24 March 2017

Philip Dunne MP
Minister of State for Health
Department of Health
Richmond House
79 Whitehall
London SW1A 2NS

Re: Ban on agency staff working for their own trust or another if they hold a substantive contract.

I am writing to express the anger of the Royal College of Nursing about a recent decision made by NHS Improvement (NHSI) without any form of consultation,

NHSI wrote to the service on February 28th giving the instruction below:

‘From 1 April 2017 trusts should not be using agencies to employ individuals who are substantively employed elsewhere in the NHS. Trusts subject to the agency rules will only be able to engage substantive NHS staff working additional hours through staff banks, and / or overtime, and deduct PAYE as appropriate.’

What this instruction means for nursing staff is that at a time when wages have been held down by the Government and they are still waiting to hear whether or not they will receive a minimal 1% pay rise – the Government is about to make nurses’ financial situation even worse. For many NHS nurses the only way to ensure a decent level of income is to undertake additional work through an agency. They would not have to do this if NHS pay had kept pace with inflation.
The suggestion by NHSI that the only way nursing staff can work extra hours in future is through a NHS Bank or overtime is bordering on the absurd. NHS Banks have a poor record of paying nurses the correct level of remuneration for the skills required working these extra shifts. Very few NHS employers pay overtime – a facility that they have under Agenda for Change.

The approach from NHSI is unfair, punitive and picks on those who have no alternative but to seek extra work through an agency.

To limit the freedom for nursing staff to work for whomsoever they wish to work for and on terms they are happy to work on at a time when the Government is also holding down wages from NHS employment deliberately low is a scandal.

Our advice to our member will be as follows:

- That they are not obliged to sign up to an NHS Bank
- That they are free to work for whomsoever they wish to
- If they do work on an NHS Bank they should be paid at a minimum at their substantive post pay rate
- That if they work for a NHS Bank they should be offered to be paid at AFC overtime rates
- That the RCN will continue to challenge, both locally and nationally this unfair infringement of our members' freedom to earn a decent income, commensurate with their skills, experience and effort

Finally I would also add that to include this restriction in the same letter as advising the service about the implications of HMRC IR35, and the use of self-employed workers operating through limited companies has been most unhelpful, is largely irrelevant for nurses working additional hours through agencies, and has created a degree of anxiety for members that could easily have been avoided.

I am calling on you to please now rescind this instruction with immediate effect.

Yours sincerely,

Janet Davies
RCN Chief Executive & General Secretary