

## GPs Squeezed Again in 2012/13

by Laurence Slavin



According to the latest inflation indicators, inflation is currently either 4.5% according to the CPI index or 5.2% according to the RPI index.

The GPC and NHS employers have agreed the contract arrangements for 2012/13, which are principally as follows:- a 0.5% pay award on the overall value of GMS contract payments to be delivered by adjusting the value of QOF points. Like last year, it is intended that this increase be applied to staff earning less than £21,000 p.a.

There are also changes in the QOF framework but, for the purposes of this article, it is not expected to alter the earnings from QOF.

The osteoporosis DES will no longer be available, but the funding will be added back into the global sum.

The alcohol reduction DES, the learning and disabilities DES and the extended hours DES will continue.

Do not forget that the superannuation payments for GPs increase in April 2012 from a maximum of 8.5% to 10.9%.

### So what will these changes mean for a GP's finances?

The results of this have been put into the attached table which is based on a real GMS practice with 3.33 full time equivalent partners, 7,200 patients and achieving above average financial returns from enhanced services and QOF.

If the practice chooses to pass none of the

increase in funding to their staff, the practice profits, after taking into account the GPs' extra superannuation, will reduce by 2.56% or £10,181. If the pay rise is 1%, the reduction in profits is 3.29% or £13,105. If the practice tries to give the staff an increase in pay to match the increase in inflation, the practice profits will fall by 6.02% or £23,952, which is a loss of £7,192 per full time equivalent partner.

Practices have been used to minimal pay rises and have been actively reducing their costs to preserve their profits, but there is only so much that can be done and most of that has been done already.

Staff do, of course, need to be properly rewarded, but if the partners are trying to run the practice while resources are not fully funded, does it give the wrong message to give staff pay rises while the ship is floundering? "We are all in this

together" is a quotation that comes to mind.

### What are practices doing to protect themselves?

Well, if all the usual exercises on cost mitigation and maximising claims have been completed, the practice will need to look at non NHS activities as well as NHS work. Taking on a nursing home with a decent retainer will cover the loss in profits and fund a staff pay rise up to 2%, but will, of course, involve working harder. Increasing the list size by 270 patients will provide enough income to pay the 4.5% increase to staff, but not all practices can do this and in fact, list cleaning makes this more difficult to achieve

In these difficult times, the exercise is really to minimise losses rather than maximise profits.

	Actual 2011/12	no increase staff pay	1% increase staff pay	2% increase staff pay	3% increase staff pay	4.5% increase staff pay	5.2% increase staff pay
GMS Payments - 2011/12	723,850	723,850	723,850	723,850	723,850	723,850	723,850
Pay Award	-	3,619	3,619	3,619	3,619	3,619	3,619
Reimbursements	113,901	113,901	113,901	113,901	113,901	113,901	113,901
Other Income	56,011	56,011	56,011	56,011	56,011	56,011	56,011
Total Income	893,762	897,381	897,381	897,381	897,381	897,381	897,381
Staff Costs	316,574	316,574	319,740	322,905	326,071	330,820	
Costs unaffected by Inflation	57,979	57,979	57,979	57,979	57,979	57,979	57,979
Additional Superannuation	-	8,335	8,093	8,026	7,959	7,859	
Costs affected by Inflation	121,458	121,458	121,458	121,458	121,458	121,458	121,458
Inflation	-	5,466	5,466	5,466	5,466	5,466	5,466
Total Expenses	496,011	509,811	512,735	515,834	518,933	523,582	
Profits	397,751	387,570	384,646	381,547	378,448	373,799	
Reduction in Profits - percentage		2.56%	3.29%	4.07%	4.85%	6.02%	
Reduction in Profits - £s		10,181	13,105	16,204	19,303	23,952	



# Is your Locum Employed or Self Employed?

by Stuart Singer

HMRC are increasingly investigating the employment status of regular GP locums. Where locums are employed via a registered agency or contracting their services via a limited company, GPs are unlikely to face a problem, but where a GP practice is employing a locum directly and the locum is registered as self-employed, HMRC are arguing that they are, in fact, disguised employees.

HMRC set out in leaflet IR56 published in 2004 what constitutes employed and self-employed status. In addition, they will provide, if requested, written guidance on the employment status of individuals.

### In general, you are an employee if

- you have to do all the work yourself
- you work under the direction of someone
- you work set hours
- you are paid by the hour, week or month
- you are entitled to overtime pay or bonus payments

### In general, you are self-employed if

- you can employ someone else to do your work
- you can make a profit or a loss

- you provide the main items of your equipment
- you agree a fixed price per job
- you decide what work to do and when you will do it
- you regularly work for different people
- you correct work in your own time without charge

Clearly, in the case of a GP locum, some of both apply. With HMRC attacking more and more locum relationships, our advice is for you to have a contract with the locum which sets out the terms of the arrangement in such a way so as to protect self-employment status.

Within such a contract, the most important

aspect is a substitution clause, which enables a locum to provide a substitute locum should they be unable to cover a session for any reason.

The second area of attack from HMRC is the expenses incurred by locum GP's in travelling from their home to the surgery at which they are working. Up to now, GP locums have been regarded as being based at home. Therefore, travel from home to the surgery has been an allowable expense. HMRC are currently trying to argue that the GP locums' place of business is the surgery where they are working, hence the journey to and from home is not allowable. It will be interesting to see how much success they have.



# Late payment of PAYE/NIC could result in large penalties

by Jenny Stone

The rates of the penalties are as follows:-

Employers are required to pay PAYE and NIC payments by the 19th of each month, or the 22nd if paying electronically (the money must be in HMRC's account by this date). Late payment penalties were introduced from May 2010, however, HMRC are only now sending letters regarding penalties that have accrued since May 2010. Even if you are only one day late with the payment of your PAYE/NIC, you will be charged a late payment penalty.

No. of times payments are late in a tax year	Penalty Percentage	Amount to which the penalty percentage applies
1	No penalty (as long as the payment is less than six months late)	Total amount that is late in the tax year
2 - 4	1%	As above
5 - 7	2%	As above
8 - 10	3%	As above
11 or more	4%	As above

For example, if a practice's monthly PAYE/NIC is £6,000 per month and it is paid late to HMRC for nine months of the tax year, they would be charged a 3% penalty on each month, which would result in a penalty of £1,620.

The amount of the penalty will depend on how many times you have been late paying your PAYE/NIC in a tax year.

It is advisable for practices to pay their PAYE/NIC payments electronically as a lost cheque in the post will not be an acceptable excuse for late payment.

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# Can an employer make an employee retire?

by Susan Bernstein

The default retirement age (DRA) of 65, which allowed employers to retire employees at or over the age of 65, was abolished by the Government with effect from 6 April 2011. This means that, subject to transitional provisions, any retirement dismissal of an employee on or after that date could potentially be age discriminatory and unfair. This article will help employers to review their practices for managing an ageing workforce.

## Q: Is it still possible to compulsorily retire employees at a set age without the DRA?

A: Yes, but in much more limited circumstances. Without the DRA, it will not be possible to automatically retire employees at 65 or over. However, it will still be possible to retire employees lawfully at a set age if you, as the employer, can establish that such a retirement age can be objectively justified. This means that you have to show it is a proportionate means of achieving a legitimate aim of your GP practice.

It remains to be seen how difficult it will be for an employer to justify a set retirement age if challenged in an employment tribunal. Case law to date regarding set retirement ages has primarily related to situations not covered by the DRA, such as partners. In the case of *Seldon v Clarkson Wright and Jakes*, a partner in a law firm challenged his compulsory retirement at 65 as being age discriminatory. The firm sought to justify its set retirement age on the basis that it facilitated partnership and workforce planning and allowed partners to retire with dignity rather than having to expel them for poor performance. The Court of Appeal held that the firm's aims were legitimate, however, the Supreme Court has given permission for this case to be appealed so its status remains uncertain.

If you are looking to establish a set retirement age, you would be advised first to set out the reason why you wish to do so clearly on paper to ensure the set retirement age meets a legitimate aim, such as workforce planning and then to consider whether you have good evidence to support this reason or whether there is a less discriminatory way of achieving the same result. It will also be important to follow a fair procedure by giving your employees adequate notice of impending retirement. If appropriate, you can consider a request to stay on as an exception to the set retirement age provided you treat all employees who request to stay on fairly and consistently.

## Q: I have an employee aged 65 who is not working as well as they did five years ago. Now that I cannot rely on the DRA to dismiss them, what can I do?

A: The abolition of the DRA does not prevent an employer from dismissing an older employee through its performance management processes. You can dismiss a 65 year old who cannot do their job on the grounds of capability just as you can dismiss a 25 year old who cannot do their job. However, just as with the 25 year old, it will be important to follow a fair procedure before dismissing the employee by having warned them in accordance with your disciplinary procedures of your dissatisfaction, having given them reasonable time to improve and having warned them of the consequences if they did not. The time which should be allowed for improvement depends on the facts, including the type of job and the level of incompetence. Although it is rarely fair to dismiss an employee on the basis of one act of incompetence, it is possible to do so where the consequences are so serious that to continue to employ them would be too risky and dangerous. This could be the case in a GP practice if the general public may be at risk.

Of course, it is always going to be difficult to dismiss a long-serving employee who has reached their sell-by date on the grounds of their recent performance. Accordingly, before embarking on a capability procedure, it is worth remembering that employees can still voluntarily retire and it would be useful to have an open discussion with them first. If properly handled, you may learn that they intend to retire soon anyway and avoid you having to go down the capability route.

## Q: What can I say to an older employee at a meeting to discuss their future plans?

A: It is not currently clear whether it would be considered directly discriminatory simply to ask only older employees what their intentions are and whether they wish to retire or remain in work. An analogy is that asking a woman on maternity leave when/if she intends to return to work would not be considered to be sex discriminatory. However, ACAS suggests that it would be best practice to hold regular meetings with all members of staff and not just older employees to ask them what their long-term career objectives are. In other words, if you are going to ask older employees about their plans, it is good practice to ask

other, younger employees about their plans too, perhaps as part of an appraisal meeting. You could start the discussion by asking what their future plans are, or how they see themselves developing over the next year. Do not ask direct questions such as "Are you planning to retire in the near future?" or "You seem to be slowing down, have you thought of retirement?", but if the employee indicates that they wish to retire, there is then no problem in talking about the date of their retirement and any adjustments they might like to their working patterns leading up to retirement.

## Q: Do I have any rights if an employee indicates to me that they will leave on a certain date, but then does not do so?

A: If an employee tells you during a discussion that they are planning on retiring, they have the right to change their mind until they have given you formal notice to terminate their employment. Even if you get the employee's agreement in writing to retire on a certain date, it is unlikely to have any legal force since an employee cannot sign away their employment rights unless they are legally advised and sign a compromise agreement. If the employee changes their mind before giving formal notice, you are entitled to ask their reason for not retiring. This might throw up an issue that you, as their employer, might be able to help them overcome. However, if they decide that they do not wish to retire, you will be open to a claim for unfair dismissal if you force them to do so. It is only after the employee has given formal notice to terminate their employment that you can force them to retire if they change their mind and want to stay on.

Susan Bernstein is a partner at the law firm, OGR Stock Denton LLP ([www.ogrstockdenton.com](http://www.ogrstockdenton.com)). She has specialised in all aspects of employment law, both contentious and non-contentious for over 12 years and regularly advises employers on HR matters (including disciplinary proceedings), assists with business transfers and represents employers in discrimination and unfair dismissal claims brought against them. Susan may be contacted on 020 8349 0321 or at [sbernstein@ogrstockdenton.com](mailto:sbernstein@ogrstockdenton.com)



## Childcare Vouchers

by Russell Finn

Childcare vouchers are available to any employee of an employer who has registered for a Childcare Voucher Scheme.

What this means is that employees can pay for childcare out of their pre-tax pay, therefore saving money on income tax, national insurance and superannuation. This saves money for the employer as well, as they do not have to pay employer's national insurance or superannuation on the value of the vouchers.

Sadly, if you are a self-employed locum or GP partner, you will not be able to use the scheme. The only relief you could get is if you qualify for Child Tax Credit or Childcare Element of the Working Tax Credit.

The amount of vouchers that you can buy is limited to £55 per week for basic rate taxpayers, £28 per week for higher rate taxpayers and £22 per week for super rate taxpayers.

Vouchers do not have to be used just for nurseries; they will be accepted at any regulated provider, i.e. after school club, playgroup, nanny, childminder or au pair up to when your child is aged 15.

A word of warning though; for employees that are also claiming childcare tax credits, a voucher is not classified as paying for childcare, so could limit the amount of tax credit that you can claim.

Also, if you are pregnant again, it could affect what you can claim by way of Statutory Maternity Pay, as vouchers are not classified as "pay".

If you are in this situation, then there is an on-line calculator available on the HMRC website to work out which system would work best.

## Staff profile



**Name:**  
*Nisha Gorasia*

**Date and place of birth:**  
*25th December, Cardiff*

**Job Title:**  
*Accountant*

**When you were a child, what did you want to be when you grew up?**  
*Bank Manager or a Holiday Tour Rep*

**Give 3 words that describe you:**  
*Loyal, friendly and happy*

**If you could invite 3 people to dinner (alive or dead), who would they be?**  
*Peter Andre, Michael Jackson and Vin Diesel*

**What won't you leave home without?**  
*My car keys*

**What is the last book you read?**  
*Shopaholics*

**What is your secret vice?**  
*Crisps*

**What is your greatest ambition?**  
*To buy my own house*

**People would be surprised to know that.....**  
*I can play the piano*

**What is your favourite quote?**  
*"What goes around comes around"*

**What is your favourite movie?**  
*Alice in Wonderland*



Please note that the office will be closed from 1pm on the 23rd of December and will re-open on 3rd of January 2012



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Thanks to Amanda Mandary and Julia Hoad for editing this newsletter.