



November 2023

**Unite submission to the Department of Health and Social Care Consultation:**

## **Minimum Service Levels in the event of strike action in hospitals in England, Scotland and Wales**

**This submission is made by Unite, the UK's leading trade union. Unite represents and organises over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.**

Unite represents hundreds of thousands of workers in the sectors targeted in the Strikes (Minimum Service Levels) Bill. Unite has around 100,000 members who work in health services across the UK, including many who work in hospital services. This includes doctors, nurses, pharmacists and estates staff. Unite membership includes seven professional associations – the Community Practitioners and Health Visitors' Association (CPHVA), Guild of Healthcare Pharmacists (GHP), Medical Practitioners Union (MPU), Society of Sexual Health Advisors (SSHA), Hospital Physicists Association (HPA), College of Health Care Chaplains (CHCC) and the Mental Health Nurses Association (MNHA) – and members in occupations such as allied health professions, healthcare science, applied psychology, counselling and psychotherapy, dental professions, audiology, optometry, building trades, estates, craft and maintenance, administration, ICT, support services and ambulance services.

### **Introduction**

Unite is firmly opposed to the introduction of minimum service level requirements during strikes in the health sector or in the wider public and private sectors.

The Strikes (Minimum Services Levels) Act is a blatant and serious attack on workers. The imposition of minimum service levels would add severe and unacceptable restrictions on workers' right to strike to defend and improve their jobs, pay and conditions.

It is custom and practice for life-and-limb cover to be agreed by health unions during industrial disputes. This legislation would replace a system tailored to the needs of the workplace and agreed by employers and unions with a national service level mandated from Whitehall.

The UK government, unlike governments in Scotland and Wales, has neglected to introduce safe staffing levels legislation for NHS services on non-strike days. The UK government has also failed to address the crisis in NHS staff vacancies in England, the latest figures at the time of writing show a vacancy rate of rate of 8.9% or 125, 572 for June 2023.<sup>1</sup> , This peaked at 130,000 in September 2022. The retention of staff, including new joiners and more experienced staff remains a serious challenge within the NHS.<sup>2</sup> This acute staffing crisis has been driven by thirteen years of government-imposed pay cuts. TUC analysis has found hundreds of thousands of NHS workers had lost at least a “year’s worth of salary” as a result of their pay not keeping pace with inflation since 2010.<sup>3</sup>

The lack of investment and staffing crisis in the NHS are having a seriously detrimental impact on patient care, contributing to the record NHS waiting lists, which now stand at 7.77 million and which are due to rise to 8 million by summer 2024.<sup>4</sup> The Royal College of Emergency Medicine has also raised concerns that there are between 300 and 500 excess deaths per week because of delays in emergency service provision in England.<sup>5</sup>

Rather than tackling the crises this government has created in the NHS, ministers have chosen to attack the key workers in the NHS who cared for our families and communities throughout the pandemic, by restricting their right to strike for decent pay and conditions.

The UK already has the most draconian and restrictive strike laws in Europe and the industrialised world.<sup>6</sup> The Act would further violate workers’ human rights. Unite believes that the government’s proposals for minimum service levels are undemocratic, unlawful and unworkable.

**The proposals are profoundly undemocratic.** In significant parts of hospital services, for industrial action to be lawful, not only must more than 50% of trade union members vote in a ballot, but 40% of eligible members must also vote to support industrial action. These high thresholds well exceed any electoral requirements faced by MPs or other elected officials throughout the UK. Now, under the UK government’s plans for minimum service levels, the clear democratic mandate from union members for strike action in the NHS would be blatantly disregarded and overridden by an order issued in Whitehall.

The Act provides Secretaries of State **with largely unfettered powers**<sup>7</sup> to impose minimum service requirements with minimal input from the workers affected and virtually no parliamentary scrutiny. These powers were widely criticised by the House of Lords Delegated Powers and Regulatory Reform Committee<sup>8</sup> and the Joint Committee on Human Rights.<sup>9</sup> The Joint Committee found that “[t]he lack of any limits on the

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<sup>1</sup> <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-vacancies-survey/april-2015---june-2023-experimental-statistics>

<sup>2</sup> <https://www.nhsemployers.org/news/latest-nhs-workforce-and-vacancy-statistics#:~:text=The%20report%20shows%20that%20the,of%20130%2C000%20in%20December%202022.>

<sup>3</sup> TUC (2023) [NHS workers have “have lost over a year’s worth of salary” since 2010 – new TUC analysis reveals | TUC](#)

<sup>4</sup> <https://www.health.org.uk/news-and-comment/news/nhs-waiting-list-to-peak-at-more-than-8-million-by-summer-2024#:~:text=Charles%20Tallack%2C%20Director%20of%20Data,grow%20for%20several%20more%20months.>

<sup>5</sup> <https://news.sky.com/story/up-to-500-people-could-be-dying-each-week-due-to-emergency-care-delays-12777794>

<sup>6</sup> TUC (January 2023) Anti Strike Laws in the UK

<sup>7</sup> <https://www.tuc.org.uk/news/anti-strikes-bill-will-give-ministers-unfettered-power-restrict-right-strike-top-lawyers-warn>

<sup>8</sup> <https://committees.parliament.uk/publications/34217/documents/188239/default/>

<sup>9</sup> <https://committees.parliament.uk/publications/34229/documents/189556/default/>

*level of service that the Secretary of State may impose by regulations risks a failure to comply with the Article 11 requirement of being “in accordance with the law” as the Bill arguably currently allows for potentially arbitrary interferences with the right to strike”. The Committee therefore concluded the government has not adequately made the case that this Act meets the UK’s human rights obligations.*

**The Act fails to comply with the UK’s international obligations.**

The right to strike is a hallmark of any democratic society, recognised and protected in UN treaties, ILO Conventions, the European Social Charter (1961), and the European Convention on Human Rights, all of which the UK has ratified. Yet the introduction of minimum service level requirements would mean that some workers will lose their right to strike entirely. It is likely that significant numbers of medical, nursing, allied professional and administrative and support staff would be required to work every strike day if the government’s proposals for minimum service levels in hospitals are to be met.

The UK has also been repeatedly criticised by international agencies for violating international standards due to the lack of effective dismissal protections for striking workers.<sup>10</sup> Nevertheless, the government’s proposals could flout these human rights standards further by removing automatic unfair dismissal protection for workers who are named in an employers’ work notice but who fail to turn up at work. Furthermore, if a court concludes that a trade union has failed to comply with the duty to take reasonable steps to ensure workers named in a work notice attend work, then industrial action will no longer be protected, and all striking workers will face the risk of being sacked.

**Trade unions will be expected to police and undermine their own strikes.** The government plans to impose unprecedented duties on trade unions to take ‘so-called’ reasonable steps to ensure members named in an employers’ work notice break the strike and go to work.

Unite is appalled by the government’s proposed Code of Practice which would impose excessive and onerous restrictions and administrative burdens on trade unions. In our opinion, the Code represents a serious overreach. For example, if the Code were implemented:

- Picketing and the actions of picket supervisors would be regulated.
- The nature and accuracy of membership data held by trade unions could be further regulated.

These duties would be imposed even though they do not appear to have any basis in legislation and/or they conflict with other legal requirements. Unite is also deeply concerned that the government is seeking in the Code of Practice:

- To require trade unions to take on the role of employers, in directing members as to the work they are ‘required’ to undertake on strike days.
- To regulate the form and content of trade union communications with our members.
- To impose an obligation on trade unions to encourage their members to reveal their special category trade union membership data.
- To impose costly, onerous and completely impracticable administrative burdens on unions, failure to comply with which can result in excessive sanctions for unions and our members.

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<sup>10</sup> The European Committee on Social Rights which supervises member states compliance with the European Social Charter has in multiple reporting cycles concluded that the ability of workers to defend their interests through lawful collective action was excessively circumscribed in the UK. The Committee has taken the view that the protection of workers against dismissal when taking industrial action is insufficient and not in conformity with Article 6§4 of the Charter.

These duties and expectations are inconsistent with the role and purpose of trade unions and appear to flout trade unions' fundamental right to freedom of association protected under Article 11.

**The sanctions imposed by the Act would also be disproportionate and draconian.** As noted above, employees named in an employers' work notice will lose their automatic protection from unfair dismissal if they fail to go to work on strike days. In effect, they will be forced to break a strike they support for fear of being sacked. In addition, unions which fail to comply with the unprecedented duty to take reasonable steps to ensure members named in the work notice face the threat of legal challenge by employers, and the risk of injunctions preventing strike action, or excessive and punitive damages of up to £1 million. In addition, the Bill as introduced completely failed to define what reasonable steps trade unions are expected to take. Only the courts will be able to determine this on a case by case basis. The duties on unions and the risk of legal action are completely unforeseeable.

It is therefore of no surprise that the Joint Committee on Human Rights concluded: *"The penalties imposed on trade unions and workers for failing to comply with the requirements of the Bill and of any work notice issued by an employer are severe"* and why the Committee called on the government to reconsider the legislation.

**International comparisons:** The government has repeatedly tried to justify the Bill by claiming that countries across Europe already use minimum service level requirements. However, the government has failed to acknowledge that other governments which may impose minimum service level requirements that are also failing to comply with international human rights standards. For example, the ILO found France had breached its international obligations in imposing minimum service levels in relation to industrial action at an oil refinery plant. The UK government's proposals, including the sanctions imposed on individuals and trade unions, well exceed any restrictions imposed in Spain, Italy or France. Ministers also refuse to recognise that minimum service levels elsewhere in Europe are achieved through social partnership arrangements, not through diktats from Government Ministers in Whitehall.

**Damaging industrial relations:** The introduction of minimum service levels for hospital services is likely to poison industrial relations and to damage staff morale.

The government's impact assessment also acknowledges that the proposals could weaken the bargaining power of trade unions. This will do nothing to improve the recruitment and retention crisis in the NHS or to reducing NHS waiting times which now stand at record levels due to a decade of government-imposed pay cuts and underfunding.

The latest annual NHS Staff Survey reveals that fewer than one in three NHS staff are satisfied with pay. Continuing to suppress pay can only accelerate the rate of staff exits, with staff choosing to leave for better paid jobs.

Employers in the sector have expressed similar fears. During the Parliamentary stages of the Strikes Bill, NHS Providers highlighted concerns that: *"this Bill risks damaging relationships in the NHS between trust leaders and their staff, and between trust leaders and local union representatives at a particularly fraught time, without addressing and of the issues underlying current strike action or providing a useful alternative approach to managing service provision during periods of strike action."*<sup>11</sup>

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<sup>11</sup> NHS Providers (2023) <https://nhsproviders.org/media/695220/strikes-minimum-service-levels-bill-hol-committee-stage-2.pdf>

**The government's proposals are also unnecessary.** It is custom and practice for life-and-limb cover to be agreed by health unions, locally at Trust level, during industrial disputes. This system is buttressed by close trade union collaboration with NHS Employers and NHS England at a national level, through which concerns and incidents can be flagged during strike days.

Minimum service level regulations would replace a system tailored to the needs of the workplace and agreed by employers and unions with a national service level mandated from Whitehall.

Unite believes that the existing voluntary arrangements work well, as was acknowledged by the Government's Impact Assessment which accompanied the MSL consultation for the ambulance services.

Analysis of data on major incidents confirms that industrial action has not led to an increase in major incidents. Instead they are a product of the under-resourcing and under-staffing within the NHS.

**The proposals for minimum service levels are also counter-productive.**

The government's own Impact Assessment<sup>12</sup> accompanying the consultation warns that the policy could lead to increased industrial action:

*"Implementing MSLs [...] in the could increase tensions between unions and health service employers. This may result in more adverse impacts in the long term, such as an increased frequency of strikes for each dispute, including action in areas not covered by the MSL."* The assessment also acknowledged that the regulations could lead to an increase in action short of a strike.

Making it easier for employers to sack staff will also do nothing to support public services which are already struggling with staffing crises. The latest NHS vacancy statistics found that the total number of vacancies in June 2023 was 125,578, a vacancy rate of 8.9%.

## **Conclusion**

Public services are on the brink of collapse after more than a decade of austerity. We remain in the midst of an unprecedented cost of living crisis Working people are seeing their incomes squeezed and their standards of living fall as prices rise. At the same time company profits soar.

Yet, instead of getting on with their day job and solving the many crises of their own making, this government has chosen to play politics and attack a fundamental workers' right through the introduction of minimum service levels.

The UK government promised rewards for the key workers they clapped during the pandemic but what they have delivered time and time again are real term pay cuts and a lack of investment in the NHS. Now they are resorting to threatening workers with the sack if they take action for better terms and conditions.

Unite supports our members 100% and we will not stand for this. We will use every means at our disposal to defend the right to strike.

Rather than adopting the worst practices from other countries, the government should commit to improving workers' rights, put an end to exploitative fire and rehire tactics and promote collective

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<sup>12</sup> <https://assets.publishing.service.gov.uk/media/651bd775e4e65800d59d83e/msl-hospital-services-impact-assessment.pdf>

bargaining. Collective bargaining is widely recognised as the most effective route for delivering sustainable pay increases, tackling inequality at work and promoting investment in skills, training and productivity.

Unite's policy is for the government to abolish the NHS Pay Review Body and introduce permanent, free collective bargaining on pay for NHS staff. Unite has led the way in adopting this policy and other unions are starting to follow because of the loss of confidence in the current pay setting process in England, Wales and Northern Ireland which relies on the NHS Pay Review Body (NHS PRB). The Scottish Government no longer submits remits to the UK wide Pay Review Body and engages in free collective bargaining alongside trade unions and NHS employers.

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## Consultation Questions

### Question 1.

**To what extent do you agree or disagree that current arrangements are sufficient in providing cover for essential services?**

- Strongly agree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite firmly believes that legislation imposing minimum levels of services is unnecessary, undemocratic and unworkable.

There is a long-standing history of constructive, joint working between NHS employers and trade unions. It is custom and practice for life-and-limb cover to be agreed by unions locally and trust by trust during industrial disputes. These agreements protect patients at the same time as respecting the fundamental right for health workers to strike. This was demonstrated during the ambulance service strikes between December 2022 and February 2023.

The Equality and Human Rights Commissions (EHRC) has expressed concern that the government has not demonstrated that the legislation is necessary given the existence of voluntary sector agreements.<sup>13</sup>

Government-imposed minimum service levels could poison industrial relations in the NHS, replacing a system tailored to the needs of the workplace and agreed by employers and unions with a national service level mandated from Whitehall that is far less responsive to the needs of NHS patients.

During the Parliamentary Stages of the Strikes Bill, NHS Providers expressed concerns about the potential impact of the legislation on employment relations in the NHS: *"this Bill risks damaging relationships in the NHS between trust leaders and their staff, and between trust leaders and local union representatives at a*

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<sup>13</sup>

[https://www.equalityhumanrights.com/sites/default/files/strike\\_minimum\\_service\\_levels\\_bill\\_statement\\_feb\\_23\\_002.docx](https://www.equalityhumanrights.com/sites/default/files/strike_minimum_service_levels_bill_statement_feb_23_002.docx)

*particularly fraught time, without addressing the issues underlying current strike action or providing a useful alternative approach to managing service provision during periods of strike action.”<sup>14</sup>*

## Question 2

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**To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action to achieve this**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 500 words).**

The introduction of minimum service levels in hospital services would be unnecessary, undemocratic and unworkable.

NHS staff are professionals who commit their working lives to caring for patients. They only consider industrial action as a matter of last resort. The recent industrial action demonstrates the level of dissatisfaction and low morale amongst NHS staff. The imposition of minimum service levels would mean that their democratic wishes would be blatantly disregarded and overridden by a diktat issued in Whitehall.

It would also damage constructive industrial relations in the NHS and do nothing to resolve on-going pay disputes. Instead it is likely to exacerbate the existing recruitment and retention crisis in hospital services, deterring potential new recruits and negatively impacting retention as workers fear they may be sacked for taking industrial action in defence of their pay and conditions. It is likely to be counter-productive, leading to aggravated and prolonged disputes.

Employers in the sector agree and have expressed their concern at the legislation with NHS Providers briefing parliamentarians: *“this Bill risks damaging relationships in the NHS between trust leaders and their staff, and between trust leaders and local union representatives at a particularly fraught time, without addressing and of the issues underlying current strike action or providing a useful alternative approach to managing service provision during periods of strike action.”<sup>15</sup>*

The TUC’s recent complaint to the ILO exposed how the imposition of minimum service levels will breach the UK’s international obligations<sup>16</sup>. Similarly the Joint Committee on Human Rights found that the legislation equates to *“a serious interference with Article 11 rights.”<sup>17</sup>*

The Strikes Act would also introduce punishing sanctions. Employees could lose their automatic protection from unfair dismissal. Many will feel compelled to work on strike days for fear of being sacked. Trade unions will be expected to police and undermine their own strikes. Failure to comply would mean that legal protection for strikes is lost, meaning unions could face injunctions or be required to pay excessive penalties.

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<sup>14</sup> <https://nhsproviders.org/media/695569/strikes-minimum-service-levels-bill-lords-report-26-04-2023.pdf>

<sup>15</sup> NHS Providers (2023) <https://nhsproviders.org/media/695220/strikes-minimum-service-levels-bill-hol-committee-stage-2.pdf>

<sup>16</sup> <https://www.tuc.org.uk/research-analysis/reports/tuc-submission-ceacr>

<sup>17</sup> JCHR (2023) [Legislative Scrutiny: Strikes \(Minimum Service Levels\) Bill 2022–2023 - Joint Committee on Human Rights \(parliament.uk\)](https://www.parliament.uk/resources/jchr/legislative-scrutiny-strikes-minimum-service-levels-bill-2022-2023)

The proposals are also unnecessary. It is custom and practice for life-and-limb cover to be agreed by health unions during industrial disputes. Minimum service levels would replace a system tailored to the needs of the workplace and agreed by employers and unions with a national service level mandated from Whitehall.

The Joint Committee on Human Rights concluded: *“We do not consider that the Government has given clear and compelling reasons why the current legal protections that apply to strikes and the current practice of establishing voluntary minimum service levels are no longer sufficient to balance the rights of the wider public against the rights of the employees and unions concerned.”*<sup>18</sup>

The Regulatory Reform Committee gave the government’s impact assessment of the Bill a red-rating concluding it was ‘not fit for purpose’, as the *“makes use of assumptions in the analysis which are not supported by evidence.”*<sup>19</sup>

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### **Question 3.**

**To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for in-patients already receiving hospital care:**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Further to our principled and practical objections to the introduction of legislative minimum service levels in hospital services as set out above, we do not agree this proposal should be introduced during strike action for in-patients already receiving hospital care or any other areas of hospital services.

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### **Question 4.**

**To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for existing patients requiring urgent elective treatment?**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Further to our principled and practical objections to the introduction of legislative minimum service levels in hospital services as set out above, we do not agree this proposal should be introduced for existing patients requiring urgent elective treatment or any other areas of hospital services.

It is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes. Unite takes the view that these local, trust by trust voluntary arrangements are effective. The government

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<sup>18</sup> Ibid

<sup>19</sup> Gov.UK (20230 [Strikes \(Minimum Service Levels\) Bill: RPC Opinion \(Red-rated\) - GOV.UK \(www.gov.uk\)](#))



proposals would replace a system which is tailored to the needs of the workplace and local area and agreed by employers and unions with a national service level mandated from Whitehall.

Unite remains committed to participating in existing local, voluntary arrangements to ensure that life and limb cover is provided for the public during strike days.

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#### **Question 5.**

**To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for existing patients needing emergency, critical or urgent assessments, diagnostics or treatment?**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite is strongly opposed to the introduction of Minimum Service Levels. Further to our principled and practical objections to the introduction of minimum service levels in hospital services as set out above, we do not agree this proposal should be introduced for existing patients needing emergency, critical or urgent assessments, diagnostics or treatment or any other areas of hospital services.

It is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes. Unite takes the view that these local, trust by trust voluntary arrangements are effective. The government proposals would replace a system which is tailored to the needs of the workplace and local area and agreed by employers and unions with a national service level mandated from Whitehall.

Unite remains committed to participating in existing local, voluntary arrangements to ensure that life and limb cover is provided for the public during strike days.

#### **Question 6.**

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**To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for new patients presenting to the hospital requiring unplanned assessment, diagnostics and/or treatment?**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite is strongly opposed to the introduction of Minimum Service Levels. Further to our principled and practical objections to the introduction of minimum service levels in hospital services as set out above, we do not agree this proposal should be introduced for new patients presenting to hospital requiring unplanned assessment, diagnostics and/or treatment, or any other areas of hospital services.

As noted elsewhere, it is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes. Unite takes the view that these local, trust by trust voluntary arrangements are effective. The

government proposals would replace a system which is tailored to the needs of the workplace and local area and agreed by employers and unions with a national service level mandated from Whitehall.

Unite remains committed to participating in existing local, voluntary arrangements to ensure that life and limb cover is provided for the public during strike days.

#### **Question 7.**

**To what extent to you agree or disagree with allowing local clinicians to determine whether their patients fall under the categories for MSL outlined in the principles listed above during strike action?**

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- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite is strongly opposed to the introduction of Minimum Service Levels. Further to our principled and practical objections to the introduction of minimum service levels in hospital services as set out above, we do not agree with the proposal.

It is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes. Unite takes the view that these local, trust by trust voluntary arrangements are effective. The government proposals would replace a system which is tailored to the needs of the workplace and local area and agreed by employers and unions with a national service level mandated from Whitehall.

Unite remains committed to participating in existing local, voluntary arrangements to ensure that life and limb cover is provided for the public during strike days.

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#### **Question 8.**

**If MSL regulations are introduced for hospital services, which types of employers should be specified to follow these regulations during strike action?**

- No employers should be specified by MSL regulations

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite is strongly opposed to the introduction of Minimum Service Levels. Further to our principled and practical objections to the introduction of minimum service levels in hospital services as set out above, we do not agree any employers should be subject to or specified by MSL regulations.

We would be particularly concerned if commissioners (ICBs) were to be involved in the setting of minimum service level requirements because they do not employ the workers who provide the service.

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#### **Question 9.**

**To what extent do you agree or disagree that MSLs should not include community-based health services?**

- Strongly disagree

**Please explain your position and provide any supporting evidence (maximum 250 words).**

Unite is strongly opposed to the introduction of Minimum Service Levels. Further to our principled and practical objections to the introduction of minimum service levels in hospital services as set out above, we do not agree this proposal should include community-based health services or any hospital services.

It is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes. Unite takes the view that these local, trust by trust voluntary arrangements are effective. The government proposals would replace a system which is tailored to the needs of the workplace and local area and agreed by employers and unions with a national service level mandated from Whitehall.

Unite remains committed to participating in existing local, voluntary arrangements to ensure that life and limb cover is provided for the public during strike days.

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**Question 10.**

**Do you think there is an alternative option to introducing MSLs in hospitals, to ensure continuity of access to essential services and protect patients from risks to life and life-changing harm during strike action?**

- Yes

**Please explain your position and provide any supporting evidence (maximum 250 words).**

There is a long-standing history of constructive, joint working between NHS employers and trade unions at a local level that has patient safety at its heart.

It is custom and practice for cover to be agreed at a local level between unions and employers during industrial disputes that ensures continuity of access to emergency hospital services, as was the case during hospital services strikes that took place between December 2022 and throughout 2023.

The Strikes Act provides Ministers with wide-ranging powers to override these well-established local arrangements, without the requisite local knowledge to understand the needs of patients being cared for and treated within a hospital setting.

Unite firmly believes the status quo should remain, with voluntary derogations agreed at a local level between employers and trade unions.

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**Question 11.**

**Are there groups of people, such as (but not limited to) those with protected characteristics, who would benefit from the proposed introduction of minimum service levels in some or all hospital services?**

- No

**Why?**

Patients, families and communities are all suffering as the result of record NHS waiting lists, which now stand at 7.77 million (due to rise to 8 million by summer 2024), with the elderly and those with long term illnesses being worst affected.<sup>20</sup> The number of people who are economically inactive because of long-term sickness is now over 2.5 million,<sup>21</sup> leading to the growth in-house poverty.

But these waiting lists are not caused by industrial action. They are the product of thirteen years of the government's under-investment in the NHS and the suppression of public sector pay which contribute to the recruitment and retention crisis in the NHS workforce.

Instead of seeking to attack key workers within the NHS, Unite calls on the government to invest in NHS services and training and in the real terms restoration of NHS pay and conditions.

Good industrial relations between employers and NHS staff are also in everyone's interests. It reduces staff turnover and delivers better quality and consistent care for patients.

Unite is deeply concerned that this minimum service level will damage industrial relations and could lead to worsening levels of service.

Employers understand this and have voiced their concerns over this approach. As NHS Providers have stated, these proposals place: *'undue, and unfair, responsibility on trusts as employers to guarantee minimum service levels, without any of the tools to resolve the issues in hand given that NHS pay is determined nationally. There is also no detail about what would happen if these minimum levels are not met outside of a period of industrial action, or whose responsibility that would be'*<sup>22</sup>.

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**Question 12.**

**Are there groups of people, such as (but not limited to) those with protected characteristics, who would be negatively affected by the proposed introduction of minimum service levels in some or all hospital services?**

- Yes

**Which particular groups might be negatively affected and why?**

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<sup>20</sup> <https://www.health.org.uk/news-and-comment/news/nhs-waiting-list-to-peak-at-more-than-8-million-by-summer-2024#:~:text=Charles%20Tallack%2C%20Director%20of%20Data,grow%20for%20several%20more%20months.>

<sup>21</sup>

<https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/economicinactivity/articles/risingillhealthanddeconomicinactivitybecauseoflongtermsicknessuk/2019to2023#:~:text=Our%20Economic%20inactivity%20by%20reas on,is%20now%20over%202.5%20million.>

<sup>22</sup> <https://nhsproviders.org/media/695220/strikes-minimum-service-levels-bill-hol-committee-stage-2.pdf>

Women, black and ethnic minority workers and disabled workers are overrepresented in the public sector workforce. Attempts to impose levels of minimum service in hospital services would therefore have a disproportionate and negative impact on the rights of these workers with protected characteristics to participate in lawful, industrial action. Race equality organisations have raised their concern about the disproportionate impact of this legislation. The Equality Trust, the Joint Council for the Welfare of Immigrants (JCWI) and Runnymede Trust, joined the TUC in warning that the Strikes Bill will be a huge step backwards for tackling racism at work in Britain and that *“attacking the right to strike will hit BME workers’ wages by undermining their ability to win a better deal at work.”*<sup>23</sup>

Individual workers could find themselves subject to dismissal if they exert their democratic and fundamental right to strike. And all workers in hospital services are liable to lose out economically due to the undermining of their ability to bargain for better terms and conditions. The government’s own impact assessment made this clear.

Women make up 77 per cent of the NHS workforce. Women’s rights campaign groups have raised the alarm on minimum service legislation, saying it will have a silencing effect on women. Jemima Olchawski, chief executive of the Fawcett Society, said: *“For many women who work in systemically undervalued sectors, strike action is critical to making their voices heard. What’s more, we know that women, especially women of colour, are at the sharp end of the cost of living crisis – workplaces must work for women and the starting point for this must be decent pay and working conditions.”*<sup>24</sup>

## Contact

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<sup>23</sup> [Strikes Bill “huge step backwards” for tackling racism at work – TUC, Runnymede, Equality Trust and JCWI | TUC](#)

<sup>24</sup> [Anti-strike bill discriminates against women, say campaigners | Industrial action | The Guardian](#)