

Policy 26 Managing an ILF Scotland Award

Version: 2.0

Last Amended: 15 April 2021

Next Review Date: 31 March 2022

1.0 Background

- 1.1 ILF Scotland assumes that a recipient has capacity unless established otherwise. The Adults with Incapacity (Scotland) Act 2000 (the '2000 Act'), which provides ways to help safeguard the welfare and finances of people who lack capacity, defines 'Capacity'. 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, how that money should be spent and any responsibilities that they may have as an employer.
- 1.2 In order to achieve independent living, many individuals may require the support of a third party. ILF Scotland will give additional financial support to a recipient's package if they require extra assistance to do this.

2.0 Policy

- 2.1 This policy addresses the following areas:
- recipient consent to process their personal data and check for eligibility,
 - the capacity to understand what ILF Scotland funding is for and how that money should be spent,
 - the capability to manage ILF Scotland funding and spend it appropriately.

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- 2.2 Recipients must provide consent for ILF Scotland to process their Personal and Sensitive Personal Data.¹ ILF Scotland must gain informed consent to disclose these data to third parties for legitimate business purposes.²
- 2.3 Only those with legal authority may consent to data processing on behalf of a recipient.
- 2.4 Recipients deemed to have capacity must sign forms required by ILF Scotland. If they cannot sign, then a third party may sign to witness their acceptance and detail why.
- 2.5 Third parties signing on behalf of a recipient deemed not to have capacity must have the proper authority to do so.
- 2.6 ILF Scotland will establish if a recipient has the capacity and therefore the capability to manage an ILF Scotland award either on his or her own or with assistance. If ILF Scotland deems a recipient to have capacity, then it determines that they can be responsible for ensuring that they can manage their award correctly in line with guidance.
- 2.7 Recipients without the capacity to manage an ILF Scotland award must use a third party, approved by ILF Scotland, to accept responsibility. ILF Scotland will deem this person liable for the use of monies.

¹ As defined in the Data Protection Act 1998.

² This will include eligibility checks with other Government agencies and providing Assessors with adequate and relevant information about the recipient.

Annex A – Guidance and process notes for staff

3.0 Capacity – definition and assessment

3.1 The definition of capacity is as given in the 2000 Act.

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.

3.2 Assessors will establish if recipients have, at that time, the capacity to consent to their data being processed and the capacity to manage an ILF Scotland award (whether this is with assistance or not).

3.3 They will start with the assumption that an individual has capacity. They will make a decision based on that moment and taking into account a number of factors. They will not judge a person's capacity simply on a single aspect.

3.4 Assessors will take into account any impairment or disturbance of the mind or brain (whether temporary or permanent). Where there is an impairment or disturbance, the Assessor will determine if that means the person is unable to make a decision at that time.

3.5 The Senior Management Team will issue advice to Assessors on how to establish capacity.

3.6 If there are any doubts over a Group 2 Recipient's capacity, ILF Scotland should contact the relevant HSCP/H SCT to carry out a capacity assessment. The assessment may require a different approach, in which case the ILF Scotland's Assessor will consult the Management Team and will keep a copy of the assessment to support the decision to accept a third party.

3.7 Staff with questions or concerns about capacity issues should contact the Senior Management Team.

4.0 Letting recipients know what will happen to their personal data

- 4.1 ILF Scotland must inform recipients about what will happen to their personal data and ask for a recipient's consent to allow it to process the data. Assessors will provide this 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.

5.0 Responsibilities of recipients

- 5.1 The Agreement Form requires a signature from the recipient to confirm that they agree to manage their award in line with their obligations as set out in the Your Responsibilities guide. Recipients are also required to give consent to ILF Scotland carrying out eligibility checks with the Department for Work and Pensions. The ILF Scotland privacy statement further explains how it will process personal data. We discuss below, instances where the recipient does not have the ability to sign.
- 5.2 The person who signs the Agreement Form is the Award Manager and will be fully accountable for all aspects of the care/support package and funding arrangements relating to an ILF Scotland award. It will be their responsibility to ensure that they administer ILF Scotland monies correctly.
- 5.3 Assessors will establish at the review visit if the recipient is capable of managing an award from ILF Scotland.
- 5.4 The Your Responsibilities guide explains what ILF Scotland expects of the person who manages an ILF Scotland award. ILF Scotland staff will advise recipients or their representatives, of what their responsibilities are. It is important that the person managing the award understands that they have responsibilities as an employer. They must understand how they can use ILF Scotland funding and that they must keep proper records. If they cannot do this on their own, they must get someone to help them.

- 5.5 ILF Scotland will ensure that it provides guidance and training to its Assessors to help them determine if a recipient has the capability to manage an award, either on their own or with assistance.

6.0 Other people signing on behalf of the Recipient

- 6.1 ILF Scotland will ask recipients to give consent to their data being processed by ILF Scotland and to agree that they will manage their award in line with their obligations in the Your Responsibilities guide.
- 6.2 ILF Scotland will assume that a person has the capacity to do the above unless it is established otherwise. Assessors will undertake to establish this at review visits.
- 6.3 There are some instances where an authorised third party may have to give consent on behalf of a recipient. This will be where a recipient does not have the capacity to consent or, has capacity but is unable to sign because of a physical disability.
- 6.4 If a recipient does have the capacity to consent but cannot physically sign then a third party may witness their acceptance. They should provide details of why they have witnessed the acceptance.
- 6.5 If a recipient lacks capacity to consent then ILF Scotland will accept signatures from authorised third parties. In the first instance, these are those with Power of Attorney or Guardianship under the 2000 Act.
- 6.6 It should be made clear, on any document that a third party signs, why they are signing on the recipient's behalf.
- 6.7 The person who signs the Agreement Form becomes the Award Manager and takes on responsibility for managing ILF Scotland funding correctly.
- 6.8 The Award Manager must also understand that with their responsibility they become liable for the correct management of the ILF Scotland award. This includes using ILF Scotland funding only to achieve the outcomes detailed in Policy 41 Use of ILF

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Scotland Funding, making sure they employ Personal Assistant correctly and that they inform ILF Scotland of any relevant changes.

6.9 The hierarchy of who can be an Award Manager is detailed in the '*A guide to signing the Recipient Agreement Form*'. The hierarchy is:

1. Recipient
2. Power of Attorney (POA) / Financial Guardian
3. Benefits Appointee

If there are compelling reasons why none of the above can be the Award Manager then one of the below may be engaged. The reasons for choosing one of the below should be recorded clearly on the recipient's file.

4. A suitable third party (such as a family member or management organisation. ILF Scotland should consider the nature of the relationship with the recipient before accepting them as Award Manager.)
5. HSCP/HSCT representative

7.0 Who requires to be present at Review Visits

7.1 If a third party has signed the application or agreement form on behalf of a Recipient, ILF Scotland expects that that person is present at the visit. In the event of a Power of Attorney/Guardian signing, ILF Scotland expects that they will be present at the visit. ILF Scotland will ensure that it communicates this requirement clearly to both the recipient and any third party at the point of arranging the visit.

Annex B: Assessing Capacity

8.0 Assessing Capacity

8.1 ILF Scotland will always start from the assumption that a recipient has capacity. Our assumption will not be that a recipient must have an extensive knowledge of employment law and financial management to have capacity. If a person knows there are areas of managing an award that they need support with and that they get that support, then ILF Scotland can consider them as having the capacity to be capable of managing an award.

8.2 ILF Scotland will not solely base a decision about recipient capacity on the following:

- age
- appearance
- assumptions about their condition
- any aspect of their behaviour

8.3 ILF Scotland will use a number of questions to help it establish if a recipient has capacity to manage an award. These include:

- Does the person 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 person understand that if they employ someone that they have a responsibility as an employer, to comply with employment legislation and good practice?
- 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 person 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?

8.4 One of the responsibilities of an ILF Scotland award manager is to advise us of significant changes. These include:

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- Any change of circumstances
- Any change of benefits
- Any hospital or respite admissions
- Changes to DLA
- Changes to HSCP/HSCT input
- If they stop receiving care/support

8.5 Award Managers should also consider communication. This includes whether the recipient can communicate their decisions and whether the services of a professional should be engaged to aid their communication.

8.6 If an ILF Scotland Assessor has any doubt about capacity, they should request that the HSCP / HSCT / a qualified person carry out medical care, carry out a more thorough assessment.

9.0 Cross References

Policy 41 Use of ILF Scotland Funding

10.0 History Date Reviewed

Version 1: 1 July 2015
Version 2: 15 April 2021