

# Policy Circular

Document No 03/10

**Owner:** Corporate Affairs Team

**Subject:** Trust Funds

**Version:** 3 of 3

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**Next Review:** May 2014

**Please note: The ILF is closed to new applications.**

## Introduction

1.1 This policy applies to all existing users.

1.2 It covers any case where the user:

- Is a beneficiary under a trust fund
- Has funds being administered through the Court of Protection (England and Wales), the Public Guardian (Scotland) or the Office of Care and Protection (N Ireland)
- Receives payments from the Thalidomide Trust

1.3 The term “trust fund” is used throughout this policy to cover all these situations

## 2.0 Policy

2.1 There are three different situations which are covered by this policy:

- When a user first receives money in trust;
- The use of the trust money by the user; and

- Undertaking a financial assessment for a user with a trust.  
Please refer to the section of this policy relevant to which of these situations you are considering.

### **3.0 When a user first receives money in trust**

#### **3.1 Users who applied on or after 1 April 2008**

- 3.2 Where a user who applied to the ILF on or after 1 April 2008 subsequently receives compensation or becomes a beneficiary of a Trust fund, the ILF award should be withdrawn if the money held in trust exceeds £23,250.
- 3.3 Where the capital held by the trust is £23,250 or less there is no restriction on how a candidate or his trustees can spend any money paid from the trust.
- 3.4 Where the trust fund derives from an award of compensation then it is the **total** amount of the compensation that is the determining factor. No distinction is to be drawn between the various elements of the award such as pain and suffering, future losses, cost of care etc.
- 3.5 Where periodical payments or a structured settlement are involved the ILF will not normally fund where in the reasonable opinion of the Trustees the **total** value of the payments likely to be made as periodical payments or under the structured settlement is greater than £23,250.00.
- 3.6 Where ILF has withdrawn an award in accordance with this section of the policy, any candidate may ask for a review of that decision on the grounds that they should be considered an exception to the policy. The onus is on the candidate to set out the reasons why the normal policy should not be applied. Requests for a review will be determined in the first instance by the Senior Management Panel. Guidance for the Senior Management Panel is set out at Appendix 1.
- 3.7 Any candidate who is dissatisfied with a decision of the Senior Management Panel can appeal to the Trustees' User Personal Cases Committee.

- 3.8 Cases involving payments made or derived from any of the following should not be suspended and should be referred to the Senior Management Panel:

Thalidomide Trust  
Vaccine damage payments  
The Macfarlane Trust  
The Macfarlane (Special Payments) Trust  
The Macfarlane (Special Payments) (No 2) Trust  
The Fund  
The Eileen Trust  
The Skipton Fund  
MFET Limited  
The Caxton Foundation

### **3.9 Users Who Applied Before And Up To 31 March 2008**

- 3.10 Where a user applied prior to or on 31 March 2008, their award should not be suspended due to a trust fund being established, whether the money is received before or after 1 April 2008.

### **4.0 The use of the trust money by the user**

- 4.1 Money from a trust fund may be used to purchase Qualifying Support and Services (QSS) in addition to or in place of QSS purchased with funding from ILF.
- 4.2 Where a User purchases QSS with trust fund money, suspension or cancellation of the award should not normally be considered.
- 4.3 It is not necessary to ask for trust accounts, to refer trust fund cases to the Operations Director or to make enquiries to determine whether money from a trust fund has been spent on QSS.
- 4.4 ILF payments must be spent on QSS and users must account in the usual way for how ILF payments have been used.
- 4.5 Any unspent ILF funding must be returned to ILF in accordance with normal policy.

## 5.0 Financial assessment

- 5.1 For all ILF users who are in receipt of Income Support, Income Based Jobseekers Allowance, Income Related Employment and Support Allowance or Pension Guarantee Credit, the fact that they are in receipt of these benefits is sufficient information that the person is financially eligible for an ILF award. No questions need to be asked about how their trust fund money is spent.
- 5.2 For **all other users** ILF carries out periodical assessments of their financial circumstances (notional assessments) to determine if they are financially eligible, these assessments also take account of any partner's financial circumstances. These assessments also determine the amount of any available income (user contribution).
- 5.3 When notional assessments are being undertaken, ILF should ask if the user has received any payments from the trust fund in order to decide whether they should be taken into account as income or capital.
- 5.4 Appendix 2 to this policy provides guidance on when payments are treated as either income or capital.

## 6.0 User trusts

- 6.1 This is a term sometimes used (there may be others) where a trust fund is set up to receive Direct Payments made by a Local Authority. These trusts are normally set up where there are issues relating to the candidates capacity to receive a direct payment. The arrangement allows LAs to make direct payments via the trust in circumstances when a Direct Payment might not otherwise be available. User trusts may also be established where a bank will not open an account in the candidate's own name.
- 6.2 It may be that ILF payments will also be channelled through such a trust, and possibly also benefits. **Where Direct Payments from a local authority (or the ILF) are managed in this way this policy does not apply to these user trusts.**

6.3 If money from any source other than Direct Payments or an ILF award or the candidates' benefits is paid into a trust it should not be treated as a user trust. If there is any doubt about whether a trust should be treated as a user trust, guidance should be sought from the Policy Development Team.

## **7.0 Source**

Trustees meeting December 2009  
Operational Delivery Board 2 September 2010  
Income Support (General) Regulations 1987  
Regulation 46: Schedule 9 paragraph 15; Schedule 10 paragraphs 12, 12A, 44 & 45  
ILF Trust Deed, Third Schedule  
ILF Trust Deed amendment 29 July 2011

## **8.0 History**

This policy replaces previous policies:

- Court Of Protection Cases 14/04
- Structured Settlements 16/04
- Thalidomide Trust Cases 04/06
- Trust Funds And Compensation Cases 12/08
- Trust Fund Cases 13/04
- Payment Of Trust Funds/ Notional Assessments – Interim Policy

## **9.0 Date reviewed**

15 December 2010  
8 August 2011  
19 June 2012

## **APPENDIX 1**

### **GUIDANCE FOR SMP/UPCC ON ISSUES IN TRUST FUND CASES**

Cases may be referred to the Senior Management Panel (SMP) or the User Personal Cases Committee (UPCC) when a user who has applied on or after 1 April 2008 has entitlement to funds held in a trust fund and wishes to apply for an exceptional decision as to why their ILF funding should continue. The capital in the trust fund must be greater than £23,250 for an exceptional decision to be required.

The ILF Trust Deed states that the ILF will not normally offer financial assistance to such an individual. Therefore, SMP or UPCC will be asked if this case is exceptional, so that the normal policy should not apply.

SMP/UPCC should not be asked to consider any appeals on notional assessments involving a trust fund as the ILF has no discretion in this area. A user may ask for the complaints and decision review team to review that the application of the rules has been correct but cannot review the content of the rules as these are applied from the income support regulations, over which the ILF has no discretion.

The general principle behind the policy is that receipt of ILF funding is means tested and all recipients must have capital of less than £23,250. It would therefore be inequitable for individuals to be able to escape this eligibility condition by capital being placed in a trust fund.

SMP and UPCC therefore need to consider whether the particular case and reasons presented mean that this individual's case is exceptional and provides reasons that the general policy should not be applied. They may wish to take into account the normal capital disregards which can be applied, as set out in the COGA and the 'Treatment of Capital' policy. However, these are not decisive and SMP and the UPCC have discretion to take other factors into account. If the capital disregards are considered as a reason for exceptionality, conditions or periodic review of the decision may be deemed appropriate to take account of any changes.

## **APPENDIX 2**

**This appendix only relates to users who applied up to or on the 31 March 2008 or to users where an exceptional decision has been taken as detailed in Appendix 1.**

### **NOTIONAL ASSESSMENT ISSUES IN TRUST FUND CASES**

Section 7 of the COGA states that capital shall be calculated in accordance with the provisions of section 136 of the Social Security Contributions and Benefits Act 1992 and regulations 46 to 52 and schedule 10 of the Income Support (General) Regulations 1987. In addition to these regulations, there are certain additional exceptions set out in the COGA.

The guidance set out below is intended to reflect how the IS regulations operate in the situations that ILF staff are most likely to encounter. No attempt has been made to cover all possible aspects of the IS regulations that might potentially apply or to cover all possible case scenarios that might arise.

In case of any doubt please refer to the Decision Makers Guide, the IS regulations and/or seek guidance from the Policy Team.

#### **1.0 Capital held in a discretionary trust**

Any capital which is held in a discretionary trust is not taken into account in the assessment of a candidate's means for eligibility purposes and to determine any user contribution. The legal owners of the capital are the trustees and not the candidate. This is so regardless of the source of the capital – e.g. personal injury compensation, property settled (placed in trust) by will or by a living relative.

#### **2.0 Payments made from the Trust Fund**

##### **2.1 Income payments**

Regular payments of income are not taken into account. The candidate is free to spend the money as they wish; there is no restriction on how the money can be used. Regular payments are payments that are paid or due to be at regular intervals – weekly, monthly, annually or following some other pattern.

Income that is not spent within the period in respect of which it was paid then becomes capital. (This rule applies to any regular payments received by the candidate).

## **2.2 Capital payments**

One off or lump sum payments made from the trust fund are treated as capital in the hands of the candidate. Lump sum payments should be aggregated with any other capital owned by the candidate to determine whether they have exceeded the ILF capital limit or to ascertain whether any tariff income should be included in the assessment.

## **3.0 Capital administered by the Court of Protection**

Where the capital being administered by the Court of Protection (COP) represents damages or compensation in respect of personal injury, the capital is disregarded. It is treated in the same way as capital held in a discretionary trust.

Capital administered by the COP that derives from a source other than personal injury is treated as if it is the candidate's capital and is taken fully into account.

## **4.0 Thalidomide Trust**

Payments from the Thalidomide Trust are made on an annual basis. The annual payments are disregarded for Income Support purposes (and therefore also for the ILF assessment). Any payments from the Thalidomide Trust that are not spent in the year in which payment is made will thereafter count as capital. Payments are made to Thalidomide beneficiaries on 6<sup>th</sup> April each year.

## **5.0 Payments in respect of personal injury**

If a lump sum payment for personal injury (to the user or their partner) is made direct to the user and has not been put into a trust, it is disregarded for 52 weeks from the date of receipt. This is to allow time to set up a trust. The disregard only applies to the initial payment. Subsequent payments made in consequence of the same injury are taken into account in full.

Where a lump sum payment is made direct to the user, guidance should be sought from the policy team.