Coleg Nyrsio Brenhinol
Cymru
Royal College of Nursing
Wales

Implementing the NURSE STAFFING LEVELS (Wales) ACT 2016

Capturing the journey from legislation to implementation

Coleg Nyrsio Brenhinol Cymru
Royal College of Nursing Wales

CONTENTS

First published: September 2021

EXECUTIVE SUMMARY

Since the onset of devolution of legislative power to Wales, the RCN Wales has built a formidable reputation for campaigning and influencing policy and legislative change in Wales. Few organisations, if any, have achieved the same level of impact as RCN Wales has over the last 20 years.

The passing of the Nurse Staffing Levels (Wales) Act 2016 (to be referred to through this paper as 'the Act'), the first of its kind in Europe, stands as a testament to the ability of the organisation to campaign effectively, to engage in political and legislative processes with evidence, and to support both the introduction and passage of key legislation to set minimum nurse numbers in acute hospital settings.

However, it is important to understand that professional operational practice does not change overnight with the enactment of new law. A significant amount of work is required to operationalise and fully implement legislative change, and this can be as challenging as getting the law on the statute book. This report explains what happened during the two-year period between 2016 and 2018, when policymakers and clinical practitioners set about turning the hopes and aspirations of the Act into reality. It accompanies the historical narrative covering the long journey to passing the Act – captured in **An act of compassion: The Story of the RCN Wales Campaign for the First Safe Nurse Staffing Law in Europe**.[1]

[1] Royal College of Nursing Wales (2018) *An act of compassion: the story of the RCN Wales campaign for the first nurse staffing law in Europe, Cardiff: RCN Wales.*

This report explores, with insights from those key contributors who were central to the passing and implementation of the Act, what actions made the difference in delivering the legislation. In enacting and implementing legislation there are always assumptions about the ease with which a new law will work. There are also unintended consequences or challenges which can affect the pace and success of implementation, to which this report alludes.

This report also lays out the work that RCN Wales undertook to advance the professional agenda through legislative means. As a professional body, RCN Wales relies on its members to support and engage in the political process in order to secure change for those across the nursing profession, to support their professional roles and development, and to continue improving levels of care.

This report is for the members of RCN Wales, and for those with an interest in how workplace legislation can be successfully implemented. It is important because change is not a one-off; delivering legislation, whilst an achievement, is not the end of the story unless it can be effectively implemented.

NURSE STAFFING LEVELS (WALES) ACT

JOURNEY TO IMPLEMENTATION

2006
The campaign to secure safe staffing levels begins.

2006 (May)
The RCN Congress passes a resolution demanding UK-wide legislation to ensure appropriate staffing levels.

2007 (Sept)
'Get it Right' campaign launches, which, over 3 years, consolidates workforce planning in the minds of Assembly Members (AMs).

2011
'Time to Care' campaign launches, which includes a clear demand for a statutory duty for safe care.

2013
Kirsty Williams AM is successful in a ballot to introduce a private member's bill on safe staffing.

2014
Kirsty Williams AM formally presents the bill to the National Assembly to start its legislative journey.

2016
The Nurse Staffing Levels (Wales) Act is passed by the National Assembly and is given royal assent to become law.

2017
Welsh Government publishes statutory guidance to accompany sections 25B and 25C of the Act.

2018
NHS Wales publishes non-statutory operational guidance to assist staff to practically implement the Act..

The Act is fully implemented in acute medical and surgical wards on 1 April 2018. The first set of national reports on compliance and impact are due in 2021.

BACK TO CONTENTS

PROJECT FRAMEWORK AND METHODOLOGY

The project framework underpinning this report was in two distinct parts:

1 A brief context, setting out the journey to the passage of the Act in 2016 so that the reader who is unfamiliar with the role of RCN Wales in delivering the legislation has an understanding of what has been achieved.

2 A substantive analysis section on the implementation of the Act from 2016 to 2018 considering:

   a the role of RCN Wales, NHS Wales and the Welsh Government in leading and co-ordinating the elements needed to implement the Act

   b work undertaken to design both the statutory and operational guidance, and the contribution of key players in delivering this (including the Nurse Directors Working Group; Public Health Wales National Implementation Programme Group; the work undertaken by local health boards to support their own local implementation group and ward sisters' group; work undertaken by local health boards updating IT systems

   c the contribution of key individuals and their experiences, which will be captured in this report

A significant amount of the detail for Part 1 of the report has been taken from *An act of compassion,* the historical narrative detailing RCN Wales's ten-year journey to achieving its policy objective: to get the Act onto the statute book.

The detail for Part 2 of the report was obtained predominantly through semi-structured interviews, with some written submissions of evidence. Insight Wales Consulting undertook the interview work over a six-week period from October to December 2020. Due to the Welsh Government restrictions in response to COVID-19, interviews were either conducted virtually, via the Microsoft Teams platform or, where these could not be arranged, written submissions were requested. Where virtual interviews took place, a number of these sessions were recorded, and the appropriate permissions were given by interviewees for these recordings to be stored in the RCN Wales archive.

The interviewee groups were broken down as follows:

RCN Wales Representatives
(former and current staff, and board members)

- **Richard Jones MBE** (RCN Council Member for Wales and Member of the RCN Wales Board)
- **Tina Donnelly CBE FRCN** (former RCN Wales Director)
- **Lisa Turnbull** (Policy and Public Affairs Adviser)

Welsh Government Officials **(former officials)**

- **Prof Jean White CBE** (former Chief Nursing Officer for Wales)
- **Helen Whyley** (former Welsh Government Nursing Officer on workforce regulation and developed the nurse staffing levels legislation)

Nursing Director Representatives

- **Ruth Walker MBE** (Executive Nurse Director, Cardiff and Vale University Health Board and Senior Responsible Officer on the All Wales Executive Directors of Nursing Group)
- **Mandy Rayani** (Executive Director of Nursing, Quality and Patient Experience, Hywel Dda University Health Board and Member of the All Wales Executive Directors of Nursing Group)

The set of structured questions asked in the interviews can be found in the appendix to this report.

BACKGROUND TO THE NURSE STAFFING LEVELS (WALES) ACT 2016

The granting of royal assent to the Nurse Staffing Levels (Wales) Act in April 2016, was the culmination of the first phase of a journey to realise the tangible objective of members of the nursing profession: to improve patient safety on hospital wards in Wales. For over a decade, RCN Wales members had continually advised that there was a real and substantial issue of inadequate registered nurse-to-patient ratio levels on their wards and that this was impacting on their ability to provide the excellent care of which they were capable. It was, as Gaynor Jones, former Chair of the RCN Wales Board said, "a message that we simply couldn't ignore – patient safety was being compromised by poor staffing levels."[2]

...patient safety was being compromised by poor staffing levels.

From 2006, there were no fewer than four resolutions carried at RCN Congress demanding that RCN Council (the RCN's governing body) lobby the governments of all four countries in the UK for legally enforceable staffing levels, in order to safeguard standards of patient care.

The notion of introducing legally enforceable staffing levels was not something that was completely new at that time. State legislatures in the USA and Australia had already achieved standardised nurse–patient ratios via legislation. In 2004, California had seen a significant reduction in mortality rates following the introduction of a mandatory ratio of one nurse to five patients in acute settings. Moreover, the state of Victoria, Australia, had introduced a minimum staffing law in 2001, which led to better recruitment and retention of nurses, and a reduced reliance on agency staff; these were two other key issues that were already on the radar of RCN Wales's officers and council members.

However, no such legislation had been passed anywhere in Europe by either national or sub-national legislatures, so a significant amount of learning, planning and campaigning needed to be done before any attempt could be made in Wales to bring about legislative change.

Between 2009 and the National Assembly for Wales election in 2011, RCN Wales embarked on a number of high-profile, hard-hitting campaigns, directed at both AMs and the Welsh Government, to shape the narrative around providing nurses with the best opportunity to deliver high-quality, patient-centred, efficacious care to the best of their ability, including:

[2] Royal College of Nursing Wales (2018) *An act of compassion: the story of the RCN Wales campaign for the first nurse staffing law in Europe, Cardiff: RCN Wales* (Foreword).

***Emergency Care: Get it Right* (2009)** – directed at the Welsh Government, it was the RCN's blueprint for improving patients' emergency treatment and cutting A&E waiting times. In particular, the report urged local health boards to monitor nurse staffing levels and the skill-mix in emergency care departments.

***Nursing Matters* (2010)** – directed at AMs and prospective candidates standing for election in 2011, this manifesto argued that health boards should have a statutory duty to demonstrate that they were employing sufficient registered nurses, and that the number of full-time equivalent registered nursing posts should be maintained in order to protect the quality of patient care. It also called for improved data collection on the number and grades of general practice nurses, and for more primary care nurses.

Aligned with its manifesto, RCN Wales and its members directly lobbied candidates and asked them to sign the Nursing Matters pledge, which was a promise that, if elected, to campaign for a change in the law to require health care organisations to demonstrate they had the right number of health care support workers and registered nurses to provide safe patient care.

***Time to Care* (2011)** – directed at AMs, this highlighted the need for nurses to be given "essential time to care for patients in a professional and dignified way" and included an explicit demand for a statutory duty for safe care. It also featured a suggestion to AMs of all political parties that they submit a safe staffing proposal to the members' ballot, for a private members' bill. Such a bill would have the chance to be considered during the period of the next Assembly, which was due to sit until 2016.

Aside from these direct campaigns, RCN Wales was also capitalising on general National Assembly for Wales business to bang the drum for change. It was using opportunities to build cross-party consensus in the Assembly Cross Party Group on Nursing and Midwifery, where it held the secretariat position, to get issues like the impact of the Francis Inquiry and workforce planning on the forum agenda. Moreover, it also used the scrutiny function of the Assembly's Health Committee to provide evidence into its inquiry on workforce planning in 2011.

At the same time, a number of health policy issues and protagonists were beginning to align on national and UK-wide levels that would challenge the status quo and begin to change the paradigm in favour of legislative change.

On a public policy level, the scandal of poor patient care at the Mid Staffordshire NHS Foundation Trust had started to emerge in 2007, which culminated in a full public inquiry and the publication of the Francis Report in 2013.[3] The UK Government responded to recommendations in the Francis Report by publishing Hard Truths: *The Journey to Putting Patients First*.[4] One of the key actions was to commission the Keogh Review,[5] which explored the high mortality rates and alleged poor patient care in 14 other hospital trusts in England. Wales too had its own independent inquiries examining poor patient care – the Ockenden Report[6] into the Tawel Fan Ward at Ysbyty Glan Clywd in North Wales, and the Andrews and Butler Report,[7] into the Princess of Wales and Neath Port Talbot Hospitals within the Abertawe Bro Morgannwg University Health Board. In its inspection reports between 2011 and 2013, the health care regulator – Healthcare Inspectorate Wales – also highlighted that in seven out of 12 hospitals in Wales, a shortage of staff was affecting the ability to provide dignified care. Moreover, the Older People's Commissioner for Wales raised her concerns about adequate staffing levels to meet the needs of older patients in her 2011 report, *Dignified Care?: The experiences of older people in hospital in Wales*,[8] and in subsequent follow-up progress reviews in 2012[9] and 2013,[10] as she felt the concerns raised were not being properly addressed.

[3] The Mid Staffordshire NHS Foundation Trust Public Inquiry & Francis, R. (2013*), Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry. London: Stationery Office.*"

[4] Department of Health (2014), *Hard Truths: The Journey to Putting Patients First.* [https://www.bl.uk/collection-items/hard-truths-the-journey-to-putting-patients-first-volume-one-of-the-government-response-to-the-mid-staffordshire-nhs-foundation-trust-public-inquiry] (last accessed 8 January 2021).

[5] Keogh, B. (2013), *Review into the quality of care and treatment provided by 14 hospital trusts in England: overview report.* [https://www.nhs.uk/nhsengland/bruce-keogh-review/documents/outcomes/keogh-review-final-report.pdf] (last accessed 8 January 2021).

[6] Ockenden, D. (2014), *External Investigation into the concerns raised regarding the care and treatment of patients Tawel Fan Ward, Ablett Acute Mental Health Unit, Glan Clwyd Hospital.* [http://www.wales.nhs.uk/sitesplus/documents/861/tawel_fan_ward_ockenden_internet.pdf] (last accessed 8 January 2021).

[7] Andrews, J. & Butler, M. (2014), *Trusted to Care: An independent Review of the Princess of Wales Hospital and Neath Port Talbot Hospital at Abertawe Bro Morgannwg University Health Board*. [https://gov.wales/sites/default/files/publications/2019-04/trusted-to-care.pdf] (last accessed 8 January 2021).

[8] The Older People's Commissioner for Wales (2011), *Dignified Care?: The experiences of older people in hospital in Wales.* Cardiff: The Older People's Commissioner For Wales.

[9] The Older People's Commissioner for Wales (2012), *Dignified Care: One Year On: The experiences of older people in hospital in Wales.* [http://www.olderpeoplewales.com/en/news/news/12-10-11/Dignified_Care_One_Year_On_-_Progress_Report_from_the_Older_People_s_Commissioner_for_Wales.aspx#.YPmUb6iSmUl] (last accessed 8 January 2021).

[10] The Older People's Commissioner for Wales (2013), *Dignified Care: Two Years On: The experiences of older people in hospital in Wales.* [http://www.olderpeoplewales.com/en/news/news/13-09-23/Older_People_s_Commissioner_for_Wales_publishes_Dignified_Care_Two_Years_On.aspx#.YPba0sSSmuY](last accessed 8 January 2021).

On a public finance level, in 2010 the UK Coalition Government started to pursue a policy of austerity within public sector spending, which had an impact on the Welsh Government's block grant and the amount it could spend on health care on an annual basis. At the same time, local health boards in Wales were significantly overspending on agency and bank staff because they were cutting education commissions, and unable to fill vacancies across a number of sub-speciality areas.

On a political level, the former academic and government special adviser on health, Mark Drakeford, who was elected as part of the new 2011 intake, was quickly elevated from being chair of the Assembly's Health Committee to Minister for Health in 2013. Also, the leader of the Welsh Liberal Democrats, Kirsty Williams, had her own personal experience of an understaffed hospital ward whilst taking a relative to an emergency assessment unit; this experience proved fundamental in her being persuaded by RCN Wales to put her name forward for the legislative ballot to try and generate change through a private member's bill.

Whilst being agreeable to supporting the need for legislative change and subsequently submitting her name into the last legislative ballot in 2013, for Kirsty Williams' name to be drawn out ahead of 18 other political colleagues, all vying for their own opportunity to bring forward legislation in other policy areas, was nothing other than sheer good fortune.

In *An act of compassion*, the documented story commissioned by RCN Wales to officially track the journey of the Act for its historical archive, Kirsty Williams talks about that initial moment of incredible luck:

"I was as surprised as anybody that my name was drawn out of the hat. It's kind of like politics' version of winning the lottery. So, I had the chance therefore to bring forward my idea to the floor of the chamber of the National Assembly for Wales and ask fellow Assembly Members to support that piece of legislation."

Yet, despite this first political step in attempting to bring the bill into law, it still had a long way to go and only a small chance of success.

There is generally a four-stage process for the consideration of a public bill which involves:

Introduction	the person responsible introduces the bill to debate the merits of progressing it to the first scrutiny stage (Stage 1), although it can be voted down at this stage
Stage 1	consideration of the general principles of the bill by a committee, and the agreement of those general principles by the Senedd (again it can be voted down at this stage)
Stage 2	detailed consideration by a committee of the bill and any amendments tabled to that bill
Stage 3	detailed consideration, by the Senedd, of the bill and any amendments tabled to that bill
Stage 4	a vote by the Senedd to pass the final text of the bill
Royal assent	the bill formally becomes an act and law when agreed to by the monarch.

There is an optional, additional amending stage, called the Report Stage, which can take place between stages 3 and 4, if proposed by the Member in Charge and agreed by the Senedd[11].

So, whilst RCN Wales had already done a considerable amount of the groundwork, both internally with their members and externally with politicians, policymakers and key opinion formers, there were still a number of hurdles to overcome. RCN Wales had to persuade the Minister that there was sufficient evidence to demonstrate that legislative change rather than policy change was the right course of action. It had to persuade the government that its attempt to introduce policy guidance for health boards on staffing levels was not being used and adhered to consistently. It also had to persuade NHS Wales and the health boards that there would be no unintended consequences - in relation to finance, compatibility to other care settings or resource redeployment - that could either undermine compliance or add further pressure to the health care system.

Once the bill had been presented to AMs and given consent to move to Stage 1 of the legislative process, RCN Wales had to introduce a new set of tactics, tactics that were more refined, nuanced and in some ways, more diverse; tactics that had to capture both hearts and minds. While it had to maintain campaign momentum with AMs and its own membership base, it also had to bring other senior nursing professionals and academic expertise to the table to really prove the case to the government and the

[11] Senedd Cymru | Welsh Parliament (2021), *Guide to the Legislative Process.* [https://senedd.wales/senedd-business/legislation/guide-to-the-legislative-process] (last accessed June 2021).

governing Welsh Labour Party. It also needed to capture the broader public consciousness and persuade people that legislative change was in everyone's best interests.

Richard Jones, RCN Wales Board Member and Wales's representative on the RCN Council, whose initial e-petition captured and harnessed public awareness to get the legislation past Stage 1, recognised it was important to take the public on this journey too. He said:

"The support of the general public was considerable. We had individuals actively volunteering for us in their communities encouraging people to sign the e-petition. We were very influential in delivering patient and nurses stories to demonstrate the cost-effective benefits to patients of working within the Act and that, in the long run, this would reduce patient deaths, deliver a higher quality of care and reduce readmission rates."

An act of compassion captures the range of activities that took place from March 2014 through to March 2016 and it is clear from the documented evidence that a multifaceted set of tactics were deployed over that two-year period to generate the change RCN Wales so badly sought. The timetable of the passing of the Act is set out below:

Introduction	**Debate by Responsible Member** (Kirsty Williams) – 1 December 2014
Stage 1	Public consultation, committee scrutiny, debate on bill principles – 10 December 2014 to 3 June 2015; Financial Resolution 3 November 2015
Stage 2	Committee consideration of amendments – 4 June 2015 to 25 November 2015
Stage 3	Plenary consideration of amendments – 8 December 2015 to 3 February 2016
Stage 4	Plenary passing of the bill – 10 February 2016.

There was then a period of four weeks set aside to allow for any formal legal challenge to be made, if it is considered that the Act is invalid or beyond the powers of the institution passing it.[12]

[12] Senedd Cymru | Welsh Parliament (2016), *Senedd Business: Nurse Staffing Levels (Wales) Act 2016*. [https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=11778] (last accessed 8 January 2021).

CONTENT OF ACT

The Act is succinct and straightforward in what it sets out to achieve. It places a number of overarching duties on health boards, as well as specific duties to calculate staff numbers in those specified areas of the NHS that are included in the Act, namely adult acute medical and surgical wards.

The key provisions of the Act are:

Section 25A this part refers to the overarching responsibilities placed on health boards and trusts to provide sufficient nurses in all settings (this requirement extends to all care environments where NHS Wales provides or commissions a third party to provide nurses)

Section 25B requires health boards to calculate and take reasonable steps to maintain the nurse staffing level in all adult acute medical and surgical wards. Health boards are also required to inform patients of the nurse staffing level

Section 25C requires health boards to use a specific method to calculate the nurse staffing level in all adult acute medical and surgical wards

Section 25D relates to the scope of statutory guidance issued by the Welsh Government in respect of sections 25B and 25C

Section 25E requires health boards to report their compliance in maintaining the nurse staffing level for each adult acute surgical and medical ward.

At a health board level, the requirements of the Act are reported through the Welsh Government reporting template, which allows boards to critically analyse their activities, progress and challenges. This reporting process is to ensure that boards are publicly confirming how they comply with the legislation and, crucially, board members are asked to approve staff numbers in specified wards, to discuss additional funding implications for certain wards where action is required to ensure compliance with the Act, and to consider how this work informs other workstreams such as quality and patient safety.

WHAT HAPPENED AFTER THE ACT WAS PASSED?

The Act was finally given royal assent on 21 March 2016. It was a huge achievement for RCN Wales, as it was the first piece of legislation of its kind in both the UK and the rest of Europe; only a small number of countries globally had legislated in this area. It was also another significant step forward in the development of the National Assembly for Wales, which had only acquired primary law-making powers through the 2011 referendum. This was only the second piece of member-introduced legislation to make the Welsh statute book.

Yet, even in the early aftermath of its success, RCN Wales had already launched an annual report– *Nursing numbers in Wales: An overview*[13] – to widen the scope of the Act so that the legislation could be extended to other clinical and care settings, like paediatric wards, mental health wards and even out into community nursing and nursing homes.

Following the 2016 election, this suggestion was something the new Welsh Government, led by First Minister Carwyn Jones, decided to move forward. His government's strategic five-year plan, entitled *Taking Wales Forward 2016-2021*,[14] included a pledge to extend the Nurse Staffing Levels (Wales) Act 2016 to non-acute settings, which would be overseen by the new Cabinet Secretary for Health, Vaughan Gething, who took up his post in November 2017.

However, with a piece of workplace legislation of this kind, things do not change overnight. There was to be a two-year period of phased introduction before the Act came fully into force. This phased approach allowed its elements to be aligned with the annual planning cycle in NHS Wales and gave time for the development of guidance on how the Act should be applied in practice.

...with a piece of workplace legislation of this kind, things do not change overnight...

[13] Royal College of Nursing Wales (2016), *Nursing numbers in Wales - an overview*. Cardiff: RCN Wales.

[14] Senedd Cymru | Welsh Parliament (2016), *Taking Wales Forward 2016-2021*. [http://www.wales.nhs.uk/sitesplus/documents/986/Taking%20Wales%20Forward.pdf] (last accessed 8 January 2021).

Section 25A of the Act relates to the overarching responsibility placed upon each health board, requiring health boards and trusts to ensure they have robust workforce plans, recruitment strategies, structures and processes in place to ensure appropriate nurse staffing levels across their organisations. This duty came into effect in April 2017. Section 25D of the Act required that Welsh Government devised statutory guidance to support the Act; this was launched on 2 November 2017.[15] An operational handbook was subsequently developed to assist health boards and trusts interpret and implement the requirements of the Act; this was issued at the end of March 2018.[16]

The statutory guidance and associated operational handbook relate to sections 25B and 25C of the Act and requires health boards and trusts to:

- use a specific method to calculate appropriate nurse staffing levels
- take all reasonable steps to maintain the nurse staffing levels within adult in-patient medical and surgical wards, and
- inform patients of the nurse staffing level.

These duties, together with a requirement to formally present the nurse staffing levels information to board members on an annual basis, came into effect from 6 April 2018.

Furthermore, under the reporting duties outlined in section 25E, health boards must submit a three-yearly report to Welsh Government. The first of these were submitted in the spring of 2021.

THE IMPLEMENTATION IN YEARS 2016-2018

The hopes of the profession were certainly riding high in the aftermath of the passing of the Nurse Staffing Levels (Wales) Act 2016. As RCN Wales member and senior staff nurse Neil Evans said in the culminating section of *An act of compassion*:

...we can go that extra mile...

"I think the Nurse Staffing Levels Act gives hope to nurses in Wales. It is going to help with recruitment in the profession. It is going to help with the retention of experienced nurses which is then going to deliver the exemplary care we know these patients want, that we want to give, not just the basic care as it were, the minimum amount that we can do, we can go that extra mile, what we want to do."[17]

[15] Senedd Cymru | Welsh Parliament (2017), Nurse Staffing Levels (Wales) Act 2016: *Statutory Guidance*. [https://gov.wales/sites/default/files/publications/2019-04/nurse-staffing-levels-wales-act-2016.pdf] (last accessed 8 January 2021).

[16] NHS Wales (2019), *Nurse Staffing Levels (Wales) Act 2016: Operational Guidance*. [https://heiw.nhs.wales/files/all-wales-nurse-staffing-programme/operational-guidance-v2-english-april-2019-final-for-dissemination/] (last accessed 8 January 2021).

[17] RCN Wales, 2018, p 58.

RCN Wales saw the legislation, and the implementation of it, as a fantastic opportunity not just to improve patient outcomes, but as an opportunity for the nursing profession to radically change NHS culture.

However, critical to the Act's implementation and its potential success or failure, was the statutory guidance framework and the operational guidance detail that would enable nurses, nurse leaders and health boards to deliver the Act in practice.

This section of the report takes up from where *An act of compassion* left off and examines in greater depth what happened during the two years of planning and preparing systems, and what part RCN Wales and other principal protagonists played in the shaping of key guidance and operational tools.

Development of the statutory guidance

There are two types of policy guidance:

- that which is statutory, issued by the government to support the implementation of an Act, and therefore carrying the weight of the legislation
- non-statutory guidance, such as that issued by a public body to support general improvements or which sets the standards for operating procedures within an organisation.

Preceding the introduction and enactment of the Nurse Staffing Levels (Wales) Act 2016, the Welsh Government, through the Office of the Chief Nursing Officer, was evolving policy levers to establish and formalise an approach to nurse staffing levels. In 2011, the Chief Nursing Officer (CNO), Prof. Jean White, with the executive directors of nursing of all the health boards, created the All Wales Professional Nursing Staff Group (AWPNSG). The original aim of the AWPNSG was to develop and co-ordinate a national approach to calculating nurse staffing numbers (skill mix and ratios), patient acuity and dependency assessment. In 2012, it developed the National Acuity Tool – a key workforce planning tool which underpins the duty under section 25C of the Act.

While it was evident that the Welsh Government wanted to develop, implement and evolve policy tools around the calculation of nurse staffing levels, the fundamental flaw was that the principles were either not being adhered to by health boards or they were not being consistently applied. This is why RCN Wales considered that there was no other option available other than to mandate levels and put the framework and calculation methodology into law.

However, once that law was passed, it was the CNO who had the lead role in taking forward the implementation of the legislation on behalf of the Government. She recalls:

"Once the Bill was accepted and was to be supported by Welsh Government, my team was responsible for delivering the Act. After the Act became law, my Directorate continued to work with the All Wales Nurse Staffing Group, which I had asked to be formed - and the Executive Nurse Directors, to ensure the duties of the Act were implemented."

The Nursing Directorate team within the Office of the CNO was responsible for the development of the statutory guidance, which was done in collaboration with representatives from NHS Wales, RCN Wales and other stakeholders, and with the support of the All Wales Nurse Staffing Group.

As nursing officer for workforce regulation within the CNO's Nursing Directorate, Helen Whyley was the lead policy officer charged with drafting the statutory guidance in relation to the duties set out in the Act. She recalls how important the legislation was, not just for increasing nursing staff numbers, but also in terms of reshaping workforce culture within the NHS and making the NHS more accountable to the public:

"The initial legislation was a significant achievement and a real milestone in terms of the practice of nursing; it was the first piece of legislation in Europe and it was ambitious. So, there was a real opportunity, if we got this right, to change culture.

...there was a real opportunity, if we got this right, to change culture...

It was both all about numbers but not about numbers. Now there was a legal duty and a general requirement on the NHS, as a whole, to understand the nursing establishment around things like rotas and whole-time equivalent nurses because prior to that, different health boards were interpreting staffing numbers in different ways and there was no consistency of approach. It was now a requirement of health boards and

senior directors to manage budgets to be accountable and to understand what was required in terms of education recruitment and staffing of care environments."

However, she also recalled how challenging the development of the guidance was in relation to operational practice:

"To try and capture the complexity of nursing care in an algorithm is extremely challenging. It's not just the difficulty of a prescribed method but it's how nurses employ the art and science of nursing with individual patients who can have very differing care needs. The other important element was informing patients and the general public about these changes and what it would mean in practice. There was a drive to be really transparent about safe nursing levels but not to frighten patients either; so, it was about putting together a formal narrative and context but develop a conversation. It is something really hard to set out in detail but also to simplify for the general public because of the complex variables involved with setting safe staff levels particularly around the methodology and triangulation."

Engagement was a really important aspect of developing the statutory guidance, both within government and externally. Helen Whyley worked with other civil servants across government, including legal support and other policy officers, to try and operationalise the duties that were outlined by the Act and produce a draft guidance document that could be shared and refined. External engagement with stakeholders was undertaken through organised meetings and workshop events, as well as through the production of a consultation document to elicit stakeholder feedback on a working draft of the guidance.

Public consultations are extremely important in the development of public policy and legislation because they allow the government to gather the widest set of views and opinions on whether a policy or law is necessary, whether

it is ambitious enough, whether it is clear enough in its design and function and whether it can be practically implemented. The consultation on the statutory guidance began in December 2016 and concluded in April 2017. By analysing responses, Helen and her team were able to address issues, questions and queries that came back from stakeholders regarding how the guidance would take shape and how it would be interpreted.

RCN Wales's influence and involvement

From the conclusion of *An act of compassion*, it was evident that RCN Wales wanted to play a central role in shaping and influencing both the statutory and the operational guidance documents. According to senior officials in post at this time, its focus remained resolute because so much hope was riding on the Act being comprehensively implemented. Lisa Turnbull, RCN's Policy and Public Affairs Adviser in Wales, commented:

"The feeling in the RCN was if the statutory guidance was less than robust it would have been a wasted opportunity to not only improve patient care but change nursing and health care culture. It had to be meaningful, to ensure the legislation was meaningful, and huge pressure came with that, not just in terms of the Act's ambition but that it could be operationalised in practice – it had to work on the ward level."

The statutory guidance provides guidance on sections 25B (Duty to calculate and take steps to maintain nurse staffing levels) and 25C (Nurse staffing levels: method of calculation of the Act). It also emphasises that, in accordance with section 25D, local health boards and NHS trusts in Wales, to which the duties in sections 25B and 25C apply, must have regard for the guidance when exercising their duties under those sections.

The development of guidance in relation to section 25C's duty was relatively straightforward, as RCN Wales had developed the argument extremely persuasively during the passage of the Act of the importance of the triangulation method in the calculation exercise. So, when calculating the nurse staffing level, a designated person (charge nurse or ward sister) must:

- exercise professional judgement
- take into account the average ratio of nurses to patients appropriate for providing care to patients that meets all reasonable requirements, estimated for a specific period using workforce planning tools (quality indicators)
- take into account the extent to which patients' well-being is known to be particularly sensitive to the provision of care by a nurse (patient acuity).

However, it was clear that in relation to the 25B duty, there was an under-appreciation in some quarters of the RCN of how difficult it was going to be to translate the art, science and culture of nursing into an algorithm or single methodology. Lisa Turnbull, whose professional background was in public policy and research rather than as a nursing practitioner, acknowledges that developing the statutory guidance was "very tough and complex". The RCN had to evaluate and re-evaluate the terminology and language used because it knew that each element of the guidance would be examined and scrutinised by each and every designated person responsible for implementing it. For Tina Donnelly, RCN Wales Director during this period, it was vital that there was no ambiguity in the language used in the statutory guidance, which could potentially hamper or undermine compliance with the legislation. She said:

"We had to make sure there was no potential to misinterpret nor the potential to have a different understanding. In particular, we had to make sure the operational guidance was clear and that it enabled people to have a comprehensive understanding of expectations."

The other critical factor for the long-term durability of the statutory guidance was that it needed to have the ability to evolve and adapt to changing models of care and patient acuity. Tina Donnelly said:

"We needed to ensure the guidance could be periodically reviewed with the evolution of evidence and in line with the acuity of the client base, because what is right now may not be so in four years' time. So, if they [the Welsh Government] wanted to change the guidance, it had to be evidence based and appropriate and it had to be fully consulted on."

It was therefore crucial that the RCN could bring to bear all the professional insight, knowledge and expertise of its members to help shape the guidance documents and ensure they were future-proofed.

There was a significant amount of RCN Wales engagement during the development of the statutory guidance. Officers spent over a year working with the Office of the CNO, who led the drafting process. As well as the RCN Wales Director having regular one-to-one meetings with Helen Whyley, RCN Wales officers responded to the formal consultation during the process and attended and hosted several stakeholder events and conferences to gather views and test the temperature of their members on this issue. Robust and meaningful discussions within the RCN Wales Board were also an important conduit of pre-decision scrutiny, as Richard Jones recalls:

"Board Members contributed to the discussions at the RCN Wales Board meetings when we discussed the draft statutory guidance and operational guidance and I think, in the main, our comments were taken on board when drafting."

As the lead stakeholder in the development process, RCN Wales played a pivotal role in three fundamental ways:

- bringing professional expertise and research to bear in developing the definitions and methodology – much as it had done when it brought in Linda Aiken and Prof. Anne Marie Rafferty to solidify the arguments for the legislation
- bringing the voice of the frontline nurse to bear in terms of ensuring operational knowledge was properly factored into both the statutory guidance and operational guidance documents
- providing critical challenges and feedback on government views and assumptions.

On the last point in particular, RCN Wales raised a number of concerns during the formal consultation process on the statutory guidance because it felt the matters it had raised in meetings and events with officials had not been fully translated into the draft guidance. As it stated:

"Introducing statutory guidance that is weaker and extremely vague and also less than the current non-statutory guidance will result in poorer care for patients and a likely increase in patient mortality and morbidity."[18]

The fundamental concerns it had were that:

- the CNO's Guiding Principles to support Safe Nurse Staffing Levels in Wales had not been reflected explicitly in the draft guidance
- there was no reference to a 7:1 patient to nurse ratio in the draft guidance
- there was no recognition of the supernumerary role of the ward sister/charge nurse
- there was no recognition of nursing student mentorship, which needed to be factored into the calculation process, and
- there was no detail regarding the reporting and accountability functions of health boards to support them in collecting and reporting on data required to comply with the legislation.

It was evident that unless these issues were properly addressed, RCN Wales would be unable to support the publication of the guidance as it was drafted.

Although Helen Whyley left her post in the Welsh Government before the guidance was formally signed off by all parties, she recalled how important RCN Wales was in this process:

"The Royal College of Nursing Wales were obviously key stakeholders as they supported Kirsty Williams in her Private Member's Bill to get the legislation passed. They were invited to wider stakeholder meetings but we also took the opportunity to have bespoke one-to-one meetings with them to discuss issues around definitions like, professional judgement and

[18] Senedd Cymru | Welsh Parliament (2017), *Nurse Staffing Levels (Wales) Act 2016: Consultation on the Statutory Guidance (Individual Responses)* Response 50, pp.189-194. [https://gov.wales/sites/default/files/consultations/2018-01/170831responsesen.pdf] (last accessed 8 January 2021).

what that actually meant. Another key aspect of their input was directly hearing the nurses' voice, particularly around the issue of escalation procedures and if you formalise that what consideration is needed - does it work...have we got the inference right? [...] It allowed us the opportunity to sense check the detail in the guidance and I don't believe we would've got it completely right without the RCN. So, that engagement with them was very important."

The CNO, who had ultimate oversight of the process, concurred with Helen Whyley on the influence that RCN Wales had in the statutory guidance development process:

"RCN Wales was an important stakeholder throughout the development and implementation of the Act. One very helpful element of their activities was to give critical challenge and feedback in the drafting of the statutory guidance."

Development of the operational guidance

Following the development of the statutory guidance, which was published in November 2017, the development of the operational guidance was the next key step in implementing and embedding the legislation. The operational guidance is, in effect, the detailed manual or handbook for NHS Wales and is an NHS-owned document that was created by a working group of the All Wales Nurse Staffing Group (the National Nurse Staffing Programme),[19] which includes representation from all health boards, and is agreed and signed off by their executive nurse directors. However, while the Office of the CNO had oversight responsibility, the CNO emphasised the key role the All Wales Nurse Staffing Group played in the practical, operational roll-out of the Act. She said:

"The All Wales Nurse Staffing Group was set up to help prepare the NHS for implementation of the Act and has a dedicated programme with workstreams preparing specific service areas for extension of the Act in the future. The programme officers supporting the group sat in Improvement Cymru (part of Public Health Wales) until July 2020 when the programme was moved to Health Education and Improvement Wales. The group reports to me, as CNO and the Executive Nurse Directors via their monthly forum. One of the Executive Nurse Directors chairs the national group, and each workstream has an Executive Nurse Director as sponsor."

[19] Health Education Improvement Wales (2020), *All Wales Nurse Staffing Programme.* [https://heiw.nhs.wales/programmes/all-wales-nurse-staffing-programme/] (last accessed 8 January 2021).

The All Wales Executive Directors of Nursing Group meetings were an important driving force behind developing and shaping the operational guidance, as Mandy Rayani, currently the Executive Director of Nursing, Quality and Patient Experience at Hywel Dda University Health Board recalls:

"The meetings were productive. We had Joanna Doyle, the National Nurse Staffing Programme lead in place, so she, our Senior Responsible Officer (Ruth Walker) and leads from various organisation were doing the detail and working up the guidance but they were constantly bringing forward reports, providing us with information, seeking our advice regarding what we were prepared to sign up to, even down to the paragraph and sentence minutiae within the operational guidance. I was fortunate because I got the opportunity to create a Nursing Staffing Programme lead role within the Health Board and that individual got to work with the programme board on both sets of guidance from day one. So that was another helpful channel which allowed me to contribute to shape and to influence."

RCN Wales's influence and involvement

As was the case with the Welsh Government officials, the rapport between RCN Wales and the National Nurse Staffing Programme Manager (Joanna Doyle) was professional and constructive, with good intent shown on both sides. Joanna Doyle collaborated with RCN Wales lead officers and regularly shared drafts of the guidance as it progressed, so these could be appraised as it evolved. Similar to the development of the statutory guidance, there was a formal consultation process, which allowed RCN Wales and other external stakeholders the opportunity to comment on the draft of the operational guidance.[20]

In its consultation response, RCN raised a number of key issues, including:

- the need for specific numerical standards (patient to staff ratios) to be fully reflected in the guidance
- accessibility of the handbook guide in an applicable format so that it is clear and can be practically used – including the development of a summary or 'at a glance' format

[20] Royal College of Nursing Wales (2018), *Nurse Staffing Levels (Wales) Act 2016: Operation Guidance Consultation Response*. Unpublished internal document.

- that staff are properly trained and understand the importance of the guidance
- the need for review and refinement of the guidance, particularly when the legislation is extended
- ensuring there is an "active offer" of services to patients in the Welsh language without requesting it
- that there is a clear complaints process section from 2019/2020 onward
- ensuring there is a clear, transparent process/template for reporting and communicating staff levels on a ward to patients
- that further thought and examination is given to reporting templates, as well as the auditing and monitoring process involved in the legislation, to ensure that this is as independent and as accurate as possible.

However, it was the engagement and monitoring by RCN Wales after 1 April 2018 that was also going to be critical. As Lisa Turnbull remembers:

"We wanted to see the strongest possible operational guidance. However, the implementation period was also important. We wanted to be as constructive as possible with the Programme Manager and with the Health Boards because this was a big change; it needed time to be embedded into organisational culture and we wanted to be supportive of that. We wanted to allow a reasonable amount of time for implementation and we wanted to support our members through the change as well."

This approach was certainly welcomed by Ruth Walker. She said:

"RCN have influenced heavily within government and within the Health Boards. They have also worked with the All Wales Nurse Staffing Group to assist us in making sure that the legislation was fully understood at Board and at ward level. There was an initial fear that the RCN would be very critical of Health Boards and of us, as Nurse Directors, during the early stages of implementation. There was genuine concern that this would put professional pressure on the Nurse Directors as they work with their Board to implement the Act. However, that hasn't been the case. RCN colleagues have been nurturing and encouraging and the tone of leadership has been helpful. They have also encouraged frontline staff to be part of the process, which again has been positive."

So, while there was no immediate or direct pressure from RCN Wales regarding implementation, in the interim it undertook an information-gathering exercise from health boards and its members – both quantitative and

qualitative data – to allow it to build up a broad picture of what was going on in each region and also nationally. The information gathered allowed RCN Wales to publish a monitoring report in November 2019, *Progress and Challenge: The Implementation of the Nurse Staffing Levels (Wales) Act 2016*.[21]

This report examined progress on implementation based on various sources of information, both internal and external, from the health boards. It not only sets out a number of national recommendations for the Welsh Government but also poses a list of questions to allow board members to critically self-evaluate the progress that had been made to date within their organisation; this is something they were formally mandated to do under section 25E of the Act.

This corporate ownership of the legislation was a key component of the Act for RCN Wales, as Tina Donnelly recalls:

"There has been a lot of Board engagement with development of the Act, particularly in relation to workforce planning and we have seen an increase in nursing education commissions – not just one or two but a significant increase in percentages. Nursing Directors were a bit apprehensive about whether mandating nursing numbers could actually be achieved and quite rightly so because they were the executive lead on the Health Board; so, if nurse staffing levels weren't adhered to, their anxiety was if they would be solely accountable? That's why it was so important to ensure that in the Act the responsibility would not fall on one single registrant but rather accountability would rest with the whole Health Board. That inclusion did allay a lot of the fears of the Nursing Directors and consequently ensured buy-in."

Lisa Turnbull concurred with that view, and added further:

"The importance of Health Boards not just buying into the legislation but owning the legislation was really important. There had to be both corporate responsibility and corporate accountability. It was also the first piece of legislation that placed a duty on the NHS to deliver good patient care; now we have the Health and Social Care (Quality and Engagement) (Wales) Act 2020."

[21] Royal College of Nursing Wales (2019), *Progress and Challenge: The Implementation of the Nurse Staffing Levels (Wales) Act 2016*. Cardiff: RCN Wales.

Aside from direct involvement in the two guidance documents and implementation monitoring, what was also important was that RCN Wales continued to engage and brief AMs on progress to ensure that political attention remained on the Act. While there were a number of members who were directly involved in the legislation still in the Assembly after the 2016 election, the member in charge of the legislation, Kirsty Williams, had agreed to become a cabinet minister within what was a minority Welsh Labour Government, and there were a considerable number of new members who required introductory briefings to the whole agenda. As Lisa Turnbull recalled:

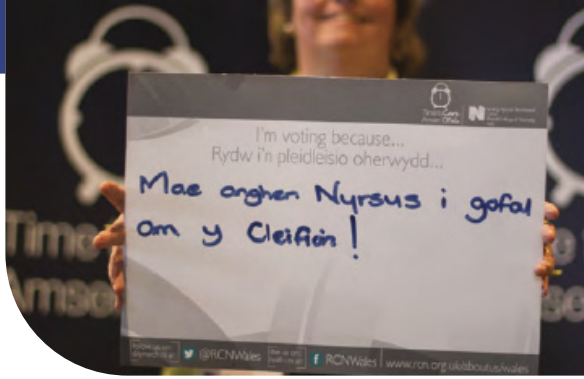
"We did undertake a lot of introductory briefing of new members. However, we were also fortunate that we could work closely with several members who we already knew well from the legislation process. For example, while David Rees was no longer Chair of the Health Committee, he was an engaged and passionate advocate."

Alongside this external activity, RCN Wales continued to engage and mobilise its membership. It set legislative change as a key strategic objective – it was its top priority – and it mandated officers to engineer that change. It needed members to be involved through the whole journey, and therefore members needed to be kept informed of progress. RCN Wales officers used focused, social media communications to keep members updated. The key reason for using social media was it allowed the membership to be primed to mobilise, should the process stall or hit the buffers.

WHAT HAS BEEN THE PERCEIVED IMPACT OF THE LEGISLATION SINCE 2018?

What the Act has brought in terms of responsibility and accountability has proven to be a real game-changing shift for nursing directors. Particularly within the implementation of the two guidance documents, the Act has instilled into all health boards that it is now their corporate responsibility to own the legislation, not just to buy into it. Accountability would no longer fall on the shoulders of the executive nurse director, as the professional registrant of the board; there was now complete corporate accountability.

For Ruth Walker, this was an important turning point. She said:



"The legislation is pioneering and can not only have an impact on the quality and safety of care for our patients but also the morale and health of our staff. Ensuring the accountability and responsibility is fully understood at the frontline and the at Board level is very important. The clarity of the role of the Designated Professional responsible to inform and advise the Board on safe staffing levels across all areas of the UHB [university health board] is empowering and gives a platform to ensure this area of work is addressed as required by the Act, at the Board. As the Designated Professional, I'm being given the opportunity to bring the voice of senior nursing colleagues into the Boardroom to ensure that they have the correct resources to be able to undertake roles effectively. The Act gives a platform for Ward Sisters and Charge Nurses to have the confidence to sign off establishments before I take the calculations to the Board. This approach has also allowed Sisters and Charge Nurses to explore, debate and challenge the establishments as part of the process. There is definite ward to Board ownership."

However, for Mandy Rayani there was some personal anxiety in having the responsibility of implementing the legislation. She had returned to Wales in 2017 to take up her post, after a three-year period in a senior leadership position within an English NHS Trust. Having left Wales just at the point the legislation was being introduced into the National Assembly for Wales in 2014, she was torn about whether legislating was the right thing to do. She said:

...it allows nursing leaders to have a different type of conversation around the Board table...

"It's been very positive in that it allows nursing leaders to have a different type of conversation around the Board table and to look at it from multiple perspectives. For example, in terms of the professional development opportunities it brings to the profession... I've been able to establish locally a training programme, a nurse leadership programme and support the establishment of an apprentice scheme with the Director of Workforce & OD; in relation to the financial opportunities and the real conversations about what its actually going to cost an organisation...it has allowed me to lever some more resource from the Board not just for registered nurses but also for health care support posts and rehab and reablement posts...but also the other perspectives, such as the quality lens of the patient from both patient outcomes and experience; the staff experience in terms of well-being, making sure we have the sufficient resources on the ground to deliver safe

and effective patient care. This has been all been really good.

But the negatives relate, predominantly, to the way the Act feels at times to be being used as a performance management tool. We've created an Act but haven't yet got the workforce in quantity and capacity to deliver it, so it has almost become a stick to beat the profession with which is disappointing and that was never the real intention. It was to drive improvement and that we had the right level of suitably qualified staff to improve patient care."

However, she did admit that it was still early in the calculation cycle to inform the education commissioning arrangements over the medium term:

"We are only in about cycle 6 I think of the calculations – it takes about 6-8 cycles before you get confident in the figures and have the confidence to interpret what the figures are telling you. It's this bit now, 2 plus years in that is going to truly inform the commissioning arrangements going forward, so that we have the right numbers because there is currently a gap."

Unintended consequences

There was a significant amount of attention given to potential unintended consequences during the Act's legislative journey through the National Assembly. The principal ones cited were:

- was there a risk that minimum levels would become the maximum?
- that the requirement for particular levels of nursing on one ward but not on other wards could mean that, in difficult times, health boards could transfer staff from a ward which did not have that legal requirement to a ward which did – what would be the consequence be for patients on those other wards?
- would implementing the legislation be financially prohibitive for health boards to undertake?
- were there enough commissions in the system to fill recruitment gaps and ensure health boards were not put at risk of failure to comply?

As a former RCN Wales Director, Tina Donnelly remembers that much of the argument was a smokescreen. She said:

"During the legislation I kept hearing all over the place questions about what were the unintended consequences. Some of that agenda was related to what it meant for Welsh Government and also for Health Boards about failing to comply with the legislation, what would be the

sanctions; what it meant for other health professionals or indeed, other nurses, not involved in the first part of the Act - those in medical and surgical arenas in the non - acute sector; and what actually did safe staffing and minimum staffing mean...For me the unintended consequences balanced themselves out by doing the right thing by the client, the patient...it is about good client advocacy, exactly what the nurse is there to do. And as we addressed those issues, we began to see behaviour change even before the guidance was in place."

...we began to see behaviour change even before the guidance was in place...

Lisa Turnbull also believes these apprehensions have not materialised. She said:

"Most of the potential unintended consequences that were cited during the passing of the Bill were rebutted or neutralised during the legislation's passage to the statute books. For example, in terms of finance and how to comply during staff shortages, mitigation measures were introduced in relation to the general duty 25A but also the risk-based actions the senior nurse could take to protect patients' safety in the wards covered in the second duty. Again, the key underpinning here is professional judgement."

The CNO was also sanguine in her belief that those concerns around unintended consequences would not materialise. She said:

"Many of the concerns I had were explored during the committee stages that led to the Act being introduced.

One major concern was how to comply with the Act when there were staff shortages – I and others did not want to see staff being taken from other areas, thus putting those areas at risk and moved to the wards covered by the Act's second duty (sections 25B and C) to meet full compliance. There were two mitigations to stop this happening: the first was the introduction of the general duty in the Act (25A) that places an obligation on the NHS bodies to have regard to providing sufficient nurses in all areas to care for patients sensitively; and the other was to set out in the Act risk-based actions the senior nurse could take to protect patients' safety in the wards

covered by the Act's second duty. The reality is that on occasion an area covered by the Act may not have available all the staff deemed to be appropriate, but we don't want actions taken that put people at serious risk of harm in other parts of the health system by closing beds or moving staff without careful consideration of how to minimise risk. Professional judgement is key in managing the whole system and balancing all risks to patients."

However, in implementing the legislation, a number of workforce planning factors have become clearer, as the CNO recalled:

"Filling staff vacancies in parts of Wales as the establishments on the wards covered by the Act's second duty did become clearer. There is a global shortage of nurses and even though education numbers have increased in recent years, it takes years to correct any shortfall. We had the double challenge of already having difficulties in filling vacancies and then the implementation of the Act re-adjusted establishments upwards leading to more posts to be filled. Cost is a factor. We have had many years of flat cash funding due to the financial crisis, so there was little headroom if you wanted to expand workforce establishments; and filling any vacancy with agency staff is expensive. Again, while overseas recruitment isn't necessarily the most cost-effective way to correct workforce shortfalls, it is helpful."

The capacity of the workforce in relation to the gap in workforce numbers was something that was concerning to both nurse directors interviewed, as too was the challenge of finance. Ruth Walker said:

"I am worried about staffing levels. Staff shortages are a day-to-day challenge and therefore monitoring compliance is a day-to-day challenge. I know there was some apprehension within the profession of displaying the staff levels information for the public. The apprehension stemmed from a feeling that if there wasn't enough staff on a given day that they were somehow letting the public down. I know the public want to see more nurses and more staff on the wards."

Mandy Rayani said:

"Ensuring we have the capacity and experience in the workforce is an issue. The Act has helped our thinking about wider workforce planning regarding recruitment and retention and our engagement with HEIW [Health Education and Improvement Wales] to commission placements; the development of an evidence base to inform that has been extremely helpful. Within a local perspective and while much of the focus of the Act

was on registered nursing enhancement, what we have found is that there has been a significant uplift in health support worker roles. What the Act has forced us to do is consider carefully what is the complete wrap-around workforce that is required to care for patients – it's about the whole workforce that wraps around to ensure best care outcomes.

Also, locally, money has been a key issue; it's a real factor. When we had the first set of calculations to implement the Act we estimated we needed circa. £5m investment and there was a lot of challenges around that. So, I think the risk-based phasing approach has been the most appropriate way to progress for both a finance and workforce capacity perspective."

Lessons learned

Despite the perceived lack of unintended consequences at this stage, it does not mean that with the benefit of hindsight those involved in implementing the legislation would not have done things differently. A key factor raised by the CNO and nursing directors was the fragility of the IT system used to gather data for reporting. The CNO felt that not having a national system to gather all of the data required by the Act at the start was a deficiency. She said:

"If we could wind back time, it would have been preferable if a national system to gather and record data would have been available at the beginning of the implementation. A workable solution to this was only introduced in July 2020, after quite a period of development. Before that individual Health Boards had their own different processes in place. Health Boards are going to face significant challenges in preparing the first 3-year reports and there is likely to be variation in presentation making it difficult to have a consistent national picture using these different data sources.

However, given the timescales involved in developing such systems, and the complexities of varying software contracts across the Health Boards, in all reality that would have meant a significant delay to implementation, which wouldn't have been acceptable or pragmatic. The benefits and achievements in nurse staffing in Wales over the first 3 years of implementation will have been worth doing regardless of the challenges in reporting on them."

Ruth Walker said:

"I think if we knew what we know now when Helen (Whyley) was drafting the legislation, we would have seen that there are parts of the legislation that are very difficult to implement, particularly in relation to IT software and the consistency and stability of the platform. For me, I think we should have standardised the rostering system across Wales earlier and we should have had a more stable IT system – this in particular has been our Achilles Heel; it's a real challenge. We are having constant challenges with the current system and platform, mainly due to the fact that the system isn't designed to do what we now require it to do. That's why I believe further investment is required now and has now been agreed."

For Mandy Rayani, it was the need for additional information to accompany the guidance documents which would have allowed health boards to understand and prepare for the financial changes implementing the Act would generate. She also felt there was an issue of definitions and language that would have been helpful to clarify and to prevent any misinterpretation, particularly of the issue of "reasonable steps". She said:

"In hindsight there probably should have been a little bit more around the financial implications to have aided the understanding about the costs to implement the Act because I don't think that was fully understood or anticipated – not by Nursing Directors who knew this was going to cost money – but in terms of preparing the Boards in terms of the scale of what was coming.

Going back to the guidance and the 'reasonable steps' element of the Act, this has caused a lot of anxiety. I have a solicitor on the Board, and he asks me a lot of questions about 'reasonable steps' and his interpretation as a lawyer compared to the intent which has been put into the Act is different."

For RCN Wales, one of the key aspects of the legislation was whether the duty under 25B should have been expanded at the start of the legislative process so that it could have been implemented across all care settings from the very outset. The views on this within RCN Wales were mixed, and sometimes conflicted, for a number of reasons.

Former RCN Wales Director Tina Donnelly was acutely aware of the need for a strong evidence base to justify the designation of the care settings in the draft legislation. However, she felt perhaps RCN Wales could have pushed this further with both the Welsh Government and AMs. She said:

"We knew there were problems in both paediatrics and mental health areas of workforce issues but we needed to accumulate the evidence to put forward that case. We had the evidence for acute medical and surgical wards, and the case was clear. However, acute medicine and surgery is not just relevant to adult care provision, it covers children as well and we did want to push for the inclusion of children. They are an extremely vulnerable patient group, particularly neonates as they cannot articulate pain or discomfort. But at the time we didn't have the evidence base. However, with hindsight, I wish we could have collated the neonatal evidence because the evidence did emerge as part of an independent panel inquiry into Betsi Cadwaladr's attempt to move neonatal intensive care services to England. If we had included it as part of the Act, we would have had one part of children's care in the mix and we may have been a little further forward with paediatrics now."

For Lisa Turnbull, reflecting on the process highlighted the lack of guidance around the other duties in the Act. The Act does not provide a power to issue guidance in respect of section 25A (the more general duty to provide sufficient nurses in all settings, including all care environments where NHS Wales provides or commissions a third party to provide nurses). Nor is there guidance underpinning section 25E, the duty to report. It is only section 25A of the Act that has statutory guidance underpinning it. As Lisa Turnbull recalled:

"There is no guidance underpinning the first or the third duty and I was always concerned about this for environments like care homes, for example, what it meant in terms of monitoring and reporting and escalating concerns. However, there was a conscious decision to get section 25B right so we will need to revisit the other sections within the framework."

However, Richard Jones felt that the staged implementation of the Act was the right approach. He said:

"I think that the staged implementation process was of great importance to ensure that it was affordable and that it was evaluated effectively. Implementing it in acute medical & surgical wards first and increasing nursing student training numbers in a graduated way was a very sensible approach. This hopefully will now be rolled out to paediatrics next. Then hopefully to mental health and community settings when we have designed relevant and reliable acuity tools."

WHAT ARE THE NEXT STEPS ON THE IMPLEMENTATION JOURNEY?

Expansion

During the period that interviews were being conducted for this report (October to December 2020), the Welsh Government formally issued its consultation to expand the legislation to paediatric wards and, in so doing, requested views on amending the statutory guidance. Tina Donnelly believed that while it had taken some time to get to this point, it was right to extend the Act and felt that, following paediatrics, it should be rolled out to mental health and community settings:

"It has been a bit slow to progress and it has taken time to get the data. But we are on a journey. The extension to care of children is right, as they are cared for with acute medical and surgical conditions and should be treated equally in terms of need, just like adults particularly in relation to the UN Rights of the Child which needs to be upheld, something I know the Children's Commissioner is very keen to pursue. However, it [the legislatio] needs to extend also to mental health areas of provision and I would also like to see it in the community arena too – as part of the care closer to home agenda. That single nursing entity in a client's home is a concern to me because of the complexity of needs and then of subsequent care…one nurse may not have the complete breadth of professional skills set to deal with a client's issues in one visit."

For the nursing directors, Ruth Walker felt that there needed to be an urgent expansion of the Act to mental health and to community nursing in its broadest context. However, Mandy Rayani did raise some anxiety. She said:

"The Act has raised the profile of the nursing workforce in terms of patient care which is a positive. However, I am anxious about the extension of the Act, particularly around the district nursing extension because I think time has moved on. I think it's now, actually, more about community nursing in its broadest sense because the way in which we have to deliver services now in the community is different from when we started talking about the Act and the principles. In terms of Mental Health, when we get there with the extension, it's the area that is probably going to be the most challenging. If we thought we had a financial and workforce challenge with the acute sector, we have an even bigger one for mental health; as

the Nurse Director sponsoring that workstream it gives me real anxiety. On a positive note the extension for paediatrics is coming online. I don't think it's going to be too big an ask…too big a leap in terms of workforce availability locally, but I don't know how it's going to land nationally."

Health board reporting

Under the reporting duties outlined in section 25E, health boards must submit an annual report to their boards outlining compliance with the nurse staffing levels, the impact upon the quality of care where the nurse staffing level was not maintained, and the actions required in response to this. They must also submit a three-yearly report to the Welsh Government, collating all this data. The first of these is to be concluded in the spring of 2021. However, the impact of the COVID-19 pandemic, along with a sub-optimal data collection system, was going to impact on this process. The CNO hoped that the data collected prior to the pandemic would show that the Act was delivering as intended. She said:

"The Act requires the NHS bodies to present a report on compliance with the Act every 3 years, the first such report is due in May 2021. I think this will be a good point to review whether the Act did in fact improve nurse staffing levels and more importantly improve the quality and safety of care. Obviously, with the global COVID-19 pandemic hitting in 2020, the results presented in this first report will be skewed but subsequent reports will hopefully show positive impact."

…this will be a good point to review whether the Act did in fact improve nurse staffing levels and more importantly improve the quality and safety of care…

Both nursing directors interviewed also raised concerns about the duty to report aspects of implementation, particularly the health boards' ability to capture the right data to produce accurate and meaningful reports on the process of the legislation's implementation. Mandy Rayani said:

"It is going to be interesting when we submit our three-year reports into Welsh Government because the national system required to capture the data we need – the health care management system – it is a fragile tool. It hasn't helped us to have robust reporting and we already know there are going to be gaps when we do come to report, not least because of the impact of COVID but because of the way we have had to try to capture and report against our acuity and staffing functions as well. So effectively, we've tried to implement the Act without all the tools available to enable us to fully and successfully implement in practice."

Maintaining political momentum

For Tina Donnelly, it was important to make sure the Act's implementation remained high on the political agenda, and that there was continuous scrutiny of the performance of both the Welsh Government and the health boards:

"The Health Committee committed to do a review a year after the implementation of the Act. Why hasn't it happened? It is important that RCN Wales continues to lobby for an in-depth review of data and see how effective it has been. We know legislation changes behaviour, we saw that when the seat belt legislation was introduced: how many people now get into a car and don't put a seatbelt on? Similarly, the majority of people don't go out to willingly break the law but sometimes they are under pressure, things happen and these pressures need to be identified and acted upon. It's also a key measure of the whole Royal College, not just Wales, to pursue a campaign to get nurse staffing levels' legislation onto the statute books in the two other parts of the UK where it currently doesn't exist. So that evidence is really important."

CONCLUSIONS

RCN Wales had a significant effect on influencing the final guidance documents produced by the Welsh Government and by NHS Wales. As during the initial legislative journey of the Act, RCN Wales brought to the process professional expertise, critical challenge and, most importantly, the voice of the frontline nurse.

There were clearly matters that, with hindsight, would have been done differently. However, there was always a balance to be struck between what was feasible and achievable in regard to implementing the legislation, and with the member-led policy objective: to have safe staffing levels in all care environments where registered nurses operate.

The reporting process scheduled for the spring of 2021 is going to be the next critical milestone in the Act's implementation journey. The impact of the COVID-19 pandemic will be a significant factor, not just in the publication, but also in terms of the data that were captured during this last financial year. There will be a consequential impact: the pandemic has affected how the health system works, it has profoundly affected its workforce and it will continue to do so for some time to come. So, while the requirements of the Act did not stop, the risk-based decisions and professional judgement applied will have been somewhat different than in pre-COVID times.

One positive may be that in implementing the Act pre-COVID-19, it has put Wales in a better position to manage the crisis as a whole. However, analysing the data and making those assessments will only be possible during the recovery period when there is an opportunity to pause and to reflect.

In terms of summing up where the Act's implementation is currently, the CNO Prof. Jean White captured it best:

"My hopes for the Act have become a reality, happily. By passing this legislation, we have ensured that there is now a requirement for the NHS Health Boards and Trusts to fund and actively seek to recruit the nursing staff commensurate with the level of care needed by patients in the medical and surgical wards. There was one example where a board decided it didn't want to fund the recommended level of nursing staff presented by the Executive Nurse Director. When this was raised with me, I was pleased to be able to write to the Chief Executive Officer of the Health Board and inform them, that due to the legislation, they could not refuse to fund the staff required in the wards covered by the Act and they had to reverse their board's decision. It means that nurse staffing does now have to be considered in all planning and delivery decisions, and I have heard first-hand from Nurse Directors about how it has strengthened the nursing voice around the board tables."

BIBLIOGRAPHY

Andrews, J. & Butler, M. (2014), *Trusted to Care: An independent Review of the Princess of Wales Hospital and Neath Port Talbot Hospital at Abertawe Bro Morgannwg University Health Board.* [https://gov.wales/sites/default/files/publications/2019-04/trusted-to-care.pdf] (last accessed 8 January 2021).

Department of Health (2014), *Hard Truths: The Journey to Putting Patients First.* [https://www.bl.uk/collection-items/hard-truths-the-journey-to-putting-patients-first-volume-one-of-the-government-response-to-the-mid-staffordshire-nhs-foundation-trust-public-inquiry] (last accessed 8 January 2021).

Health Education Improvement Wales (2020), *All Wales Nurse Staffing Programme.* [https://heiw.nhs.wales/programmes/all-wales-nurse-staffing-programme/] (last accessed 8 January 2021).

Keogh, B. (2013), *Review into the quality of care and treatment provided by 14 hospital trusts in England: overview report.* [https://www.nhs.uk/nhsengland/bruce-keogh-review/documents/outcomes/keogh-review-final-report.pdf] (last accessed 8 January 2021).

NHS Wales (2019), *Nurse Staffing Levels (Wales) Act 2016: Operational Guidance.* [https://heiw.nhs.wales/files/all-wales-nurse-staffing-programme/operational-guidance-v2-english-april-2019-final-for-dissemination/] (last accessed 8 January 2021).

Ockenden, D. (2014), *External Investigation into the concerns raised regarding the care and treatment of patients Tawel Fan Ward, Ablett Acute Mental Health Unit, Glan Clwyd Hospital.* [http://www.wales.nhs.uk/sitesplus/documents/861/tawel_fan_ward_ockenden_internet.pdf] (last accessed 8 January 2021).

Royal College of Nursing Wales (2016), *Nursing numbers in Wales - an overview. Cardiff: RCN Wales.*

Royal College of Nursing Wales (2018), *An act of compassion: the story of the RCN Wales campaign* for the first nurse staffing law in Europe. Cardiff: RCN Wales.

Royal College of Nursing Wales (2018), *Nurse Staffing Levels (Wales) Act 2016: Operation Guidance Consultation Response.* Unpublished internal document.

Royal College of Nursing Wales (2019), *Progress and Challenge: The Implementation of the Nurse Staffing Levels (Wales) Act 2016.* Cardiff: RCN Wales.

Senedd Cymru | Welsh Parliament (2016), *Taking Wales Forward 2016-2021.* [http://www.wales.nhs.uk/sitesplus/documents/986/Taking%20Wales%20Forward.pdf] (last accessed 8 January 2021).

Senedd Cymru | Welsh Parliament (2016), *Senedd Business: Nurse Staffing Levels (Wales) Act 2016.* [https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=11778](last accessed 8 January 2021).

Senedd Cymru | Welsh Parliament (2016), *The Nurse Staffing Levels (Wales) Act 2016.* [https://www.legislation.gov.uk/anaw/2016/5/contents/enacted] (last accessed 22 July 2021).

Senedd Cymru | Welsh Parliament (2017), *Nurse Staffing Levels (Wales) Act 2016: Statutory Guidance.* [https://gov.wales/sites/default/files/publications/2019-04/nurse-staffing-levels-wales-act-2016.pdf] (last accessed 8 January 2021).

Senedd Cymru | Welsh Parliament (2017), *Nurse Staffing Levels (Wales) Act 2016: Consultation on the Statutory Guidance (Individual Responses)* Response 50, pp.189-194. [https://gov.wales/sites/default/files/consultations/2018-01/170831responsesen.pdf] (last accessed 8 January 2021).

Senedd Cymru | Welsh Parliament (2021), *Guide to the Legislative Process.* [https://senedd.wales/senedd-business/legislation/guide-to-the-legislative-process] (last accessed June 2021).

The Mid Staffordshire NHS Foundation Trust Public Inquiry & Francis, R. (2013), *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry.* London: Stationery Office.

The Older People's Commissioner for Wales (2011), *Dignified Care?: The experiences of older people in hospital in Wales.* Cardiff: The Older People's Commissioner For Wales.

The Older People's Commissioner for Wales (2012), *Dignified Care: One Year On: The experiences of older people in hospital in Wales.* [http://www.olderpeoplewales.com/en/news/news/12-10-11/Dignified_Care_One_Year_On_-_Progress_Report_from_the_Older_People_s_Commissioner_for_Wales.aspx#.YPmUb6iSmUl] (last accessed 8 January 2021).

The Older People's Commissioner for Wales (2013), *Dignified Care: Two Years On: The experiences of older people in hospital in Wales.* [http://www.olderpeoplewales.com/en/news/news/13-09 23/Older_People_s_Commissioner_for_Wales_publishes_Dignified_Care_Two_Years_On.aspx#.YPba0sSSmuY] (last accessed 8 January 2021).

BACK TO CONTENTS

APPENDIX
Interview Questions

- Taking you back to 2016, what was your job role between 2016–2018 and what was your involvement in the Nurse Staffing Levels (Wales) Act 2016?
- Did you have any apprehension or fears relating to unintended consequences. Similarly, did you have any hopes for the Nurse Staffing Levels (Wales) Act 2016?
- Were these apprehensions/fears/hopes borne out?
- What was your involvement in the statutory guidance and operational guidance of the Nurse Staffing Levels (Wales) Act 2016?
- Did you encounter RCN Wales during the implementation process, if so, what do you believe was RCN Wales's role in the implementation process of the Nurse Staffing Levels (Wales) Act 2016?
- What were the big factors in influencing the implementation (for example timescale, cost, etc)?
- In hindsight would you have done anything differently during the period of 2016–2018 relating to the implementation of the Nurse Staffing Levels (Wales) Act?
- We have asked a number of specific questions. However, if you have any related issues which have not been specifically addressed, please use this opportunity to raise them.

Coleg Nyrsio Brenhinol
Cymru
Royal College of Nursing
Wales


RCNWales


@RCNWales


rcn_wales

BACK TO CONTENTS