

BMA locum practice agreement – model terms of engagement for a locum GP

Explanatory notes

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BMA locum practice agreement – model terms of engagement for a locum GP

The model terms of engagement for a locum GP have been produced jointly by the BMA General Practitioners Committee (GPC) and the sessional GP subcommittee with the help of BMA Law. They can be used for the engagement a locum GP by a GP practice and they are recommended by the BMA as good practice.

The model terms are intended to avoid disputes and protect against locums being categorised as employees or workers by HM Revenue & Customs (HMRC) for tax purposes or an employment tribunal for the purposes of statutory employment protection, as well as ensure compliance with the General Data Protection Regulation (GDPR).

The document is a general template that will need to be adapted for specific circumstances. The law relating to employment status and data protection will always be applied on a case by case basis. It is therefore recommended that members seek legal advice on their individual situation before using it. It is also important that practices and locums adhere to the terms in practice.

Work Schedule

This first section of the model terms sets out the dates, times, locations and services to be provided, as well as the various fees and how they will be paid. This will be the main area of negotiation between the locum and the practice so both parties should ensure they are comfortable with the work schedule before signing it and before signing the terms and conditions.

Terms and Conditions

- 1) The terms and conditions are valid in conjunction with a completed work schedule, and together form a legal contract.
- 2) Once signed, the terms and conditions will apply to each engagement (each time an individual works for the practice for a set period). For the first engagement, both the terms and conditions and a work schedule will need to be signed. An updated work schedule should then be completed and signed for each subsequent engagement.

Engagements

- 3) This states that the locum will be self-employed and not an employee or worker. The status of the locum is particularly important (for both the practice and the locum) for the purposes of tax. Guidance on how HMRC determine whether a locum is employed or self-employed is available on the [BMA website](#).

The test of employment status is also relevant for the purposes of entitlement to statutory employment protection e.g. unfair dismissal and paid holiday and sick pay. Self-employed contractors are not entitled to such protection.

It is important to remember that it is not simply a case of who pays the tax and national insurance or how the individual categorises himself or herself. A range of other factors will be considered when determining an individual's employment status. The model terms have

been drafted so they are consistent with a self-employed engagement. However, HMRC or an employment tribunal would ultimately determine an individual's employment status on a case by case basis. In doing so they may look at the reality of the relationship, as well as any contract, so it is important that the parties adhere to the relevant terms of the contract in practice.

- 4) The locum will work to the terms of the relevant work schedule, unless prevented by illness or injury – see clauses six and seven below.
- 5) This clause is about mutuality of obligation and is another factor in determining self-employed status. The locum has no obligation to accept work from the practice, and the practice has no obligation to offer it to that locum. This is also related to the test of employment status as outlined in the [BMA guidance](#).
- 6) The locum should notify the practice ASAP in the event of sickness, or inability to carry out the services at the times agreed; this would be expected under the obligations in GMC good medical practice.
- 7) Another clause that ensures the locum is classed as self-employed and not an employee or worker is regarding the right of substitution. If the locum is unable to fulfil the booking, he/she can send an equally qualified colleague who is suitably skilled.
An obligation of personal service would be indicative of an employee or worker relationship. However, the courts have held that even where there is a right of substitution, if it is restricted (for example, subject to the agreement of the practice or limited to occasions of sickness) or not exercised in practice then an individual can still be categorised as an employee or worker. See the section of the [BMA employment status guidance](#) relating to personal service.
If the locum does provide a substitute and paid the substitute then the substitute could not pension their earnings in the NHS pension scheme.
- 8) Another clause that supports self-employment – simply put, the locum doesn't get paid if they are not working.
- 9) As a self-employed contractor, the locum will not be entitled to sick pay, annual leave or other employment benefits. The exception is the NHS pension scheme which locums are still able to be part of and entitled to contributions from the practice.
- 10) As the locum will be self-employed, they will be responsible for paying their own tax and national insurance contributions.
- 11) Cancellation of any/all of the work schedule by either side must be in advance and in writing, which includes email.

Locum obligations – it is important for both parties to know what is expected of each of them. This section outlines what is expected/required of the locum

- 12) As expected under good medical practice, the locum will provide their services to the best of their ability.
- 13) The locum should be aware of the listed organisations, and what their obligation as a locum is in relation to each.
- 14) The locum is expected to follow any practice policies or procedures – see clause 24 below.
- 15) The list of things that the locum is responsible for in terms of registration and indemnity is needed to help the practice fulfil their CQC obligations, ensure the locum remains classified as self-employed, and most are also part of good medical practice.

- 16) As expected under good medical practice, the locum must notify the practice if they are subject to any fitness to practice proceedings or conditions.
- 17) This clause makes clear that the locum will have personal responsibility for their work and provide a contractual indemnity to the practice for any medical or clinical negligence on the part of the locum. Personal liability for one's work is consistent with a self-employed engagement.
- 18) This clause could refer to ensuring notes are completed, that requests for investigations are done, or that a response to a complaint is returned in a timely fashion – the practice may not know this information without requesting it from the locum, and in such a situation the locum should provide the information promptly.
- 19) While most practices don't book private work such as HGV medicals into locum clinics, it is important to be clear who retains pay in this instance. Completing part 2 cremation forms is a common cause of disagreement. Normally any remuneration for non-NHS/fee-paying medical work would be retained by the practice, so the locum must inform the practice promptly if they undertake any fee-paying work. If the locum and practice agree to a different arrangement regarding private work, then this and the appropriate fee should be agreed in the work schedule.
- 20) The freedom of the locum to work elsewhere is consistent with a self-employed engagement.
- 21) This is a standard confidentiality clause, to protect both patient data but also the practice's business interests.
- 22) This clause means the locum will submit an invoice on a monthly basis for work done during that month (in line with the agreed fee and agreed work schedule) and should allow sufficient time for the invoice to be paid and then for the locum to submit their pension contributions within the required timeframe.

Practice Obligations – it is important for both parties to know what is expected of each of them. This section outlines what is expected/required of the practice

- 23) Practices must be registered with the CQC (in England). It may be helpful for the locum to be aware of a practice's CQC status as well as their rating and be satisfied that they are fully registered. The clause only applies to England so will need to be removed for use in Wales.
- 24) This clause means that the practice must ensure the locum has support and information in order to work effectively, as well as for the locum to appropriately complete appraisals, local audits etc. This would include access to an accurate and up to date locum pack, providing the necessary computer log ins and enabling smart cards/ICE access and ensuring the locum knows where to look for all relevant practice policies and procedures. The [BMA locum handbook](#) provides further guidance on locum inductions. The clause also means the locum will be notified of any complaints or significant events in which they have been involved.
- 25) The practice will pay in a timely manner, which allows the locum not only to receive the pay within a month of providing the services but will allow the locum to comply with the pension submission deadline.
- 26) The practice should make NHS pension employer contributions if the locum is a member of the pension scheme.
- 27) This clause provides the locum will generally be responsible for their own expenses e.g. if the locum accepts work at a practice 2 hour drive away, unless mileage is covered in the work schedule as an additional expense, the locum could not then charge for it in addition to their agreed fee. Responsibility for one's own expenses is an indicator of self-employed status.

- 28) This clause means that if the locum owes the practice any money, it can simply be deducted from the next invoice, for example in the event of overpayment. This allows the practice to make proper deductions from the locum's fees which could not otherwise be made without their consent should the locum be deemed as a worker.
- 29) In order to comply with GDPR, practices must provide certain information to staff and others whose personal data is held by the practice. This can be done by referring to a 'privacy notice' that informs those individuals about how their personal data will be used and for what purposes.

Termination

- 30) If either side breaches the terms and conditions in a serious or persistent manner, this clause can be used to end the engagement with immediate effect.
- 31) This clause outlines the circumstances in which the practice could end the engagement immediately.
- 32) In line with GDPR, the locum must return or delete any copies of information belonging or relating to the practice at the end of the engagement.

General

- 33) This clause requires the parties to adhere to provisions for the purposes of compliance with legislation relating to data protection, and privacy and electronic communications, as set out in Schedule 1 (below). Where a controller (e.g. a practice) uses a processor (e.g. a locum) to process personal data on their behalf, the GDPR requires them to enter into a data processing agreement containing certain mandatory clauses. The provisions of Schedule 1 have been drafted to comply with the law as it stands at the time of drafting. However, the law in this area is subject to change and may be affected by the UK's departure from the EU ('Brexit') and so will need to be kept under review. Further information about GDPR is available on the [BMA website](#).
- 34) These terms and conditions cannot cover every eventuality, and may be varied by agreement between the practice and locum. If this happens, each individual variance should be documented so that the protection from all the rest of the terms and conditions is still there for both parties.
- 35) If there is a disagreement, these terms and conditions can be used during legal action (however see clause 36 below).
- 36) Before any dispute is raised through a legal route, both parties should seek resolution through the BMA mediation service or similar (some LMCs offer this service).

Schedule 1 – data legislation

Part 1

This part makes clear that the practice is the controller and the locum is a processor, and sets out the responsibilities of each party with regard to data protection. Both parties should read this section carefully and ensure they understand the responsibilities and requirements within.

Part 2

This part provides a data processing register setting out the subject matter, nature and purpose of the processing by the Locum, the types of Personal Data, categories of Data Subject and duration of the processing. It needs to be completed before signing the terms and conditions.

BMA Model Terms of Engagement for a Locum GP – Optional clauses (to be inserted in ‘Additional Terms’ in the Work Schedule if required)

These optional clauses can be inserted into the work schedule if both parties agree.

Cancellation fee

The locum and the practice can agree cancellation fees in the event that either party cancels an engagement. The time period and percentage of the fee owed to the other party in the event of cancellation are for negotiation between the practice and the locum.

Employment status indemnity

This is a contractual indemnity clause that protects the practice against any liability associated with the locum subsequently being deemed an employee or worker by HMRC for tax purposes or by an employment tribunal for the purposes of statutory employment protection. It means that the locum will be responsible for any associated costs, unless the reasons for this are the fault of the practice.

Data protection indemnity

As controllers, practices are primarily responsible for ensuring any data processing complies with the GDPR. This includes where the processing is carried out on their behalf by a processor such as the locum, although processors are now also subject to some obligations under the GDPR. This is a further contractual indemnity clause that means that the locum will be responsible for any liability and costs which the practice (as controller) may incur due to the locum (or their substitute) breaking the terms of Schedule 1 relating to data protection legislation.