

In Order to help practices read the SFE 2019 Derby and Derbyshire LMC have produced a consolidated version of Section 15 and Section 16 (Maternity and Sickness Cover) of the SFE which includes the baseline document from 2013, 2014 (Amendments 1 & 2), 2015 (Amendments 1, 2 & 3), 2016 (Amendments 1, 2 & 3), 2017 (Amendment), 2018 (Amendment). Practices are reminded that the SFE remains the definitive document and if there is any uncertainty, they should refer to the original documents and Derby and Derbyshire LMC cannot be held responsible for any errors in this guide.

Where the paragraph numbering and lettering is not consecutive it reflects the amendments where subparagraphs have been deleted in total.

## **15: PAYMENTS FOR GP PERFORMERS COVERING MATERNITY, PATERNITY, ADOPTION LEAVE AND SHARED PARENTAL LEAVE**

### **General**

**15.1.** Employees of contractors will have rights to time off for ante-natal care, maternity leave, paternity leave, adoption leave, parental leave and shared parental leave, if they satisfy the relevant entitlement conditions under employment legislation for those types of leave. The rights of partners in partnerships to these types of leave are a matter for their partnership agreement.

**15.2.** If an employee or partner who takes any such leave is a performer under a GMS contract, the contractor may need to employ a locum or a salaried GP under a fixed term contract or use the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor (or more than one such person) to maintain the level of services that it normally provides. Even if the Board is not directed in this SFE to pay for such cover, it may do so as a matter of discretion. However, if—

(a) the performer is a GP performer; and

(b) the leave is ordinary or additional maternity, paternity leave or ordinary or additional adoption leave, or shared parental leave the contractor may be entitled to payment of, or a contribution towards, the costs of locum cover under this SFE.

### **Entitlement to payments for covering ordinary or additional maternity, paternity and ordinary or additional adoption leave or shared parental leave**

**15.3.** In any case where a contractor actually and necessarily engages a locum or uses the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor (or more than one such person) to cover for the absence of a GP performer on ordinary or additional maternity leave, paternity leave or ordinary or additional adoption leave or shared parental leave, and—

(a) the leave of absence is for more than one week ;

(b) the performer on leave is entitled to that leave either under— (i) statute;

(ii) a partnership agreement or other agreement between the partners of a partnership; or

(iii) a contract of employment, provided that the performer on leave is entitled under their contract of employment to be paid their full salary by the contractor during their leave of absence;

(d) the contractor is not also claiming another payment for locum cover in respect of the performer on leave pursuant to this Part, “(d) the GP performer who is a party to the contract or who is already employed or engaged by the contractor is not employed full time; and

(e) the contractor is not also claiming another payment for locum cover in respect of the performer on leave pursuant to this Part.”;

then subject to the following provisions of this Section, the Board must provide financial assistance to the contractor under its GMS contract in respect of the cost of engaging that locum (which may or may not be the maximum amount payable, as set out in paragraph 15.5).

**15.4.** The Board must consider whether or not it is necessary for the contractor to engage, or continue to engage, a locum or a salaried GP on a fixed term contract or to use, or continue to use, the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor (or more than one such person) to cover for the absence of a GP performer under this Section having regard to the following principles—

(a) it should not normally be considered necessary for the contractor to employ a locum, or a salaried GP on a fixed term contract or to use the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor, if the performer on leave had a right to return but that right has been extinguished;

(b) it should not normally be considered necessary for the contractor to employ a locum, or a salaried GP on a fixed term contract or to use the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor, if the contractor has engaged a new employee or partner to perform the duties of the performer on leave and it is not carrying a vacancy in respect of another position which the performer on leave will fill on his return.

**15.5.**—(1) The maximum amount payable under this Section by the Board in respect of cover for a GP performer is—

(a) in respect of the first two weeks for which the Board provides reimbursement, £1,143.06 per week; and  
(b) in respect of any week thereafter for which the Board provides reimbursement in respect of cover, £1,751.52 per week.

(2) Any amounts payable by way of reimbursement under this Section—

(a) are not to be paid on a pro-rata basis having regard to the absent performer's working pattern; and  
(b) are to be whichever is the lower of the invoiced costs or the maximum amount payable in respect of any week under sub-paragraph (1).

#### **Payment arrangements**

**15.6.** The contractor is to submit claims for costs actually incurred after they have been incurred, at a frequency to be agreed between the Board and the contractor, or if agreement cannot be reached, within 14 days of the end of the month during which the costs were incurred. Any amount payable falls due 14 days after the claim is submitted.

#### **Conditions attached to the amounts payable**

**15.7.** Payments or any part of a payment under this Section are only payable if the contractor satisfies the following conditions—

(a) if the leave of absence is maternity leave, the contractor must supply the Board with a certificate of expected confinement as used for the purposes of obtaining statutory maternity pay, or a private certificate providing comparable information;

(b) if the leave of absence is for paternity leave, the contractor must supply the Board with a letter written by the GP performer confirming prospective fatherhood and giving the date of expected confinement;

(c) if the leave of absence is for adoption leave, the contractor must supply the Board with a letter written by the GP performer confirming the date of the adoption and the name of the main care provider, countersigned by the appropriate adoption agency;

(ca) if the leave of absence is for shared parental leave, the contractor must supply the Board with a certificate as used for the purposes of confirming the GP performer's eligibility for shared parental leave or a letter written by the GP performer providing comparable information(a) and countersigned by the practice;

(d) the contractor must, on request, provide the Board with written records demonstrating the actual cost to it of the cover or the additional cost to it of the cover provided by another GP performer who is already employed or engaged by it; and

(e) once the arrangements are in place, the contractor must inform the Board— (i) if there is to be any change to the arrangements; or

(ii) if, for any other reason, there is to be a change to the contractor's arrangements for performing the duties of the performer on leave,

at which point the Board is to determine whether it still considers the cover necessary.

**15.8.** If the contractor breaches any of these conditions, the Board may, in appropriate circumstances, withhold payment of any sum otherwise payable under this Section.

## **Section 16: PAYMENTS FOR LOCUMS OR GP PERFORMERS COVERING SICKNESS LEAVE**

### **General**

**16.1.** Employees of contractors will, if they qualify for it, be entitled to statutory sick pay for 28 weeks of absence on account of sickness in any three years. The rights of partners in partnership agreements to paid sickness leave is a matter for their partnership agreement.

**16.2.** If an employee or partner who takes any sickness leave is a performer under a GMS contract, the contractor may need to employ a locum, or a salaried GP on a fixed term contract or use the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor (or more than one such person) to maintain the level of services that it normally provides. Even if the Board is not directed in this SFE to pay for such cover, it may do so as a matter of discretion and it may also provide support in order for the contractor to provide cover for performers who are returning from sickness

leave or for those who are at risk of needing to go on sickness leave. It should in particular consider exercising its discretion—

- (a) where there is an unusually high rate of sickness in the area where the performer performs services; or
- (b) to support contractors in rural areas where the distances involved in making home visits make it impracticable for a GP performer returning from sickness leave to assume responsibility for the same number of patients for which that performer previously had responsibility.

#### **Entitlement to payments for covering sickness leave**

**16.3.** In any case where a contractor actually and necessarily engages a locum or a salaried GP on a fixed term contract or uses the services of a GP performer who is a party to the contract or who is already employed or engaged by the contractor (or more than one such person) to cover for the absence of a GP performer on sickness leave, and—

- (b) if the performer on leave is employed by the contractor, the contractor must—
  - (i) be required to pay statutory sick pay to that performer; or
  - (ii) be required to pay the performer on leave his full salary during absences on sick leave under his contract of employment;
- (c) if the GP performer's absence is as a result of an accident, the contractor must be unable to claim any compensation from whoever caused the accident towards meeting the cost of engaging a locum or salaried GP on a fixed term contract to cover for the GP performer during the performer's absence. But if such compensation is payable, the Board may loan the contractor the cost of cover, on the condition that the loan is repaid when the compensation is paid unless—
  - (i) no part of the compensation paid is referable to the cost of cover, in which case the loan is to be considered a reimbursement by the Board of the cost of cover which is subject to the following provisions of this Section; or
  - (ii) only part of the compensation paid is referable to the cost of cover, in which case the liability to repay shall be proportionate to the extent to which the claim for full reimbursement of the cost of cover was successful;
- (cc) the GP performer who is a party to the contract or who is already employed or engaged by the contractor is not employed full time. and
- (e) the contractor is not already claiming another payment for cover in respect of the performer on leave pursuant to Part 4, then subject to the following provisions of this Section, the Board must provide financial assistance to the contractor under its GMS contract in respect of the cost of engaging that cover (which may or may not be the maximum amount payable, as set out in paragraph 16.5).

**16.4.** It is for the Board to determine whether or not it was in fact necessary for the contractor to engage the locum, or to continue to engage the locum, but it is to have regard to the following principles—

- (a) it should not normally be considered necessary to employ a locum if the performer on leave had a right to return but that right has been extinguished;
- (b) it should not normally be considered necessary to employ a locum if the contractor has engaged a new employee or partner to perform the duties of the performer on leave and it is not carrying a vacancy in respect of another position which the performer on leave will fill on return;
- (d) it should normally be considered necessary that a single-handed GP performer or a job-sharer fulfilling the role of a single-handed GP performer will need to be replaced, if they are on sickness leave, by a locum.

#### **Ceilings on the amounts payable**

**16.5.** The maximum amount payable under this Section by the Board in respect of locum cover for a GP performer is £1,751.52 per week.

**16.5A.** Any amounts payable by way of reimbursement under this Section—

- (a) are not to be paid on a pro-rata basis having regard to the absent performer's working pattern; and
- (b) are to be whichever is the lower of the invoiced costs or the maximum amount payable in respect of any week under paragraph 16.5."

**16.6.** No reimbursement under this Section will be paid in respect of the first two weeks period of each period of leave of absence. After that, the maximum periods in respect of which payments under this Section are payable in relation to a particular GP performer in respect of any such period are—

- (a) 26 weeks for the full amount of the sum that the Board has determined is payable; and
- (b) a further 26 weeks for half the full amount of the sum the Board initially determined was payable."

**16.7.** In order to calculate these periods, a determination is to be made in respect of the first day of the GP performer's absence as to whether in the previous 52 weeks, any amounts have been payable in respect of

that performer under this Section. If any amounts have been payable in those 52 weeks, the periods in respect of which they were payable are to be aggregated together. That aggregate period (whether or not it in fact relates to more than one period of absence)—

- (a) if it is 26 weeks or less, is then to be deducted from the period referred to in paragraph 16.6(a); or
- (b) if it more than 26 weeks, then 26 weeks of it is to be deducted from the period referred to in paragraph 16.6(a) and the balance is to be deducted from the period referred to in paragraph 16.6(b).

**16.8.** Accordingly, if payments have been made in respect of cover for the GP performer for 32 weeks out of the previous 52 weeks, the remaining entitlement in respect of that performer is for a maximum of 20 weeks, and at half the full amount that the Board initially determined was payable.

**Payment arrangements**

**16.9.** The contractor is to submit to the Board claims for costs actually incurred during a month at the end of that month, and any amount payable is to fall due on the same day of the following month that the contractor's Payable GSMP falls due.

**Condition attached to the amounts payable**

**16.10.** Payments or any part of a payment under this Section are only payable if the following conditions are satisfied—

- (a) the contractor must obtain the prior agreement of the Board to the engagement of the locum or salaried GP on a fixed term contract (but its request to do so must be determined as quickly as possible by the Board), including agreement as to the amount that is to be paid for the cover;
- (b) the contractor must, without delay, supply the Board with medical certificates in respect of each period of absence for which a request for assistance with payment for cover is being made;
- (c) the contractor must, on request, provide the Board with written records demonstrating the actual cost to it of the cover;
- (d) once the arrangements for cover are in place, the contractor must inform the Board—
  - (i) if there is to be any change to the arrangements for cover; or
  - (ii) if, for any other reason, there is to be a change to the contractor's arrangements for performing the duties of the GP performer on leave, at which point the Board is to determine whether it still considers the cover necessary;
- (e) if the arrangements for cover are in respect of a performer on leave who is or was entitled to statutory sick pay, the contractor must inform the Board immediately if it stops paying statutory sick pay to that employee;
- (f) the GP performer on leave must not engage in conduct that is prejudicial to that performer's his recovery; and
- (g) the GP performer on leave must not be performing clinical services for any other person, unless under medical direction and with the approval of the Board.

**16.11.** If any of these conditions are breached, the Board may, in appropriate circumstances, withhold payment of any sum otherwise payable under this Section.