



## User Policy information sheet 1

### Employer Support policies

This information sheet is correct at the time of issuing but the ILF reserves the right to update this policy at any time. Please refer to the DWP website for the most current version of this policy.

### About this information sheet

This policy information in this sheet is primarily intended to support Users who directly employ their own Personal assistants however the Disclosure and Barring Services/Protecting Vulnerable Groups policy may also be applied where a PA is self-employed. ILF staff should not act as advisors on matters of employment.

Policy guidance is provided on the following subjects:

- [Payroll costs](#)
- [National Insurance Costs \(NIC\) and Pay As You Earn \(PAYE\) tax](#)
- [Holiday Pay](#)
- [National Minimum Wage](#)
- [Statutory Sick Pay](#)
- [Contributions towards redundancy and related costs](#)
- [Employer's Liability Insurance](#)
- [Disclosure and Barring Services/Protecting Vulnerable Groups checks](#)
- [Parental leave](#)
- [Health and safety training](#)
- [Task training](#)
- [Legal costs](#)
- [Workplace pensions](#)
- [Advertising costs](#)

## Source information

Section 3 (1) (a) of the Deed gives Trustees a general power to make payments to cover costs that in their reasonable opinion have been or will be properly incurred as a consequence of purchasing qualifying support and services. Policies listed below are allowed as a result of this clause in the deed (further source information is provided alongside individual policies in some cases). Trustees have made decisions on the individual matters of policy detailed below.

## Payroll Costs

Decision - Trustees meeting 12/09/07

The ILF can pay towards the cost of payroll services where a user who directly employs their own PA or their representative requests this.

The ILF can normally consider a payroll charge of up to £12 per week. (See process guide). Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum (see ILF payment policy) applicable to the user.

Payroll costs can be paid in addition to financial management support costs (see separate policy)

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

Decision - Trustees meetings 13/09/06, 08/11/06, 13/12/06

The ILF will include an additional amount for employers NIC within every offer that is calculated where a user is to directly employ their own PA and where the earnings threshold is met. To avoid duplicate payments the ILF will not normally allow this inclusion where a direct payment is being matched or an inclusive rate is to be applied, as it will be assumed that this cost has been factored into the rate. (See process guide).

An additional amount will not be included within the offer for the employees NIC, this will be deducted from the PA gross wage.

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

Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum applicable to the user. Other elements of the care plan should be re-arranged to accommodate these costs.

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## Holiday Pay

Trustees meetings 13/09/06, 08/11/06, 13/12/06

The ILF will ensure that an amount of money for statutory holiday pay is included within all offers made to users who directly employ PA's. This is to enable the user to give their regular PA paid annual leave whilst employing alternative care. This will be the equivalent of 5.6 weeks of the care costs within the offer on an averaged basis. The ILF will not make a contribution towards costs required to cover individual contractual agreements that exceed statutory entitlements.

This contribution will not be included where the PA is self-employed. Where the ILF are matching a Direct Payment (DP) or using an inclusive rate to calculate an offer it will be assumed that provision exists within this rate for holiday pay. Where it is confirmed that an amount for holiday pay is not included within the DP or inclusive rate the ILF should then add in an amount to the offer in line with the policy detailed above.

Where a PA is to take maternity, adoption, extended paternity 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 the gap in the care. If a User attends respite and requests that a retainer payment is made, provision to cover Holiday Pay should still be included within the offer. (See process guide)

Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum applicable to the user. Other elements of the care plan should be re-arranged to accommodate these costs.

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## National Minimum Wage

The ILF should ensure National Minimum Wage (NMW) rates are applied to all offers where appropriate. Details of current rates and who these apply to can be found on the [direct.gov](http://direct.gov) website.

Workers do not necessarily have to be paid the National Minimum Wage if they are considered self-employed for NMW purposes. It is the responsibility of the User to establish the correct employment status of a Personal Assistant.

During night periods the NMW must be paid for every hour of work actually provided however it does not necessarily need to be paid during night periods when work is not provided, so for example when a PA is resting or sleeping. However this may be different depending on the type of contract that a PA has.

It is the responsibility of the user to establish whether NMW should be paid during night periods and where the ILF is asked to pay an extra amount to enable NMW regulations to be complied with for a night period the ILF may consider allowing extra monies to be paid, particularly if legal advice has been obtained to indicate this is required.

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## Statutory Sick Pay

Trustees meetings - 13/09/06, 08/11/06, 13/12/06.

Where a user has paid Statutory Sick Pay (SSP) to a directly employed PA but has only been able to recover some of this under the Percentage threshold scheme the ILF can consider paying the shortfall (See process guide). The ILF will not make such a payment where a PA is self-employed.

Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum applicable to the user.

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## Contributions towards redundancy and related costs

Decision – SMB 12/02/14 Trustees meetings 19/02/14 SMB 11/03/14 Governing document reference - Trust Deed, First schedule Part 1 6;7 (c)

This policy is applicable with effect from 19 February 2014.

The ILF can consider making a contribution towards costs a user has incurred as a result of ending the employment of a directly employed Personal assistant (PA).

Two types of costs can be considered, those which are to allow for pay in lieu of notice (PILON) and also statutory redundancy pay.

These costs can be considered in circumstances where a user becomes ineligible for funding (a group 3 payment), or where payments will continue but where one or more PA has been made redundant.

The ILF will not make a payment where the PA is self-employed.

The ILF will not make a payment for PILON where a user who was the employer has died but may consider a contribution towards redundancy costs. Where a user dies and another individual, such as the User's Mother or friend etc, directly employs the PA PILON costs can still be considered.

### **Other costs**

In addition the ILF can consider contributing towards outstanding costs related to the previously employed PA such as payroll costs, Holiday pay etc, in line with normal policy. Any such payments can only be made in line with normal maximum sum and group 3 restrictions (see below for more details of restrictions). Users or their representatives should make requests to the ILF for such costs to be covered in line with ordinary procedures.

### **Requests for payment**

Prior to the ILF considering a payment the user will need to check the terms of their Employers Liability Insurance and will be expected to claim against the insurance where redundancy related costs are covered. The ILF will only consider a contribution towards costs not covered by the user's insurance.

Where a user receives a direct payment they should check if any ELI policy purchased from this money covers any redundancy costs.

The user will then need to submit a request to the ILF detailing the reason for the payment request and the amount required (separating PILON and redundancy costs), and provide a brief overview of how this has been calculated.

The ILF will consider any payment within the limitations of the trust deed as set out below.

### **Limitations for users who remain in payment**

Payments are capped by the average weekly maximum sum for the relevant group within a given financial year.

Group 1 user's average weekly payment within a financial year cannot exceed £815.00

Group 2 user's average weekly payments within a financial year cannot exceed £475.00

This means that where a user already has payments at or near the relevant maximum sum the ILF will not be able to contribute towards redundancy costs, or may only be able to contribute in part.

There is no requirement for any Available Income to be deducted from such a payment as Available Income is already deducted from the user's offer.

### **Limitations for users who are no longer in payment (group 3 users)**

The trust deed allows a payment to be made to former group 1 and group 2 users, provided that the total payment does not exceed 12 weeks of the maximum sum of the relevant group.

This means that the combined contribution towards PILON and statutory redundancy costs for a former group 1 user cannot exceed £9,780 and for a group 2 user £5,700.

There is no requirement for available Income to be deducted a from a group 3 payment.

Also see the ILF Run off payments (group 3) policy and payments policy.

### **Jointly funded support**

Where the PA care costs are shared with the Local Authority the ILF will consider whether the notice and compensation costs should be shared with the Local Authority.

### **Advice and support**

The ILF is unable to advise a user regarding specific redundancy situations or costs. Where support is needed this should be obtained from an external source for example ACAS.

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## **Employer's Liability Insurance (ELI)**

Decision - Trustees meetings 13/09/06, 08/11/06, 13/12/06

The ILF can pay for ELI costs, where the user directly employs a PA. There are 2 levels of insurance cover available and the ILF can pay for either of these. The ILF will not cover these costs where the PA is genuinely self-employed or where the care is provided by an agency. (See process guide)

Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum applicable to the user.

Where a user has an ELI policy this factor will be considered if a request is made to pay for Legal or redundancy related costs to be covered.

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## **Disclosure and Barring Service/Protecting vulnerable groups (previously CRB) checks**

Decision - Trustees meeting 11/07/08, 09/07/08

The ILF can pay for the cost of disclosures and any associated umbrella costs for anyone who will be providing care to an ILF user, providing there is scope within the ILF maximum sum. (See process guide) These costs may be

covered by the ILF whether the PA is directly employed by the user or where the PA is self-employed.

Inclusion of this additional cost within an award must not take the overall funding above the annual group maximum sum applicable to the user.

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## Parental leave

Decision - Trustees meetings 13/09/06, 08/11/06, 13/12/06

The ILF will not make any financial contribution towards statutory Maternity, Paternity or Adoption leave payments. This is because users should be able to claim back all monies paid to a PA from HMRC.

The ILF will not contribute towards any other (contractual) payments that a user may have agreed to make.

ILF monies can be used to pay for a replacement carer 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. The ILF can meet the costs of annual leave for a PA who is taking Maternity, Paternity or Adoption leave assuming the annual maximum sum will allow for this. Where there is insufficient scope within the maximum sum to accommodate these costs the care arrangements may need to be rearranged to allow for the costs to be met.

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## Health and Safety training

Decision Trustees meeting 12/03/08

The ILF may assist users 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 can assist where such costs are not due to be met by social services or another source.

Such costs can only be met as and when they are incurred and should not be included within the normal ILF offer. (See process guide) The ILF will not cover these costs where the PA is self-employed.

Inclusion of this additional cost within an award must not take the overall funding above the group maximum sum applicable to the user.

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## Task training

Decision-Trustees meeting 12/03/08,

In circumstances where a User needs an existing PA to provide 'on-the-job' training for a new PA to perform specific tasks the ILF can consider paying for the extra time that is needed for this. Where the LA share joint package costs with the ILF such training costs should be shared with the LA.

The ILF will not pay for a PA to attend formal training to expand their skill base or attain educational qualifications. (See process guide)

Inclusion of this additional cost within an award must not take the overall funding above the group maximum sum applicable to the user.

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## Legal costs

Decision - Trustees meeting 12/09/07,

The ILF may consider paying for legal costs incurred that relate directly to the users role as an employer. The decision to pay such costs may only be made by the ILF Trustees through the user personal case committee (UPCC) and all requests will be considered in line with the current financial position. The decision to agree to pay for such costs may be affected if the user has obtained an [Employers Liability Insurance](#) (ELI) policy that offers to cover legal costs. (See process guide)

Inclusion of this additional cost within an award must not take the overall funding above the group maximum sum applicable to the user.

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## Workplace Pensions

Currently small employers are not required by law to make contributions to employee pensions. The ILF will not make any payments towards employer pension contributions.

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## Advertising and recruitment Costs

Decision – Trustees meeting 13/2/08 and 12/03/08

The ILF can consider covering advertising costs that are incurred when a user needs to recruit a new directly employed PA. A decision to fund recruitment costs other than advertisement costs must be considered by the ILF senior management panel.

Advertisement and recruitment costs may be paid as and when they occur on production of evidence and should not be included within the offer calculation.

Advertisement and recruitment costs may only be met where there is scope within the maximum sum limits to do so.

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## Useful Links

It may be useful to also read the following policy documents: -

- Financial management support
- ILF payments
- Run-off payments (group 3)

Queries relating to the policy can be emailed to the policy in-box at <mailto:policy.development@ilf.gsi.gov.uk> or alternatively see the Frequently Asked Questions (FAQ) document.

## Administration section

**Document owner**                      **Corporate affairs**

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