



# Direct Payment factsheet 8: Is your Personal Assistant employed or self-employed?

## 1. How to check if your Personal Assistant is employed or self-employed

If your Personal Assistant (PA) states that they are self-employed or if you have any doubts around their employment status, the PA should complete their information using the HMRC employment status indicator tool. Refer to the next section.

ESI tool: <https://www.gov.uk/guidance/check-employment-status-for-tax>

The outcome of this will tell us if the PA is employed or self-employed for tax purposes. This is to evidence that they will be liable for their own contributions as this will not be calculated into the Direct Payment and will not be the responsibility of the DP Recipient

If you are unsure regarding the employment status of a PA, you can contact ACAS for guidance on a case by case basis.

## 2. The importance of employment status

If your PA is employed or self-employed will determine whether or not the Council will need to allow for tax, national insurance and pensions contributions for the PA in your Direct Payment. If your PA is self-employed, they are liable for their own HMRC contributions.

|                    | EMPLOYMENT  | SELF-EMPLOYMENT  |
|--------------------|---|--|
| Contracts          | An employee has a contract of service. You (the employer) will most likely have control over what they do and when they do it.  | A self-employed person has a contract for services. They are often described as 'working for themselves' and can decide what work they do and how they do it. They will often provide services to other people as well as you.         |
| Tax                | An employee will pay tax on earnings from their employment.   | A self-employed person will pay tax on the profits from their self-employment.   |
| Payment of tax     | An employer deducts tax from their employee's pay and sends it to HMRC on their behalf. Tax is paid throughout the year.  | A self-employed person is responsible for assessing and paying their own tax. They do this by filing a tax return at the end of each tax year under the self-assessment system.  |
| National Insurance | Employees pay Class 1 NIC on their earnings. These are deducted from pay and paid to HMRC by the employer, on the employee's behalf. The employer may also have to pay secondary Class 1 NIC on their employee's earnings, which is an extra cost for the employer. | Self-employed people are responsible for their own NIC. They pay Class 4 NIC based on their profits and Class 2 NIC based on the number of weeks of self-employment, usually alongside their income tax after the end of the tax year. |
| Expenses           | It is quite difficult for an employee to get tax relief for any employment expenses as they usually have to be 'wholly, exclusively, necessarily' incurred for the job.   | The test for claiming tax relief for business expenses for the self-employed is less strict than for employees and so they can often get tax relief for more expenses than employees.  |

### 3. Case studies

#### Self-employed PA:

As outlined in the box 'How do I apply the rules?' most PA's will be employees. However, it is possible for a PA to be self-employed, although this is likely to be the exception.

If you are using a self-employed PA, they may need to register with the Information Commissioners Office (ICO) as they may be a data controller under data protection legislation. The self-employed PA must check to see if this applies in their situation and can do so by checking on the Registration Self-assessment pages of the ICO website. Further guidance around data protection is also available on the ICO website.

It is the responsibility of a self-employed PA to assess whether they need to be registered with ICO. If you are going to use a self-employed PA you should raise the above with them.

**Example:** Dave is a qualified care worker who works on a casual basis, around other commitments that he has. He sometimes provides his services to Mikey who is usually cared for by his family members. Dave is offered work, which he can accept or decline, when Mikey's family feel they need additional support or when they need some respite. He sends an invoice for any services he provides for Mikey once a month. Dave has several clients like Mikey who he sees each week for short periods.

Dave is vastly experienced in care work and he tends to each of his customers' general needs in accordance with their individual requirements. On occasion, Dave may not be able to see Mikey (for example due to illness) even though an appointment has been arranged. Dave is married to Nina, who is also a qualified care worker, and, on these occasions, she will step in and go and see Mikey instead. The ability for Dave to send Nina in his place is provided for in the contract that he has with Mikey's family.

It is worth noting that if Mikey was Dave's only client, he was contracted to work a significant number of hours each week for Mikey and his family dictated his work and had influence over who Dave used as his substitute (or were able to refuse a substitution altogether), then he may well be an employee for tax purposes.

#### Employed PA:

**Example:** Christopher is an employed PA, he has been working one-to-one with a direct recipient Ed for two years.

Ed is supported by a Direct Payment Support Service who provide payroll for the PA's employed by Ed.

Christopher supports Ed with Personal care amongst other tasks and his hourly rate of pay is in line with the national living wage. Christopher is paid on a 4 weekly basis and his tax and national insurance contributions are calculated by Ed's payroll support and Ed makes a one off payment to HMRC to cover the costs of the national insurance, tax and any pension contributions for Christopher as he is employed by Ed.

If for any reason Christopher was unable to go into work (sick or annual leave) then a replacement PA would be sought and put in place by Ed, and Ed could get support with recruitment from a Direct Payment Support Service.

*'I get to support my client through some the good times and the bad, we have a lot of fun and lots of laughs while we are working together, we very much work in a partnership. After personal care has been completed it's just like being with a friend helping them to make the most of life.'*

#### **4. Contact information**

If you are still in doubt about your PA's employment status you can contact HRMC tax office for advice and guidance on the employment status of your PA, or alternatively your PA insurance. If you have any disputes around the PA's employment you should raise this with your PA insurance.

For Employment information and support please contact – [DPEnquiries@Nottscc.gov.uk](mailto:DPEnquiries@Nottscc.gov.uk) 0115 80 44945

##### **General contact information:**

Phone: 0300 500 80 80 - Monday to Friday: 8am to 6pm (Calls cost 3p a minute from a BT landline. Mobile costs may vary).

Enquiries: [www.nottinghamshire.gov.uk/contact](http://www.nottinghamshire.gov.uk/contact)

Website: [www.nottinghamshire.gov.uk](http://www.nottinghamshire.gov.uk)

Deaf / hard of hearing:

- Text relay service: Dial 18001 0115 9774050 from your textphone or the Relay UK app.
- Download the SignVideo app to communicate with Nottinghamshire County Council in British Sign Language via an interpreter. Visit [www.nottinghamshire.gov.uk/contact-us](http://www.nottinghamshire.gov.uk/contact-us) for more information.

Phone 0300 500 80 80 if you need the information in a different language or format.

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