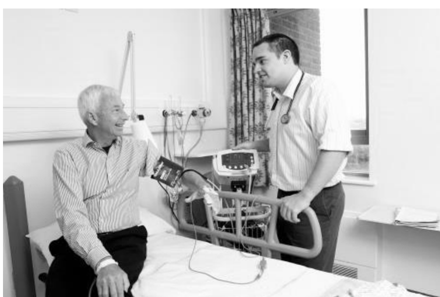
NHS Improvement

Agency rules

March 2016



About NHS Improvement

NHS Improvement is responsible for overseeing foundation trusts, NHS trusts and independent providers. We offer the support these providers need to give patients consistently safe, high quality, compassionate care within local health systems that are financially sustainable. By holding providers to account and, where necessary, intervening, we help the NHS to meet its short-term challenges and secure its future.

NHS Improvement brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams. NHS Improvement is an operational name for the organisation which formally comes into being on 1 April 2016.

Contents

1. Introduction 4
2. Organisations in scope 5
3. Staff groups in scope 6
4. Expenditure ceilings 6
5. Price caps 7
6. Maximum wage rates 9
7. Mandatory use of approved framework agreements 11
8. Personal services companies 12
9. Overriding the agency rules 13
10. Governance 14
11. Support 15
12. Enforcement 16

Annex 1. Definitions 18

Annex 2. Price caps on total hourly charge 21

Annex 3. Maximum wage rate tables 23

Annex 4. How the price caps are calculated 27

Annex 5. Key dates 29

Note: NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority (TDA), Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

From 1 April 2016 all references to Monitor or TDA will in effect be replaced by 'NHS Improvement'. This document therefore uses NHS Improvement throughout.

1. Introduction

1.1. NHS Improvement recognises that agencies can perform an important role by helping align the supply of staff with where they are most in demand. However, trust spending on agency staff has increased to the extent that it is one of the most significant causes of deteriorating trust finances. NHS Improvement has introduced a set of rules to support trusts to reduce their agency expenditure.

1.2. This document sets out all the rules for trusts on agency expenditure, which are collectively known as the 'agency rules'. It builds on and supersedes previous rules documents for trusts (including those published on 1 September 2015 and 23 November 2015). Trusts should refer to this document for details on how to comply with all the agency rules, including the requirements from 1 April 2016 to:

- comply with a ceiling for trust total agency expenditure
- continue to procure all agency staff at or below the price caps
- use approved framework agreements to procure all agency staff.

These rules also outline a requirement to comply with maximum wage rates when procuring agency staff from 1 July 2016.

1.3. From 1 April 2016, the agency rules apply to all staff groups (ie those listed in section 3).

1.4. The agency rules are designed to:

- significantly reduce agency spend
- improve transparency on agency spend
- bring greater assurance on quality of agency supply
- encourage staff to return to permanent and bank working.

2. Organisations in scope

2.1. The agency rules apply to:

- all NHS trusts
- NHS foundation trusts receiving interim support from the Department of Health (DH)
- NHS foundation trusts in breach of their licence for financial reasons.

2.2. Throughout this document 'trusts' refers to 'all trusts in scope of the rules' unless otherwise specified.

2.3. There is a strong expectation that all other NHS foundation trusts will comply. The new value for money trigger[1] in the risk assessment framework means that NHS Improvement will explicitly take into account foundation trusts' inefficient or uneconomic spending practices, including in relation to agency spending, as a measure of governance. NHS Improvement will continue to work with NHS trusts through application of the accountability framework and may also investigate trusts that are not managing their agency spend effectively.

2.4. Trust performance against the agency rules will form part of the criteria for releasing funding from the Sustainability and Transformation Fund.

2.5. The ceilings and mandatory use of approved framework agreements applies to ambulance trusts and ambulance foundation trusts. Price caps apply to ambulance trusts and ambulance foundation trusts from 1 July 2016.

2.6. While these rules apply to trusts and foundation trusts, commissioners have an important role in monitoring performance. We encourage trusts to work with their commissioners to agree plans for services in the event of staffing issues.

---

[1] Outlined in: www.gov.uk/government/uploads/system/uploads/attachment_data/file/451387/Risk_Assessment_Framework_updated_August_2015_final.pdf

3. Staff groups in scope

3.1. The agency rules apply to all staff groups covered by national pay scales:

- medical staff (including dental staff where applicable)
- nursing and midwifery staff
- all other clinical staff
- all non-clinical staff.

3.2. GPs are not covered by the agency rules, except where they are employed by a trust. Where this is the case, the appropriate equivalent medical price caps should apply.

3.3. Very senior managers are not covered by this set of agency rules.

3.4. Please see Annex 1 for definitions of terms.

4. Expenditure ceilings

4.1. NHS Improvement has set ceilings on the total amount individual trusts can spend on agency staff in 2016/17. From 1 April 2016 expenditure ceilings for agency nursing will be replaced with expenditure ceilings that apply to all agency staff groups.

4.2. All trusts, including all foundation trusts, have a ceiling.

4.3. Annual expenditure ceilings for 2016/17 have been calculated based on a trust's Q1 to Q3 (April to December) 2015/16 spend on agency as a percentage of total staff spend.

Table 1. Ceilings for trusts

Current agency spend as a percentage of total staff spend	Required reduction in agency spend
Above 4.6%	35%
3% - 4.6%	0-35%
At or below 3%	0%

4.4. Each trust received their annual ceiling on 17 March 2016. Trusts with planned agency expenditure above their annual ceiling will need to revise their plans to ensure agency expenditure is within the ceiling. Revised plans should be submitted to NHS Improvement by 11 April 2016. Trusts with planned agency expenditure at or below their ceiling will not need to take any further action with regards to their plans.

4.5. There is a strong expectation that all trusts not in scope of the rules will comply with this rule, and revise their plans to ensure agency expenditure is at or below their ceiling where necessary.

4.6. NHS Improvement will calculate the monthly profile of a trust's ceiling in proportion to the monthly profile of their planned agency expenditure. All trusts should therefore ensure that their planned monthly profile of agency expenditure is robust.

4.7. A trust's performance against its agency ceiling will be monitored on a monthly basis through the trust's monthly data submissions to NHS Improvement. All trusts will be held to account against their annual expenditure and monthly profile.

4.8. Ceilings are maximum levels, and trusts should reduce agency expenditure below these levels as far as possible.

4.9. Only in exceptional circumstances will an adjustment to individual trust ceilings be considered (eg if a trust submitted inaccurate agency expenditure data for Q1 to Q3 2015/16). Trusts should email agencyrules@monitor.gov.uk for further guidance. The deadline for the submission of an application for adjustment is 31 March 2016.

4.10. Following implementation of the ceilings, NHS Improvement will monitor agency spending and may subsequently adjust trajectories and ceilings as appropriate, or as new data becomes available.

5. Price caps

5.1. The price caps set by NHS Improvement apply to the total amount a trust can pay per hour for an agency worker. Trusts must not pay more than the price caps to secure an agency worker. Trusts can override the price caps in exceptional patient safety circumstances only (see section 9).

5.2. The price caps apply when:

- an agency fills a shift directly
- an agency finds a worker to fill a shift, but the trust pays the worker directly for that shift and pays the agency a finder's fee (all of this

expenditure including payment to the worker, fees and on-costs should be classified as agency expenditure)

- workers are paid through a limited/personal service company or are engaged via a third party limited liability partnership.

5.3. The price caps do **not** apply to:

- substantive/permanent staff
- bank staff (both in-house banks and outsourced banks)
- overtime payments to substantive/bank staff (eg waiting list initiatives)
- staff employed by a trust on a fixed-term contract.

5.4. The price caps apply to all staff providing NHS services at the trust and apply to all specialties and departments, subject to paragraph 5.3.

5.5. The price caps apply to ambulance trusts and ambulance foundation trusts from 1 July 2016.

5.6. The price caps also apply to agency workers who are contracted on a sessional or fee for service basis.

5.7. The price caps set are the maximum total hourly rate that trusts can pay for an agency worker. NHS Improvement will proceed with the ratcheting down of the caps on 1 April 2016. This means that from 1 April 2016 agency workers should be paid in line with NHS substantive pay rates.

5.8. Price caps for all staff from 1 April 2016 are calculated at 55% above basic pay rates. This takes into account holiday pay (annual leave and bank holidays), employer National Insurance contributions, a nominal employer pension contributions and a modest agency fee (see Annex 4 for further details on how the price caps are calculated).

5.9. The price caps include worker pay and all other elements of the payment, including all expenses such as travel and accommodation.[2] Trusts cannot pay other additional sums to agency workers or to agencies.

---

[2] The price caps do not include travel costs as part of the role where these would normally be paid to a substantive worker, eg home visits.

Table 2. Price caps as a percentage above basic substantive hourly rates

Staff groups	Maximum charge from 1 Apr 2016[3]
Junior doctors	55% above basic rates
Other medical staff	
All other clinical staff	
Non-clinical staff	

5.10. The price caps represent the maximum that trusts can pay and should not be interpreted as standard or default rates.

5.11. Trusts that currently pay agency staff below the capped rates are expected not to exceed the rates they currently pay.

5.12. Annex 2 details the full set of price caps, excluding any relevant VAT. Price caps are based on standard NHS 2016/17 pay scales and may be revised in light of any changes to contracts for substantive workers.

5.13. There are different price caps for high cost supplement areas, in line with Agenda for Change. The methodology for applying these has been updated since the 23 November 2015 publication on price caps, to reflect maximum and minimum annual high cost area supplements.

5.14. For medical and dental staff, rates are set for eight pay scales. Two different rates apply for 'core' hours and 'unsocial' hours. For the purposes of the agency price caps, core hours are defined as 7am to 7pm, Monday to Friday (excluding bank holidays). Unsocial hours are all other hours. On-call hours should be treated the same as core or unsocial hours, depending on when they fall. Neither high cost area supplements nor regional supplements are applicable to medical and dental staff.

6. Maximum wage rates

6.1. NHS Improvement is separately setting the maximum amount an agency worker receives per hour. Trusts are encouraged to comply with the maximum

[3] The price caps apply (ie 55% above basic pay rates) to ambulance trusts and ambulance foundation trusts from 1 July 2016

wage rates[4] from 1 April 2016. Trusts are required to comply with the maximum wage rates from 1 July 2016. Trust compliance with the maximum wage rates is required in addition to compliance to the price caps. Trusts can override the maximum wage rates under exceptional patient safety circumstances only.

6.2. Trusts should seek confirmation from agencies that workers are not paid more than the maximum wage rates. Trusts must report on this in their weekly returns to NHS Improvement from 1 July 2016. Trusts should therefore ensure arrangements are in place to be able to submit this information from this date.

6.3. Both maximum wage rates and price caps aim to ensure that agency workers are paid in line with standard NHS terms and conditions. Annex 3 details the maximum wage rates. The maximum wage rates are set at a level similar to those of substantive staff.

6.4. Both maximum wage rates and price caps apply hourly.

6.5. Trusts will need to be aware of their responsibilities under the Agency Workers Regulations 2010 and Working Time Regulations.

- Tables A3 and A5 in Annex 3 set out the maximum wage rates that can be paid when engaging with a worker for less than 12 weeks.
- Tables A4 and A6 in Annex 3 set out the maximum wage rates that can be paid when engaging with a worker for longer than 12 weeks.
- The price caps remain the same regardless of the length of time an agency worker spends on assignment.
- Trusts will therefore need to consider whether long-term reliance on agency staff is appropriate and sustainable within the price caps.

6.6. Where trusts have entered into bookings or contracts at rates above the price caps, trusts should seek to renegotiate or conclude these arrangements as quickly as possible, taking into account any contractual requirements for notice and/or exit fees. All payments above the price caps should be reported as overrides to the price cap at shift level.

[4] Maximum wage rates are set at substantive levels but include a small allowance in lieu of the benefits that substantive staff receive. Employer National Insurance and employer pension contributions are not included in the wage cap but are included in the total price cap, along with any agency fee and framework fee. No other payments are permitted to the worker.

6.7. Trusts found to be entering into block bookings to avoid the price caps may be investigated by NHS Improvement. Appropriate regulatory action may be taken in response to non-compliance with the agency rules.

6.8. NHS Improvement monitors the agency rules in partnership with NHS England and the Care Quality Commission (CQC). The rules, including the level of the price caps and maximum wage rates, may be subject to change at the discretion of NHS Improvement.

7. Mandatory use of approved framework agreements

7.1. From 1 April 2016, trusts are required to procure all agency staff (nurses, doctors, other clinical and non-clinical staff) via framework agreements that have been approved by NHS Improvement. Overrides to the rule are permitted on exceptional patient safety grounds only. This is an extension of the previous requirement to procure all nursing staff via approved framework agreements. (Please also see paragraphs 7.7 and 7.8).

7.2. This rule applies to ambulance trusts and ambulance foundation trusts from 1 April 2016.

7.3. A list of approved framework agreements[5] can be found on the website. NHS Improvement will continue to review framework applications on an ongoing basis as they are submitted, and where applications are received on or before 1 April 2016, that framework can continue to be used pending the decision by NHS Improvement. NHS Improvement will continue to communicate outcomes to framework operators and trusts including any updates to the list of approved framework agreements.

7.4. Framework agreements that do not meet the conditions set out in the framework approvals guidance will have their approved status reconsidered by NHS Improvement and risk having that status removed. If approval is removed NHS Improvement will notify trusts that they are no longer able to use that particular framework agreement and allow trusts a reasonable time period, at NHS Improvement's discretion, to adjust their arrangements to approved framework agreements.

7.5. All procurement from approved framework agreements must comply with the price caps and maximum wage rates.

---

[5] www.gov.uk/guidance/rules-for-all-agency-staff-working-in-the-nhs

- NHS Improvement is working with framework operators to ensure that all approved framework agreements contractually embed the price caps and maximum wages rates (either through framework operators renegotiating contracts or re-tendering framework agreements), and that this is achieved as soon as possible and by 1 November 2016 at the latest.

- In the meantime, where trusts are using an approved framework agreement with maximum rates, trusts are expected to continue to negotiate rates in order to comply with the price caps and maximum wage rates.

7.6. It is the responsibility of framework operators, not trusts, to seek approval from NHS Improvement for their framework arrangements. Trusts are requested to inform their framework operators of these rules.

- We have a published guidance for framework operators, which sets out how framework operators can apply for framework agreements to be approved by NHS Improvement for use by trusts.

- Framework operators can apply via the application form on the website. We will continue to review applications on an ongoing basis

7.7. Where there are existing contractual arrangements with agencies, trusts are expected to renegotiate or terminate those arrangements where appropriate so far as legally possible, taking into account any contractual requirements for notice and/or exit fees.

7.8. NHS Improvement may grant approval for a trust to use an agreement with an agency not on the approved framework agreements, but only where a trust can demonstrate equivalent or better value for money than the approved framework agreements, including equivalent or lower prices, than the prevailing price caps and maximum wage rates. Trusts need to apply for these to be considered on a case-by-case basis. We expect these instances to be rare.

8. Personal service companies

8.1. NHS Improvement recognises that in some circumstances trusts engage directly with a worker directly via a limited/personal services company (PSC). Trusts must only engage directly with a worker working via a PSC where the trust is assured that the worker is complying with IR35 legislation. The trust must seek proof from the worker that they have complied with the obligations set out in HMRC guidance. If a worker cannot provide adequate assurance that they are operating within the law the trust must not engage with the worker via that arrangement.

8.2. As referred to in paragraph 5.2, the price caps apply when trusts engage with a worker via a limited/personal services company or third party limited liability partnership.

8.3. Trusts are however encouraged not to engage with individual workers via PSCs. Where possible, trusts should engage that worker via the trust's bank and/or encourage the individual onto the trust's payroll.

8.4. As part of the framework approvals process, NHS Improvement will grant approval where framework operators ensure that agencies on the framework agreements are seeking regular assurance from agency workers that workers are complying with IR35 legislation when engaging with a trust via a limited/personal services company.

8.5. NHS Improvement reminds trusts of their ultimate responsibility to ensure all agency workers engaged in employment at their organisation comply with the standard NHS Employment checks.

9. Overriding the agency rules

9.1. The agency rules include a 'break glass' provision for trusts that need to override the price caps, maximum wage rates or framework rules on exceptional patient safety grounds only.

9.2. Overrides should be used within a robust escalation process sanctioned by the trust board. Trust boards have primary responsibility for monitoring the local impact of the agency rules and ensuring patient safety.

9.3. All trusts, including foundation trusts that are not in breach of their licence conditions, are expected to report weekly to NHS Improvement the number of shifts which override the rules and complete a short qualitative survey. All overrides should be reported to NHS Improvement. The weekly monitoring return should be signed off by a relevant board member, eg finance director, medical director, nursing director, or human resources director.

9.4. Overrides to the price caps rule are where a trust procures an agency worker at a rate that is in excess of the price caps.

9.5. Overrides to the maximum wage rates are where a trust procures an agency worker at a rate that is in excess of the maximum wage rates. Trusts are required to report on compliance with maximum wage rates from 1 July 2016.

9.6. Overrides to the framework rule are where a trust procures an agency worker via any mechanism other than via an approved framework agreement or arrangement for example:

- off framework

- via a non-approved framework agreement or arrangement.

9.7. Where trusts override the price caps and maximum wage rates they should indicate in their weekly returns the main mechanism for overriding the rules (agency/framework or personal services companies)

9.8. Where trusts have needed to override the agency rules they should report the following information on the overrides on a shift-level basis in their weekly returns:

- staff group (medical, nursing, other)
- type of rule (eg price cap, framework, both)
- number of shifts where a rule(s) has been overridden.

10. Governance

10.1. We expect all trust boards, including the boards of all foundation trusts, to ensure that they are following robust and effective processes for managing the implementation of the agency rules. We expect:

- accurate and timely weekly override submissions to NHS Improvement:
  - submitted weekly by Wednesday noon
  - submissions signed off by a board member
- board accountability:
  - one accountable officer in place for agency expenditure and compliance to the agency rules
- escalation process for sourcing agency staff which ensures:
  - appropriate review of agency use taking into account safety, quality and finances
  - appropriate use of the override mechanism
- regular internal review panels for monitoring trust overrides and reviewing agency rules monitoring data
- regular board review of agency expenditure and overrides to ensure compliance with agency ceiling

10.2. NHS Improvement will scrutinise any overrides. Inappropriate use and failure to make rapid improvements to workforce management may lead to regulatory action as appropriate. This could include trusts boards being

required to develop a clear workforce strategy on how the overrides will be avoided in the future.[6]

11. Support

11.1. Trusts are encouraged to work closely with commissioners to:

- agree plans for continuing or suspending services in the event of staffing issues
- understand potential patient safety concerns and their impact on delivery of trust/clinical commissioning group (CCG) contracts.

11.2. Trusts are also encouraged to work closely with framework operators who can support trusts to comply with the agency rules.

11.3. NHS Improvement will support trusts as much as possible in complying with the agency rules. Where trusts are struggling to comply, we will seek to work with them to identify issues, develop and prioritise actions and implement solutions. We have developed a diagnostic tool to help NHS providers move to best practice and reduce their use of agency staff.[7] We strongly encourage all trusts to use the tool and develop robust action plans to better manage agency spend and compliance with the agency rules.

11.4. NHS Improvement's Workforce Efficiency Team helps trusts to use the diagnostic tool and to provide improvement support where needed. Please see our website for more information on the Workforce Efficiency Team and their webinars[8] on issues such as rota management, developing a bank and explaining the agency rules.

11.5. If you have any questions on support please contact the Workforce Efficiency Team via the general agency rules mailbox agencyrules@monitor.gov.uk

[6] NHS Improvement, CQC and the Chief Nursing Officer for England emphasise the importance of trusts and commissioners fulfilling their responsibilities for safe staffing, as set out in the joint letter of 13 October 2015 from Sir Mike Richards, Dr Mike Durkin, Jane Cummings, Sir Andrew Dillon and Ed Smith and also detailed in the National Quality Board (NQB) guidance (including the 10 expectations published in November 2013). http://www.england.nhs.uk/wp-content/uploads/2013/11/nqb-how-to-guid.pdf

[7] www.gov.uk/guidance/rules-for-all-agency-staff-working-in-the-nhs

[8] www.workcast.com/?cpak=9747167076605020&pak=9835807670444027

12. Enforcement

12.1. Inappropriate overriding of the rules, or any deliberate action to circumvent the rules, will have a bearing on NHS Improvement's regulatory judgements, on the basis that a trust may not be achieving value for money, which may indicate wider governance concerns.

12.2. For foundation trusts, NHS Improvement will consider compliance in accordance with the provider licence and risk assessment framework. NHS Improvement may investigate foundation trusts if there is sufficient evidence to suggest inefficient and/or uneconomical spending at a trust, for instance agency and management consultant spend, which indicates wider governance concerns. NHS Improvement will continue to work with NHS trusts through application of the accountability framework and may also investigate trusts that are not managing their agency spend effectively.

12.3. Before considering any action, we will seek to understand the degree to which a trust is aware of the issue and has a credible plan to address it. We expect providers to take the lead in developing and implementing workforce solutions.

12.4. While trust boards are ultimately accountable for compliance with the rules, we will seek to support trusts in implementing them and addressing issues. The plan in Table 3 (page 17) sets out how we intend to approach non-compliance.

12.5. NHS Improvement considers that all elements in the approach above – developing and implementing plans, leveraging central support, identifying necessary exceptions – can be achieved via routine engagement with trusts. If, however, we consider that trusts are not doing all they can to meet all the agency rules in a timely manner, then we may consider regulatory action to formally direct trusts to apply the steps described above.

Table 3: NHS Improvement's response to non-compliance

1. Test trust's understanding of the issue and the ability to address it	
Trust explains to NHS Improvement the reasons behind its level of override(s)	Trust provides: • a clear explanation of the causes of the overrides • evidence of appropriate and effective governance and workforce management processes, eg activity plans and links between staffing and financial plans • evidence of best practice in considering other options before the trust overrode the controls
Trust develops an evidence-based plan to return to compliance	Plans must be signed off by the trust's nursing director/medical director/human resources director/finance director as appropriate, endorsed by the executive team and approved by the board The plan should reference processes that both control costs and preserve patient safety
Trust delivers this plan	NHS Improvement will request information on whether the trust is meeting the plan via the reporting cycle or more frequently
2. If necessary, provide best practice support to develop a solution	
Trust seeks support via relevant best practice teams	If the trust is unable to deliver the plan, or considers that it needs external support immediately, then the trust should work with experts to go through any or all of step 1 above. Experts may include NHS Improvement's Agency Rules Team and/or the Workforce Efficiency Team A follow-up plan should be agreed with the central bodies, referencing the gap between actions to date and best practice and how this will be closed
3. Escalation if rules are still being overridden	
Present case to NHS Improvement	If the trust is still unable to meet the price caps despite following steps 1 and 2 above, then the board may be requested to explain to NHS Improvement why this is so. We will use this interaction to identify the degree to which the board understands the problem and has engaged with it

Annex 1: Definitions

Price caps	Price caps are the maximum total amount of money, exclusive of VAT, that a trust can pay per hour for an agency worker. These include all related costs (eg holiday pay for the worker, employer National Insurance, employer pension contributions, administration fee/agency charge).
Maximum wage rates	Maximum wage rates are the maximum total amount of money that a trust can pay per hour to secure an agency worker. Trusts are required to seek confirmation from agencies that workers are not paid more than the maximum wage rates.
Ceilings	Ceilings refer to the total amount a trust can spend on agency staff in 16/17, as a proportion of their total staffing bill.
Framework agreements	All framework agreement must be procured in accordance with the EU public contracts directives as implemented by the Public Contracts Regulations 2006 or the Public Contracts Regulations 2015. The Regulations define a framework agreement as: "an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies."
Medical staff	Medical staff are defined as all practising doctors who are registered with the General Medical Council, who are employed in that capacity.
Other clinical staff	Other clinical staff are defined as those registered clinical staff who are not already included as part of 'Medical staff', eg nurses, allied health professionals, etc.
Non-clinical staff	Non-clinical staff include but are not limited to estate and maintenance staff, and administration and clerical staff. Non-clinical positions also include managers.
Agency staff and agency expenditure	Agency staff are defined as those who work for the NHS but who, for the purposes of the transaction, are not on the payroll of an NHS organisation offering employment. Procurement should be classified as agency expenditure where: • an in-house bank is unable to fill a shift directly and sources the shift from a third-party agency • an outsourced bank (including but not limited to NHS Professionals) is unable to fill a shift directly and

	sources the shift from a third-party agency • an agency fills a shift directly • an agency finds a worker to fill a shift, but the trust pays the worker directly for that shift and pays the agency a finder's fee (all this expenditure including payment to the worker and on-costs should be classified as agency expenditure). Where trusts employ a method of direct engagement (or 'finder's fee') for individual shifts or periods of employment, all costs associated with this supply (including the pay to the worker and on-costs through the NHS provider) should be classified as agency spend.
Bank expenditure (not in scope of rules)	Expenditure on shifts through both in-house and outsourced banks should be classified as bank and not under the scope of the price caps rules. This includes outsourced banks that are provided by organisations including, but not limited to, NHS Professionals. However, where these organisations are used to source shifts from a third-party agency, expenditure on those shifts should continue to be classified as agency expenditure. For the avoidance of doubt, agency shifts supplied through neutral or master vendor arrangements should continue to be classed as agency spend. Procurement should be classified as bank where: • an in-house bank provides a shift directly • an outsourced bank (including but not limited to NHS Professionals) provides a shift directly.
Agenda for Change (AfC)	AfC allocates posts to set pay bands (1 to 9) based on the principle of equal pay for equal value and harmonising uplifts for unsociable and geographical regions. All staff working for providers are subject to AfC except doctors, dentists and very senior managers.
Medical and dental pay scales	This Pay and Conditions circular informs employers of the pay arrangements for staff covered by the national medical and dental terms and conditions of service
Very senior managers (VSMs)	VSMs are defined as those who are not subject to AfC; they are above band 9. They are currently paid on the discretion of the provider they work for. They are not in scope of this set of agency rules. There is published guidance for NHS employers on VSM pay. VSMs are usually chief executives, executive directors or other senior directors.

Annex 2: Price caps on total hourly charge

The following tables set out price caps on the total hourly charge made by a trust to an agency.

Table A1 sets out the price caps for all medical and dental staff.

Table A2 sets out the price caps for all Agenda for Change staff – both clinical and non-clinical staff.

Where a shift covers time periods that are capped at different rates, the cap should be calculated pro rata for those time periods. For example, a shift for a consultant over six core hours and two unsocial hours has a capped rate of £652.96 (= £75.34 x 6 hours + £100.46 x 2 hours)

Table A1. Medical and dental maximum hourly charge

Grade and shift type		Hourly rate
Foundation year 1	Core	£20.37
	Unsocial	£24.62
Foundation year 2	Core	£25.27
	Unsocial	£30.54
Registrar (ST1-2) / Core medical training	Core	£28.66
	Unsocial	£34.63
Registrar (ST3+)	Core	£35.73
	Unsocial	£43.17
Dental core training	Core	£35.19
	Unsocial	£42.52
Specialty doctor / staff grade	Core	£52.00
	Unsocial	£69.33
Associate specialist	Core	£64.35
	Unsocial	£85.80
Consultant	Core	£76.10
	Unsocial	£101.46

Note: For the purposes of agency price caps and maximum wage rates, core hours are defined as 7am to 7pm, Monday to Friday (excluding bank holidays). Unsocial hours are all other hours. On-call hours should be treated the same as core or unsocial hours, depending on when they fall. Neither high cost area supplements nor regional supplements are applicable to medical staff.

Table A2. Agenda for change maximum hourly charge

Grade and shift type		No supplement	Fringe	Outer London	Inner London
Band 1	Day	£12.29	£13.05	£15.08	£15.58
	Night / Saturday	£18.44	£19.20	£21.22	£21.73
	Sunday / Bank Holiday	£24.58	£25.34	£27.37	£27.88
Band 2	Day	£14.24	£15.00	£17.03	£17.54
	Night / Saturday	£20.51	£21.27	£23.29	£23.80
	Sunday / Bank Holiday	£26.77	£27.53	£29.56	£30.07
Band 3	Day	£15.57	£16.35	£18.36	£18.86
	Night / Saturday	£21.33	£22.11	£24.12	£24.62
	Sunday / Bank Holiday	£27.09	£27.87	£29.88	£30.39
Band 4	Day	£17.79	£18.68	£20.58	£21.35
	Night / Saturday	£23.13	£24.02	£25.91	£26.69
	Sunday / Bank Holiday	£28.46	£29.35	£31.25	£32.02
Band 5	Day	£22.55	£23.67	£25.93	£27.06
	Night / Saturday	£29.31	£30.44	£32.69	£33.82
	Sunday / Bank Holiday	£36.07	£37.20	£39.46	£40.58
Band 6	Day	£27.90	£29.22	£31.45	£32.98
	Night / Saturday	£36.27	£37.59	£39.83	£41.35
	Sunday / Bank Holiday	£44.65	£45.96	£48.20	£49.72
Band 7	Day	£32.77	£34.09	£36.32	£37.85
	Night / Saturday	£42.61	£43.92	£46.16	£47.68
	Sunday / Bank Holiday	£52.44	£53.76	£55.99	£57.51
Band 8a	Day	£38.05	£39.37	£41.60	£43.12
	Night / Saturday	£49.47	£50.78	£53.02	£54.54
	Sunday / Bank Holiday	£60.88	£62.20	£64.43	£65.95
Band 8b	Day	£45.66	£46.98	£49.21	£50.73
	Night / Saturday	£59.36	£60.68	£62.91	£64.43
	Sunday / Bank Holiday	£73.06	£74.37	£76.61	£78.13
Band 8c	Day	£54.25	£55.57	£57.80	£59.32
	Night / Saturday	£70.52	£71.84	£74.08	£75.60
	Sunday / Bank Holiday	£86.80	£88.12	£90.35	£91.87
Band 8d	Day	£65.30	£66.62	£68.85	£70.37
	Night / Saturday	£84.89	£86.21	£88.44	£89.96
	Sunday / Bank Holiday	£104.48	£105.80	£108.03	£109.55
Band 9	Day	£78.77	£80.09	£82.32	£83.84
	Night / Saturday	£102.40	£103.72	£105.95	£107.47
	Sunday / Bank Holiday	£126.03	£127.35	£129.58	£131.10

Note: High cost area supplements and shift times are defined as per Agenda for Change.

Annex 3: Maximum wage rate tables

The following tables set out the maximum wage rates.

Tables A3 and A4 set out the maximum wage rates for all medical and dental staff.

Tables A5 and A6 set out the maximum wages rates for all Agenda for Change staff – clinical and non-clinical.

As for the price caps on total charge, where a shift covers time periods that are capped at different rates, the worker cap should be calculated pro rata for those time periods. For example, a shift for a consultant over six core hours and two unsocial hours has a capped rate of £471.90 (= £54.45 x 6 hours + £72.60 x 2 hours).

Both the maximum wage rates and price caps take into account holiday pay.

- Tables A3 and A5 set out the maximum wage rates to be paid when engaging with a worker for less than 12 weeks.
- Tables A4 and A6 set out the maximum wage rates that can be paid when engaging with a worker for longer than 12 weeks

Table A3: Medical and dental maximum worker rate, less than 12 weeks

Grade and shift type		Hourly rate
Foundation year 1	Core	£14.73
	Unsocial	£17.79
Foundation year 2	Core	£18.26
	Unsocial	£22.07
Registrar (ST1-2)/ Core medical training	Core	£20.71
	Unsocial	£25.03
Registrar (ST3+)	Core	£25.82
	Unsocial	£31.20
Dental core training	Core	£25.43
	Unsocial	£30.73
Specialty doctor / staff grade	Core	£37.58
	Unsocial	£50.11
Associate specialist	Core	£46.51
	Unsocial	£62.01
Consultant	Core	£55.00
	Unsocial	£73.33

Note: For the purposes of agency price caps and maximum wage rates, core hours are defined as 7am to 7pm, Monday to Friday (excluding bank holidays). Unsocial hours are all other hours. On-call hours should be treated the same as core or unsocial hours, depending on when they fall. Neither high cost area supplements nor regional supplements are applicable to medical staff.

Table A4: Medical and dental maximum worker rate, 12 weeks or more

Grade & shift type		Hourly rate
Foundation year 1	Core	£15.18
	Unsocial	£18.34
Foundation year 2	Core	£18.83
	Unsocial	£22.75
Registrar (ST1-2)/ core medical training	Core	£21.35
	Unsocial	£25.80
Registrar (ST3+)	Core	£26.62
	Unsocial	£32.17
Dental core training	Core	£26.22
	Unsocial	£31.68
Specialty doctor / staff grade	Core	£38.75
	Unsocial	£51.66
Associate specialist	Core	£47.95
	Unsocial	£63.94
Consultant	Core	£56.70
	Unsocial	£75.60

Note: For the purposes of agency price caps and maximum wage rates, core hours are defined as 7am to 7pm, Monday to Friday (excluding bank holidays). Unsocial hours are all other hours. On-call hours should be treated the same as core or unsocial hours, depending on when they fall. Neither high cost area supplements nor regional supplements are applicable to medical staff.

Table A5: Agenda for Change maximum worker rate, less than 12 weeks

Grade and shift type		No supplement	Fringe	Outer London	Inner London
Band 1	Day	£8.88	£9.43	£10.90	£11.26
	Night / Saturday	£13.32	£13.87	£15.34	£15.71
	Sunday / Bank Holiday	£17.77	£18.32	£19.78	£20.15
Band 2	Day	£10.29	£10.84	£12.31	£12.67
	Night / Saturday	£14.82	£15.37	£16.84	£17.20
	Sunday / Bank Holiday	£19.35	£19.90	£21.36	£21.73
Band 3	Day	£11.25	£11.82	£13.27	£13.63
	Night / Saturday	£15.42	£15.98	£17.43	£17.80
	Sunday / Bank Holiday	£19.58	£20.14	£21.59	£21.96
Band 4	Day	£12.86	£13.50	£14.87	£15.43
	Night / Saturday	£16.71	£17.36	£18.73	£19.29
	Sunday / Bank Holiday	£20.57	£21.21	£22.59	£23.14
Band 5	Day	£16.29	£17.11	£18.74	£19.55
	Night / Saturday	£21.18	£22.00	£23.63	£24.44
	Sunday / Bank Holiday	£26.07	£26.89	£28.52	£29.33
Band 6	Day	£20.17	£21.12	£22.73	£23.83
	Night / Saturday	£26.22	£27.17	£28.78	£29.88
	Sunday / Bank Holiday	£32.27	£33.22	£34.83	£35.93
Band 7	Day	£23.69	£24.64	£26.25	£27.35
	Night / Saturday	£30.79	£31.75	£33.36	£34.46
	Sunday / Bank Holiday	£37.90	£38.85	£40.46	£41.57
Band 8a	Day	£27.50	£28.45	£30.07	£31.17
	Night / Saturday	£35.75	£36.70	£38.32	£39.42
	Sunday / Bank Holiday	£44.00	£44.95	£46.57	£47.67
Band 8b	Day	£33.00	£33.95	£35.57	£36.67
	Night / Saturday	£42.90	£43.85	£45.47	£46.57
	Sunday / Bank Holiday	£52.80	£53.75	£55.37	£56.47
Band 8c	Day	£39.21	£40.16	£41.77	£42.87
	Night / Saturday	£50.97	£51.92	£53.54	£54.64
	Sunday / Bank Holiday	£62.73	£63.69	£65.30	£66.40
Band 8d	Day	£47.19	£48.15	£49.76	£50.86
	Night / Saturday	£61.35	£62.31	£63.92	£65.02
	Sunday / Bank Holiday	£75.51	£76.46	£78.08	£79.18
Band 9	Day	£56.93	£57.88	£59.50	£60.60
	Night / Saturday	£74.01	£74.96	£76.57	£77.67
	Sunday / Bank Holiday	£91.09	£92.04	£93.65	£94.75

Note: High cost area supplements and shift times are defined as per Agenda for Change.

Table A6: Agenda for Change maximum worker rate, 12 weeks or more

Grade	Shift type	No supplement	Fringe	Outer London	Inner London
Band 1	Day	£9.16	£9.73	£11.23	£11.61
	Night / Saturday	£13.74	£14.30	£15.81	£16.19
	Sunday / Bank Holiday	£18.32	£18.88	£20.39	£20.77
Band 2	Day	£10.61	£11.18	£12.69	£13.07
	Night / Saturday	£15.28	£15.85	£17.36	£17.73
	Sunday / Bank Holiday	£19.95	£20.52	£22.03	£22.40
Band 3	Day	£11.60	£12.18	£13.68	£14.06
	Night / Saturday	£15.89	£16.47	£17.97	£18.35
	Sunday / Bank Holiday	£20.19	£20.77	£22.26	£22.64
Band 4	Day	£13.26	£13.92	£15.33	£15.91
	Night / Saturday	£17.23	£17.90	£19.31	£19.88
	Sunday / Bank Holiday	£21.21	£21.87	£23.29	£23.86
Band 5	Day	£16.80	£17.64	£19.32	£20.16
	Night / Saturday	£21.84	£22.68	£24.36	£25.20
	Sunday / Bank Holiday	£26.88	£27.72	£29.40	£30.24
Band 6	Day	£20.79	£21.77	£23.44	£24.57
	Night / Saturday	£27.03	£28.01	£29.68	£30.81
	Sunday / Bank Holiday	£33.27	£34.25	£35.91	£37.05
Band 7	Day	£24.42	£25.40	£27.07	£28.20
	Night / Saturday	£31.75	£32.73	£34.39	£35.53
	Sunday / Bank Holiday	£39.07	£40.06	£41.72	£42.85
Band 8a	Day	£28.35	£29.33	£31.00	£32.13
	Night / Saturday	£36.86	£37.84	£39.50	£40.64
	Sunday / Bank Holiday	£45.36	£46.35	£48.01	£49.14
Band 8b	Day	£34.02	£35.00	£36.67	£37.80
	Night / Saturday	£44.23	£45.21	£46.87	£48.01
	Sunday / Bank Holiday	£54.44	£55.42	£57.08	£58.22
Band 8c	Day	£40.42	£41.41	£43.07	£44.20
	Night / Saturday	£52.55	£53.53	£55.20	£56.33
	Sunday / Bank Holiday	£64.68	£65.66	£67.32	£68.46
Band 8d	Day	£48.66	£49.64	£51.30	£52.44
	Night / Saturday	£63.25	£64.24	£65.90	£67.03
	Sunday / Bank Holiday	£77.85	£78.83	£80.50	£81.63
Band 9	Day	£58.69	£59.68	£61.34	£62.47
	Night / Saturday	£76.30	£77.28	£78.95	£80.08
	Sunday / Bank Holiday	£93.91	£94.89	£96.55	£97.69

Note: High cost area supplements and shift times are defined as per Agenda for Change.

Annex 4: How the price caps are calculated

This annex illustrates the methodology behind the calculation of the price caps. The price caps are as stated in Annex 2, and are not formally defined by this methodology. The price caps have been calculated based on a percentage uplift on substantive salaries.

Baseline calculation

The baseline is calculated from the substantive annual pay for each band or grade and converted to an hourly equivalent figure. This assumes a 52.18-week year for all staff. It also assumes a 37.5-hour week for Agenda for Change (AfC) staff and a 40-hour week for medical staff.

Core hours for junior doctors receive the Band 1C uplift (20%) and unsocial hours receive an uplift at the mid points of bands 1B and 1A (45%). Unsocial hours for other medical staff receive an uplift of 33.3%.

Price caps for AfC staff take into account existing AfC rules on unsocial hours for substantive staff.

Price caps for AfC staff also take into account existing AfC high cost areas supplements, at 5% for Fringe, 15% for Outer London and 20% for Inner London. These are subject to the annual minimum and maximum payments, converted to hourly rates. Rates for the different high cost area supplements are presented in the full price cap rate tables.

Uplift calculation for cap on total charge

Price caps for all staff from 1 April 2016 are calculated at 55% above this hourly rate.

Uplift calculation for maximum worker rates

Maximum worker rates are calculated by adding an additional allowance for holiday pay. For workers engaged for less than 12 weeks, this is taken to be 28 days out of 260.9 possible working days, ie 12.02% on top of the baseline hourly rate. For workers engaged for 12 weeks or more, this is taken to be 35 days out of 260.9 possible working days, ie 15.49% on top of the baseline hourly rate.

Annex 5: Key dates

Date	Milestone
17 March 2016	Annual expenditure ceilings issued to trusts
21 March 2016	List of current approved framework agreements published
23 March 2016	Publication of consolidated agency rules document
1 April 2016	Rules on mandatory use of approved frameworks for trusts take effect (applies to ambulance trusts and ambulance foundation trusts)
11 April 2016	Trusts submit revised plans for agency spend as part of annual planning process. Planned agency spend should be at or below a trust's ceiling
1 July 2016	Maximum wage rates take effect Price caps apply to ambulance trusts and ambulance foundation trusts
1 November 2016	The latest date that approved framework agreements must have pricing structures that fully reflect NHS Improvement's conditions for approval, including contractually embedding the price caps and maximum wage rates

Contact us

NHS Improvement
Wellington House
133-155 Waterloo Road
London
SE1 8UG

T: 020 3747 0000
W: improvement.nhs.uk

NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.

This publication can be made available in a number of other formats on request.

NHS Improvement (March 2016) Publication code: Guidance 01/16