

Nurse Staffing Levels (Wales) Act 2016 Compliance

Final Internal Audit Report

April 2022

Hywel Dda University Health Board

NWSSP Audit and Assurance



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Acknowledgement

NHS Wales Audit & Assurance Services would like to acknowledge the time and co-operation given by management and staff during the course of this review.

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Executive Summary

Purpose

The purpose of the review was to evaluate and determine the adequacy of the systems and controls in place within the Health Board for ensuring compliance with the Nurse Staffing Level (Wales) Act (NSLWA).

Overview

No high priority matters have been identified. Two medium priority matters arising concerned:

- No explicit evidence of review or approval of the nurse staffing levels by the Designated Person. We recognise that approval is implied in the retrospective annual report to Board.
- Infrequent assurance reporting to the QSEC

Two low priority matters arising concerned areas for refinement and further development – these are detailed in Appendix A.

Report Classification



Reasonable

Some matters require management attention in control design or compliance.

Low to moderate impact on residual risk exposure until resolved.

Trend

n/a

Assurance summary¹

Assurance objectives	Assurance
1 Nurse Staffing Policy	Reasonable
2 Calculation of Nurse Staffing Levels	Reasonable
3 Patients are informed of the nurse staffing levels	Reasonable
4 Reasonable Steps are taken to maintain Nurse Staffing Levels	Reasonable
5 A Nurse Staffing Levels (Wales) Act 2016 report is submitted to the Board and Welsh Government	Substantial

Key Matters Arising

	Assurance Objective	Control Design or Operation	Recommendation Priority
1	Approval by Designated Person	2 Design	Medium
2	Assurance Reporting to QSEC	4 Operation	Medium

¹ The objectives and associated assurance ratings are not necessarily given equal weighting when formulating the overall audit opinion.

1. Introduction

- 1.1 A review of the Nurse Staffing Levels (Wales) Act 2016 compliance was undertaken at the request of the Director of Nursing, Quality & Patient Safety (the Executive lead for the audit) and in addition to the 2021/22 Internal Audit Plan.
- 1.2 The *Nurse Staffing Levels (Wales) Act 2016* (the 'Act') became law in March 2016 and requires health bodies to have regard for the provision of appropriate nurse staffing levels, to ensure nurses have time to provide sensitive care for patients.
- 1.3 The Act empowers nurses and ward managers with the evidence to support and inform their professional judgement when determining nurse staffing levels on their wards. It consists of five sections:

25A	Overarching duty to have regard to providing sufficient nurses to allow nurses time to care for patients sensitively
25B	Duty to calculate and take steps to maintain nurse staffing levels including: <ul style="list-style-type: none">• identification of a designated person to calculate the nurse staffing level• take all reasonable steps to maintain the nurse staffing level• make arrangements to inform patients of the nurse staffing level
25C	Prescribes the triangulated approach to calculate the nurse staffing level
25D	Relates to statutory guidance released by Welsh Government about the duties under sections 25B & 25C
25E	Duty to submit a nurse staffing levels report setting out the extent to which nurse staffing levels have been maintained and the impact that not maintaining the nurse staffing levels has had on care provided to patients

- 1.4 Section 25B previously applied only to adult acute medical and surgical wards but has now been extended to paediatric inpatient wards with effect from October 2021.
- 1.5 The potential risks considered in this review are as follows:
- lack of awareness of the Act resulting in non-compliance with the requirements; and
 - inappropriate variation from the planned nurse staffing levels may result in poor quality care or patient harm.

2. Detailed Audit Findings

Objective 1: The Health Board has an appropriate and up to date Nurse Staffing Level policy and procedure in place and these are accessible to all relevant staff

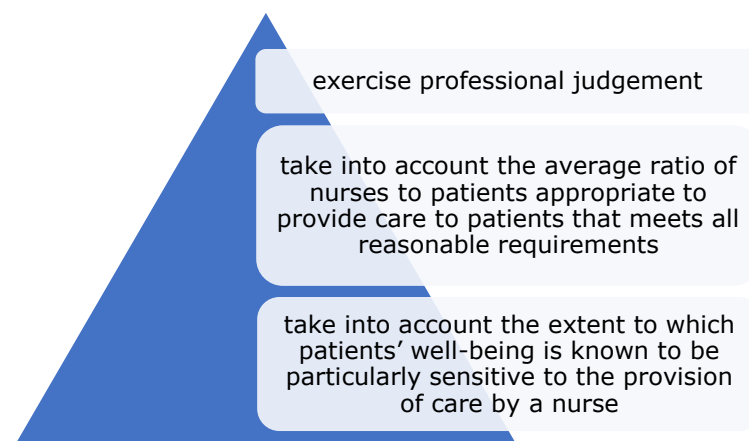
- 2.1 The *Nurse Staffing Levels (Wales) Act 2016* (the 'Act') passed by the National Assembly for Wales in March 2016 requires the Health Board to have an overarching framework that provides sufficient nurse staffing levels across the organisation.
- 2.2 The Health Board has a *Nurse Staffing Level & Escalation Plan: Acute Adult Policy* in place which is available to staff on the intranet. The policy is aligned to the Act and provides information and standards to support the calculation of nurse staffing levels, identifies the 'reasonable steps' to be taken to ensure levels are maintained, and the escalation process where this is not achieved.
- 2.3 The Director of Nursing, Quality & Patient Experience is identified as the 'designated person' responsible for making a recommendation to the Board regarding the nurse staffing level for each ward subject to section 25B of the Act.
- 2.4 The policy was last reviewed and approved in January 2019 and was due for review in December 2021. It has not been updated to reflect the change in legislation in July 2021 regarding the extension of nurse settings with effect from October 2021. We were advised that the policy is in the process of being reviewed and updated.

Conclusion:

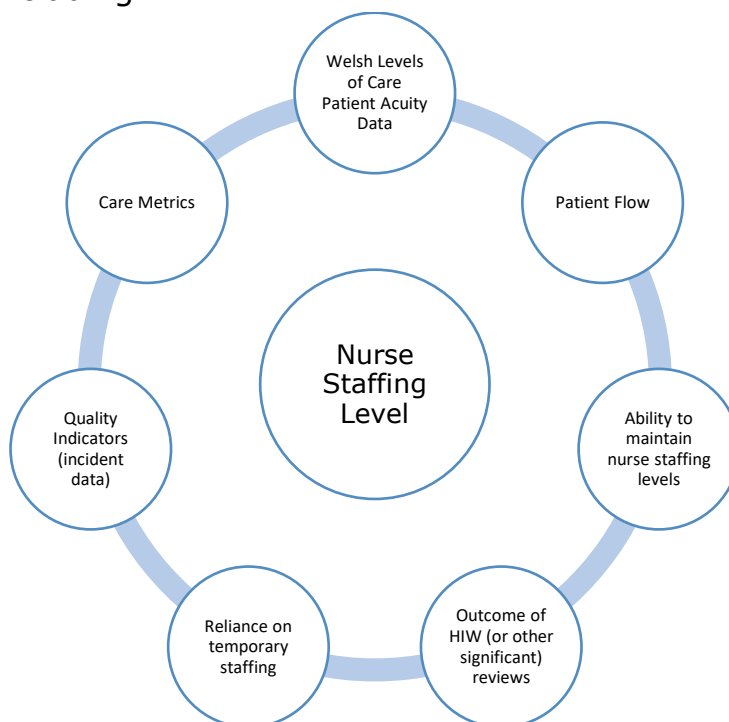
- 2.5 We have concluded **Reasonable** assurance for this objective on the basis that the *Nurse Staffing Level & Escalation Plan: Acute Adult Policy* requires review and updating. Recognising that this was ongoing at the time of audit, no recommendations have been raised.

Objective 2: Nurse staffing levels are calculated using the prescribed methodology

- 2.6 Section 25C of the Act prescribes the method of calculating the nurse staffing level and states that the designated person must:



2.7 Using the framework provided by the national Nurse Staffing Programme, the Health Board has devised a template to facilitate this triangulated approach. It is a comprehensive tool capturing a vast array of factors influencing the required nurse staffing level, including:



Determining the Planned Roster

- 2.8 In simplistic terms, the calculation of the nurse staffing level involves determining the planned roster (using the template) and calculating the wholtime equivalents (WTE) required to fulfil this roster (including 26.9% 'headroom' to allow for staff absence from the workplace as required by the Act).
- 2.9 There are 35 wards across the four acute hospitals to which section 25B of the Act (the duty to calculate and take steps to maintain nurse staffing levels) currently applies. We sampled 11 wards and requested the templates for the most recent (Autumn 2021) review cycle.
- 2.10 We confirmed that the nurse staffing levels had been reviewed for all sampled wards, using the prescribed template. In all cases the templates evidenced consideration of the factors above, and demonstrated compliance with the prescribed methodology.
- 2.11 Four templates did not evidence review/discussion with the Nurse Staffing Programme (NSP) Team, and nine did not evidence review/discussion with the Designated Person to confirm the new proposed nurse staffing levels. However, ward templates are summarised by the NSP Team in an 'overview document' for each acute site, used to facilitate review and discuss with the Designated Person. **[See Matter Arising 1 at Appendix A]**

2.12 Review of the overview documents noted that the outcomes of these discussions are recorded. Although there is no explicit evidence that the Designated Person has reviewed the overview document, we acknowledge that their review and approval is implied through the subsequent reporting of agreed nurse staffing levels by the Designated Person to the Board (see objective 5). **[See Matter Arising 1 at Appendix A]**

Calculating the WTE Requirements

2.13 We reconciled the planned rosters per the template/overview document to the finance tool and confirmed that the WTE's had been calculated based on the agreed planned rosters and included the 26.9% headroom required by the Act.

Conclusion:

2.14 Nurse staffing levels had been reviewed for the sampled wards, with the templates demonstrating compliance with the prescribed methodology and triangulated approach set out within the Act and Health Board policy. In some cases, the templates had not been fully completed to explicitly document review and decisions by the NSP Team and Designated Person, although we recognise that these were instead evident on the overview document. Accordingly, we have concluded **Reasonable** assurance for this objective.

Objective 3: Patients are informed of the nurse staffing levels, in accordance with the requirement of the Act

2.15 Section 25B of the Act requires the Health Board to make arrangements for the purpose of informing patients of the nurse staffing level.

2.16 Observations at Withybush and Glangwili General Hospitals confirmed that bilingual templates displaying the nurse staffing levels and the date the levels were agreed by the Board are publicly displayed outside wards, along with FAQ leaflets. The notices were not updated during the COVID-19 pandemic and therefore do not reflect the most recently agreed nurse staffing levels in November 2021. We were advised that they are in the process of being updated at the time of our review.

2.17 An FAQs section and contact details for the NSP Team are also available via the Patient Information section of the Health Board website.

Conclusion:

2.18 We acknowledge that nurse staffing level notices were not updated due to the pandemic, and that this is in the process of being addressed. Accordingly, we have concluded **Reasonable** assurance for this objective.

Objective 4: All reasonable steps are taken to enable wards to maintain nurse staffing at the calculated levels, with mechanisms in place for recording and reviewing any variation with the calculated nurse staffing levels

2.19 The Health Board is required to ensure that ‘all reasonable steps’ are taken to maintain the nurse staffing level in all areas. Roles and responsibilities of the Chief Executive, Executive Directors and operational staff in ensuring that nurse staffing levels are maintained are clearly defined. The policy identifies examples of ‘reasonable steps’ including:

Strategic Steps	
Workforce planning linked to IMTP and education commissioning processes	
Recruitment & retention strategies	
Robust organisational risk management framework	
Operational Steps	
Robust electronic rostering tool	Redeployment of staff from other areas of the HB
Temporary (bank & agency) staff	Use of other healthcare professionals
Effective resource planning	Senior nursing staff to work within planned roster
Appropriate and timely escalation where necessary	

2.20 The financial impact assessment for the Autumn 2021 nurse staffing level review identified an additional £1.3m revenue funding required to facilitate changes to the existing staff establishment. These assessments have been challenging during COVID-19 due wards being affected by potentially temporary changes to bed numbers, patient pathways and clinical specialties.

2.21 We were advised that the results of the review were submitted as part of the Health Board IMTP process, with £270k released immediately from 2021/22 approved funding. The Executive Team requested further assurance for the remainder, which related to a number of changes to patient acuity and ward designation during the pandemic. We understand that this funding was subsequently approved, however further changes had occurred in the period following the Autumn 2021 review. These are being assessed during the Spring 2022 nurse staffing level review cycle which was ongoing at the time of our review.

2.22 The process follows that once the funding allocation has been agreed, the planned rosters are set within the roster systems to aid resource planning and monitoring of compliance with the nurse staffing levels. At the time of audit, the roster systems had not been updated to reflect the results of the Autumn 2021 review due to the delays in agreeing revenue funding allocations.

2.23 With effect from July 2021, compliance with the nurse staffing levels is recorded on a shift-by-shift basis via the health care monitoring system. The senior nurse on duty on each ward records the patient acuity and roster hours worked (by

substantive and temporary staff) in the last 24 hours and then forms one of four conclusions, based on their professional judgement:

- (i) Planned roster was met and was appropriate (based on patient acuity)
- (ii) Planned roster was met but was deemed not appropriate (based on patient acuity)
- (iii) Planned roster was not met but deemed appropriate (based on patient acuity)
- (iv) Planned roster was not met and deemed not appropriate (based on patient acuity)

2.24 This data is extracted into the IRIS system and displayed in graphs depicting the extent to which nurse staffing levels were complied with, to aid review and monitoring.

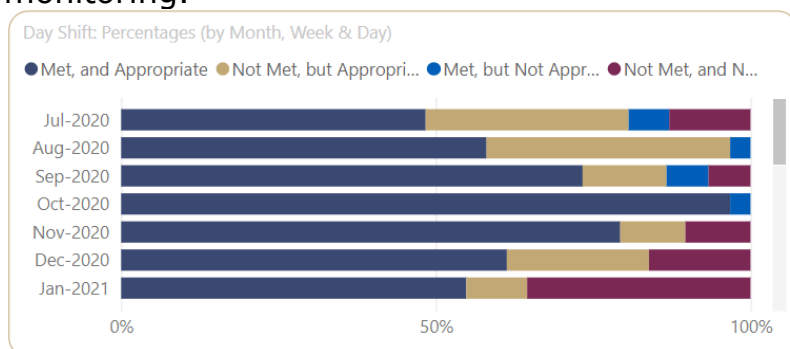


Figure 1: example 'extent to which' graph

2.25 The "extent to which" data was available for the first time during the Autumn 2021 review cycle, and a summary was included in the annual assurance report to the Quality Safety & Experience Committee (QSEC) in March 2022 (see table 1 below). The report states that the majority of these shifts occurred during the third wave of the pandemic when escalation processes were in place and staff were utilised flexibly to manage risk across all acute sites.

	Adult		Paediatrics	
Period Reviewed	05/04/2021 – 28/02/2022		01/10/2021 – 28/02/2022	
Total Number of Shifts	21,407		20,807	
Number & % of Shifts where:				
Planned Roster Met and Appropriate	14,603	65.69%	13,572	65.23%
Planned Roster Met but Not Appropriate	490	2.29%	486	2.34%
Planned Roster Not Met but Appropriate	41,860	8.69%	1,777	8.54%
Planned Roster Not Met and Not Appropriate	4,994	23.33%	4,972	23.9%
Data Completeness	97.6%		97.5%	

Source: Annual Assurance Report to QSEC March 2022

- 2.26 The NSP Team confirmed that the “extent to which” data reflects the position after ‘all reasonable steps’ have been taken to maintain staffing levels, although this has been challenging during the pandemic as some actions that would usually have been taken have not been possible due to service demand and the (sometimes limited) availability of temporary staff.
- 2.27 The assessment of whether the available staffing level is appropriate to meet patient care needs is based on the senior nurses’ professional judgement of the match (or mismatch) between workforce availability and patient acuity. The *Safecare* software system is being implemented across NHS Wales and, when fully rolled out, will enable a more visible and explicit triangulation between the roster information and the patient acuity data to underpin this judgement. The senior nurse on duty will still be able to apply their own professional judgement to the extent to which the workforce can meet with patients’ needs but it is anticipated that the daily use of this system to support operational decision making will help to ensure the reliability and validity of the data captured.
- 2.28 In addition to the annual assurance report, nurse staffing level updates are reported to the QSEC as and when required as part of the Quality & Safety Assurance Report, with exceptional items reported separately. The most recent update was provided in August 2021 with regards to the Spring 2021 review cycle.
- 2.29 No updates were presented to QSEC during or immediately following the Autumn 2021 review cycle, for example to update on the challenges and delays in completing the financial impact assessment and agreeing funding allocations. Similarly, prior to the annual assurance report in March 2022, the committee had not been informed of difficulties in maintaining agreed nurse staffing levels. However, we recognise that the statutory annual report highlighting the finance and workforce implications of the Autumn 2021 cycle was presented to Board in November 2021 (see objective 5 for further details). **[See Matter Arising 2 at Appendix A]**
- 2.30 A report on *Stroke Services: Nurse Staffing Levels* was presented to QSEC in December 2021, prompted by the results of the *Deep Dive Review of Stroke Performance*. The report highlighted the risks and mitigations relating to nurse staffing levels within Stroke Services, and reported assurance to the committee that “*the nurse staffing levels that are in place for the current Health Board model have been subject to a robust challenge and scrutiny process. These have been agreed by the Designated Person as professionally appropriate...*”.

Conclusion:

- 2.31 Arrangements are in place to capture compliance with nurse staffing levels which revealed difficulties in maintaining these levels during 2021/22. Although QSEC are provided with an annual assurance report, the committee should be provided with more regular updates via the Quality & Safety Assurance Report. Consequently, we have concluded **Reasonable** assurance for this objective.

Objective 5: A nurse staffing levels report is submitted to the Board and Welsh Government in accordance with Section 25E of the Act

- 2.32 Section 25E of the Act states that for each three-year reporting period, the Health Board must submit a report to the Welsh Government outlining:
- The extent to which nurse staffing levels have been maintained;
 - The impact the board considers that not maintaining nurse staffing levels has had on care provided to patients by nurses (by reference to increase in complaints, medication errors, patient falls and hospital acquired pressure ulcers); and
 - Any actions taken in response to not maintaining nurse staffing levels.
- 2.33 The report for the period 2018-2021 was presented to the Board in September 2021, prior to submission to Welsh Government in October 2021.
- 2.34 Health Board policy requires the Designated Person to formally present the nurse staffing level for each section 25B ward to the Board on an annual basis. The latest report, presented in November 2021, confirmed the approach to calculating nurse staffing levels and the finance and workforce implications of the Autumn 2021 review. The report included a summary of nurse staffing levels for section 25B wards, highlighting the pre- and post-review planned rosters and required establishments.
- 2.35 We identified minor discrepancies between the planned rosters and required establishment per the finance impact assessment and Board paper. The NSP Team confirmed that this was due to errors in the Board paper. **[See Matter Arising 3 at Appendix A]**

Conclusion:

- 2.36 Noting the above we have concluded **Substantial** Assurance for this objective.

Appendix A: Management Action Plan

Matter Arising 1: Incomplete Templates & Approval by Designated Person (Design)	Impact	
<p>We confirmed that the nurse staffing levels had been reviewed for all sampled wards, using the prescribed template. In all cases the templates evidenced consideration of the factors above, and demonstrated compliance with the prescribed methodology.</p> <p>Four templates did not evidence review/discussion with the NSP Team, and nine did not evidence review/discussion with the Designated Person to confirm the new proposed nurse staffing levels. Ward templates are summarised by the NSP Team in an 'overview document' for each acute site, used to facilitate review and discuss with the Designated Person.</p> <p>However, there is no explicit evidence that the Designated Person has reviewed and agreed the nurse staffing levels. We acknowledge that this is implied through the subsequent reporting of agreed nurse staffing levels by the Designated Person to the Board, although this is some time after the agreed nurse staffing levels have been implemented.</p>	<p>Potential risk of:</p> <ul style="list-style-type: none"> Non-compliance with the Act and Health Board Policy 	
Recommendations	Priority	
<p>1.1 The Nurse Staffing Level templates should be fully completed. If the overview document is the preferred method for capturing NSP Team and Designated Person review and approval, the template should be updated to remove these sections and instead refer to the overview document.</p>	<p>Low</p>	
<p>1.2 Review and approval of the agreed nurse staffing levels by the Designated Person should be evidenced.</p>	<p>Medium</p>	
Agreed Management Action	Target Date	Responsible Officer
<p>1.1 Ahead of the next (Autumn 2022) cycle, revise the Nurse Staffing Level review template and associated documents and design the process by which the revised nurse staffing level templates and associated documents are updated following the discussion with the Designated Person</p>	<p>31 August 2022</p>	<p>Nurse Staffing Programme Lead</p>

1.2 Design a process by which the Designated Person formally confirms the record of the agreed nurse staffing levels and test this process as part of the Spring 2022 nurse staffing level review cycle.	31 May 2022	Nurse Staffing Programme Lead
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Matter Arising 2: Assurance Reporting to QSEC (Operation)		Impact
<p>The “extent to which” data was available for the first time during the Autumn 2021 review cycle, and a summary included in the annual assurance report to the Quality Safety & Experience Committee (QSEC) in March 2022.</p> <p>In addition to the annual assurance report, nurse staffing level updates are reported to the Board on an annual basis (in line with statutory requirements) and to QSEC as and when required as part of the Quality & Safety Assurance Report, with exceptional items reported separately. The most recent update to QSEC was provided in August 2021 with regards to the Spring 2021 review cycle.</p> <p>No updates were presented during or immediately following the Autumn 2021 review cycle, for example to update on the challenges and delays in completing the financial impact assessment and agreeing funding allocations. Similarly, prior to the annual assurance report in March 2022, the committee had not been informed of difficulties in maintaining agreed nurse staffing levels. However, we recognise that the statutory annual report highlighting the finance and workforce implications of the Autumn 2021 cycle was presented to Board in November 2021.</p>		<p>Potential risk of:</p> <ul style="list-style-type: none"> • The Board does not receive assurance in respect of the organisation’s ability to maintain agreed nurse staffing levels • Inappropriate variation from the planned nurse staffing levels may result in poor quality care or patient harm.
Recommendations		Priority
<p>2.1 The Quality Safety & Experience Committee should receive regular assurance reports on the Health Board’s ability to maintain agreed nurse staffing level, with escalation to the Board where appropriate.</p>		<p>Medium</p>
Agreed Management Action	Target Date	Responsible Officer
<p>2.1 Routinely provide a (minimum of a) 6 monthly (August and February) report to HB’s Quality Safety & Experience Committee as part of the regular overarching assurance report to that committee.</p> <p>This report will include (quantitative) details of the extent to which the nurse staffing levels have been maintained across Section 25B wards during the previous 6 months; and (qualitative narrative) description of the steps that have been taken to maintain the planned rosters at their agreed levels and any notable patient outcomes associated with maintaining/not maintaining the staffing levels.</p>	<p>From August 2022 onwards</p>	<p>Nurse Staffing Programme Lead</p>

Matter Arising 3: Accuracy of Reporting to Board (Operation)		Impact
We identified minor discrepancies between the planned rosters and required establishment per the finance impact assessment and Board paper. The NSP Team confirmed that this was due to errors in the Board paper.		Potential risk of: <ul style="list-style-type: none"> Inaccurate reporting to Board
Recommendations		Priority
3.1 Ensure accurate reporting of nurse staffing levels to the Board.		Low
Agreed Management Action	Target Date	Responsible Officer
3.1 Embed a process of checking/proofreading all the data incorporated into Board / QSEC reports to ensure accuracy	May 2022 onwards	Nurse Staffing Programme Lead

Appendix B: Assurance opinion and action plan risk rating

Audit Assurance Ratings

We define the following levels of assurance that governance, risk management and internal control within the area under review are suitable designed and applied effectively:

	Substantial assurance	Few matters require attention and are compliance or advisory in nature. Low impact on residual risk exposure.
	Reasonable assurance	Some matters require management attention in control design or compliance. Low to moderate impact on residual risk exposure until resolved.
	Limited assurance	More significant matters require management attention. Moderate impact on residual risk exposure until resolved.
	No assurance	Action is required to address the whole control framework in this area. High impact on residual risk exposure until resolved.
	Assurance not applicable	Given to reviews and support provided to management which form part of the internal audit plan, to which the assurance definitions are not appropriate. These reviews are still relevant to the evidence base upon which the overall opinion is formed.

Prioritisation of Recommendations

We categorise our recommendations according to their level of priority as follows:

Priority level	Explanation	Management action
High	Poor system design OR widespread non-compliance. Significant risk to achievement of a system objective OR evidence present of material loss, error or misstatement.	Immediate*
Medium	Minor weakness in system design OR limited non-compliance. Some risk to achievement of a system objective.	Within one month*
Low	Potential to enhance system design to improve efficiency or effectiveness of controls. Generally issues of good practice for management consideration.	Within three months*

* Unless a more appropriate timescale is identified/agreed at the assignment.



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