



Midlothian
Health & Social Care

Midlothian Integration Joint Board

Health and Care (Staffing) (Scotland) Act

Benchmark Report 2024

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Introduction

WE PLAN HEALTH & CARE SERVICES FOR

96,600

**PEOPLE IN THEIR HOMES,
IN THE COMMUNITY
& IN HOSPITALS**



OUR SERVICES INCLUDE:

ADULT SOCIAL CARE	CARE HOMES	A&E	COMMUNITY HOSPITAL
DAY SERVICES	END OF LIFE CARE	VACCINATIONS	ALLIED HEALTH PROFESSIONALS
CARE AT HOME	JUSTICE	MENTAL HEALTH	COMMUNITY NURSES
SUPPORT FOR CARERS	SPORT & LEISURE	PRIMARY CARE	REHAB & RECOVERY

Who we are

Midlothian Integration Joint Board (IJB) is a planning and decision-making body created by Midlothian Council and NHS Lothian plan to plan and direct some health and social care services for the people of Midlothian. We are responsible for an integrated budget that we receive from Midlothian Council and NHS Lothian. The services we provide include commissioned services that deliver care and support on our behalf.

Health and Care (Staffing) (Scotland) Act, 2019

This section outlines the aims of the Health and Care (Staffing) (Scotland) Act and our duties as an Integration Authority.

The purpose of the Act

The guiding principles of the Health and Care (Staffing) (Scotland) Act are to ensure the provision of safe and high-quality services that help people achieve the things that matter to them most. This means that the way we plan and deliver services must

- improve personal outcomes for the people who access our services
- take account of the particular needs, abilities, and circumstances and views of people who access our services
- respect the dignity and rights of people who access our services
- be open and transparent
- ensure the wellbeing of staff
- ensure effective and efficient allocation of staff
- promote multidisciplinary working.

Our responsibilities

Our responsibilities and legal duties are outlined in the Public Bodies (Joint Working) (Scotland) Act (2014). We must pay due regard to and meet the duties of legislation relating to health and social care. From the 1st of April 2024, this includes the statutory duties of the Health and Care (Staffing) (Scotland) Act, 2019.

Midlothian IJB does not employ health and social care workforce directly. This means the governance and assurance relating to safe staffing within health care services will be reported by our NHS Lothian partners, and Midlothian Council will report in relation to the registered care services. We have worked closely with all our partners to ensure we have transparent reporting across the whole system.

What we must report

All Integration Authorities must meet the requirements of the Act and relevant secondary legislation. These duties can be found in section 3(2) and (6) of the Act and relate to the planning or securing the provision of care services from others.

The Health and Care (Staffing) (Scotland) Act defines a 'care service' as mentioned in section 41(1) of the [Public Services Reform \(Scotland\) Act 2010](#) as:

- a support service
- a care home service
- a school care accommodation service
- an offender accommodation service
- an adoption service
- a fostering service
- an adult placement service
- child minding
- day care of children
- a housing support service

Section 3(2) of the Act describes our duty when planning or securing the provision of a care service from a third-party provider. This must include how we ensure the provision of safe and high-quality care, and the health, wellbeing and safety of staff and people who access services in relation to

- the nature of the service
- the size of the service
- the aims and objectives of the service
- the number of people who access this service
- the needs of people who access this service
- appropriate staff training and suitable assistance, including time off work for the purpose of obtaining further qualifications appropriate to their work.

The duty applies to services provided by staff working in a care service. The definition of "working in a care service" includes working for payment or as a volunteer, and working under a contract of service or apprenticeship, a contract for services or otherwise than under a contract. For example, this includes

- employees of the care service
- agency and other temporary / contract workers
- self-employed workers
- those on apprenticeship schemes and other 'earn as you learn' schemes who are employed by the care service, and
- all volunteers.

Care service providers have previously been required to comply with Regulation 15 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 on staffing and staff training. The duties of the Health and Care (Staffing) (Scotland) Act are very similar.

Section 3(6) of the Act requires us to report on how we have met the duties and guiding principles of the Act.

Reporting

This section outlines the action we have taken to provide assurance in relation to our responsibilities in relation to the Health and Care (Staffing) (Scotland) Act, 2019.

Midlothian IJB assurance activity

What we have done

In preparation for the provisions of the Health and Care (Staffing) (Scotland) Act 2019 coming into force on 1st April 2024, we completed several key pieces of work to gather assurance.

Workforce Governance

In 2023/24 we asked Midlothian HSCP to put in place a workforce governance and assurance structure to support and plan, develop, monitor, and constantly improve how deliver safe and high-quality care, and ensure the health, wellbeing and safety of staff and people who access services.

The Midlothian HSCP Integrated Workforce Governance Board is an integrated Programme Board with representation from Midlothian HSCP, NHS Lothian, Midlothian Council, Midlothian Community Planning Partnership, the Third Sector and other partners. The Board oversees and directs the work of two SubGroups: Workforce Planning and Workforce Engagement.

The Workforce Planning SubGroup is tasked with the development, delivery, monitoring and reporting of the Midlothian HSCP Integrated Workforce Plan 2022-25 and supports the HSCP to increase its skills and capacity in relation to workforce planning. This group has also supported our understanding of the duties of the Health and Care (Staffing) (Scotland) Act.

The Workforce Engagement Subgroup is tasked with the development, delivery, monitoring and reporting of workforce engagement activity, and staff governance and development. This SubGroup is also responsible for the development and delivery of Midlothian HSCP's Staff Communication Engagement and Experience Plan, and the measurement and evaluation of the 12 months action plan.

Midlothian HSCP Governance and Assurance Framework

Midlothian HSCP has committed to building and iteratively improving an Integrated Governance and Assurance approach by developing a triangulated governance methodology. In 2023/24 this included developing the Midlothian HSCP Integrated Governance and Assurance Framework for all service areas across health and social care (Activity), understanding population data through two robust IJB and HSCP performance frameworks (Experience), and evaluating our progress towards improving personal outcomes through outcome mapping (Outcomes).

The relationship between the Midlothian HSCP Integrated Governance and Assurance Framework (GAF) and the improvements in the Clinical and Care Governance (CCG) structure and assurance process provide a strong basis for assurance in operational activity. In addition, the development of an HSCP Performance Framework and the implementation across the HSCP of outcome mapping has supported building an Integrated Governance and Assurance, position as part of our commitment to a Quality Management System approach.

Duties of the Health and Care (Staffing) (Scotland) Act

In order to ensure we had a good understanding of how delegated services and the services we commissioned from another person under a contract, agreement, or other arrangements, were meeting the duties of the Act, we commissioned the Workforce Planning SubGroup to undertake a benchmarking exercise. As a result, the Workforce Planning SubGroup designed and developed a survey that was circulated to all 49 service management areas.

Response rate

All 49 of the service management areas were invited to participate in this benchmarking exercise.

14 of the 49 service areas stated they were not subject to the legislation.

35 service areas stated they are subject to the legislation and completed the survey.

Of the 35 service areas who completed the survey

- 19 service management areas (54%) provide health care
- 9 service management areas (26%) provide social care
- 7 service management areas (20%) service management areas provide health care and social care

Knowledge and Understanding

Of the 35 service management areas that completed the survey:

All of the service management areas (100%) reported they had read and understood the Health and Care (Staffing) (Scotland) Act, 2019.

Of the service management areas subject to the legislation who provide social care services, all of them (100%) were previously aware that there are legislative obligations under the Health & Care (Staffing) (Scotland) Act 2019 for 'care service' providers?

Of the 9 service management areas that only provide social care services, 8 (89%) were previously aware that the team(s) or service(s) planning or securing the provision of a 'care service' from another person under a contract, agreement or other arrangements have legislative obligations under the Health & Care (Staffing) (Scotland) Act 2019.

All 35 of the service management areas (100%) who reported they were subject to the legislation reported they had read and understood the 5-part process of the Common Staffing Method.

The Common Staffing Method to set staff numbers and inform service design was reported to be used in 22 service management areas (62%). Some service management areas were unsure (23%) and some disagreed (14%) that this methodology was used.

Duties

Of the 35 service management areas that completed the survey:

- 16 (46%) reported they had a duty to ensure appropriate staffing,
- 7 (20%) reported they had duties in relation to planning or securing the provision of care from another person or provider under a contract, agreement or other arrangement, and
- 12 (34%) reported they had duties in relation to both appropriate staffing and the planning or securing the provision of care.

16 service management areas that reported they provided either social care or a combination of health and social care

- 6 service management areas (38%) did not provide a 'care services' as defined in section 47(1) of the Public Services Reform Act 2010.
- 10 service management areas (62%) reported providing at least one 'care service'.
 - 7 service management areas reported providing a support service
 - 3 service management areas reported providing a care home service
 - 2 service management areas reported providing housing support
 - 2 service management areas reported providing an adult placement service

9 of the 10 service management areas (62%) who reported providing a 'care service' also reported they plan or secure the provision of all or part of that 'care service' from another person under a contract, agreement, or other arrangements.

- Of these 9 service management areas, 7 of those service management areas (78%) reported they have processes, practices, or procedures in place to meet the obligations relating to planning or securing the provision of a 'care service' from another person under a contract, agreement, or other arrangements. These processes, practices or procedures must ensure the provision of safe and high-quality care, and the health, wellbeing and safety of staff and people who access services that considers
 - the nature and size of the service
 - the aims and objectives of the service
 - the number of people who access this service and their needs
 - appropriate staff training and assistance, including time off work for the purpose of obtaining further qualifications appropriate to their work

5 service management areas plan or secure the provision of 'health care' from another person under a contract, agreement, or other arrangements.

- 3 of these 5 service management areas they have processes, practices, or procedures in place to meet the obligations relating to planning or securing the provision of 'health care' from another person under a contract, agreement, or other arrangements.
- 2 of these 5 service management areas relied on the Lothian Contracts team to undertake assurance in this area.

Other parts of the legislation

22 service management areas (63%) have real-time staffing assessment procedures in place.

3 service management areas (9%) use a nationally validated real-time staffing tool that has been provided by Scottish Government, the Care Inspectorate, NES, HIS or other national body.

3 service management areas (9%) employ agency staff. 2 of these service management areas have processes to ensure they do not exceed 150% of the amount paid to an equivalent employee

34 service management areas (97%) have a procedure in place to identify, record, mitigate, and report staffing risks as is necessary

33 service management areas (94%) have a procedure in place to escalate severe or recurring risks, including to Board level.

19 service management areas (54%) seek and consider advice from an appropriate professional advisor when making staffing decisions. 18 of those 19 service management areas ensure the advice of professional advisors is noted, the decisions made following this advice and rationale is recorded, and any professional advisors receive feedback on actions taken.

26 service management areas (74%) report team leads have adequate time and resources allocated to meet the responsibilities associated to their role (supervision and needs of staff, people accessing services, and staff training to ensure the development and delivery of safe, high-quality care).

28 service management areas (80%) reported they have an appropriate number of suitably qualified and competent individuals working to ensure the health, wellbeing and safety of the people who access the service and the provision of safe and high-quality care.

31 service management areas (89%) reported receive appropriate training to deliver safe, high-quality care, and have adequate time allocated to complete this training?

What we must now do

While we have undertaken a number of tasks to provide assurance that we are meeting our duties and obligations in relation to safe staffing, we know there is still more we could do. In 2024/25 we will continue to work with both our partners to ensure service are aware of the duty to comply with the guiding principles of the Health and Care (Staffing) (Scotland) Act, 2019.

In Midlothian, we commission over £45 million in services provided by third parties. We will continue to work alongside our partners to ensure that we have met our duties in relation to the services that we commission from third parties. In 2024/25 we this will include

- Ensuring our Market Facilitation Plan supports a local market that promotes the guiding principles of the Act.
- Reviewing and updating the register of contracts to note when one of the services managed by Midlothian HSCP plans or secures the provision of 'social care' from a third party under a contract, agreement, or other arrangements.
- Issuing a contract variation with a clause detailing the requirements of all third-party providers in relation to hourly rate and minimum pay.
- Asking Midlothian HSCP to ensure all third-party providers are aware of the duty to comply with the guiding principles of the Act by overseeing a review of contract terms and conditions that includes the requirement for providers to
 - Participate in registration checks
 - Participate in PVG Checks
 - Observe Fair Work practices
 - Evidence the progress they are making towards improving personal outcomes, not just service outputs
 - Follow a defined process if a provider has difficulty in meeting the duties of the Act, and describe the action we will take in response
 - Establish workforce plans
 - Participate in regular contract review including staffing information and training details
- Ensuring due diligence check before contracting services that include questions on staffing and delivery