

Payments for locums covering sick leave and phased return to work

What is phased return to work?

A phased return to work is an arrangement whereby an individual who has been away from work on sick leave returns to their full duties and working pattern gradually, over a defined time period. Specific details will depend on medical circumstances and agreement between the individual and their employer/place of work.

Does NHS England support practices to allow GPs this opportunity?

Yes. Individuals do not always need to be fully recovered to go back to work, and in fact it can often help recovery to return to work. This is why the fit note allows doctors to make such recommendations and why NHS England has clarified how it will facilitate the safe return to work in these circumstances.

What is this clarification and where can I find it?

NHS England has updated its protocol in respect of locum cover payments for GP performers on sick leave and phased return. This has yet to be published, as the protocol is also being updated to reflect (unrelated) Statement of Financial Entitlements (SFE) changes from 1 October 2018. NHS England has confirmed the update, mindful of the increasing questions on this issue, and has shared this with all local commissioners asking they implement this in lieu of the published protocol.

Extract from protocol¹:

Sickness leave and phased return to work

Commissioners support the safe return to work of GP performers and recognise that GP practices exercise flexibility in managing sickness absence, where GP performers under a fit note are declared they may be fit to work, subject to advice and agreement on phased return or adjusted hours. The fit note in such cases is continuing to declare sickness absence for the period subject to and excluding any agreed working arrangements. For example, if a GP performer is advised they may be fit to work two days out of five for the two weeks – then the other three days in each week for that period remain as sickness absence.

Payment in respect of necessary cover for this sickness absence under a fit note advising phased return or adjusted hours may however be mandatory or discretionary, subject to the requirements of the SFE being met.

In respect of GP performer who is a partner, the SFE makes no distinction on sickness leave, meaning paragraph 16.3 applies whether a GP partner is under a fit note declaring they are unfit to work, or may be fit to work subject to advice given on phased return or adjusted hours. Mandatory provision for payment therefore applies

¹ Published protocol may be subject to minor drafting changes as part of gateway approvals process

and commissioners should continue to reimburse locum cover costs as per paragraph 11 above.²

In respect of GP performer who is an employee, the SFE applies further requirements at paragraph 16.3 to qualify for payment – which is that the contractor is required to pay the GP performer Statutory Sick Pay (SSP) or their full salary during sickness leave under their contract of employment. A phased return or adjusted hours arrangement may interfere with a contractor meeting these requirements – SSP is subject to forming a period of incapacity to work of four consecutive days. Where these requirements are not met, payment to reimburse any locum cover costs would be discretionary (see paragraph XX). Where these requirements continue to be met under a phased or adjusted hours arrangement commissioners should continue to reimburse locum cover costs as per paragraph 11 above.

And

Discretionary payments in respect of cover for employed GP performers on phased return or adjusted hours arrangement following sickness absence.

The commissioner has discretion to make payments in circumstances where requirements of the SFE are not met, including where employed GP performers are returning to work under a phased return or adjusted hour's arrangement following sickness absence.

The commissioner will make payments in the following circumstances.

- The employed GP performer's phased return or adjusted hours arrangement follows directly sickness absence leave which attracted a locum payment under Section 16 of the SFE.
- Where the phased return or adjusted hours arrangement has been advised under a Fit Note (and for the period only that fit note covers or advises).
- Where the contractor is paying the employed GP performer their full salary in respect of their phased return or adjusted hours arrangement, for example taking account of both working and sickness absence days/sessions.

In these circumstances the commissioner will pay the lower of actual invoiced costs or maximum amounts payable calculated in line with paragraph XX.

Will there be any further details available?

The SFE will be updated in October 2018 and NHS England will update its locum protocol soon after to accommodate these changes and consolidate the update for

² Paragraph 11 reads "After two weeks, payments start, and the maximum amount payable is £1,751.52 per week for each of weeks 3 to 28. Thereafter, the maximum amount payable is £875.76 per week for each of weeks 29 to 54."

phased return confirmed above. However, some worked examples are provided below.

Worked examples

- If GP partner A is absent **from 3 April to 26 April**, a two-week qualification period, then the practice is entitled to reimbursement for the lower of actual invoiced costs or weekly maximum for the period 17 to 26 April.

After 26 April the GP partner returns to work but with a fit note stating that he can work three of his regular six weekly sessions for the first four weeks. So, the practice is entitled to reimbursement for three sessions per week for those four weeks.

- Salaried GP B is absent from **1 October to 30 November**, a two-week qualification period, so the practice is entitled to reimbursement for the lower of actual invoiced costs or weekly maximum for the period 15 October to 30 November.

After 30 November, the salaried GP returns to work but with a fit note stating that she can work four of her regular seven sessions for the first two weeks, but must work Monday, Wednesday and Friday so that she is not working consecutive days.

She will not qualify for statutory sick pay during this time (because she is not off work for four consecutive days), and will not be paid her full salary, so the practice is not *automatically* entitled to reimbursement for the cost of cover.

However, the practice may claim reimbursement and, if the salaried GP is being fully paid for the sessions she does work, the commissioner should use its discretion to reimburse the practice. So, the practice should be reimbursed for three sessions per week for two weeks.

- GP performer C (salaried or partner) C is absent from **9 January to 6 February**, a two-week qualification period, so the practice is entitled to reimbursement for the lower of actual invoiced costs or weekly maximum for the period 23 January to 6 February.

After 6 February, the GP performer returns to work and suggests working four of their regular seven sessions for the first week.

The practice may not claim reimbursement as the phased return is not subject to a fit note recommendation and has been agreed at the employers/place of works discretion.