

# Personal Assistant Employment Status

A guide to support good  
practice



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## Important notice

This document is intended to support understanding of Personal Assistant employment status for people who draw upon care and support in England, whether they are funding it themselves or through Direct Payments. It provides practical guidance based on current legislation, case law and multi-agency discussion.

It is not legal advice.

Employment status depends on the specific facts of each individual arrangement. The illustrative scenarios and indicators set out in this guide are designed to support informed decision-making but should not be treated as definitive determinations. Different facts may lead to different conclusions.

Employment law and tax interpretation may continue to evolve through future case law, tribunal decisions or regulatory clarification. Individuals and organisations should seek appropriate professional or legal advice where there is uncertainty about their specific circumstances. This may include consulting official guidance from HMRC, the Care Quality Commission (CQC), the Employment Agency Standards Inspectorate (EAS), or obtaining independent professional or legal advice relevant to their circumstances.

Nothing in this guide should be interpreted as discouraging personalised support or legitimate flexible arrangements. Its purpose is to support good practice, reduce risk and increase confidence in making lawful decisions. Responsibility for determining and maintaining compliant arrangements rests with those entering into them, supported by local authorities and Direct Payment support services as appropriate.

This guide is produced in the context of England's care and support system. Many of the core employment status principles are similar across Great Britain (England, Scotland and Wales), but readers should check local guidance and advice where they are based particularly in Northern Ireland.

For tax status, readers should refer to HMRC guidance and seek professional advice if unsure.

## Acknowledgement

All the people and organisations involved in the development of this guidance would like to recognise the significant efforts and contribution of David Ashley, Trustee of the National Direct Payments Forum and Director of the Independent Living Group, who drafted the text and tirelessly helped all involved find words that everyone could commit to, with an unseen but significant amount of behind the scenes liaison to make this happen. Without David's commitment to this work – and the wider Independent Living movement – it would not have been brought together in such a clear and cohesive way.

## Executive summary

This guidance aims to provide clear, practical advice to help individual employers and support organisations to determine the correct employment status of Personal Assistants (PAs). Accurate classification is essential to ensuring legal compliance, protecting the rights of PAs and enabling employers (often people receiving Direct Payments) to manage support confidently and responsibly.

With a focus on real life examples, our aim was to examine the key distinctions between employment and self-employment, explaining how factors such as control, mutual obligation, integration into the employer's routine and financial risk influence status determinations. It highlights common scenarios in the PA sector that can create ambiguity regarding the application of tax rules, employment agency standards, employment rights and responsibilities regarding the Care Quality Commission (CQC).

Importantly, this guidance recognises that self-employed PAs and micro-providers can play a valuable and legitimate role in providing personalised support, when their working arrangements genuinely meet HMRC and employment law criteria. The information provided encourages the use of self-employed PAs where appropriate, lawful and beneficial, while emphasising the need for a clear agreement, accurate status assessment and ongoing review to ensure compliance.

There is no silver bullet but by providing a consistent approach, this guide aims to:

- **Promote legal and financial compliance**, including adherence to employment law, tax and National Insurance requirements.
- **Ensure fairness and transparency** in working arrangements, safeguarding both employers and PAs.
- **Support personalised care**, recognising the unique dynamics of PA roles and the importance of flexibility within lawful boundaries.
- **Reduce disputes and liabilities**, by enabling informed decisions and accurate record-keeping.

It is acknowledged from the outset that not all self-employed PAs provide regulated services, such as personal care, which in those cases limits the associated risks. Similarly, we acknowledge the difference between introductory agencies operating outside of regulation, with a purpose to circumvent their legal duties, in contrast to an individual or local community based micro-enterprise unwittingly operating in the grey area between employment and self-employment. Those intentions and corresponding risks must be considered by the reader and applied proportionately when engaging with the content and implications of this guidance.

Overall, we hope the information provided empowers PA users, support

organisations and funding bodies to assess PA working arrangements confidently and to establish employment relationships that are sustainable, person-centred and fully compliant with regulatory expectations.

## Introduction

In recent years, the care sector has seen a marked increase in the number of personal assistants (PAs) operating on a self-employed basis – also referred to as microproviders and sometimes placed by introductory care agencies. While this trend reflects the growing demand for flexibility and personalised care arrangements, it also brings with it a series of under-recognised and potentially serious risks.

In 2023 the National Direct Payments forum presented a report and called a conference to discuss these concerns. In its conclusions the report promised to explore the development of a guidance around these issues, something the wider organisational participants endorsed at the conference.

**This guidance is built around 7 case studies reflecting different care arrangements involving PAs, micro-providers and introductory care agencies.**

### Case study 1: George

A micro-provider who supports Mr and Mrs Chowdhury with domestic tasks.

### Case study 2: Harry

A PA who is employed to support DP recipient, Mr Naughton.

### Case Study 3: Helen

A micro-provider who provides a range of support to Mrs Nibizi, including personal care.

### Case study 4: Jean

Jean runs a small community interest company (CIC) supporting people with learning disabilities.

### Case study 5: John

A team of PAs plus some agency staff enlisted to support John, managed by his daughter Gemma.

### Case study 6: Manju

A live-in carer placed by an introductory agency to support Mr Dean.

### Case study 7: Molly

A PA who registers with an online platform through which she supports Mrs Deng.

**In each case we explore the regulatory and statutory implications for the people receiving support and the care and support workers providing the service and doing the work.**

See below for the list of key organisations who helped put this guidance together.

- Think Local Act Personal (TLAP)
- National Direct Payments Forum
- Independent Living Group Ltd
- Community Catalysts
- Low Incomes Tax Reform Group (LITRG)
- Support with Confidence
- Somerset Council
- HMRC
- Care Quality Commission
- Employment Agency Standards Inspectorate
- Skills for Care
- Micro-provider representatives

Through an exploration of each case study, this guidance explores the different types of self-directed care arrangements commonly found today. It aims to showcase the growing and creative use of self-employed PAs while highlighting the latent legal and regulatory, challenges that accompany this shift.

These risks and the potential consequences pose significant concerns for individuals employing PAs, professionals commissioning care, and the PA workforce. Issues relating to HMRC tax status, employment rights, Care Quality Commission (CQC) regulations, and agency standards warrant urgent attention. By unpacking these complexities, this guidance aims to inform and persuade stakeholders to consider more robust and compliant approaches to self-directed care arrangements.

**That must not equate to a curtailing of self-directed personalised care provided by PAs. Far from it. Personal Assistance is recognised by this group as the foundation of the independent living movement that kickstarted Direct Payments in the UK and is consequently crucial to its future sustainability and success.**

Instead, it is a call to ensure that all care arrangements are legally compliant and safe for both the hirer and worker/provider and an acknowledgment that additional resource to support and encourage consistent and lawful practice is required.



## Employment status – who this guidance is for

Employment status is critically important in the Personal Budgets (PB) and Direct Payments (DP) space. This is because employment status determines the rights and responsibilities of both the care provider/worker (micro-provider /personal assistant) and the individual receiving care and support (or their representative). It also determines the tax and national insurance which should be paid to HMRC.

This guidance examines the issues surrounding the employment status of microproviders and personal assistants and seeks to support the following groups.

- **People providing support:** Personal assistants (PAs) (employed or self-employed, including micro-providers)
- **PA users:** Direct Payment recipients and self-funders
- **People giving advice to PAs and PA users:** Direct Payment support staff
- **Local Authority (LA) and Integrated Care Boards (ICB):** Commissioners

## Background: What we did

This guidance is the culmination of a series of meetings that took place throughout 2024/25 between the National Direct Payments Forum, Independent Living Group Ltd, Think Local Act Personal (TLAP), Community Catalysts, Low Incomes Tax Reform Group (LITRG), Support with Confidence, Somerset Council, HMRC, CQC, Employment Agency Standards Inspectorate, Skills for Care and micro-provider representatives.

Those meetings made clear that Employment status directly impacts:

1. The legal and financial responsibilities of clients receiving Direct Payments and self-funders.
2. The rights, protections, and obligations of care workers.
3. Compliance with employment and tax laws.

It was universally accepted that getting PA employment status right is essential to ensure care arrangements are sustainable, legal, and fair.

## Enforcement in practice

The conversation and debate behind this guidance often centred around risk vs reality. The relevant law and regulatory frameworks are fixed and have not changed significantly throughout this process. Tax and employment legislation are both equally clear. If HMRC have evidence of an incorrect employment status classification, they can take action to ensure the right tax and national insurance contributions (NICs) can be paid. Similarly, if an individual makes a claim, asserting their statutory employment rights, which an employment tribunal determines they have been denied, those rights can be enforced by way of an award against the person in receipt of support (deemed to be the employer).

It is understandable why HMRC allocates its resources to areas which represent the biggest risks of tax loss and non-compliance. Consequently, and unless HMRC is alerted to a particular case, it is possible that some non-compliant care arrangements may remain under the radar and free from further scrutiny, until HMRC decides to look further into the arrangements in question.

Regarding the enforcement of workers' rights PAs must first understand what they are entitled to, before seeking the necessary support and/or advocacy to pursue a claim. This process can take many months or even years to reach a conclusion. This impacts the worker's immediate income and risks spoiling the relationship with their employer. This process potentially reduces the number of successful claims and therefore limits access to justice for PAs working in the care sector.

The limitation on resources available for HMRC to examine the employment status of PAs coupled with the prolonged route necessary to enforce employment rights at tribunal combine to create an environment in which non-compliant care arrangements can often remain un-checked.

On the surface these arrangements present as stable care and support packages which further limits the incentive to interfere. This has supported a culture of complacency and (in some areas) facilitated a drive to replicate such care packages on scale. This trend is particularly problematic in an (austerity driven) era of diminishing resource for social care provision.



## Introductory care agencies and other intermediaries

It is also clear that many introductory care agencies are operating seemingly outside of any overt regulatory interference placing “self-employed” workers with people in need of care and support. In many cases this includes PAs who are living in with the individuals and families they support. With only a cursory grasp of the applicable legal tests it is difficult to support the legality of such an arrangement, yet introductory agencies are advertising freely and operating without scrutiny.

Although many organisations describe themselves as genuine introductory agencies and therefore claim to fall outside the remit of the Care Quality Commission (CQC), both this status and the obligations arising under

the Employment Agency Act 1973 (enforced by the Employment Agency Standards Inspectorate, EAS) still warrant closer scrutiny.

As a result of this and other complexities which can arise when people are acting as brokers of care, in addition to tax and employment law, both CQC and EAS considerations are included and examined in the case studies throughout this guidance.

## In summary

The lack of clarity in the self-directed care sector, contributes to a false sense of legitimacy where the boundaries between employment and self-employment remain permanently blurred. Many PAs self-define (or are defined by the hirer or labour providers such as introductory agencies) as self-employed despite working under conditions that resemble employment (e.g., personal service, set hours, direct supervision). This lack of legal clarity has led to inconsistent practices across Local Authority areas, ICBs and self-funding individuals.

The perception that regulatory enforcement will rarely materialise has led to complacency among employers or individuals managing care packages and created a space in which myths and untruths can grow and persist. This weakens the deterrent effect of employment law, encourages non-compliance regarding tax rules, and leaves both workers and care recipients exposed to legal and financial risks that, until now, have been rarely realised.

For meaningful change, enforcement must be visible, consistent and supported by clear guidance and education for all stakeholders. The resource must be allocated to support PA users and the PA workforce to arrange and maintain compliant and lawful care arrangements including the safe utilisation of both employed PAs and self-employed micro-providers.

In the meantime, by presenting real-world case studies, this guidance aims to:

- Show how employment status plays out in practice.
- Highlight the risks for workers, clients and commissioners.
- Support all stakeholders to make informed, lawful, and sustainable arrangements.

# Myth busting

## **Myth 1: Employed PA or self-employed PA – that isn't the question**

The prevailing outlook that a PA is either universally self-employed or employed is an unhelpful view that should be replaced with a general acceptance that each care arrangement requires examination on its own merits based on the facts presented. It is possible for a PA to be employed in one arrangement and self-employed in another which is considered in the 'John' case study.

It is also necessary to acknowledge and reiterate that while hiring genuinely self-employed care workers is an attractive proposition with less responsibility for the hirer, the client is ultimately sacrificing the stability and protections associated with hiring employees and relinquishing some control around how their care and support needs are met. Similarly, while genuinely self-employed workers benefit from greater independence and potentially higher take home wages, they consequently lack the security, paid leave, and other employment benefits and rights that come with employment.

Support to weigh up these options and understand the consequences on the hirer and worker is not always available for those people receiving a budget from their local authority or ICB.

## **Myth 2: To suggest a replacement is not unfettered substitution**

When assessing employment status, substitution is sometimes described as a 'slam dunk' to indicate genuine self-employment. The self-employed PA enters into an agreement to provide a service and has complete autonomy over who does the work, providing they are suitably qualified.

Most care arrangements involve personal care or a close intimate knowledge of a person's home and family. In this context, trust and personal service are generally accepted as a necessary characteristic of a successful self-directed care arrangement.

A genuine right to unfettered substitution is therefore rarely appropriate or desirable. In the absence of a genuine substitution clause PAs often retain the right to suggest a replacement or point towards a pool of suitably qualified workers. The engager is then free to choose who provides cover when the primary worker is unable to perform the work themselves.

This is defined by HMRC as replacement but doesn't meet the definition of substitution required to denote self-employment. Case law has further reinforced that the existence of a substitution clause in the written

agreement, must be realistic, and a reflection of how the contract functions, if it is to carry any weight. The concept of substitution is considered and applied in the 'George' case study.

A PA can still be genuinely self-employed without this right, but it becomes necessary to show that all other factors point to self-employment. This narrows the pathway to genuine compliance as examined in the 'Helen' case study where we used the HMRC Check Employment Status for Tax (CEST) tool to make a status decision. A fully annotated outcome report from CEST is provided to support this case study which highlights that it can be difficult to reach a firm conclusion in some cases.

# Summary of regulatory and employment responsibilities to support the case study-based guidance

# PA employment

## Legal responsibilities for PA users

When individuals employ PAs, they are responsible for:

- **Paying wages:** Ensuring at least the National Minimum Wage.
- **Tax and National Insurance:** Deducting and paying these on behalf of their PA.
- **Pensions:** Providing access to a workplace pension under auto-enrolment rules.
- **Employment contracts:** Issuing written contracts with agreed terms.
- **Liability insurance:** Taking out employer's liability insurance.

Misclassifying a PA (e.g., treating them as self-employed when they are in effect an employee) could lead to legal and financial penalties for the client/hirer/ employer.

## Rights and protections for personal assistants

PAs classified as employees are entitled to certain protections, such as:

- **Statutory sick pay**
- **Paid holidays**
- **Protection from unfair dismissal**
- **Workplace pensions**

If a worker is misclassified as self-employed, they may lose these rights, potentially leading to disputes or complaints.

Employment law governs the relationship between employers and employees, setting out rights, responsibilities, and obligations. In the UK, key areas of employment law include:

**Employment contracts:** Legal agreements between employers and employees outlining terms such as pay, hours, duties, and notice periods.

**Wages and pay:** Laws ensure workers are paid at least the National Minimum Wage/National Living Wage and receive payslips and equal pay for equal work.

**Working hours and holidays:** The Working Time Regulations limit weekly working hours (typically 48 unless opted out), guarantee rest breaks, and provide 5.6 weeks of paid annual leave.

**Discrimination and equality:** The Equality Act 2010 protects employees from discrimination based on protected characteristics like age, race, sex, disability, religion, and more.

**Health and safety:** Employers must provide a safe working environment under the Health and Safety at Work etc. Act 1974.

**Dismissal and redundancy:** Laws govern fair dismissal, notice periods, redundancy processes, and protect against unfair dismissal.

**Family and sick leave:** Rights to maternity, paternity, adoption, parental leave, and Statutory Sick Pay are protected by law.

**Employment tribunals:** Disputes between employers and employees can be resolved through tribunals, where legal claims such as unfair dismissal or discrimination are heard.

Employment law aims to balance fairness, protect workers, and provide clarity for employers in managing their workforce.

All the above applies to employees working under a contract of employment. Some of the key rights (often referred to as day one statutory rights) also apply to casual workers. If a worker is misclassified as self-employed, when they are fact in an employee or worker, they could be missing out on statutory employment rights they would otherwise have access to.

Direct Payment support services commissioned by local authorities and ICBs have traditionally provided support for people employing personal assistants to manage the above suite of responsibilities.



## Compliance with HMRC

HMRC has strict rules on employment status. If a self-employed care worker is later deemed to be an employee by HMRC, the client may face backdated tax and National Insurance contributions, along with fines.

The implications of misclassification are usefully examined by the Low-Income Tax Reform Group (LITRG) at:

<https://www.litrg.org.uk/employers/independent-living-paying-care/employing-carer#1>

## Employment Agency Standards

The Employment Agency Standards (EAS) Inspectorate, within the Department for Business and Trade, enforces the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. It ensures agencies comply with standards like providing written contracts, not charging fees to workers, and maintaining confidentiality. The EAS conducts inspections, investigates complaints, and can issue warning letters or pursue legal action for non-compliance.

Genuinely self-employed PAs who can provide substitutes are potentially classed as employment agencies for the purposes of the act and therefore in scope of the Employment Agencies Act 1973.

### What the law says

Due to the broad definition of "Employment Agency" (see below) it is possible that any care arrangements where self-employed workers are connected, either through information or tailored assistance with hirers or employers fall within "scope" of the Employment Agency Standards Inspectorate (EAS).

The Definition of employment agency is set out in section 13 Employment Agencies Act 1973:

*"13 (2) For the purposes of this Act, "employment agency" means the business (**whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business**) of providing services (**whether by the provision of information or otherwise**) for the purpose of finding [persons] employment with employers or of supplying employers with [persons] for employment by them."*

The previous report also highlighted the legal requirements in terms of protections for workers and hirers that have to be met<sup>1</sup> and consequences for breaches.

It is important to recognise that the focus of the law is on **intermediaries** who provide specialist services connecting workers with hirers, and the legislation provides a framework that supports growth, the care sector (and others), and compliance, but provides a safety net if anything goes wrong.

Whilst the law still applies to any business that is not primarily an intermediary, **there is no case law or legal test** to suggest that incidental, occasional and **non-commercial arrangements are the focus of the law**.

## What this means in practice, looking at the case studies

### Helen & George

Both Helen and George are businesses providing information to assist client in finding other workers. This potentially brings them within scope of the Employment Agency Standard Inspectorate (EAS) and satisfies the definition of Employment Agency (see above) meaning they have various responsibilities regarding the suitability of the workers they are referring<sup>1</sup>.

Whilst it meets the legal definition ultimately **only the courts can decide whether Employment Agency Act (1973) would apply to Helen and George**. Since inception in 1973 there has been no known legal test in terms of case law, conducts inspections or enforcement actions (e.g. warnings, prosecutions, enforcement undertakings or orders, or banning someone) of arrangements across any industry where these are:

- Adhoc
- Incidental
- Occasional
- Informal
- Non-commercial

If applied to all informal or non-commercial arrangements most businesses in all sectors (from sole traders to national organisations) would come within scope of Employment Agency Law regulations. E.g. "A self-employed gardener passing on a contact detail of a tree surgeon to a client".

The potential scale of breach with these types of informal arrangements is significant and goes far beyond the care sector, as business will not be aware of the various legal responsibilities regarding the suitability of the workers he is referring<sup>1</sup>.

<sup>1</sup> Gov.uk: <https://www.gov.uk/employment-agencies-and-businesses>

Whether it was the intention of the law to look at these arrangements has never been legally tested. Whilst this needs to be considered, the spirit and principles of this law should apply to all arrangements.

## **Manju and Molly**

In both, examples Manju and Molly there was an intermediary whose primary business it was to supply workers to hirers.

**Since 1973 all complaints and inspections have focused on business who see themselves as intermediaries** or third parties who provide employment services on a commercial or systematic basis. The aim of EAS is to support businesses in achieving compliance, but they can take enforcement action against those who persistently or deliberately flout the law and the protections within it.

The closest to the example in care is **Simply Learning Tutor Agency Ltd & Others v Secretary of State for Business**. This case concerned whether online tutor introduction agencies are considered employment agencies under the Employment Agencies Act 1973. The High Court ruled that such agencies, even those dealing with self-employed tutors, fall under the definition of “employment agency” within the Act.

This means they are subject to the regulations governing employment agencies and must comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

In this case and in summarising the decision, Justice Mountfield noted that *“in short, where a business holds itself out as a ‘middleman’ between a person who needs services and the person offering to supply them, the protective terms of the EAA and the regulatory requirements of the Conduct Regulations will usually apply to the ‘middleman’ business for the protection of work-seekers, hirers and workusers”*.

This judgment doesn’t differentiate between a business that provides a service as its main activity or an individual who passes on information about a role from an employer to someone else.

As noted earlier, it would ultimately be for the Courts to decide if any arrangements put in place were covered by the legislation and the judgment set out above.

## Care Quality Commission (CQC)

The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England. Providers of adult social care services (like care homes, home care agencies, and supported living services) must register with the CQC to legally operate. The CQC ensures that people receiving adult social care in England are treated with dignity, respect, and compassion, and that care services are safe and high-quality.

The [Health and Social Care Act 2008 \(Regulated Activities\) 2014](#) describes the different activities regulated by CQC such as nursing care, the provision or surgical procedures, maternity services and [personal care](#). For the purposes of this guide and in relation to the case studies, we have focused only on personal care and its relevant exemptions and exclusions.

An employed Personal Assistant or self-employed PA or micro-provider operating as a sole trader providing personal care is **not generally required to register with CQC** if they are working directly for the person ([or a related third party](#)) receiving care and support.

However, this exemption will not apply to self-employed PAs, micro-providers or introductory agencies if they provide an **“ongoing role”** in the delivery of personal care which is defined by CQC as an active engagement in any of the following activities:

- **Monitoring the service** provided to people by the care workers they have introduced.
- **Arranging rotas** of care workers on behalf of people who receive care.
- **Being responsible for managing the replacement** of a care worker, e.g. providing absence cover that goes beyond simply introducing another care worker, and in a way that does not need the person receiving care to make a decision.
- **Continuing to charge** for the services being provided by a care worker after paying a one-off introduction fee.
- **Continuously reviewing and updating people’s care needs** when a person hasn’t asked for this.
- **Making changes to active care plans**, whether consulting with the person receiving care or not.
- **Requiring PAs to attend professional supervision**, wear a specific uniform or use specific paperwork, tools equipment or services.

Introductory agencies and teams of micro-providers engaging in any of the activities listed above should seek further advice regarding their requirement to register with the CQC.

Here is a link to a recent case where the CQC took action against care a care provider operating unlawfully: [CQC takes action against care providers of unregistered services in Oxfordshire - Care Quality Commission](#).

Further information regarding the general exceptions and exemptions from registration is available in the CQC publication '[Scope of Registration](#)'.

# Case studies

## George

No personal care

### Determination: Self-employed

George describes himself as a **self-employed Personal Assistant** (PA) who offers support with domestic tasks such as cleaning, admin, gardening and basic DIY. He also supports and assists his clients outside of the home to manage daily tasks as needed. He does not provide any personal care as part of his service.

George advertises in various places across the town where he lives, as well as within the council's online directory. He is registered as self-employed with HMRC, has a unique tax reference (UTR) and manages his own tax affairs. George considers himself to be genuinely **self-employed**. He has his own public liability insurance policy.

#### The arrangement

Mr and Mrs Chowdhury are starting to struggle at home due to their various health concerns and would like some help with cleaning and laundry, as well as staying on top of all their household bills. They see a flyer in their local post office advertising George's services and give him a call.

George arranges a time to visit Mr and Mrs Chowdhury to talk through the help they need.

Mr and Mrs Chowdhury show George around their home, and they agree to 5 hours support per week. They agree when this will be completed each week. Mr and Mrs Chowdhury are quite flexible and happy for George to amend the days and times occasionally, according to his schedule and other client's needs. George will do his best to stick to the agreed days and time but agrees to provide reasonable notice of any changes to his schedule.

George invoices Mr and Mrs Chowdhury monthly for the work he delivers.

George supports multiple clients and sometimes finds it difficult to fit everyone in. Mr and Mrs Chowdhury do not have anyone else who can step in and help them when George cannot attend. Although the support George delivers is not essential, they do want to ensure they stay on top of everything at home. On that basis they do not raise any objections to the clause that George has put in his contractual terms saying:

'In the event that I am unable or unwilling to perform the services (as defined)

personally, I shall arrange at my own expense entirely for another suitable person to perform the services’.

George is part of a local WhatsApp group of similarly qualified PAs and has agreed he will seek cover for Mr and Mrs Chowdhury via that network when he cannot attend, including when he is on holiday or unwell. George will continue to invoice Mr and Mrs Chowdhury in this instance and organise payment for the substitute PA.

## Regulation

- CQC George does not provide personal care in the home so does not come under CQC regulation in this instance.
- Employment Agency Standards (EAS) George is sharing work via a WhatsApp group. This potentially brings him into scope of Employment Agency Standards because he is operating like an employment agency (as defined) and has various responsibilities regarding the suitability of the workers he is referring, which can be found at:  
<https://www.gov.uk/employment-agencies-and-businesses>

Definition of employment agency – section 13 Employment Agencies Act 1973: *“(2) For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding [persons] employment with employers or of supplying employers with [persons] for employment by them.”*

His responsibilities in this instance are minimal, but it is important that he understands how the Employment Agency Act applies to his operating model.

## Status determination

George negotiates the details of the care arrangement with Mr and Mrs Chowdhury and can substitute himself when necessary.

As per HMRC’s guidance (see Right to substitution ([ESM0530 – ESM0538](#)), an ‘unfettered’ right to substitution will be determinative for self-employment because this means that there is no requirement for the personal service of that particular worker.

An ‘unfettered’ right to provide a substitute essentially means a worker has an unrestricted right to provide a replacement worker as and when they see fit. It also means:

- The client cannot give permission, ‘vet’ or in any way restrict who the PA sends in their place.

- The substitute PA isn't someone from a pool of workers regularly used by the client.
- The substitute PA isn't interviewed or subject to any form of selection process, other than confirming they're qualified to undertake the role.
- The PA mustn't require written permission from the client to provide a substitute - they must have free rein to replace themselves as and when you see fit.
- The PA must pay the substitute PA yourself (rather than the client paying them directly).

Having critically analysed the terms and conditions; it appears George has an unfettered right to substitution. It's also important that those terms *could actually happen* in practice.

There is no requirement for George to provide his services personally. He can freely substitute, at his own expense. This is inconsistent with an employment relationship.

George is legitimately self-employed in this arrangement.

It is worth noting that if George was providing personal care services for Mr and Mrs Chowdhury, then due to the very intimate nature of this relationship, it would probably be inappropriate for him to send someone else in his place, or at least not on an unfettered basis (i.e. without their involvement or approval).

Although personal service/substitution is just one of the status tests to be considered, if there is no unfettered right to substitution, a worker would need to demonstrate multiple, unambiguous indicators that they are in business on their own account to be considered genuinely self-employed.

In the absence of such a right, a worker would need to demonstrate multiple, unambiguous indicators of self-employment to reach the same conclusion.

# Harry

## False self-employment

### Determination: Employed

Harry is a Personal Assistant who has worked for several clients in receipt of Direct Payments over the years. He can provide personal care and other support as required. He considers himself an experienced Personal Assistant and is a keen student of the independent living movement. Harry understands the concept of personal assistance and how this contrasts with more traditional forms of care work.

In his previous PA roles, Harry has always been engaged on an employed basis, i.e., on a contract of employment, paid via PAYE.

#### The arrangement

Harry has recently been made redundant from a permanent PA role and applied for a new PA job in response to an advert he spotted online. The advert was placed by a local Direct Payment recipient, Mr Naughton. The job involves some personal care and general support to enable Mr Naughton to live independently; the successful applicant will be part of a large care team providing many hours of support throughout the week on a regular basis.

Following a brief interview at a local café, Harry is offered the job. Mr Naughton explains to Harry that the role is self-employed and that Harry will be expected to manage his own tax affairs and invoice for the work he provides. Harry reluctantly agrees, as he is not familiar enough with the law to make a case against this and is keen to accept the job. Mr Naughton explains that the other PAs in his team are all self-employed as this makes things easier for him by limiting his responsibilities. It also allows him to pay a more generous hourly rate because the Direct Payment rate for self-employed PAs from his Local Authority is higher than the rate allowed for employed PAs. It is described to Harry as a win-win situation.

Harry is asked to sign a document provided by the payroll and managed account provider used by Mr Naughton to confirm the role is self-employed. This document will remain on file to confirm that Harry understood that he was entering in a self-employed position to limit his opportunity to claim employment rights in the future.

Although Harry and the PA team are classified as self-employed on paper, Mr Naughton exercises significant control over their work. He sets their working hours, assigns specific tasks, and provides necessary equipment and training. The PAs work exclusively for Mr Naughton, and he pays them a regular

wage. His support needs are extremely personalised. The PAs he engages cannot send substitutes if they are unavailable, they simply call in sick and Mr Naughton offers another of his team the extra hours.

## Regulation

- **CQC** There are no CQC registration requirements for Harry due to the exemptions for those providing personal care directly and under control of the cared for person. Learn more at <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>
- **Employment Agency Standards (EAS)** An organisation comes into scope of EAS when it operates as either an **employment agency** or an **employment business** as defined by the Employment Agencies Act 1973. There are no employment business or Employment agency considerations for Harry to consider.

## Status determination

The working arrangement suggests that the PAs are not genuinely self-employed and are more like employees or workers in practice. The level of control, mutual obligation, and integration into Harry's routine indicates an employment relationship. This misclassification can lead to legal concerns, as the PAs may be entitled to employment rights such as sick pay, holiday pay, and protection from unfair dismissal.

Similarly, Mr Naughton could be required to pay backdated employers national insurance contributions (NICs) and pension contributions if the HMRC and pensions regulator became aware of the situation.

When determining employment status, the label which the parties attach to the relationship is not determinative. Instead, any examination would have to consider whether the PA was genuinely self-employed or not. In this case it is entirely clear that Harry is expected to carry out the work he undertook personally and that he was not in business on his own account.

There is no obvious legal reason why Mr Naughton would insist on Harry and the team being self-employed except to minimise his responsibilities and to facilitate paying a higher hourly rate to his PAs. It is likely that the document Harry was asked to sign (held by the money management company) would be disregarded in the event of a claim through the employment tribunal in the event Harry wanted to assert his statutory employment right to holiday pay for example. It would also not be determinative if the HMRC had cause to investigate the situation.

Harry is not legitimately or genuinely self-employed by any measure and is currently missing out on holiday pay and other statutory entitlements related to his employment. There are significant risks associated with the

current arrangement that should be a red flagged by the funding body and corresponding Direct Payment support service.

This arrangement should be reconfigured so that Harry (and the remainder of his staff team) are officially employed by Mr Naughton, provided with an employment contract and paid via the PAYE system.

When determining employment status, the label and paperwork which the parties attach to the relationship is not determinative. In fact, it can be ignored if it doesn't reflect the reality of the working arrangements. Instead, any examination would have to consider whether the PA was genuinely self-employed or not based on the nature of the relationship between the parties involved.

In this case, Harry is expected to carry out the work he undertakes personally, and he is not in business on his own account. This, along with the level of control, mutual obligation, and integration into Mr Naughton's routine indicates an employment relationship.

PAYE tax and NIC has not been operated on Harry's wages as required by law. The [PAYE Regulations](#) say that HMRC can collect tax underpayments from the employer (Regulation 80) – this is effectively a means of enforcing the payment of PAYE and says that the employer will remain liable for the tax that should previously have been accounted for to HMRC but for whatever reason was not paid. Similarly, Mr Naughton could be required to pay backdated employee and employer's national insurance contributions (NICs) and workplace pension contributions.

Harry's misclassification can also lead to employment law concerns, as if he is not genuinely self-employed, he may be entitled to employment rights such as holiday pay, and protection from unfair dismissal.

Mr Naughton is at risk of an investigation from HMRC. Although HMRC may be sympathetic in care and support employer cases, having them inquire into his affairs may be intrusive, lengthy and stressful, and the consequences of getting a status wrong can be expensive, especially when you consider HMRC can usually go back four years (more, if they think you have been 'careless').

In terms of the employment law risks, it is often the case that people go along with a false self-employed status – until something goes wrong. Such as the employment relationship breaks down or they become a parent and need parental leave, or the job finishes, and they want to claim out-of-work benefits etc. The potential for Harry to become disgruntled with the situation is an ongoing risk.

In this situation there are significant risks associated with the current arrangement that should be a red flag for the Local Authority and corresponding Direct Payment support service.

This arrangement should be reconfigured as soon as possible so that Harry (and the remainder of his staff team) are officially employed by Mr Naughton, provided with an employment contract and paid via the PAYE system. Mr Naughton may need professional advice regarding regularising the historic position.

# Helen

## Self-employed micro-provider

### Determination: Undetermined

Helen describes herself as a Micro-Provider. She has been through a local business enterprise programme to understand more about the care market and has carefully considered the scope of her services both legally and operationally. Helen has invested in training such as health and safety, first aid, safeguarding and paid for her own DBS and public liability insurance. Having considered the best business structure (for example, sole trader or limited company), she registers as a self-employed sole trader with HMRC.

Helen provides a range of support activities including general household duties, gardening, personal care, administrative help and supporting people while out and about. Helen advertises her support services via various methods but also gets a lot of enquiries via word of mouth. Helen currently supports five people concurrently.

### The arrangement

Helen receives an enquiry from Mrs Nibizi on Monday morning because she needs additional support in the week, when her family members are at work. Mrs Nibizi found Helen's details on the local care services directory and likes the look of her from the details on her profile – she is also comforted by the knowledge that she is based locally in the neighbouring village.

Helen and Mrs Nibizi agree to meet each other to discuss what support is required. Helen gives Mrs Nibizi a copy of her contract for services and explains the range of services and tasks that she is qualified, competent and insured to provide. She also discusses contingencies with Mrs Nibizi and what would happen if she was sick, on holiday or had a personal emergency.

Helen is part of a network of independent carers who are trained to the same standard as herself and is able to suggest other carers if she is unable to provide support. It would then be for Mrs Nibizi and the new carer to meet, discuss arrangements and agree terms/cost/payment etc.

During the meeting it is ascertained that Helen is unable to provide support at the exact times requested by Mrs Nibizi due to support for other customers. They mutually agree the times for support and the tasks that are to take place – initially for a month, with an option to extend.

This looks like:

- Monday, Tuesday and Thursday
- 1 hour (personal care) between 8.30-9.30am – support to get washed and dressed, support to prepare breakfast.
- Up to 2 hours - Later in the day (more flexible as to when exactly) - domestic support around the home and garden. Including cleaning, gardening, walking the dog, food preparation etc.

Helen invoices Mrs Nibizi for her services at the end of each week. She will only charge for the hours she has completed. They both review the arrangement monthly and extend the contract if both parties are satisfied.

The arrangement is very successful. Mrs Nibizi is happy to recommend Helen but is also able to expand her care and contingency options through introductions to other carers made by Helen.

## Regulation

- **CQC** There are no CQC registration requirements for Helen due to the exemptions for those working on their own and providing personal care directly and under control of the cared for person. Learn more at <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>
- **Employment Agency Standards (EAS)** Under section 13(2) of the Employment Agencies Act 1973, an “employment agency” is defined as: “...a business (whether or not carried on with a view to profit) which provides services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers...”

According to the EAS, a carer sourcing and supplying alternative workers to cover for them when they are unavailable (or otherwise acting as a broker of care for a client), falls under the definition of employment agency. This means that Helen could have various obligations, for example ensuring that the workers she ‘provides’ are suitably qualified, insured etc. For more info see a brief guide for agencies on GOV.UK at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/936515/eas-brief-guide-for-agencies.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936515/eas-brief-guide-for-agencies.pdf)

However, we understand that occasional activity like this is unlikely to be scrutinised unless something goes wrong. See EAS note, ‘what the law says’, in the main guidance.

## Status determination

In this arrangement there is **no explicit right of substitution**. Helen is clearly providing **personal service** – she cannot simply send anyone else

in her place. The ability to signpost alternative carers is not the same as a contractual right of substitution. This means it is not enough to determine her status without considering the remaining tests.

Looking at the other status tests:

On **mutuality of obligation**, there is no overarching requirement for Helen to accept ongoing work, nor for Mrs Nibizi to offer it. Nevertheless, during each agreed booking, there is a binding obligation on Helen to provide the services and on the Mrs Nibizi to pay.

Helen negotiates terms with clients directly and may decline certain tasks. Helen and Mrs Nibizi mutually agree working hours. Some work has to be done in an agreed location (Mrs Nibizi's home) and some can be Helen's choice (where to walk the dog). Once tasks are accepted, Helen takes some direction from Mrs Nibizi in terms of her preferences (e.g. food, clothing, daily routine). However, regarding personal care - Helen is required to follow health and safety rules, safeguarding standards and personal care protocols. She is under some **control**.

Helen **works for several clients**, concurrently, on a short-term and long-term basis and continues to advertise her services in a variety of places. The contract with Mrs Nibizi does not take up the majority of Helen's working time.

She provides her own PPE, cleaning supplies and gardening equipment. Small tools or disposable items are not the same as providing **significant equipment** – for example, an adapted van, bought and maintained solely for work purposes. She also incurs some vehicle costs in getting to and from her clients (she uses a family car for work purposes – the proportion of private use vs business use is around 50/50).

Although she had some 'coaching' to begin with, Helen has researched, built and now manages, her **service provision independently**. She works hard on her reputation but pays for some marketing and her own website. She sets her own rates, pays for her own training, professional advice, and administrative outgoings. This shows some **business risk and opportunity** although there is perhaps only a small risk that this outlay would not be recovered from income from future engagements.

## Outcome?

There are some factors here that point towards employment (for example Helen does not have the right of substitution and is under some control) but others that point to self-employment (Helen has modest financial risk in running her service, and several different clients). Unlike the other case studies, where things are much clearer, at first glance, it is not possible to say what Helen's status is.

Helen therefore uses the Check Employment Status for Tax tool (CEST) (<https://www.gov.uk/guidance/check-employment-status-for-tax>) which can help determine employment status where it is not clear. The annotated results can be found on the following pages. As you can see, in this case it has returned an unable to determine result. The CEST tool is available for everyone in all sectors, but as this case demonstrates it cannot address every nuance which might exist, including some working arrangements within the care sector.

Ultimately, professional advice would probably be required to make a determination, based on the exact facts and circumstances to confidently assert whether the 'in business on own account' factors outweigh the lack of substitution rights to make Helen genuinely self-employed. More information may be needed, on how the arrangement works in practice.

For example, if there is very little chance of Helen having to put work right if Mrs Nibizi was unhappy with something. Or if Helen had been known to call herself 'Mrs Nibizi's PA or carer', rather than she 'works for her own business', her position would be weakened, and the outcome could possibly favour an employed outcome.

If things remain unclear, or in dispute, it could be for a judge to decide based on [case law](#) that has built up over the years in the courts.

Although there is a credible case Helen could be self-employed based on some of her working arrangements, in the absence of certainty from the courts and due to the risks (from HMRC for tax, or from Helen for employment rights), Mrs Nibizi may prefer to err on the side of caution and treat Helen as an employee. Although, the risk of enforcement actions (HMRC or employment rights) against these specific arrangements means that currently, the risks are very low.

Mrs Nibizi funds her support via a Direct Payment from her local authority and should be supported by her local DP support service to weigh up her options and make an informed choice about hiring Helen, based on the above information. As the working relationship between her and Helen develops and grows, she should be further supported to review and monitor the potential consequences of her choices periodically and as required.

# Unable to make a determination

[Preview and save or print a copy of your result](#)

▶ [How to save your results](#)

## For your records

**Date of result:** 19 September 2025

**File name:** Helen CEST

## Why are you getting this result

Based on the information provided, the tool has been unable to provide a determination on your employment status. This outcome is typical when the information is finely balanced.

HMRC will stand by this result as long as it reflects the actual or expected working practices. If these working practices change, you should use this tool again.

## What you told us

### About you

Who are you? Worker

Do you have, or will there be, a contract in place? Yes

Do you provide your services through a limited company, partnership or unincorporated association? No

Are you an 'office holder'? No

Are you an 'office holder'?	No
What job role are you using this CEST tool for?	Health (including clinical research) and care (medical and social)

### Personal service

Have you already started working for this client?	No
Does your client have the right to reject a substitute?	Yes

Helen does not send a substitute, however the CEST tool does not have an option that responds to Helen's situation. This is the answer that best matches the situation even if it is not an exact fit.



### Control

Does your client have the right to move you from the task you originally agreed to do?	No, you would have to agree
Does your client have the right to decide how the work is done?	No, you and your client agree together
Does your client have the right to decide your working hours?	No, you and your client agree
Does your client have the right to decide where you do the work?	No, some work has to be done in an agreed location and some can be your choice

### Financial risk

Will you have to buy equipment before your client pays you?	No
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Reading the guidance that is linked to from the tool, Helen understands that she can only tick yes to this if it is significant equipment, for example a driver that provided their own lorry.



<b>Will you have to fund any vehicle costs before your client pays you?</b>	No	<p>Reading the guidance that is linked to from the tool, Helen understands that she should tick no to this because she already owns and runs the car and has no real additional costs over and above the fuel to get to clients. This is not significant in relation to the value of her income from Mrs Nibliz.</p>
<b>Will you have to buy materials before your client pays you?</b>	No	
<b>Will you have to fund any other costs before your client pays you?</b>	Yes	
<b>How will you be paid for this work?</b>	An hourly, daily or weekly rate	
<b>If the client was not happy with your work, would you have to put it right?</b>	Yes, unpaid but your only cost would be losing the opportunity to do other work	<p>Reading the guidance that is linked to from the tool, Helen ticks this because she is unlikely to incur any tangible costs to put things right (for example if she does not clean the house to the expected standard). At best, she may suffer opportunity cost due to the time it takes to rectify</p>
<b>Worker's Involvement</b>		
<b>Will your client provide you with paid-for corporate benefits?</b>	No	
<b>Will you have any management responsibilities for your client?</b>	No	
<b>How would you introduce yourself to your client's consumers or suppliers?</b>	You work for your own business	<p>Helen selects this answer because although Mrs Nibliz does not have customers or suppliers, she interprets it as also applying to friends and neighbours of Mrs Nibliz. However, in reality, this question is hard to apply to care situations meaning that it is also hard to answer 'accurately'. This, in turn, means Helen may not get a reliable result.</p>
<b>Worker's Contract</b>		
<b>Does this contract stop you from doing similar work for other clients?</b>	No	
<b>Are you required to ask permission to work for other clients?</b>	No	
<b>Are there any ownership rights relating to this contract?</b>	No	
<b>Have you had a previous contract with this client?</b>	No	

**Is the current contract the first in a series of contracts agreed with this client?** Yes

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**Will this work take up the majority of your available working time?** No

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**Have you done any self-employed work of a similar nature for other clients in the last 12 months?** Yes

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## Jean

### Micro-Enterprise / Community Interest Company

#### **Determination: Community Interest Company (CIC)**

Jean runs a Community Interest Company (CIC) with the aim of offering personalised services to adults with learning disabilities.

Jean uses a local Community Centre for people with a learning disability to meet and spend time together. She provides art, music and hobby classes. She also supports people to develop the skills and confidence required to gain volunteering and work opportunities locally.

An experienced professional in the care sector, Jean transitioned from a large national care provider to establish her own community micro-enterprise in response to the challenges of providing person-centred care. To begin with she provided individual home help/companion services in people's homes, for an hourly fee, working through her own limited company.

Over time, Jean realised she wanted to prioritise social impact. She researched her options on [GOV.UK](https://www.gov.uk) and with guidance from specialist support providers, she developed a community-based support model and converted to a Community Interest Company (CIC).

CICs are regulated so this process involved her limited company making a special resolution/changing the articles of association and then submitting a Companies House application. This included a community interest statement and an asset lock declaration (while a CIC can generate profits, it cannot distribute these profits to shareholders except as permitted by legislation).

She also took steps to build her operational base including:

- Purchasing insurance relevant to her services
- Checking the regulatory (Care Quality Commission (CQC) position
- Updating her Disclosure and Barring Service (DBS) check.
- Registering with the Information Commissioner's Office (ICO).
- Completing health and safety, food hygiene, and safeguarding training.
- Implementing policies and procedures to guide her service delivery.

Jean's CIC hired one staff member initially, with plans for growth as demand increases.

Jean's CIC has various revenue streams, all the while adhering to her social purpose of benefiting the community. These include charging clients to attend her group under a subscription type model (they can use their Direct Payments for this), applying for grants and funding for example from the

National Lottery, organising fundraising activities, and partnering with local businesses.

## Regulation

- **CQC** Limited companies must be registered with the CQC if they are providing the regulated activity of providing personal care. Jean is not providing personal care so is out of scope.
- **Employment Agency Standards (EAS)** An organisation comes into scope of EAS when it operates as either an employment agency or an employment business as defined by the Employment Agencies Act 1973. There are no employment business or agency considerations in either scenario.

## Status determination

A limited company (Ltd) is a **legal entity**. Jean is both the owner of the company (the **director/ shareholder**) and the person that the company hires out to provide services. It would be extremely unusual for services to be provided to your own limited company on a self-employed basis.

While Jean was providing home care/companion services under her own Ltd company, her company should have:

- filed annual accounts and an annual confirmation statement with **Companies House**
- submitted a **company tax return** to HMRC
- paid any **corporation tax** it owes on its profits
- kept detailed financial records of the business' day to day activities

As a director/shareholder, Jean must prepare a **self-assessment tax return** in her personal capacity each year. She must work out her strategy for lawfully extracting money from her limited company (salary/dividend/director loan).

From the point of view of the person taking on Jean to help in the home/ provide companionship, they will have paid the company for its services, usually on production of an invoice. Jean will not have been paid by them directly - she will have been paid by her own company. In these instances, it is the limited company's responsibility to decide if there are any employment status issues around Jean providing services to people in their homes, for example, **under IR35**.

Community Interest Companies (CICs) are subject to the same tax obligations as regular limited companies, including having to pay **corporation tax** on their profits. Once Jean converts her Ltd company to a CIC, to the extent it is generating profits after deducting allowable expenses, she must pay

corporation tax on those profits. It is eligible for normal corporation tax reliefs but there are no CIC specific tax exemptions/reliefs available.

She must also adhere to **specific reporting requirements** for Companies House and the CIC Regulator. As director of a CIC, Jean will have to prepare an annual CIC Report to file with the CIC's accounts. The Report should show the CIC is satisfying the community interest test and that it is engaging with its stakeholders.

As her CIC grows, Jean needs to evaluate whether her services are subject to **VAT**. She will probably need to operate **Pay As You Earn** tax and National Insurance on any 'reasonable' salary she draws out of the CIC - as there are restrictions on dividends this is probably the most straightforward way of paying herself. If she is hiring people, she will need to consider their **employment status** for the purposes of working out what employment rights they are entitled to and whether she needs to operate PAYE on their pay.

# John

## Hybrid Team of employed PAs + Agency care

### Determination: Employed

John has significant health challenges following an industrial accident. He is a middle-aged individual, living at home with his adult daughter Gemma, in an adapted bedroom downstairs. John requires continual assistance due to complex health issues, including brain damage and mobility limitations.

Gemma receives Direct Payments on behalf of her dad. She uses them to buy in care and support, to supplement the unpaid care that she provides on an ongoing basis. Gemma is supported to manage her responsibilities by her local Direct Payment support service who are funded by her local council. The support service is run by a local user-led organisation (ULO) and former centre for independent living.

### The arrangement

Gemma organises support for John as follows:

- Three primary PAs: one guaranteed 30 hours per week (Rachel) and two guaranteed 16 hours per week (Martin and Connor).
- Their roles are supplemented by an external care agency that provides additional support as needed and to cover staff shortages.

Rachel was recruited directly by Gemma who had drawn up a detailed job description setting out training/skills requirements, responsibilities and expectations. After an interview/reference checking etc. she offered Rachel the job. Rachel is contracted to work a guaranteed 30 hours per week. Rachel serves as the senior and primary PA outside of Gemma, ensuring continuity of care and familiarity with John's needs.

Martin and Connor have been taken on with a guaranteed 16 hours per week. Their roles are designed to ensure adequate coverage while allowing for flexibility to accommodate John's changing needs.

Gemma works full time from home but is required to travel. All PAs are given their rotas 4 weeks in advance, subject to change based around Gemma's work movements. If Gemma goes on holiday, the PAs are offered overtime.

The PAs are responsible for a variety of essential tasks, including:

- **Personal care:** Assisting John with daily activities such as getting dressed, toileting, and maintaining hygiene.

- **Meal preparation:** Preparing and serving meals while encouraging John to eat and stay hydrated.
- **Medication management:** Administering medications in accordance with prescribed schedules and maintaining accurate medication charts.
- **Engagement activities:** Providing companionship through conversation, games, and discussions about John's interests, which is crucial for mental stimulation.
- **Health monitoring:** Checking for signs of health issues, such as pressure sores, and documenting any changes in John's condition.

## Contingency plan

Gemma has also contracted with a local care agency – London Cares. An agency worker attends for 30 minutes each day to help with high-demand tasks such as hoisting, which cannot be performed by the primary PAs alone due to health and safety regulations.

The agency staff also provide cover on a short-term basis should any of John's usual PAs be off sick or on leave. London Cares invoice Gemma monthly – their staff are employed directly (and paid) by London Cares.

## Regulation

- **EAS** London Cares is an employment business and as such, has various responsibilities: <https://www.gov.uk/employment-agencies-and-businesses>
- **CQC** London Carers must be registered with the CQC. There are no CQC registration requirements in relation to Rachel, Martin or Connor due to the exemption for those providing personal care directly and under control of the cared for person: <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>

## Status determination

There are no PAYE obligations on Gemma regarding the agency workers in this scenario. The responsibilities for their pay and tax rests with their employer, London Cares.

As Gemma recruited Rachel, Martin and Connor directly, it is up to her, the engager, to decide on what their employment status is, for the purposes of working out whether she needs to operate PAYE and give them employment rights. This is the case even though Connor tells her that he works on a self-employed basis for another client and would like to do the same in this arrangement.

To work out employment status, we apply the case law principles established by the courts, as summarised here:

- <https://www.gov.uk/government/publications/employment-status-factsheet-esfs1/employment-status-factsheet-esfs2>
- <https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-checklist-for-employers-and-other-engagers>

Maintaining a consistent support team is crucial for John's well-being. It is vital that they work as arranged by Gemma - there can be nothing transient or casual about their working patterns. They are **obligated** to turn up in accordance with the rota and in return, Gemma is **obligated** to pay them, even if she cancels shifts at the last minute.

Due to the need for familiarity and because they have built up a good understanding of John's unique needs, there is no question of the PAs ever being able to send a substitute. Gemma has recruited them – based on their specific characteristics and skills – she requires their **personal service**.

Due to John's specific needs and routines, the PAs must adhere to strict protocols, especially in activities like dressing, to prevent health complications but also so as not to disrupt established rapport and trust. Even for non-personal tasks, the PAs need to do things in a particular order and manner. They are under significant **control**. Gemma is not always present to control the PAs specifically; however, she retains the **right of control** at all times.

These are the three central factors (sometimes referred to as the 'irreducible minimum') which generally determine whether an employment relationship exists between two parties - **personal service, control and mutuality of obligation**. However, all aspects of the entire relationship must also be considered and assessed for consistency with an employment relationship. This includes the provision of equipment, the financial arrangements and the relationship dynamics.

Having considered the arrangements carefully, Gemma concluded that all **three key elements** are present and that there **are not really any other significant pointers away from employment**.

Rachel, Martin and Connor are **employees**. Even Connor, who has another client that he works for on a self-employed basis is an employee of Gemma. It is perfectly possible for someone who is self-employed in respect of one arrangement, to be employed in respect of another.

Gemma needs to pay all the PAs via PAYE and provide them with 'employee' employment rights.

# Manju

## Introductory Agency / Live in Care

### Determination: Employed

Manju is a live in carer registered with the Introductory (Live in Care) Agency, Springfield Care. She provides live in care to clients who are matched to her through the Springfield Care members website.

#### The arrangement

Mr Dean is 86 and has dementia. He is physically frail and struggling with cognitive function, communication and daily living activities. His children have considered residential care, but their options are limited, and Mr Dean does not want to leave his home and the connection to his children and his wife, who recently passed away.

Mr Dean is not eligible for any financial support from the local authority, so the family look for a live in carer they can pay privately to support him at home. They come across the Springfield Care website that purports to place live in carers on a self-employed basis. They were very attracted by comments on their website, such as *'We are an introductory care agency. Rather than paying us, as you would with a managed care agency, in this instance, your contract is with the carer. Carers registered with us take care of their own tax affairs. This means you won't have to liaise with HMRC or worry about holiday pay and sick pay.'*

The family found Manju through this website. Manju and the family signed a very short agreement under which she would be paid £800 a week and be provided with food and accommodation in return for providing live in care services, which was drafted up by the introductory agency. The agency set the £800 rate. The agency also sent the family terms and conditions for them to agree, including the clauses below:

- We act as an Introductory Agency. We are appointed by the Client to identify and introduce a potential live in PA to support the Client. The Agency makes all reasonable efforts to check the suitability of the PA.
- The PA is self-employed and receives their remuneration gross from the Client. The PA is responsible for her/his own Income tax and National Insurance Contributions under Self-Assessment.
- The Client is free to terminate the contract at any time, but we recommend you contact us to discuss any concerns or problems before action is taken.

If necessary, we will endeavour to provide you with a suitable replacement PA as soon as is reasonably possible.

- The ongoing introductory Agency Fee (£115 per week) will be invoiced to the Client on and the end of the month and is payable within two weeks of receipt of the invoice.
- If the Client wishes to engage a PA introduced by our Agency without using our services and PA agrees to do so, then the Client will be subject to a charge of £1,435.
- The PA's duties will usually consist of providing intermittent and irregular care to their client at times when it is required. It is important to maintain this flexibility while complying with the Client's legal obligation to ensure the PA has adequate rest breaks and does not work excessive hours. We recommend that you agree with the PA that there are no specified hours of work but the average number of hours the PA will work in each 24-hour period is 10-12 hours. At all times when the PA is not working the PA is entitled to rest or sleep in private.

Manju starts immediately, providing Mr Dean with a structured/supportive/safe environment and excellent, patient, empathetic care, around the clock, 7 days a week. The family are delighted and feel that Manju is really enhancing Mr Dean's quality of life but after a while, start to wonder if the arrangement is sustainable due to the demands on Manju. For example, Manju likes to work as much as possible to send money home back to her family in India. When Mr Dean's family ask if she wants to take some time off, she declines.

## Regulation

- **EAS** The 'introductory agency' here, will be at least an employment agency. However, if they are not just an introductory agency and are providing more of a 'managed' service they will potentially be an employment business, although this is more likely to apply if the agency were handling Manju's pay. Both classifications restrict what the business can do (for example, both employment agencies and businesses are prohibited from charging fees to workers for finding or trying to find them jobs) but additionally, employment businesses have extra requirements: <https://www.gov.uk/employment-agencies-and-businesses>

EAS have various powers to investigate agencies and enforce the legislation: <https://www.gov.uk/government/publications/employment-agency-standards-eas-inspectorate-enforcement-policy-statement/employment-agency-standards-eas-inspectorate-enforcement-policy-statement>

- **CQC** Genuine introductory agencies do not have to be registered with the CQC. However managed agencies do; they manage staff recruitment, training, and placement, as well as the care plan and delivery. CQC

registration ensures that these agencies meet specific standards for quality and safety. It is a criminal offence to run an unregistered managed agency: <https://www.cqc.org.uk/contact-us/report-concern/report-unregistered-service>

There are no CQC registration requirements on Manju due to the exemption for those providing personal care directly and under control of the cared for person: <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>

- **HMRC** There are no PAYE obligations on the platform in this scenario if they are a genuine introductory agency and as such do not meet the requirements of the agency legislation: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2031>

If it is not a genuine introductory agency, the rules would be different. See the note below.

However, Mr Dean's family, as Manju's engager should check her status. They should not rely on what they are told by the agency. Just because introductory agencies fall outside of the agency legislation meaning there is no need for the agency to operate PAYE, this does not mean that Manju is self-employed by default. Falling outside of the agency legislation just means that the agency doesn't have a PAYE obligation.

Based on HMRC's guidance for tax purposes (in [ESM4015](#)), and the employment law case of [Chatfield-Roberts](#), most live-in carers are likely to be employees and not self-employed under the general status tests.

The family need to pay Manju via PAYE and provide her with 'employee' employment rights. Treating Manju as self-employed because the introductory agency said so (when in fact she is an employee), has left them severely non-compliant with tax and employment law obligations.

### **What if it is not a genuine introductory agency?**

Springfield Care do not just make a match for a one-off fee and allow the parties to contract directly. Instead they remain involved in the arrangement meaning there is an argument that they fall within the scope of HMRC's agency legislation: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2000>

This legislation applies when workers supply their services to an agency for the onward supply to an end client and means that the workers should be taxed under PAYE as a deemed employee of the agency. This would relieve the family from having to operate PAYE on Manju's wages, as the PAYE obligation would sit elsewhere in the chain.

# Molly

## Introductory Agency

### Determination: Employed

Molly is looking for some local work to fit around her family life. She is good with people and is thinking about setting up a small care and support service.

She registers with the 'Help you find a PA' introductory care service and is added to a list of PAs who have registered to advertise their services. 'Help you find a PA' is an online platform that helps to match clients who are looking for care and support with local PAs.

#### The arrangement

Mrs Deng contacts the 'Help you find a PA' service as she needs someone to support her 5 hours per week, for 1 hour of personal care support every morning, Monday to Friday.

'Help you find a PA' service sends out a referral to all PAs who are registered to offer personal care support in the location where Mrs Deng lives. They also provide Mrs Deng with a handbook so that she can understand the recruitment process, what her obligations are, and be provided with useful tips and templates.

A number of PAs respond to the referral expressing an interest in the work. Their details are forwarded to Mrs Deng by the 'Help you find a PA' service, for her to then contact the PAs she is interested in supporting her.

The 'Help you find a PA' service has no further involvement in the set up of the working arrangements between Mrs Deng and the PA. They will however contact Mrs Deng to check she is happy with the service she had from 'Help you find a PA' and get feedback on how the PA's support is going.

Once Mrs Deng has the list of PA names, she sets about contacting them. She provides them with a job description and then chats with each of them to explain the type of care and support she needs in more detail, and discusses pay and conditions.

Mrs Deng mainly needs assistance with washing every morning as she requires someone to help operate the hoist in her bathroom. She needs someone between 9 and 10am ideally, however there is a little bit of flexibility around this. She wants someone reliable and friendly that she can build a trusting relationship with - but also someone who can respect her home, privacy and dignity. If the person doesn't have relevant training or experience,

she is happy to teach them how to lift and move her safely but this means that they need to be good at listening and following instructions. Mrs Deng's daughter will cover any periods of absence. She is offering £15 an hour as this is what her Direct Payment budget allows.

Molly applies for Mrs Deng's position and gets the job. She doesn't have any other jobs yet but is actively looking. She has already registered for self assessment with HMRC (the way self-employed people pay their taxes), got a basic DBS check herself and bought some business cards and logoed tunic as she really wants her venture to take off.

## Contingency plan

Mrs Deng will find alternative carers via the 'Help you find a PA' platform if cover is required.

## Regulation

- **CQC** There are no CQC registration requirements on either the agency or Molly due to the exemptions for genuine introductory agencies and those providing personal care directly and under control of the cared for person: <https://www.cqc.org.uk/guidance-providers/registration/personal-care-ongoing-role-introductory-agencies-individual-care>
- **Employment Agency Standards (EAS)** An organisation comes into scope of EAS when it operates as either an employment agency or an employment business as defined by the Employment Agencies Act 1973. There are no employment business or Employment agency considerations for Molly to consider as she is working alone.

The 'Help you find a PA' agency are however in scope and should ensure their operating model is compliant - <https://www.gov.uk/employment-agencies-and-businesses>

Definition of employment agency – section 13 Employment Agencies Act 1973 (2): For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding [persons] employment with employers or of supplying employers with [persons] for employment by them.

- **HMRC** There are no PAYE obligations on the platform in this scenario as they are merely acting as a genuine introducer and as such do not meet the requirements of the agency legislation: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm2031>

## Status determination

Once Mrs Deng and Molly have been introduced, it is up to Mrs Deng, as the engager, to decide on what Molly's employment status is in this arrangement. This will help Mrs Deng clarify whether she needs to operate PAYE and give Molly employment rights. This is the case even if Molly presents as already being registered with HMRC as 'self-employed'.

To work out employment status, we apply the principles established by the courts as set out here:

- <https://www.gov.uk/government/publications/employment-status-factsheet-esfs1/employment-status-factsheet-esfs2>
- <https://www.gov.uk/government/publications/employment-status-and-employment-rights/employment-status-and-rights-checklist-for-employers-and-other-engagers>

Mrs Deng has purposefully taken on Molly to assist her and would not be happy for Molly to send a substitute due to the personal nature of the work. This denotes **personal service**.

There is also a **mutual obligation** to provide and pay for work for 1 hour a day and for that work to be undertaken as set out in their **contract** (which Mrs Deng drafted with the help of a template), with Molly unable to be late/leave early or simply not turn up.

Molly is under a certain amount of **control** from Mrs Deng as the work is in Mrs Deng's own home, at the time that Mrs Deng requires and Molly needs to follow her lead when she is washing and assisting her.

Other relevant factors include the work being regular and ongoing. Molly being an **integral** part of Mrs Deng's life, the lack of **financial risk** (as Molly has made no real investment in her business that she is at risk of not recouping, and is paid by the hour). There is also a requirement to use Mrs Deng's **equipment** (hoist) to carry out the work. The fact that Molly might provide her own tunic and other PPE, and uses her family car to get to work is not significant enough to count as providing her own equipment.

It is likely that Molly is an **employee** in this arrangement, even though she only assists Mrs Deng for a short time each day. While Molly **intends** to become a successful care service/micro-provider and has registered with HMRC as 'self-employed' - **the starting point is that you look at the arrangement before you, on its own merit.**

If Molly's business develops, such that she eventually has other clients and can firmly say she is in **business on her own account**, then this may be a consideration, but it is still perfectly possible for someone who is self-employed in respect of one arrangement, to be employed in respect of another.

Mrs Deng should seek advice and consider whether she needs to pay Molly via PAYE and what employment rights she might be entitled to. As Molly does not earn more than £96 per week (the current secondary threshold for employers National Insurance contributions) and does not meet any of the other criteria, there is no obligation on Mrs Deng to operate PAYE at the moment or pay any employer National Insurance contributions (NIC). However she must give Molly payslips and keep good records for tax purposes. She must also check **what employment rights Molly has and should be advised to seek advice and guidance from the local Direct Payment support service to help her operate this care arrangement lawfully.**