



**south ayrshire**  
health & social care  
partnership

**South Ayrshire Health and  
Social Care Partnership**

**Self-Directed Support Policy**

**2022-23**



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## 1. Introduction

- 1.1. **Self-Directed Support (SDS)** is the mainstream approach to the delivery of social care to individuals and their carers across Scotland. The delivery of SDS places the individual at the centre of the assessment process, recognising they are best placed to define their needs, make choices and take more control of their lives.
- 1.2. Improving the outcomes for individuals and their families by providing them with information and advice and working alongside them is central to the successful delivery of SDS. South Ayrshire Council is committed to carrying out its statutory duty to deliver SDS and to ensure individuals and their families have real choice and control over the care and support they require. Our aim is to work in partnership with individuals and their families, to enable them to live independently and be part of their local communities.
- 1.3. The delivery of self-directed support is part of a wider personalisation agenda. The approach to deliver SDS is evident in several other health and social care policies such as the Self-Management Strategy, the Carers Act 2016 and the National Dementia Strategy. Self-directed support can be accessed by children and young people and shares a similar value base with the GIRFEC (Getting it Right for Every Child) practice model.

## 2. Values and Principles of Self-directed Support

- 2.1. The values and principles that underpin Self-directed Support are embedded into the assessment framework and are as follows:
  - **Collaboration, Dignity, Informed Choice, Involvement and Innovation**  
We will work alongside and respect the individual's right to dignity throughout the assessment and support planning process. This will be achieved by ensuring that information and support is available that enables real choice and control and as a consequence, the ability to be innovative in achieving personal outcomes.
  - **Participation, Responsibility and Risk Enablement**  
We will support and encourage individuals to take as much choice and control over their care and support as safely possible. We will openly discuss personal responsibility and adopt a risk enabling approach that promotes choice and control and details how any potential risks can be managed. We will also work with individuals to ensure they are free from any form of exploitation and/or abuse.

## 3. Legal Basis

- 3.1. The legal basis for assessment in respect of the Social Care (Self-directed Support) (Scotland) Act 2013 ("the Act") remains within the following core legislation:
  - Section 12A of the Social Work Scotland Act 1968 provides the legal basis for community care assessments for adults.
  - Section 23 of the Children (Scotland) Act 1995 provides the legal basis for community care assessments for children in need.
  - The Carers (Scotland) Act 2016 provides the legal basis for the assessment of carers.
- 3.2. The legal basis of the Social Care (Self-directed Support) (Scotland) Act 2013 is to offer greater choice and control to individuals who following an assessment have eligible support needs. A statutory duty in place requires the individual carrying out the assessment to offer and provide information about the four SDS Individual Support Options that are available.

3.3. SDS has four **Individual Support Options** available to any individual who is eligible to receive social care support. The four options are as follows:

- **Individual Support Option 1 - Direct Payment**

The Council can provide the individual with a direct payment (the budget) to the equivalent financial value of the traditional care and support they are receiving or assessed as requiring. The budget can be used by the individual to design and personalise their support to meet their outcomes and this is set out in a support plan. This may include using the budget for the employment of a Personal Assistant and/or directly purchasing services from a care provider or any other innovative options that can meet the identified outcomes.

- **Individual Support Option 2 - Individual Service Fund**

An individual service fund is when the relevant amount of funding made available (the budget) to meet an individual's needs is held either by a provider (nominated by the individual) or the Council. This option means the individual can have more choice, control and flexibility as to when and how their care and support is delivered. Similar to individual support option 1, how the care and support will be delivered to meet the agreed outcomes is set in a support plan.

- **Individual Support Option 3 – Council Arranged Services**

This option is often referred to as traditional care and support and the Council will arrange the care and support to be delivered by a commissioned care provider, or the existing in-house services. The care and support will be delivered to meet the agreed outcomes which are set in a support plan.

- **Individual Support Option 4 - Mixed Package of Care and Support**

A combination of Individual Support Options 1, 2 and 3 can be used. For example, an individual can receive traditional personal care support through Option 3 and combine this with Option 1 to design any social support to meet their agreed outcomes set out in their support plan.

#### **4. Individual Support Option 1 (Direct Payment) - Individuals ineligible to receive a Direct Payment**

4.2 The Self-directed Support (Direct Payments) (Scotland) Regulations 2014<sup>1</sup> (“the Regulations”) set out when an individual whom the Council has assessed as requiring care and support is ineligible to receive a Direct Payment (Individual Support Option 1) These include:

4.4 When the assessment identifies there is a need for the provision of either residential accommodation or residential accommodation with nursing care, then Individual Support Option 1 direct payment is not available as a means of funding. The Regulations define a

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<sup>1</sup> Scottish Government, *The Self-directed Support (Direct Payments) (Scotland) Regulations 2014*  
<http://www.legislation.gov.uk/ssi/2014/25/contents/made>

period in excess of 4 consecutive weeks in a residential establishment in any 12 month period as the timeframe which would make an individual ineligible to receive a direct payment.

- 4.5 A direct payment that is in place may be terminated in circumstances including;
- There is evidence that the provision of a direct payment is likely to put the safety of the person to whom the support is provided or others at risk.
  - the local authority considers on reasonable grounds that the direct payment user has breached criminal law or a civil law obligation in relation to the support to which the direct payment relates
  - The direct payment has been used (wholly or partly) to secure the provision of support by a family member other than in circumstances where the family member is permitted to provide support.
  - There is evidence the use of a direct payment is not meeting the outcomes set out in the support plan.
- 4.4 In the event of a Direct Payment being terminated we will:
- consider any contractual obligations entered into by the direct payment user i.e. personal assistants.
  - Take into account the time that will be required to put in place alternative arrangements to provide the support to which the direct payment relates.
  - Confirm the termination verbally and follow this up in writing with details of why the direct payment has been terminated.

### **Self-Employed Personal Assistants**

If someone in receipt of a direct payment (Individual Support Option 1) wants to employ a self-employed personal assistant, there are several checks that have to take place before this is authorised. This includes the self-employed person providing written confirmation about their employment status. If an individual considering this option for their care and support, we will provide the relevant advice and guidance following the assessment.

Further information on self-employment status can be accessed at:

<https://www.gov.uk/government/collections/employed-or-self-employed> or you can contact the HMRC self-employed status team on 03000 527 450.

## **5. Risk Enablement**

### **Our Approach**

- 5.1. Risk enablement is an approach which recognises that risk is not only an inevitable part of life but often a necessary one. Self-Directed Support (SDS) is underpinned by principles of choice and control and to achieve this we need to adopt a more collaborative approach to working with risk. The 21<sup>st</sup> Century Social Work Review Report stated “services must develop a new organisational approach to managing risk which ensures the delivery of safe, effective and innovative practice... focusing particularly on evidence based approaches to risk assessment and management”.
- 5.2. In South Ayrshire, we will adopt a collaborative approach to managing and assessing risk. Our approach to assessing risk will be enabling, participative and transparent, with the goal of achieving positive outcomes for individuals. Any potential risks will be discussed, recorded, monitored and reviewed throughout the assessment and review process.

- 5.3. The main principle behind embedding a risk enablement philosophy is to ensure that our professional practice model is transparent about both discussing and managing the risks associated with independent living. Adopting this approach will also enable individuals and their families to have choice and control over their lives and how their care and support is delivered.
- 5.4. A Child's Assessment and Plan will record the assessment and management of risk, along with contingency planning underpinned by the GIRFEC practice model.

### **Levels of Risk**

- 5.5. In order to promote a shared understanding in the approach to managing risk, the following levels have been defined and will be discussed in the assessment process:
- **Low Risk**  
No indication of the likelihood of the risk factors causing serious harm.
  - **Moderate Risk**  
There are identifiable risk factors and the potential for harm to be caused, but it is unlikely to happen if changes are made to the current circumstances.
  - **Substantial Risk**  
There are identifiable risk factors which could indicate a risk of serious harm. The potential event(s) could happen at any time and the impact could be serious.
  - **Critical Risk**  
There is an imminent risk of serious harm. The potential event(s) is more likely to happen imminently and the impact could be serious.
- 5.6. We cannot eliminate risk from everyday life, but we can have a positive approach to assessing and managing risk, with a starting point being a shared understanding. Achieving this approach recognises the importance of professional judgement, valuing and respecting individual choice and working collaboratively.

## **6. Employment of Family Members**

- 6.1. South Ayrshire Council recognises the significant role of unpaid carers, who may often be family members. A family member can be employed as a personal assistant, when the family member, direct payment user and the local authority are all in agreement.
- 6.2. The Self-directed Support (Direct Payments) (Scotland) Regulations 2014 define a family member and set out the criteria when they can be employed to provide care and support using a direct payment.
- 6.3. The Regulations define a "family member" as being:
- The spouse or civil partner of the direct payment user.
  - A person who lives with the direct payment user as if their spouse or civil partner.
  - The direct payment user's parent, child, brother, sister, aunt, uncle, nephew, niece, cousin, grandparent, grandchild.
  - The spouse or civil partner of any person listed above.
  - A person who lives with any person listed above as if their spouse or civil partner.
- 6.4. A direct payment to a family member will be considered where:

- The family member, direct payment user and the Council agree to the family member providing the support.
- The family member is capable of meeting the direct payment user's needs i.e. supporting them to achieve their outcomes.
- Any of the factors below apply.

6.5. The factors are:

- There is a limited choice of service providers who could meet the needs of the direct payment user.
- The direct payment user has specific communication needs which mean it will be difficult for another provider to meet the needs.
- The family member will be available to provide support which is required at times where other providers would not reasonably be available.
- The intimate nature of the support required by the direct payment user makes it preferable to the direct payment user that support is provided by a family member.
- The direct payment user has religious or cultural beliefs which make the provision of support by a family member preferable to the direct payment user.
- The direct payment user requires palliative care.
- The direct payment user has an emergency or short-term necessity for care.
- There are any other factors in place which make it appropriate, in the opinion of the local authority, for that family member to provide the support.

6.6. Where an individual is in receipt of a direct payment, a family member **may not** provide the support which relates to the direct payment in the following circumstances:

- The local authority determines that either the family member or the direct payment user is under undue pressure to agree to the family member providing support; or
- The family member is either the legal guardian, continuing attorney or welfare attorney with the power to make decisions as regards the support to be provided through the direct payment.
- The Local Authority considers that a family arrangement may impact adversely on a carer or young carer.
- It is considered the family member is unable to provide the level of care due to other reasons that have become evident during the assessment.

6.7. The potential impact of an individual becoming the direct employer of a family member should be considered and discussed during the assessment.

6.8. As with all other aspects of the assessment, the practitioner has a duty of care to ensure the safe and effective delivery of care and support. To meet this requirement, they need to agree that a family member will be able to provide the level and type of support required to meet the identified outcomes and this should be discussed as the support plan is being developed.

## **7. Information and advice to promote Self-directed Support**

7.1. South Ayrshire Council is required to ensure information and advice is available to individuals to be informed about SDS and allow them to take control and have real choice in how they access any care and support. In order meet this requirement, the Council works in partnership with Ayrshire Independent Living Network (AILN) which is a local independent support organisation.

7.2. AILN is a user-led organisation and is able to offer independent advice and support in relation to all aspects of accessing self-directed support. This includes information around all aspects

of being an employer alongside providing an optional payroll service to individuals who choose to employ a Personal Assistant under self-directed Individual Support Option 1.

- 8.4 If an individual, their carer or representative requires independent support to manage their SDS Individual Support Option 1, they can choose to access this type of support through other organisations equivalent to the cost of AILN.

## 8. The Allocation of Resources

- 8.1. The Social Work (Scotland) Act 1968 places a duty on local authorities to ensure that resources (the relevant amount) are made available to meet eligible care needs to a standard they consider suitable and adequate.
- 8.2. In South Ayrshire we have adopted an 'equivalency model' for the allocation of resources under self-directed support. This means an individual with eligible needs will be entitled to a personal budget which is equivalent to the cost of delivering a similar level of traditional services. The equivalency calculation of a budget is similar across all four SDS Individual Support Options, meaning that regardless of what option is chosen, it will not put an individual at any disadvantage.
- 8.3. The practitioner involved at the assessment stage should advise the individual of the relevant amount or allocation of resources available to them.
- 8.4. The equivalent rates for **2021-22** are set out in **Appendix 1**. The rates are reviewed annually in April to reflect any inflationary increase.
- 8.5. Any individual who is not satisfied with the level of resources they have been allocated should in the first instance discuss this with the practitioner and their manager. If agreement cannot be reached, the individual should be made aware of the [Council's Listening to You](#) complaints procedure.<sup>2</sup>

## 9. The Refusal of Resource Allocation

- 9.1. The allocation of financial resources under Individual Support Option 1 is provided to meet the outcomes set out in the Support Plan. The Council will not agree or continue with funding if it is used in the following ways:
- Unreasonably endanger any person.
  - Support an illegal act.
  - Involve gambling or financial investments.
  - Fund health care that should be met by the NHS unless budgetary arrangements have been put in place between agencies to permit this.
  - Pay for anything that other sources of income should normally cover (for example, food and drink).
  - Not contribute to the agreed outcomes within the support plan.
  - Purchase of any goods or services that does not meet outcomes as detailed in the support plan.
  - Where the individual is subject to **Adult Support and Protection measures**, Individual Support Option 1 funding would not be allocated until the ASP is no longer in place and standard Care Management procedures apply. Option 2 ISF may be applied in these circumstances

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<sup>2</sup> See: <http://www.south-ayrshire.gov.uk/listeningtoyou/>

- 9.2. Any refusal or withdrawal of funding should be discussed between the individual and the practitioner and followed up in writing explaining why the decision was reached. This will allow the refusal of resources to be evidenced in writing and if an individual does not agree with the decision they can access the [Council's Listening to You](#) complaints procedure.

## **10. Financial Assessment and Charges**

- 10.1. Individuals assessed for support under self-directed support will be subject to a financial assessment. This will be carried out after the assessment of need and in some instances a financial contribution towards the total cost of any support provided may be put in place.
- 10.2. South Ayrshire Council currently applies a consistent charging policy for non-personal care services. This is in line with the COSLA's national guidance on Charges Applying to Non-residential Social Care Services<sup>3</sup>. Charging thresholds and rates are adjusted annually (in April) in line with pension and benefit changes.

## **11. Termination of Funding**

- 11.1. Direct payments can be terminated (Individual Support Option 1) under the Self-directed Support (Direct Payments) (Scotland) Regulations 2014. The Council has the right to terminate the direct payment in a range of circumstances that include:

- Where the individual has become ineligible to receive direct payments.
- Where the payment has been used for purposes out-with the person's support plan (i.e. misuse of funds).
- Where it has been used to secure the provision of support by a family member in circumstances where the family member is not permitted to provide such support.
- Where it becomes evident that an individual is unable to manage the funds or complete the reconciliation process despite being provided with additional support and advice.
- Where the local authority considers on reasonable grounds that the individual has breached the criminal law or a civil law obligation in relation to the support to which the direct payment relates.

- 11.2. In the event of a direct payment being stopped, the lead practitioner will inform the individual both verbally and in writing. A period of notice will normally be given before the payments are discontinued. When an individual who continues to have eligible needs is no longer eligible to receive direct payment they will continue to be supported with other self-directed support options put in place.

- 11.3. When a direct payment is discontinued, a reconciliation process will take place. South Ayrshire Council may seek to recover any misused funding as the Council deems appropriate.

## **12. Financial Monitoring of Individual Support Option 1 - Direct Payments**

- 12.1. South Ayrshire Council is accountable for public funds and as a result it will monitor direct payments made to service users. The monitoring process is proportionate and is based on

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<sup>3</sup> COSLA, *National Strategy & Guidance for Charges Applying to Non-residential Social Care Services 2013/14* - [http://www.cosla.gov.uk/sites/default/files/documents/13-01-25\\_item\\_xx\\_charging\\_guidance\\_for\\_non-residential\\_social\\_care\\_-\\_charging\\_guidance\\_section\\_6\\_revised.doc\\_1.doc](http://www.cosla.gov.uk/sites/default/files/documents/13-01-25_item_xx_charging_guidance_for_non-residential_social_care_-_charging_guidance_section_6_revised.doc_1.doc)

the Chartered Institute Public Finance and Accountancy Guidance (CIPFA), Self-Directed Support: Direct Payments - A Guide for Local Authority Finance Managers.

12.2. When a direct payment account has accrued funds that have not been used, and this can occur due to a range of different circumstances, a reconciliation of the funding will take place. The individual will be notified in advance of this process and normal future payments will continue unless there is a change in their circumstances.

12.3. The frequency of the monitoring is set out in the table below:

12.4.

Level of Weekly Payment	Evidence	Risk Level	Frequency
>£50 per week (or £2600 per annum)	Administrative Competence	Low	Monthly financial review for first 3 months then annual review
>£50 per week (or £2600 per annum)	Administrative difficulty	Low	Monthly financial review until confident and then annual review
£50 - £300 (or £2601 - £15600 per annum)	Administrative competence	Low-Moderate	Monthly financial review for first 3 months followed by one quarterly review and one 6 monthly review. Thereafter annual review
£50 - £300 (or £2601 - £15600 per annum)	Administrative difficulty	Moderate - High	Monthly financial review until confident and then annual review
>£300 (£15601 or more per annum)	Administrative competence	Moderate	Monthly financial review for first 3 months followed by quarterly review in year one and 6 monthly in year two. Thereafter annual review
>£300 (£15601 or more per annum)	Administrative difficulty	High	Monthly financial review for year one thereafter quarterly review until confident

12.4 The reconciliation process is relevant to all four SDS Individual Support Options. All public funds provided under any of the options are monitored by a combination of the formal review process and the financial reconciliation process, to ensure the funds made available are being used effectively.

### 13. Equality and Diversity

13.1. South Ayrshire Council's Equality and Diversity Statement for 2013 affirms the Council's commitment to the general principles of fairness, equality and human rights and seeks to apply these principles in all that it does as a community leader, service provider, education authority and employer through:

- Challenging and eliminating unlawful discrimination, harassment and victimisation wherever it can.
- Being inclusive, fair minded and transparent in all that it does.

- Tackling prejudice and promoting understanding and inclusion.
- Consulting and engaging with service users and employees.

13.2. Implementation of the Council's Self-directed Support Policy will support our commitment to equality and diversity by giving people greater choice and control over services they receive and enabling them to meet their particular needs and individual outcomes.

#### **14. Related Policies**

14.1. This policy is inter-dependent with the following local and national policies, strategies, procedures and guidelines:

- Fair Access to Community Care Services Policy
- Non-residential Social Care Charging Policy
- West of Scotland Inter Agency Adult Support & Protection Practice Guidance
- Commissioning & Contracting Policy & Procedures Framework - Community Care
- Audit Policy - Community Care / Children & Families 2010
- South Ayrshire Dementia Strategy 2018-23
- South Ayrshire Adult Mental Health Strategy 2017-22
- South Ayrshire Adult Learning Disability Strategy 2017-23
- South Ayrshire GIRFEC Practice Guide 2014
- South Ayrshire Health and Social Care Partnership Strategic Plan.
- Carers (Scotland) Act 2016
- The Self-directed Support (Direct Payments) (Scotland) Regulations 2014

## Appendix 1

### Self-Directed Support Equivalent Service Rates

The following equivalent rates will be paid for individuals accessing Individual Support Option 1 (Direct Payment) and Option 2 (Individual Service Fund) and Option 4 (a mix). These rates are based on the equivalent cost of purchasing (Option 3) services from external service providers. Separate rates for employment of a personal assistant are also included and all rates will commence on the **01-04-22**.

<b><u>Equivalency Hourly Rates for Option 1, 2 or 4 for all external providers</u></b>		Date from:
<b>Older People (60+)</b> - Personal/Non-Personal Home Care Rate ( <i>per providers offer 21/22</i> )	£19.21	per hour (or equivalent approved rate for the Lot or rural location) 01.04.22
<b>Adults (18-59)</b> - Personal/Non-Personal Home Care Rate ( <i>per providers offer 21/22</i> )	£19.21	per hour from 01.04.22
<b>Children (up to 18)</b> - Personal/Non-Personal Home Care Rate	£19.21	per hour from 01.04.22
<b>Sleepover Rate</b>	£12.81	per hour from 01.04.22
<b>Ucan learn, work, live</b>		
Support	£12.00	per hour from 01.04.22
Transport	£11.00	per hour from 01.04.22
<b>Deaf Blind Scotland</b>	£18.45	per hour from 01.04.22
<b>Ayrshire Children's Services Ko-nekt</b>	£15.50	per hour from 01.04.22
Enhancement/rurality payments *Girvan/Troon areas (if you are unsure if an enhancement applies please check with SDS Finance Team)		
3% on older peoples agency rate of £19.21	£19.79	per hour from 01.04.22
6% on older peoples agency rate of £19.21	£20.36	per hour from 01.04.22
3% on adult agency rate of £19.21	£19.39	per hour from 01.04.22
6% on adult agency rate of £19.21	£20.36	per hour from 01.04.22
<b>Day Care Older People (60+)</b>	£50.17	per day from 01.04.22
<b>Day Care Adults (18-59)</b>	£50.17	Per day from 01.04.22
<b>Respite and Short Breaks</b>		
<i>The respite rates below are subject to waiving of charges and there is a carers support plan being in place. If there is no carers support plan in place the rates below will be subject to a charge.</i>		
<b>Older People (60+) Respite – Residential Care</b>	£ 719.05	per week from 01.04.22

<b><u>Equivalency Hourly Rates for Option 1, 2 or 4 for all external providers</u></b>		Date from:
<b>Adult (18-59) Respite</b>	£1499.68	per week from 01.04.22
<b>Nursing Respite (Option 3 only)</b>	£832.10	per week from 11.04.22

<b><u>Personal Assistant (PA) rates 2022/23</u></b>		
South Ayrshire Council will provide <b>one-off payroll start-up costs</b> when a Personal Assistant is employed.	<b>£450.00</b>	Year 1 only
Hourly Personal Assistant Rate from 01/4/2022	<b>£13.86</b>	per hour
<i>(This includes Employers NI and contingency rates. The P.A. should be paid £10.02 per hour - Scottish Living Wage)</i>		
<b>Personal Assistant Sleepover Rate</b> <i>(The P.A. should be paid £10.02 per hour - National Minimum Wage)</i>	<b>£13.86</b>	per hour
<b>3rd party managed bank account</b>	£12.15	per hour
<b>payroll only service</b>	£9.68	per hour
<b>Invoice only 3</b>	6.90	per hour

Date completed – 01-04-2022

Date to be reviewed - 01-04-23

## Appendix 2

### Self Directed Support Personal Assistant: Professionals' Checklist

When an individual or their legal proxy chooses to utilise **Individual Support Options 1,2 or 4**, there are essential checks required in order to meet the requirements of the individual and the local authority SDS and Direct Payment processes, as well as the relevant legislation.

Where an individual chooses **Individual Support Option 1 (direct payment)** and wishes to employ a **Personal Assistant** to support their assessed needs, there are several pieces of essential information which require to be provided to satisfy the processes and legislation underpinning it and protection of the individual. These sources of information and supporting evidence are:-

**Self Employed Personal Assistants must** provide written confirmation/evidence of

- their employment status,
- registration with HMRC as a self-employed tax payer
- insurance as a self employed carer/PA/company
- most recent completed PVG check
- record of relevant training and skills appropriate to the needs of the individual
- relevant registration status with professional bodies, e.g SSSC, NMC, etc.
- business use within car insurance (if appropriate)

If the **Personal Assistant/Self Employed Personal Assistant** is sourced and employed by the individual with support from **Ayrshire Independent Living Network (AILN)**, their checks and requirements reflect those of the local authority and vice versa and are satisfactory in meeting those requirements. AILN will ensure all of the relevant recruitment, payroll, contractual and associated processes are in place prior to the commencement of a Personal Assistant (PA) and shall maintain relevant employer records for the individual. AILN are a non-profit making organisation whom take a minimal weekly/monthly charge from the individual for providing the ongoing employment and resource support and initial start up one-off costs are provided by the local authority, detailed in Appendix 1, Self-directed Support Equivalent Service Rates.

**Self Employed Personal Assistants** whom are sourced via an **employment agency/broker** via Individual Support Option 1 (Direct Payment) **must** provide the same information to the individual as though they were being employed by them directly. The agency or broker may advise that these essential pieces of evidence have been provided to them, but in order to meet the requirements of the individual and the local authority when accessing public funds, the individual and professional providing support to the individual, e.g. Social Worker, Community Care Assistant, etc **must insist on obtaining these** prior to any Self Employed Carer/PA/Micro-enterprise/Company commencing and that commencement is dependent on these being satisfactory.