

The Future of the Independent Living Fund (ILF)

Association of Directors of Social Work response

ADSW welcomes the opportunity to respond to the consultation on 'The Future of the Independent Living Fund.'

Question 1

Do you agree with the Government's proposal that the care and support needs of current ILF users should be met within the mainstream care and support system, with funding devolved to local government in England and the devolved administrations in Scotland and Wales?

This would mean the closure of ILF in 2015.

The Association notes the important role that the Independent Living Fund (ILF) has played in supporting people with complex care needs to lead independent lives. For that reason ADSW was not in agreement with the decision to close the Fund to new applicants from June 2010: that decision increased costs for local authorities at a time of budgetary constraint and rising need. ADSW is also concerned about the impact of the wider welfare reforms on the benefit entitlement of disabled people.

However, we agree that in response to the proposal the most appropriate arrangement is that ILF funding should now be transferred to local authorities, and to the devolved administrations, since this will allow a fairer, better integrated, more consistent and transparent approach to be taken to financial support to independent living, and greater choice and self-determination for people with disabilities.

ADSW is aware that some recipients of ILF may experience a reduction in the amount of resources allocated to them as a consequence of the proposed change. We are concerned that recipients of ILF do not suffer undue hardship and reduction in quality of life as the process of transition. We welcome the opportunity to work with the DWP and Scottish Government to identify the obvious and the hidden consequences of this change and jointly plan to reduce any negative impact.

In particular, clarity is required around the following issues:

1. The size of the Fund to be transferred. ILF expenditure is reducing significantly year by year as a result of the decision in June 2010 to close the Fund to new applicants. This decision was taken to bring ILF spending back into line with the budget: ADSW strongly believes that it should be this balanced total budget that is transferred, not just the reduced amount spent by 2015. It would not be fair to disabled people to take the difference between the 2010 balanced budget and the 2015 reduced spend as a saving for the DWP.
2. The amounts transferred should include the current administrative costs for ILF. Consideration should also be given to any one-off costs faced by local authorities in the transitional period before and after the transfer of the Fund in 2015, such as the need to undertake additional community care assessments or reviews.
3. The degree of protection that could be given to current service users and the timescale for transition to new arrangements recognising that wider equity and fairness will be an integral part of these discussions.

- 4 How funds will be distributed to local authorities: whether distribution will be based on current level of use and the implications of alternative funding formulas, which are likely to require phased implementation.

Question 2

What are the key challenges that ILF users would face in moving from joint ILF/local authority to sole Local Authority funding of their care and support needs? How can any impacts be mitigated?

If the funds are transferred and care and support needs are funded solely by local authorities, there could be a range of impacts:

- The application of local assessments/ eligibility criteria may result in a reduction in provision for ILF users. There needs to be further discussion on how to support current service users, possibly during a period of transition.
- Consideration is needed of the breadth/ variety of service provision provided to current ILF users as well as of the level of service; of the impact on employers and PAs as well as on the quality of life of the recipient of ILF.
- For individuals, the impact of reassessment and a potential adjustment of funding may cause anxiety at best and in some cases will have the potential to be traumatic. Some people who use ILF are vulnerable adults and will require a great deal of practical and emotional support when facing what will be a significant change to a very fundamental aspect of their lives
- Benefits appointees cannot be given cash payments by local authorities (in Scotland). Where adults lack the capacity to manage their own affairs, a Guardianship application may be needed to maintain the current support. This could take months to achieve and early preparation would be needed before 2015. Assessment of capacity requires medical input and there could be implications for health services in carrying out the assessments. Additionally, families may not be willing to take on the challenging role of legal guardianship.

A phased protection may therefore be the most appropriate way forward, which ADSW believes should be detailed within co-produced national guidance for local authorities (led by the Department of Health in England and the devolved administrations in Scotland, Wales and Northern Ireland).

Question 3

What impact would the closure of the ILF have on Local Authorities and the provision of care and support services more widely? How could any impacts be mitigated?

There are a number of potential impacts for local authorities:

- Local authorities work within existing legislation and apply statutory guidance when undertaking assessments, consider eligibility, determine resource allocation, etc, in order to ensure an equitable approach to service provision. If ILF was transferred with no preserved rights, there may be a reduction in care packages and a subsequent negative impact upon the individuals concerned. There may be particular issues for the small numbers of Group 1 users where there has been no previous local authority involvement. Guidance on transition arrangements would need to consider this issue.
- Changes to support levels may result in a reduced quality of life for some individuals who feel their ambition to live well in the community has been undermined. Potentially there may be consequences for the continued employment of formal carers/PAs etc

who are currently employed through ILF payments. Formal challenges to councils may be made. National guidance, and a programme of information giving for all those involved is required to support all parties through this process.

- Local authorities will be required to consider the suitability of arrangements where relatives are employed using ILF (using the exceptional circumstance rule which allows local authority discretion.)
- The impact of welfare benefit reforms and the introduction of the Personal Independence Payment are currently unclear. Consideration is required on how this will impact on ILF eligibility for existing users. Local authorities will be expected to guide people through the changes and ensure that support needs continue to be met.
- The local authority charging policy differs from the ILF policy on user contributions. If local authorities take over current ILF functions, a transfer to the local authority charging arrangements will need to take place. Clarity is required through guidance on how ILF will assist with this process, particularly in preparing service users before the transfer.
- There are still a number of people over 65 years in receipt of ILF in Scotland and any issues associated with free personal care would need to be covered in Scottish guidance.
- Some support arrangements may sit outside local authority framework agreements with external agencies for commissioning support. Where people are unable to manage their own support and it is not possible to have a Guardian appointed to manage a direct payment on their behalf, it may not be possible in these circumstances to continue with the individual's existing arrangements.
- Where people employ personal assistants, the rate paid by ILF may be different from that paid by the local authority and will need to be aligned. This could result in an increase in costs over and above the level of transferred funds to bring rates into line – particularly where PAs are being funded at minimum wage by ILF. If the local authority rate is lower than the ILF rate, there will be an impact on PA terms and conditions.

There are however opportunities that this proposal offers and ways to mitigate the impact. The proposed change would aim to achieve the situation where one review of care and support needs would be required, reducing duplication of effort. Financial monitoring of ILF payments could be streamlined within SDS and individual budgets, making audit and reporting less complicated for service users. In addition to administrative benefits, a more rationalised approach to allocating and mobilising resources to meet support needs has the potential to produce a climate within which self-direction and co-production can take place. A phased protection approach could be adopted to mitigate the impact of changes for individuals and this could be further developed in co-produced national guidance to local authorities.

Question 4

What are the specific challenges in relation to Group 1 users? How can the Government ensure this group are able to access the full range of Local Authority care and support services for which they are eligible?

Group 1 users are individuals who have been receiving ILF before 1993 - i.e. before the criteria included *'receipt of local authority social services support'*. However, it is expected that most individuals will be known to local authorities – in fact DWP figures show that 53% of the 621 Group 1 ILF clients in Scotland at March 2012 were receiving local authority support. None the less, local authorities will be required to undertake additional work to assess the

need for support. An early access to lists of Group 1 clients will be essential to support this activity. Retaining an identified link person in each local authority area, who has in-depth knowledge of ILF, should support this process.

There will be 'consent to share' issues for Group 1 users. The Independent Living Fund should engage at an early stage with Group 1 users to prepare for transfer. This should include obtaining consent to share information with the local authority. A consideration is required of what measures will be taken if an individual refuses to give consent to share information - would ILF/DWP continue to make payments to those individuals as a separate arrangement? The differences in eligibility criteria applied between local authority and ILF will be a matter for consideration here - not all ILF recipients would be eligible for local authority funding.

It is anticipated that information from ILF will be required on whether Group 1 users have the capacity to consent or whether this has been managed by a benefits appointee. Transfer and management of PA employee arrangements may be more complex and involve contracts and payroll procedures.

Guidance should address the issue of different charging arrangements for Group 1 users.

Information will be required by Group 1 users who do not currently engage with the local authority on how to proceed with a request for assessment and support. A consideration of ongoing support in the meantime from ILF is required taking into account reasonable time scales for completion of this transfer.

Question 5

How can DWP, the ILF and Local Authorities best continue to work with ILF users between now and 2015? How can the ILF best work with individual local authorities, if the decision to close ILF is taken?

The complexities raised in our response to the earlier questions need to be taken into account when considering management of the change and early planning is essential.

ILF recipients, individually and as a group, should have the opportunity to voice their views on how delivery of future financial arrangements will take account of their diverse needs, individual circumstances and current use of funds. They require access to information and support. Communication between central and local government must support this process.

ILF/DWP may best progress the above through involvement of local authorities and service users in the development of a post-consultation strategy. Clarity is required on what the DWP role will be – particularly in relation to the changes to welfare benefits and the implementation of Personal Independence Payments.

A series of events will be required to inform, guide and support service users, carers (including unpaid carers) and local authorities, aiming to minimise any negative impact of the changes. Guidance and a communication strategy should be developed to support the transition. This will include the role of advocacy in supporting individuals through the change.

The changes will place additional demands upon local authorities in terms of resources and capacity. Consideration is required of how these additional demands can be supported at central level.