
**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 - Murray Rose, Director of Commissioning

Purpose of the Report

1. To update Cabinet on national changes to the ILF.
2. 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

3. The ILF has been established for 27 years and is due to close on 30th June 2015. The Fund offered eligible disabled people funding to support their independence. The Government proposal is that the current spend minus 5% is transferred to the local authorities in perpetuity. Currently in Darlington, the current spend is approximately £1,000,000
4. The national transfer strategy is that all ILF recipients are reviewed in the light of their Councils 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.
5. The ILF funding will be transferred to the local authorities on the 1st July 2015 as part of the Councils' baseline allocation. This funding is not ring fenced.

Recommendation

6. Cabinet is asked to approve the following proposals:
 - (a) All reassessments will be undertaken between May and August 2015 in a personalised and outcome focussed way using Council's eligibility criteria.
 - (b) All financial assessments to be completed by end of 30th June 2015.

- (c) The reassessments and resulting financial assessments would then enable us to understand the eligible care and support needs, impacts on individuals and the total cost of support packages. A final report will be submitted to Cabinet with these findings for a final decision.
- (d) Ring fence the fund allocation up to end of March 2016. This would enable staff to complete all proposed tasks and/or any other required actions whilst ensuring the ILF users' eligible needs are met continuously without interruption during the period of the transition.
- (e) The Council will fund the existing care and support packages at the current rate for direct payments users until the final decision is to be made.
- (f) The proposed timescales should provide sufficient time to put any required actions or alternative support arrangements in place during this transition.

Reasons

- 7. Approval is sought in order to ensure a managed process is in place to support the transfer arrangements.

Murray Rose
Director of Commissioning

Background Papers

ILF, ADASS and LGA Code of Practice.
Care Act regulations relating to ILF transfer
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 may be efficiencies in support provision once the reassessments have been undertaken but none are identified at this stage.

MAIN REPORT

Proposal

8. All reassessments will be undertaken between May and August 2015 in a personalised and outcome focussed way using Council's eligibility criteria.
9. All financial assessments to be completed by end of 30th September 2015.
10. The reassessments and resulting financial assessments would then enable us to understand the eligible care and support needs, impacts on individuals and the total cost of support packages. A final report will be submitted to Cabinet with these findings for a final decision.
11. Ring fence the fund allocation up to end of March 2016. This would enable staff to complete all proposed tasks and/or any other required actions whilst ensuring the ILF users' eligible needs are met continuously without interruption during the period of the transition.
12. The Council will fund the existing care and support packages at the current rate for direct payments users until the final decision is to be made.
13. The proposed timescales should provide sufficient time to put any required actions or alternative support arrangements in place during this transition.

Background

14. 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 the direct payments could not be made by local authorities.
15. 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.
16. The two funds had different eligibility criteria which resulted in two separate groups of users, i.e. Group 1 and Group 2.
17. 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.
18. 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.
19. ILF works alongside, however outside of the mainstream care and support system.
20. The ILF uses different eligibility criteria to the local authority on deciding funding care packages. 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.
21. 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

22. 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.
23. 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.

24. 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.
25. On 18th December 2012, following a consultation period, the Government decided to close the ILF and transfer the funding to local authorities.
26. The Court of Appeal overturned the Government's decision on 6th November 2013 on the grounds that the DWP had failed to comply with its public sector equality.
27. Following a new Equality Impact Assessment and careful consideration of the Court of Appeal's ruling, the Minister for Disabled People announced on 6th March 2014 that the Government had decided that the ILF would close on 30th June 2015.
28. The closure of the ILF now requires local authorities to determine their policy on this matter.

Transfer of Funding & Responsibility to Local Authority

29. Following the closure of the ILF, the funding and responsibility of the ILF recipients' care and support needs will be transferred to local authorities in England from 1st July 2015.
30. Funding for each ILF recipient will be 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.
31. 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.
32. Funding based on the ILF's net commitment to ILF recipient recognising future attrition for the year. Funding would be distributed to local authorities based on ILF's forecast expenditures for 2015/16 in each local authority area at the point of closure.
33. Future ILF funding will be reduced by 5% each year as a natural attrition.
34. The ILF sent data about each ILF recipient who has given consent to each local authority in November 2014 and March and May 2015.
35. The ILF will continue to support ILF recipients and make payment until 30 June 2015, providing they still meet the ILF's conditions. This includes all arrears and as a result ILF recipients will get two payments from the ILF during June 2015.
36. All ILF users have received information from the ILF about changes in their funding. In recent months ILF administrators have been jointly reviewing each individual with a social worker from the LA to give clear information about their future funding.

Profile of ILF Users in Darlington

37. Currently there are 59 people are in receipt of ILF funding that the Council is aware of.
38. There is the possibly that a number of people who are in receipt of ILF have not yet contacted Darlington Borough Council (DBC).
39. There are 13 Group 1 users in DBC. Of these is only one person who does not receive a service through DBC.
40. 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.
41. There are 46 Group 2 users in DBC.
42. The total approximate annual award for 59 users is £1,019,721. This is the anticipated annual amount which will be transferred to DBC with a 5% annual reduction.

ILF Users	ILF Package (£)		Sub Total
	Offer 1	Offer 2	
Group 1	195,632.80	0.00	195,632.84
Group 2	768,987.50	55,100.68	824,088.16
Net Total	964,620.30	55,100.68	
Grand Total	1,019,720.98		

43. 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

44. 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	868,195.08

Consideration for DBC – Risks, Uncertainties & Challenges

Eligibility Criteria

45. The ILF operates under a different eligibility criteria to the local authority. Therefore ILF users may be eligible for the same level of support once ILF ends and the local authority take over, however some may not reach the current threshold for support.
46. The Care Act 2014 introduces a national eligibility criteria with a minimum threshold for care and support needs which local authorities must meet. All local authorities must comply with this national threshold. Authorities can also decide to meet needs that are not deemed to be eligible if they chose to do so.
47. Many ILF users are concerned that their support package will be reduced following the implementation of the new national eligibility criteria.
48. 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 8th April 2015 suggested that there are 29 authorities out of 152 who propose to ring fence.
49. 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 the permanent basis will be replicating of 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.

Assessments

50. ILF has carried out outcome focussed reviews for all recipients jointly with a social worker from the LA during the transfer review process and have given a copy of an ILF Transfer Review Support Plan to each users. However, local authorities still need to or be planning to carry out their own independent assessments following the implementation of Care Act in April 2015.
51. In Darlington, Adult Social Care is planning to start a programme of reassessment. These assessments will be undertaken in accordance with the Care Act and new national eligibility criteria. Assessments did not take place prior to April 2015, as following the implementation of the Care Act, they would be a requirement to review again.
52. The Care Act 2014 Guidance No 10.2 places specific duties upon local authorities to ensure people are able to fully participate and be fully involved in the assessment and care and support planning processes (with an advocate where eligible) and therefore the timescales of assessments for ILF recipients would need to be accessible for people to participate, including allowing time for people to participate within the process.

53. 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.
54. 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.
55. The LA can choose to manage any changes to care packages in different ways, providing some transitional protection where required if their current support plan is no longer eligible, but this needs to be considered on a case by case basis after a detailed needs assessment.
56. It is anticipated that there would be some personal impact for individuals as well as 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. All these would not be known until reassessments have been undertaken.

Funds / Finance

57. We do not know the total funding that will be distributed to us, although this would be on the basis of local patterns of expenditure.
58. All ILF users make 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.
59. Future ILF funding will be reduced by 5% each year as a natural attrition.
60. 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 FACS eligible services.
61. To create a two tier system of funding is felt to be unfair and the FACS eligibility criteria must be applied consistently across all users.
62. Local authorities will need to be aware of any additional costs associated with changes in care provisions. This can only be established once the individual needs have been assessed under the Care Act eligibility criteria.
63. 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.
64. This will increase further work for the Financial Assessment Team as they have to assess and ensure the recipients' contributions as per fairer contribution policy.

65. Final costs associated with this transfer will not be known until all of the ILF users have been reassessed against the new eligibility criteria and fairer contributions policy.
66. It is anticipated that there would be a financial risks involved in this transfer as the process of funding is still unclear and we do not know the full costs of the support we will need to fund.

Other Implications

67. 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.
68. Any reduction in funding may impact upon ILF users' citizenship/lifestyles potentially may seek challenges through legal process.
69. As a result of the reduction to their ILF funding, there are potential complaints to the local authority.
70. There may be disputes and complaints if disagree with the level of care and support for their assessed needs.
71. Potentially there will be cases presented to the local or national media which may be damaging to the reputation of the DBC.
72. Any increase in formal complaints and/or legal challenges will need managing and be costly in staff time.
73. Work associated with ILF assessments and disputes is undertaken in consistent way as failure to do so would open to challenges.
74. Paying redundancy costs of employees/personal assistants is of particular concerns 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.
75. Potentially safeguarding concerns if DBC does not work with the ILF recipients may leave them at risks following the closure of the ILF.
76. 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.

Impacts on ILF Users

77. It is difficult to estimate the impacts the changes will have on people's lives without undertaking the reassessments.

78. The table below shows the potential impacts on individuals without the ILF:

Case	Package Received	Likelihood of Impact
<p>LW (178123)</p> <p>Male</p> <p>Age: 30</p> <p>Life Stages 26+ Team</p>	<p>LA Package:</p> <ul style="list-style-type: none"> • 22 hours direct payments • 52 @ £296.89 per week respite <p>ILF Package: Offer 1: £315 X 52 wk</p> <p>Used for: 21 hours social time instead of day services this is on a 2-1 staffing basis</p>	<ul style="list-style-type: none"> • LW lives at home with his father who is a sole carer • LW would be at a high risk of losing his paid support networks. • This would put his father at risk as LW will physically target father. • LW and his father would be at risk of social isolation. • Potential for LW to require specialist residential support at an earlier stage in his life
<p>MB (177170)</p> <p>Female</p> <p>Age: 43</p> <p>Life Stages 26+ Team</p>	<p>LA Package:</p> <ul style="list-style-type: none"> • 3 days day service • 7 sleepovers • 12 hours direct payments <p>ILF Package: Offer 1: £741.60 X 52 wk</p> <p>Used for: 72 hours when not at day services and weekends provision of additional 2 to 1 support</p> <p>Comments: 24 hour package plus 5 hours domestic</p>	<ul style="list-style-type: none"> • Lives in her own flat with support from very familiar personal assistants who have supported her for over 20 years • could not remain in the current accommodation • would need to look at long term 24 hour support
<p>DN (178950)</p> <p>Female</p> <p>Age: 36</p> <p>Life Stages 26+ Team</p>	<p>LA Package:</p> <ul style="list-style-type: none"> • 5 hours direct payments • 5 days day services <p>ILF Package:</p> <ul style="list-style-type: none"> • Offer 1: £297.03 X 26 wk • Offer 2: £624.60 X 26 wk 	<p>DN has the services provided by a PA and would lose the relationships she has developed</p> <p>Father would require additional support in the home as DN also has a brother with complex learning disabilities.</p>

Sister of CN	Used for: <ul style="list-style-type: none"> • 28 hours support and social - 26 weeks of the year • 59 hours support and social - 26 weeks of the year • Employees NI and holiday pay 	Possible family breakdown
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79. These are an initial officer assessment of potential impacts, and may change once people are contacted directly.

Equality Impact Assessment

80. The personal impact for individuals will not be known until the reassessment of care and support needs has been undertaken, but each individual will be reassessed and provided with information, advice and support should their package of care change.

81. There is a national equality impact assessment regarding the closure from the national perspectives has been completed by the ILF.

82. Equality Impact Assessment (EIA) is in progress in Darlington in relation to the equality impact on local ILF recipients. It will be updated when all reassessments have been undertaken.

83. The following are some examples of the potential impacts on current ILF recipients:

- (a) Individual may become isolated as the money they used to support their inclusion is not available.
- (b) Individual may not be supported by a consistent employee.
- (c) Loss of current accommodation due to lack of ongoing support.
- (d) Family break down due to parent/carer stress.
- (e) Unable to access social activities, voluntary work or employment.

Timetable

June 2015	Initial Report to Cabinet
May – June 2015	Financial Assessments
May – Aug 2015	Reassessments of ILF users
Sep - Oct 2015	Equality Impact Assessment Findings/Final Report to Cabinet Final Decision by Cabinet
Oct 2015 – 31 Mar 2016	Making all necessary arrangements to transition existing care package onto the new system