

Kent County Council

Direct Payments Factsheet #2

Employing Personal Assistants

1. Who is this factsheet for?

This factsheet is an introduction to Personal Assistants (PAs) and is produced by Adult Social Care and Health. If it does not give you all the information you need, please contact us, our details are at the end of this factsheet

2. Why Employ Personal Assistants

Some people choose to employ Personal Assistants (PA) with their Direct Payment. Employing and managing staff can be daunting at first. However, with the right support and information, people employing PAs can have positive experience. Employing a PA allows you to have more choice and control over how your assessed needs are met.

This factsheet explains some of your responsibilities and where to get more information, advice and support.

The Skills for Care website provides more information on what is a Personal Assistant (PA) and what is involved if you want to use your direct payment to employ a PA: <http://www.skillsforcare.org.uk/individualemployers/>. This information is presented in a range of toolkits. If you are unable to access the Skills for Care website, you can call 0113 245 1716.

You do not have to approach this alone; you can be supported by the Direct Payment Support Team or if you prefer to be supported by someone else you can contact the Direct Payment Support Team to discuss other options.

3. Employing a PA

When you complete your support plan you will need to identify how a PA will help you so that you are clear on their role.

If you do not know who you want to employ you can advertise the job. You can contact the Direct Payment Support Team who can help you with this. The DP Team have a PA database which lists people who have shown an interest in being a PA. The Advert will be sent to the people on the list and advertised with Find a Job <https://www.gov.uk/jobsearch>

Or you can advertise the job. If you would like some help with advertising the job you can contact the Direct Payment Support Team.

4. Self-employed PAs

You might decide to pay a self-employed PA with your direct payments. If you do, you need to be aware of the following:

- It is very important to ensure that HM Revenue & Customs agree that your PA 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 PA is engaged. More guidance is available from the HM Revenue & Customs web site:
<https://www.gov.uk/employment-status/selfemployed-contractor>
There is also a Status Customer Service Team with whom you can discuss your PA's status. Their telephone number is: 0300 123 2326.
It's very important to confirm whether your PA should or should not be treated as self-employed. If you get your PA's status wrong, you could end up having to pay tax, NIC and possibly penalties to HMRC. If your PA claims to be self-employed and you are not sure what to do, you should contact the Direct Payment Support Team
- A PA might be treated as self-employed for tax purposes but have a different status in employment law. An employment tribunal or court may still make a decision that they are a worker or employee for employment rights purposes. This means that a PA who has been treated as self-employed could claim they have, for example, been unfairly dismissed or have missed out on holiday pay. As the employer you would be liable for any settlement. If you pay a PA who is treated as self-employed, you should ring the ACAS Helpline on 0300 123 1100 to discuss this with them. You can also contact the Direct Payment Support Team for guidance
- It is also possible that a PA who is treated as self-employed might fall within the scope of auto-enrollment 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

5. Recruitment Pack Sent To PAs

Typically should include:

- Advert
- Application form
- Privacy Notice
- Job Description and Person Specification

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Skills for Care toolkit 2 'Recruiting a Personal Assistant' provides step by step support.

You can use the KCC recruitment service which allows all applications to be sent to us so that you maintain anonymity, if you would like to use this service please contact the Direct Payment Support Team.

6. Interview Process

Once you have gone through the application forms, you can now interview people to select the most suitable candidate. KCC recommends that you do not interview in your own home. KCC has buildings that you can use or your Direct Payment Support Worker can advise on suitable places. You can also invite your DP Support Worker to support you with the interview and book the venue.

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 the PA does not start until you have completed all the relevant checks.

7. Disclosure and Barring Service (DBS)

Kent County Council recommends that a DBS check (formally known as CRB) is carried out on ANY person you wish to employ. The Direct Payment Support Team can provide more information.

8. Preventing Illegal Working

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 and keep copies of the documents you check.

For more information go to: <https://www.gov.uk/check-job-applicant-right-to-work> Or telephone the Home Office UK Border Agency Employers Helpline: 0300 123 4699

9. Contract of Employment

From the 06th April 2020, legally you must give your employee a written statement of their terms and conditions before or on the 1st day of their employment.

This is a change from the previous requirement of providing the written statement within 3 months.

The written statement will need to contain

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- the hours and days of the week the employee is required to work, whether they may be varied and how
- entitlements to any paid leave
- any other benefits not covered elsewhere in the written statement
- details of any probationary period
- details of training provided

The Skills for Care and <https://www.gov.uk/employment-contracts-and-conditions> provide more information on employment contracts. You will also find templates on these websites. You can also contact the Direct Payment Support Service for templates. The KCC templates provide additional clauses on safeguarding, pension, age restrictions and what happens with your PA if you are admitted to hospital, which includes retainer payments.

10. General Data Protection Regulation (GDPR)

As an employer you will be regulated under the General Data Protection Regulation when dealing with personal data about job applicants and employees. How employers process and store information is not new as GDPR replaces some of the requirements under the Data Protection Act. You need to comply with the GDPR regulations by ensuring that you have a privacy policy your employees are aware of.

This applies across the European Union (including in the United Kingdom) and you are responsible as 'controller' of that personal information for the purposes of those laws.

11. 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.

12. Paying your Personal Assistant

Remember you should not pay your PA cash, you should pay your PA by cheque, by bank transfer or if you use a Kent card you can make payments over the internet, or by phone.

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

13. National Living Wage/National Minimum Wage

In April 2016 the Government introduced the National Living Wage. This now means that anyone employed by you who is 25 years of age or over must be paid at least the National Living Wage. The National Living Wage and the National Minimum Wage are monitored by HM Revenue & Customs (HMRC). To find out the current hourly rate please refer to - www.gov.uk or contact the Direct Payment Support Team

There will be penalties if you pay less than the set hourly rate to someone who is eligible for the National Living Wage. HM Revenue & Customs have the responsibility for enforcing the National Living Wage as well as the National Minimum Wage and take firm action where an employer fails to pay the correct hourly rate. This may include imposing penalties on the employer of up to £20,000 per PA.

If you think you have employees who are paid less than the National Living Wage or National Minimum Wage, or you have any questions relating to either of these, you should contact the employment law helpline provided by your insurance company. You can also contact the Direct Payment Support Team for guidance.

If you pay a flat rate for sleeping nights, you should contact the employment law helpline provided by your insurance company to discuss this with them. You can also contact the Direct Payment Support Team for guidance.

14. Providing a Workplace Pension

In 2008 the government introduced the Pensions Act. From 2012 all employers need to enroll all their 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 the website: <http://www.thepensionsregulator.gov.uk/en/employers>

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: www.tpr.gov.uk/writing

If the personal assistant you employ is aged between 22 and the State Pension Age and you pay them more than £192 a week, you'll have to put them into a pension scheme and pay money (also called 'contributions') to that pension scheme.

If the personal assistant you employ is aged under 22 or over the State Pension Age, or you pay them less than £192 a week, you don't have to put them into a pension scheme. But you'll need to give them the option to join a scheme, unless they are aged under 16 or over 74. If they do join, in some cases this will mean you have to pay contributions to the scheme on their behalf.

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-enrollment 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

15. Managing your PA

Skills for care toolkit 4 'Managing your PA' will help you with managing your PA. However if things start to go wrong you can access the ACAS website: <http://www.acas.org.uk/index.aspx?articleid=1461> or telephone: 0300 123 1100 for free

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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 allocation you will be given enough to cover high rate insurance. High rate insurance will ensure you have access to legal advice.

A employment specialist will guide you through the process you will need to follow if issues arise with your personal assistant.

Your Direct Payment Support Worker will be able to help you with information but will not be able to make any decisions for you. Kent County Council do not employ your personal assistant and will be impartial if issues arise.

The Direct Payment Support Worker can be part of any meetings you must hold with your personal assistant and take notes for you. These notes will be for you, to discuss with your employment specialist.

Skills for care toolkit 6 'Sorting out problems' will also help you.

Your personal assistant may also require support at this time and advice and guidance is available from -

ACAS provide free information and advice to employees, to help them avoid or resolve any problems or issues.

www.acas.org.uk or call their helpline on 0300 123 1100 (text relay 18001 0300 123 1100)

16. Insurance & Redundancy

It is a legal requirement to have employer's liability/public liability insurance if you employ a personal assistant. Failure to have this will mean the employer will be personally liable should things go wrong. Liabilities may include redundancy costs, or employment tribunal costs. KCC will cover the cost of a higher rate of insurance cover through your direct payments.

If you employ PAs and your direct payments end, your PAs 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. When taking out or renewing your employer's liability/public liability insurance policy, it is essential that 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.

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In the event of your death, KCC will work with any Executor you may have to finalise your Direct Payments account. Your Executor will need to contact your insurance company for advice on what to do. It will be the responsibility of the person administering your estate to make any payments owing to your PAs, for example redundancy payments, or a final invoice to a payroll agency. All money left in the account after any employment responsibilities have been met will be reclaimed by KCC. Some of the redundancy payment may need to be met from your estate.

17. Car Insurance If your PA is going to use either your car 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 with your PA and agree how this cost will be met.

**If you have questions you can contact the Direct Payment Support Team:
Telephone: 03000 413 600 or email: direct.payments@kent.gov.uk
Or you can find more information on: www.kentdp.co.uk**

This leaflet is available in alternative formats and can be explained in a range of languages.