

Employment Support – TF09

Owner: ILF Scotland

Subject: Employment Support

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1. Background

This policy and associated guidance applies only when an ILF Transition Fund grant is used to employ a personal assistant (PA). Employing a PA brings specific responsibilities.

ILF Scotland is unable to offer comprehensive advice or guidance on the responsibilities of becoming an Employer, or specific advice on employer support costs. Where support is needed this should be obtained from an external source, for example: a. ACAS Scotland; b. Your local support organisation; c. Your Local Authority.

ILF Scotland want to ensure that any grant recipient who chooses to become an employer understands and fulfils their responsibilities to be a legally compliant employer.

2. Policy Statement

All PA employers have statutory responsibilities and must act within the law. ILF Scotland's policy is to ensure that all grants made to recipients, who choose to employ PAs, are sufficient to ensure they can discharge their duties as responsible employers.

The costs that ILF Scotland will pay in relation to employing a PA are outlined below and they should be included in a grant application where that grant is to be used to employ a PA. A grant recipient should only proceed to employ a PA after they have received the agreement of ILF Scotland.

Where an applicant requests that a grant matches a Local Authority Direct Payment rate, the costs outlined below will not be added to the grant as it will be assumed, unless otherwise evidenced, that provision has been made for these costs in that rate.

Where a PA is employed using more than one source of funding, it is expected that the employment costs detailed below are shared proportionately between the different funders, as appropriate and in line with existing ILF Scotland policy.

3. Policy Guidance

The guidance set out below applies only when an ILF Transition Fund grant is used to employ a PA. It is intended to assist applicants as they prepare their application, and ILF Scotland staff in their evaluation of applications and administration of grants.

4. Payroll Costs

ILF Scotland can pay towards the cost of payroll services where a recipient who directly employs their own PA, or their representative, requests this. ILF Scotland can normally consider a payroll charge of up to £12 per week. Payroll costs can be paid in addition to financial management support costs (see policy TF07 -'Financial Management Support').

To avoid duplication of payments, where payroll costs include the management of both an employee's payroll and pension, the additional pension management fee will not be paid by ILF Scotland.

5. National Insurance Contributions (NIC) and Pay As You Earn (PAYE) Tax

ILF Scotland will cover employers NIC within every grant where employment of a PA is agreed and where the earnings threshold is met.

An additional amount will not be provided for the employees NIC, which should be deducted from the PA gross wage as appropriate.

ILF Scotland will not include any extra money for PAYE tax. This should be deducted from the PA salary.

6. Holiday Pay

ILF Scotland will ensure that an amount of money for statutory holiday pay is included within all grants made to those who directly employ PAs. This is to enable the recipient to give their regular PA paid annual leave, whilst employing alternative care.

Where a PA is to take maternity, adoption, extended paternity, any other parental leave or sick leave for a period of time they will still accumulate annual leave, as will any PA whose hours are increased or who is recruited to cover any gap in care and support. If an ILF Transition Fund grant holder attends respite and requests that a retainer payment is made, provision to cover holiday pay should still be budgeted for within the grant offer. These contributions will not be required where the PA is self-employed.

7. Scottish Living Wage

ILF Scotland expect all grant recipients employing PAs to pay the Scottish Living Wage (SLW) (in line with Scottish Government commitments and as detailed on the Scottish Living Wage website).

8. Statutory Sick Pay

Where a recipient is required to pay Statutory Sick Pay (SSP) to a directly employed PA, ILF Scotland will consider making a contribution. Contact should be made with ILF Scotland for assistance to determine if and how much ILF Scotland will contribute towards SSP. Please see <https://www.gov.uk/statutory-sick-pay> for further details on qualifying for SSP. ILF Scotland will not make such a payment where a PA is self-employed.

9. Redundancy and Payment in lieu of notice (PILON)

ILF Transition Fund grants are short term and time limited. Any PAs employed and paid in part or fully using an ILF Transition Fund grant should have an appropriate contract in place specifying the duration of their employment period. ILF Scotland do not expect to receive requests to cover expenses associated with redundancy or PILON.

10. Liability Insurance

A suitable Employers Liability Insurance (ELI) policy should be in place if a PA(s) is employed through ILF Scotland funding.

ILF Scotland will provide a contribution towards the yearly cost of an insurance policy that covers the following:

- Employers Liability Insurance
- Public Liability Insurance

If the PA is self-employed then they should have their own Public Liability Insurance policy, as they must be covered against accidents that can occur within the workplace. ILF Scotland will not make any contribution towards this cost.

11. Protecting vulnerable groups

ILF Scotland can pay for the cost of disclosures/PVG scheme records and any associated umbrella costs for anyone who will be providing care to a recipient. These costs may be covered by ILF Scotland whether the PA is directly employed or where the PA is self-employed.

12. Parental leave

ILF Scotland will not make any financial contribution towards statutory maternity, paternity or adoption leave payments. This is because ILF Transition Fund grant holders should be in a position to claim back all monies paid to a PA from HMRC. ILF Scotland will not contribute towards any additional (contractual) payments that an ILF Transition Fund grant holder may have agreed to make.

A grant can be used to pay for a replacement PA that is required while the usual PA is taking maternity, paternity or adoption leave and any associated employer costs for the replacement PA.

An employed individual still accrues annual leave entitlements during periods of Maternity, Adoption and extended Paternity leave. ILF Scotland can meet the costs of annual leave for a PA who is taking Maternity, Paternity or Adoption leave, assuming the maximum grant will allow for this (as is the case with all payments made under this policy).

13. Health and Safety training

ILF Scotland may assist employers using ILF Transition Fund grants to be compliant with health and safety law by providing financial support to help pay either in full, or in part for health and safety training, such as moving and handling, that is identified as being required within an employee's risk assessment.

ILF Scotland can assist where such costs are not due to be met by Social Work Services or another source. ILF Scotland will not cover these costs where the PA is self-employed.

14. Task Training

A grant submission may include an element for training new PAs employed to carry out support specific to the outcomes for which the grant is agreed.

- A request should state the reasons for the task training, specific proposed hours and tasks the training is required to cover
- ILF Scotland will not pay for a PA to attend formal training to expand their skill base or attain educational qualifications
- Task training is not intended to supplement care and support hours and is expected as a one-off cost.

15. Legal costs

ILF Scotland is not liable for any fines, legal costs or compensation incurred by the recipient. An Employers Liability Insurance (ELI) policy should be in place and is expected to cover any such costs incurred.

16. Workplace Pension Costs

A request for statutory employer's pension costs can be made to ILF Scotland. ILF Scotland will only pay fees towards essential pension costs.

ILF Scotland staff should seek guidance from the policy team on the reasonableness of pension related costs included in an application for a grant.

In order to process an application for pension costs, ILF Scotland requires evidence of:

- staging date(s),
- contribution amounts,
- the cost of management fees, and
- the pensions provider.

ILF Scotland will not pay above the statutory required contribution amounts per employee. Where the payroll costs include the management of a pension, ILF Scotland will not pay for the addition of a pension management fee. ILF Scotland will require evidence of any amounts applied for.

Payments will only be made from the staging date. ILF Scotland will require evidence of this. ILF Scotland will not pay for pension errors or fines imposed by a pensions provider or regulator.

17. Discretionary Decisions

In exceptional circumstances, a recipient can apply to the ILF Scotland Senior Management Team (SMT) to vary the allowable pensions management fee.

18. Advertising and Recruitment Costs

ILF Scotland can consider covering advertising costs that are incurred when there is a need to recruit a new directly employed PA. A decision to fund recruitment costs other than advertisement costs must be considered by the ILF Scotland Senior Management Team.

Advertisement and recruitment costs may be paid and should be included within the proposed plan submitted in an application to the ILF Transition Fund.

19. Record keeping

ILF Transition Fund grant holders need to keep statements and records that confirm they have spent funding to meet the outcomes or goals detailed in the agreed plan. This includes details of personal assistants' hours of support, the amount paid and the method of payment, etc. These statements and records will be required at the end of the grant period and as outlined in the 'Your Responsibilities Guide'.

20. Self-employed Personal Assistants

Self-employed PAs are identified by the fact that they are in business for themselves. They work for themselves and can often provide support to more than one person. They have far greater control over how and when to deliver support. Self-employed PAs should have a contract with a recipient or their Grant Manager.

21. Confirmation of Self-employed Status

Where someone claims to be a self-employed PA, this must be confirmed in writing by HMRC before a recipient enters into a contract with the PA. It is an ILF Transition Fund recipient's responsibility to ensure that HMRC have confirmed the PA as selfemployed. In the event that a PA does not meet HMRC requirements, ILF Scotland is not liable for any fines or liabilities incurred by the contractor or recipient.

If there is any doubt about whether the terms and conditions under which a PA carries out their duties are those of self-employment, then the ILF Transition Fund grant recipient must seek advice from HMRC.