

DECEMBER 2025



**UNIVERSITY
OF WARWICK**

**STRENGTHENING
LABOUR RIGHTS
PROTECTION
FOR AGENCY
WORKERS IN
THE NHS**

**VICTORIA LABRO
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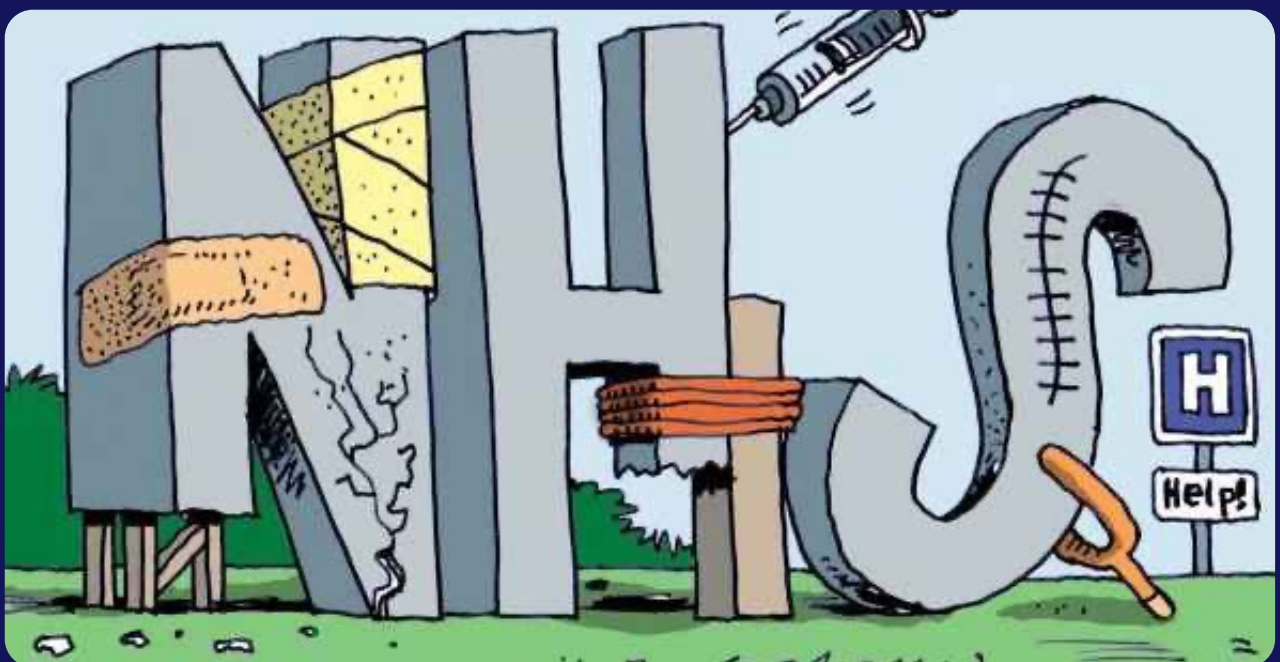
*LABOUR LAW IN CONTEXT
POLICY BRIEF*

EXECUTIVE SUMMARY

THE NHS IS EXPERIENCING ONE OF THE MOST SEVERE WORKFORCE CRISES IN ITS 77-YEAR HISTORY. LONG-STANDING SHORTAGES IN STAFFING HAVE CREATED CHRONIC GAPS THAT ARE INCREASINGLY FILLED BY AGENCY WORKERS.

AGENCY WORKERS PLAY A VITAL ROLE IN SUSTAINING CARE DELIVERY IN THIS ENVIRONMENT, YET THEY FREQUENTLY WORK UNDER WEAKER LABOUR PROTECTIONS, WITH INSECURE SCHEDULING, UNPREDICTABLE INCOME, LIMITED CAREER PROGRESSION, AND EXPOSURE TO DISCRIMINATORY PATTERNS IN STAFFING DISTRIBUTION.

THIS BRIEF ARGUES THAT REDUCING AGENCY RELIANCE WITHOUT STRENGTHENING PROTECTIONS RISKS WORSENING PATIENT SAFETY, STAFF WELLBEING, AND EQUALITY OUTCOMES AND PROPOSES A SET OF EVIDENCE-BASED RECOMMENDATIONS, SUCH AS IMPROVED WORKING-TIME RIGHTS, STANDARDISATION OF SHIFT PROTECTIONS, EQUAL ACCESS TO TRAINING, ENHANCED CAREER-PROGRESSION ROUTES INTO PERMANENT ROLES, AND TRANSPARENT MONITORING OF RACIAL/ETHNIC DISPARITIES



LEGACIES OF THE COVID-19 PANDEMIC AND DISCRIMINATORY PATTERNS IN STAFFING DISTRIBUTION

THE COVID-19 PANDEMIC PLACED UNPRECEDENTED STAFFING DEMANDS ON THE NHS, WHICH WAS ALREADY SUFFERING FROM STAFFING SHORTAGES AND A RETENTION CRISIS. HOSPITALS EXPANDED THEIR ICU DEPARTMENTS, REQUIRING RAPID RECRUITMENT OFTEN THROUGH EMPLOYMENT AGENCIES. DURING THE FIRST WAVE, MANY AGENCY WORKERS WERE PLACED IN UNFAMILIAR ROLES WITHOUT SUFFICIENT BRIEFINGS AND DEPLOYED IN AN AD HOC MANNER, WHILST PERMANENT STAFF HAD ACCESS TO NHS TRUST ORGANISED PROTOCOLS AND ENJOYED VACCINATION PRIORITY. [1]

One study found that health care workers from ethnic minority backgrounds were less likely than their White- British colleagues to receive risk assessments before redeployment. [2]

The 12-week qualifying period under the Agency Workers Regulation 2010 Act delays agency workers' access to claims for access to equal basic working conditions, including those tied to health and safety concerns.



THIS STRUCTURAL INJUSTICE PLACES BME WORKERS AT A marginally greater EXPOSURE TO HEALTH AND SAFETY HAZARDS.

REFORMS

- Amend the Agency Worker Regulation 2010, Regulations 5 and 7, to mandate day-one equal treatment on health and safety measures. Agency workers face a unique challenge because of the 12-week qualifying period. Infrequent and short-term shift allocations reset the qualifying clock, effectively excluding them from the eligibility to file a claim through Employment Tribunals for fairer and safer labour conditions.
- Implementation of required equality impact assessments before rota changes or large-scale redeployments would help monitor staffing patterns, disproportionate impacts on BAME workers, and monitor staffing patterns[3]

[1] SAM DRESTI, 'WORKFORCE AND PATIENT SAFETY: TEMPORARY STAFF - INTEGRATION INTO HEALTHCARE PROVIDERS' (HSSIB4 SEPTEMBER 2024) <[HTTPS://WWW.HSSIB.ORG.UK/PATIENT-SAFETY-INVESTIGATIONS/WORKFORCE-AND-PATIENT-SAFETY/THIRD-INVESTIGATION-REPORT/](https://www.hssib.org.uk/patient-safety-investigations/workforce-and-patient-safety/third-investigation-report/)> ACCESSED 3 DECEMBER 2025.

[2] ZAINAB ZUZER LAL AND OTHERS, 'REDEPLOYMENT AND CHANGES IN WORKING PATTERNS OF HEALTHCARE WORKERS DURING COVID-19 IN THE UK: A QUALITATIVE STUDY' (2025) 25 BMC HEALTH SERVICES RESEARCH

[3] MATTHEW GILL AND GRANT DALTON, 'LICENCE TO LEAD LESSONS FOR PUBLIC BODIES FROM THE PANDEMIC RESPONSE IN HEALTH' (2022) <[HTTPS://WWW.INSTITUTEFORGOVERNMENT.ORG.UK/SITES/DEFAULT/FILES/2023-09/LICENCE-TO-LEAD-PUBLIC-BODIES.PDF](https://www.instituteforgovernment.org.uk/sites/default/files/2023-09/licence-to-lead-public-bodies.pdf)> ACCESSED 3 DECEMBER 2025.

THE HIDDEN INEQUALITIES IN STAFFING

RELIANCE AND CUTS [4]

- NHS spending on agency staff
 - £3 billion 23/24
 - £2.1 billion 24/25
- Currently acts as a shock absorber for
 - Chronic staff shortages
 - High vacancy levels
 - Burnout
- Ignores underlying issues such as
 - Poor retention
 - Low pay
 - Underfunding

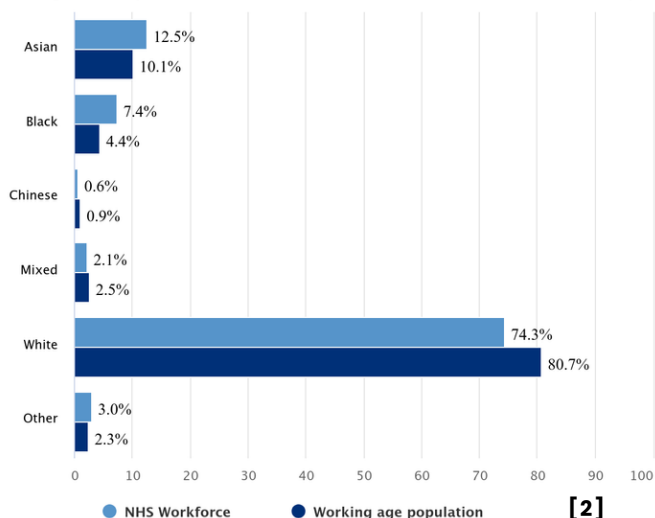
STRUCTURAL INEQUALITIES [5]

- Ethnic minority staff represent 28.6% of the NHS workforce.
- BAME staff are disproportionately concentrated in lower-graded roles and more likely to experience discrimination.
- Black staff are least likely to believe they have equal opportunity to progress.
- This makes agency work a last resort rather than a genuine flexible option. [6]

TRAINING GAP

- Lack of access to
 - Employer-funded training
 - Protected study time
 - Formal development pathways.
- This reduces the ability to cover higher-skill shifts and limits conversion to substantive posts.

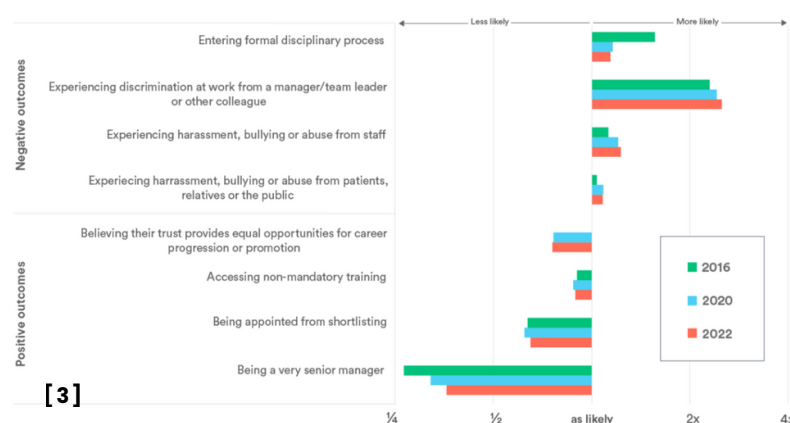
Title: Percentage of NHS workforce (2022) and percentage of working age population (2021 census)
Location: England. Time period: June 2022. Source: NHS Workforce Statistics – June 2022 | Ethnicity Facts



[2]

Relative likelihood of different career experiences for Black and minority ethnic staff compared with White staff

07/02/2024



[3]

[2] NHS WORKFORCE STATISTICS, 'PERCENTAGE OF NHS WORKFORCE (2022) AND PERCENTAGE OF WORKING AGE POPULATION (2021 CENSUS) BY ETHNICITY' (GOV.UK, APRIL 2023) <[HTTPS://WWW.ETHNICITY-FACTS-FIGURES.SERVICE.GOV.UK/WORKFORCE-AND-BUSINESS/WORKFORCE-DIVERSITY/NHS-WORKFORCE/LATEST/](https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest/)> ACCESSED 8TH DECEMBER 2025.

[3] LUCINA ROLEWICS ET AL, 'THE NHS WORKFORCE IN NUMBERS' (NUFFIELDTRUST, FEBRUARY 2024) <[HTTPS://WWW.NUFFIELDTRUST.ORG.UK/RESOURCE/THE-NHS-WORKFORCE-IN-NUMBERS](https://www.nuffieldtrust.org.uk/resource/the-nhs-workforce-in-numbers)> ACCESSED 8TH DECEMBER 2025.

[4] NHS ENGLAND, 'LETTER: FURTHER ACTION TO REDUCE NHS SPENDING ON TEMPORARY AGENCY STAFFING' (NHS, JUNE 2025) <[HTTPS://WWW.ENGLAND.NHS.UK/LONG-READ/LETTER-FURTHER-ACTION-REDUCE-NHS-SPENDING-TEMPORARY-AGENCY-STAFFING/](https://www.england.nhs.uk/long-read/letter-further-action-reduce-nhs-spending-temporary-agency-staffing/)>

[5] NHS ENGLAND, 'NHS WORKFORCE RACE EQUALITY STANDARD 2024 DATA ANALYSIS REPORT FOR NHS TRUSTS' (NHS, JUNE 2025) <[HTTPS://WWW.ENGLAND.NHS.UK/LONG-READ/NHS-WORKFORCE-RACE-EQUALITY-STANDARD-WRES-2024-DATA-ANALYSIS-REPORT-FOR-NHS-TRUSTS/](https://www.england.nhs.uk/long-read/nhs-workforce-race-equality-standard-wres-2024-data-analysis-report-for-nhs-trusts/)> ACCESSED 8TH DECEMBER 2025.

[6] NINA HEMMINGS ET AL, 'ATTRACTING, SUPPORTING AND RETAINING A DIVERSE NHS WORKFORCE' (NUFFIELDTRUST, NOVEMBER 2021) <[HTTPS://WWW.NUFFIELDTRUST.ORG.UK/SITES/DEFAULT/FILES/2022-10/1636121852-NHS-WORKFORCE-DIVERSITY-WEB.PDF](https://www.nuffieldtrust.org.uk/sites/default/files/2022-10/1636121852-nhs-workforce-diversity-web.pdf)> ACCESSED 8TH DECEMBER 2025.

KEY ISSUES

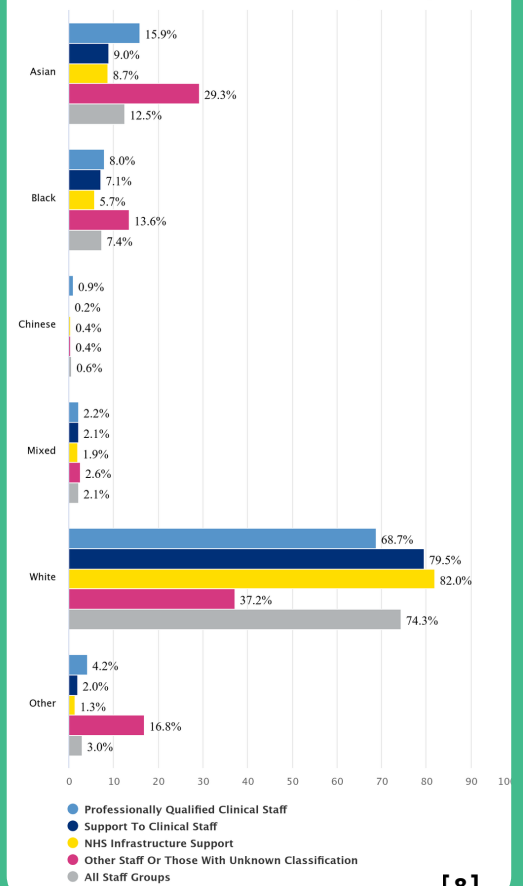
Figure 3: Percentage of staff reporting experiencing discrimination at work from their manager, team leader or other colleague in the previous 12 months



Source: NHS staff survey.

[7]

Title: Percentage of NHS staff by ethnicity and staff group. Location: England. Time period: June 2022. Source: NHS Workforce Statistics - June 2022 | Ethnicity Facts and Figures GOV.UK



[8]

REFORMS

GUARANTEED TRAINING ACCESS [9] AND FORMAL CAREER PATHWAYS [10]

- Require contracted agencies to grant temporary workers the same access to training as substantive staff.
- Create a nationally supported conversion pathway with guaranteed interview and priority access to substantive posts after meeting time/competency criteria,
 - E.g. 6 months of service with mapped training.

MINIMUM GUARANTEED HOURS AND PREDICTABLE ROSTERING

- Offering a guaranteed minimum block of hours or a bank contract.
- This reduces income volatility and helps with planning.

DATA AND EQUALITY MONITORING [11]

- Mandate collection and transparent reporting of agency worker demographics and career outcomes to measure structural inequalities.

ANTI-DISCRIMINATION AND PROGRESSION [12]

- Publishing action plans to reduce disparities in promotion and report on conversion outcomes for agency workers from different ethnic groups.

"THROUGH THE COURSE OF OUR INVESTIGATION, IT WAS TROUBLING TO HEAR OF THE WIDESPREAD DISCRIMINATION AGAINST TEMPORARY STAFF AND THE NEGATIVE IMPACT THIS HAS ON THEIR DAILY LIVES... UNABLE TO INTEGRATE WITH TEAMS THEY ARE WORKING WITH AND FEELING FEARFUL WHEN PATIENT SAFETY ISSUES AROSE, OR INCIDENTS OCCURRED..."

MATT MANSBRIDGE
SENIOR SAFETY INVESTIGATOR
HEALTH SERVICES SAFETY INVESTIGATIONS BODY

[7] NINA HEMMINGS ET AL, 'ATTRACTING, SUPPORTING AND RETAINING A DIVERSE NHS WORKFORCE' (NUFFIELDTRUST, NOVEMBER 2021) <<https://www.nuffieldtrust.org.uk/sites/default/files/2022-10/1636121852-nhs-workforce-diversity-web.pdf>> ACCESSED 8TH DECEMBER 2025.

[8] NHS WORKFORCE STATISTICS, 'PERCENTAGE OF NHS STAFF BY ETHNICITY AND STAFF GROUP' (GOV.UK, APRIL 2023) <<https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/nhs-workforce/latest/>> ACCESSED 8TH DECEMBER 2025.

[9] HEALTH AND SOCIAL CARE COMMITTEE, 'WORKFORCE: RECRUITMENT, TRAINING AND RETENTION IN HEALTH AND SOCIAL CARE' (HOUSE OF COMMONS, JULY 2022) <<https://committees.parliament.uk/publications/23246/documents/171671/default>> ACCESSED 8TH DECEMBER 2025.

[10] NHS ENGLAND, 'NHS LONG TERM WORKFORCE PLAN' (NHS, JUNE 2023) <<https://www.england.nhs.uk/wp-content/uploads/2023/06/nhs-long-term-workforce-plan-v1.2.pdf>> ACCESSED 8TH DECEMBER 2025.

[11] NHS ENGLAND, 'NHS WORKFORCE RACE EQUALITY STANDARD 2024 DATA ANALYSIS REPORT FOR NHS TRUSTS' (NHS, JUNE 2025) <<https://www.england.nhs.uk/long-read/nhs-workforce-race-equality-standard-wres-2024-data-analysis-report-for-nhs-trusts/>> ACCESSED 8TH DECEMBER 2025.

[12] IBID

LACK OF REPRESENTATION

A key issue within agency work is its relation to unions and union protections. As agency workers do not benefit from as many protections as other workers, union action which pushes for the improvement of work protections is thus not useful to them. Also, any localised union action is ineffective for agency workers who work across many locations as opposed to in a single location for a single employer.

- **Strike breaking:**

- Agency workers are often used to break strikes, leading to less effective strikes and weaker powers of workers. Strikes are used as a last resort, and breaking down this ability means that negotiations with unions are much harder.[14]

- **Union membership:**

- Agency workers are not inclined to have union membership, given the unpredictability of pay, and even those who have membership often do not receive as many benefits from it due to their status as agency workers.



REFORMS

Reforms should focus on improving union powers and ensuring agency workers are protected by unions. Through this, it would be possible to reduce the issue of a two-tier system of workers.

- **Ban on breaking strikes with agency workers**

- Strikes come as a last resort in solving disputes, and breaking strikes with agency workers undermines the already limited power which workers hold.[15]
- UNISON (one of the major unions for NHS workers) recently went to court over this issue, resulting in a high court ruling that this was 'unlawful'; however, this decision was not from the Supreme Court and is not in a statute and thus is a step in the right direction, but not an overall solution.[16]

- **Improvement of working protections**

- By improving working protection for agency workers (such as minimum guaranteed hours and protected training hours), the precarity of agency workers is reduced, allowing them to further benefit from union actions and be more able to access unions.

[14] UNISON, 'UNISON TAKES THE GOVERNMENT TO COURT OVER LAW ALLOWING THE USE OF AGENCY WORKERS TO BREAK STRIKE' (20 SEPTEMBER 2022) <[HTTPS://WWW.UNISON.ORG.UK/NEWS/2022/09/UNISON-TAKES-THE-GOVERNMENT-TO-COURT-OVER-LAW-ALLOWING-THE-USE-OF-AGENCY-WORKERS-TO-BREAK-STRIKE/](https://www.unison.org.uk/news/2022/09/unison-takes-the-government-to-court-over-law-allowing-the-use-of-agency-workers-to-break-strike/)> ACCESSED 25 NOVEMBER 2025.

[15] UNISON, 'GOVERNMENT PLANS TO USE AGENCY WORKERS TO BREAK STRIKES ARE DANGEROUS AND UNLAWFUL' (22 JULY 2022) <[HTTPS://WWW.UNISON.ORG.UK/NEWS/2022/07/GOVERNMENT-PLANS-TO-USE-AGENCY-WORKERS-TO-BREAK-STRIKES-ARE-DANGEROUS-AND-UNLAWFUL/](https://www.unison.org.uk/news/2022/07/government-plans-to-use-agency-workers-to-break-strikes-are-dangerous-and-unlawful/)> ACCESSED 25 NOVEMBER 2025.

[16] UNISON, 'HIGH COURT RULES 'STRIKE-BREAKING' AGENCY WORKER REGULATIONS UNLAWFUL' (13 JULY 2023) <[HTTPS://WWW.UNISON.ORG.UK/NEWS/2023/07/HIGH-COURT-RULES-STRIKE-BREAKING-AGENCY-WORKER-REGULATIONS-UNLAWFUL/](https://www.unison.org.uk/news/2023/07/high-court-rules-strike-breaking-agency-worker-regulations-unlawful/)> ACCESSED 25 NOVEMBER 2025

CONCLUSION

Agency workers are essential for maintaining the NHS, but current policy trends wrongly blame agency labour for NHS inefficiencies rather than addressing core structural issues.

A measured approach is needed to safeguard agency workers' rights, whilst taking into account the realities of a system still recovering from unprecedented challenges and pressures.



APPENDIX

We enjoyed researching this topic, and we divided the work, each focusing on a key issue faced specifically by agency workers in the NHS. We then researched and collated possible recommendations and reforms.

We enjoyed this unique style of writing and data collection!

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