

**IN THE MATTER OF
NHS DEATH IN SERVICE BENEFITS**

**INSTRUCTIONS TO COUNSEL
TO ADVISE**

Counsel is requested to provide written advice in respect of the following matter.

1. NHS Business Services Authority (“**NHS BSA**”) is the administrator of the NHS Pension Scheme (the “**Scheme**”). The Scheme provides death in service benefits to its members.
2. In a recent decision Carl Sanderson v NHS Business Services Authority [2019] EWHC 2900 (Ch) [Exhibit 1] (“**Sanderson**”), the court determined that the appellant was not entitled to receive death in service benefits from NHS BSA as she was not considered to be in pensionable employment as that phrase is used in the rules governing the Scheme, the National Health Service Pension Scheme Regulations 1995/300 (the “**1995 Regulations**”). It is only if a member dies in pensionable employment that regulations F1, G2 and G7 of the 1995 Regulations require the lump sums and widower’s pensions in issue on this appeal to be paid.
3. Instructing solicitors are acting on behalf of NASGP (the trading name of NASGP - National Association of Sessional GPs, a UK company limited by guarantee) (“**NASGP**”).
4. NASGP operates an online platform (the “**Platform**”) which provides, amongst other services, a matching service to supply independent locum GPs to medical practices for short term, temporary work contracts.
5. Locums are self-employed (they are not employed or contracted by NASGP) and enter into temporary contracts directly with medical practices. Locums operating through the Platform can choose to use the Platform’s own template terms and conditions [Exhibit 2] (“**Platform Template Terms**”) to cover the terms of their assignments, or they can use their own contract terms, or simply carry out an assignment with no specific written terms in place.

6. Locums are understood to operate, in most cases, as self-employed contractors during their temporary assignments with these medical practices.
7. On the basis that the locums are considered to be operating as self-employed contractors during their engagements with medical practices, we are concerned that following the ruling in *Sanderson*, locums who are contracted by medical practices to perform assignments but are unable to do so due to forced absence under self-isolation rules or due to contracting Covid-19 (Coronavirus) will lose their potential NHS death in benefits cover as they will be considered not to be in 'pensionable employment' at their date of death whether they die during a contracted assignment period or during any break period between one contract and the next.
8. In order to avoid this occurring, and to enable the locum to receive the NHS death in benefits cover, it is proposed to replace the existing locum contractor's agreement with a temporary 'continuous service contract' which would automatically arise between the medical practice and the locum on the occurrence of a relevant absence. This 'continuous service contract' would then continue in place until such time as the locum returned to work under a new contract.
9. We attach [Exhibit 3] suggested wording ("**Proposed New Terms**") to be included in the Platform's Template Terms which would temporarily convert the locum's contractor's existing temporary, fixed-term contract into a continuous service contract.
10. Counsel is requested to advise in writing:
 - a. Whether the proposed solution would indeed permit the locum's beneficiaries to obtain the NHS death in service benefits should a locum die during the period of the operation of this continuous service contract.
 - b. Whether the suggested wording for the Proposed New Terms are sufficient to effect the proposed solution, or whether Counsel suggests any changes to those Proposed New Terms.
 - c. Counsel will note that we have inserted a nominal charge of £12 per month to apply to this new continuous contract in order to create (a) binding consideration and (b) to show an intention to pay a contribution to the NHS pension scheme from this charge. Does Counsel believe we could limit this payment to a notional charge of just £1?

We attach the following Exhibits:

1. *Carl Sanderson v NHS Business Services Authority* [2019] EWHC 2900 (Ch)
2. Platform Template Terms.
3. Proposed New Terms.

Please contact Mr Ray Levy of instructing solicitors should you require any further information.

Ray Levy Law Offices
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