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# GPC

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General Practitioners  
Committee

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## Focus on salaried GPs

### Guidance for GPs

**Note:**

1. The BMA's *Salaried GPs' Handbook 2009* (available only to BMA members) provides detailed guidance for salaried GPs and GP employers. BMA members can also obtain individual expert employment advice by emailing [support@bma.org.uk](mailto:support@bma.org.uk) or telephoning 0300 123 1233.
2. This guidance incorporates previous GPC guidance for salaried GPs on changes to hours of work and tips for negotiating salary.

## Focus on salaried GPs

This guidance note has been produced by the General Practitioners Committee (GPC) to:

- explain 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.
- explain the process of changing hours of work in light of the extended access DES
- provide guidance to PMS and APMS salaried GPs
- provide guidance on negotiating salary and appropriate uplifts.

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.

### The Model salaried GP contract

The nGMS contract negotiations led to the NHS Confederation, Departments of Health and the GPC agreeing a model offer letter and set of minimum terms and conditions (which together are known as the Model contract) to be used by a GMS practice or PCO when employing a salaried GP on or after 1 April 2004.

The Model contract represents good employment practice and was designed to ensure a common standard for all GPs employed by GMS practices and PCOs. The aim is also that this standard will have a knock-on effect with those employed by PMS and APMS being able to negotiate improved terms where those offered do not meet the minimum set out in the Model contract.

#### Who does the model contract apply to?

The Model contract refers to a 'salaried general practitioner', and so includes the following employed GP:

- salaried GP who undertakes special interest work (a GPwSI)
- assistant
- associate
- GP retaine
- Flexible Career Scheme GP
- returner scheme GP
- salaried GP employed to work out-of-hours.

For the Model to apply to these doctors, they must be:

- employed by a GMS practice or PCO
- with their employment commencing on or after 1 April 2004.

If the above qualifying criteria are met then it is not possible for the employer to offer less favourable terms and conditions than those set out in the Model contract. This is because the National Health Service (General Medical Services Contracts) Regulations 2004 (Statutory Instrument 2004, number 291) states as follows, and this is reflected also in the standard GMS contract between GMS practices and the PCO:

'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.)

### **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 GMS provider contract. [This is set out in schedule 6, paragraph 115 of the above Regulations.](#)

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

BMA members should contact the BMA immediately if they are employed by a GMS practice or PCO and have not been offered the minimum terms and conditions. BMA contact details are given at the end of this guidance note.

Please note that the BMA provides an employment contract checking service for BMA members. 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 (eg 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 GMS practices.

### **Improvements to the Model contract**

Employers have the flexibility to offer enhanced terms and conditions – for example, to aid recruitment and retention.

### **Employment law protection for all salaried GPs**

All salaried GPs and employers should ensure that the terms and conditions offered complies with statutory employment law.

If in doubt, the BMA offers individual advice to GPs who are BMA members.

### **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 GMS practice or PCO on or after 1 April 2004.

It is also possible for all salaried GPs to be employed on enhanced terms and conditions.

## Hours of work

Under the Model, full-time is defined as 37.5 hours per week. The Model breaks this amount down to nine notional sessions of 4 hours and 10 minutes per session – although the time of a session can be altered to suit the parties.

Working hours should be carefully defined in a job plan. A job plan is a condition of the Model, and the BMA/GPC has produced guidance on the content of a [job plan which is available online](#).

### *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 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.

### *Changing hours of work*

For guidance on the action to take if the employer proposes to change the contracted hours of work (eg for the extended access DES), see the section below on changing hours of work.

## 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.

To calculate the annual leave entitlement (minus statutory/public holidays):

- number of contracted hours worked per week x 0.8 = number of days leave per year [D]
- D x 7.5 = number of hours of leave per year

If 'NHS days' are added to annual leave entitlement, then calculate the full entitlement as follows:

- number of contracted hours worked per week x (32 divided by 37.5 = full entitlement)

Please note that the above ready reckoner calculations do not include bank/public holidays. The model contract states that full-time salaried GPs will receive these days off in addition to their annual leave

entitlement and that where they are required to work on these days to time off in lieu. It is good employment practice to provide additional time off when a part-time salaried GP's normal days of work do not fall on a bank/public holiday. More details of this are set out in the BMA's *Salaried GPs Handbook 2009*, and BMA members are advised to contact the BMA for individual advice on this.

### **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 £52,462 for 2008/09, as recommended by the independent Doctors' and Dentists' Review Body's (DDRB). While the DDRB suggests a salary range for 2008/09 of £52,462 to £79,167, this is only a minimum range, and employers have the flexibility to offer enhanced pay rates to aid recruitment. Employers cannot offer less than this.

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 2008/09 the DDRB recommended an overall uplift of 2.2% for salaried GPs on the 2007/08 figures.

Please see the later guidance to salaried GPs on negotiating salary.

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**

Details on the NHS pension scheme for salaried GPs is set out in the BMA's *Salaried GPs' Handbook 2009* and in the BMA Pensions Department [factsheet for GPs](#).

### **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.

The GPC has produced detailed [job planning guidance](#).

### **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. For FCS and retainer scheme GPs it is subject to a minimum of eight protected sessions.

#### *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](#). 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](#).

#### *CPD leave entitlements*

A full-time salaried GP working 37.5 hours per week is entitled to 208 hours of CPD a year. To calculate a part-time salaried GP's CPD entitlement:

- number of hours worked per week x 6.4 = number of minutes of CPD per week [X]
- X divided by 60 = number of hours of CPD per week [Y]
- X or Y x 52 = annual entitlement to CPD (X = minutes; Y = hours).

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.

### **LMC levies**

Under the Model contract, the employer (ie 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 terms and conditions 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 previous salaried GP work and locum GP work (regardless of the employer or contractor) is counted provided that the GP was performing primary medical services.

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 GPC lawyer's expert opinion in these sections has 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.

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 DBERR website ([www.dberr.gov.uk](http://www.dberr.gov.uk)). BMA members can receive advice on how this applies to them by contacting the BMA. Also, the BMA *Salaried GPs' Handbook 2009* contains detailed guidance on the statutory provisions.

#### *Maternity pay under the Model salaried GP contract*

Under the Model contract, 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 Model salaried GP contract.

The most recent changes to the maternity leave arrangements of the General Whitley Council benefits were identified in the English Department of Health's Advance Letter (GC) 1/2003, which is [available on the DoH's website](#) - and this is similarly replicated in Scotland, Wales and NI. 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 prevails.

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 15<sup>th</sup> 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.<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 (ie 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.

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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.



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.

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.

Salaried GPs and their employers may therefore wish to renegotiate their individual employment contracts to reflect the above enhanced provisions.

### **Sickness leave benefits**

Further guidance on the statutory and contractual provisions are set out in the BMA Salaried GPs' Handbook 2009.

#### *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.

#### *Provisions under the Model salaried GP contract*

The Model contract offers improved sick leave benefits, in line with hospital doctors.

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 under 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](#) and section 57 of the Whitley Council Handbook.

### **Unfair dismissal and redundancy**

The statutory and contractual position is set out in detail in the *BMA Salaried GPs' Handbook 2009*.

#### *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. However, as is noted in Appendix A it is possible to claim unfair dismissal from day one where dismissal is for certain reasons.

#### *Redundancy provisions for salaried GPs employed under the Model contract*

The view of the GPC's lawyer 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 pay<sup>3</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>4</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 (ie 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. This is available to BMA members through the BMA, and so members should contact the BMA as a matter of urgency.

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

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

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

<sup>4</sup> Please see footnote 1.

### *Unfair dismissal provisions for salaried GPs employed under the Model contract*

The GPC's 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, they (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. However, as is noted above, the ability to claim unfair dismissal for dismissals on certain grounds is available from day one.

Also, fixed term contracts for four years or more automatically means that the employee's contract is made permanent.

## **PMS and APMS salaried GPs**

It is not obligatory for PMS and APMS employers to offer the Model salaried GP contract. Nevertheless, the GPC recommends the Model contract (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.

## **Flexible Career Scheme, retainer scheme and returner scheme GPs**

Flexible Career Scheme (FCS), retainer and returner scheme GPs who are employed by a GMS practice or PCO since 1 April 2004 must be offered terms and conditions that are no less favourable than the agreed Model salaried GP contract. 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 GP retainer scheme GPs](#). 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. Many PCOs/deaneries require GP practices who wish to employ a GP retaineer to use the BMA model GP retainer contract.

The GPC also produced a [model contract of employment for FCS GPs](#) and is similar to the GP retainer scheme contract. As with the GP retainer model contract, many PCOs/deaneries required GP practices to use the BMA model FCS contract in order to be eligible for the funding. However, it should be noted the FCS scheme is no longer available to new recruits.

The retainer scheme and FCS are for fixed terms with regard to the funding received from the PCO by the employer. As a result, employers tend to offer the retaineer/FCS GP a fixed-term contract for the period of the funding. While fixed-term contracts can legally exist, the consequences of being employed under a fixed-term contract for a period of one year or more means that an employee is entitled to full employment rights (ie acquires the right to claim for unfair dismissal, although it is possible to claim this for certain dismissals with under one year's employment). More details of this are set out in the *BMA's [Salaried GPs' Handbook 2009](#)*.

Also, 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. 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, if a GP's employment contract uses the GPC model FCS contract or the GPC model retainer contract, then previous NHS service (eg NHS service prior to the current post) will be taken into account in determining your NHS continuity of service for:

- contractual redundancy pay
- contractual maternity pay
- contractual sick pay.

However, previous NHS service will not be used to calculate eligibility for statutory redundancy pay or for an unfair dismissal claim. Further details on continuity of service are detailed in earlier 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. [Note: This is under the statutory disciplinary and dismissal procedure which is to be reviewed/replaced from 1 April 2009.] Our lawyer's view is that 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 earlier section on this.

## **Risk management by the practice**

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 \(SFE\)](#). 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 Departments 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.

## Changing hours of work

Some GP practices are looking to extend their opening hours following the introduction of the new extended access Directed Enhanced Service (DES). Details of the DES can be found in the GPC guidance note, [Focus on Extended Access 2008/09](#).

As noted under the 'Hours of work' section above, if a salaried GP is employed under the model salaried GP contract and the employer requests that the salaried GP to work different hours on a temporary basis, then if this is agreed the salaried GP will receive payment for this extra work based on a pro rata of their salary.

The following guidance is for salaried GPs and concerns where a permanent change to the salaried GP's terms and conditions is proposed.

### 1. If the employer wants to change your hours permanently, what should you do in the first instance?

We would hope that your employer would have a meaningful discussion with you before reaching any decisions. Certainly communication, involvement and engagement is generally the key to practices managing any change successfully.

If the employer suggests changing hours, then we advise salaried GPs to ask the employer (if they do not do it automatically) to put the details of the proposal in writing so that you can consider this fully and can use this to take advice as necessary. We recommend that the proposal should include the following:

- whether the proposal is for an increase in the individual's working hours or a re-arrangement in working hours;
- a range of alternative options to consider (e.g. in terms of the hours available since some staff may be able to cover different hours);
- whether the new hours will include time for administration;
- the impact that the re-arrangement of hours will have on team meetings and the ability for clinicians to communicate;
- details of the support staff that would also be working with you during the new hours;
- practice security and insurance arrangements that will be in place if you are being asked to work late or at weekends;
- whether the remuneration will remain the same or will be at a higher rate to take account of any anti-social hours;
- whether the proposal is for a temporary or a permanent change to working hours; and
- the timescale for responding to the proposal and what opportunities there will be to discuss this in a meeting.

### 2. Could the permanent change in hours work for you?

The next step is for the salaried GP to consider the proposals fully. It may be that the proposed change to hours could work, or be rearranged to work, to your benefit. For example, if you can arrange childcare on a Saturday morning, then you may be able to negotiate that you start work later or leave earlier during the week. Alternatively you may prefer to start work later in the day and to work later in the evening.

In considering this, also bear in mind how the proposed change fits in with your professional development aspirations, your personal development plan and any actions agreed during your recent in-house performance review (internal appraisal).

Therefore, instead of rejecting immediately such a proposal it is worth at least considering whether it might be suitable for you and if so how you can make the proposed changes work for you. Of course, this will not be possible for everyone.

### 3. How your hours of work may be changed?

In considering whether to accept the changes proposed, you may wish to note the ways that an employer may amend your terms and conditions of employment within the law.

There are five main ways in which your terms and conditions can be changed:

- By explicit negotiated agreement between you and your employer.
- Where agreement is already contained within the contract prior to the change – i.e. if there is a contractual right to vary the contract. For example, the contract may reserve the right to change the timings of hours of work subject to consultation. If your contract contains such a provision, the employer would not need subsequently to negotiate and agree any change to your hours with you (although it would be good practice for the employer to do this). It might, however, still be possible to object to the change if it is excessive or unreasonable. This will depend on the circumstances\*. To check whether your contract of employment contains such a term, BMA members should send their contract to the BMA.
- By collective agreement where the contract specifies that such changes will be incorporated. Again, to check whether your contract of employment contains such a contractual term please send it to the BMA.
- By performance of the contract - if you work to the new hours then you could be deemed to have accepted a change by performance. Thus if a change occurs which a salaried GP is concerned about then the salaried GP needs to clarify with the employer that he/she is not agreeing to the change and should seek further advice from the BMA.
- By you being dismissed from your contract and then you being offered a new contract on different terms. This would only be expected to occur in extreme circumstances. The employee does not, however, need to accept the change and may be able to seek legal redress for the dismissal. Furthermore, where an employee is qualified<sup>5</sup> to make a claim for unfair dismissal the employer would have to show a fair reason (which may include business reorganisation/efficiency as 'some other substantial reason') and have acted reasonably.

It is also possible that, where a salaried GP is unable to change his/her hours, the employer may dismiss salaried GP without re-engaging him/her. As above, this is an extreme measure and legal redress may be available in such an instance if a fair reason is not given, the correct procedure for dismissal is not followed, or if adequate notice is not given.

\* While the national model salaried GP contract refers to undertaking additional work (as follows) this is not a contractual right to vary the contract:

*"A Practice may agree with the practitioner that he/she should undertake work which is not specified in his/her job plan by way of additional nominal sessions or fractions thereof. The extra session(s) shall be remunerated on a pro rata basis to a full-time practitioners` salary. Any such agreement shall be reviewed when required but at least annually and will be terminable at three months` notice on either side".*

### 4. Your response to the proposal

After considering the proposal, you should then carefully consider how you respond it. As in any negotiation, listening to the reasons for the change and engaging in the discussion is the key.

There may be parts of the proposal that you can support and other parts which you are unable to or which cause you concern. You should be clear about this in your response. For example, you may be willing in

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<sup>5</sup> To be qualified to make a claim of unfair dismissal on general grounds, an employee must have been employed by the same employer for at least one year. Claims of unfair dismissal on some special grounds, such as any form of unlawful discrimination, may be made from day one of employment.

principle to consider working longer one night a week, but the specific hours suggested are impossible. Or the timescale for meeting the change may be too short if, for example, you have childcare cover to arrange.

Alternatively you may be unable to change your working hours at all. We recommend that in the first instance you explain to your employer your reasons for this – for example, for family/childcare reasons.

If you cannot accept the proposal as it stands or are unable to accept it at all, then by specifying your reasons when you respond may enable your employer to seek other GPs to cover the new hours and/or consider revising their proposals.

#### 5. What if you cannot change your hours and your employer insists on a change?

If your employer is not willing or able to consider changing the proposal, then BMA members should contact the BMA immediately for individual expert advice on how to handle the particular situation and to discuss options.

#### 6. What if you agree to a change to your hours of work?

If you agree to your hours being changed, then you should request a draft revised contract of employment and a draft new job plan. We advise that you have these checked prior to working to the new arrangements. BMA members should contact the BMA immediately so that the proposed revision to their contract and job plan can be checked.

## **Negotiating your salary**

The following is designed to assist **all** salaried GPs to negotiate their salary.

### *Annual pay uplifts*

The GPC recommends that all salaried GPs should ensure that they will receive an annual pay uplift (e.g. at least in line with inflation, and if appropriate in line with the Government's decision on the pay of general practitioners following the recommendation of the Doctors' and Dentists' Review Body). Salaried GPs may also want to ensure that they receive a separate annual pay increment to recognise and reward your experience. The details of how your annual pay uplift and any other increase will be calculated should be included in the written contract of employment.

Given that salaried GPs are generally regarded as adding to the quality of services provided by practices, this should be taken into consideration when negotiating salary and future uplifts. Options for achieving this include a percentage increase or bonus payment in addition to the standard annual and incremental uplifts to reflect your contribution to the practice's achievement under the Quality and Outcomes Framework (QoF) and/or other added value that the salaried GP brings to the practice. We are aware of some employers which have already committed to reward all their staff with a bonus payment in line with the practice's overall achieved or anticipated QOF points.

### *Factors to consider when negotiating your salary*

The following factors may influence your salary:

- the length of your previous NHS service (this includes hospital based work)
- the length of your previous GP service (this includes work as a GP locum, GP principal, GP retainer, flexible career scheme GP, salaried GP, etc)
- the type of work which you have previously undertaken
- your qualifications (eg MRCGP or specialist accreditation)
- the type of work which you will be required to undertake in the salaried GP post
- the hours of work and the composition of your job plan in the salaried GP post
- whether you will be required to work any additional hours or sessions, for example to cover absent colleagues, possible teaching sessions or to attend practice meetings if held outside your normal working hours

- whether you will be required to undertake any out-of-hours work
- whether mileage incurred as part of duties is taken into account
- whether additional expenses incurred by you are taken into account, for example medical defence organisation subscriptions, BMA and/or Royal College of General Practitioners (RCGP) membership fees, use of mobile phone whilst working
- whether your employer contributes to the LMC levy. If so then you are an LMC member. If the employer does not contribute, then you may be required to make an individual membership payment to the LMC in order to be a member, and this should be taken into account when negotiating your salary.
- whether you will receive paid study leave
- whether you will receive protected and paid time for continuing professional development during normal working hours
- market forces (ie the demand for salaried GPs in the area, as well as the supply of potential salaried GPs)
- the cost of living in the area
- whether you will receive a bonus payment, and if so how much
- by what method your salary will be increased each year and the amount that you are likely to receive.

Given that every GP has different experience and every post has a different set of requirements and job specification, it is impossible for us to advise you on the exact salary that you can expect to achieve. Nonetheless we would strongly advise you not to undersell yourself and to weigh up different offers before making your final decision. As stated above, the salary of full-time GPs employed by a GMS practice or a PCO must not be below, but can be above, the basic salary range. We recommend that PMS and APMS salaried GPs also do not accept less than this basic minimum salary.

## Frequently asked questions

- Q** Can I be a member of the NHS superannuation scheme as a salaried GP?  
**A** Yes. Check that your employer is recognised by the Pensions Agency as an 'NHS Employer' and see the earlier section on pensions.
- 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 guidance above on negotiating salary.
- Q** Will there be national terms and conditions for GPs with special interests (GPwSIs)?  
**A** It is difficult to define GPwSIs 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. The GPC recommends that those who are PMS or APMS employed should also receive at least those minimum terms.

## For further information

BMA members can obtain individual expert advice from the BMA.  
 Email: [support@bma.org.uk](mailto:support@bma.org.uk)  
 Telephone: 0300 123 1233



## 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, eg 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 should contact the BMA (email: [support@bma.org.uk](mailto:support@bma.org.uk); telephone 0300 123 1233).

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