

Section 10 Employing Care

Information in this section applies to all Fund Users (see preface)

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10.1 Who Can Provide Support To A Fund User

It is the choice of a Fund user to decide whether they wish to use an agency, or to employ personal assistants (PAs). Some Fund users like to employ a care agency to assist them as they find this the easiest option, whilst others prefer to recruit and employ their own PAs giving them control of the support they need. Some Fund users have a combination of agency support and PA support.

10.1.1 Relatives As Personal Assistants (PAs)

A Fund user cannot normally employ a relative who lives in the same house as the Fund user as a PA using payments awarded by the Funds (see 3.4.5). A relative that lives at a separate address from the Fund user can be employed as a PA using payments awarded by the Funds.

10.1.2 Care Agencies

If a Fund user chooses to use an agency, the agency will take care of the following:

- Recruitment of PAs
- Providing PAs
- Paying wages, tax and national insurance
- Any other day-to-day issues

The Funds will consider the reasonable rate an agency may charge, including travel costs (see 7.1.2.2). An agency should insure their own staff against any accidents that may occur whilst they are providing support for the Fund user.

10.1.3 Agents Or Introducers

These are often named as an agency and confused with agencies that employ their staff (see 10.1.3). An agent does not employ staff, they usually only introduce a PA to

the Fund user; the Fund user then becomes the employer of the PA. If an agent is used to introduce a PA to a Fund user, the Fund user will need to treat the PA as an employee.

10.2 Employing Personal Assistants (PAs)

10.2.1 Employer's Legal Requirements

A privately employed PA is a support worker that a Fund user employs to provide the care they require. The Fund will assist a Fund user to meet their employer's legal responsibilities where possible within the confines of the Funds' maximum payment limits (see Section 2) and the Fund's policies. Fund users need to be informed of their employer's responsibilities, and the costs these might incur.

10.2.2 Employees' Employment Rights

All employees, including PA's, have statutory employment rights, which are law. Below are some examples of employees' rights.

- The right to written terms and conditions
- The right to 24 days paid holiday/leave per year pro rata
- The right to an itemised pay slip
- The right **not** to have illegal deductions from earnings
- Maternity leave
- Written notice
- Paternity leave
- The right **not** to be unfairly dismissed
- The right **not** to be discriminated against on grounds of race, sex or disability, unless as defined in the Sex Discrimination Act 1975, Race Relations Act 1976 or Disability Discrimination Act 1995 there is a genuine occupational

qualification that warrants not employing a person of a certain sex, race or with a disability.

- The right to time off for public duties
- Health and safety rights
- The right to be paid at least the minimum wage

A PA also has contractual rights in addition to the above statutory rights. Whether or not a Fund user has given their PA a written contract, in law, a contract still exists between the Fund user and their PA. It is a legal requirement of an employer to provide his/her employees with a contract of employment, within two months of the employee starting.

10.2.3 Basic wage

The reasonable cost of a PAs basic wage will be considered, the basic wage elements should be based on local rates for work of comparable responsibility and skill levels, eg, the advertised rate for a home care worker. Employers on-costs will be over and above the basic wage, however the employer should deduct Income Tax and Employees' National Insurance from a PA's wages. Basic daytime hourly rates vary widely around the UK with a starting point of the National Minimum Wage (NMW).

10.2.4 National Minimum Wage (NMW)

The NMW is the minimum the Funds will consider when making an offer. If care provided is for a sleepover the NMW only has to apply to the waking hours covered, if the contract with the PA clearly sets out the period when the PA is permitted to sleep, and the employer provides suitable sleeping facilities. Rates for a waking night shift will often be higher, the minimum the Funds will assess at being the NMW per hour

worked. The Funds will make an offer not below the NMW rate. The Funds will make it clear to the Fund user how an offer has been calculated and that as an employer they have a legal responsibility to pay the NMW, unless there is evidence that a PA is a volunteer worker or is self-employed and chooses not to charge NMW. (A volunteer worker is, for example, a person who works for a charity or Voluntary Organisation. These people do not have to be paid the NMW).

10.2.5 Employer's National Insurance (NI)

The Fund user must pay Employer's NI for any PAs they employ - who earn over the earnings threshold as defined by HMRC. The Funds will automatically include a sum of money for Employers NI within all care packages that cost more than the earnings threshold where the care is to be provided by a directly employed PA.

Users should state the amount they require to be included for NI purposes. Where a user is unable to do so the ILF will include a set amount of money within the offer for NI as specified by ILF policy. Where a user notifies the ILF that this amount is not adequate the ILF can consider increasing the amount to be paid for this purpose.

Where ILF is to make an offer based on matching a Direct Payment rate an assumption will be made that this already has an inclusion for employers NI within it. Where the ILF agrees to match a direct payment rate the ILF would expect the Local Authority Social Worker to provide information to users about the direct payment rate so users can put the appropriate amount of monies aside for NI purposes. Only where a user and social worker explicitly inform the ILF that an inclusion has not been made for NI within the Direct Payment rate will the ILF consider providing a separate sum of money for this purpose.

Employer's NI is payable per employment (ie for each job a person does) when the wages are above the Contributions Agencies minimum threshold amount. There is then a sliding scale as NI is paid at a percentage of the amount above the Contributions Agencies minimum threshold amount. Users should be encouraged to contact HMRC for specific information relating to NI contributions.

10.2.6 Holiday Pay

If a Fund user employs PAs, each PA is legally entitled to receive 24 days holiday pay per year. The amount a PA is entitled to receive is equivalent to the usual weekly hours worked.

ILF will automatically include within offers for directly employed care an additional amount of money (equivalent to 24 days extra care) so that users can meet their obligation as an employer and give employees paid holiday.

ILF will calculate the total extra amount that will be required for holiday pay for a year and then average this out over the course of the year so that a small amount is paid each week for this purpose. The user will then need to put this sum of money aside so that it can be used for its intended purpose.

Where the ILF offer is based on matching a direct payment rate an assumption will be made that there is already an inclusion within the rate for holiday pay and so no extra will be calculated. Where the ILF agrees to match a direct payment rate the ILF would expect the Local Authority Social Worker to provide information to users about the direct payment rate so user can put the appropriate amount of monies aside for holiday pay. If a user and social worker can specifically confirm that a direct payment rate

does not include holiday pay then ILF could consider making a contribution at this point.

It is possible for an employer to specify when they would like an employee to take annual leave and if an ILF user states that their PA must take their leave during periods of time when they are in respite then extra monies will not be needed from the ILF.

A payment for holiday pay will not be made for agency staff, as they are employed by the agency not the Fund user.

10.2.7 Statutory Sick Pay (SSP)

Statutory Sick Pay (SSP) is the minimum level of sick pay an employer must pay to most employees who are off work sick for 4 or more calendar days in a row. It is paid for qualifying days (after an employee has served 3 waiting days) for employees with average weekly earnings of not less than the Lower Earnings Limit. Qualifying days are normally the days an employee would be required to work under the terms of their contract.

If an employer qualifies under the Percentage Threshold Scheme (PTS), they are entitled to recover a certain amount of SSP paid to their employees. It is an employer's responsibility to determine their employee's entitlement to SSP, to make payments as necessary and reclaim monies where appropriate.

The Fund is able to consider reimbursing Fund users for the excess amount of SSP that cannot be recovered, providing there is scope within the maximum payments (see Section 2).

10.2.8 Employer Liability Insurance

Employers Liability Insurance (ELI) is compulsory for many employers: however there are certain exceptions.

Where the ILF is requested to do so an inclusion can be made within the offer for ELI where the user directly employs PAs. This will protect the Fund user if a worker has an accident whilst providing care to the Fund user. There are insurance companies who provide this type of cover as a separate policy to other insurances a Fund user may have. ILF will consider making such a payment where the maximum sum will allow for this.

10.2.9 Stakeholder Pensions

Fund users who employ 5 or more employees are obliged to offer access to a stakeholder pension scheme. This includes consultation, selection of a scheme and payroll deductions if an employee wishes. The employer is not required to make a contribution to a stakeholder pension. The Funds will not make any payment towards stakeholder pension contributions. Fund users who require information about stakeholder pensions should contact either

- The Occupational Pensions Regulatory Authority (OPRA)
Tel: 01273 627600 Email: helpdesk@opra.gov.uk or

- HMRC - Employers helpline
Tel: 08457143143

10.2.10 Statutory Maternity/Paternity/Adoption leave and pay

PAs who are employed by ILF users may need to take a period of leave due to their parental responsibilities.

Users must ensure that they comply with the law with regard to an individual's leave entitlement (HMRC employer helpline or website may provide specific guidance) and that they are paid the necessary corresponding pay entitlement during this period.

Users will be able to claim back the full amount of any statutory maternity, paternity and adoption pay that they are due to pay from HMRC.

ILF will not make any contributions towards maternity, paternity or adoption pay as the whole amount can be re-claimed from HMRC. If a user wishes to pay a PA an amount additional to the statutory requirement ILF is unable to help with the cost of this.

10.3 Other On Costs

10.3.1 Payroll Costs

If a Fund user finds the prospect of administering payments to pay PAs daunting and wishes to use a payroll service to keep records and pay their PAs, a reasonable cost for the service can be considered by the Funds as part of the package, subject to the Funds' maximum payment ceiling (see Section 2).

10.4 Self-Employed PAs

It is not the choice of a Fund user, or their PA, to decide if a PA is self-employed. Only the HMRC (Her Majesties Revenue and Customs) can make a decision regarding a person's self-employment status. If someone is classed as self-employed, the PA will have confirmation of their self-employed status, from HMRC, for the work that they undertake, eg. if a PA works for two people they will have evidence of self-employment for both jobs.

PAs who are self-employed are not entitled to holiday pay, sick pay etc. The Fund user will not have to make any deductions for tax or NI if the PA is self-employed. The PA should be able to obtain a statement from the tax office to verify their self-employed status in relation to the work they do for a Fund user. It is essential that the Fund user sees evidence of the PAs self-employed status, thus ensuring the Fund user is not committing an offence, by not paying tax and employer's NI if HMRC and DWP have not classed the PA as self-employed.

10.5 Arriving From Abroad And Working As PAs

If a Fund user informs us they wish to employ a PAs who have recently moved to this country they should be made aware of the Asylum and Immigration Act 1996. The act states, "that it could be a criminal offence to employ someone who does not have permission to be in, or to work in the United Kingdom (UK)".

Fund users should make certain basic checks before taking on new PAs relevant to this situation. **The checks are not compulsory but are advisable.** If Fund users do not make the checks, they will have no defence in the event of criminal proceedings by the Immigration Department. Fund users need to see a document that relates to the

person they intend to employ, and which confirms they are in the UK legally and able to work. Such information will be held on the person's passport, visa, or work permit or on a documented National Insurance Number (NINO) (see 10.5.1).

10.5.1 What does a “documented National Insurance Number (NINO)” mean?

This means: A document issued by a previous employer, HMRC, Department for Work and Pensions, or the Employment Service which states the NINO of the person named. **Examples of such documents are as follows:**

P45, pay slip, P60, NINO card, or a letter issued by one of the government bodies mentioned above. Fund users should be advised to keep a record of the document they have seen eg. photocopy it.

10.5.2 Temporary And Permanent NINOs

A person legally entering the UK and wishing to work will initially be advised to quote their temporary NINO. This will be in the format of: TN, followed by 6 digits, followed by either M or F eg. TN 12 09 50 F.

TN means temporary number

Digits these consist of the person's date of birth

M/F either male or female

If further information is required, this can be obtained from the Home Office, Immigration Department, their number should be in the phonebook.

10.6 Records Kept By The Funds

The Funds keeps a record of any agency used and/or whether a Fund user employs PAs, or uses self-employed PAs using Fund payments.

The Funds will ask this information to be supplied in circumstances as follows: -

- When an offer is made, or whenever there is a change in payments
- At a revisit or review visit (see Section 11)

10.7 Information The Funds Require

10.7.1 Agency Workers

If a care agency is used the Funds do not need to know the name of each individual worker. However, the Funds do need to know:

- The name and address of the agency
- How much the agency is paid each week or four-weekly
- The dates on which a care agency started, and finished if no longer used
- How many hours the care agency works each week

10.7.2 What The Fund Does With This Information

The Funds keep records of care agencies on its computer system and in a Fund user's personal file. The Funds **do not** automatically pass on this information to anyone else, and the Funds are not allowed, by law, to pass on this information, unless there are very specific reasons to do so, for example to prevent or detect a crime.

10.7.2.1 Data Protection (see 1.12)

Part of the Data Protection Act states that the Funds must tell people if it holds information about them.

If a care agency is used the Funds are not required to write to the agency because the agency is a company rather than a private individual, so the terms of the Data Protection Act do not apply in the same way. However, there are times when the Fund

is permitted by the Data Protection Act to contact the care agency, for example to detect or prevent a crime.

10.8 Fund Users Keeping Records

10.8.1 PAs And Agencies

A Fund user needs to keep a record of the hours worked by an agency and/or PAs and how much they are paid.

- A Fund user needs to keep a record of the number of hours worked to calculate wages or check agency bills at the end of every week or month
- A Fund user needs to keep records for tax purposes if private PAs are employed
- A Fund user needs to keep records in case they have to pay Statutory Sick Pay or Statutory Maternity Pay
- A Fund user needs to keep records in case there are any disputes between the Fund user and the PA or agency, about when they have worked and how much they have been paid
- A Fund user needs to keep records in case the Funds have any queries about how they have used payments

10.8.2 Records The Funds Will Ask To See

The Fund will not ask to see records about PAs or care agency as a matter of course. Payments from the Funds are worked out according to the weekly cost of care and are usually made automatically every four-weeks. We do not ask to see records each time we make a payment. However, the Funds might ask to see records of who has been employed using the Funds payments. We may also ask to see records if it is unclear how a Fund user has been using the payments from the Funds.

10.8.3 How Should A Fund User Keep Records?

It is up to the Fund user how records are kept, some people like to write everything in a book, whilst some people keep records using a computer. (See some examples in Appendix D).

10.8.4 For How Long Should A Fund User Keep Records?

The Funds need a user to keep records for 2 complete tax years after the work has been done. **A tax year runs from 1 April one year to 31 March the following year.** This means that, if someone works in January 2003 a Fund user needs to keep records about that work until April 2005, so that they have got it for two complete tax years after the work has taken place. This means that the Fund user will be able to answer any tax queries that come up if they have employed PAs privately, or be able to tell the Funds about care that has been employed since the last review, which happens every two years (see 11.1).

NB As an employer, HMRC will require a Fund user to keep records for a certain length of time, the time scale should be checked with the HMRC.

Appendix D Record Of PA Employees Or Care Agencies

Name	Address	National Insurance Number	Date Started	Date Left	Hours and Rate of Pay
Example John Smith	12 John Street Johnstown JH1 2DP	AB123456C	01/01/2000	31/01/2003	20 hours pw @ £6.50ph

Weekly Timesheet

Name of Fund User

Name of Personal Assistant (PA)

Week Beginning

Personal Assistant's NINO

Day	Rate	Number of Hours	Rate	Number of Hours	Rate	Number of Hours
Monday						
Tuesday						
Wednesday						
Thursday						
Friday						
Saturday						
Sunday						

Signature of Fund User

Signature of PA

Date

Employee Details Record

Employers Name: _____

Employee's Name	
Employee's Address	
Date of Birth	
Telephone number	
National Insurance Number	
Start Date	
Leaving Date	
Bank Details (do not fill in if you are paying by cheque or cash)	
Name of Bank	
Bank Address	
Sort Code	
Account Name	
Account Number	

Personal Assistant's Weekly Rota

Employees name: _____

Week starting on (Monday date): _____

Day	Start time	Finish time	Number of hours worked	Overnight shift
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				

Total number of hours worked: _____

Total number of overnight shifts worked: _____

Amount paid: £ _____ Date of payment: _____

Personal Assistants signature _____

Method of payment (tick a box): Cash Cheque Bank account