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GPC

General Practitioners
Committee

Focus on salaried GPs

Guidance for GPs

BMA 

Focus on salaried GPs

This guidance note has been produced by the General Practitioners Committee (GPC) to explain in detail the minimum terms and conditions for salaried GPs (the Model contract), which came into effect under the new General Medical Services (nGMS) contract on 1 April 2004.

Although there may be some differences in process in each of the four countries of the UK, the principles of this guidance apply to all.

While this guidance focuses on GPs employed by GMS practices and by Primary Care Organisations (PCOs) on or after 1 April 2004, it also advises those not employed under the Model contract (namely, those employed by an Alternative Provider of Medical Services (APMS), Primary Medical Services (PMS) practice or employed before 1 April 2004).

Background

A large number of GPs now work on an employed basis – employed either by nGMS and PMS practices, PCOs or APMS, including out-of-hours providers.

The nGMS contract, with its global sum allocation to practices, means that GMS practices now have the flexibility to appoint salaried staff. The nGMS contract negotiations also led to the NHS Executive, Departments of Health and the GPC agreeing a set of minimum terms and conditions (the Model contract) to be used by an nGMS practice or PCO when employing a salaried GP. These minimum terms represents good employment practice and ensure a common standard for all new GPs employed by nGMS practices and PCOs. The aim is also that these minimum standards will have a knock-on effect with those employed by PMS and APMS being able to negotiate improved terms where these do not meet the minimum set out in the Model contract.

Who does the model contract apply to?

The Model contract applies to all salaried GPs whose employment with an nGMS practice or PCO started on or after 1 April 2004. For these doctors it is not possible to offer less favourable terms and conditions than those set out in the Model contract.

The National Health Service (General Medical Services Contracts) Regulations 2004 (Statutory Instrument 2004, number 291) states that:

“The contractor shall only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" [henceforth referred to as “the Model”] published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the new GMS contract 2003.” (Schedule 6, part 4, paragraph 63.)

This is reflected in the standard nGMS contract for GMS practices.

There is also the flexibility for employers to offer enhanced terms and conditions – for example, to aid recruitment and retention.

Consequences of not offering the Model contract

There are severe consequences for a GMS practice which does not offer at least the Model contract to a new salaried GP, with the ultimate sanction being the withdrawal by the PCO of the nGMS provider

contract. This is set out in schedule 6, paragraph 115 of the above Regulations (www.opsi.gov.uk/si/si2004/20040291.htm#115c).

PCOs are also obliged to offer at least the Model contract and if this is not adhered to then ultimately an instruction can be sent from the Health Department.

If you are employed by a GMS practice or PCO and have not been offered the minimum terms and conditions, please contact AskBMA for expert individual advice (BMA members only) or your LMC.

Please note that AskBMA provides an employment contract checking service for BMA members. All GPs are encouraged to take advantage of this service before signing an employment contract, as it is advisable to rectify any contractual problems before the contract is in force.

Those employed before 1 April 2004 and/or employed by a PMS or APMS practice

The GPC recommends that all GPs, regardless of employer or when employed, should be employed on terms and conditions of service that are no less favourable than the Model. This will ensure that contractors will not face a discrimination claim (e.g. under the Part Time Workers Regulations or sex discrimination legislation) which may result from employing salaried GPs on different terms and conditions of employment. It will also help to ensure good recruitment and retention of staff, particularly with the migration of salaried GPs to nGMS practices.

GPs already working in an employed capacity should check whether their contracts are comparable to the model salaried GP contract, and particularly ensure that they comply with current employment law, including the European Working Time Directive.

Who is a salaried GP?

The Model contract applies to a “salaried general practitioner”. The term “salaried GP” can be used to describe any employed GP, and so includes the following:

- salaried GP who undertakes special interest work (a GPwSI)
- assistant
- associate
- GP Retainee
- Flexible Career Scheme GP
- Returner Scheme GP
- salaried GP employed to work out-of-hours

Flexible Career Scheme, Retainer Scheme and Returner Scheme GPs

Flexible Career Scheme (FCS), Retainer and Returner Scheme GPs who are employed by a nGMS practice or PCO since 1 April 2004 may not be offered terms and conditions that are less favourable than that of the agreed Model minimum terms and conditions for salaried GPs. In addition these schemes have specific features, particularly regarding educational time, which should be taken into account.

The GPC has published a model contract of employment for FCS GPs (www.bma.org.uk/ap.nsf/Content/flexiblecontract). This model contract uses the agreed and binding minimum model salaried GP contract as its basis, with amendments made to incorporate the terms of the Scheme and offers some enhanced conditions for such doctors. It is recommended that practices wishing to employ a FCS GP do so according to this model contract of employment for FCS GPs.

The GPC has updated its model contract for Retainer Scheme GPs (www.bma.org.uk/ap.nsf/Content/contractretainerGP).

The Retainer Scheme and Flexible Career Scheme are for fixed terms with regard to the funding received from the PCO by the employer. The GPC lawyer has advised that, whilst legally it is generally understood that fixed term contracts such as FCS and Retainer Schemes can exist, the consequences of having a fixed term contract and being employed under it for a period of one year or more means that an employee may be entitled to full employment rights (i.e. acquire the right to claim for unfair dismissal).

Any fixed term contract should not be regarded as simply ending at the end of a fixed term period. It is still a dismissal in law. As indicated above, if the employee has more than one year's service then they will acquire the right to claim unfair dismissal. In addition, fixed term contracts for four years or more are automatically in law considered to be permanent. Nevertheless, we advise that salaried doctors on a fixed term contract should apply formally to their employer for their contract to be made permanent.

Appendix A provides a summary of some of the legal entitlements for an employee. These apply equally to a salaried GP on a fixed term contract.

In addition, our legal view is that if your employment contract is based on the model salaried GP contract, the GPC model FCS contract or the new GPC model retainer contract, then your previous NHS service will be taken into account in determining your NHS continuity of service for contractual redundancy pay purposes (but not for calculating eligibility for statutory redundancy pay or for an unfair dismissal claim). Further details on continuity of service and on redundancy and unfair dismissal are detailed in later sections.

Where a salaried GP has been employed for at least one year, employers are obliged to ensure that they have a fair reason for dismissal and that a dismissal is reasonable in all the circumstances e.g. that they have followed the correct dismissal procedure. The withdrawal of funding may not on its own be a fair ground for dismissal, particularly if someone else is recruited to fill the vacant post. Consideration is likely to be given to the proportion of the previous funding received by the practice vis-à-vis the salary of the FCS/retainee GP. Obviously any possible ensuing problems will not materialise should the GP be retained by the practice in an equivalent salaried position. Salaried GPs and their employers are therefore advised to seek individual expert advice from the BMA (if a BMA member) should a problem arise.

For further information on redundancy and salaried GPs, please see the later section on this.

What do the Model terms and conditions for salaried GPs contain?

The Model terms and conditions bring important improvements to the terms and conditions of salaried GPs, in line with the terms and conditions of other employed doctors in the NHS.

The Model contains the minimum terms that must be offered to full-time salaried GPs (with these available on a pro rata basis for those who work part-time) employed by a nGMS practice or PCO on or after 1 April 2004. It is therefore possible for all salaried GPs to be employed on enhanced terms and conditions.

Hours of work

Full time is defined as 37.5 hours (9 notional sessions of 4 hours and 10 minutes) per week. Working hours should be carefully defined in a job plan (which is a condition of the Model).

Part-time working

The ratio of contracted hours in relation to the definition of full time as 37.5 hours a week determines a less than full-time employee's entitlements to annual leave, public holidays, protected continuing professional development (CPD) time and pensionable service.

The salary of part-time employees should be calculated pro rata in relation to this definition of full time hours - for example, a GP employed for five sessions should receive 5/9ths of the full time salary.

Additional hours

If a salaried GP accepts a contract of more than 37.5 hours then the extra time must be recognised by a pro rata increase in salary. Extra non-contractual hours must be mutually agreed and should be either remunerated or recognised with time off in lieu.

Practitioners employed in salaried posts will have the basic rights and protection as the European Working Time (ETW) Regulations provide. This includes (but is not limited to):

- a working time limit of an average working week of 48 hours a week which a worker can be required to work (though workers can choose to work more if they sign an individual waiver form)
- a right to a minimum 20 minutes' rest break where the working day is longer than 6 hours.

It is an employer's duty to ensure that employees are given adequate rest breaks. The EWT times quoted above are the minimum, and where work patterns can be intensive or stressful there is a case for longer breaks to be implemented.

Annual leave

Under the Model, full-time salaried GPs are entitled to a minimum of 30 working days per annum. They are also entitled to 10 statutory and public holidays per year (which includes two "NHS days" which NHS staff receive and these two days may be taken at any time by the salaried GP). These amounts of leave should be calculated pro rata for part-time salaried GPs.

For a breakdown of the annual leave and statutory/public holiday entitlement based on the number of sessions the salaried GP is contracted to work, see the leave entitlement table below.

Salary

The Model contract notes that the DDRB salary range will apply for both GMS and PCO-employed GPs. The minimum salary for a full-time salaried GP (pro rata for those working less than full time) employed under the Model contract is £51,332 for 2007/08, as recommended by the independent Doctors' and Dentists' Review Body's (DDRB). While DDRB suggests a salary range for 2007/2008 of £51,332 to £77,462, this is only a minimum range, and employers have the flexibility to offer enhanced pay rates to aid recruitment, but cannot offer less than this range in assessing the appropriate salary.

In addition, under the Model contract a salaried GP's salary must be uplifted annually at least in line with the DDRB recommended increase. For 2007/08 the DDRB recommended an overall uplift of £1,000 for salaried GPs on the 2006/07 figures.

The GPC has published guidance to assist salaried GPs in their salary negotiations, including possible

further uplifts in pay above the minimum requirements of the Model contract (www.bma.org.uk/ap.nsf/Content/negotiatingsalary?OpenDocument&Login).

For details of how the salary of those who work less and more than full-time should be calculated, please see the previous section of hours of work.

Pension

Salaried GPs (regardless of the model salaried GP contract) can join the NHS pension scheme as 'assistant practitioners' (or type 2 practitioners) and pension their earnings according to the dynamised total career earnings method for practitioners. As is the case for all GPs, pension and lump sum benefits are calculated based on total career earnings.

The earnings cap, which limits the amount of earnings and contributions to an occupational pension scheme, applies to those who joined after 1 June 1989. Details of this, as well as further information about the pension arrangements for salaried GPs can be found in the BMA Pensions Department factsheet for GPs (www.bma.org.uk/pensions?OpenDocument?Login)

Job Plan

The Model notes that a job plan must be produced and appended to the salaried GP's terms and conditions. The job plan is a key component of the Model contract.

The job plan produced should outline the employee's normal duties, workload and important non-clinical roles undertaken within paid work time (such as participation in practice meetings, clinical governance, primary health care team meetings, etc). An element of flexibility between both parties, for example regarding working later when busy and leaving early when not so busy and for childcare reasons, may be mutually agreed. An example of what to include in the job plan is appended to this guidance. The GPC has also produced detailed guidance on job planning at: <http://www.bma.org.uk/ap.nsf/Content/jobplannov05>.

Continuing Professional Development

Entitlement to protected time for CPD

Full-time salaried GPs employed under the model contract are entitled to at least four hours per week on an annualised basis of protected time for professional development. This is adjusted on a pro-rata basis for part-time employees and is subject to a minimum of eight protected sessions for FCS and Retainer Scheme doctors.

Use of protected CPD time

CPD time should be used according to the educational needs of the salaried GP, as specified by their NHS appraisal and personal development plan (PDP). The CPD protected time may be relevant to the priorities of the practice and the wider NHS, provided it is in accordance with the doctor's PDP.

The arrangement for taking CPD is discussed in detail in the GPC's job planning guidance [link]. The model contract allows CPD time for full and part-time salaried GPs to be accrued and taken on a flexible basis. Using the CPD time flexibly allows it to be taken in a variety of ways and to accommodate different learning styles in order to meet a GP's personal development needs. For example, it could be accrued to be taken in blocks for courses and/or in single hours for meetings.

The employer and salaried GP may mutually agree to use some of the allocated CPD time to allow the salaried GP to extend their management and development skills (e.g. to allow the salaried GP to take responsibility for a QOF domain). This should be with the proviso that these activities are used for the salaried GP's development and that sufficient time is available for other personal development opportunities. The proportion of time spent on this will depend on the GP's PDP.

CPD activities may include:

- self-directed/private study, i.e. to keep up to date and/or for professional exam preparation
- developing and/or updating a personal development plan
- courses
- specific clinical refresher experience
- audit
- practitioner or self-directed learning groups
- PCT protected learning events
- researching clinical queries
- obtaining clinical experience relevant to specific PDP aims
- management development activities provided these benefit the salaried GP's personal or skills development
- in-house practice based educational meetings (excluding practice meetings which do not have a direct educational purpose, such as business, practice development, multi-disciplinary clinical team meetings, etc, since there is separate provision for these under the model contract).

The balance of these various CPD activities needs to be appropriate to the individual's educational and developmental needs.

NHS GP appraisal

Under the Performers List regulations, it is compulsory for all NHS GPs to participate in NHS GP appraisal.

The BMA has sought external legal advice which has noted that time must be set aside during working hours for a salaried GP to prepare for NHS GP appraisal. This further noted that this preparation time was in addition to the protected CPD time of four hours (pro rata) per week.

The appraisal interview itself should be taken outside of the minimum CPD time, but within normal working hours. If it is not possible for the appraisal interview to be conducted during normal working hours, the interview may be held outside of working hours provided the salaried GP agrees and receives appropriate reimbursement or time off in lieu.

Salaried GPs are not required to contribute financially for an NHS appraisal. Funding for appraisal for salaried GPs employed by a GMS practice is via an appraisal premium which is included in the practice's global sum. Comparable arrangements should be in place for PMS practices. Funding for appraisal for PCO-employed GPs and freelance GPs is via the PCO. Further details are available in the GPC guidance note on appraisal funding (www.bma.org.uk/ap.nsf/Content/appraisfund031104?OpenDocument?Login).

CPD leave entitlements

Please see the later section and table on leave entitlement.

LMC levies

Under the Model, the employer (i.e. the practice or the PCO) will pay the LMC voluntary levy for the

salaried GP.

Continuity of NHS service

Paragraph 1.7 of the Model defines NHS employment as previous work for an NHS Trust, PCO, Strategic Health Authority or Special Health Authority (or any of the predecessors in title of those bodies or the equivalent bodies in Wales, Scotland and Northern Ireland), together with time as a GP provider or performer. Thus time spent as a GP principal, salaried GP or locum GP is regarded as NHS employment. The GPC lawyer's view is that the wording of paragraph 1.7 means that the employer of a salaried GP or the contract that a locum GP is working under is not a relevant factor provided that the GP was performing primary medical services.¹

Details of how paragraph 1.7 may affect a salaried GPs' entitlement to maternity, sickness and redundancy under the model contract, as well as the types of breaks that do not affect continuity of service, are set out in the relevant sections below. The views/expert opinion of the GPC lawyer given in these sections below have been confirmed by external lawyers. However, please be aware that because of the wording of the model contract it is not possible to give a definitive view.

Maternity leave benefits

Statutory minimum leave and pay

All employees are now statutorily entitled to 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional leave - regardless of how long they have worked for their employer. This situation reflects a recent change in law and applies for those whose baby was expected to be born after 31 March 2007.

Maternity Allowance (MA) will be payable up to 39 weeks (subject to the employment and earnings criteria test), with Statutory Maternity Pay (SMP) payable up to 39 weeks if the qualifying criteria for it are met. For general details on the qualifying criteria, please see the websites listed below, or for more detailed guidance please contact AskBMA.

Provisions for salaried GPs employed by a nGMS practice or PCO on or after 1 April 2004, or using the minimum terms and conditions for salaried GPs (the Model)

Under the minimum terms and conditions of the Model for salaried GPs, salaried GPs will be entitled to the provisions of the General Whitley Council (GWC) Handbook (Section 6). While the GWC handbook no longer applies to non-doctor NHS employees, it is still applicable in this context as it is explicitly referred to in the minimum terms for nGMS and PCO-employed GPs.

The most recent changes to the maternity leave arrangements of the General Whitley Council benefits were identified in the Department of Health's Advance Letter (GC) 1/2003, which is available on the DoH's website (www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Advancedletters/DH_4062467). Section 6 of the General Whitley Council Handbook is attached to the letter and explains the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme. However it must be noted that our legal view is that where there is any inconsistency between the GWC Handbook requirements and the provisions of the Model contract, the Model contract may prevail.

¹ The views of the GPC lawyer are based on expert opinion. Please be aware however that because of the wording of the model contract it is not possible to give a definitive view.

In summary under the model salaried GP contract:

- a salaried GP working full-time or part-time will be entitled to paid and unpaid maternity leave of 52 weeks in total if she has 12 months of NHS continuous service at the beginning of the eleventh week before the expected week of childbirth
- the amount of contractual maternity pay receivable is as follows:
 - for the first eight weeks of absence, the employee will receive full pay, less any SMP or MA receivable
 - for the next 14 weeks, the employee will receive half of full pay plus any SMP or MA receivable providing the total amount does not exceed full pay
- to be eligible for the above benefits a doctor must fulfil certain notification requirements before the end of the 15th week before the expected date of childbirth
- statutorily if the salaried GP is eligible for SMP or MA, they will now receive SMP or MA for the next 17 weeks in total (even though the GWC refers to the next four weeks) since SMP or MA are now available for 39 weeks in total
- with prior arrangement of the employer the entitlement may spread differently across the maternity leave
- employees will also be entitled to unpaid leave for the remainder of the 52 weeks

In terms of what counts as NHS service, our legal view is that paragraph 1.7 of the model contract means that previous service as a GP principal, salaried GP and/or locum should be classed as NHS service.² Work for a PCO and NHS hospital certainly counts as NHS service.

For the purposes of calculating whether a salaried GP meets the 12 months of continuous service qualification, if a doctor has a break in service (i.e. has not done any NHS work) for over three months in the preceding 12 months then the calculation of the continuous service must start again. However, the following breaks in service are disregarded (but not count as service):

- break in service of three months or less
- absence due to maternity, paternity or adoptive leave (paid or unpaid)
- employment under the terms of an honorary contract
- up to 12 months abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the specialty concerned
- up to 12 months (exceptionally extended by a further 12 months at the discretion of the employer) of voluntary service overseas with a recognised international relief organisation

While the GWC Handbook notes that NHS GP locum work does not count as service, our legal view is that this is inconsistent with the Model contract and thus should not be incorporated into the maternity provisions for salaried GPs. On this basis all GP locum work (where the locum is providing primary medical services) will count as NHS service provided that there is no substantive break in NHS service.

It has been a grey area as to whether a salaried GP who goes on maternity leave and returns to another GP practice would be required to repay her maternity pay, less any Statutory Maternity Pay, to her original employer. Advice from the GPC lawyer is that the wording of the model salaried GP contract (reading paragraph 1.7 of the model contract and the GWC maternity provisions together) is likely to mean that if a salaried GP goes on maternity leave and returns to another GP practice or NHS employer then she is entitled to retain her full maternity pay from her original employer. This advice is based on the expert opinion of the GPC lawyer. However, due to the wording of the model contract it is not possible to give a definitive view. The box below outlines the difficulties in giving this advice.

² The views of the GPC lawyer are based on expert opinion and confirmed by an external firm of lawyers. Please be aware however that because of the wording of the model contract it is not possible to give a definitive view.

The Model refers to the maternity provisions in GWC section 6. Historically, the GWC when drafted was not intended to apply to GP practices; hence, when interpreting the definition of NHS employer for maternity pay purposes, there is a difficulty. If the definition of NHS employer under GWC does not refer to GP providers as employers, then under GWC paragraph 5.2.3 a salaried GP will not be entitled to paid and unpaid maternity leave even if she returns to the same employer. This is clearly nonsensical. Furthermore, GWC part C (which refers to continuous service) carves out a definition of NHS employer and implies that this definition, which excludes GP providers, does not apply elsewhere in the document. Due to the imprecise nature of the drafting of GWC and the lack of a clear definition of NHS employer, it would be reasonable in the circumstances to revert to the definition in paragraph 1.7 of the Model (which recognises working for a GP practice as NHS employment) and include GP providers in the definition of an NHS employer for the purposes of maternity.

An amendment of the model terms would be the best solution, and this is currently being pursued.

When the Model contract was introduced the maternity provisions were consistent with hospital doctors. However, since then hospital doctors have received the following enhanced maternity pay arrangements:

- for the first 8 weeks of absence, full pay less any SMP or MA receivable;
- for the next 18 weeks, half of full pay plus any SMP or MA receivable provided that the total receivable does not exceed full pay
- 13 weeks' SMP or MA that they are entitled to under the statutory scheme.

The GPC is therefore currently seeking a revision of the Model to match the maternity arrangements for hospital doctors. In the meantime, salaried GPs and their employers may wish to renegotiate their individual employment contracts to reflect the above enhanced provisions.

PMS and APMS salaried GPs

It is not obligatory for PMS and APMS employers to offer at least the minimum terms and conditions (the Model). Nevertheless, we recommend the Model (or improved terms) for all salaried GPs, regardless of their employer. PMS and APMS GPs should seek to ensure that they receive at least the minimum, particularly the recognition of previous NHS continuous service.

Further reading

Further general information about maternity rights and statutory maternity pay is available on the Department of Trade and Industry website:

- Maternity leave changes - www.dti.gov.uk/er/matleafr.htm or
- Individual rights of employees - www.dti.gov.uk/er/individual/rights-pl716.htm

There is also information available on the Department for Work and Pensions website (www.dwp.gov.uk/lifeevent/famchild/).

Sickness leave benefits

Statutory sick pay

All employees are entitled to at least Statutory Sick Pay (SSP) from their employer. SSP is payable on the fourth day of any period of sickness and is then paid for every day that you would normally be working for up to a maximum of 28 weeks. It is not possible to claim SSP at the same time as SMP or statutory paternity or adoptive pay.

The Model contract offers improved sick leave benefits, in line with hospital doctors. All salaried GPs employed since 1 April 2004 by a nGMS practice or PCO must be offered these benefits. Given that the current rate for SSP is only £70.05, it is advisable for all salaried GPs to ensure that they have improved sickness pay provisions (ideally in line with the Model contract).

Provisions for salaried GPs employed by a nGMS practice or PCO on or after 1 April 2004, or using the minimum terms and conditions for salaried GPs (the Model)

Under the Model, “a practitioner absence from duty owing to illness, injury or other disability shall... be entitled to receive an allowance in accordance with the NHS scale contained in paragraph 225 of the Hospital Conditions of Service.”

This means that those salaried GPs employed using the minimum terms and conditions (the Model) will be able to receive the following sick leave allowances:

- during the first year of NHS service: one month’s full pay and (after completing four months’ service) two months’ half pay
- during the second year of NHS service: two months’ full pay and two months’ half pay
- during the third year of NHS service: four months’ full pay and four months’ half pay
- during the fourth and fifth years of NHS service: five months’ full pay and five months’ half pay
- after completing five years of NHS service: six months’ full pay and six months’ half pay

Calculating years of service for sick leave under the Model

All previous continuous NHS service (including locum service), is aggregated for the purposes of sick leave. Continuous service means without a break of more than 12 months, although there are specific circumstances in which a break of more than 12 months does not mean a break in qualifying service. NHS service here certainly refers to any work undertaken for a PCO and in an NHS hospital. In addition, as paragraph 1.7 of the model contract notes that NHS employment includes all GMS, PMS and APMS work undertaken as a GP principal, salaried GP and locum doctor, the view of the GPC lawyer is that this wording can be interpreted as meaning that such work counts as previous service for the purpose of calculating continuous NHS service.³

Further details are contained in paragraphs 225 to 244 of the Hospital Medical and Dental Staff terms and conditions of service (www.dh.gov.uk/assetRoot/04/07/40/14/04074014.PDF) and section 57 of the Whitley Council Handbook.

Risk management of maternity and sickness leave

In the event that a salaried GP takes leave for maternity, paternity, adoption or sickness leave, their practice will typically employ locums to maintain the level of services that it normally provides. A practice’s entitlements to the funding for such locums is detailed in the Statement of Financial Entitlements (SFE) (www.dh.gov.uk/assetRoot/04/06/71/92/04067192.pdf). The SFE’s suggested maximum locum payment to practices is currently £978.91 per week and up to £1500 per week after the second week of maternity, although PCOs have the discretion to pay more.

The provision for locum funding allows PCO discretion, with the SFE suggested condition that external locum GPs be employed to cover the work of the absent doctor and that full entitlements are paid to the

³ Please see footnote 2.

absent doctor. The GPC continues to press the Department of Health for more definitive entitlements to practices for locums covering maternity, paternity, adoption and sickness leave.

The GPC recommends the following actions:

- LMCs should discuss the local funding of locum arrangements with their PCOs to ensure that practices in their area will receive funding for locum cover of salaried GPs in the event of sickness, maternity, paternity, adoption or sickness leave
- practices should consider purchasing insurance for locum cover during sickness absence to cover all of their salaried GPs (and possibly other staff as well). This would ensure that a practice would not be out of pocket in the event that a salaried GP had to take sick leave.

Unfair dismissal and redundancy

Statutory provisions

Under employment law, an employee gains full employment rights after one year of service (in terms of eligibility to claim for unfair dismissal) and is eligible for statutory redundancy pay after two years. Appendix A sets out a brief legal position for employees with regard to some entitlements.

Redundancy provisions for salaried GPs employed under the Model contract

The view of the GPC's lawyer⁴ is that the wording of the Model contract can be interpreted to take a GP's continuous NHS service (including previous NHS hospital and/or NHS GP work, and also includes all salaried GP and locum GP work where the GP is performing primary medical services) into account for the purposes of contractual redundancy pay⁵. Thus if a salaried GP has two years or more of continuous NHS service on joining a practice then he/she may automatically be entitled to contractual redundancy pay based on his/her previous years of service if a redundancy situation arose⁶ (although entitlement to the nominal statutory redundancy payment is only available after two years with their current employer).

Contractual redundancy pay = an additional redundancy payment available under the model salaried GP contract.

Statutory redundancy pay = available as of right to all employees but only after two years of service with a current employer.

For all employees, including salaried GPs, there are certain criteria that must be met before a redundancy situation applies (i.e. the dismissal of a salaried GP does not automatically mean that they have been made redundant). When considering the end of a contract of employment for a salaried GP, practices should seek expert legal advice (BMA members may contact AskBMA - email: askbma@bma.org.uk; telephone 0870 6060828).

If a redundancy situation applies, then the provisions of s45 of the General Whitley Council handbook will apply (reproduced at appendix B). However, due to the recent age discrimination regulations it is likely that some of these provisions (e.g. regarding not being entitled to redundancy pay at 65 years of age or over) would not apply.

⁴ Please see footnote 2.

⁵ Based on reading paragraph 7 of the model offer letter in conjunction with paragraphs 1.7 and 9 of the minimum terms and conditions, and these with the other relevant parts of the minimum terms.

⁶ Please see footnote 2.

Unfair dismissal provisions for salaried GPs employed under the Model contract

Our legal view is that previous NHS service is not taken into account in determining a doctor's eligibility to claim unfair dismissal. However, as for all employees, the statutory provisions listed above will apply.

Fixed term contracts

Where a doctor is employed on a fixed term contract, as stated above these doctors (as with other employees) already have basic employment rights and may acquire full employment rights after being employed for a period of one year or more. Also, fixed term contracts for four years or more automatically means that the employee's contract is made permanent.

Leave entitlements under the Model

The table below will assist salaried GPs in calculating their leave entitlements under the Model. The table does not take into account any adjustments that might have to be made to the CPD entitlement if the salaried GP takes maternity leave or sick leave.

Please note that a full-time salaried GP is entitled to 10 statutory and public holidays (pro rata for part-time salaried GPs) per annum. This includes two "NHS days" which NHS staff receive, and these two days may be taken at any time by the salaried GP.

Number of sessions per week	Total number of sessions per annum	Number of sessions of annual leave per annum	Number of sessions of statutory and public holidays per annum	Remaining number of sessions per annum	CPD sessions per annum [an explanation of what these sessions include is given above)	Clinical sessions per annum
X	X x 52	X x 6	X/9 x 20	Y	Y/9 = Z	Y - Z
9	468	54	20	394	44	350
8	416	48	18	350	39	311
7	364	42	16	306	34	272
6	312	36	13	263	29	234
5	260	30	11	219	24	195
4	208	24	9	175	19	156
3	156	18	7	131	15	116
2	104	12	5	87	10	77
1	52	6	2	44	5 (8*)	36

*Please note that Flexible Career Scheme and Retainer Scheme GPs are entitled to a minimum of 8 protected sessions per year for CPD regardless of working hours.

Frequently asked questions

Q Can I be a member of the NHS superannuation scheme as a salaried GP?

A Yes.

Q As a salaried GP am I eligible for seniority payments?

A Salaried GPs are not eligible for seniority payments under the Statement of Financial Entitlements (SFE). Under the SFE seniority payments are only paid to GP contractors, not salaried GPs.

For guidance on achieving additional uplifts to your salary, please see the GPC's guidance:

www.bma.org.uk/ap.nsf/Content/negotiatingSalary?OpenDocument&Login

Q Will there be national terms and conditions for GPs with special interests (GPwSIs)?

A It is difficult to define GPSIs precisely although the RCGP has attempted to define such roles. Salaried GPs with specialist roles who are GMS practice or PCO employed must receive at least the minimum terms and conditions of service as set out in the Model salaried GP contract. Those who are PMS employed should also receive at least those minimum terms. We also advise all salaried GPs to consult with the GPC's "Negotiating your salary" guidance note

(www.bma.org.uk/ap.nsf/Content/negotiatingSalary?OpenDocument&Login).

For further information

BMA members can obtain individual expert advice by contacting AskBMA on 0870 6060 828 or email: askBMA@bma.org.uk.

APPENDIX A

SUMMARY OF SOME OF THE LEGAL ENTITLEMENTS AVAILABLE TO AN EMPLOYEE

Claims requiring no qualifying period of service (available from day one)

Breach of contract (e.g. dismissal without notice pay)

Equal pay

Discrimination (e.g. race, sex, age, disability, religion, sexual orientation)

Claims requiring one year or more of service

Unfair dismissal

[Note: it may be possible to claim with less than one year of service in certain situations, e.g. dismissal for asserting a statutory right.]

Claims requiring two years or more of service

Redundancy pay (provided a redundancy situation exists). However, note the provisions in the model contract allowing previous NHS service to be taken into account in assessing redundancy pay entitlement.

With four years or more of service

Fixed term employees automatically become permanent employees.

Please note that the above is only a summary of the entitlements. For expert individual advice, BMA members can contact AskBMA (email: askbma@bma.org.uk; telephone 0870 6060828).

There are time limits for bringing employment rights claims and so advice should be sought as soon as possible.