



# CLINICAL DIRECTOR CONTRACTS – GUIDANCE NOTE

The following contracts deal with six possible models:

- 1 self-employed consultant engaged by a lead practice (which is identical to one engaged under the Hybrid model);
- 2 self-employed consultant engaged by a federation to which the activities of the Primary Care Network (PCN) have been delegated;
- 3 self-employed consultant engaged by all practices of a PCN (the flat model);
- 4 employed clinical director employed by a lead practice, (which is identical to one employed under the hybrid model);
- 5 employed clinical director employed by a federation;
- 6 employed clinical director employed by all practices of a PCN.

There are two main ways of contracting with the clinical director (CD); engaging them as a self-employed contractor, or employing them.

## SELF-EMPLOYED CONTRACTOR VS EMPLOYMENT CONTRACTS

It is entirely a matter of agreement between the PCN and the clinical director whether they are engaged as a self-employed contractor or as an employee. Under the self-employed model, the CD will theoretically have more flexibility in terms of other activities, but will not have any right to sick pay, holiday pay and would not be subject to the engaging entity's disciplinary processes. They would also have to account to the HMRC for their own tax, at a self-employed person's rates.

Normally, when a self-employed person's VATable income exceeds the VAT threshold (£85,000 a year in 2019/20) they have to register for VAT and account to the HMRC for their VAT receipts. However, it is possible that the services of the CD will be seen as the supply of medical services, and so be VAT exempt. In the event that that is not the case, the wording of the self-employed contracts refers to "any VAT".

As an employee the CD would, conversely, be entitled to all the benefits and be subject to those obligations that an employee is subject to. They would be taxed under the PAYE system.



It is worth noting that the nature of the CD role may mean that she or he is viewed in employment law as a 'worker' even if engaged under a self-employed contract. This is an intermediary status between a true self employed person and an employee. A worker is entitled to many of the same rights as an employee, including paid holidays, the national minimum wage, protection from less favourable treatment if working part-time. They are protected from discrimination under the Equality Act 2010. Workers are also entitled to itemised pay statements, and from 6 April 2020, workers will be entitled to a written statement of initial employment particulars.

There is also a risk that the CD would be seen as a full blown employee despite being engaged as a self-employed person, with all the same protections (such as unfair dismissal rights). In addition, the HMRC could deem the CD to be an employee for tax purposes.

Unfortunately, there is no cast iron guarantee that a self-employed CD will never be seen as a worker or an employee by an employment tribunal or the HMRC, and much would depend on how the arrangement works in practice.

Very broadly speaking the more independent the CD is, the less likely they will be an employee or worker. To some extent having a major alternative role as a self-employed partner in a GP practice suggests such independence. However, there is always the risk that the level of commitment between the PCN and the CD suggests worker status.

## **THE DIFFERENT METHODS OF CONTRACTING WITH THE PCN UNDER SELF-EMPLOYED OR EMPLOYMENT CONTRACTS**

The contracts that follow also reflect three different models relating to the entity that engages with, or employs the CD. The simplest is where the PCN appoints one practice to be the engaging/employing entity. This can be any practice, (except that a CD cannot be an employee in a practice in which they are also a partner), and need not be the one that receives the core funding, although it may be simpler if it were, and would be better for arguing that there is no supply of staff between practices, thus avoiding a VAT levy. The contracts labelled 'Lead Practice/Hybrid' caters for this arrangement. 'Lead Practice' refers to the practice receiving the funding whereas 'Hybrid' refers to the situation where another single practice engages or employs.

The federation model refers to the situation where a separate entity is formed to operate the PCN. This entity can therefore engage with or employ the CD.

The Flat model is the most complex from a contracting point of view. This is where every practice engages with or employs the CD. This obviously will result in practical issues, and it is recommended that the PCN nominate a single practice to deal with the CD from an administrative point of view. In such a model the Board will also obviously have an important role to play.



## **AMENDING THE CONTRACTS**

We recommend that the contracts are not amended wholesale, as they have each been carefully structured to help achieve self-employment or employment, and the employment contract must contain certain information by law. However, we have put in square brackets different options, such as within the holiday pay and sick pay clauses of the employment contract, depending on how generous the employing entity wishes to be. We do recommend that the parties read through the relevant contract carefully to ensure they understand what they are each agreeing to.

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