



Aberdeen City Health & Social Care Partnership
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Self-Directed Support Aberdeen

Becoming an Employer





A Direct Payment (Option 1) of Self-Directed Support is the only option where you have the choice to employ your own staff.

The information in this document will provide you with general information on your responsibilities as an employer in line with Aberdeen City Health and Social Care Partnership (ACHSCP) and Aberdeen City Council Education and Children's Services (ACCECS).

If you are considering employing your own Personal Assistant/Carer, it is important to understand what this means and the responsibilities you will have as an employer.

The purpose of this guide is to ensure you are aware of your responsibilities in becoming an employer.

For reference

Where the term **Practitioner** is used this refers to a trained staff member who could be a Social Worker, Care Manager, Care Co-Ordinator or Family Resource Worker who are employed by Aberdeen City Health and Social Care Partnership or Aberdeen City Council Education and Children's Services.

SDS Helpline/Portal

Tel 01224 523837

SDSHelpline@aberdeencity.gov.uk

<https://aberdeencity.mylifeportal.co.uk/home/>



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Section 1

Registering as an Employer

As an employer you are required to register with Her Majesty's Revenue and Customs (HMRC) in order that relevant Tax and National Insurance payments can be made.

If your employee earns under £112 a week in your employment you do not have to register with HMRC. However, you will be required to register if any of your employees:

- start earning more than £113 a week, this is the same as £490 a month or £5,876 a year (information correct on 21/04/17),
- get a pension or another job while still working for you
- gets any expenses or benefits.

You are required to keep records of everything that you pay your employees. This is a simple process which you can opt to do yourself or you can contract with a Payroll company to do this on your behalf.

More information on payments to the HMRC can be found at www.hmrc.gov.uk.

Further information on registering as an employer can be found on <https://www.gov.uk/register-employer>.

Section 2

Recruiting your Staff

The aim of recruitment is to get the best person for the job. If you decide you wish to recruit your own staff this guide can provide you with information. Should you wish further advice your practitioner can signpost you to a local support network who can support you through the safe recruiting process.

More information and guides are available on the MyLife Portal:
https://aberdeencity.mylifeportal.co.uk/option_1_new

Recruiting staff documentation is available from ACAS
<http://www.acas.org.uk>



Useful information on being an employer is available on the Government Website.

<https://www.gov.uk>.

The recruitment process can be daunting and as such there are some key pieces of information to remember. You should strive to ensure any processes you use are ethical, clear and transparent. All applicants must be treated in the same way. The use of an application form can assist with this process and ensure the same questions are asked of each applicant. You can create your own application form, you can contact a Support Network who can provide you with a draft application form or you can download a draft from the MyLife Portal.

https://aberdeencity.mylifeportal.co.uk/sample_documents.aspx

Essential Documents

It is important for you to have all the necessary documents you will need for a smooth and seamless recruitment process. Examples of documents you will be required to provide the job applicant are:

- Job description
- Person specification
- Job application form
- Equality and Diversity monitoring form
- Information about the employer

The applicants should also be informed if there are any specific checks that will be required i.e. registration with a professional body, Health Checks and references. Aberdeen City Council strongly advocates that a PVG is in place for all employees. This is paid for by the employee.

The successful applicant will require a job offer letter, terms and conditions and the contract of employment.

Things that you should consider before you advertise

- How would you like the applicants to respond to the advertisement? Will you accept a CV or are you providing an application form. Can they apply in person, by email, telephone or post?
- Who will select the candidates for interview?
- Where will the interview be held and who will conduct them?
- How will you select the successful candidate?
- Are you aware of how personal information must be handled? To find out



Writing your advert

What to think about before writing your advert:

- Will your advert be easily understood and to the point?
- Ensure that it contains the job title and main aspects of the role, including pay, and type of contract i.e. permanent, fixed or term time.
- Hours of work, including days and times.
- General location of the position (do not give your home address just the area)
- Include skills and knowledge essential for the post.
- Personal qualities that are important to you.
- State how you would like applicants to apply and give a contact name, telephone number or email address.
- Provide a closing date.

Equality and Human Rights

If you wish to employ someone of a particular gender this is permitted in certain circumstances. You can advertise for an employee that is the same gender as the person receiving the care/support if it is an essential part of the job that calls for a member of that gender, i.e. a female can employ a female carer for aspects of intimate personal care. However if the carer was providing solely housing support then it would not be a genuine requirement of the job to solely employ a female. This is called Genuine Occupational Requirement (GOR) and is a provision of the Equality Act 2010. More information can be found at www.equalityhumanrights.com

Job Description and Person Specification

You should consider the development of a Job Description which is a list of tasks you require your employee to carry out. This can be task or outcome based, this will assist you to work out what key skills, knowledge and experience you are looking for in the applicant.

Job Descriptions should include the following:

- Job Title
- The person to whom the employee reports to
- The location of the job
- A list of the main duties, tasks and responsibilities of the job
- Outcomes to be met and the support needed



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- Training requirements and expectations, if any
- Probationary period if you wish to identify one
- Hours of work

The Person Specification should focus on the skills and knowledge, aptitudes, experience and personal qualities you would like your Personal Assistant to have. Your Support Plan that you and your practitioner have drawn up will be the basis for the contract.

Advertising

You should consider different ways of advertising to find the right employee.

Local Newspaper:

This will enable you to reach a wide audience which may mean you may receive lots of applicants. This option can be costly depending on the size of advert and length of publication.

Local Jobcentre Plus:

Employers can advertise vacancies through the Government's online Universal Job match at www.gov.uk/jobsearch The vacancies also go on display at the Local Jobcentre plus

Online:

There are various online resources and websites where you can advertise for staff.

Local College and Universities:

It can be beneficial for you as an employer to keep in touch with career advisers within local colleges and universities, and take part in their job fairs and have access to their bulletin boards. This can be useful where you are looking for staff with particular skills.

Using word of mouth:

You may ask your present workers if they know of anyone who would be able to support you, or by using social networking sites.

Selecting a suitable candidate





Deciding who to interview is often called 'shortlisting' those applicants who meet your requirements from all the applicants you have received interest from.

After the closing date you will look through the applications and decide who you want to interview. You can use the job description and Person Specification to select in a systematic way who best matches the job to draw up a shortlist of candidates for interview.

You must be clear on how you select applicants for interview to ensure it is fair and you do not discriminate against anyone on the grounds of race, gender etc.

ACAS has a useful booklet called 'Delivering Equality and Diversity' which can be downloaded from <http://www.acas.org.uk/media/pdf/t/l/Delivering-equality-and-diversity-advisory-booklet.pdf>

Once you have made your decision you can contact the candidates that best fit your needs and ask them to attend an interview. You should inform them of the documentation that you will ask them to provide e.g. passport, birth certificate, PVG certificate and training certificates. Be clear about the location and time and the name of the person conducting the interview.

Preparing for and conducting the interview

Prepare yourself for the interview by having a list of questions you wish to ask the candidates. Questions should be 'open-ended' so that they cannot be answered with 'yes' or 'no' answers.

Do not interview alone or in your own home. It is a good idea to have the person who the candidate will be supporting, a friend, professional or family member with you when you are interviewing.

A general tip is to base the questions around the job description.

Ask the candidate about their work experience, qualifications, the reasons for applying for the job, their training, likes, dislikes, skills, knowledge and why they would like to work with you.

To assist you decide who you would like to employ it can be useful to use a selection form. You would establish key skills or knowledge areas that you require and ask the applicant about them.

Then you could rank each person based on how they responded to the question. It is advisable to take notes. This will help you to draw comparisons between applicants when all the interviews are finished.



Take a break between the interviews to reflect on the answers and responses you received.

You do not have to make an immediate decision, take time to go over the responses.

If you did not feel that anyone was suitable you can re advertise and interview different people.

Before making a final decision check that the preferred candidate has the legal right to work in the UK if applicable (explanation of requirements are listed further on in this guide).

Offering the post

Once you have made a decision about whom you would like to offer the job to, contact them to say that they are the **preferred candidate**. Be clear that that this is dependent on you receiving suitable references and say that it is subject to pre-employment checks and the job offer is made on the condition that the results of the checks are satisfactory. Advise that a PVG statement is their responsibility; they purchase the PVG as it belongs to them.

Once the candidate has accepted the preferred candidate status you can contact the unsuccessful applicants. You can ask if people if they want feedback from the interview, or people may ask for feedback on their interview, this can be given from the notes you have taken.

Completing checks

By now you will have made your decision as to who is your preferred candidate. You must now consider further pre-employment checks, some of which are optional while others are a legal requirement.

Carry out these checks before a job is formally offered. By doing this you will be assured that the employee is suitable for the post before a final job offer is made.

A detailed checklist of pre-employment checks is available at www.acas.org.uk/templates.

All checks must meet Data Protection Act 1998 requirements. The checks you carry out must be lawful, necessary and fair. All information must come from a trusted source.



Aberdeen Health and Social Care Partnership and Aberdeen City Council Education and Children's Services strongly advocate that all workers either hold or apply for a full PVG or an update of any PVG they already hold.

If the applicant is registered with the Scottish Social Services Council (SSSC) or another registered body you can request to see a copy of their registration documents.

References:

Your job application will say that you will be asking for references. These are requested during the preferred applicant stage. Where an unsatisfactory reference is received then this is grounds for no longer being the preferred candidate. You must let the person know and give them the reason why you no longer want to offer them the job.

Formal Offer of Employment

When you are satisfied that the preferred candidate is who you wish to offer the job to, you make a formal offer and let them know all references and other checks are satisfactory. Once the job has been offered and accepted with all the conditions satisfied a binding contract of employment comes into existence.

Section 3

Written Statement of Terms and Conditions of Employment

Employers are legally required to put the main particulars of employment in writing. It is not a contract of employment in itself but is evidence of the contract of employment.

Employers are required to give the written statement to employees within two months of starting work, ideally on their first day. Employers can issue the written statement in instalments:

- Name of employer and employee.
- Date employment and continuous employment started.
- Job location.
- Pay and whether it's weekly, monthly etc.
- Working hours.
- Holiday entitlement.



- Job description / job title.
- Probationary period (if any).

Additional documentation is to be provided to cover topics relating to:

- Statutory leave entitlements including sickness leave and how this will be paid
- Disciplinary and Grievance procedures
- Pension contributions and who is responsible for paying
- Tax and whether or not the person is eligible to pay tax

Starting Work

It can be useful to consider what elements you will put in place when an employee starts work with you. It is advisable to consider a probationary period, as this allows you to establish the person's suitability for the role. It is important that this is made clear to the employee when they are offered the job, and is referred to in the terms and conditions. During the probationary period you must provide the employee with all the necessary tools to undertake their role and you must provide support where needed.

You should review the employee's performance regularly and offer guidance if required. If, after providing this support, the employee's performance is not satisfactory then you can extend the probationary period or you can terminate their employment. However you should ensure that, prior to termination you have provided appropriate and sufficient support and opportunities for improvement.

Training

You may find it necessary for your staff to undertake general or specifically identified training. As an employer it is your responsibility to source the appropriate training.

This training may be provided by attending paid-for training courses, accessing support from relevant professionals, NHS training, or passing over your own knowledge and skills.

The cost of training or covering staff time while attending training can be paid for out of the Direct Payment budget, if it has been identified at the assessment stage as a specific requirement.

You will need to have specific Direct Payment money for this, so you must be clear that this has been put in place before paying or organising any training.



Paying your worker

As an employer you must comply with the National Minimum Wage rates which change every year.

To get more information on the latest pay rates go to

<https://www.acas.org.uk/pay> or

<https://www.gov.uk/national-minimum-wage-rates>

The current rate of £10.99 being paid for Personal Assistants allows you to pay your workers as well as build up contingency money.

The Personal Assistant rate shall be received as part of the Direct Payment which has been calculated to allow payment of your Personal Assistant's in line with the Scottish living wage for adult care workers of £8.45 per hour.

The Aberdeen City Health and Social Care Partnership are committed to ensure care workers are paid the Scottish Living Wage. This applies to all care workers in Aberdeen City.

Aberdeen City Council advises that you pay all your Personal Assistants the living wage. How much you pay your Personal Assistants is ultimately up to you but the Council would expect you to provide the living wage to your workers to align with our living wage pledge as a local authority.

Contingency money is built up for the following purposes:

- Sick pay
- Annual Leave
- Tax – where eligible
- National Insurance

At the time your direct payment account is audited, a maximum of 4 weeks of contingency money (the equivalent of a 4-weekly direct payment) will be allowed to remain in your account to be used for the purposes listed above.



Equal Pay

Employers must give men and women equal treatment in the terms and conditions of their employment contract:

- the equal terms can cover all aspects of pay and benefits, including;
- basic pay
- overtime rates
- performance related benefits
- hours of work
- access to pension schemes
- annual leave entitlement

Further information can be found at <https://www.acas.org.uk/equalpay>

Working Time Directive

The Working Time Regulations determine the maximum weekly working time, patterns of work and holidays, plus the daily and weekly rest periods. In general the Working Time Regulations provide rights to:

- a limit of an average 48 hours per week on the hours a worker can be required to work, though individuals may choose to work longer by "opting out"
- paid annual leave of 5.6 weeks a year
- 11 consecutive hours' rest in any 24-hour period
- a 20-minute rest break if the working day is longer than six hours
- one day off each week
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health checks.

Further information can be found at <https://www.gov.uk/maximum-weekly-working-hours>

Notice if Employment is to End

Employees are entitled to a minimum legal notice period of 1 week if they have been consistently employed for 1 month or more. Thereafter the employee will be entitled to one week's additional notice for every completed year worked up to a maximum of 12 weeks.

Employees must give at least 1 weeks' notice should they wish to leave the



employment, unless a longer period of notice is stipulated in the contract of employment. A four week notice period is advised.

Redundancy Pay

Where an employee has 2 years' service they acquire a statutory right to redundancy pay. This is in circumstances where the job ceases or is diminished, i.e. less working hours.

Redundancy payments are variable by age and length of service so it is advisable to contact your insurance provider should you think about making staff redundant.

<https://www.gov.uk/redundant-your-rights>.

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

TUPE applies to business transfers and to service provision changes. It provides 3 main principles namely:

- The automatic transfer principle: employees transfer to the transferee who inherits all rights, liabilities and obligations in relation to the employee;
- Protection from dismissal in connection with a TUPE transfer.
- The obligation to inform and consult with the representatives of the affected employees.

Should you require continued care after your direct payments cease, then it is possible that your employees may be liable to transfer under TUPE to the new care provider. Should such a scenario occur then you as the employer are liable. Due to the legal complexity of TUPE it is strongly advised that you seek independent legal advice to ascertain your liability.

Pensions

Every employer must automatically enrol workers into a workplace pension scheme if they:

- are aged between 22 and State Pension age
- earn more than £10,000 a year
- work in the UK

This is called 'automatic enrolment'.

For further information on your responsibilities to enrol your staff in a workplace pension please contact the pension's regulator at www.thepensionsregulator.gov.uk.



Section 4

Legal Permission to Work in the UK

You must check that a job applicant is allowed to work for you in the UK before you employ them:

- You must see the applicant's original 'right to work' documents.
- You must check that the documents are valid with the applicant present.
- You must make and keep copies of the documents and record the date you made the check.
- You could face a civil penalty if you employ an illegal worker and haven't carried out a correct right to work check.
- You must not discriminate against anyone because of their race.

There is further information available on how to carry out right to work checks and what documents you can accept.

<https://www.gov.uk/government/publications/right-to-work-checklist>

If the job applicant can't show their documents

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- You are reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office.
- The applicant has an Application Registration Card.
- The applicant has a Certificate of Application that is less than 6 months old.

Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document
Further advice and information can be found at:

<https://www.gov.uk/legal-right-work-uk>



Section 5

Holiday Leave Entitlement

Almost all workers are legally entitled to 5.6 weeks' paid holiday per year pro rata (known as statutory leave entitlement or annual leave). An employer can include bank holidays as part of statutory annual leave.

Bank or public holidays do not have to be given as paid leave. An employer can choose to include bank holidays as part of a worker's statutory annual leave. Further information can be found at <https://www.gov.uk/holiday-entitlement-rights>.

Statutory Payments and leave entitlement

There are various statutory payments/leave that employees may be eligible for. The criteria around these payments are somewhat complex so the following information is as a guide only, further information on these payments can be found at <https://www.gov.uk/browse/employing-people/time-off>

Time off for Emergencies

Employees have the right to reasonable amounts of time off in an unpaid capacity where there is an emergency involving a dependent. This right is designed to cover genuine emergencies, and as such you can decide what is reasonable given the circumstances. The right to time off does not include the right to pay. So this is also at your discretion and should be included in your terms and conditions of employment.

Protection from Unfair Dismissal

Your employee has the right not to be unfairly dismissed. Should a disciplinary issue arise it is always advisable to have prepared for this and have already purchased an Insurance policy which provides you with Indemnity cover. You will then be able to contact the insurance company to request advice before taking any action. If it is not possible to contact the insurance provider immediately you may suspend the employee with pay and then follow the advice of the insurance provider or other professional advisor.



Section 6

Payroll services

An additional monetary payment is available to supported people who choose to use a Payroll company. This is to cover the payroll cost. You must discuss the need for this during the assessment and support planning process.

It is your choice as to which company to use. The following companies support people in receipt of Direct Payments. This is not an exhaustive list and you can choose who you want to support you. It is a good idea to shop around to see what services can be offered to you, the cost and how often you will meet or talk to the payroll company. This will depend on the level of support you need.

Cornerstone

Tel: 01224 256000 or email: payrolldp@cornerstone.org.uk

Fife Business Services Ltd

Tel: 0845 8620846 or email: payroll@fifebusinessservices.co.uk

Fergus Neilson Ltd

Tel: 01865 989714 or email: info@fergusneilson.co.uk

PayPacket Limited

Tel: 0800 848 8998 or email: info@paypacket.org.uk

Quill Account

Tel: 01337 827017 or email: info@quillaccounts.co.uk

Scottish Personal Assistant Employers Network (SPAEN) www.spaen.co.uk

Dosh Financial Advocacy: <http://dosh.org/>

Tel: 0300 303 1288

Further information on some of these companies is available on the MyLife Portal: https://aberdeencity.mylifeportal.co.uk/resource_directory.aspx

Insurance

When you employ staff it is important that you purchase adequate insurance cover. There are 2 types of insurance provisions that should be made:

Employers and Public Liability Cover - This is compulsory for employers as it protects against liability for bodily injury or disease sustained in the course of



employment.

Employment Law and Indemnity – This cover is optional but recommended as it can cover any legal costs in defending Employment Tribunals and in addition compensation awarded is largely payable through the insurance provision, provided the advice of the indemnifier is followed.

An amount of up to £110.00 annually is currently payable to help towards the purchase costs of the insurance policy.

You must purchase the policy from the direct payment account and submit the receipts to our finance department with the first financial audit in order for them to action reimbursement of policy cost. At the 6 week review of the direct payment your practitioner will request to see evidence that the appropriate insurances are in place.

It is your choice as to which insurance provider to use, the following companies provide insurance for supported people.

Employers and Public Liability Insurance Providers

Towergate Insurance

www.towergate.com

Endsleigh Insurance

www.endsleigh.co.uk

Direct Care Policy (Zurich)

www.directcareinsurance.co.uk

Scottish Personal Assistant Employers Network (SPAEN)

www.spaen.co.uk

Indemnity Insurance Cover

Scottish Personal Assistant Employers Network (SPAEN)

www.spaen.co.uk

Direct Care Policy (Zurich)

www.directcareinsurance.co.uk

Fish Insurance

www.fishinsurance.co.uk

This is not an exhaustive list of companies.



It is advocated that you have comprehensive house insurance to cover your property and its contents. You may want to include cover for accidental damage. You should inform your insurer that you are employing people to work in your own home. As an employer you have a legal duty to insure against accidents or injury to your staff, or accidents or injury caused by them while they are working for you.

You must consider travel or car insurance, for example if your personal assistant is going to be using your car or travelling with you regularly.

Section 7

Protection of Vulnerable Groups (PVG)

The Protection of Vulnerable Groups (PVG) scheme is operated by Disclosure Scotland. It is the responsibility of the employee to get their check done, as the certificate belongs to them and is transferrable between jobs. The PVG document belongs to the worker therefore it is their sole responsibility to pay for it. This cost cannot be met from the Direct Payment budget. It is strongly advocated and advised by ACHSCP and ACCECS that employers request this check. It is an offence for someone who is barred from working with children or adults to apply for jobs or to start working with people. This check is keep people safe from harm. Further details regarding the cost is available at www.disclosurescotland.co.uk or 0870 609 600.

Section 8

Employment Status

There are different categories of employment that you should be aware of:

Employee – A Personal Assistant will be employed by you, work for you under a contract, you will fully explain within a written statement 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 their annual leave, employers liability insurance, tax (where applicable) and pension contribution (where applicable) for each personal assistant. You tell them the hours you want them to work, when, where, tell them how much you will pay, what you want to do, how your outcomes will be met and how to support you.

Casual Workers – Work on an ad hoc basis, with no obligation for them to work. As such they do not benefit from the same terms and conditions as an employee however they will still be entitled to the statutory requirements. Instead of a contract



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you have a casual agreement highlighting what you would be expecting of their work. This type of employment would still require the worker to be subject to Tax and National Insurance, so again you bear responsibility and would typically use a payroll company.

Self-Employed – Self-employed carers or self-employed support 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 carers or self-employed support workers will work for you under a Service Agreement or Service Provision Contract. There is no statutory definition of such an agreement.

This person sets their own work schedule, rate of pay and conditions. The HMRC have issued guidance and there is case law to demonstrate that to have a genuinely self-employed person in the social care sector is both unlikely and open to risk. As the employer, it is your obligation to check the individual's employment status. You need to use the HMRC's Employment Status Tool to determine this:

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

Further information on the use of self-employed workers is available on the MyLife Portal. Please read the document linked below for further information and advice:

<https://aberdeencity.mylifeportal.co.uk/aberdeen-city-home-page/pages/what-is-sds/more-on-option-1/employing-personal-assistants/>

If your worker's employment status is confirmed as being self-employed, contact your allocated practitioner or the SDS Helpline at SDSHelpline@aberdeencity.gov.uk who will be able to provide you with the necessary paperwork.

