

Managing an ILF Transition Fund Grant – TF06

Owner: ILF Scotland

Subject: Managing an ILF Transition Fund Grant

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1. Background

ILF Scotland will seek clarification at the point of application that an individual has capacity to manage an ILF Transition Fund grant. Incapacity is described in the Adults with Incapacity (Scotland) Act 2000, which defines “incapable” as:

- (a) acting; or
- (b) making decisions; or
- (c) communicating decisions; or
- (d) understanding decisions; or
- (e) retaining the memory of decisions,

by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise); “Adult” means a person who has attained the age of 16 years.

A first principle of the 2000 Act is that a person must be assumed to have capacity unless it is established that she/he lacks capacity.

<http://www.legislation.gov.uk/asp/2000/4/contents>

In the context of this policy, ILF Scotland is concerned with the applicant's capacity to understand:

- What an ILF Transition Fund grant is for;
- how the grant should be spent;
- the responsibilities associated with managing the grant.

2. Policy Intention

The aim of this policy is to ensure that those applicants/recipients who lack capacity, or who need additional support, are able to apply to the ILF Transition Fund on an equal basis with others.

3. Policy

- a. The application process will enable ILF Scotland to establish if an individual has the capacity to manage a grant either on their own or with assistance.
- b. Applicants/recipients deemed to have capacity are deemed responsible for ensuring that grants are managed in accordance with their agreement with ILF Scotland.
- c. Applicants deemed to have capacity must sign the relevant forms provided by ILF Scotland. If, due to an impairment that does not affect their capacity, they cannot sign then a third party acceptable to ILF Scotland may sign as a witness to their agreement.
- d. Recipients without the capacity to manage an ILF Transition Fund grant must use a third party Grant Manager acceptable to ILF Scotland, who will take responsibility on the recipients behalf. This Grant Manager will be responsible for the appropriate use of the grant.

Annex A – Guidance and process notes

1. Capacity – definition and assessment

- a. The definition of incapacity is as given in the Adults with Incapacity ((Scotland) Act 2000.
- b. ILF Scotland will start with the assumption that an applicant/recipient has capacity but will make further investigation of capacity if there are indicators of incapacity as defined in the Adults with Incapacity (Scotland) Act 2000 (see section 1 above). ILF Scotland will not judge a person's capacity on a single aspect. The intention is to offer support and so ensure that there is equal access to the ILF Transition Fund irrespective of capacity.
- c. ILF Scotland will take into account any impairment (whether temporary or permanent) to determine if that means the applicant/recipient is unable to make a decision at that time.
- d. The ILF Scotland Senior Management Team will ensure that guidance and advice is available to staff to assist them in establishing if an individual has capacity. Staff will also be advised that they should seek guidance from ILF Scotland Senior Management Team if needed.
- e. If there are any doubts over an applicant/recipients' capacity then the Local Authority may be contacted for a capacity assessment to be undertaken. A copy of the result of this assessment may be kept on file by ILF Scotland to support the decision to accept a third party Grant Manager.

2. Letting applicants/recipients know what will happen to their personal data

- a. Applicants/recipients must be informed about what will happen to their personal data and notified how it will be processed. See Policy TF13, Data Protection, for details on how personal and sensitive personal data will be processed.

3. Letting applicants know what their responsibilities are

a. ILF Scotland will ask applicants (or their representatives), to agree to the terms and conditions of receiving the grant. This affirmative action by the applicant (or their representatives), declares their understanding and agreement to only use the grant for the stated purpose in accordance with their application and to manage their grant in line with their obligations which are detailed in the 'Your Responsibilities Guide'. The grant will not be offered until this positive agreement has been made. ILF Scotland will put the offer on hold until such time as agreement is made or withdrawn. There may be instances where the applicant does not have the ability to sign. This is addressed separately in this policy document.

b. The person who signs the Agreement Form accepting the offer will be the Grant Manager and is fully accountable for all aspects of the funding arrangements relating to an ILF Transition Fund grant. It is their responsibility to ensure that the administration of ILF Scotland monies will be handled appropriately and as agreed with ILF Scotland.

c. ILF Scotland will establish if the applicant/recipient is capable of managing a grant from ILF Scotland. The capability to manage a grant will not be judged on an extensive knowledge of employment and financial management. If a person recognises that there are areas of managing a grant that they need support with, and ILF Scotland is satisfied that they will get that support, they will be considered capable of managing a grant.

d. ILF Scotland will advise recipients or their representatives of their responsibilities in relation to managing a grant and maintaining appropriate records. That person needs to know they have a responsibility to ensure that if they employ someone they do so appropriately and within the legal requirements set by employment law. They must understand how ILF money may be used and that proper records must be kept. If they cannot do this on their own they must get someone to help them.

4. Other people signing on behalf of the applicant/recipient

a. ILF Scotland will assume that a person has the capacity to meet their responsibilities, as outlined above, unless it is established otherwise.

b. There are some instances where an authorised third party may have to sign on behalf of an applicant/recipient. This will be where an applicant/recipient does not have the

capacity to understand and agree to the terms of the grant, or, if they do have the capacity but they are unable to sign because of an impairment.

c. If an applicant/recipient does have the capacity to agree, but cannot physically sign, then a third party may witness their acceptance. In such circumstances details of why a witness was required should be provided.

d. If an applicant/recipient lacks capacity then ILF Scotland will accept signatures from authorised third parties agreed by ILF Scotland. In the first instance these are adults with a Power of Attorney or a Guardianship/Intervention Order granted under the Adults with Incapacity (Scotland) Act 2000 or those named at (h) and (i) below.

e. It should be made clear on any document that a third party signs why they are signing on the applicant/recipient's behalf.

f. The person who signs the Agreement Form becomes the Grant Manager and takes on responsibility for managing ILF Scotland monies appropriately.

g. The Grant Manager must also understand that with their responsibility they become liable for the management of the grant. This includes not only spending the money for support as agreed with ILF Scotland but also making sure agencies and personal assistants are employed appropriately and ILF Scotland are informed of any relevant changes.

h. The hierarchy of who can be a Grant Manager is detailed below:

a. Recipient

b. Power of Attorney (POA)/Guardian or Intervener

c. Benefits Appointee

If there are compelling reasons why none of the above can be the Grant Manager then a suitable third party may be engaged following discussion with ILF Scotland. The reasons for choosing a third party Grant Manager should be recorded clearly on ILF Scotland records. A suitable third party may be a family member or management organisation. The nature of the relationship with the grant holder should be considered before accepting them as Grant Manager.

5. Who needs to be present at ILF Scotland Visits

a. If a third party has signed the application or agreement form on behalf of an applicant/recipient, ILF Scotland will expect that person to be present at any visit required. In the event of a Power of Attorney/Guardian signing, ILF Scotland will require that they are present at the visit. This requirement will be communicated clearly to both the recipient and such third party at the point of a visit being arranged.

Annex B: Assessing Capacity – Guidance

1. Assessing Capacity

ILF Scotland will always assume that a recipient or applicant has capacity and will use the criteria below to consider whether an applicant can manage a grant alone or with support. A recipient/applicant will not be required to have an extensive knowledge of employment law and financial management to be deemed to have capacity. If a person knows there are areas of managing a grant that they need support with and they get the required support, then they will be considered as having the capacity to manage a grant.

a. When establishing if a recipient/applicant has capacity to manage a grant, at that time, there are a number of questions that should be used as guidance. These include:

- Does the person have a general understanding of what it means to manage an ILF Transition Fund grant?
- Do they have a general understanding of the responsibilities of an ILF Transition Fund Grant Manager?
- Does the person understand that they are the 'boss', if they employ someone, and that they must ensure the employment is managed properly?

Do they understand that all ILF Transition Fund grants must be spent only on the preauthorised support plan activity.

- Does the person understand that records must be kept on how the money is spent?

- Do they understand that if they cannot manage the grant alone that they must get help from someone and if unclear about this should seek advice from ILF Scotland.

b. Whether or not an applicant/recipient has capacity will never be based on simply:

- Their age
- Their appearance
- Assumptions about any health condition or impairment
- Any aspect of their behaviour

c. Any relevant communication matters should also be considered. This includes whether the applicant /recipient can communicate their decisions and whether the services of a professional person should be engaged to aid their communication.

d. If there is any doubt about the capacity of the applicant then a more thorough assessment should be requested from the Local Authority or by a GP or other qualified health professional.

e. One of the responsibilities of an ILF Transition Fund Grant Manager is to advise us of significant changes. These include:

- Any change of circumstances which may affect the use of the grant which may include –
 - o Hospital admission.
 - o Delay in implementing the plan.
 - o Unavailability of support to progress plan arrangements.

This list is not exhaustive and Grant Managers/recipients should consult with ILF Scotland if they are in any doubt.