



Independent  
Living Fund

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# Policy Circular

Document No 17/07

**Owner:** Corporate Affairs Team  
**Subject:** Relatives (living with user) as a paid carer  
**Version:** 5 of 5

**Last Amended:** 6 March 2014

**Date Reviewed:** 6 March 2014

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

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

## 1.0 Background

The ILF is committed to supporting independent living for its users as individuals. The ILF wishes, wherever possible, to provide users 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 user visited on or after 1 October 2007, a relative (as defined by the Deed) living in the same house as the user will not normally be allowed to act as a paid carer using ILF funding.

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## **2.0 Definition of relative**

Under the terms of the 2006 Deed a relative who lives with the user cannot normally be paid to provide care. A relative is 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’ which applied prior to 1 October 2007.

## **3.0 Definition of house**

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

The ILF supports a group of individuals who all have specific and individual support requirements. When the ILF has to consider exceptionality in relation to an ILF user, it is exceptionality within this group rather than compared to the population as a whole.

The ILF supports independent living for its users. 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 user or is the only satisfactory means of having the support needed to meet the user's outcomes.

If it is the only means of meeting the user'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.

Where the user feels that there are exceptional reasons why only that relative can provide the care that the user is assessed as needing, they may ask the Senior Management Panel (SMP) to consider the case. Where this request is unsuccessful the user may appeal to the Trustees' User Personal Cases Committee (UPCC). 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 LA approval**

The ILF will not normally approve a request to fund a close relative who lives with a User to be paid with ILF monies unless the LA that the user will transfer to in 2015 has confirmed that they are likely to support such arrangements from July 2015. Confirmation of the LA support and approval should be obtained before the case is referred to SMP for consideration.

## **6.0 Local authority decisions**

The ILF should carefully consider the factors in the guidance and the amount of care the relative is being asked to provide, whether they are also providing unpaid care, what the provisions are should the relative be unavailable and whether this would mean that the relative is the sole carer. The Working Time Regulations will also be considered. Where necessary, if there are concerns, this should be discussed in detail with the LA to ensure they are aware of the potential difficulties and that all parties still agree that the proposals represent the best arrangements for the user.

## **7.0 Existing cases**

At the review visit the assessor and the LA representative will assess the current support arrangements and identify the best possible plans for transfer. If the ILF has previously given approval for a close relative who lives with a user to be paid with ILF monies to provide support it should be established whether the LA is likely to continue to support this arrangement from July 2015 onwards.

In circumstances where the LA would not support the arrangements alternative plans should be considered. Where the User does not wish to alter such arrangements they should be made aware that this is likely to change after transfer.

## **8.0 Civil partners**

It has been ILF 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.

At the review visit it should be established if the LA is likely to continue to support the arrangements after transfer. Where they will not the new support plans should be considered. Where the user does not wish to alter the arrangements they should be made aware that this is likely to change after transfer.

## **9.0 Amended deed definition of relatives**

For users who employ a relative who was not defined as a 'close relative' prior to the changes to the 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 SMP.

## **10.0 Procedure**

If a user makes a request to employ a relative who lives in the same house, Service Delivery should explain that the ILF can only do this in exceptional circumstances, give the user an outline of the policy and the necessary process. They should explain that the user 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 user has considered these points, if they wish to refer their case to SMP, service delivery should allocate an assessor to undertake a visit to collect information for the referral and notify the Complaints and Decision Review Team. The user 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 Complaints and Decision Review team will then liaise with the assessor and the user to draft the SMP referral.

In all cases where it becomes evident that a relative who lives in the same house as the user was employed without our agreement, the case should be referred to Complaints and Decision Review who will refer to SMP. Payment should continue until SMP have made a decision. The Social Work Team will need to be advised if a second visit is required.

SMP 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 the Trust Deed and an overpayment will arise and referral to Grant Recovery will be needed.

### **11.0 Source**

Independent Living Fund Trust Deed  
Trustees 04 July 2012  
Trustees meeting 13 March 2013  
Trustees November 2013

### **12.0 Cross References**

Engaging Care Abroad Policy

### **13.0 History Date Reviewed**

10 June 2010  
11 August 2010  
25 January 2012 (Review date amended from June 2012)  
March 2013  
November 2013  
6 March 2014

## **Annex**

### **Guidance for referrals**

#### **Relative residing with ILF user and providing paid care**

##### **Procedure:**

An ILF assessor will be asked to undertake a visit to discuss with the user 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 SMP or UPCC and will not be able to make the decision for the user, they can merely discuss the reasons the user feels there is exceptionality and offer their professional opinion on support needs. Where possible the user 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 user or is the only satisfactory means of having the support needed to meet the user's outcomes.

If it is the only means of meeting the user'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 ILF will usually only agree to fund new arrangements where the LA supports the plans and is likely to continue to support these after transfer.

##### **Key Factors in considering a request:**

- The user's independence will be improved;
- All other care avenues have been exhausted;
- Residential care is the only alternative;
- The user'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 user is unable to communicate with any one 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 SMP/Trustees might want to ask:**

- Has the user 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 user be reminded of their responsibilities as an employer?
- Should the user be reminded that use of a payroll service is available and recommended?

Reviewed:

October 2007 amended August 2010 and May 2012

Agreed by

Trustees 04 July 2012

## **Appendix 2: 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 Panel (SMP) or User Personal Cases Committee (UPCC) when determining whether a request to employ a relative who lives in the same house as a user 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 SMP or UPCC. Please also explain to the user that you are unable to speculate on the possibility of having their request agreed, as you are not the decision maker.

Where possible, the user should be seen without the relative who it is proposed is employed. If the user 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 user'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 User</b>	
Who is asking for the decision to allow a relative?	
Does the user have capacity to choose and/ or ability to express their reasons? If the user 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 user, is the person assessing unable to do this?*

Will it promote independence or will it reinforce dependence on family members?	
What are the user’s Independent Living Outcomes and how will employing a relative to assist them to meet these in a way that any other support cannot?	<i>List the outcomes and reasons they can only be met by a relative</i>
Does the user 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?	

Does this appear to be in the best interests of the user? Why?	<i>Are there any issues of faith or geographic isolation?</i>
Has the user moved to live with the relative or vice versa or have they been residing together for some time?	<i>If the move is recent or planned, have the local authority provided advocacy support? What was the outcome of this?</i>
Does the user understand the change to the relationship needed if a relative is employed? For example, a contract will be required	

<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 user'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 the ILF 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>

<b>General issues</b>	
<p>Has the relative been employed without ILF having knowledge for some time? <i>If so, the ILF will need to consider whether the user/award manager were aware of ILF policy and why they chose not to inform ILF</i></p>	
<p>Do the user/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>	