
**THE CLOSURE OF THE INDEPENDENT LIVING FUND (ILF)
AND TRANSFER TO THE LOCAL AUTHORITIES**

**Responsible Cabinet Member
Councillor Veronica Copeland, Adult Social Care and Housing Portfolio**

**Responsible Director
Suzanne Joyner, Director of Children and Adults Services**

SUMMARY REPORT

Purpose of the Report

1. To seek agreement from Cabinet on the proposals to implement the closure of the ILF, and the transfer of resource and responsibility to the local authority.

Summary

2. The ILF has been established for 27 years and closed on 30 June 2015. The Fund offered eligible disabled people funding to support their independence. In Darlington the current spend is approximately £868,000.
3. The national transfer strategy is that all ILF recipients are reviewed in the light of their Council's eligibility criteria, which is different from the ILF criteria, and then decisions made regarding continuation of support. Some individuals may have a reduction in support.
4. The ILF funding was transferred to local authorities on 1 July 2015 as part of the Council's baseline allocation. This funding is not ring fenced.

Recommendation

5. Cabinet is asked to agree recommended Option 3, that the transfer of funding for the financial year 2016/17 and going forward goes into the baseline budget for adult social care and ex-ILF fund users are reassessed annually, as are all other social care users who meet the eligibility criteria. Following the reassessment their care and support package will be changed accordingly if needed.

Reasons

6. The recommendations are supported by the following reasons:
 - (a) To implement the enforced closure of the ILF and the transfer of resource and responsibility to the local authority.
 - (b) The ILF operates a different eligibility criteria to that of the local authority when assessing care and support needs. The Care Act 2014 introduces a new national minimum eligibility criteria with a set threshold for care and support needs which local authorities must comply with. This enables all people with care and support needs to be supported through one equitable and streamlined social care system.
 - (c) The local authority is required to meet the care and support needs of all individuals who have eligible needs in a consistent way. This enables use of all available adult social care funding in a more consistent, effective and equitable way within a single system.

Suzanne Joyner
Director of Children and Adults Services

Background Papers

- (i) ILF, ADASS and LGA Code of Practice
- (ii) Care Act regulations relating to ILF transfer
- (iii) DWP - Closure of the ILF Equality Analysis

Turai Perumal : Extension: 6307

S17 Crime and Disorder	This report has no implications for crime and disorder.
Health and Well Being	This report addresses the health and wellbeing of a number of adults in receipt of specific support.
Carbon Impact	There are no carbon impact implications in this report.
Diversity	This report concerns individuals with at least one protected characteristic.
Wards Affected	All wards.
Groups Affected	This will impact on a small number of disabled adults.
Budget and Policy Framework	This report makes no changes to the budget and policy framework.
Key Decision	This is a Key Decision.
Urgent Decision	This is not an Urgent Decision.
One Darlington: Perfectly Placed	This report makes recommendations about support for a group of people who have additional needs and who may not otherwise lead a healthy life.
Efficiency	There is no efficiency as the transfer of the ILF funding goes towards the care and support package of these individual to meet their eligible needs. However, there may be efficiencies in support provision in the future following an annual review/reassessment.

MAIN REPORT

Background

7. The Government established the ILF in 1988. The ILF is an Executive Non-Departmental Public Body of the Department for Work and Pensions (DWP). It was created to enable disabled people to purchase their own support in order to live independently in their own homes when direct payments could not be made by local authorities.
8. From its creation the ILF ran as a charitable trust until 1993. In 1993 the original fund was closed to new applications and a new fund was created. The two funds ran in parallel until 2007 when they were amalgamated.
9. The two funds had different eligibility criteria which resulted in two separate groups of users, i.e. Group 1 and Group 2.
10. Group 1: These users received funding from the ILF prior to April 1993. They did not all receive support or funding from local authorities. Awards to Group 1 recipients were made against varying criteria and some of these recipients may not meet the new national eligibility criteria for paid support. The maximum ILF payment is £815 per week.

11. Group 2: These users are receiving funding from ILF on or after April 1993. They have care packages which must include a minimum contribution from the local authority of at least £17,680 per year (£340 per week) before receiving ILF support. The maximum ILF payment is £475 per week.
12. ILF works alongside, however outside of the mainstream care and support system.
13. The ILF uses different eligibility criteria than that of local authorities on determining eligibility for care and support needs and the funding thereafter of any care packages for eligible needs. The ILF frequently funds or meets needs that would be assessed by local authorities as being “desirable” elements of care or “low” or “moderate” within what was the Fairer Access to Care Service (FACS) criteria. It is likely that this will be reflected when measured against the new Care Act eligibility criteria.
14. There are also significant differences between the ILF and adult social care rules on user contributions to support packages and fairer charging.

The Closure of the ILF

15. The Government’s view is that the mainstream adult social care system provides many of the features currently associated with the ILF such as direct payments, personal budgets and individual choice and control.
16. The Government maintained it was increasingly difficult to justify operating a separate source of funding for one group of disabled people. Closing the ILF and transferring the funding to local authorities will attempt to address this. The transfer will enable use of all available adult social care funding in a more consistent, effective and equitable way within a single system.
17. Furthermore, the Care Act 2014 mandates direct payments along with personal budgets and personalised care planning for the first time in to law and making them the norm for people with care and support needs.
18. On 18 December 2012, following the consultation period, the Government decided to close the ILF and transfer the funding to local authorities.
19. The Court of Appeal overturned the Government’s decision on 6 November 2013 on the grounds that the DWP had failed to comply with its public sector equality.
20. Following a new Equality Impact Assessment and careful consideration of the Court of Appeal’s ruling, the Minister for Disabled People announced on 6 March 2014 that the Government had decided that the ILF would close on 30 June 2015.
21. The closure of the ILF now requires local authorities to determine their proposals on this matter.

Transfer of Funding and Responsibility to Local Authority

22. Following the closure of the ILF, the funding and responsibility of the ILF recipient's care and support needs was transferred to local authorities in England from 1 July 2015.
23. Funding for each ILF recipient was sent to the local authority from the Department of Communities and Local Government (DCLG) in a Section 31 Grant (not in Local Government Finance Settlement) in June or July 2015.
24. The transfer of funding to the local authority will be determined by the conditions set out in the transfer document DCLG and will go to the baseline adult social care budget.
25. The ILF sent data about each ILF recipient who has given consent to each local authority in November 2014 and March and May 2015.
26. The ILF continued to support ILF recipients and made payments until 30 June 2015, providing they still met the ILF's conditions. This includes all arrears and as a result ILF recipients received two payments from the ILF during June 2015.
27. All ILF users have received information from the ILF about changes in their funding. ILF administrators had jointly reviewed each individual with a social worker from the LA to give clear information about their future funding.

Profile of ILF Users in Darlington

28. There are 59 people in receipt of ILF funding that the Council is aware of.
29. There is the possibility that a number of people who are in receipt of ILF who have not yet contacted Darlington Borough Council (DBC).
30. There are 13 Group 1 users in DBC. Of these there is only one person who does not receive a service through DBC.
31. Group 1 users are not obliged to disclose their ILF funding when approaching local authorities for subsequent additional support. The ILF have asked for their consent to pass their details onto their LA.
32. There are 46 Group 2 users in DBC.
33. Table 1 shows the breakdown of the ILF users by group and gender.

Gender	Group 1	Group 2
Male	7	24
Female	6	22
Sub Total	13	46
Grand Total	59	

34. Table 2 shows the age range of the ILF users. The youngest is aged 25 and the oldest is aged 68 years.

Age Range	No. of ILF Users						Sub Total
	Group 1			Group 2			
	Male	Female	Total	Male	Female	Total	
21-30				3	5	8	8
31-40	1		1	9	5	14	15
41-50	6	5	11	3	3	6	17
51-60				7	4	11	11
61-70		1	1	2	5	7	8
Sub Total	7	6	13	24	22	46	
Grand Total	59						

35. Table 3 shows the living arrangements of the ILF users.

Living Arrangements	No. of ILF Users	
	Male	Female
Supported Living	14	10
Living at home	17	18
Sub Total	31	28
Grand Total	59	

36. Table 4 shows the types of primary impairments that ILF recipients have as follows:

Type	No. of ILF Users
Learning Disability (Autism)	44
Physical Impairment	15
Mental Health Problem	
Grand Total	59

37. Table 5 shows the opened cases by teams.

Team	No. of ILF Users
Life Stages 0 - 25	
Life Stages 26+	44
Ongoing Care	15
Mental Health Adults	
Mental Health Older People	
None	
Grand Total	59

38. Table 6 shows there are 29 ILF users employing Personal Assistants.

No. of ILF Users			
Group 1		Group 2	
Male	Female	Male	Female
7	5	6	11
29			

39. Table 7 shows the total approximate annual award for 59 users is £1,019,721. This is the annual amount which was transferred to DBC.

ILF Users	ILF Package (£)		Sub Total
	Offer 1	Offer 2	
Group 1	195,632.84	0.00	195,632.84
Group 2	768,987.48	55,100.68	824,088.16
Net Total	964,620.32	55,100.68	
Grand Total	1,019,721.00		

40. Table 8 shows the ILF users' annual contribution as follows:

ILF Users	Annual Contribution (£)
Group 1	17,678.44
Group 2	133,826.68
Grand Total	151,505.12

41. Table 9 shows the breakdown of the Funds as follows:

Details	Amount (£)
Gross Annual Total	1,019,721.00
Annual ILF Users' Contribution	151,505.12
Net Annual Total	868,215.88

Proposals

42. At the point that ILF will no longer exist and people's needs will be considered wholly against social care eligibility criteria, any financial impact associated with any future funding decision will be an impact against the total funding for care and support packages held by adult social care.

43. There are 3 options:

- (a) **Option 1** – the transfer of funding for financial year 2016/17 and going forward goes into the baseline budget for the Council.
- (b) **Option 2** – the transfer of funding from 1 July 2015 goes into the baseline budget for adult social care on a recurring basis and is continually ring-fenced to ILF users to enable them to receive the package of care they received from the ILF.

- (c) **Option 3** – the transfer of funding for financial year 2016/17 and going forward goes into the baseline budget for adult social care and ex-ILF fund users are reassessed annually as are all other social care users who meet the eligibility criteria. Following the reassessment their care and support package will be changed accordingly if needed.

44. Impact of the options:

- (a) **Option 1** – would place additional pressure on the adult social care budget as adult social care would have to fund any element of this care package that had been previously funded by ILF and was found to be an assessed need following reassessment. The majority of ILF users would face an immediate change to the way their care and support is delivered and the possibility of a reduction to the funding that they currently receive. The loss of ILF funding on 30th June 2015 would mean that ILF users would probably face cuts to the funding they have now and therefore the hours of care they receive and have to make different choices about their daily lives.
- (b) **Option 2** – would place an additional budget pressure on the adult social care budget as we would end up supporting ex-ILF recipients with packages of care/support that are higher than their eligible needs as the ILF eligibility and Care Act eligibility are completely different. In addition to this the Council would end up operating a two tier system where ILF users and adult social care users are assessed in different ways and this would be difficult to justify and open to challenge. This option would mean the only impact on the ILF users would be how their funding was actually paid and managed and no impact at all to their package of care.
- (c) **Option 3** – would mean that the Council is able to use the funding available to Adult Social Care to support all disabled people in a consistent, effective and equitable way. The intention would be to offer support through the Direct Payments scheme where chosen by the ex-ILF users ensuring that they can retain choice and control albeit within resource constraints, including the continuation of their existing arrangements. However some ILF users may face a reduction to the funding that they currently receive and this would mean that they would have to make different choices about their daily lives.

Eligibility Criteria

- 45. The ILF operated a different eligibility criteria to that of the local authority when assessing care and support needs. Therefore, ILF users may or may not be eligible for the same level of support once ILF ends and the local authority takes over responsibility, however some may not reach the current threshold for support.
- 46. ILF eligibility is linked only to users having savings of less than £23,250 and being in receipt of Disability Living Allowance. The LA however, applies a different criteria and so there is a risk that some activities currently paid for by ILF funding may not be Care Act eligible once the funding transfers to local authorities. This could potentially see a reduction in some people's packages.

47. The Care Act 2014 introduces a new national minimum eligibility criteria with a set threshold for care and support needs which local authorities must meet. All local authorities must comply with this national minimum threshold. Local authorities can decide to meet needs that are not deemed to be eligible if they choose to do so.
48. Many ILF users are concerned that their support package will be reduced following the implementation of the new national eligibility criteria.
49. The care and support needs of any social care recipient including ILF users may change over time. The LA is required to meet the care and support needs of all individuals who have eligible needs in a consistent way.
50. Therefore there is a strong lobby to ring fence the ILF funding for social care to support the people in receipt of ILF. A national freedom of information (FOI) request report dated 8 April 2015 suggested that there are 29 authorities out of 152 who propose to ring fence.
51. The reason for the closure of the ILF is to enable all people with care and support needs to be supported through one equitable and streamlined social care system. Ring fencing ILF funding on a permanent basis will be replicating what is already deemed to be a two tier system. There may be challenges from other social care recipients who did not previously receive ILF money.

Financial Implications

52. £651,161 ILF funding was transferred in 2015/16 to support the existing ILF users. This was a pro rata amount of the £868K.
53. All ILF users made their financial contribution towards their ILF support which is separate to their local authority financial contribution. The funding will be transferred net of any ILF charges of the individual's ILF personal contribution. Individuals received a local authority financial assessment which has resulted an estimated loss of income of £54,196.
54. Should funding reductions occur and impact on individual long term arrangements as ILF cases, recipients will be subject to the same funding criteria as all other recipients of eligible services.
55. To create a two tier system of funding is felt to be unfair and the national eligibility criteria under the Care Act 2014 must be applied consistently across all users.
56. From 1st July 2015 all former ILF users will be required to contribute the required amount towards ILF award and the cost of whatever care and support they receive from local authority subject to a financial assessment.

HR Implications

57. This proposal will not affect Council employees.

58. Where proposals may affect external organisations or individuals, the Council needs to be mindful of the requirements for these organisations or individuals to discharge their own employee consultation obligations, and as such early communication of the proposal is advised.

Corporate Landlord Advice

59. This proposal will not affect the Council's land holdings or involve a lease, or license or any transfer or purchase of land.

Consultation and Outcomes

60. ILF consulted with local authorities and recipients prior to the government making the decision to abolish the scheme. ILF users expressed concerns about their care packages being reduced and being unable to achieve the same outcomes as they have with ILF. This is most likely because the ILF provides greater flexibility in eligibility criteria in the use of funding than most local authorities. It is almost certain that closure of the ILF will mean that the majority of users will face changes to the way their support is delivered, including the real possibility of a reduction to the funding they currently receive. This is because the ILF fund some aspects of care that some local authorities do not and may also provide different levels of flexibility in the use of such funding. Loss of ILF funding could mean that current ILF users will have to make different choices about their daily lives. For example, no longer able to employ a Personal Assistant, inability to access social activities, voluntary work or employment. (Department of Work and Pensions ILF Equality Analysis March 2014.)

Other Implications

61. ILF users and their carers expressed concerns about their care packages being reduced and being unable to achieve the same outcomes as they have with ILF at the same time as the Welfare Reform changes have begun impacting upon their overall benefits.
62. Any reduction in funding may impact upon ILF users' citizenship/lifestyles and potentially may seek challenges through legal process, for example JR case.
63. As a result of any reduction to their ILF funding, there are potential complaints to the local authority.
64. There may be disputes and complaints if disagree with the level of care and support for their assessed needs.
65. Potentially there will be cases presented to the local or national media which may be damaging to the reputation of DBC.
66. Any increase in formal complaints and/or legal challenges will need managing and be costly in staff time.

67. Work associated with ILF assessments and disputes is undertaken in a consistent way as failure to do so would be open to challenges.
68. Paying redundancy costs of employees/Personal Assistants is of particular concern to ILF recipients. There may be some people who will struggle financially to meet their employer responsibilities as a result of this change and there are no allocated funds for this from the ILF to the local authorities.
69. Potentially safeguarding concerns if DBC does not work with the ILF recipients may leave them at risk following the closure of the ILF.
70. There is the potential that some ILF users pay providers an hourly rate which is higher than DBC's rate, however, it is likely that those on the current contracts framework will fall in line with the commissioned rate.

Equality Impact Assessment

71. There is a national equality impact assessment regarding the closure from the national perspectives has been completed by the ILF.
72. An Equality Impact Assessment (EIA) has been undertaken in Darlington to enable Members to understand the full impact on local ILF recipients. The EIA is attached in full at **Appendix 1**.
73. The EIA has identified that the proposals had no specific impacts in terms of race, sex, religion and belief, sexual orientation, pregnancy and maternity, gender reassignment, and marriage and civil partnership.
74. The EIA shows that age and disability are the characteristics where there is likely to be an impact.
75. Consideration has also been given to the cumulative impact on all of the nine protected characteristics if proposals are approved.
76. Financial assessment following the transfer of resources to the local authority (as of 01 July 2015) has identified that there are no huge increase in number of recipients' financial contributions towards their care provisions (see **Appendix 2** for details).
77. Only 1 recipient has no change in their contributions.
78. A majority of 43 recipients have a reduction in their contributions. The minimum reduction is by 1.6% (£1.52) and the maximum is by 100%. There are a total 7 recipients who have a total reduction and the highest amount is £193.20.
79. There is an increased in 15 recipients contribution, which is a minimum increase of 0.5% (£0.11) and a maximum increase of 14% (£13.84).
80. ILF has carried out outcome focussed reviews for all recipients jointly with a social worker from the local authorities during the transfer review process. However, local

authorities carried out or were planning to carry out their own independent assessments following the implementation of Care Act in April 2015.

81. In Darlington, Adult Social Care conducted a programme of reassessment between May 2015 and September 2015. These reassessments were undertaken in accordance with the Care Act and the new national eligibility criteria. The potential impacts of the changes may have on individuals to be affected and those who care for them is also to be established through these reassessments.
82. A separate questionnaire form was also sent to all recipients to complete their views on how the changes may affect them and those who care for them as part of the EIA. Forms relating to 27 cases were completed and returned; out of these 26 are individuals and 12 are carers.
83. Two open sessions were also arranged which aim to provide them with an update and clarify any questions they may have. Only 2 individuals and 2 carers attended these sessions.
84. It has been identified that the care provisions remain unchanged or have increased for almost all recipients following the reassessment. Only a few recipients (3 people) care provision elements funded by ILF for has slightly reduced following the reassessment, as they were not utilising the provision at all as it was not required.
85. Recipients and their carers identified that it would impact on their general and mental health well-being and quality of life if there would be a reduction in their support hours. This is not the case including for those 3 people who have a reduction in their support hours, as there is no changes in their care provision.
86. There would be some personal impact on employees/Personal Assistants and care providers. Also any changes to the support needs to take into consideration of the ILF users' contractual and legal obligations, for example, make redundancy payments and give notice period.

Timetable

Jan – Feb 2016	Findings/Final Report to Cabinet Final Decision by Cabinet
Feb – Mar 2016	Making all necessary arrangements to transition existing care package onto the new system