



Stations & Revenue Safety Council



Influenza A (H1N1) – Swine Flu Update.

“...once a fully fit pandemic virus emerges, its further international spread is unstoppable”. Dr Margaret Chan, WHO

“National incidence of influenza-like illness increased for all regions and is now evident in all age groups.”
Royal College of GPs

“Providing that he doesn’t have symptoms (sore throat, runny nose and temperature) he should come into work whether or not his wife tests positive for swine flu”. Dr Olivia Carlton, LUOH (relating to a track worker case)

“...there is absolutely no need for a meeting nor any need to take any special measures... There is no change” Mike Strzelecki, Director of Safety, LUL (response to safety representatives calling for consultation on Swine Flu).

Most people will now be aware that Swine Flu (H1N1) is spreading rapidly among the population. While the common symptoms are mild for most, they can be fatal for various vulnerable groups (pregnant women, those with other medical underlying conditions, particularly, though not only, any condition that may compromise your immune system etc).

We have witnessed so far 17 deaths attributable to swine flu in the UK. While it is true that Flu kills between 5,000 and 7,000 people in a typical winter - mainly the elderly - although the number can rise to more than 10,000 in bad years – it is also clear that Swine Flu could add considerably to that number.

As of now, there is no evidence to suggest that the viral strain H1N1 has further mutated (see ABC of Influenza below and previous circulars).

There are two polar dangers in responding to the current situation. One is to be alarmist and running the risk of panic and overwhelming the health services in particular. The other is complacency, overly reassuring people into a false sense of security, where a rapid emergency response to a genuine case could be the difference between life and death.

Lul/TfL clearly fall into the second category. Safety representatives have written continuously to management calling for a network wide, all companies meeting to consult on the changing situation and staff genuine concerns.

Sadly, we’ve hit a brick wall. The response is the same each time as the quote from Mike Strzelecki above illustrates. Essentially, they’ve stuck their heads in the sand hoping it will all go away. However, we know it will not go away and we need urgent concerns addressing now.

Previously, it has been agreed that if a Pandemic is declared that surgical gels and hand wipes will be distributed. LUL have failed to carry out this agreement. Previously, it has been agreed that cleaners, in particular, would be looked at closely regarding their equipment and materials, PPE and facilities. We have had no response from LUL/Tubelines.

Previously, it has been agreed that any additional effective PPE will be considered after advice and further evaluation. Even the Royal College of GPs is suggesting

a re-visit on advice on PPE, particularly for health workers since the death of a GP attributable to swine flu.

While most people who contract the virus suffer mild symptoms it is clear that those with other underlying medical conditions are at greater risk. If you are pregnant, HIV positive, have a cardiac related illness etc you will be at greater risk. Indeed, even if you do not have any serious underlying condition, members of your family may. LUL does not exist in a vacuum. The advice from LUOH does not appear particularly robust. Indeed, it appears that LUOH, with no great surprise, is more interested in ensuring staff remain at work and LUL achieve attendance targets.

Essentially, staff are presently asked to diagnose themselves - a form of self-assurance - and then do the right thing. What if you mis-diagnose your symptoms? The tragic case of Chloe, who died aged 6, was mis-diagnosed as having tonsillitis.

Further, there seems to be no consistency in dealing with cases coming up on the job. Some staff are asked to remain at home for seven days; some are asked to come in; some are asked to take annual leave whilst others are told that they follow the usual sickness procedures.

While we continue to insist for an all companies, all grades, network wide consultative meeting on this urgent issue we also draw attention to your legal rights to refuse to work on the grounds of safety.

We have, and continue to pursue a collaborative approach with management to address staff concerns. However, we cannot stand still as the situation develops and continue to allow management frustrate any meaningful consultation with recognised and elected safety representatives to address your fears.

RMT Representatives

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Your Legal Rights - Safety

1) The principal safety legislation in the land, the Health and Safety at Work Act 1974 (Section 7) states:

The employee has a duty in:

“taking reasonable care for your own health & safety and that of others who may be affected by what you do or don’t do”

2) Under the Employment Rights Act 1996, as amended, employees have the right not to be dismissed, selected for redundancy or subjected to any detriment on the following grounds:

- The employee left, or proposed to leave, or (while the danger persisted) refused to return to his or her place of work, or any dangerous part of it, in circumstances of danger he or she reasonably believed to be serious or imminent, and which the employee could not reasonably have expected to avert.
- The employee took, or proposed to take “appropriate steps” to protect himself or herself or other persons in circumstances of danger which he or she reasonably believed to be serious and imminent.

This is explained in “*Harvey on Industrial Relations and Employment Law*” that:

“... (in) the case of the employee who believes himself to be in serious and imminent danger and who on that account quits work. The employee’s belief must be both genuine and reasonable. If he cannot reasonably avert the danger, then he is entitled to take himself out of harm’s way. The employer must not victimise him for leaving the area of danger, or proposing to leave it, or for refusing to return while the danger lasted”.

Case law has established that an employee’s reasonable concerns may also cover serious and imminent danger affecting members of the public.

3) Further, in a recent case, union members working for LUL who refused to work during the fire-fighters dispute (2002/2003) and who were not paid, had a hearing listed for their application that any deduction of pay was unlawful.

There were two arguments:

- 1) Based on law cited above, enabling anyone to absent themselves from the workplace when there is a serious and imminent danger and a significant risk, and this does not amount to secondary industrial action.
- 2) Based on a breach of contract relating to the implied term that the employer will provide for the Health and Safety of staff (see e.g. Johnson v Bloomsbury Health Authority).

LUL settled out of court and agreed to pay the applicants all the money they had deducted.

The ABC of Influenza

Swine Flu is a highly contagious acute respiratory disease.

Influenzas are classified into three major genera: A, B and C. Over thousands of years Influenzas B and C have been domesticated by long circulation in human populations. The Influenza C is a cause of the common cold for instance and B produces a classic winter flu.

Influenza A however remains wild and is very dangerous. It remains primarily among ducks and waterfowl but can cross over to humans and other bird and mammal species. Although the figures are hard to assess domesticated seasonal type A influenza can kill as many as one million people a year. A small increase in the virulence combined with high incidence could cause global problems.

It also has an incredible capacity to evolve rapidly creating modified strains requiring new vaccines – this process is called *antigenic drift*. However, every human generation or so, a bird or pig version of Influenza A will swap genes with a human type of influenza or acquire mutations allowing it to leap between species – this process is called *antigenic shift* and signals the imminence of a pandemic. Also, sometimes through a co-infection of a host cell by two different subtypes of influenza can result in a *reassortment* virus – a hybrid having gene segments from different parents. Influenza A is what Mike Davis calls an “*extraordinary shape-shifter*”.

Both the 1957 and 1968 flu pandemics are believed to have originated from the mixing of bird and human viruses inside pigs.

The Influenza A subtypes are classified by HxNy. The H stands for *hemagglutinin* and is the molecular key that influenza uses to ‘unlock and enter’ host cells while the N stands for *Neuraminidase* which allows the virus ‘escape’ from a dying host. As Davis puts it ‘*H is the burglar and N is the escape artist*’. There are many subtypes and swine flu is of the H1N1 subtype. But there are other subtypes H1N2, H3N1 or H5N1 commonly known as avian or bird flu.

The N in influenza is more vulnerable than the H. This is what the powerful anti viral drugs Relenza (zanamivir) and Tamiflu (oseltamivir) attack. The government hopes to have stockpiles of safe vaccines available from the end of August, enough for the entire population.