



Department  
of Health &  
Social Care

*From Lord Markham  
Parliamentary Under-Secretary of State*

*39 Victoria Street  
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Dear colleagues,

As promised, I am writing to follow up our debate during the first day of the Strikes (Minimum Service Levels) Bill Committee Stage on 9 March and to provide more details on the comments and questions raised throughout.

I very much appreciated the points raised in the debate by Lord Allan regarding voluntary arrangements between employers and trade unions for strike days and instances where discussions went to the wire or voluntary arrangements failed. I would like to provide more detail on this specific point. As noted in my response, minimum service levels (MSLs) set out in regulations, which could be implemented through work notices, would create certainty, better enabling NHS providers to plan and keep patients safe during industrial action. It would also enable decisions to be taken earlier regarding other measures such as postponement of routine appointments, which would also keep patients informed. While it is not appropriate to name specific cases where there have been such issues, there have been instances where these voluntary arrangements have not been agreed until the last minute, or there has been disagreement or uncertainty about what has been agreed, posing risk to the provision of life-saving or emergency treatments. MSLs for ambulance services would provide greater assurance that patients will be kept safe and allow employers to better plan their services on strike action days.

I would like to expand on the points made in the debate by Lord Hendy regarding the services that are in scope of MSLs in the health sector. As a priority we are consulting on whether MSLs should be in place for ambulance services during a time of strike, recognising that disruption to blue light services puts lives at immediate risk. As set out above, I am concerned that in some instances voluntary arrangements have not been agreed until the last minute, or there has been disagreement or uncertainty about what has been agreed and this may impact on patient safety. Further consultations on other health services may follow if we are not confident that voluntary arrangements are sufficient to protect the lives and health of patients.

An important point was raised in the debate by Lord Fox regarding private companies and the remit of the Bill. I would like to provide further clarification on this specific point. Our current consultation is looking at whether we should introduce MSL regulations for ambulance services in the NHS. Private sector organisations are not intended to be in scope for these specific regulations, though this may not be the case in other areas.

A number of noble Lords wanted to understand the impact of this Bill, both on the health workforce and the service users themselves. As you will know, our consultation on whether to introduce MSL Regulations in the ambulance service is currently open. Not only will we use these written responses in our development of the detail of the policy, but we will be hosting several workshops with key stakeholders to complement the consultation. Each workshop will have a different focus. One will focus on the patient experience and will be attended by third sector organisations and patient representative groups. Others will focus on employers and service providers, and workers themselves. We will explore potential impacts of different options. The views we gather will feed directly into the policy work with the aim of retaining appropriate patient outcomes, balanced with the rights of workers.

We will also explore through the consultation and workshops how exactly the MSLs should be defined, the metrics used, and any potential impacts on particular groups. We will publish our response to the consultation in the weeks after it closes. The consultation will close on 9 May.

In response to a question by Lord Allan, I made a commitment to follow up in writing with further detail regarding modelling and analysis of the legislation, particularly on the potential impact on legal liability, civil claims and claims against the NHS for compensation. I would like to expand on this to explain that these matters will be considered as part of the final stage impact assessment on the secondary legislation, if introduced, which will be completed following the close of the consultation. After this point we will have a clearer idea of the scope and detail of any secondary legislation we might introduce. If the decision is taken to proceed with MSLs for ambulance services, the impact assessment will consider the impacts of the specific MSL regulations being introduced on both ambulance services, as employers who will be able to issue work notices in the event of strike action under the regulations, and unions who may call such action. It will also consider the wider benefits of the policy for the public. These will be compared against the current position, where no MSL regulations are in place.

Lastly, several noble Lords raised questions in the debate regarding the standard for MSL regulations to be introduced for the health sector. I would like to provide further clarification on this and in particular references to “life and limb,” including what this means for the consultation on MSLs for ambulance services that is currently live. Though “life and limb” can be used as shorthand, this term can have different meanings to different individuals and it is not an established standard for consulting on future MSLs. To be clear, the proposed standard which is being consulted on in the ambulance service consultation is set out below. It may be appropriate for a different standard to be used should MSLs for other health services be considered. If MSL regulations for other health services are considered then the proposed standard would be consulted on prior to their introduction.

*“Our proposal is to ensure that the level of resource available on any given day of strike action will be set at a level to ensure all 999 calls are answered and assessed by ambulance control room staff. It is also to ensure that all life-threatening and emergency calls receive an appropriate response by an ambulance, a Hazardous Area Response Team, Specialist Operational Response Team or other responder.”*

I hope this letter has provided clarity on these important points raised in the Committee Stage. I am copying this letter to Lord Callanan and will deposit this letter in the libraries of both Houses”

With my very best wishes,

A handwritten signature in blue ink, appearing to read 'M. Markham', with a stylized flourish at the end.

**LORD MARKHAM CBE**