

Policy Circular

Document No 03/12

Owner: Corporate Affairs Team

Subject: Managing an ILF Award

Version: 2 of 2

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Next Review: June 2014

1.0 Background

- 1.1 In the first instance the ILF will assume that a User has capacity unless established otherwise.¹ Capacity is ‘the ability to make a decision about a particular matter at the time the decision needs to be made.’² In the context of this policy, it is the User’s capacity to understand, at the necessary time, what ILF funding is for and how that money should be spent and any responsibilities that they may have as an employer.
- 1.2 However in order to achieve independent living many individuals may require the support of a third party. We will give additional financial support to a User’s package if they need extra assistance to do this.

¹ The first principle of the Mental Capacity Act 2005.

² Mental Capacity Act 2005: Code of Practice.

Independent Living Fund

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The Independent Living Fund is an Executive Non-Departmental Public Body of the Department for Work and Pensions

2.0 Policy

2.1 This policy concerns the following areas:

- User consent to process their personal data and check for eligibility,
- the capacity to understand what ILF funding is for and how that money should be spent,
- the capability to manage ILF funding and spend it appropriately.

2.2 Users must provide consent for their Personal and Sensitive Personal Data to be processed by the ILF.³ Informed consent must also be gained to disclose these data to third parties for legitimate business purposes.⁴

2.3 Only those with the legal authority to do so may consent to data processing on behalf of a User.⁵

2.4 Users deemed to have capacity must sign forms required by the ILF. 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 User deemed not to have capacity must have the proper authority to do so.⁶

2.6 It will be established if a User has the capacity and therefore the capability to manage an ILF award either on their own or with assistance. Users deemed to have capacity are deemed responsible to ensure that their award is managed correctly in line with guidance.

2.7 Users without the capacity to manage an ILF award must use a third party, acceptable to the ILF, to accept responsibility. This person would be deemed liable for the use of monies.

³ As defined in the Data Protection Act 1998.

⁴ This will include eligibility checks with the Department for Work and Pensions and providing Assessors with adequate and relevant information about the User.

⁵ Power of Attorney or a person appointed by the Court of Protection.

⁶ In the first instance these must have Power of Attorney or be appointed by the Court of Protection.

Annex A – Guidance and process notes for staff

3.0 Capacity – definition and assessment

- 3.1 The definition of capacity as ‘the ability to make a decision about a particular matter at the time the decision needs to be made’⁷ is taken from the Mental Capacity Act 2005: Code of Practice.

The first principle of the Mental Capacity Act 2005 states that a person must be assumed to have capacity unless it is established that he lacks capacity.

- 3.2 Assessors will establish if Users have, at that time, the capacity to consent to their data being processed and the capacity to manage an ILF 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 Social Work Team will issue advice to Assessors on how to establish capacity.
- 3.6 If there are any doubts over a Group 2 User’s capacity then the Local Authority should be contacted for a capacity assessment to be undertaken. A copy of the result of this assessment should be kept on file by the Social Work Team to support the decision to accept a third party. The assessment of a Group 1 User’s capacity may require a different approach and the Social Work Team should be consulted.

⁷ Mental Capacity Act 2005: Code of Practice.

- 3.7 Staff with questions or concerns about capacity issues should contact the Social Work Team.

4.0 Letting users know what will happen to their personal data

- 4.1 Users must be informed about what will happen to their personal data and then give consent so that we can process the data. Assessors will provide this information at Review visits. It is also available in the User Guide Booklets and on the ILF's section of the [direct.gov.uk](https://www.direct.gov.uk) website. ILF staff should be able to advise Users, if they contact the office directly, about how their data will be processed. The Records Manager will be able to provide further advice if necessary.

5.0 Letting users know what their responsibilities are

- 5.1 The Agreement Form requires a signature from the User to show that they agree to manage their award in line with their obligations as set out in the User guides. They also sign to consent to eligibility checks to be made with the Department for Work and Pensions. The User Guides further describe how personal data will be processed by the ILF. There may be instances where the User does not have the ability to sign. This is discussed later below.
- 5.2 The person who signs the Agreement Form is the Award Manager and will be fully accountable for all aspects of the care package and funding arrangements relating to an ILF award. It will be their responsibility to ensure that the administration of the ILF monies is being handled correctly.
- 5.3 Assessors will establish at the Review visit if the User is capable of managing an award from the ILF. The capability to manage an award won't be judged on an extensive knowledge of employment and financial management. If a person knows that there are areas of managing an award that they need support with, and that they will get that support, they will be considered capable of managing an award.
- 5.4 The User guides and other ILF documents detail what is expected of someone managing an ILF award. ILF staff should

also be able to advise Users or their representatives what their responsibilities are. That person needs to know that they have a responsibility to ensure that if they employ someone they do it properly. 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.

- 5.5 Guidance and training is given to Assessors to help them determine if a User has the capability to manage an award, either on their own or with assistance.

6.0 Other people signing on behalf of the User

- 6.1 Users should sign to show that they consent to their data being processed by the ILF and to show that they agree to manage their award in line with their obligations as set out in the User guides.
- 6.2 The ILF 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 sign on behalf of a User. This will be where a User does not have the capacity to consent or, if the User does have the capacity, where they are unable to sign because of a physical disability.
- 6.4 If a User 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 User lacks capacity to consent then the ILF will accept signatures from authorised third parties. In the first instance these are those with Power of Attorney or a person appointed by the Court of Protection.
- 6.6 It should be made clear, on any document that a third party signs, why they are signing on the User's behalf.

- 6.7 The person who signs the Agreement Form becomes the Award Manager and takes on responsibility for managing ILF monies correctly.
- 6.8 The Award Manager must also understand that with their responsibility they become liable for the correct management of the ILF award. This includes only spending the money on Qualifying Support and Services, making sure carers are employed correctly and informing the ILF of any relevant changes, as detailed in the User guides.
- 6.9 The hierarchy of who can be an Award Manager is detailed in the Payment Security document 'A guide to signing the User Agreement Form'. The hierarchy is:
1. User
 2. Power of Attorney (POA) / Lasting POA / Court Deputy / 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 User's file.

4. A suitable third party (such as a family member or management organisation. The nature of the relationship with the User should be considered before accepting them as Award Manager.)
5. LA representative

7.0 Who needs to be present at Review Visits

- 7.1 If a third party has signed the application or agreement form on behalf of a User, ILF will expect that that person is present at the visit. In the event of a Power of Attorney signing, the ILF will insist that they are present at the visit. This requirement will be communicated clearly to both the User and such third party at the point of the visit being arranged.

Annex B: Assessing Capacity

8.0 Assessing Capacity

8.1 We will always start from the assumption that a User has capacity and make any decision based on the time it needs to be made. Our assumption will not be that a User 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 they will be considered as having the capacity to be capable of managing an award.

8.2 Whether or not a User has capacity will never be based on simply:

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

8.3 When establishing if a User has capacity to manage an award, 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 award?
- Do they have a general understanding of the responsibilities of an ILF award manager?
- Does the person understand that they are the 'boss', if they employ someone, and that they must ensure all this is done properly?
- Do they understand that all ILF money must be spent properly, on getting someone to provide them with assistance for personal and domestic care?
- Does the person understand that records must be kept on how the money is spent?
- 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 award manager is to advise us of significant changes. These include:

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

8.5 Any communication matters should be considered as well. This includes whether the User can communicate their decisions and whether the services of a professional should be engaged to aid their communication.

8.6 If there is any doubt about capacity then a more thorough assessment should be requested from the local authority or perhaps by a doctor or other medical professional.

9.0 History

This policy was previously named Consent, Capacity and Capability.

10.0 Source

Trustees meeting 04 July 2012