



Employing a Personal Assistant or Contracting the Services of a Self-Employed Worker

1. Employing a Personal Assistant (PA) or contracting the services of a Self-Employed Worker (HMRC Registered) including carer, nanny, au-pair, support worker, personal assistant or therapist etc.

With Option 1, you can employ your own staff and these are classed as personal assistants. You can employ more than one personal assistant.

Alternatively you can buy the services of a self-employed worker. It is up to you to decide what is most suited to your support needs.

Aberdeen City Council advocates employing PAs that are employed directly by you. The tax and employment status of an employed personal assistant (PA) and a self-employed worker who charges for their time by the hour is different. As the employer it is your responsibility to determine the employment status of your worker.

2. The employment status is not a matter of choice for the worker

Due to HMRC guidelines it is very difficult to be registered with HMRC as a self-employed carer or self-employed support worker.

Aberdeen City Council strongly advises that personal assistants are employed directly by you or your legal representative receiving the direct payment.

3. Employing a Personal Assistant

- **For someone to be classed as a Personal Assistant:**

A personal assistant will be employed by you and work for you under a contract, which you will fully explain within a written statement called the terms and conditions of employment. You are legally required to provide your worker with this written statement within the first eight weeks of employment.

You will pay the annual leave, national insurance (where applicable), tax (where applicable) and pension contribution (where applicable) for each personal assistant. You will take out your own employer's liability insurance.

Personal assistants support you and cannot send a substitute in their place when on annual leave or off sick. You must make these arrangements.



As an employer you will:

- be registered with HMRC as an employer where the earnings of your PA or PA's is over £113 per week and pay the tax where applicable;
- pay national insurance (where applicable);
- specify the times, days, hours of work and location; set hours of work decided by you;
- be in control of your care and support; you tell the PA when to support you, what to do and how to carry out the tasks as best suits you;
- ask the PA to carry out new or additional tasks in relation to your assessed outcomes;
- pay an hourly rate determined by you for the support you receive; paid by the hour, week or month and provide a payslip. The personal assistant rate you receive as part as your direct payment was calculated to allow you to pay your PA's the Scottish living wage for care workers (currently £8.45 per hour as of 1 April 2017). Aberdeen City Council strongly advises that you pay all your Personal Assistants the living wage. How much you pay your PA's is ultimately up to you but the Council would expect you to provide the living wage to your workers.
- pay for overtime;
- identify any training that the PA or PA's require to support you, e.g. Moving and Handling, First Aid, Epilepsy Awareness, Medication training.

A personal assistant cannot be asked to be self-employed to enable you to avoid taking on employer's responsibilities.

It is important to remember that a PA cannot send a substitute if they are unable to come to work on any given day. This is because they would then be acting as an agency by providing a substitute. If this is the case, the 'agency' must be registered with the Care Inspectorate and subject to inspection on whether the National Care Standards are being met. <http://www.careinspectorate.com/>.

Where the local authority believes that someone is acting as an agency and is not registered, the local authority has a duty to report this to the Care Inspectorate. A person becomes an agency when they provide support to you by sending a substitute in their absence.



4. Employing a Self Employed Worker

Aberdeen City Council will not stipulate that you cannot use a self-employed worker if you choose Option 1.

If you go ahead and use a self-employed worker this is absolutely your choice.

However, we need to highlight that there are some risks you should be aware of when you engage the services of a self-employed worker.

This factsheet explains what these are and what steps you can take to minimise those risks.

Self-employed workers are identified by the fact that they are in business for themselves. They work for themselves and often provide support to more than one supported person. They have far greater control over how and when to deliver support. Self-employed workers will work for you under a Service Agreement or Service Provision Contract. Unfortunately there is no statutory definition of such an agreement.

A self-employed worker:

- must hold their own registration with Her Majesty's Revenue and Customs (HMRC), will have a Unique Tax Reference (UTR) which will be allocated by HMRC and will submit an annual tax return;
- must have the right to work in the UK;
- account for their own national insurance and tax deductions;
- have their own liability insurance;
- will organise their own sick pay and holiday pay;
- can decide when they want to work, when they take their leave and when and how they support you (this runs contrary to SDS being about you choosing the support and being in control of your outcomes and needs);
- must show you their terms and conditions of service and give you a service contract to sign;
- must send you an invoice for the service and support they provide;
- is responsible for their own training to meet your support needs e.g. Moving and Handling, First Aid, Epilepsy, any training specifically to support you, and evidence this training;



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- will provide all of their own equipment including Moving and Handling and Personal Protective Equipment (gloves, aprons);
- can send and pay a substitute if they are unable to do the work on any given day, they should provide someone to cover for them when they are away;
- must give you confirmation in writing around what the arrangements will be, should the self-employed worker be unable to provide support, due to sickness or leave.

As the potential employer, you (or your legal representative) need to check the employment status of your worker using the HMRC Employment Status Tool: <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>
This tool determines if they can be classed as an employed or self-employed worker.

We recommend that you complete the online questionnaire together with the potential worker as a discussion about some of the items may be required to clarify the role of your worker and to make sure you both have the same understanding of what the role will involve.

The tool will determine whether the worker could be employed or qualify as self-employed. In some cases, the online questionnaire will not give a definite answer. If this happens, you need to contact the HMRC Status Team at 0300 123 2326 (choose option 1).

Further guidance is available on the HMRC website at <https://www.gov.uk/government/collections/employed-or-self-employed>.

Once the person's employment status is clarified, keep evidence of this for your own records.

Where someone claims to be a self-employed worker under HMRC ruling they must have spoken to the HMRC Status Team and had this confirmed. The contact number for the Team is **0300 123 2326, choose option 1**. As the employer who will be making the payments, you have an obligation to check your worker's employment status. If there is any doubt about the individual's employment status, the Status Team will provide a written answer to you upon written request. <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/status-customer-service-team>

If there is any doubt about whether the terms and conditions under which a worker is carrying out their duties are those of self-employment, you must seek advice from the HMRC.

HMRC advice: Advice from HMRC Self-employed status helpline





“The supported person who is considering engaging with the services of a self-employed worker is advised to go onto the self-employed status checker.

<https://www.gov.uk/guidance/check-employment-status-for-tax>

You will be asked to answer questions regarding the duties the worker would be expected to carry out. This will give the supported person a clear answer as to whether their worker could be classed as self-employed. If it is a negative response from the questionnaire then the individual cannot legally use the services of this worker. Where the supported person remains unclear make contact with HMRC directly.”

Further information can be found in the HMRC’s Employment Status Manuals (ESM):

- For care workers: ESM4015
<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4015>
- For care workers paid under Court of Protection Order or from a trust fund: ESM4016
<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4016>

Aberdeen City Council strongly advise that anyone considering employing a self-employed carer or support worker reads the information on the HMRC website as well as this information.