



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

## **Becoming an Employer**





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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 Integrated Children and Families Services.

## **SDS Helpline/Portal**

Tel 01224 523837

[SDSHelpline@aberdeencity.gov.uk](mailto: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.

You don't need to register for PAYE if none of your employees are paid £118 or more a week, get expenses and benefits, have another job or get a pension. However, you must keep payroll records.

Your records must show you've reported accurately, and you need to keep them for 6 years from the end of the tax year they relate to. HMRC may check your records to make sure you're paying the right amount of tax.

If your employee earns under £118 a week in your employment you do not to have to register with HMRC. However, you will be required to register if any of your employees:

- start earning more than £118 a week, this is the same as £512 a month (information correct on 28/05/19),
- 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](http://www.hmrc.gov.uk).

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

## 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.



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More information and guides are available on the MyLife Portal:

[https://aberdeencity.mylifeportal.co.uk/option\\_1\\_new](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](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 more see the Information Commissioners Office's website at [www.ico.org.uk](http://www.ico.org.uk)

## 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 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](http://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



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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
- 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](http://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 a particular skill set.

### *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](http://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 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 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



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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 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 £11.69 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 £9.00 per hour.

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

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

Contingency money is built up for the following purposes:

- Annual Leave cover
- Sickness cover
- Employers Tax and National Insurance – where eligible

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



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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. reduction in working hours/supported person no longer requires the support due to moving into residential care.

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>.

Should you be in a position where you require making workers redundant you are advised to discuss this initially with your allocated worker and insurance provider or seek independent legal advice. Redundancy is a statutory right, there are employment law protocols that must be adhered to. Your Employers Liability insurance may help with the cost of any resulting costs/payments dependent upon your level/type of cover. Once all final invoices are paid from the Direct Payment account then any residual funds within the account may also be used towards redundancy claims.

### **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

Under the Pensions Act 2008, every employer in the UK must put certain staff into a workplace pension and pay into it. This is called 'automatic enrolment'.

The Pensions Regulator is responsible for ensuring that all employers comply with workplace pension law. It's important that you understand what you'll need to do and prepare early.

When you have a personal care assistant, you are an employer from the day your first member of staff starts working for you and you have legal duties.

If you are employing staff for the first time, your legal duties for automatic enrolment begin on the day your first member of staff starts work. This is known as your duties start date. You should start preparing early in anticipation for this, so you know what you'll need to do.

You will need to provide a pension scheme and pay contributions into it if anyone who works for you on your duties start date is:

- aged between 22 and up to state pension age
- and earns more than £833 per month (£192 per week)

The Essential Guide to Automatic Enrolment provided by the Pensions Regulator is available from

<http://www.thepensionsregulator.gov.uk/the-essential-guide-for-automatic-enrolment-Oct17.pdf>

The Pensions Regulator will give you guidance and tools to help you meet your automatic enrolment duties.

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](http://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).

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.

Community Life Choices

Tel: 01772804088 or email: [payroll@communitylifechoices.co.uk](mailto:payroll@communitylifechoices.co.uk)

Accountability

Tel: 01914 921222 or email: [accability@accability.com](mailto:accability@accability.com)

Fife Business Services Ltd

Tel: 0845 8620846 or email: [payroll@fifebusinessservices.co.uk](mailto:payroll@fifebusinessservices.co.uk)

Fergus Neilson Ltd

Tel: 01865 989714 or email: [info@fergusneilson.co.uk](mailto:info@fergusneilson.co.uk)

Partners in Personalisation CIC

Tel: 07712703733 or email: [partnersinpersonalisation@gmail.com](mailto:partnersinpersonalisation@gmail.com)

PayPacket Limited

Tel: 0800 848 8998 or email: [info@paypacket.org.uk](mailto:info@paypacket.org.uk)

Quill Account

Tel: 01337 827017 or email: [info@quillaccounts.co.uk](mailto:info@quillaccounts.co.uk)

Scottish Personal Assistant Employers Network (SPAEN)

Tel: 01698 250280 or email: [www.spaen.co.uk](http://www.spaen.co.uk)

DD Payroll Services

Tel: 01332 293612 or email: [info@ddpayroll.co.uk](mailto:info@ddpayroll.co.uk)

Further information on some of these companies is available on the MyLife Portal:

[https://aberdeencity.mylifeportal.co.uk/resource\\_directory.aspx](https://aberdeencity.mylifeportal.co.uk/resource_directory.aspx)



## Financial Advocacy

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

Tel: 0300 303 1288

## Insurance

When you employ staff, it is important that you purchase adequate insurance cover. Your policy must cover you for at least £5 million and come from an authorised insurer. You can be fined £2,500 every day you are not properly insured.

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 during employment  
<http://www.legislation.gov.uk/ukpga/1969/57/section/2>

**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.

You can request up to £110.00 annually which is currently payable for the costs of the insurance policy. There are insurance providers who provide cover within the annual budget of £110. Therefore, it is expected that you use one of these providers. If your insurance needs could have been reasonably met within budget but you have chosen a more expensive provider/package, then you will need to personally contribute to the difference in cost.

If you find that due to your individual circumstances that an insurance provider cannot meet your needs within the allocated budget, then you must contact your practitioner to discuss further.

You must purchase the policy from the direct payment account and submit the receipts to our finance department with the first financial audit 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. You can check to see if your insurer is authorised by looking at the Financial Conduct Authority register

<http://www.fsa.gov.uk/fsaregister>



## Employers and Public Liability Insurance Providers

Policies available with a fixed cost:

Mark Bates LTD

<https://markbatesltd.com/contact>

Fish Insurance

[www.fishinsurance.co.uk](http://www.fishinsurance.co.uk)

SureWise

<https://www.surewise.com/direct-payments/>

These providers can give you a quote based on your individual circumstances:

Direct Care Policy (Zurich)

[www.directcareinsurance.co.uk](http://www.directcareinsurance.co.uk)

Endsleigh Insurance

[www.endsleigh.co.uk](http://www.endsleigh.co.uk)

## Indemnity Insurance Cover

Direct Care Policy (Zurich)

[www.directcareinsurance.co.uk](http://www.directcareinsurance.co.uk)

Fish Insurance

[www.fishinsurance.co.uk](http://www.fishinsurance.co.uk)

These lists are not exhaustive list of companies. It is your choice which insurance company you choose so long as they can meet your specific requirements.

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](http://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 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



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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](mailto:SDSHelpline@aberdeencity.gov.uk) who will be able to provide you with the necessary paperwork.

## Section 9

### Data Protection

General Data Protection Regulation (GDPR) and the Data Protection Act 2018 came into force on the 25th May 2018. Together they have replaced the Data Protection Act 1998.

Your employees' personal data should be kept safe, secure and up to date.

Data you as the employer can keep about your employee includes:

- name
- address
- date of birth
- sex
- education and qualifications
- work experience
- National Insurance number
- tax code





- details of any known disability
- emergency contact details
- employment history with the organisation
- employment terms and conditions (e.g. pay, hours of work, holidays, benefits and absence)
- any accidents connected with work
- any training taken
- any disciplinary action

What an employer should tell their employees:

- what records are kept and how they're used
- the confidentiality of the records and how you will store them
- how these records can help with their training and development at work