

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Safe Nurse Staffing Levels \(Wales\) Bill](#) / [Bil Lefelau Diogel Staff Nyrsio \(Cymru\)](#)

Evidence from Nursing and Midwifery Council – SNSL(Org) 15 / Tystiolaeth gan Y Cyngor Nyrsio a Bydwreigiaeth – SNSL(Org) 15

Nursing and Midwifery Council response to The National Assembly for Wales’ Health and Social Care Committee call for evidence on the Safe Nurse Staffing Levels (Wales) Bill

- 1 We are the Nursing and Midwifery Council (NMC). We are the statutory regulator for nurses and midwives in the UK. We exist to:
 - 1.1 protect the health and wellbeing of the public;
 - 1.2 set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers; and,
 - 1.3 ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- 2 We hold the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we have a duty to investigate that allegation and, where necessary, take action to safeguard the health and wellbeing of the public.
- 3 We welcome the opportunity to provide written evidence to The National Assembly for Wales’ Health and Social Care Committee on the Safe Nurse Staffing Levels (Wales) Bill, please find below our response.

Safe staffing

- 4 The importance of appropriate staffing was reinforced by the Francis Report into failings at Mid Staffordshire NHS Foundation Trust in England. Appropriate staffing plays a fundamental part in the delivery of safe and effective health and care. Safe staffing can be a complex area and has to take account of multiple factors. It must be matched to patients’ needs and is about skill-mix as well as numbers, about other staff as well as nurses, and other settings as well as hospitals. It is the responsibility of health and care providers, which are regulated by system regulators in the four countries of the UK.

- 5 As a professional regulator it is not the role of the NMC to set or assure standards related to appropriate staffing. Registration is an important safeguard, but employers have the primary responsibility to make sure they employ the right number of staff with the right skills and experience in the right posts. As such, we do not expect the Safe Nurse Staffing Levels (Wales) Bill to have a direct impact on the work of the NMC.
- 6 However, we are aware that this area has a bearing on what we do in a number of ways and that aspects of the Code¹ and NMC guidance place an emphasis on nurses and midwives to raise concerns, including issues with regards to safe staffing levels. In June 2014 the NMC produced a briefing paper on appropriate staffing in health and care settings (please see **Annex 1**).

The Code and raising concerns

- 7 The Code contains the professional standards that registered nurses and midwives must uphold. UK nurses and midwives must act in accordance with the Code, whether they are providing direct care to individuals, groups or communities or bringing their professional knowledge to bear on nursing and midwifery practice in other roles, such as leadership, education, or research. The NMC will publish a revised version of the Code in January 2015, coming into effect in March 2015.
- 8 Environmental factors like staffing levels can affect nurses' or midwives' ability to uphold the values of the Code. Nurses and midwives have a professional duty to report any concerns from their workplace which put the safety of people in their care or the public at risk.
- 9 The revised Code places a greater emphasis on raising concerns, including concerns they have over staffing levels or as a consequence of staffing levels. The Code states nurses and midwives must:
 - 9.1 *Act without delay if they believe that there is a risk to patient safety or public protection.* This includes raising and, if necessary, escalating any concerns held over patient or public safety, or the level of care people are receiving in the workplace or any other healthcare setting. Nurses and midwives must also raise concerns if being asked to practice beyond their remit, experience or training.
 - 9.2 *Raise concerns immediately if they believe a person is vulnerable or at risk and in need of additional support and protection.* Nurses and midwives must take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse, and must disclose information if you believe someone may be at risk of harm.
 - 9.3 *Be aware of, and minimise, any potential for harm associated with their practice.* Nurses and midwives must consider how to take measures to minimise the likelihood of errors, near misses, harms and the impact of harm if it occurs.

¹ The Code: Standards of conduct, performance and ethics for Nurses and Midwives (2008), NMC. (<http://www.nmc-uk.org/Publications/Standards/The-code/Introduction/>)

- 10 We recognise that nurses and midwives who raise a genuine concern and act with the best of intentions and in line with the principles laid down in this guidance are meeting their professional responsibilities and adhering to the Code. Failure to report concerns may bring their fitness to practise into question and put their registration at risk.
- 11 A nurse or midwife has a professional duty of candour to be open and honest with a patient when something goes wrong with their treatment or care causes, or has the potential to cause, harm or distress. The NMC alongside the General Medical Council (GMC) is in the process of consulting on its guidance on this. The draft guidance states that a nurse or midwife, must be open and honest with patients, with colleagues, and with employers. If something goes wrong when providing care, a nurse or midwife must report it whether or not it leads to actual harm.

Employers and management

- 12 It is not the role of the NMC to ensure that healthcare environments have safe and appropriate staffing levels.
- 13 Appropriate staffing is a collective responsibility of boards and executive teams. Nurses and midwives who hold senior positions, such as directors of nursing are not necessarily individually responsible for appropriate staffing, and staffing concerns do not automatically imply a fitness to practise concern about executive level nurses and midwives.
- 14 However the Code applies to every registered nurse and midwife whatever their role and scope of practice, including directors of nursing who are members of leadership teams responsible for safe staffing. Recent fitness to practise cases demonstrate that managers and directors can be sanctioned for presiding over poor care just as frontline nurses and midwives can be sanctioned for delivering poor care.
- 15 The Code states that nurses and midwives must uphold certain standards and values (see 8.1, 8.2, 8.3). A referral to the NMC could raise concerns about an individual's fitness to practise based on these standards and failing to raise concerns about staffing levels.

Staffing and fitness to practise

- 16 Our fitness to practise processes routinely test and weigh evidence about the responsibility of nurses and midwives and the impact of the care environment. While it is not the primary purpose of the NMC to ensure safe staffing levels, if a nurse or midwife is referred to the NMC on the basis of an allegation to do with staffing we may explore whether the registrant:
 - raised concerns,
 - assessed evidence of risk to patients,
 - sought to mitigate risk.

- 17 Professional accountability means being prepared to account for difficult decisions and being able to give a robust account of acting on good evidence and in the best interest of patients.
- 18 Expectations of registrants will depend on their role and level of seniority. There may be higher expectations of a director of nursing in this regard than a ward manager, for example. However, all registrants should be aware of their individual and collective responsibilities.
- 19 If a nurse or midwife accepts responsibility for practice which is deemed to be beyond their capability and which has resulted in errors in practice, both the employee and employer are accountable. The employee for failing to acknowledge their limitations, and the employer for failing to ensure that the employee has the appropriate skills and knowledge.

Staffing and education

- 20 We set and monitor standards for education of nurses and midwives, which takes place in higher education institutions (HEIs) and in healthcare settings. Pressures on staffing can have an impact on practice placement settings, where they make it harder for nurses and midwives to dedicate time to supporting students. We require HEIs to monitor and mitigate risks to practice placements. If we have evidence that staffing levels may be affecting the training environment, we may ask education providers to investigate and provide assurance.
- 21 Our guidance places responsibility on nursing and midwifery students to raise concerns. *Guidance on professional conduct for nursing and midwifery students*, states that students should:
 - 21.1 Inform their mentor, tutor or lecturer immediately if they believe that they, a colleague or anyone else may be putting someone at risk.
 - 21.2 Seek help immediately from an appropriately qualified professional if someone for whom they are providing care has suffered harm for any reason.
 - 21.3 Seek help from their mentor, tutor or lecturer if people indicate they are unhappy about their care or treatment.

Staffing and revalidation

- 22 From January 2016, nurses and midwives will have to undergo a process of revalidation every three years. Amongst other requirements, this will include showing that they have met the continuing professional development (CPD) standards and reflection on their practice, based on the requirements of the code, using feedback from service users, patients, relatives, colleagues and others.
- 23 Revalidation will ensure that nurses and midwives are regularly appraised, meet the standards of the Code, including those relating to raising concerns, and keep themselves up to date through CPD.

Working with others

- 24 We will inform the appropriate system regulator if we uncover concerns about a provider when we are investigating a fitness to practise referral or as part of our work in quality-assuring nurse training. Such concerns could include claims of unsafe staffing or the suppression of concerns raised by staff. We also encourage system regulators to inform us if they have concerns about the conduct or practice of individual nurses or midwives in respect of staffing or any other matter covered by the Code.

Annex 1

NMC Briefing

Appropriate staffing in health and care settings

What is the NMC's interest in staffing?

The importance of appropriate staffing was reinforced by the Francis Reports into failings at Mid Staffordshire NHS Foundation Trust in England. Appropriate staffing plays an important part in the delivery of safe and effective health and care. Safe staffing can be a complex area and has to take account of multiple factors. It must be matched to patients' needs and is about skill-mix as well as numbers, about other staff as well as nurses, and other settings as well as hospitals. It is the responsibility of health and care providers, which are regulated by system regulators in the four countries of the UK.

As a professional regulator it is not the job of the NMC to set or assure standards related to appropriate staffing.

However, it is a matter that has a bearing on what we do in a number of ways. This briefing sets out some of the regulatory considerations raised by this issue.

What does the Code for nurses and midwives say that relates to staffing?

The Code sets out the core standards of ethics and practice expected from nurses and midwives. It is intended to support registrants in ensuring their practice meets the standard required of the professions.

Environmental factors like staffing levels can affect nurses' or midwives' ability to uphold the values of the Code. The Code says that:

You must make the care of people your first concern, treating them as individuals and respecting their dignity

This primary duty means that nurses and midwives should be vigilant about safety and quality:

You must work with colleagues to monitor the quality of your work and maintain the safety of those in your care.

It also means that they have a professional duty to act or speak out if quality and safety may be compromised:

You must act without delay if you believe that you, a colleague or anyone else may be putting someone at risk.

You must report your concerns in writing if problems in the environment of care are putting people at risk

We require nurses and midwives to uphold nationally agreed standards as well as the Code:

You must inform someone in authority if you experience problems that prevent you working within this Code or other nationally agreed standards.

For nurses and midwives in England, this would include guidance being developed by the National Institute for Health and Clinical Excellence (NICE) on safe staffing, and the National Quality Board/Chief Nursing Officer's 2013 guidance, *How to ensure the right people, with the right skills, are in the right place at the right time.*

What does the NMC's guidance on Raising Concerns say?

Our Raising Concerns guidance contains a list of examples of concerns that should be raised, including:

Issues to do with care in general, such as concerns over resources, products, people, staffing or the organisation as a whole

The Code, senior registrants and staffing

Appropriate staffing is a collective responsibility of boards and executive teams. Registrants who hold senior positions such as director of nursing are not necessarily

individually responsible for appropriate staffing, and staffing concerns do not automatically imply a concern about executive level registrants. However, the Code states that:

As a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions.

A referral to the NMC could raise concerns about an individual's fitness to practise based on the 'actions or omissions' of a senior registrant. Factors such as how staffing requirements were set, what mechanisms for monitoring these were in place and how well concerns were listened to would be important considerations in such a case.

We have always been clear that the Code applies to every registered nurse and midwife whatever their role and scope of practice, including directors of nursing who are members of leadership teams responsible for safe staffing. Recent fitness to practise cases demonstrate that managers and directors can be sanctioned for presiding over poor care just as frontline nurses and midwives can be sanctioned for delivering poor care.

Staffing and fitness to practise

Our fitness to practise processes routinely test and weigh evidence about the responsibility of nurses and midwives and the impact of the care environment. If a nurse is referred to the NMC on the basis of an allegation to do with staffing we may explore whether the registrant:

- raised concerns
- assessed evidence of risk to patients
- sought to mitigate risk

We understand that taking the right decisions about staffing on the ground is not always straightforward. For example, closing a ward to admissions may be in the best interests of patients already admitted and being treated, but may not be in the interests of those waiting for admission in A&E. Also, nurses may be advising operational managers rather than in direct charge. Professional accountability means being prepared to account for tricky decisions and being able to give a robust account of acting on good evidence and in the best interests of patients.

Expectations of registrants will depend on their role and level of seniority – there may be higher expectations of a director of nursing in this regard than of a ward manager, for example. However, all registrants should be aware of their individual and collective responsibilities.

Staffing and education

We set and monitor standards for the education of nurses and midwives, which takes place in higher education institutions (HEIs) and in healthcare settings. Pressures on staffing can have an impact on practice placement settings, where they may make it

harder for nurses and midwives to dedicate time to supporting students. We require HEIs to monitor and mitigate risks to practice placements. If we have evidence that staffing levels may be affecting the training environment, we may ask education providers to investigate and provide assurance.

Recruitment challenges and registrations

People must be registered with the NMC to practise as a nurse or midwife in the UK. We uphold the public interest by setting standards for entry to the register and being consistent in their application.

Registration is an important safeguard, but employers have the primary responsibility to make sure they employ staff with the right skills and experience in the right posts.

Staff shortages may lead employers to recruit overseas. Overseas nurses are a valuable resource for UK healthcare providers. It typically takes longer to register overseas applicants to the register. Although EU applications are usually quicker than non-EU applications, employers need to take responsibility in the interest of patients for checks on matters such as language competence that regulators cannot yet require as part of registration.

Regulators have challenging targets for completing registrations because our performance has a direct impact on the front line. But in order to protect the public we must not cut corners when it comes to making sure applicants are who they say they are, and are qualified to do the work of registered nurses and midwives.

However, there are things we can do to help:

- Provide clear guidance on the information we need to manage initial registrations and renewals
- Be proportionate – only require what is necessary to protect the public
- Process registrations as quickly as possible, consonant with taking the necessary steps to check eligibility
- Collaborate as appropriate with workforce bodies leading recruitment and returning campaigns

Working with others

We will inform the appropriate system regulator if we uncover concerns about a provider when we are investigating a fitness to practise referral or as part of our work in quality-assuring nurse training. Such concerns could include claims of unsafe staffing or the suppression of concerns raised by staff. We also encourage system regulators to inform us if they have concerns about the conduct or practice of individual nurses and midwives in respect of staffing or any other matter covered by the Code.

NMC website address: <http://www.nmc-uk.org/About-Us/Safe-staffing>

References

[2nd Francis report](#)

[DH \(2013\) Hard Truths](#)

[NQB/CNO \(2013\) How to ensure the right people, with the right skills, are in the right place at the right time.](#)

[Safety data \(June 2014\)](#)

June 2014