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# GPC

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General Practitioners  
Committee

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## 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](http://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](http://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](http://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.

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 (DDRDB). 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/negotiating\\_salary?OpenDocument&Login](http://www.bma.org.uk/ap.nsf/Content/negotiating_salary?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](http://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*

The use of the CPD time will depend on the educational needs of the doctor as specified by their appraisal and personal development plan (PDP). The protected CPD time must be used for professional development. It may include time spent developing/updating a personal development plan, on courses, private study, specific clinical refresher experience and audit. It may also include practitioner group meetings and participation in practice meetings, provided that these have a largely educational component and are used to complement (rather than replace) other CPD sessions.

Please also see the later section and table on leave entitlement.

## **Appraisal**

Under the Performers List regulations for nGMS and PMS, it is compulsory for all NHS GPs (including salaried GPs) to participate in NHS GP appraisal.

Adequate time must be set aside during working hours for a salaried GP to prepare for NHS GP appraisal. Additional protected CPD time may be required for this. The GPC has estimated that the first appraisal will require at least 6 1/4 hours of preparation time, regardless of whether a GP works full or part-time.

All salaried GPs must be allowed sufficient protected time to prepare for appraisal during working hours.

The appraisal interview should also take place during a GP's normal working hours, but if this is not possible, the interview may be held outside of working hours provided that the salaried GP agrees and receives appropriate reimbursement or time off in lieu.

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](http://www.bma.org.uk/ap.nsf/Content/appraisfund031104?OpenDocument?Login)).

### **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.

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. However, please be aware that because of the wording of the model contract it is not possible to give a definitive view. The views/expert opinion of the GPC lawyer given in these sections below have been confirmed by external lawyers, but cannot be treated as authoritative as this is as yet untested by the courts.

### **Maternity leave benefits**

#### *Statutory minimum leave and pay*

All employees are statutorily entitled to 26 weeks' ordinary maternity leave, regardless of how long they have worked for their employer. Maternity Allowance (MA) will be payable (subject to the employment and earnings criteria test), with Statutory Maternity Pay (SMP) payable if the qualifying criteria for it are met. For general details on the qualifying criteria, please see websites listed below, or for more detailed guidance please contact AskBMA. In addition employees who have completed 26 weeks' continuous service by the beginning of the 14<sup>th</sup> week before the expected week of childbirth are entitled to 26 weeks' additional maternity leave.

Where an employee's baby is born on or after 1 April 2007, they will be statutorily entitled to additional maternity leave (regardless of length of service), with SMP and MA payments extended to 39 weeks.

#### *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](http://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, then the Model contract may prevail.

In summary:

- a salaried GP working full-time or part-time will be entitled to paid and unpaid maternity leave 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 Statutory Maternity Pay or Maternity Allowance receivable
  - for the next 14 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance receivable providing the total amount does not exceed full pay
  - for the next four weeks, the employee will receive the standard rate of Statutory Maternity Pay or Maternity Allowance.
- with prior arrangement of the employer the entitlement may spread differently across the maternity leave
- employees will also be entitled to 26 weeks of unpaid leave
- to be eligible for the above benefits a doctor must fulfil certain notification requirements before the end of the 15<sup>th</sup> week before the expected date of childbirth

In terms of what counts as service with an NHS employer, our legal view is that paragraph 1.7 of the model contract means that previous service as a GP principal, salaried GP or locum working under a GMS, PMS or APMS contract should be classed as NHS service.<sup>1</sup> 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 NHS locum work 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

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<sup>1</sup> 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.

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. The GPC is therefore seeking an amendment to the Model terms and conditions in order to ensure clarity for the future.

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

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 that 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](http://www.dti.gov.uk/er/matleafr.htm) or
- Individual rights of employees - [www.dti.gov.uk/er/individual/rights-pl716.htm](http://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/](http://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.<sup>2</sup>

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](http://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

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<sup>2</sup> Please see footnote 1.

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](http://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 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 lawyer<sup>3</sup> 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) into account for the purposes of contractual redundancy pay<sup>4</sup>. 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 arose<sup>5</sup> (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

<sup>3</sup> Please see footnote 1.

<sup>4</sup> 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.

<sup>5</sup> Please see footnote 1.

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.

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

## **For further information**

For any further information about salaried GPs and the new contract, please contact the BMA via AskBMA on 0870 6060 828 or email: [askBMA@bma.org.uk](mailto:askBMA@bma.org.uk) (BMA members only) or your Local Medical Committee.

BMA members wishing to access information about maternity and sickness entitlements should contact their local BMA office.

(1) These Model terms and conditions are the minimum terms and conditions of the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" set out in schedule 6, part 4, paragraph 63 of the National Health Service (General Medical Services Contracts) Regulations 2004 (Statutory Instrument 2004, number 291).

## 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](mailto: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.

SECTION 45ARRANGEMENTS FOR REDUNDANCY PAYMENTS

## SCOPE

1. These arrangements apply to employees who, having been employed for the minimum qualifying period of reckonable service (as defined in paragraph 2.2) in the National Health Service in Great Britain (or previously in Northern Ireland), are dismissed by reason of redundancy, which expression includes events described in section 81(2) of the Employment Protection (Consolidation) Act 1978, and premature retirement on organisational change under paragraphs 1(iii), 6, 7 and 8 of the agreement on Premature Payment of Superannuation and Compensation Benefits (ss Section 46). The minimum qualifying period is 104 weeks continuous service whole-time or part-time.

2. When considering redundancies, regard should be had to good employment practice, such as that outlined in the ACAS booklet on handling redundancies.

## DEFINITIONS

3. For the purposes of these arrangements, the following expressions have the meanings assigned below:-

3.1 "Health Service Authority" means a Regional Health Authority, a District Health Authority, the Dental Practice Board, a Special Health Authority, a Family Health Service Authority, the Public Health Laboratory Service Board, a Health Board and the Common Services Agency in Scotland, the Northern Ireland Health and Social Services Board and its Central Services Agency, and any predecessor or successor authority.

3.2 "Reckonable service", which shall be calculated up to the date on which the termination of the contract takes effect, means continuous employment as defined in 1 above with the present or any previous Health Service authority, after attaining age 18 years.

A period (which may include the aggregate or shorter periods) not exceeding 12 months beginning on or after 1 April 1985 spent as a GP trainee in the employment of a Principal GP trainer under the Trainee Practitioner scheme shall, notwithstanding that it is not employment with a Health Service authority, also count as "reckonable service".

Periods of employment prior to a break or more that 12 months at any one time in employment with a Health Service authority shall not count as "reckonable service", except that any period of employment as a GP trainee counted as "reckonable service" shall not count as part of any period of more than 12 months constituting a break in employment with a Health Service authority.

Service which qualifies under Section 58 of this Handbook shall also count as reckonable service. The following previous employment shall not so count:

3.2.1 employment which has been the subject of terminal payments under HM (60)47 or HM(62)12 (in Scotland, SHM(60)38 or SHM(62)14;

3.2.2 employment which has been the subject of a redundancy payment under this agreement or under any similar redundancy arrangements in Northern Ireland;

3.2.3 employment which has been the subject of compensation for loss

SECTION 45 (CONT'D)

of office under the National Health Service (Transfer of Officers and Compensation) Regulations 1948 and 1960, the National Health Service (Transfer and Compensation) (Scotland) Regulations 1948 and 1960, the Local Government (Executive Councils) (Compensation) Regulations 1964 and 1966, the National Health Service (Compensation) Regulations 1971, the National Health Service (Compensation) (Scotland) Regulations 1971, or Regulations made under section 24 of the Superannuation Act 1972, or any orders made under sections 11(9) or 31(5) of the National Health Service Act 1946 or sections 11(10) or 32(5) or the National Health Service (Scotland) Act 1947 or sections 13(3) or 19(6) of the National Health Service (Scotland) Act 1972, or under sections 28(6) or 60 of the Health Service Act (Northern Ireland) 1948 or Article 78 of the Health and Personal Social Services (Northern Ireland) Order 1972 or Regulations made under section 44 of the National Health Service Reorganisation Act 1973, or section 34A of the National Health Service (Scotland) Act 1972.

3.2.4 employment in respect of which the employee was awarded superannuation benefits.

3.3 "Superannuation benefits" means the benefits, or part of the benefits (other than a return or contribution) payable under a superannuation scheme in respect of the period of the employee's reckonable service.

3.4 "Week's pay"\* means either:

3.4.1 an amount calculated in accordance with the provisions of Schedule 14, Part II of the Employment Protection (Consolidation) Act 1978 except that paragraph 8 of Schedule 14, Part II shall not apply or

3.4.2 an amount equal to 7/365ths of the annual salary in payment at the date of termination of employment, or

3.4.3 the weekly wage calculated as at the date of termination of employment, to which the employee would be entitled under the agreements of the Ancillary Staffs Council or the Ambulance Council or the Whitley Councils for the Health Services (Great Britain) during absence on annual leave,

whichever is more beneficial to the employee.

**BENEFITS**

4. The redundancy payment\* shall take the form of a lump sum dependent on the employee's age and reckonable service at the date of ceasing to be employed. This shall be:

4.1 for all employees aged 41 or over who are not immediately after that date entitled to receive payment or benefits provided under the NHS Superannuation Scheme, the lump sum shall be assessed as follows:

4.1.1 2 weeks' pay for each complete year of reckonable service at age 18 or over with a maximum of 50 weeks' pay, PLUS

4.1.2 an additional 2 weeks' pay for each complete year of reckonable service at age 41 or over with a maximum of 16 weeks' pay.

(Overall maximum, 66 weeks' pay)

\* Footnote - In all cases the redundancy payment will need to be recalculated, and any arrears due paid, if a retroactive pay award is notified after the date of cessation of employment.

SECTION 45 (CONT'D)

4.2 For other employees, a maximum of 20 years reckonable service may be counted, assessed as follows:

4.2.1 For each complete year of reckonable service at age 41 or over - 1½ weeks' pay;

4.2.2 For each complete year of reckonable service at age 22 or over but under 41 - 1 week's pay;

4.2.3 For each complete year of reckonable service at age 18 or over but under 22 - ½ week's pay.

(Overall maximum, 30 weeks' pay)

5. Fractions or a year cannot count except that they may be aggregated under 4.2.1, 4.2.2 and 4.2.3 to make complete years. These must be paid for at the lower appropriate rate for each complete year aggregated.

6. If the 64th birthday has been passed, the sum calculated under paragraph 4 above shall be reduced by one twelfth for each complete month between the date of the 64th birthday and the last day of service.

7. Redundant employees who are entitled to an enhancement of their superannuation benefits on ceasing to be employed will, if the enhancement of service is less than 10 years, be entitled to receive redundancy payments. Where the enhancement of service does not exceed 6 2/3 years they will be paid in full; where the enhancement of service exceeds 6 2/3 years they will be reduced by 30% in respect of each year of enhanced service over 6 2/3 years with pro rata reduction for part years.

**EXCLUSION FROM ELIGIBILITY**

8. Employees otherwise eligible shall not be entitled to redundancy payments under these arrangements if they:-

8.1 are dismissed for reasons of misconduct, with or without notice; or

8.2 are age 65 or over; or

8.3 have reached the normal retiring age in cases where there is a normal retiring age of less than 65 for employees holding the position which they held and the age is the same for men and women; or

8.4 at the date of the termination of the contract have obtained without a break or with a break not exceeding 4 weeks suitable alternative employment with the same or another Health Service authority in Great Britain or NHS trust in Great Britain; or

8.5 unreasonably refuse to accept or apply for suitable alternative employment with the same or another Health Service authority in Great Britain or NHS trust in Great Britain; or

8.6 leave their employment before expiry of notice except as described at paragraph 11; or

8.7 are offered a renewal of contract (with the substitution of the new employer for the previous one) where the employment is transferred to another public service employer not being a Health Service authority.

SECTION 45 (CONT'D)**SUITABLE ALTERNATIVE EMPLOYMENT**

9. "Suitable alternative employment", for the purposes of paragraph 8, should be determined by reference to sections 82(3) and 82(5) of the Employment Protection (Consolidation) Act 1978. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility by adapting their domestic arrangements where possible.

10. For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing before the date of termination of contract and with reasonable time for the employee to consider it; the employment should be available not later than 4 weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the "trial period" provisions in section 84(3) to (7) of the Employment Protection (Consolidation) Act 1978 shall apply.

**EARLY RELEASE OF REDUNDANT EMPLOYEES**

11. Employees who have been notified of their cessation of employment on account of redundancy, and for whom no suitable alternative employment in the NHS is available may, during the period of notice, obtain other employment outside the NHS and wish to take this up before the period of notice of redundancy expires. In these circumstances the employing authority shall, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date and that date shall become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under the other terms of this agreement.

**CLAIM FOR REDUNDANCY PAYMENT**

12. Subject to the employee submitting a claim which satisfies the conditions and is made either before or within 6 months after cessation of employment, the redundancy payment shall be paid by the employing authority. Before payment is made, employees shall provide a certificate that at the date of termination of the contract they had not obtained or been offered or unreasonably refused to apply for or accept suitable alternative Health Service employment commencing without a break or with a break not exceeding 4 weeks from the date of termination and that they understand that the payment is made only on this condition and they undertake to refund it if this condition is not satisfied.

**DISPUTES**

13. Employees who disagree with the employing authority's calculation of the amount of redundancy payment or rejection of a claim for such payment should in the first instance make representation to the employing authority via the local grievance procedures.