

Q&A - Understanding your responsibilities as an employer of personal assistant's webinar

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Our thanks go to Becky Rourke from Fish Insurance and David Ashley from Mark Bates Limited in answering these questions.

Health and safety

1. **How can I help support my PA through health issue that limits what activities they are able to support with?**

Speak with your PA and undertake a risk assessment to ascertain what tasks it is safe to continue doing. You may need to make adjustments to ensure the PA's injuries are not aggravated any further, for example, whether training in assisting and moving techniques may be required or equipment that might aid the work they are doing.

Above all, work with your PA to keep them safe and in the job. You'll need to continually evaluate whether or not it is practicable to keep them in post and working safely.

Seek advice from your insurance provider or personal budget team to manage this process.

2. **Are there examples of risk assessment template that will help those who have been shielding to have their PAs return to work?**

Yes, you can find a couple of examples on the Skills for Care [information hub COVID-19 pages for employers](#) – see 'Supporting your PAs at work during COVID-19'.

You may also be able to obtain a variety of employment templates from your insurance company (for example, from Peninsula if you have a policy with FISH), who may also be able to support you to complete them.

Personal Protective Equipment (PPE)

3. **Can we decide our own rules when it comes to PPE and COVID?**

The [COVID-19 guidance for people receiving direct payments](#) includes a section on PPE. Click on the 'PPE' option in the left-hand list. There is also details of [local provision of PPE](#).

4. **If my PA, who is a 'vulnerable person' themselves doesn't do 'hands-on' support but does support me in other ways, who pays for personal**

5. **protective equipment (PPE) to keep them and myself safe?**

Employers would normally be responsible for providing PPE, to maintain a safe working environment. If your personal budget (social care direct payment, or personal health budget) includes money to purchase PPE, you can continue to use your usual suppliers.

However, COVID-19 guidance for direct payment recipients says that if you employ a PA you are entitled to free PPE for your PA, where this is needed. This can be accessed through local resilience forums (LRFs) or through your local authority (LA) depending on where you live. If you're unsure of who is in charge of this distribution locally, you could contact your LA or Clinical Commissioning Group (CCG) who will assist you.

DHSC have committed to providing free PPE for COVID-19 needs until 31 March 2021 (through either LAs or LRFs).

The organisation funding your direct payment – either your LA or CCG – has responsibility to ensure that you and PAs that support you, have the PPE needed to keep safe. If you cannot access PPE, it is their responsibility to get you the PPE you and your PAs need during this time.

You can find more information about PPE supplies in this [guidance for direct payment recipients](#).

Performance review and supervision

6. **Where can I find a simple Supervision Template?**

[This template](#) could be used as the basis for supervision.

Please note: It is from the [suite of resources on 'Supervision'](#), which has been developed as part of our leadership and management offer for adult social care providers.

We will use this template and amend it so that it can be included in the next update of the Employing PAs toolkit.

Insurance

7. **As there are legal responsibilities, must councils pay for the level of insurance that has access to the legal cover?**

There is a legal responsibility for all employers to have employer's liability insurance ([Employers' Liability \(Compulsory Insurance\) Act 1969](#)).

All other aspects of cover provided by direct payment insurance policies are discretionary.

However, there are no legal requirement to provide employers with access to legal support. But as it is a legal requirement that employers comply with employment law, this additional service supports employers to be compliant and can help if difficult situations occur.

Contracts

8. **Do the insurance companies insist that you use their employment contract templates (as provided by the insurer)?**

No insurance companies don't usually insist that employers use their contracts, however they can provide support with producing contracts if required.

9. **Do contracts have to be re-issued every year, even if the terms have not changed?**

No, they don't. Employees and employers must stick to a contract until it ends (for example, by an employer or employee giving notice or an employee being dismissed) or until the terms are changed (usually by agreement between the employee and employer).

Legal advisors at the insurers can check contents/changes/additions etc. to ensure the content is lawful.

More on 'Changing an employment contract' from ACAS
www.acas.org.uk/changing-an-employment-contract.

Pay and redundancy

10. **Where can PAs get additional support if they work less than 12 hours a week and are not eligible for sick pay or benefits?**

If you're not eligible for Statutory Sick Pay you may be able to apply for [Universal Credit](#) or [Employment and Support Allowance \(ESA\)](#). You can use [form SSP1](#) to support your application.

11. **If the council says that sleep in is paid at the minimum wage (NMW), should this be the national living wage (NLW) if over 25, or can this be the actual minimum wage which is supposed to only be for people under 25?**

If the council say pay NMW you would need to pay the NMW according to the age of the PA.

The NLW applies to workers over 25 and should be paid per hour for working time. If the PA is under 25 the NMW rate can apply.

12. **Whose responsibility is it to pay for a PAs redundancy payments, for example, in the event that the person who requires care and support (IE) dies?**

The estate of the deceased is liable in employment law, but the funding body must provide the necessary funds.

An insurance policy could help with redundancy payments, but would only pay up to the policy limit.

Chapter 12 of the [Care Act Guidance](#) talks about redundancy payments.

For personal health budgets, see sections 6.1 'Setting the amount of a direct payment' and 6.4 'Repayment of a direct payment' in the [Guidance on Direct Payments for Healthcare: Understanding the Regulations](#) for full details.

Working time

13. **If my PA is on call 24 hours a day and exceeds working time regulations. What legal paperwork do they need to sign?**

Workers can choose to work more than 48 hours a week on average if they are over 18. This is called 'opting out'. Employers can find information about what paperwork a PA needs to sign to opt out on the [Gov.uk website](#).

ACAS has also produced [information about opting out](#).

14. **Do the 48 hours include any time that is "sleep in"?**

A list of what counts as work and what doesn't count as work is available on the Gov.uk website www.gov.uk/maximum-weekly-working-hours/calculating-your-working-hours. It doesn't mention 'sleep in' but does refer to 'time spent on call at the workplace' and 'any time that is treated as 'working time' under a contract'.

Provisions as to rest breaks under the Working Time Regulations (WTR) must be considered. The WTR include time spent 'at the employer's disposal' and engaged in activities as working time. Caselaw has developed to include time spent on-call but at a place determined by the employer as working time. Applying the law to the facts it would seem that the hours where the worker who is required to be on-call at the service user's home (asleep or not), must be considered for the purposes of the WTR.

We recommend employers contact the [Acas helpline](#) or use the [Acas Helpline Online](#) to get further advice on working hours.

15. **Although an employee can opt out of the 48 hours, is there a limit on how many hours a PA can work?**

You can't work more than 48 hours a week on average (normally averaged over 17 weeks). This law is sometimes called the 'working time directive' or 'working time regulations'. You can choose to work more by opting out of the 48-hour week.

Reg 8 of the WTR (pattern of work) states that the pattern of work organised by the employer must not put the workers H&S at risk. The worker must be given adequate rest breaks. This regulation also applies even when the 48 hour opt out has been signed or if other exclusions such as special case worker are being applied.

We recommend employers contact the [Acas helpline](#) or use the [Acas Helpline Online](#) to get further advice on working hours.

EU settlement scheme and recruiting PAs

16. **Does an employer have a right to ask EU PAs to prove they have the new settlement scheme status? Before or after June?**

An employer has a right to let a PA know they need to get settlement status before 31 June and that they will have to confirm it after this date.

17. **What about a student from EU who has the right to be here; how does it relate to UK settlement scheme?**

They would need to provide evidence as per current guidance, i.e. no change.

Training

18. **Is there a legal requirement to officially train PAs in moving and handling when using a hoist or is it good enough to show them how to use it informally?**

There is no legal requirement, however it is a very good idea to ensure your PAs are trained to use any equipment to support you. Formal training, from an insurance perspective, is that people are trained adequately to use the piece of equipment.

To get funding to pay for training apply for [individual employer funding](#) from Skills for Care.

19. **Skills for Care has produced an excellent resource STOP LOOK CARE an information guide for anyone providing direct support to people with a learning disability and or autism. Is it available on the SfC website?**

The [STOP LOOK CARE](#) guide will be added to the information hub during its next update.

Checks and accreditation

20. **What happens when they [PA] take financial advantage of you by taking you to tribunal for unfair dismissal (happened and resolved). How can you stop them going and being a carer for someone else and doing it again?**

We would always advise that an employer seeks advice at any sign of an issue to avoid an issue going to tribunal. However, if it does the advice line can offer support to employers. There is no way you can stop this happening again to someone else.

21. **Who is responsible for obtaining an enhanced DBS check?**

Employers would need to seek support from their direct payment provider to obtain a DBS check on any PAs they want to employ.

See the Disclosure and Barring Service (DBS) checking personal assistants (PAs): [advice note](#) for more information.

22. **If a PA is qualified and accredited through a Support With Confidence scheme, what does this mean?**

[Support With Confidence](#) (SWC) is a Local Authority scheme which provides a list of approved care and/or support services that have been vetted on the grounds of quality, safety and training. Not all Local Authorities run a SWC scheme.

Members of the scheme agree to be subject to certain checks, that they are qualified or trained to a certain standard and that they'll provide the people they

work with appropriate information about the services they offer or perform.

For example, a PA might have undergone a training programme to understand the role and achieve certain qualifications, had references checked, be DBS checked and follow a code of conduct.