

Understanding the employment status of personal assistants (PAs)

A guide for individual employers

This guide will explain why it's important to understand the employment status of PAs, how the wide spectrum of the PA role may influence employment status, the different ways in which you can engage a PA and where to go to find more information and advice.

This guide is for individuals who need care and support who:

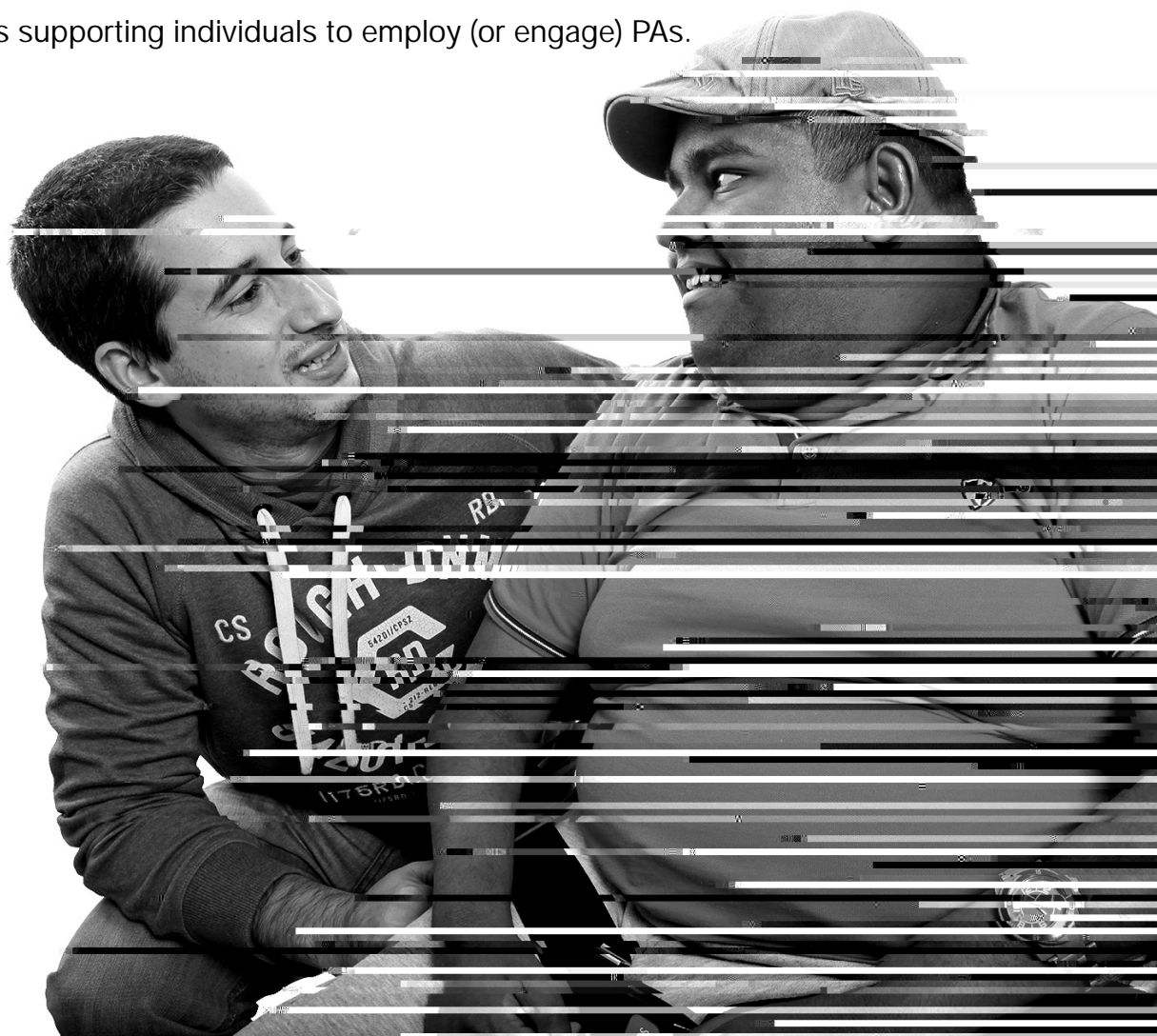
- directly employ one or more PAs

- engage the services of a PA, for example through a matching service or care agency
- are thinking about either employing or engaging the services of a PA.

Others who may find this guide of interest:

- PAs

- organisations supporting individuals to employ (or engage) PAs.



Contents

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Introduction

In 2015 there were around 500,000 people receiving long term support via a personal budget. Of these 145,000 were receiving direct payments and we estimate that around 65,000 will be directly employing personal assistants (PAs) (an increase from an estimated 32,000 in 2008).

This means that more people than ever have more choice and control over the care and support that they need. As a result, the options and types of support available have also changed.

New ways (or models) for people to get the care and support they need have developed in response to individuals needs and choices. One of the implications of this is that the term PA is increasingly being used to describe anyone that could support you to live independently, no matter how they're employed.

As well as directly employing a personal assistant (PA) other models are available, for example a user-led organisation could employ them on your behalf, you could use an online introduction agency, or you could hire a PA who is self-employed, for example.

Because of recent, and widely publicised, debates around working arrangements between an individual and their employer (for example Uber and Deliveroo), Government is paying closer attention to those working on a self-employed basis. This together with the different models of employment, means that the employment status of PAs can be a complicated issue.

We have written this guide to help individuals understand how personal assistant (PA) support can be obtained and how the way in which you get that support, can determine your responsibilities as either an employer or engager of PAs.

Our intention is not to promote nor endorse any particular model, rather to attempt to clearly set out the options in what is a rapidly changing environment. Skills for Care continues to work with HMRC as a stakeholder around guidance for PAs and their employment status.

What is a PA?

A PA is someone who is (usually) employed directly by a person who needs care and support. They can also be employed by a family member or representative when the person they're supporting doesn't have the physical or mental capacity to be the employer.

A PA always works directly with the individual they're supporting, in a person centred way.

PAs are likely to be involved in many aspects of their employer's life and may be asked to provide support in the home, at leisure or at work.

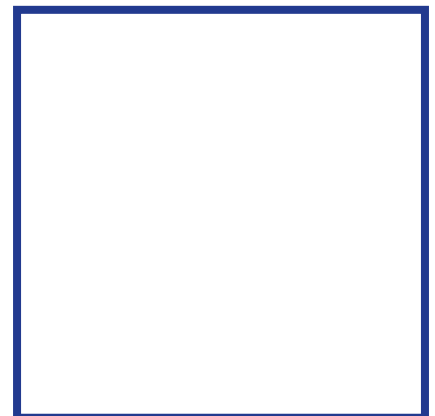
The opportunity to focus directly on the needs of an individual and the diversity of the role is what often attracts people to this type of work. The role can vary from house to house, employer to employer.

What is an individual employer (IE)?

An individual employer is someone who needs care and support, who directly employs a PA to meet their needs. By employing a PA an individual can maintain choice and control over their support, which may be delivered in the home, workplace or community.

Individual employers can pay for their PAs using a personal budget (social care or health) which they choose to take as a direct payment, or their own money (self-funders) (see appendix).

By recruiting a PA, individuals become an employer and take on all the responsibilities that entails.



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What is employment status?

Employment status is a term used to explain the working arrangement between you and your personal assistant (PA).

There are three main types of employment status for PAs:



Employed:

where you directly employ a PA using a direct payment, personal health budget (PHB) or with your own money. You might be called an individual employer.

PAs employed in this way will have more rights than those employed as 'workers'.



Self-employed:

where the PA runs their own 'business' and you contract them to provide a service such as cleaning or gardening.

Self-employed PAs don't have employment rights and responsibilities.



Resources to help you



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Why is the employment status of PAs important?

Understanding the employment status of your PA helps to determine your PA's rights and your responsibilities as an employer or an engager of PAs (an engager is someone who doesn't directly employ a PA, but you pay them or an organisation to provide their services).

It also makes sure that you and your PA pays the right amount of tax and National Insurance Contributions (NIC). If the employment status of your PA is wrong, you and your PAs may have to pay unpaid tax and penalties, or you could lose your entitlement to benefits.

Because the term PA is increasingly being used to mean anyone that could be supporting you, and there are now lots of different ways you could engage a PA, employment status can be a complicated issue.

It's important to make sure you carry out your own checks to make sure that the status for the working arrangement between you and your PA is correct. The resources below can help you do this.

If you receive a social care direct payment or a personal health budget (PHB) to pay for a PA, you'll need to check with the organisation providing that budget about the rules around using a self-employed PA.

Guidance from Her Majesty's Revenue and Customs (HMRC) and Advisory, Conciliation and Arbitration Service (ACAS)

A PA's employment status is not a matter of choice; it depends on the circumstances. The most likely scenario is that your PA should be employed directly by you; it is very rare that a PA would be considered self-employed by HMRC.

A PA is likely to be employed if:

you decide what work is done, how it's done, when it's done and who does it

Resources to help you



There's lots of support available to help you understand employment status.

HMRC is the UK's tax, payments and customs authority. They collect the money that pays for the UK's public services and help families and individuals with targeted financial support.

Check employment status for tax, Gov.uk

Use this service to find out if your PA should be classed as employed or self-employed for tax purposes.

Am I employed or self-employed, HMRC YouTube

This HMRC video to help your PA decide if they are employed or self-employed for tax purposes.

ACAS is an organisation that provides information, advice, training, and more on YouTube

The PA role and employment status

Traditionally, a PA would be directly employed by you because you have care and support

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Getting personalised support

The next section talks about different ways you can engage or employ a PA and what they mean for you and your PA in practice.

You can:

Directly employ a PA yourself

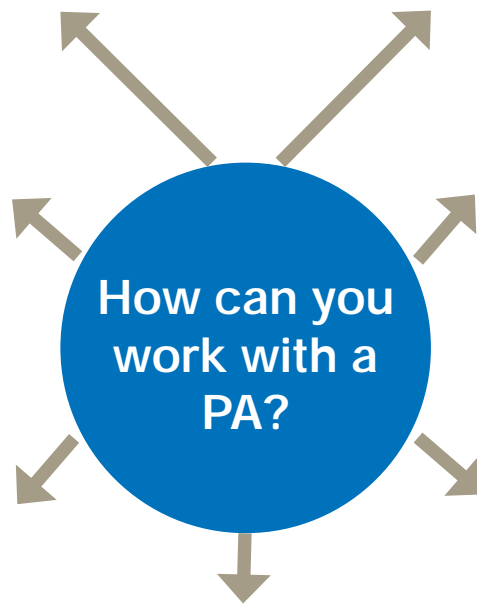
Use a ULO who employs PAs on your behalf

Use domiciliary care agency workers doing a PA role

Engage a pool of PAs who work together

Engage a self-employed PA

Use an introduction agency or matching service to find a PA



Pool your budget with other individuals to employ a PA

Directly employ a PA yourself

Who will recruit PAs?	Who has control over what work the PA does?	Who has control over who does the work?	Who's responsible for tax, national insurance and pensions?	Who needs insurance?	Does the PA have any employee rights?	Who needs to register with CQC?
You as the employer, or you could ask a support organisation to do this	You, as the employer	You, as the employer	You as the employer, or you could ask a support organisation to do this	You'll need employer's and public liability insurance	Yes	No-one
You, as the employer in partnership with agency	You, as the employer in partnership with agency	You, as the employer in partnership with agency	Agency	The agency needs employer and public liability insurance and clinical indemnity insurance	Yes, through the agency	Where personal care is involved, the agency must be registered with CQC
Agency	Agency	Agency	Agency	The agency needs employer and public liability insurance and clinical indemnity insurance	Yes, through the agency	Agency must be registered with CQC
The matching service will do a series of checks before matching you to a suitable PA	Agreed between you and the PA	You, as the employer	PA	Your PA should have public liability and any other necessary insurance	No	Matching service must be registered with CQC
PAs	PAs	PAs	PAs	The PAs need public liability insurance and clinical indemnity insurance	No	Yes, the PAs need to register with CQC as an agency
You, as the employer	You, as the employer	You, as the employer	You, as the employer	You'll need employer's and public liability insurance	Yes	No-one
PA	PA	PA	PA	The PAs need public liability insurance and clinical indemnity insurance	No	It's unlikely that the PA will need to register with CQC for sole traders, but they should seek advice

Directly employ a PA

As a person who has social care and/or health needs, you may want to remain in control of the care and support you require. If this is the case, then directly employing a PA is a good option.

Employing a PA does involve a lot of responsibility, but there are lots of benefits.

As an employer you'll be responsible for recruiting, paying tax and National Insurance, paying into a pension, complying with employment law, knowing about health and safety, carrying out supervision and training your PAs. However there is lots of support to help you do this.

What this means for you, the individual employer

You:

- have full choice and control over who works for you and what they do
- take on the responsibilities of being an employer

- must carry out relevant checks, like making sure a PA can work in the UK, asking for a DBS check and requesting references

- must have employer's and public liability insurance

- must register as an employer with HMRC and set up and run a payroll (or get someone to do this on your behalf)

- must ensure your PAs are paid at the least the national living wage (or national minimum wage); the amount will depend on their age and if they're an apprentice

- must comply with The Pensions Regulator duties around automatic enrolment.



Resources to help you



There's lots of support to help you employ or engage PAs.

Employing personal assistants toolkit

This online toolkit has practical steps to help you attract, recruit and manage PAs. It includes templates to help you write job descriptions and contracts.

Find a local support organisation

Local support organisations such as user led organisations, direct payment and personal health budget support services can help with recruitment, paperwork, carrying out checks, payroll, managing PAs and support with training.

How does it work in practice

Employing PAs directly: hear from Nadia

Nadia employs a team of PAs using a direct payment, to support her to live independently at home. She uses an electric wheelchair to get around and uses British Sign Language or her communication aid, Dynavox, to communicate.

Being an individual employer means she can choose the people who support her, who have the right values and skills to provide the care she wants. She has full control over the recruitment process and says 'I would never employ someone I wasn't 100% sure about.'

Nadia has a great insight into herself; her likes, dislikes, how she wants to be treated and what is and isn't acceptable. To ensure her PAs are right for her, she writes her own job descriptions and interviews people herself, so she knows quickly who has the right attitude and values to support her. She also supports their induction and trains her PAs herself about how to use her communication aid, her personal care needs and how to develop her rota.

Nadia describes her team of PAs as the 'dream team' who are motivated, hardworking, fun and compassionate. Employing her own staff means Nadia and her family have a good relationship with her PAs and everyone works as a team.

Having a team of PAs means Nadia can live life to the full. She goes to concerts, couch surfs, festivals and has taken a world trip with two of her PAs to Hong Kong, Australia and Singapore. Nadia also attends lots of conferences to talk about employing PAs.

She says 'I have excellent emotional support from my PAs who have total respect for me; sometimes they leave but we become friends for life.'

Although employing her own PAs takes time and dedication Nadia says 'this is the only path for true independence, choice and control.'

Having a lead PA who acts as a manager on your behalf

If you have a larger package of support, you might want to employ a lead PA who takes on some of your responsibilities as an employer and helps you to manage other PAs. For example, they may carry out supervisions, manage a rota and support you with recruitment.

Whilst a lead PA might expect to receive a higher rate of pay than the PAs they manage, it can remove some of the stress for you related to being an employer and can be a great development opportunity for a PA and add real value to their role.

Support with recruitment

A clear and detailed job description is essential so there are no misunderstandings about what the role will involve. Lynn asked for help from the local authority social services team to place the advert in a local Jobcentre Plus.

Shortlisting applications and interviewing processes will be different from employer to

Use a ULO who employs PAs on your behalf, but you keep choice and control

If you want to keep the choice and control offered by employing a PA, without the responsibility of becoming an 'employer', using an ULO to employ them might be desirable.

Under this model, a ULO would take full responsibility for employing PAs, but you'd retain the choice and control over who's employed and what they do. This means that your needs and wishes drive the recruitment and management of any PAs employed.

ULOs supporting this way of PA working may need to be registered with the CQC.

What this means for you, the individual employer

You:

- have choice and control over who and how the care and support is provided
- don't need to take on employer responsibilities
- have the opportunity to be involved in the recruitment process
- have support available if things go wrong
- might need to pay more for agency fees on top of PA hourly rates
- might experience potential conflict between the organisation and/or PA if priorities change, for example the organisation takes on conflicting work.

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How does it work in practice

ibk initiatives

ibk initiative is a family led social enterprise in Sheffield that aims to transform education and support so disabled young people and their families are included in their communities and enabled to live meaningful lives.

They do lots of work including supporting families and individuals to recruit PAs and can also be more involved in the management of and even directly employing PAs.

They feel it's important to make sure individuals have support so they can recruit and manage their PAs properly. For most, employing and managing staff opens up a whole new world to them – it can be life changing. Some enjoy the freedom of employing their own PAs, but for others it can be stressful.

ibk have been employing PAs on and off for about ten years, but has found that over the past two years, this model of employment is increasingly being requested by the families they're working with.

Whether they're supporting individuals to employ their own PAs or employing them on behalf of individuals, they always recruit PAs based on the interests and criteria set out by the individual who needs support. They've found that this results in better outcomes for both the individual and the PA.

Families and individuals have a choice about how much they want to be involved in the recruitment process. In some instances, they want to see all of the applications so they can choose who will be interviewed. Whereas others are happy for ibk to sift through the applications and do an initial interview before recommending a shortlist of potential PAs.

ibk ensures they have the correct insurance in place for the PAs they employ as well as undertaking DBS, reference and other relevant recruitment checks.

Once in post, ibk will be the employer of the PA, but will work with individuals to agree responsibilities in terms of the tasks to be undertaken by each party (PA, individual who needs care and support and ibk).

ibk initiatives believes that supervision is key and is one of the reasons this model of employment works so well. They offer supervision services and they feel it really makes a difference to support the PAs and help the individual to be a 'good employer'. It also means that issues can be addressed early on before they become a bigger problem.

When things don't work out between an individual and a PA, ibk will follow the right processes for redundancy. However, if the reasons for this were because of a personality clash, then ibk would help the PA to find work with another individual where they may be more suited.

Providing this kind of service does come at a higher cost but ibk are committed to supporting individuals in this way because they can see the difference it makes.

ibk initiatives operate this model for those individuals who do not require personal care. Where personal care is required, then they work in partnership with a CQC registered provider that understands the PA model. Over the years they have worked with domiciliary providers and others in the wider sector to help them to change their practice; they see it as their contribution to changing the views of the workforce.

Possability People

Possability People is a user-led organisation in Brighton (previously called The Fed Centre for Independent Living) who've been running their Continuing Independence Service for a couple of years. They believe this service is perfect for people who want the chance to have control over their support, but don't want the responsibility of being an employer.

As well as supporting people to directly employ their own PAs, they also provide a model of PA employment that can be considered as a bridge between a traditional domiciliary care agency and being an individual employer.

Possability People provide a bespoke service to individuals who want to employ PAs and take time to find out about them, their families and friends, discuss their needs and learn about their lifestyle and things they like. This helps them to find the right PAs for them.

When setting up this model, Possability People worked with the Care Quality Commission to ensure that they'd be compliant with their regulations and are registered as a service to carry out regulated activities. They're inspected in the same way as any other care agency and have the necessary insurances in place.

PAs are recruited in a number of ways including through their PA noticeboard, social media and recruitment sites like Indeed.

When an individual wants to employ someone, there may be a number of suitable PAs; Possability then works with the individual and the PA to find a suitable match.

As with any other agency, Possability People carry out the necessary checks (DBS, references, right to work etc.) as well as support PAs with any training needs.

Training will depend on individual's care needs and include free, online or in house training.

Possability People work with individuals to set out agreed ways of working and make sure that they and their PAs (as well as family members) understand their responsibilities and the working arrangements. This includes ensuring PAs know that individuals may direct the work they're doing, that supervisions are carried out by Possability People and they'll deal with any issues that may occur including disciplinary procedures.

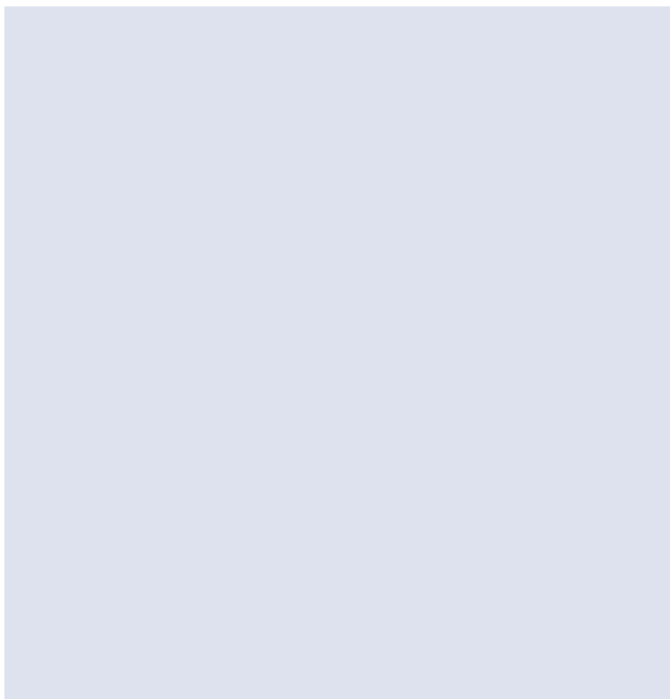
Because their service is bespoke, there isn't a set price for each package of support. The cost will depend on how many PAs are needed, the individual needs, local demographics, geography and travelling time. These factors will also determine how much the PA gets paid and whether PAs are paid different rates; for example some PAs might get paid more for doing more complex tasks.

This model works for individuals because it's a way for people to choose who's helping them and offers consistency of support.

PAs also appreciate this model and they find that retention rates are good. This is likely to be because they can build the relationship with the individual and have the option to work in a flexible way.

For example, working with an individual who was a traveller, Possability People were able to find and recruit PAs who understood the lifestyle and interests of this individual. One of the positive results of this, as well as meeting the individual's care needs, the PA has enjoyed the work so much, they would like to do more.

Traditional domiciliary care agencies are increasingly offering PA type services that may be delivered in different ways:



Use an introduction agency or online market place to find PAs

If you want the choice and control of employing a PA, but struggle to find someone, you might choose to use an introduction agency or online market place.

This is likely to be delivered online to match you to PAs in your area. Depending on the technology used and profiles of the PAs, matching is usually based on shared interests and care needs as well as location and availability.

Online market places are dedicated to providing social care services and enable you to 'shop' around for information, support, products or services you need. You can then order and pay for them as needed.

Some online sites might allow you to post vacancies and read reviews of PAs by others that have used them.

What this means for you, the individual employer

You:

- can choose from a list of PAs available to work at a time that suits you
- are assured that the PA has been checked and may have undergone a vetting process
- depending on the arrangement, you may then employ the PA directly, or enter into a contract for services
- may be bound to a minimum number of hours that a PA must work that's set by the matching service
- may need to pay additional fees like membership charges
- might need to pay more for agency fees on top of PA hourly rates

What this means for PAs

They:

- are required to undertake a vetting and/or interview process
- could work flexibly at a time when they choose
- have no guarantee of regular work
- are likely to be working on a self-employed basis, so don't have any employee rights
- must register with HMRC as self-employed and arrange own tax and National Insurance Contributions
- should enter into a contract with you
- must arrange own insurance and provide own equipment
- are supported by the agency who can manage payments and bookings
- could be paid less compared to traditional employed PA roles.



Engage a pool of PAs working together and covering each other

Sometimes a number of PAs will pool together to sell their services as a group. This means more than one PA will work for you and they work together to cover your care and support needs.

What this means for you, the individual employer

You:

- don't need to take on the employer responsibilities as the team manages itself
- could have less control about who is supporting you as a group of PAs will work together to cover your care needs
- need to check that the PAs are registered with the CQC, have the right insurance and manage their own tax and National Insurance Contributions.

What this means for PAs

They:

- may be considered as working as an agency
- need to register with the CQC
- need public liability insurance
- have no employee rights
- need to register with HMRC as self-employed and arrange their own tax and National Insurance Contributions.



Resources to help you



There's lots of support to help you employ or engage PAs.

Care Quality Commission (CQC)

The independent regulator of health and adult social care in England. The CQC makes sure health and social care services provide people with safe, effective, compassionate, high-quality care and encourage care services to improve. They do this by monitoring, inspecting and regulating services to make sure they meet fundamental standards of quality and safety and publish their reports.

Check employment status for tax, Gov.uk

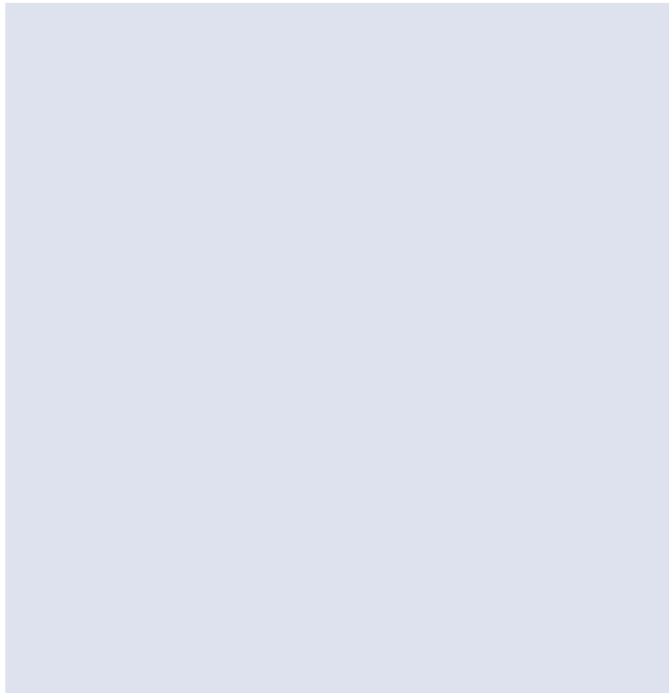
Use this service to find out if your PA should be classed as employed or self-employed for tax purposes.

Am I employed or self-employed, HMRC YouTube

This HMRC video to help your PA decide if they are employed or self-employed for tax purposes.

Pool your budget with other individual employers to employ a PA

Sometimes, groups of individuals who need care and support might join together to directly employ one or more PAs. This is sometimes called 'pooling budgets'.



If you want to have choice and control over your care and support, but don't want to take on the responsibility of being an employer or use a care agency, you could engage or contract with a self-employed PA.

People acting as self-employed PAs are in business for themselves and take responsibility for its success or failure. They offer an agreed set of services in exchange for a fee.

If you want to engage or contract with a self-employed PA, they should send you a quote for their services, send you an invoice to take payment, say when they want to work and should bring their own equipment. They're also responsible for making their own tax and National Insurance Contributions.

If you want to pay for the PAs services via a social care direct payment or personal health budget, then there may be things to consider before engaging a self-employed PA.

You need to find out where and how if you're contracting a self-employed PA. ~~Be~~
self-employed and should consider the legal implications of contracting a self-employed PA. ~~Be~~

What this means for you, the individual employer

You:

- don't need to take on employer responsibilities
- are responsible for ensuring the employment status of the PA you're engaging is correct
- have no choice or control over when the PA can work beyond what has been agreed through a contract for services.



What this means for PAs

They:

- must tell HMRC that they are self-employed
- won't get paid through PAYE
- have no employee rights
- don't need to register with CQC as a sole trader
- need the correct insurance including public liability insurance and clinical indemnity insurance
- can make a profit and develop as a business
- can work flexibly but have no guarantee of regular work
- are entitled to protection for their health and safety and, in some cases, protection against discrimination
- have their rights and responsibilities set out by the terms of the contract they have with their client.

How does it work in practice

Self-employed PA directly working for one or more individuals: hear from Jen

Jen is self-employed and works with a number of individuals using the knowledge and skills she's gained working in the health and social care sector for over 40 years. In the past three years, she's been working on a self-employed basis, providing services to individuals in their own home.

Jen usually finds new clients through word of mouth but also advertises on Wiltshire CIL's PA register. When making contact with a potential client, she sends them an information sheet that tells people about who she is, her background, qualifications, what services she can provide (such as housework, laundry, shopping and being a companion), prices, and payment terms.

It's important to be clear about what's expected from both parties (including how PAs expect to be paid for their service) and what to do when things don't go to plan.

She then arranges a visit that helps both Jen and the client see if they're going to get along, 'because not everyone gets on with everyone'. If they agree they want to work together, Jen will work with the individual to find out more about their hobbies, any medical conditions, do a plan, set out procedures and share necessary information (e.g. next of kin, medication, doctors etc.).

Jen enjoys being self-employed because she's not constrained to a strict timetable; if she needs to spend more time with someone she can. She also enjoys getting to know people and building relationships with the people she supports.

She can also find sorting out tax daunting sometimes, but she has processes in place

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Appendix

Personal budgets

When someone is assessed as having health or social care needs, they can be offered

