

## **Policy 31 Relatives (Living with Recipient) as a Paid Carer**

**Owner:** ILF Scotland

**Subject:** Relatives (Living with Recipient) as a Paid Carer

**Version:** 1.0

**Last Amended:** 1 July 2015

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**Next Review:** 30 March 2020

**This policy applies when a recipient requests, or it becomes evident, that ILF monies are used to employ a relative who lives in the same house as the recipient.**

**All requests will be considered in line with this policy, irrespective of the circumstances that have led to the request.**

### **1.0 Background**

ILFS is committed to supporting independent living for its recipients as individuals. ILFS wishes, wherever possible, to provide recipients the opportunity for independent living without compromising their family relationships, with the addition of contractual relationships and ensuring that they have personal choice of their own.

For any recipient visited by the previous ILF organisation (ILF UK) or ILFS on or after 1 October 2007, a relative **living in the same house** as the recipient will not normally be allowed to act as a paid carer using ILF funding.

## 2.0 Definition of relative

Under the terms of the ILF UK 2006 Deed, a relative who lived with the recipient could not normally be paid to provide care. A relative was defined as (Trust Deed clause 1(1)(o)):

- i) a person's partner; or
- ii) any of a person's parent, child, grandchild, grandparent, aunt, uncle, niece, nephew or sibling; or
- iii) any of a person's step-relations or his or her partner's relations within the degrees of relationship set out in (ii) above and whether arising through marriage or through civil partnership; or
- iv) the partner of any person falling within (ii) or (iii) above."

This definition is different to the definition of a 'close relative' (section 6.0) which applied prior to 1 October 2007.

## 3.0 Definition of house

Where a recipient lives in an annex or is attached to the main house where the relatives reside, and wants to employ one of these relatives to provide the care, there needs to be evidence that the recipient's house is regarded as a separate dwelling.

Different factors can lead to a decision on whether there are separate houses, these include:

- each house having exclusive occupation and access;
- separate postal addresses;
- separate council tax billing;
- separate utilities;
- the two houses to be able to be sold separately from each other; and
- no conditional restrictions on occupancy.

## 4.0 Policy

For any recipient visited on or after 1 October 2007, a relative (as defined by the ILF UK Deed) living in the same house as the recipient will not normally be allowed to act as a paid carer using ILF funding.

ILFS supports independent living for its recipients. Employing a relative who lives in the same house will only be agreed in exceptional circumstances where it is evident that it will increase the independence of the recipient or is the only satisfactory means of having the support needed to meet the recipient's outcomes.

If it is the only means of meeting the recipient's outcomes, all other alternatives should have been proved to be ineffective (or unsatisfactory) and have been exhausted. It should be seen as a last resort only.

Where the recipient feels that there are exceptional reasons as to why only that relative can provide the care that the recipient is assessed as needing, they may ask ILFS senior management team to consider the case. Where this request is unsuccessful the recipient may appeal to the ILFS Board of Directors. Guidance on what may constitute an exceptional case can be found at the annex to this policy.

Each case will be considered on its own merits and, although the factors in the guidance will be taken into account, these should not be considered as a checklist of reasons for agreement.

## **5.0 Civil Partners**

It is ILFS policy to accept care arrangements to continue without the need for a specific decision where a same sex partner (whether or not they had entered into a civil partnership) had been providing support paid for with ILF money prior to December 2005.

## **6.0 Amended Deed Definition of Relatives**

For recipients who employ a relative who was not defined as a 'close relative' prior to the changes to the ILF UK Deed in 2007 but who now falls within the new definition (e.g. a nephew), the arrangement will be allowed to continue for as long as the relative continues to provide paid care using ILF funding. In the event that the relative ceases to be a paid carer he or she will not be automatically allowed to resume as a paid carer at a future point. In these circumstances the request to resume will be considered on an exceptional basis by the senior management team.

## **7.0 Procedure**

If a recipient makes a request to employ a relative who lives in the same house, the service delivery team should explain that ILFS can only allow this in exceptional circumstances, give the recipient an outline of the policy and

the necessary process. They should explain that the recipient will need to show that employing their relative will improve their independence, or that it is the only option available, having tried all the alternatives.

When the recipient has considered these points, if they wish to refer their case to the senior management team, service delivery should allocate an assessor to undertake a visit to collect information for the referral and notify the Head of Appeals and Reviews. The recipient should be told that, where possible, they need to be seen separately from the relative who is proposed to be employed. They should also be told that the assessor does not have the discretion to make the decision or a recommendation; they will just collect information and offer a professional opinion on the support needs and identify how the outcomes could be met. The Head of Appeals and Reviews will then liaise with the assessor and the recipient to draft the referral to the senior management team.

In all cases where it becomes evident that a relative who lives in the same house as the recipient was employed without ILFS agreement, the case should be referred to Head of Appeals and Reviews who will refer to senior management team. Payment should continue until the senior management team have made a decision. A second visit may be required which would be arranged in the usual way.

The senior management team will be asked to consider whether they would have supported the request had it been made at the appropriate time. If they decide that they would not have, then the funding has been outside the terms of ILF and an overpayment will arise and referral to relevant staff will be needed.

## **11.0 Cross References**

Engaging Care Abroad Policy

## Annex Guidance for Referrals

### Relative residing with ILF recipient and providing paid care

#### Procedure:

An ILFS assessor will be asked to undertake a visit to discuss with the recipient their reasons behind wishing to employ a relative who lives in the same house. The assessor should establish whether the LA is likely to support such arrangements after transfer. The assessor cannot make any recommendations to the senior management team or Board of Directors and will not be able to make the decision for the recipient. They can merely discuss the reasons the recipient feels there is exceptionality and offer their professional opinion on support needs. Where possible, the recipient needs to be seen without the relative who is proposed to be employed.

#### Overarching Principle:

Employing a relative who lives in the same house will only be agreed in exceptional circumstances where it is evident that it will increase the independence of the recipient, or is the only satisfactory means of having the support needed to meet the recipient's outcomes.

If it is the only means of meeting the recipient's outcomes, all other alternatives should have been proved to be ineffective (or unsatisfactory) and have been exhausted. It should be seen as the last resort only.

The ILFS will usually only agree to fund new arrangements where the LA supports the plans, other than Group 1.

#### Key Factors in considering a request:

- The recipient's independence will be improved;
- All other care avenues have been exhausted;
- Residential care is the only alternative;
- The recipient's health will significantly deteriorate if an exception is not made;
- Previous abuse or a traumatic event has led to extreme lack of trust;

#### Significant Factors in considering a request:

- Specific Cultural issues

- Religion or Faith issues
- Geographical isolation;
- Key care tasks can only be carried out by the relative
- Professional evidence of a need for the relative to be the paid carer
- The recipient is unable to communicate with anyone other than the relative – Please ensure this is interrogated fully as it is rare that an individual cannot communicate with anyone outside their immediate family **When considering these factors senior management team/Board of Directors might want to ask:**
- Has the recipient exercised choice and control?
- Have they had the opportunity to receive advocacy support? (e.g. have they been referred to Direct Payment support services?)
- Should an exception be time limited?
- Should an exception be reviewed within a certain time frame?
- If an exception is made, will the relative themselves be put at risk?
- If an exception is made, are there any conditions that should be placed on the exception?
- Should the recipient be reminded of their responsibilities as an employer?
- Should the recipient be reminded that use of a payroll service is available and recommended?

## **Appendix 1: Issues to be included in the assessor's visit concerning a request to employ a relative who lives in the same house**

Enclosed are some questions prompting the information that will be helpful to the senior management team or Board of Directors when determining whether a request to employ a relative who lives in the same house as a recipient is exceptional. Please only use your report to state the facts of the situation and offer your professional opinion on the support needs of the individual.

Do not make a recommendation to the senior management team or Board of Directors. Please also explain to the recipient that you are unable to speculate on the possibility of having their request agreed, as you are not the decision maker.

Where possible, the recipient should be seen without the relative who it is proposed is employed. If the recipient does not have the capacity to make the choice, or their condition or communications makes it impossible for this to be assessed at the visit, the Award Manager and/or Local Authority, or an advocate should be involved in the visit.

The policy states that “Employing a relative who lives in the same house should only be agreed in exceptional circumstances where it is evident on the information to the decision makers, that it is the only satisfactory means of having the support needed to meet the recipient’s outcomes and all other alternatives have been proved to be ineffective (or unsatisfactory) and have been exhausted. It should be seen as the last resort only. Each case will be considered on its own merits and although the factors in the guidance will be taken into account – these should not be considered as a checklist of reasons for agreement.”

Please refer to the policy for further information.

### **This is not a checklist, but a guide to relevant issues.**

<b>Issues for the Recipient</b>	
Who is asking for the decision to allow a relative?	
Does the recipient have capacity to choose and/ or ability to express their reasons? If the recipient has communication difficulties, can they communicate with anyone other than the relative?	

Indicators as to who is making the decision to employ a relative:

*Negative – if the information is provided about the person or presented as what they would want by the person who is proposing to be employed or by another family member.*

*Negative - not being able to communicate directly with the recipient, is the person assessing unable to do this?*

<p>Will it promote independence or will it reinforce dependence on family members?</p>	
<p>What are the recipient's Independent Living Outcomes and how will employing a relative to assist them to meet these in a way that any other support cannot?</p>	<p><i>List the outcomes and reasons they can only be met by a relative</i></p>
<p>Does the recipient feel particular care tasks should be provided by a relative? Are there tasks that could reasonably be expected to be provided by the relative as part of their personal relationship? Are there some tasks that could be undertaken by other persons outside of the home?</p>	
<p>Does this appear to be in the best interests of the recipient? Why?</p>	<p><i>Are there any issues of faith or geographic isolation?</i></p>
<p>Has the recipient moved to live with the relative or vice versa or have they been residing together for some time?</p>	<p><i>If the move is recent or planned, have the local authority provided advocacy support? What was the outcome of this?</i></p>
<p>Does the recipient understand the change to the relationship needed if a relative is employed? For example, a contract will be required</p>	

<b>Issues concerning the relative to be employed</b>	
What was the motivation for this request?	
Have all other avenues been exhausted?	

Indicators as to the motivation:

*Has the relative recently been made unemployed? Does it reflect the financial needs of the house unit? Have the care needs changed which has led to the request? Has previous experience with carers led to the request? Why now?*

<p>Would this make the house financially dependent on the earnings of the relative?</p>	
<p>Were they providing a high level of unpaid care or hours above Carer's Allowance?</p>	
<p>If Carer's Allowance is in payment are they providing the 35 hours? Would they be eligible? Should the relative be claiming this, if not being paid?</p> <p>Has the impact on the relative's and the recipient's eligibility for support services been considered?(e.g. carers services or respite)</p>	
<p>Has the impact on the family member's eligibility to benefits been considered?</p>	

<p>Will the relative also continue to provide unpaid care?</p>	
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<p><b>Issues for the Local Authority</b></p>	
<p>Does the Local Authority provide a direct payment?</p>	
<p>Has the Local Authority agreed to the relative being paid with the direct payment?</p>	<p><i>If yes, how many hours is the relative already providing? What are the provisions for illness/absence of the relative? Would the relative be the sole carer if ILFS were also to agree the request? Would the LA support the whole care package being provided in this manner?</i></p>

<p>How much support has the LA given to identify alternative care?</p>	<p><i>It is unlikely that LA will offer much support to seek alternatives if they have already agreed that the user can employ relative care.</i></p>
<p><b>General issues</b></p>	
<p>Has the relative been employed without ILFS having knowledge for some time? <i>If so, ILFS will need to consider whether the user/award manager were aware of ILFS policy and why they chose not to inform ILFS</i></p>	
<p>Do the recipient/award manager and relative understand the process to be followed to decide upon their request?</p>	<p><i>Please explain the process and note here that you have. Please note that if the relative is the award manager and the request is approved, a new award manager will need to be found.</i></p>

<p>Is the request supported by any professional third parties?</p>	
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