Automatic enrolment in the care sector

Who is included?

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Who is included in the automatic enrolment duty?

A person may be subject to the automatic enrolment legislation if they are:

- aged 16 to 74 (inclusive), and
- work or ordinarily work in the UK ...

... whether or not they are full time or part time, permanent or temporary.

However, the *truly* self employed are *not* subject to automatic enrolment.
Who is the employer of the personal care assistant?

- If the carer is **employed** by another company (perhaps because the carer works for an agency or their own limited company), the service user will **not** be considered the employer.

- If the carer is **paid** by another company or agency, that company will have the responsibility for any automatic enrolment duties, **not** the service user.
What if the carer says they are self employed?

• The service user should *not* assume that a carer *is* exempt from automatic enrolment, just because they tell you that they are self employed.

• The service user should consider if the carer is normally expected to do the work themselves.

  ➢ If, at any time, the carer *can* freely substitute somebody else, then they *can* be considered truly self employed.

  ➢ However, if they *are* normally expected to do the work themselves (unless they are *unable* to do it themselves, eg they are on holiday or sick), the carer is considered to have a contract to perform work or services ‘*personally*’ ...

    ➢ and the service user will need to judge whether or not the carer is doing the work *as part of their own business.*
Is the carer working as part of their own business?

If a carer considers themselves self employed and has a ‘personal’ contract:

- The service user will need to consider whether the carer is working as part of their own business or not.
- There are some factors that will help decide if the carer is working as part of their own business. Does the carer:
  - have control of the hours they work?
  - have their own public liability insurance?
  - provide care services for other people?
  - register themselves as self-employed with HMRC?
  - not get paid when on holiday or unable to work due to sickness?

If most or all of the above are true, it would be reasonable to consider that they are undertaking the work as part of their own business.

- If they are undertaking the work as part of their own business, they can be considered ‘truly self-employed’ and are not subject to automatic enrolment.
Summary

- A person may be subject to the automatic enrolment legislation if they are aged 16 to 74 (inclusive) and work or ordinarily work in the UK.
- If the service user does not pay their carer, the service user will not be responsible for any automatic enrolment duties.
- If the carer considers themselves self employed ...
  a. if the carer has to do the work or services ‘personally’ and ...
  b. the service user considers the carer is working as part of their own business

⇒ then the carer is truly self employed and not subject to automatic enrolment.

So, if the service user is considered the ‘employer’ of any carer who is not truly self employed, then they will have automatic enrolment duties for them.