1. Context and legislation:

It is understandable that many people may say they feel more comfortable employing family members and friends, and the direct payment legislation supports this to a degree. However, it is only in exceptional circumstances that service users can pay relatives who live with them. In these cases you must give clear and specific reasons why only that family member can offer support.

Under Direct Payments regulations it is quite clear that there is no restriction on employing a relative where the relative does not normally live in the same household as the Direct Payment recipient.

Under the Care and Support (Direct Payment) regulations 2014, a direct payment cannot be used to employ a close family member living in the same household except where the local authority feels this is ‘necessary’.

Unless a council is satisfied that it is necessary to meet a person’s needs, or, in the case of a child, that it is necessary to promote a child’s welfare, a council may not allow people to use direct payments to secure services from:

- a spouse (husband or wife)
- a civil partner
- the other member of the unmarried or same sex couple of which they are a part
- a close relative with whom they live, or the spouse or partner of that person

Advice is always given that this is something that the individual should think very carefully about, as becoming the employer of a relative changes the relationship and raises issues such as ‘what will the individual do if the relative is not meeting their contract’. We have devised an advice sheet called ‘I am thinking of employing a close friend or relative. What do we both need to consider?’ that explains the points to think about.

It is possible to pay someone living within the same household to help with the paperwork and administration of the direct payment provided this is agreed in the support plan. This must be cost effective for the council. It should cost no more than the equivalent third party arrangements, for example an Independent Broker.
2. Guidance in relation to decision making

Care should also be taken before agreeing such arrangements which could be open to abuse. The Council needs to be satisfied that:

- there are genuine, overwhelming reasons why the family member needs to be employed
- there is a contractual arrangement for care-giving with the family member and all parties are clear about where the, potentially blurred, boundaries between contracted and informal care-giving lie
- contingency plans are in place to ensure the person’s needs are met if something happened to the relative who is also the personal assistant (PA) (e.g. should this informal/formal carer become ill)
- the care giving arrangement is sustainable and the Council is well aware of the needs of the informal carer in their own right

Situations will be considered on a case by case basis, and the final agreement will be the responsibility of Funding Panel 3 which sits at Assistant Director level. The following criteria may be accepted as exceptional circumstances as long as adequate evidence can be produced to prove this.

A family member may be employed:

- for reasons of ethnicity or religious belief specific limitations apply to who may acceptably be employed to deliver the care, and there is no likelihood of being able to recruit an appropriate carer locally
- when delivery of personal care by a third party would cause genuine distress to the service user
- where a ‘live-in’ carer would have been employed, but no appropriate accommodation (e.g. separate bedroom) is available in the house to enable this to happen
- where care needs are intermittent and unpredictable, and recruitment or use of an agency to meet such needs would be impracticable
- where substantial effort at recruitment has been unsuccessful due to exceptional local workforce pressures or geographic isolation
- where this is the only practical way of meeting the care needs during a temporary breakdown of other service arrangements
- the PA hours agreed are not excessive to the situation and the individual Employee is not in breach of the Working Time Regulations (WTR) (see below)

  - the Working Time Regulations (1998) provide rights to a limit of 48 hours someone can be required to work within one week; with 11 consecutive hours of rest in any 24 hour period and at least one day off in the week
  - the hours are calculated as an average across a 17 week working span. Although an individual can choose to opt out, North Somerset Council wishes to support responsible and sustainable employment and would be extremely unlikely to fund a request for a PA to undertake more than 48 hrs per week
  - 16 and 17 year olds can only work 8 hrs per day (40 hrs per week) and cannot legally ‘opt out’
3. Review

It is important to review this arrangement within the context of the overall support plan and to stress to all concerned that alternative arrangements can be made if is not working for either party. Be aware that family relationships and dynamics may change, resulting in both the employer and employed family member (PA) thinking differently about their situation. When Panel 2 forwards the application to panel 3 for final decision, a review schedule will be suggested.

The guidance under Section 2 needs to be considered again at every review and every amendment to the direct payment. In particular, where there is an increase to the direct payment PA hours, there needs to be careful thought around whether the PA hours undertaken by the ‘close person’ are appropriate.

The decision to continue funding the relative as the PA needs to be clearly recorded, either as part of the review or panel decision.

4. Process:

1. If a service user is expressing wishes to employ a relative who lives in the same household, the worker involved should explain that this would usually only be allowed in ‘special circumstances’, i.e. where this would be the only satisfactory way to meet the persons needs or outcomes. The worker stresses that there is a procedure and there could be a time delay with no guarantees there will be an eventual approval.

2. The worker leaves the ‘I am thinking of employing a close friend or relative’ advice sheet with the service user and, where possible, the prospective PA (see info sheet on Direct Payment page on the intranet or link below)

3. A preliminary discussion is had with the line manager/ service manager whether this would be a case where the Council would consider employing the relative as an option. Where appropriate, this could take place at the time when the indicative budget is approved.

4. A referral should be made to the Direct Payment Support Team who will visit and talk through the pros and cons of employing a close person. The Self Directed Support Advisor (SDSA) will also discuss back-up plans with the person and offer advice (for example around cover of support in an emergency and ways of ensuring both the ‘paid for’ and the ‘informal’ caring roles remain sustainable) where relevant.

5. Direct Payment Support team feeds back to care manager about the visit and how the service user wants to proceed and Self Directed Support Advisor (SDSA) will discuss with Line Manager re potential employment situation

6. If service user still wishes to employ a close relative, care manager (with support of Direct Payment Support Team if required) will present the service user’s request to employ a close relative to Panel Level 2. In addition to presenting the support plan, the care manager must explain why the service user wants to employ a close relative, what the back-up plans are and how this is an ‘exceptional circumstance’ (see guidance above).
7. Panel 2 considers the application and will:
   - (i) send to Panel 3 with recommendations
   - (ii) advise a review schedule

8. Panel 3 considers the request and makes a decision which will be communicated to Panel 2/service managers as appropriate. DP Support Team will track the review schedules and alert panel 2 four weeks prior to due date. Service manager will then either contact social worker or raise new request as appropriate.

9. Where the service user is dissatisfied with the decision they are able to appeal under the NSC Complaints Procedure or the worker might call a risk enablement panel to look at the situation (see ‘Risk Enablement Panel’ Guidance)

10. Direct Payment Support Service hold the schedule of reviews and will raise alert when review is due – either SDSA writes short brief for panel or DP Support Team will raise a request for review by the commissioning team with Care Connect

**Useful links:**

- Employing close friends and relatives – what do I need to consider
- North Somerset Direct Payment Policy
- North Somerset Council Risk Enablement Policy
- Care Act 2014 – ch. 12 Direct Payments

This publication is available in Braille or audio formats on request. Help is also available for people who require council information in languages other than English. Please contact: **Public Information on 01275 884 022.**

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