

Policy 26

Managing an ILF Scotland Award

Version: 3.0

Last Amended: 5 October 2022

Next Review: 5 October 2023

1 ILF Scotland Award Manager

An ILF Scotland Award Manager is the person who manages the award.

2 ILF Scotland Award Manager Responsibilities

The Award Manager is responsible for:

- correctly managing and administrating ILF funds in line with the requirements set out in ILF Scotland [‘Your Responsibilities Guide’](#)
- being accountable for the recipient’s ILF Scotland funded support package and funding arrangements
- correctly contracting with care / support providers
- acting in the role of employer and employing Personal Assistants, or if a third party organisation, assisting the employer to follow safe and accountable recruitment practices in accordance with the guidance set out in ILF Scotland’s [‘Employer Support Information Note’](#)
- only using ILF Scotland funding to achieve those independent living outcomes detailed in [Policy 41 ‘Use of ILF Scotland Funding’](#).

- ensuring that ILF Scotland funding is accounted for by keeping appropriate records for ILF Scotland audit at review for a minimum of the previous two years
- being present at ILF Scotland review visits
- informing ILF Scotland of any relevant changes, including:
 - change in recipient's circumstances
 - changes to qualifying benefits for the purpose of ILF Scotland i.e. Disability Living Allowance (DLA), Personal Independent Payment (PIP) or Adult Disability Payment
 - changes to any other recipient's benefit entitlements (Northern Ireland recipients only)
 - a recipient's admission to residential, hospital or respite accommodation
 - any reduction or cessation of any care / support or any change to the amount of social care provided by Health & Social Care Partnerships in Scotland (HSCP) / Health and Social Care Trusts in Northern Ireland (HSCT)
 - any significant increase or decrease to the hours or cost of support arranged from a provider organisation / PA.

3 Who can be an Award Manager?

ILF Scotland recipients should, if possible, manage their own award. We will always start from the assumption that a recipient has the ability to do so. Please see section 7 and 8 below for more detail.

If there are exceptional reasons why a recipient cannot manage the award themselves, ILF Scotland can agree to one of the following acting in this role, and in order of preference:

1. a suitable third party such as a family member or close friend.
2. a suitable third party organisation. (Organisations providing paid support to a recipient cannot also act as the Award Manager.)

For recipients specifically without legal capacity - the Award Manager should be a person appointed as Guardian / Controller / someone with active Power of Attorney (POA) or Social Work Department.

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4 Award Managers and Personal Assistants

An Award Manager should not normally be the paid Personal Assistant, to the recipient or have any commercial interest in the provider service (purchased by the award). ILF Scotland expects that a person who is a Power of Attorney / Guardian / Controller, Benefit Appointee or relevant (court appointed) replacement relating to the recipient to be the Award Manager and therefore, not normally the paid Personal Assistant. If someone is concerned that such a situation already exists, or may exist, they must notify ILF Scotland as soon as possible. In this circumstance, ILF Scotland will support the Award Manager to make alternative arrangements within a reasonable timescale.

Award Managers should use ILF Scotland funding to engage with providers of support or to employ Personal Assistants. In some circumstances, Award Managers can employ someone they know e.g. a close relative or family member of the recipient as a Personal Assistant, but must only do so with the express agreement of ILF Scotland. [Policy 31 A Persons Living with a Recipient as a Paid Personal Assistant](#) provides more information.

5 Signing the ILF Scotland Agreement

The ILF Scotland Agreement Form requires a signature from the recipient or their nominated representative to confirm that they agree to manage their award in line with their obligations in the 'Your Responsibilities Guide'.

ILF Scotland will assume that a person has the legal capacity to sign unless it establishes otherwise.

If a recipient has the legal capacity to agree to their obligations but cannot physically sign, then a third party may as witness be signatory of the recipients acceptance, providing details of the reason for doing so.

The person who in this circumstance accepts the Agreement Form is the Award Manager, rather than a third party witness signatory .

If a recipient lacks physical ability to sign the Agreement, but has legal capacity we will accept signatures from a third party on the recipient's behalf.

Where the recipient lacks legal capacity , those with active Power of Attorney or Guardianship (Scotland), or Power of Attorney or Controllership (Northern Ireland) should be the signatory as Award Manager.

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

6 Letting recipients know what will happen to their personal data (as defined in the Data Protection Act 2018)

ILF Scotland must inform recipients about what will happen to their personal data and will only request data that is necessary to process the award. Assessors can provide more detailed information at review visits. ILF Scotland staff will be able to advise recipients, if they contact the office directly, about how their data will be processed and provide further advice if necessary.

The ILF Scotland Agreement Form is a contract between Recipients / Award Managers and ILF Scotland. ILF Scotland routinely shares recipients' personal information with other organisations to confirm identity and in accordance with their duties as a public body managing a health and social care system. (This will include eligibility checks with other Government agencies.) If ILF Scotland wishes to use a recipients' data for another purpose, not related to the award, they will not do so without the recipient's consent.

Recipients deemed to have legal capacity must sign forms required by ILF Scotland. If they cannot physically sign, then a third party may sign to witness their acceptance and detail why.

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Third parties signing on behalf of a recipient deemed not to have legal capacity must have the authority to do so. Assessors will establish if a recipient has, at that time, the capacity to accept the terms of the agreement, with assistance or not, and to fully understand what data ILF Scotland will process for the purpose of administering their award.

7 Capacity – definition

The Adults with Incapacity (Scotland) Act 2000, and the Mental Capacity Act (Northern Ireland) 2016 both define what capacity is, and provide ways to help safeguard the welfare and finances of people who lack capacity.

The definition of capacity in the ‘Adults with Incapacity (Scotland) Act 2000’ and its [associated statutory guidance](#) is:

‘Capacity is the ability to understand information relevant to a decision or action and to appreciate the reasonably foreseeable consequences of taking or not taking that action or decision. The starting point for assessing someone's capacity to make a particular decision is always the assumption that the individual has capacity.’

The definition of capacity as given by the Mental Capacity Act (Northern Ireland) 2016 is:

‘A person lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself about the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

A person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make a decision about the matter have been given without success.’

8. Assessing Capacity for the purpose of an ILF Scotland Award

We do not require that a recipient must have an extensive knowledge of employment law and financial management to have capacity specifically to manage their ILF Scotland award. If a person knows there are areas of managing an award that they need support with and they get that support, then we can consider them to have the capacity to manage an award.

In the context of this policy, ILF Scotland considers a recipient to have capacity if they understand, at the time:

- what ILF Scotland funding is for and how it should be spent
- how to manage ILF Scotland funding
- any associated responsibilities that they may have e.g. contracting with a care / support provider, employing Personal Assistants, etc.

An ILF Scotland Assessor will establish if a recipient has the capacity and therefore the capability to manage an ILF Scotland award either on their own or with assistance. If they establish a recipient to have capacity, then they will determine that they can be responsible for managing their award appropriately in line with ILF Scotland guidance. In considering legal capacity, ILF Scotland Assessors will pay due regard to the following [Adults with Incapacity Guidance](#) and will use a number of questions to help indicate if a recipient has capacity to manage an award. This judgement only relates to the management of the ILF Scotland award. These include:

- Does the recipient have a general understanding of what it means to manage an ILF Scotland award?
- Do they have a general understanding of the responsibilities of an ILF Scotland award manager?
- Does the recipient understand that if they employ someone, they have a responsibility as an employer, to comply with employment legislation and good practice?

Does the recipient understand that if they contract someone who is self-employed to provide Personal Assistant support, they should

ensure that they are properly registered as such with HMRC? ILF Scotland will ask to see evidence of this at review visits. Please see the 'Self-Employed PAs' section of [Your Responsibilities Guide](#) for more information.

- Do they understand that they must spend all ILF Scotland funding properly, in line with the outcomes agreed between the recipient and ILF Scotland?
- Does the recipient understand that they must keep records on how they spend ILF Scotland payments?
- Do they understand that if they cannot manage the award alone that they must get help from someone?

If there are any doubts over a recipient's capacity, ILF Scotland will contact the relevant Social Work Department within an HSCP / HSCT to ask them to arrange a capacity assessment. ILF Scotland will keep a record of this information and will use this to support any decision to agree a suitable Award Manager.

9. Cross References

[Policy 31 A Person Living with a Recipient as a Paid Personal Assistant](#)
[Policy 41 Use of ILF Scotland Funding](#)
[Your Responsibilities Guide](#)
[Employer Support Information Note](#)

10. History - Date Reviewed

Version 1: 1 July 2015

Version 2: 15 April 2021

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