

Leaflet 5 - Employing Personal Assistants

This leaflet contains information about:

- **Using care agencies**
- **Employing personal assistants yourself**
- **What information the Fund will ask you about your carers or PAs**
- **Keeping records about your carers or PAs**

Choosing who to employ using your Fund payments

There is a lot to think about when you get your award from the Fund and a big part of this is who you employ to assist you.

Some ILF users like to employ a care agency to assist them, whilst others prefer to recruit and employ their own personal assistants (PAs). Some ILF users have a combination of agency support and PA support.

A care agency is a company that can supply you with support workers. The workers are employed by the agency, not by you.

A privately employed PA is a support worker that you employ yourself.

There are different things to think about, depending on whether you choose an agency or private PAs. Some of the things you need to think about are listed below.

Things to think about if you use a care agency

A care agency will take care of the following:

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

If you are thinking of using an agency, it might also be useful to consider the following things:

- You might have limited choice over who an agency sends to assist you – it might be someone new at short notice
- Variable prices – prices may vary between different care agencies in your area. Talk to a few agencies so that you can compare prices
- Be specific about your needs – make sure that the care agency will provide you with PAs that suit you, at times that suit you
- If things are not working out with your care agency, you can use a different one. If you find it difficult to talk to them about things you're not happy with, ask for help from your Social Worker or Care manager, or a friend
- Talk to your Social Worker, Care Manager or Direct Payments Advisor about what is good and bad about using a care agency. Find out which care agencies in your area are on the Social Services approved list

Employing Personal Assistants (PAs) yourself

If you decide that you would like to have full control over who you employ, then you may decide that employing your own PA is the best thing for you.

Remember that, if you do employ your own PAs, **you** are the employer. You will therefore be responsible for following any legal requirements that go with employing staff. The following is a list of just some of the things that you will need to look into if you become an employer:

- You will need to pay your PAs **at least** the national minimum wage (you can get more information about this by ringing the National Minimum Wage helpline; you can get the number from Directory Enquiries)
- You will need to pay tax and national insurance (NI) contributions for your PAs (you will need to talk to your local Inland Revenue Office to get help with this)
- You will need to give your PAs holiday pay
- You may need to pay Statutory Sick Pay or Statutory Maternity Pay if the need arises
- You may need to have employers' liability insurance (you may be able to get this through your normal household insurance policy; alternatively, you can contact the Fund to get details of specialist insurers who insure PA users)
- You may need to give your PAs a contract
- You will need to think about how you recruit your PAs and how you train them so they meet your needs

- You will need to deal with any problems that crop up with your PAs

Where to get more information about recruiting and employing PAs or care agencies

The National Centre for Independent Living (NCIL) may be able to help you get more information about recruiting and employing PAs and care agencies.

NCIL is **not** part of the Fund. NCIL is a project funded by the Department of Health to provide information and advice on direct payments for personal assistance.

It can provide information about personal assistance and personal assistance support schemes by telephone, letter and e-mail. It also has a list of publications which contain useful information about personal assistance. This list of publications is available on the NCIL website.

NCIL is based in Vauxhall, South London, but works all over the country. You can contact NCIL as follows:

NCIL
250 Kennington Lane
London
SE11 5RD

Telephone: 0207 587 1663

Fax: 0207 582 2469

Textphone: 0207 587 1177

e-mail: ncil@ncil.org.uk

website: www.ncil.org.uk

The people you employ using your Fund payments – what information the Fund needs to know

The Fund keeps a record of who you employ using your Fund payments. The Fund must keep these records for legal reasons. The Trust Deed, a legal document that governs what the Fund does, states that the Fund must keep records of who is employed by each Fund user.

PAs who are employed privately, or who are self-employed

The Fund needs to know the following information about each PA you employ:

- Full name
- Address
- National Insurance Number
- How much you pay them each week

We will ask you for this information:

- When you start to receive your Fund payments, or whenever there is a change in your payments
- Whenever you take on a new PA
- When you have your ILF Review (**see leaflet 9 for more information about ILF Reviews**)

Agency Workers

If you use a care agency, the Fund does not need to know the name of each individual worker. However, the Fund does need to know:

- The name and address of the agency you use
- How much you pay the agency each week

Like with privately employed PAs, the Fund will ask you for this information:

- When you start to receive your Fund payments, or whenever there is a change in your payments
- Whenever you take on a new PA
- When you have your ILF Review (**see leaflet 9 for more information about ILF Reviews**)

What does the Fund do with this information?

The Fund keeps a record of your PAs and/or care agency on its computer system and in your personal file. The Fund **does not** automatically pass on this information to anyone else and the Fund is 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.

The law that protects the information you give to the Fund is called **the Data Protection Act 1998 (see leaflet 15 for more information about this)**.

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

privately employed PAs, and self-employed PAs, the Fund must tell them about this information.

The Fund will do this by writing to your privately employed, or self-employed, PAs. If you are a new applicant to the Fund, the Fund will do this when you start to receive your Fund payments. If you are already a Fund user, the Fund will write to your PAs after you have had your ILF Review (**see leaflet 9 for more information about the ILF Review**).

Data Protection and care agencies

If you use a care agency, the Fund is not required to write to your agency in the same way 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 your care agency, for example to detect or prevent a crime.

Your records about who you employ using your Fund payments – what information you need to keep

You need to keep a record of the hours worked by your agency and/or PAs and how much you pay them. Keeping records is a good idea because:

- You need 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
- You will need to keep records for tax purposes if you employ private PAs

- You will need to keep records in case you have to pay Statutory Sick Pay or Statutory Maternity Pay
- You should keep records in case there are any disputes between you and your PA or agency about when they have worked and how much you have paid them
- You need to keep records in case the Fund has any queries about how you have used your Fund payments

What records do you need to keep?

You need to keep a record of the following information:

- The name, address and national insurance number of every person who works for you privately, even if they do not work for you regularly
- The name and address of any care agency that you use
- The dates on which a private PA or care agency works for you
- A record of how many hours every PA or care agency works for you each week
- A record of how much they are paid, how they are paid (eg cash or cheque) and when they are paid

What records will the Fund ask to see?

The Fund will not ask to see records about your PAs or care agency as a matter of course. Your payments from the Fund are worked out according to the weekly cost of your care and are usually made automatically every 4 weeks, so we do not ask to see records each time we make a payment to you.

However, the Fund might ask to see records of who you have employed using your Fund payments. The Fund might ask to see records if you are having a review of your payments, for example if you need more care, we would look at how much you have been employing to help work out how much more you need. We may also ask to see records if it is unclear how you have been using your payments from the Fund.

How should you keep the records?

It is up to you how you keep the records. Some people like to write everything down in a notebook, whilst some people keep records using a computer.

Some people are not sure how to keep records. To try and help, we have attached a couple of examples of how you can keep your records if you do not already have a system worked out. These examples are at the end of this leaflet.

For how long should you keep records?

The Fund needs you 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 for you in January 2000, you need to keep records about that work until April 2003, so that you have got it

for two complete tax years after the work has taken place. This means that you will be able to answer any tax queries that come up if you have employed your PAs privately, or be able to tell the Fund about care you have employed since your last ILF review, which happens every two years (**see leaflet 9 for more information about the ILF review**).

NB If you employ your PAs privately, the Inland Revenue (the tax office) may need you to keep records for longer than 2 years – please talk to them about this when you are arranging to pay tax for your PAs.

If you have got any queries about any of the information contained in this leaflet, please contact the Fund and member of staff will be happy to help.