

Adult and Children's Social Care Services



Reading
Borough Council
Working better with you

June 2018

Employing Personal Assistants

Some people choose to employ Personal Assistants with their Direct Payment. This may allow you to have more choice and control over how your assessed needs are met. It may also mean you can fit your care around your lifestyle, rather than the other way around.

Employing and managing staff can seem a daunting prospect at first, but with the right support and information, many people have had a very positive experience.

This factsheet explains the responsibilities and where you can obtain more information, advice and support.

The [Skills for Care website](#) provides more information on what a Personal Assistant is and what is involved if you want to use your direct payment to employ this way. We strongly recommend that you read the toolkits provided at the same time as this document.

If you are unable to access the Skills for Care website, you can call 0113 245 1716.

Employing a Personal Assistant

When you complete your Care and Support plan you will need to identify how a Personal Assistant will help you so you are clear on their role.

If you do not know who you want to employ, you can contact the Personal Budget Support Team as they hold a PA Register for Reading. This lists people who have shown an interest in being a Personal Assistant.

Alternatively, the Skills for Care toolkit on [Recruiting a Personal Assistant](#) has further options for where you could advertise.

Self-employed Personal Assistants

You might decide to pay someone who is self-employed with your direct payments. However, it is very important to ensure that HM Revenue & Customs agree that they may be treated as self-employed, and will therefore be responsible for paying their own tax and national insurance. Being self-employed or employed (a worker's 'status') is not a matter of choice: it depends on the terms and conditions under which the Personal Assistant is engaged. More guidance is available from the [HM Revenue & Customs website](#).

There is also a Status Customer Service Team with whom you can discuss their status. Their telephone number is: 0300 123 2326. It's very important to confirm whether your Personal Assistant should or should not be treated as self-employed. If you get their status wrong, you could end up having to pay tax, National Insurance Contributions and possibly penalties to HMRC.

It is also possible that a Personal Assistant who is treated as self-employed might fall within the scope of auto-enrolment for a workplace pension (see below) even if they are treated as self-employed for tax purposes.

For advice and guidance, please ring the employment law helpline provided by your insurance company, or the Pensions Regulator Helpline: 0845 600 1011.

Recruitment Pack Sent To Personal Assistants

Typically this should include:

- Advert
- Application form
- Job Description and Person Specification

[Skills for Care Toolkit 2 'Recruiting a Personal Assistant'](#) provides step by step support.

We recommend that you use your, or a friend/family member's, email to send and receive your job applications.

Interview process

Once you have gone through the application forms, you can now interview people to select the most suitable candidate. Reading Borough Council recommends you do not interview in your own home, but instead meet in a public place, at a friend or relative's house, or with at least one other person. Alternatively, if you use community services, you could ask if they could make a room available.

Following the interview you can make a decision and offer the job. You may wish to ask for references, normal practice is two written references for a candidate. It is advisable that they do not start until you have completed all the relevant checks.

Disclosure and Barring Service (DBS)

It is Reading Borough Council policy that a DBS check (formally known as CRB) is carried out on any person you wish to employ. The cost of a DBS check will be built into your personal budget, and we can provide you with a list of organisations who can undertake a DBS check for you.

Preventing illegal working

All employers have a legal duty to check that the person they want to employ is entitled to work in the UK before they start working for them.

It is important to make document checks on all employees even if you are sure they have the right to work here. You can check which documents you need to see [online](#), or call the Home Office UK Border Agency Employers Helpline on 0300 123 4699

Contract of Employment

Legally, you must give your employee a written statement of their main terms and conditions within two months of them starting the job. The [Skills for Care Toolkits](#) provide more information on employment contracts. You will also find templates on these websites.

Please ensure that, if you make any changes to the Contract of Employment you have with your PA, you send an updated version to the Personal Budget Support Team.

Working Regulations

As an employer you need to ensure you comply with the Working Time Regulations. The [Skills for Care Toolkit 3 'Before your Personal Assistant starts'](#) will go through minimum wage, working hours and health and safety.

Paying your Personal Assistant

You can pay your Personal Assistant with a cheque or by Bank Transfer. Payments by Cash are not permitted.

Your payroll company will advise you of any payments you need to make to HMRC to cover Tax and National Insurance. You must keep your Payroll Company informed of any changes in working times, sickness, holiday or if you go into hospital.

Providing a Work Place Pension

From 2012, it became mandatory for all employers to enroll all their eligible employees into a workplace pension. This is called automatic enrolment.

You will need to speak to your Payroll Company and ask if they have an Auto Enrolment pension scheme you can use and ask what level of support they can offer you. You must be ready to start enrolling employees from your staging date. The date will appear on the letter you receive from the pension regulator and this date will depend on when you became an employer. If you don't have this letter, contact your payroll company and ask them to find out for you. Unless your payroll company has a pension scheme that you can use, you will need to approach a pension provider in good time.

The Government has set up a pension scheme called National Employment Savings Trust (NEST) to accept all employers wishing to use the scheme for automatic enrolment. This is one option, and there are other providers available. To see what other schemes are available go to their [website](#).

You will need to identify which employees to automatically enroll and which will have the right to join your pension scheme. You will need to tell your employees about how the automatic enrolment affects them. You can find template letters [here](#).

There are rules relating to which employees are eligible for a workplace pension. You can find more information on this in [Skills For Care Toolkit 3 'Before Your Personal Assistant Starts'](#).

You must complete your declaration of compliance when you've automatically enrolled your employees. This must be done up to 5 months from your staging date.

It is also possible that a PA who is treated as self-employed might fall within the scope of auto-enrolment for a workplace pension (see below) even if they are treated as self-employed for tax purposes.

For advice and guidance, please ring the employment law helpline provided by your insurance company, or the Pensions Regulator Helpline: 0845 600 1011.

Note – The Pensions Regulator will issue a fixed notice if you don't comply with statutory notices. This is a fixed sum of £400. If you are issued with a penalty notice, you need to be aware that you cannot use your Direct Payment to cover any penalty costs

Managing your Personal Assistant

[Skills for Care Toolkit 4 'Managing your PA'](#) will help you. However if things start to go wrong you can access the [ACAS website](#) or telephone 0300 123 1100 for free confidential advice on employment matters. ACAS will provide guidance on discrimination, discipline, maternity advice and grievances at work, terminating or ending employment and notice periods. Within your Personal Budget you will be given funding to purchase Comprehensive Employers' Liability Insurance. This Cover usually contains access to legal advice (you will need to check your policy for details). [Skills for Care Toolkit 6 'Sorting out problems'](#) will also help you.

Insurance & Redundancy

If you are an employer, you are required by law to have certain insurance cover in place. If you are using your direct payment to pay for agency staff, you will not require insurance as they will be covered through the care agency's insurance. You need two types of insurance:

Employer's Liability Insurance

If your employee is injured whilst working for you and you are held legally liable, you will be protected to cover legal costs and compensation. As an employer, you are legally required to have Employers Liability Insurance in place.

Public Liability Insurance

This covers you from claims for compensation if you or your employee causes injury or damage to someone else or their property

The insurance must be in place before your Personal Assistant can start work.

It is unusual for any household buildings/contents insurance policy to provide cover to protect you from public liability or employer's liability claims and you should check carefully with your insurance provider before assuming it does.

If you employ someone and your direct payments end, they may be entitled to a redundancy payment. This will depend on how long they have worked for you.

Your payroll company and the employment law helpline provided by your insurance company will help you or your representative to determine if a redundancy payment is due.

There are currently three main providers specialising in providing policies to protect people using direct payments to employ their own personal assistants:

- [Premier Care](#)
- [Direct Care](#)
- [Fish Insurance](#)

They all offer similar additional support services such as a telephone helpline for advice on employment issues.

Depending on the insurance provider you choose, the annual premium for both employers liability and public liability policies will be between £88 and £135. The cost of public and employers' liability insurance will be built into your Personal Budget. When taking out or renewing your employer's liability/public liability insurance policy, it is essential you ensure you have a higher level of insurance cover in place to possibly help meet these costs and to ensure access to their employment law helpline.

If you or your Personal Assistant has an accident and suffers an injury, you must contact your insurers immediately and tell them about the situation. They will advise about what you need to do to make a claim.

It is important to keep a record of any accidents or incidents that occur, whether you, your Personal Assistant, or another member of the public, is involved. Be sure to take account of all accidents, irrespective of where they took place (for example inside your home or in a public place), no matter how trivial they may seem at the time, because sometimes injuries can develop later on as a result. A good idea is to keep a notebook in a safe place where you can write down the date and the details of the accident. Make sure your personal assistant knows where this is kept.

Car Insurance

If your Personal Assistant is going to use either your vehicle or their own while working for you, 'business use' must be added to the relevant policy. Some companies charge for this addition and **this is not a cost that is covered by your direct payment**, so you would need to discuss this between you and your Personal Assistant and agree how this cost will be met.

Useful websites and contacts

Direct Payment Financial Monitoring Team:

Call: **0118 937 6710**

Email: personal.budgetsupportteam@reading.gov.uk

Visit: www.reading.gov.uk/directpayments

HM Revenue & Customs: www.gov.uk/employment-status/selfemployed-contractor

Skills for Care: www.skillsforcare.org.uk/individualemployers/

Skills for Care Toolkit: www.employingpersonalassistants.co.uk/

ACAS: www.acas.org.uk/index.aspx?articleid=1461

The Pensions Regulator: www.tpr.gov.uk

This information can be made available in alternative formats (Braille, large print, audio) and other languages on request.