



Let's talk about employing PA's

24th June 2020



The following Q&A relate to the webinar that took place on the 24th June 2020 as part of the Be Human Let's talk about series. Presentations were given by ACAS, Skills for Care and Dr Miro Griffiths and can be found here> (insert webinar link). Our sincere thanks to all of the above & In Control for spending time answering these pre, during and post questions that the webinar raised.



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Pay Rates

Q. I want to pay my staff a bonus for all the hard work they have done during Covid but frightened that my council will say no. Can I do this and if the council refuse will I have to pay it out of my own personal money?

A. Discuss it with your direct payment provider and any monetary gift, if it is agreed, will be counted as income and will have tax and national insurance implications <https://www.gov.uk/expenses-and-benefits-bonuses>. However, The Low Incomes Tax Reform Group say that

employers can give small gifts to their PAs. They are classed as 'trivial benefits' and are completely free of tax. There is no limit to the number of trivial benefits that an employee can receive in a year. Employers are however expected to keep their own records of trivial benefits made to employees. Before doing anything like this, employers should seek advice. Guidance on Trivial Benefits can be found here <https://www.gov.uk/expenses-and-benefits-trivial-benefits>. Direct payment users would need to have strong justification as to why there is surplus money in the budget, which can be used as a bonus, when the amount paid to the direct payment user is based on the current support plan. So, the individual needs to have clear rationale as to why paying the "bonus" is helping to meet their needs. For example, could be argued that the payment would help with retention of staff during a very difficult and precarious time? Just be prepared if you were ever to argue for further funding to meet your needs. So, prepare a good argument

Q. Could we pay for cabs for staff - as less risk than traveling on London transport ?

A. talk to your LA or CCG - this should be covered in their requirement to be flexible in how Direct Payments are used

Q. Should self employed PAs expect to be paid if I am self isolating

A. Depends on the circumstances. There are some government grants for people who are self employed. Some people have retained the DP money therefore given PA's alternative work from home jobs.

Q. My LA have told me I can only pay a set rate of pay for my PA and I want to pay more and have less time more quality within the budget, but they say if I can manage with less time they will reduce the hours still on the lower payrate....is this right? Isn't Direct Payments supposed to give me choice and control?

A. This is not in the spirit of the Care Act nor Direct Payments. The budget must match the cost to the LA for meeting need and it must be sufficient. As a general base it should equate to average cost of quality and local provision. You should also refer to assessed need and support plan arrangements of meeting outcomes to needs.

Q. Should an LA pay different hourly rates for carers of adults or children (adult social care v childrens social care)?

A. The Care Act states it must match the cost to the LA for meeting need and must be sufficient. The pay should equate to average cost of quality and local provision and should be sufficient to cover PAs wages and any associated costs, as agreed in a care plan

Q. I am using a prepayment card given by the council, I am expected to take all the employment responsibility without control of the budget. Is it okay for employer to be dictated to on how much they pay staff by the funder or do they by default become the employer in law?

A. Prepayment cards work differently in different areas > you do have the option for a traditional Direct Payment (LA's can NOT use pre payment cards as the only option) <http://www.in-control.org.uk/media/250147/payment%20cards%20infographic%20v4.pdf>

Report mentioned in webinar was <http://www.in-control.org.uk/news/in-control-news/payment-cards-in-direct-payments-must-not-undermine-choice-and-control.aspx>



Staff Performance

Q. We are slowly bringing back our team of Personal Assistants who have all been on full pay for 3 months. We have developed our own traffic light system for bringing them back with a self assessment form for them to fill in with our team co-ordinator. Every PA has their own unique situation. Can you please advise on the following PA is not following guidance, her home is very busy and family members have often been visiting. She has been shopping and does not wear a mask. Her brother is getting married soon and they will be having a family gathering with family members from different parts of the country at her home. Her father is a taxi driver and so is her brother. On our traffic light system she was red. Green is low risk, red is High risk. What do we do? and what pay should she be on?

A. It is important to discuss openly with the PA about the concerns you have. It's important that there is shared understanding of the health implications if the PA user was to contract coronavirus.

Miro states he can't stop any of his PAs from engaging in activities outside of work, but he has requested that if there is prior knowledge of an event or situation that may increase the risk for that particular PA, then they are to inform him in advance of the next shift. This then allows him, and his family, to determine the level of risk for that PA and possibly swap shift patterns round to give the PA more time to demonstrate any symptoms.

Q. PA living with parents one of whom is shielding. His letter is till end of June but may be extended. She does not want to come when he is shielding. What do we do? and what pay should she be on?

A. Shielding is coming to an end, technically, so this will need to be revisited with the PA. It's important to discuss with the PA why do they not want to come to work. Is the PA employer also

shielding? If so, then the level of risk is considerably low – assuming that the PA drives in a private vehicle to their place of work

Q. My PA is not doing her job properly but I don't feel able to tell her in case she shouts and tell me all that she has done for me for the last year, it feels she is trying take over everything, what can I do?

A. Contact your local disabled People's organisation/Centre for Independent living and ask for advocacy or peer support. Discuss the issue and have a clear plan and procedure. You will need to raise the issue of performance carefully with A PA. Suggest the following format: Introduce quarterly/annually appraisals and review all staff employed to support you. With a witness, such as a friend or family member, invite the PA to a meeting to discuss the performance and behaviour in work. The witness should be silent – and could be identified as a notetaker for the discussion.

Q. My PA is going to a family birthday party in London, there will be lots of people there and I am worried about my exposure to the virus. Can I tell her she cannot go, or do I have to have her back if she does?

A. I don't think it is appropriate to tell them what they can/cannot do outside of work, it will likely cause problems with behaviour and performance in work – and possible deterioration of working practices. Discuss your concerns and possibly organise a shift swap, to give the individual longer time before they return to work. This would allow them to be away from you if they were to develop symptoms.

Q. If PHB holder is shielding and paying their PA in full in line with their contracted hours and has now decided that they want to let their PA go, to use the direct payment to fund online therapies instead, how do they legally go about this?

A. You would be potentially considering your employee to be redundant thus would need to follow arrangements set out in their employees contract of employment. You can speak with your insurance provider's employment law/HR service.

Q. Should a PA provide their own PPE?

A. if a PA is employed then the employer should provide the PPE

Q. Does all this also apply to self-employed P.A's? Or is the responsibility lying with them?

A. PAs working on a self-employed basis should provide their own PPE. You could have a discussion with the self-employed PA to ensure that they have the correct PPE for the duties/tasks they are required to undertake. The self-employed PA may also wish to inform you of any risk assessment that may need to take place, and what procedures they have implemented to ensure they can support you safely, as well as keeping themselves safe.

Q. What if a PA, who is not shielding is anxious about coming to work because they cannot keep 1m+ for any care and do not want to bring in virus. Family are effectively shielding so they would feel responsible if anyone got it.

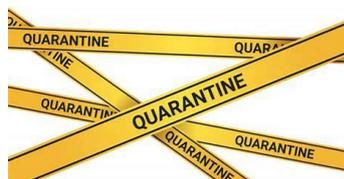
A. Have a discussion with them, in the first instance, this could be done virtually. Ensure risk assessments are carried out – they could use the template on the Information Hub for IEs, PAs and organisations supporting them. Go to <https://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Information-for-individual-employers/COVID-19-Individual-employers.aspx> - scroll down to the final subject heading where it says 'Risk assessment tools and information' and click on it. It's the item called 'Risk Assessment Tool for Personal Assistants (PAs) Returning to Work'. This template was shared with us by Disability Sheffield CIL. It was developed by Sheffield's Individual Employer and PA Development Group by people who have experience of employing their own PAs and people who work as PAs. Ensure they are aware of current government guidance.



Maternity

Q. if someone comes back from maternity can you change the contract and reduce hours?

A. If someone is pregnant they can't be treated less favourably than their colleagues as a result so you would need to follow the employment contract as to process to changing hours. You can speak with your insurance provider's employment law/HR service to take you through steps for this



Quarantine

Q. If my PA lives abroad will he have to be quarantined on return or will PA's be part of the exception alongside health professionals?

A. We have raised this with DHSC as to whether PA's are classified the same as others in the keyworkers exception on quarantine and if yes then working out how they prove this. The air bridges have solved this from some countries.



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Furlough

Q. I am still confused by what is classed as furlough and am I expected to claim this back or will my council do this as the funder of the Direct Payment?

A. The government currently will pay employers 80% of wages, up to a maximum of £2,500 a month for each eligible furloughed employee. NOTE: General expectation that those providing care will continue to work,

however furlough can be used in exceptional circumstances. Employers can top up employee's salary. Furlough must be agreed between the employee and their employer. They also need to get agreement in writing from the employee.

It is the employers responsibility

Q. Can you make retrospective claims for Furlough if staff were furloughed but employers were unaware they could access the scheme at the time?

A. No, it is too late. Unless you had already registered and claimed wages via the JRS.

Q. Do you accrue holiday entitlement during furlough , can your Employer say No and request the employee sign a declaration agreeing to this . Thank you

A. There has been no changes to taking and cancelling of annual leave of individual's working during this period. Policies and procedures continue to apply. Furloughed employees continue to accrue leave as per their employment contract. Employees can take holiday whilst on furlough. This includes bank holidays. Furloughed workers must get their usual pay in full, for any holiday they take. Employers can claim 80% under the Coronavirus Job Retention Scheme. The government has introduced a temporary new law allowing employees to carry over up to 4 weeks' paid holiday into their next 2 holiday leave years. This law applies for any holiday the employee or worker does not take because of coronavirus.



Payment to family members

Q. My adult daughter who lives in our house is allowed , during COVID19, to be paid as a PA for my younger daughter. This is working really well. Do you think this could be the post COVID arrangements too?

A. Direct Payments were never meant to replace natural family support. The rules around paying family members changed from 'exceptional circumstances' to 'where appropriate'. This was very appropriate given the pandemic. After then you have to consider how an employment relationship might have an adverse effect on family life and in the future who speaks with your daughter that is not paid or seen to have a conflict of interest. Worth thinking through and whether there is any conflict of interest, and the impact on the daughter's wellbeing and relationship with her sister and family members. and if you want this option discuss it with the council or CCG.

Q. If an adult child who normally does not live at home, has to come in to cover PA's two weeks annual leave, can we request that CHC funds - via the third party agency - are directed to them for two weeks?

A. Yes you can request it, see also answer above



Decisions

Q. Have a single PA who works 8-5 Mon-Fri and employment is managed by another agency - even though we are IE. What is our training responsibility? Is reviewing the care plan every 12 weeks ok?

A. If the PA is employed by an agency, then the person is not the employer. It is the employer's responsibility to ensure that PAs they employ have the right skills and qualifications to be able to undertake the duties. So, in this case, it would be the responsibility of the agency. However, there is no requirement for PAs to undertake training.

Q. the current guidance is to continue lockdown until 1st August ... My PA has been Shielding with me throughout , which has helped ME Massively ... Can this be continued for now

A. Yes

Q. Had some hours taken off a domicilliary care package because of lockdown. When is the right time to ask for them hours back?

A. When you need the support. This maybe now, if the person is no longer shielding. Must ensure that risk assessments are carried out.

Q. Where can I get advice on setting up shift patterns? I have funding for live in care and am looking at moving towards PAs to cover the whole week and sleep in

A. Depending on where you live and who provides your direct payment, they may be able to get support from a local CIL (Centre for independent living), some employer insurers, local authority direct payments team, clinical commissioning group PHB team might offer support too

Q. Has there been any notification on Antibody testing to give employers piece of mind when bringing staff back into the workplace

A. No, this test is not widely available yet. Antibody tests are used to detect antibodies to the COVID-19 virus to see if you have previously had the virus. The test works by taking a blood sample and testing for the presence of antibodies to see if you have developed an immune response to the virus. Antibody tests differ to virus swab (PCR) tests, which test to see if you currently have the virus.

Q. What's the difference between a personal budget and a personal health budget? How can you access appropriate formal training and who pays for it?

A. Personal budgets are provided for Social Care funded by your Local Authority/Council. Personal Health budgets are provided for NHS health care (usually long term or continuing health) funded by the NHS/your local CCG. For training some areas offer some or all their training to PA's others might give you a budget to access it. Skills for Care currently has funded training available. It is called COVID-19 essential training. People employing PAs can access this training to ensure their PAs keep their skills and knowledge up to date during this time. All the training is done virtually and will be

delivered in a variety of formats (e.g. e-learning, video conferencing, interactive webinars, virtual classrooms). Skills for Care usually has funding specifically for individual employers. They can apply for money directly to pay for training. The funding can also cover the cost of travel costs and a replacement PA if their usual PA is attending training. The funding can support a wide variety of training needs, including qualifications. It is called individual employer funding and you can find out more here www.skillsforcare.org.uk/iefunding. They also provide funding via user-led organisations. Keep an eye on SfC news to find out when this will be available. www.skillsforcare.org.uk/ulofunding. Skills for Care Information hub and employing PAs toolkit is very useful as is a learning and development guide. www.skillsforcare.org.uk/iepahub



Asking Miro

Q. Please can Miro advise What options are available for independent advocacy and support nationally or regional, if there is no CIL or suitable support service available locally? In East Sussex where I live, there no disabled peoples organisations.

A. Nationally you could contact disability rights UK; you could also contact reclaiming our futures alliance and ask if they are aware of any local networks close to you. If you email Miro privately then he will identify the nearest allies to you. There is also a lot of information that can be found here > <https://www.eastsussex.gov.uk/socialcare/paying-for-care/guide-to-direct-payments/what-are-direct-payments/>

Q. Miro - do you pay all your staff to attend the weekly video meeting? If so, was it approved by your CCG?

A. No, staff have never raised the issue of payment for the video meetings. They are not very long, and my PAs recognise that there is flexibility in their hours. Sometimes they may leave half an hour before their shift ends, so attending a 15/20 minute meeting is not seen as an unreasonable request.

Q. Name of Solicitor mentioned by Miro

A. Miro mentioned reading work Steve Broach > you will find a webinar that Steve did on the Be Human website under webinars "accessing care" www.be-human.org.uk

Q. Please can I ask Miro how the CCG has supported him during Covid 19, if and when he needed support?

A. Dreadfully, They couldn't get their act together to provide PPE (they only responded once I had escalated to NHS England) – apologising profusely and suggesting there was clerical errors and mistakes in policy interpretation by CCG staff. Yeah, sure there was...They have never responded to my concerns about how they are delivering assessments and support during the pandemic period, and how they are going to move forward.

Q. Did I hear correctly that Dr Miro uses his partner who lives with him as a pa should the need be. I have 3 pas two who have shielding needs so I have our extra work on my wife. Does this mean I can use her as a pa and pay her

A. In exceptional circumstances you can use family members as paid PAs. My suggestion is to email the CCG/local authority and inform them of the following: Due to the pandemic impact, and risk to health as well as the precariousness of the existing support network (PAs shielding, off sick, asked to isolate et cetera), you will be including your partner on the current support plan. They will need to be paid for providing you with support, otherwise it would have a detrimental impact on your relationship. Your partner must not have any role in administration of the PA support team (including dealing with timesheets and payments to staff). You will also need to have a clear argument as to how you will seek support if you had a concern about your partner's behaviour or work performance.

Q. My CCG have told me shielding is ending now, but I don't think it safe to stop shielding. Can they stop the way my funding has worked during covid now and force me into a situation that I don't feel safe with? (i.e > having increase amount of PA's in my home that were furloughed)

A. Tell them firmly, but politely, that you will continue shielding until a date at which you feel the level of risk to your health (including mental health) is appropriate for you to end shielding. Also shielding measures can be reversed when data in the local area illustrates that the risk of infection spreading is increasing or at a level where it cannot be controlled. Clearly outline how you are meeting your needs, but you still require the use of PAs, even if they are being used differently during the shielding period. It is important to highlight that the CCG provided support to you on the basis of your level of health needs. That has not changed, presumably, during the coronavirus period, so it is not appropriate that they withdraw or change the level of provision. If they do want to challenge anything, then ask them to clearly outline in a detailed breakdown how they have come to the decision. How their decision relates to the national and statutory guidance surrounding the care act. At this stage you might want a solicitor to look over the response.