

# Checklist for clinical leads

Integrated Care Boards (ICBs) will be taking stock of Clinical Leads (CLs) needed to support the delivery of its commissioning priorities.

We set out below a checklist for ICBs to consider when deciding on what basis to engage Clinical Leads:

## CONTRACT OF EMPLOYMENT OR INDEPENDENT CONTRACTOR? THINK ABOUT:

- The control that the ICB will have over the CL and the way the work is done
- Must the CL deliver the services personally?
- Mutuality of obligation – will the ICB guarantee the CL work and if they do, is the CL obliged to accept it?
- Who will accept the liability for risk?
- Who will provide the place and equipment to enable the work to be done?
- Who will be liable for tax and NI (bearing in mind IR35)

Note - whether someone is a worker or an employee will be based on the reality of the situation, not just the written terms of the contract

## IF EMPLOYED, SHOULD CLS BE PAID IN ACCORDANCE WITH AGENDA FOR CHANGE (AFC)?

CLs tend to be paid on the basis of allowances which significantly exceed agreed Agenda for Change rates of pay. If CLs are placed on AfC terms but paid at the sessional rates this could give rise to potential equal pay or discrimination claims.

Note that, CLs may have existing terms and conditions which have transferred to the ICB from a predecessor CCG which may be protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

## DOES THE CL HAVE SUBSTANTIVE EMPLOYMENT WITH ANOTHER ORGANISATION IN THE ICS E.G. AN ACUTE TRUST OR GP PRACTICE?

If so, using a secondment arrangement is likely to be the most straightforward engagement option. We would particularly recommend this option in the following instances:

- GP Clinical Leads – A secondment which maintains existing employment/partnership arrangements with the GP Practice can mitigate complexities linked to GP pensions
- Clinical Activity – If a CL is required to be clinically active this can only be achieved through substantive employment with an employer who is registered with CQC to provide regulated activities (which the ICB is not).

If you would like further advice in respect of Clinical Lead terms and conditions please do contact us

## CONTACT



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