with making contact with the officer
 - Problems with the officer's poor manner
 - Problems with the advice given, seen as working against the member
 - A perceived lack of knowledge or experience of the union officer
5. High levels of unhappiness and disapproval were expressed about the lack of accountability of managers. It was also recognised that it would be difficult for the unions to challenge them.

Suggestions for improving services the union offered

1. These related to the problems, both with the union officer and with the managers. They included improved understanding of the member's distress, improved accessibility and practical help, and better informed union officers.
2. To achieve a more effective defence against poor management practices they proposed action against managers who failed to follow procedures, the use of legal advice from employment lawyers, better levels of knowledge, and specialists to deal with suspensions.
3. An enhanced level of service and payment was proposed for staff working at higher grades who may be more vulnerable from unsubstantiated serious allegations.

The action required to achieve these improvements

1. This was very clear – more officers and support for them.
2. They also needed better training in understanding and communication
3. Better training in policies and employment law
4. The establishing of systems to ensure the independence of the union officer.

Volunteer reps

1. The comments about volunteer reps were few in comparison. Their difficult position within the organisation, as an employee was acknowledged.
2. There were also comments about the absence of protected time for them to fulfil their role and the need for better support and training for them, even payment for their services.

As these problems were common to all the main unions, it is hoped that they will be willing to join forces, for one union to take the lead and for them to work collectively for change, and involve stakeholders in this work.

Julie Fagan

Co-ordinator for the campaign group aiming to stop unnecessary suspensions in the NHS.

7.3.05

Distribution:

Beverley Malone, General Secretary, Royal College of Nursing

Derek Simpson, General Secretary, Amicus

Barrie Brown, Amicus

Dave Prentis, General Secretary, Unison

Gail Adams, Head of Nursing, Unison

Dame Karlene Davis, General Secretary, Royal College of Midwives

Jon Skewes, Director of Employment Relations, Royal College of Midwives