

NHS England and NHS Improvement  
Skipton House  
80 London Road  
London  
SE1 6LH

09 December 2021

Dear Kate,

Thank you for your letter, which Amanda Pritchard has asked me to respond to on her behalf.

I want to start by acknowledging the invaluable efforts by you and your members in supporting the healthcare system during what has been a challenging time.

The price caps set by NHS England and NHS Improvement (NHSEI) apply to the total amount a trust can pay per hour for an agency worker. Trusts are expected not to pay more than the price caps, except in exceptional patient safety circumstances, referred to as 'break glass'

In July 2021, the UK government confirmed a 3% pay award for 2021/22 for all NHS workers employed under the NHS terms and conditions of service. For clarity, an agency worker is not directly employed by the NHS. The NHS pay rates were used as a reference to benchmark the price caps before the launch of the Agency Rules in April 2016.

Section 5.14. of the agency rule states, 'The price caps will be reviewed in line with adjustments to national pay scales as appropriate'. As such, any review will be in the following financial year.

The Long Term Plan is to support NHS providers to reduce their agency staff bills and encourage workers back into substantive and bank roles.

In your letter you raised the issue of the disparity in pay between substantive staff and agency workers, with reference to the Agency Workers Regulations 2010 (AWR).

A qualifying agency worker must complete a 12-week qualifying period with the same hirer, in the same role, to be entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. This includes key elements of pay, duration of working time, night work, rest periods, rest breaks, and annual leave.

The understanding, therefore, is that qualifying agency workers will be paid in line with AfC rates.



Additionally, NHSEI publishes price caps for agency shifts, setting out the recommended maximum hourly charge that a trust should pay for agency staff. These price caps are a recommended maximum and trusts should try to obtain maximum value for money and remember that the price cap is not a standard or default rate. However, trusts must still ensure that they comply with AWR and all other relevant employment legislation. As such, we would not expect a qualifying agency worker to be paid below AfC rates.

If you can inform your members, that there have been no changes to the price cap and where there is evidence of a qualifying agency worker, this must be raised with the framework operator to investigate.

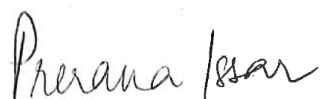
Agency workers paid above the price cap will not necessarily see a pay increase as they will already be receiving more than a substantive member of staff, and therefore AWR will not apply. Where this is unclear, NHSEI have advised trusts to obtain their own legal advice on a case by case basis.

NHSEI will continue to work closely with the framework operators to support our workforce during the recovery phase, and we hope you will want to be part of this journey.

More information about our approved frameworks can be found at [NHS England » Agency rules: list of approved framework agreements for all staff](#), and please contact the framework operators with any queries.

Thank you for your continued cooperation.

Many thanks



Prerana Issar  
Chief People Officer for the NHS

