

# Taking an integrated approach to personal assistant (PA) employment and support

A guide for local authorities and NHS organisations



This guide is for local authorities, support and NHS organisations and is about how they can work together to ensure their approaches to PA employment and support align locally. When organisations have joined up approaches to PA employment and support, this can improve the experience of individuals who employ their own PAs.

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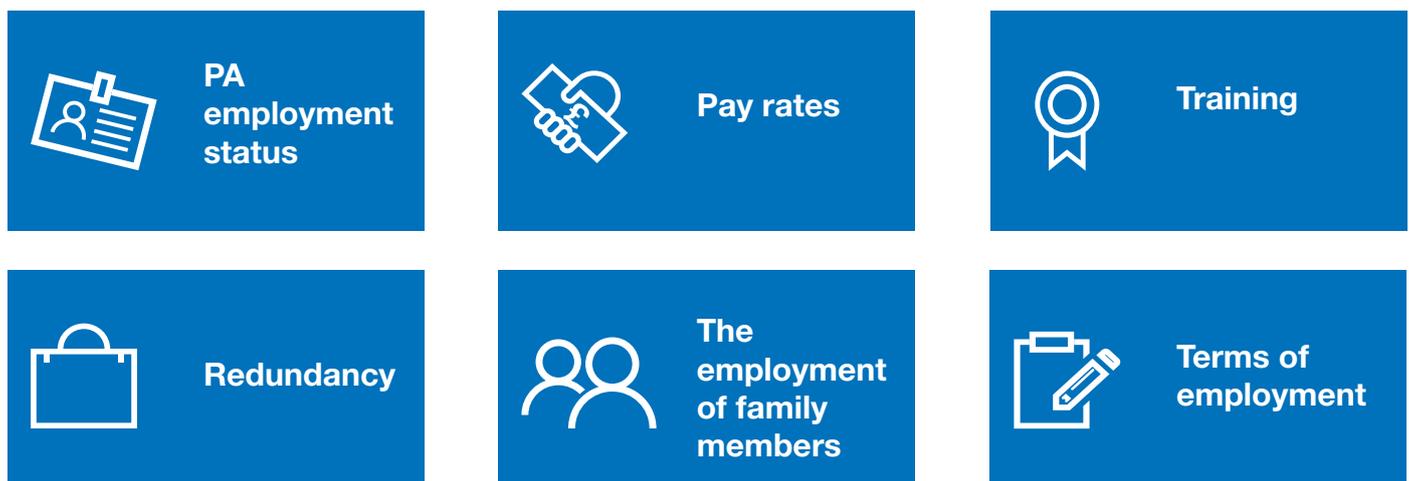
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# Introduction

When local authorities, support and NHS organisations have joined up, consistent approaches to employing and supporting PAs, this can improve the experience of individuals who employ their own PAs. The need for consistent approaches is increasingly important because:

- more people employing PAs are receiving personal budgets funded by both social care and health, either as part of initiatives such as integrated personal commissioning (IPC) or other local activity
- as someone's needs change the source of their funding may also change (for example from social care to health). Where that person is already employing a PA, consistent approaches will help minimise any disruption to their care
- both local authorities and NHS organisations are investing in developing the supply of PAs, the support available to them and the development of PAs; doing so in isolation will prompt confusion and create duplication of effort.

This guide suggests ways local authorities, support and NHS organisations can work together in the following areas.



In addition, it's crucial that:

- robust arrangements are in place to ensure continuity of care during transfer of funding arrangements
- consideration is given to how someone might retain support from their PAs, where their changing needs may prevent them from continuing in their role as an 'employer'.

This guide explains why it's important to take an integrated approach to PA employment and support, and how agreed approaches and consistent practices could be developed in the areas listed above. It also highlights that where consistency isn't achievable, stakeholders must recognise these inconsistencies and be able to articulate what these are and the reasons for them.

# Key principles for establishing an integrated approach

Local authorities and NHS organisations supporting individuals employing PAs, including those with a joint funded budget or who may be moving between funding streams, should:

- 1** start from a person centred base. The ambition of both parties should be to enable choice and control for the individual in need of care and support. Achieving this will involve working flexibly with people receiving care, involving individual employers and PAs in the co-production of local policies and taking steps to enable positive risk taking, rather than being risk averse
- 2** establish common local policies, processes and guidance (or commonality across these) by sharing existing policies, jointly developing policies and reviewing existing policies in partnership when they're refreshed. These activities should always take into account that at least some of the individual employers each organisation works with will move between funding streams (whilst retaining a PA) and so will be subject to both policies
- 3** ensure direct payment support services (DPSSs) and user-led organisations (ULO) are involved in the conversations, policy reviews and forums that take place locally. They are a source of specific and relevant knowledge on PA employment and employment law. They'll have specific examples of situations that local authorities and clinical commissioning groups (CCGs) should consider
- 4** take a pragmatic and common sense approach to issues such as employment status and the employment of family members living in the same home, on a case-by-case basis, using shared guidance.  
  
Ensure that they're in regular communication with counterparts or stakeholders from other statutory and independent sector organisations.  
  
This should not just be in relation to specific cases, but as part of wider routine conversations about local practice, challenges and developments
- 5** ensure development groups, steering groups or local networks provide a forum to prioritise and explore how to establish consistency. They should also allow a space for people to identify and discuss inconsistencies
- 6** have early conversations with each other about individual cases including establishing clearly (in the case of transfer) at the outset if someone employs a PA and wishes to continue to do so. By prioritising early conversations with employers and PAs, complexities or differences can be examined, explained and worked through.

# Why is an integrated approach important?

Greater consistency and integration of local approaches will help ensure that:

## people who need of care and support will:

- experience a more streamlined or seamless process as jointly funded care packages are set up
- (when moving funding streams) have greater continuity of care provided by someone they know and trust, avoiding disruption to existing arrangements.

## PAs will:

- have greater clarity or sufficient notice with regard to the expectations and arrangements (or any change in these) associated with their role
- (when moving funding streams) benefit from continuity of employment, terms and conditions and reassurance with regard to job security, sometimes reported as a barrier to PA recruitment.

## local authorities and NHS organisations will:

- support the development of streamlined care planning processes for those in receipt of joint or integrated funding
- support smoother transfers between funding, maintaining the stability of existing care packages and reducing the resource involved in 'case-by-case' negotiations
- improve the retention of PAs and reduce expenditure on avoidable costs, for example redundancy or recruiting to posts vacated by existing PAs
- help DPSSs and ULOs who provide support and advice, to develop consistent local messages and offers.

Where local authorities and NHS organisations take different approaches to the employment of PAs locally, these differences can:

- delay efforts in setting up jointly-funded and integrated care packages while disputes about what can be funded and expectations around PA employment are resolved
- cause distress and anxiety to people already employing and wishing to retain a PA when their funder changes; even when managed well this time may represent a period of uncertainty for a person or their family.

# Considerations for partnership working

The employment specifics that local authorities and NHS organisations should be routinely considering in partnership include:

# 1

## PA employment status

Local funders should agree a consistent approach to the employment status of PAs i.e. what makes a PA employed or self employed. Where a PA is self employed, funders should be clear about the implications of this for the employer. This can be supported by:

- clear messages on the likely legal case for direct employment and the value of employment over self employment. For instance:
  - the provision of holiday and sickness pay for the PA
  - access to a pension (subject to the terms of employment)
  - the increased choice and control that an employment arrangement grants the employer or the person acting on their behalf
- presenting the risks associated with making the wrong decision with regard to employment status
- sharing policies on the checks required and carried out to establish self-employed status, including requesting and keeping a record of:
  - someone's unique tax reference number (UTR)
  - a copy of the outcome of someone's Employment Status Indicator (ESI) check which includes a 14 digit ESI reference number

- checks on who provides any equipment a PA uses
- what insurance a PA may have in place
- the terms of service/contracts used

- documenting why use of a self employed PA has been allowed and routinely providing this information as part of the transfer process, at the same time it is identified and shared that someone has and wishes to retain a PA
- providing information on the 'offer' available locally with regard to case management, HR support, payroll and similar.

### Why?

Where a different understanding between funders in the same area exists, examples are available of people changing funders, who have previously engaged the services of a 'self-employed' PA being told that to retain their services that PA must become an 'employee'. This may delay a person's transfer between funding streams.

There's also the potential (the examples received to date are hypothetical rather than practical) that where a person's PA refuses to become an employee, they could have their 'employment' terminated.

## Resources to help you

### The employment status of PAs

This guide will help you understand more about the employment status of PAs.

### Am I employed or self employed?

This short video will help PAs understand if they're employed or self employed.

### HMRC employment status indicator tool

This tool will help you assess if PAs are employed or self employed.

# 2

## Pay rates

Pay rates should always be set according to the needs of the budget holder and recognise the value placed on the PA role. As part of this, budgets should allow the individual employer the flexibility to set appropriate rates. In addition, local funders should:

- use the same pay rates (as part of a shared framework) as a starting point for calculating indicative budgets and consult with one another when such rates are being developed; these may be linked to the complexity of tasks being performed
- recognise the benefits of a shared framework for indicative pay rates, including the ability to consistently use rates as a way to recognise long service, responsibilities or skills development and a reduction in the possible need for employment or legal advice (as changing a pay rate may prompt a change of contract)
- take a 'whole life' approach to budget setting asking "is the rate being set for PA support sustainable if someone's needs change?"
- clearly communicate with one another at the point of transfer of funding the reason why a certain rate has been set e.g. (in the case of higher rates) due to someone's remote rural location or the need for a PA to perform more complex tasks

- articulate to employers and PAs the reasons for any changes in a timely and sensitive manner. This may even include explaining why, in some instances, a PA is receiving a higher rate than they had been paid previously.

### Why?

- Establishing indicative local rates supports efforts to promote the PA role and grow the supply of PAs. It allows commissioners to better look at the PA 'market' and make a consistent offer to the PA workforce.
- Shared indicative local rates simplify the process for front line professionals involved in care planning and the promotion of direct payments and personal budgets.
- Where a PA will move to a lower rate when their employer transfers between funding streams, there is obvious potential for conflict. For instance where someone moves to a personal health budget (PHB) having previously received a social care budget, to which they made a contribution in order to pay their PA a higher hourly rate. A PHB cannot be 'topped up' by someone using their own money.

 I've worked with children's service, adult social care and NHS Leeds to adopt the same PA rates to ensure consistency across a 'Leeds offer' and simplify transition across services 

Leeds Centre for Independent Living

# 3

## Training

Where funders don't have a consistent approach to PA training or where training needs change (as someone moves between funders with their PA):

- there needs to be clear, agreed, guidance on any 'minimum' training expected for employers and PAs for example in relation to health and safety, and employment law
- arrangements should be in place to ensure the availability of bespoke training which includes consideration of when and where training should be delivered
- as people's needs change and the source of funding changes, the need for new or additional training should be clearly and positively articulated; any 'standard' training needs should be agreed and new training needs should be identified
- arrangements should be made which minimise the short-term impact of new training requirements for example, allowing an existing untrained PA to work under supervision until their training has been completed
- unless the required training is directly provided or commissioned, funding should be included in the person's budget and provision for backfill whilst a PA receives training should be part of this.

### Why?

- A consistent approach to training provides clarity to PAs, their employers, support organisations and frontline staff. It may also form part of a clear offer of support and development to all PAs locally.
- Training is often welcomed by both employers and PAs, however the mandating of specific training for PAs can be a source of issue, stress or conflict where this has not happened before. For instance where a PA has worked for someone for a long period of time; if not handled with care, such a requirement may be viewed as a value judgement on the care delivered to date.

### Learn from others

**North and East London Commissioning Support Unit** deliver flexible and bespoke training for PAs, and put a real emphasis on the mandatory and induction training needs of PAs.

Read page 32 of [Support for employers and their personal assistants following the introduction of personal health budgets](#) to read more.

## Resources to help you

### Supporting your personal assistant to gain the skills they need

This guide will help individual employers develop their PAs from induction to ongoing training.

### Individual employer funding

This funding can pay for training for individual employers and their PAs.

### A practical guide to learning and development for PAs

This guide will help PAs understand what opportunities are available to develop in their role.

# 4

## Redundancy

Just as more people will use an integrated or jointly funded budget to employ a PA, many individuals employing PAs are following or will follow a clear journey; moving between funding streams, with their PAs, as their needs change.

In many cases this change in the source of their budget will take place after they've already employed the same PA for a considerable period of time.

As redundancy pay is linked to length of service, it's important that when setting up a jointly funded care package or where someone has moved between funders, an agreement exists between both funders as to who is responsible for meeting the cost of redundancy.

The rationale for this is clear.

- A small number of examples have been reported where the lack of an agreed (standard) arrangement has delayed the funding transfer as the receiving funder has concerns about taking responsibility for meeting the full cost of redundancy.

- A local agreement supports the increased use of integrated or dual-funded budgets and allows funders to budget for any anticipated costs.

### Why?

Having an agreed approach:

- avoids potential delays in the transfer to a PHB (or vice versa)
- provides a clear way forward in situations where a redundancy payment is due and at times which are potentially sensitive for instance when someone employing a PA has passed away.

### Learn from others

In a number of areas, local authorities and CCGs are working to develop an approach to sharing the cost of redundancy, where this falls to these parties.

This includes approaches to sharing the cost of redundancy on a pro-rata basis (based on the number of years that an employer has paid for their PA using funding from each party).

1. This should cover the scenario where insurance doesn't or won't cover the cost of redundancy and an agreement should be in place even if it is believed that redundancy is covered by an individual's insurance. It is best practice that individual employers are advised to purchase advanced employers liability insurance when taking on a PA. Depending on the level of cover, circumstances around the claim and claim processing, this insurance may cover the cost of redundancy.

2. When an employer dies it is classed as a frustration of contract. This means their contract ended on the day the employer died. The employee would not be entitled to notice pay but would qualify for a statutory redundancy payment if they had worked for someone for at least two years, unless the personal representative of their estate offered to renew the contract within eight weeks.

# 5

## The employment of family members

Anyone in receipt of a personal budget from their local authority who wishes to employ a family member who lives with them, must discuss this with their local authority. The local authority will consider whether there are sufficient grounds to allow this arrangement. Similarly, where a PHB holder wishes to employ a family member who lives in the same household they must discuss this with and seek approval from their CCG.

Colleagues across local authorities and CCGs should look to establish ways of building local consistency where possible, including:

- sharing any local guidance on decision making processes particularly during development or review. This helps to establish commonality across local approaches and an understanding of where they differ. This can either be done via specific development workshops or as part of local steering groups or support brokerage networks
- documenting why the decision to allow a family member living in the same household to be employed as a PA was taken and being prepared to justify this. The rationale for a previous decision provides important context for anyone reviewing existing arrangements.

In addition, funders should:

- consider ways of facilitating existing arrangements and managing risk where consistency cannot be achieved. For instance, where there are concerns about the suitability of an existing arrangement, recommending the use of a third party to take on the 'employment' responsibility.

- start from a person centred and pragmatic base, which focuses on the wishes of the person in need of care and support.

### Why?

There's the potential that funders may make a different assessment of the necessity of this arrangement. Should this occur, it's clear that there's the potential for such a decision to cause considerable disruption and distress.

### Learn from others

**Warwickshire County Council** has worked with their local CCGs to establish consistency and a clear process for transfers between social care and health.

Read page 34 of [The PA workforce in social care and health](#) to read more.

**The London Borough of Ealing** has used a support brokerage network to co-ordinate local approaches with health colleagues and DPSSs and ULOs.

Read page 46 of [Supporting individual employers and their personal assistants: research into local authorities' support for people that employ PAs](#) to read more.

# 6

## Terms of employment

Working together local authorities and CCGs can reduce changes of contract and the chances of disputes occurring as people move from one source of funding to another by:

- sharing and using a standard contract of employment template
- working with employers and DPSSs to encourage the use of consistent (local) terms and conditions, for instance what annual leave entitlement PAs are offered
- agreeing a shared approach to developing indicative budgets and pay rates; these must include the flexibility for individuals to set appropriate rates
- working with local DPSSs and ULOs to develop shared, publically available guidance on local employment conditions, rights, responsibilities and duties for PAs
- ensuring appropriate support is available to PAs and employers where a change to an employment contract is necessary.

### Why?

A change in someone's employment conditions, rights, responsibilities or duties may result in a change of employment contract. A change in someone's contract requires an employer and employee to both agree to any changes.

As a result:

- cases where the new terms are considered less favourable may result in a dispute between an employer and their PA
- it may be necessary to seek (paid for) legal advice or support as contracts change
- by reducing changes in contract or disputes occurring; both parties can support a more 'seamless' transfers between funders for individuals and their PAs.

## Resources to help you

Your local DPSS or ULO might be able to help with terms of employment and contracts. You can find their contact details on the '[in your area](#)' section of the information hub for individual employers and PAs.

### Employing personal assistants toolkit

This online toolkit helps individual employers recruit and manage their PAs. You can also order paper copies.

### Employment contracts from Gov.uk

The Gov.uk website has lots of information about employment contracts to help individual employers.

### Contracts of employment from ACAS

ACAS can support individual employers with contracts of employment including free templates.

# 7

## Wider considerations

There are also wider considerations to think about to ensure the move between funding streams or a change in the source of the budget someone uses to pay a PA goes smoothly.

### An agreed approach to funding during transfer

It's important that robust arrangements are in place to fund and offer continuity of care during transfer. Local authorities and NHS organisations share a responsibility to ensure the continuity of care. Clear agreement on responsibilities at both organisational and individual levels is important if both parties are to achieve this.

Example: a case study introducing the approach to transfer taken by Herts Valleys CCG and their local authority is available on page 32 of the report here.

### Maintain consistency

There are a number of additional considerations local authorities and CCGs should take to maintain consistency with PA employment and support.

- Ensure the receiving party (individual employer) knows what insurance and pension arrangements an employer already has and that the funding to continue these is in place
- If an employer already has a preferred broker who they use, where appropriate, ensure that they can continue to use the services this organisation or individual provides. This familiarity and choice is important and can help avoid disruption.
- Make sure any existing use of equipment or assisted living technology is detailed and understood, as with funding during transfer there should be no break in the availability of these aids.

### Giving consideration to how someone might retain support from their PAs, where they can no longer act as the employer

Although not always the case, people will often move between funding streams (from social care to health) as their support needs increase. In this situation it's possible that someone who has previously directly held the 'employer' role may not be able to continue to do so. Where this is the case, early discussions as part of transfer should focus on:

- a) whether someone wishes to retain the support they receive from a PA
- b) how this can be achieved, including support from a family member, another person or a third party organisation.

In the case of the latter, local authorities and CCGs should consider whether Transfer of Undertakings (Protection of Employment) regulations are applicable. You can read more about this from [ACAS](#).

### Transfer of Undertakings (Protection of Employment) (TUPE)

As highlighted above, TUPE regulations may apply where someone retains the service of a PA but the person or organisation taking responsibility for employing the PA changes.

Whether TUPE applies is reliant on the details of an individual case and it is not the case that it will always be necessary when someone's source of funding changes.

To support any queries local authorities, CCGs, support organisations or employers should have and make available full details of existing and proposed employment arrangements as a matter of routine. It's also important to clearly identify local sources of HR support and advice.

# Useful resources

Skills for Care has lots of useful resources to help individual employers, PAs and organisations that support them such as user led organisations, NHS, local authorities and DPSS's.



## **The information hub for individual employers and their PAs.**

The hub has lots of resources, templates and guidance for individual employers and their PAs. There's also a specific section for supporting organisations such as local authorities, CCGs, DPSSs and ULOs.

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## **The employment status of personal assistants**

This guide explains the employment status of PAs and includes information about the spectrum of the PA role, the factors that influence the employment status of PAs and what different working models mean for individual employers and PAs.

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## **Employing personal assistants toolkit**

This toolkit has practical guidance for individual employers about recruiting and managing a PA. It includes advice about recruitment, induction, managing a PA, training and sorting out problems, and includes templates.

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## **Being a personal assistant**

This guide explains what a PA does, outlines what PAs should expect in employment, tackles FAQs about working as a PA and signposts to where PAs can get more support in their role.

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## **Research and recommendations to support PA working across England**

This report has recommendations for local authorities and NHS organisations about how to grow and retain their local PA workforce.

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