



IMPROVING AND PROTECTING THE RIGHTS OF NURSES IN THE HEALTHCARE SECTOR OF ENGLAND AND WALES

Brought to you by
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Executive Summary

The National Health Service (NHS) is one of the largest employers in Europe with over 1 million members of staff. These members of staff are dedicated, but overworked and underpaid for their level of sacrifice. A study done by the Geriatric Medicine Journal illustrated that over half of the NHS staff feel "undervalued and burnt out at the end of the day", and half of the staff pointed to issues with their health as a result of work-related stress.

In the following policy brief, we aim to point out various issues faced by staff within the NHS, followed by offering potential solutions that might help resolve, or at least alleviate, their struggles.

As essential workers, NHS employees are in critical need of more expansive legislative protections than are currently provided, to prevent from them being overworked and under-compensated, otherwise the health of the general public as a whole will suffer.

ISSUES

- Voluntary Working Hours for Nurses
- Lack of NHS Funding
- Repayment Clause in the contracts of Migrant Nurses

VOLUNTARY WORKING HOURS FOR NURSES

The culture of the NHS is such that staff are obliged to work voluntarily for as long as is necessary in times of emergency. This was a particular issue throughout the covid-19 pandemic, which pushed the NHS beyond capacity during the initial outbreak.

Working long hours comes with significant negative side effects, the most notable of these being sleep deprivation, which impairs basic functioning, affecting the standard of work performed. Lack of sleep is neither good for staff wellbeing or patient care and can lead to the making of mistakes in high pressure situations, potentially putting lives at stake.

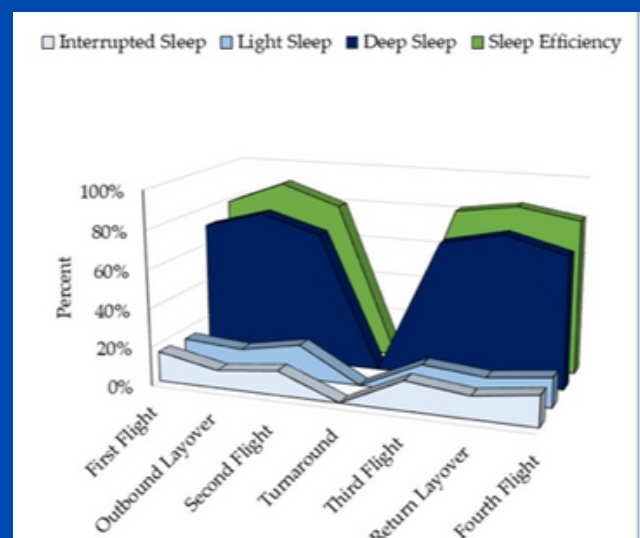
Under the WTR, night work limits don't always apply because medical emergencies fall under the exemptions to the rule, these being:

- An occurrence due to unusual and unforeseeable circumstances, beyond the control of the employer.
- Exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer.

Regulation 23 of the WTR allows for certain rules to be modified or excluded by collective agreement, with NHS nurses having the freedom to opt out if they so wish.

Regulation 24 of the WTR specifies that, wherever possible, an 'equivalent period' of compensatory rest should be taken before the next shift begins, however this is rarely observed in practice, with nurses often consequently taking their subsequent shifts in a state of impaired functioning, compromising their ability to treat patients effectively.

The airline industry is a field leader when it comes to rest management, in response to numerous fatal accidents having occurred due to fatigue-induced pilot error (see Korean Air 801). This has culminated in the Fatigue Management Guide for Airline Operators (2015), which mandates minimum levels of rest for pilots conducting intensive flight schedules, with in-flight naps also being encouraged on long haul journeys. The adjacent graph shows the quality of sleep had by pilots in different scenarios.



Suggestion

- Impose a hard cap on maximum additional hours workable, and have these hours deducted from subsequent regular hours to ensure nurses can get proper rest and come to their next shifts at full cognitive capacity.

LACK OF NHS FUNDING

The NHS staff is the backbone of the nations' healthcare system. Even before the Covid pandemic, there was an immense amount of pressure on the NHS staff and patients. The Covid-19 pandemic led to an NHS backlog, with over 7 million people waiting for treatment in September 2022.

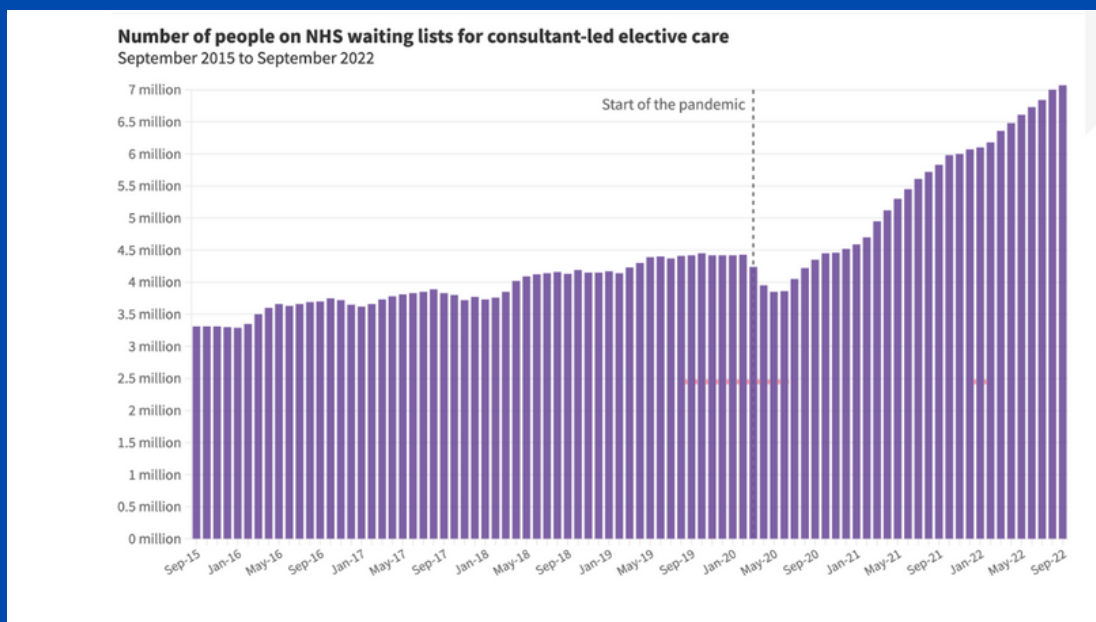
Due to this, the NHS published a plan for tackling this backlog, but this still means that we won't see the waiting list numbers fall until early 2024.

It will cost the NHS over £10 billion and take years.

This multi-year investment is necessary, as it includes a fair pay settlement to acknowledge the level of debt that the nation owes to NHS workers.

These shortages, the backlog, and the lack of capital investments significantly impact the NHS labour force. Despite the NHS investment planning, the pandemic has placed significant pressure on the staff, with workplace shortages leading to overtime work, dealing with burnout and leaving their role in the NHS. This significantly decreases the progress of a progressive plan.

Figure 1 illustrates the amount of people on waiting lists before and after the pandemic.



Suggestions

The government should ensure the multi-year investment plan keeps in pace with inflation, increasing wages as a result. The nation should create more in-depth month by month planning to ensure the goals are not vague or aimless.

REPAYMENT CLAUSE IN THE CONTRACTS OF MIGRANT NURSES

Globally, one in eight nurses practises in a country other than the one where they were born or trained, with the NHS employing from over 200 countries. However, the increasing volatility of immigration policies and its effect on NHS recruitment and treatment of nurses has created a very unwelcoming and hostile environment for migrant nurses. Even when faced with bullying, discrimination, racism, ill health or family emergencies, these nurses are unable to quit their job due to the infamous repayment clause in their contracts where they are forced to pay thousands of pounds if they wish to quit their job before their contract ends. These repayment costs are often disproportionate and punitive. Many nurses feel stuck in their job in conditions that are similar to debt bondage. Many instances of employers using the threat of deportation to coerce nurses into staying into their roles have also been reported. The British government's own modern slavery statement states that the costs of recruitment should be borne by the employers and not the workers.

**I know of cases where workers
wanted to return
home but could not because they
have been given exploiting contracts
that you cannot leave until
you pay them something like £10,000**

*- Gamu Nyasoro, Clinical Skills and
Simulation manager at Kettering General
Hospital NHS Foundation Trust*

Suggestions

The government should consider Increasing the pay of NHS nurses to an agency rate and tackling unsafe staffing levels so that migrant nurses recruited from abroad don't leave their jobs early. Moreover, consideration should be given to halting the use of repayment clauses in contracts for migrant nurses both in the private and public healthcare sector as they violate The UK Code of Practice on Ethical International Recruitment when employers seek to transfer certain costs associated with recruitment to the employee. The recruitment process should also be reviewed to ensure that no migrant nurse or healthcare staff is subject to punitive repayment clauses in their contracts. In addition to that, migrant nurses must be made more aware of contractual and employment rights under the UK law as a part of their training.

Recommendations

- Amending the **The UK Code of Practice on Ethical International Recruitment** to specifically unendorse repayment clause in contracts and replacing it with a fine capped by a legal limit if a migrant nurse wants to leave the contract early.
- International mechanisms should be in place to regulate nurses migration, such as the WHO Global Code of Practice on the International Recruitment of Health Personnel
- The ILO Nursing Personnel Convention of 1977 recognises the importance of healthcare workers, and sets out that they should enjoy conditions equivalent to other workers, with an equal level of working hours, overtime work, and entitlements to annual leave. Countries should all ratify this convention, and healthcare work should be more heavily regulated, including a maximum of 40 hours a week, rest breaks, paid overtime and annual leave. Policies should be in place to ensure recognition of hospital staff and their contributions.
- Provide nurses with the ability at any time to opt in or out of conditional voluntary work agreements without the imposition of any stigma or pressure that might compel them to reluctantly remain under the agreement against their wishes.
- Place greater responsibility in the hands of senior managers both to monitor excess hours worked by nurses, and to ensure they have the opportunity to take breaks during these stints, as well as having adequate access to food, drink and toiletries.
- Create on-site accommodation in which nurses can sleep overnight if they reach a point of fatigue that makes it unsafe for them to drive home.
- Fully inform nurses about the side effects of working beyond their specified hours.

Appendix

The topic “Improving and protecting the rights of Nurses in the healthcare sector of England and Wales” was taken into consideration in light of the ongoing nurses’ strike in England, Wales and Northern Ireland. We had four meetings and several discussions over text on our views on the topic and how to address it in the policy brief. We divided our work in a way where each of us identified a key issue affecting nurses and then came up with our own specific proposals for it as well as two general policy recommendations each. We looked at a variety of sources (which can be found in the bibliography) both academic and reported. The issue of voluntary working hours of nurses was identified by Ben, Lack of Funding was identified by Isha and The Repayment Clause in the contracts of Migrant Nurses was identified by Vandit. All in all, each member had a strong contribution towards the policy brief.

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