

Committee: Cabinet

Date: 09 March 2015

Wards: All Wards

Subject: Options for the transfer of the Independent Living Fund (ILF) and consultation outcome

Lead officer: Simon Williams Director for Community and Housing

Lead member: Councillor Caroline Cooper- Marbiah, Cabinet Member for Adult Social Care and Health

Contact officer: Sandra Mak, Team Manager, ASC Older People's Service

Recommendations:

- A. To consider, as detailed in the report, the outcome of the consultation exercise on the options for when the ILF closes and full responsibility for supporting ILF customers transfers to the Council from 1st July 2015.
 - B. To agree the recommended option (Option 4 in 5.2) on how care and support will continue to be provided to the existing ILF customers
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of the report is: to provide the background on the Government's decision to close the ILF and transfer full responsibility for supporting ILF customers to the Council; to provide feedback on the outcome of the consultation exercise that has taken place, on the options for how care and support will continue; and to seek Cabinet agreement on the preferred option

2 DETAILS

- 2.1. The ILF is a Non-Departmental Public Body funded by grant-in-aid from the Department for Work and Pensions (DWP). The fund operates as a discretionary trust alongside the mainstream adult social care system for which local authorities already take prime responsibility. Nationally, the ILF currently makes direct cash payments to around 18,000 disabled people enabling them to purchase care and support services.
- 2.2. The ILF was originally set up in 1988 and ran until 1993 as a charitable trust. 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.
- 2.3. The two funds had different eligibility criteria which resulted in two separate groups of users: Group 1 and Group 2.
- 2.4. Group 1 users joined ILF before 1st April 1993. Group 1 users may receive some support from their local authority but this support is not part of their ILF eligibility criteria.

- 2.5. Group 2 users joined on or after 1st April 1993. Group 2 users have care and support packages which must include a minimum contribution from their local authority which is part of their ILF eligibility criteria.
- 2.6. In June 2010, because of pressures on the ILF budget, the decision was taken to temporarily close the ILF fund to new users. In December 2010, the Government announced the permanent closure of the fund to new applicants, stating that awards to existing users would be protected until 2015 and that there would be a consultation on the future of the ILF.
- 2.7. On 18 December 2012, following a consultation period, the Government announced its decision to close the ILF permanently on 31 March 2015 and transfer funding to local authorities and devolved administrations in Scotland and Wales. However this decision was quashed by the Court of Appeal on 6 November 2013 on the grounds that the DWP had failed to comply with its public sector equality duties, and in particular failed to have due regard to the duty to promote equality and failed to inform the Minister fully of the potential impact of the decision when making the decision to close the ILF.
- 2.8. Following a new Equality Impact Assessment, on 6 March 2014, the Government announced a new decision to close the ILF fund on 30 June 2015. A further legal challenge to this decision was unsuccessful. From this point local authorities, in line with their statutory responsibilities, will have sole responsibility for meeting eligible care and support needs of their current ILF users.
- 2.9. The Government has stated that the ILF funding would be distributed to local authorities based on ILF's forecast expenditure for 2015/16 in each local authority area at the point of closure. In accordance with Government policy the funding devolved to local authorities is not ring-fenced and it will be up to each local authority to determine how to allocate the funding transferred to them.
- 2.10. This will mean that ILF users will have all their care and support needs assessed through the mainstream care and support system under a single eligibility criteria and charging regime.

3 GOVERNMENT RATIONALE FOR CLOSING THE ILF

- 3.1. Since the ILF was established the mainstream care and support system has evolved. In 1988 there was no legal provision for local authorities to provide direct cash payments for the purchase of care which is a feature of the ILF. The Health and Social Care Act 2001 placed a legal duty on local authorities in England to offer Direct Payments to anyone eligible for community care services. The Care Act 2014 gives all users of the social care system in England the right to a personal budget and creates a national minimum eligibility threshold.
- 3.2. The Government 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 choice and control.
- 3.3. The Government believed 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 enable use of all funding available to adult social care to support all disabled people in a more consistent, effective and equitable way within a mainstream system.

4 PROFILE OF MERTON ILF USERS

- 4.1. There 20 ILF users living in Merton. 18 out of the 20 ILF users currently have a care and support package that is jointly funded by the ILF and social services. 2 of the ILF users have care and support packages that are solely funded by the ILF. 4 out of the 20 ILF users are Group 1 users (application made before 1993).
- 4.2. Of the 4 Group 1 users, 3 have given consent for their current ILF award to be disclosed to Merton social services, but 1 Group 1 user has declined for the information to be shared. For ILF users who decline their information to be shared, the ILF's freelance social worker will contact the user and assess the user's mental capacity to make decisions on care and finance. If the user has mental capacity but does not wish to engage with their local authority then it is their decision to do so.
- 4.3. There are 16 Group 2 users (application made after 1993) and all of them have consented to information being shared.
- 4.4. 19 out of the 20 ILF users have received regular joint reviews by the ILF social worker and a review officer from Merton social services. 15 out of the 20 ILF users are known to Merton's Direct Payments team.
- 4.5. The table below illustrates the nature of Merton's ILF users' primary impairment:

Primary Impairment	No. of users
HIV/Aids related	1
Arthritis (osteo-rheumatoid)	1
Cerebral Palsy	5
Cerebro-Vascular eg stroke	2
Dementia (including Alzheimers)	1
Multiple Sclerosis	4
Other	2
Polio Damage	1
Severe Learning Disability	1
Spinal Injury	2
Total	20

- 4.6. The table below shows the age range of the Merton's ILF users. The youngest is aged 33 years and the oldest is aged 78 years.

Age range	No. of users
31-40	2
41-50	4
51-60	8
61-70	3
70+	3
Total	20

5 OPTIONS ON HOW CARE AND SUPPORT WILL CONTINUE TO BE PROVIDED POST CLOSURE OF ILF AND TRANSFER OF RESPONSIBILITIES AND ILF FUNDS TO THE COUNCIL

- 5.1. The funding position from 16/17 onwards will be subject to the next spending review cycle, however 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 decisions will be an impact against the total funding for care and support packages held by adult social care.
- 5.2. There are 4 options:
- Option1: the transfer of ILF funding on 1 July 2015 goes into the baseline budget for the Council for 15/16 and is spent in other areas of the Council
 - Option2: the transfer of ILF funding on 1 July 2015 goes into the baseline budget for adult social care for 15/16 on a recurring basis and is ring-fenced to existing ILF users in perpetuity
 - Option3: the transfer of the ILF funding on 1 July 2015 goes into the baseline budget for adult social care for 15/16 and ILF users are re-assessed immediately in accordance with social care eligibility criteria and given a personal budget for their care and support needs on this basis
 - Option4: the transfer of the ILF funding on 1 July 2015 goes into the baseline budget for adult social care for 15/16 and the individual ILF users receive the same level of funding for their care and support for 15/16. During 15/16 the ILF users will be re-assessed in accordance with social care eligibility criteria and given a personal budget on this basis for 16/17.

6 IMPACT OF THE OPTIONS

- 6.1. Option 1 would place additional pressure on the adult social care budget. ILF users would have to be assessed immediately in accordance with social care eligibility criteria and given a personal budget for their care and support needs for 15/16. The majority of the ILF users would face 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 immediate loss of ILF funding would mean that the ILF users would have to make different choices about their daily lives.
- 6.2. Option 2 would place an additional budget pressure on the adult social care budget as we may end up supporting ILF recipients above their eligible needs and the Council would end up operating a separate source of funding for a small group of disabled people which would be difficult to justify.
- 6.3. 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, within a cohesive mainstream system. The intention would be to offer support through the Direct Payments scheme where chosen by the ILF users, thus 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.

- 6.4. Option 4 is as Option 3 but would give the ILF users the time to be supported through any changes and work out care and support plans to meet outcomes whilst ensuring eligible needs are met. This would enable good planning for future care and support.

7 CONSULTATION UNDERTAKEN OR PROPOSED

- 7.1. A consultation meeting with ILF users took place on 10 February 2015. 9 ILF users and their carers attended as well as representative from Merton Centre for Independent Living and officers of the Council.
- 7.2. Telephone consultations were also held between 9 – 13 February 2015 with 6 ILF users
- 7.3. 1 consultation home visit was made at the person's request
- 7.4. 3 ILF users requested consultation via email. This was sent between 9-13 February
- 7.5. 1 person did not respond with attempts to get in touch
- 7.6. The majority of ILF users expressed a preference for Option 2.
- 7.7. The outcome of the consultation exercise is summarised in Appendix A

8 TIMETABLE

- 8.1. Following Cabinet agreement on the Option, in March 2015, each ILF user would be allocated to a key worker in the locality social care teams.
- 8.2. Information, advice and support will be provided by the key worker and Merton Centre for Independent Living from March 2015.
- 8.3. Re-assessments of the ILF users will be timetabled in accordance to Cabinet decision on the options
- 8.4. From 1 July 2015, Merton will take over the ILF responsibilities for all 20 ILF users.

9 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 9.1. Funding will be transferred to the local authority on 1 July 2015 via a section 31 Grant. The ILF funding will be transferred net of any ILF charges that the user was contributing towards their ILF care and support package. There will be an expectation that users will continue to make this level of contribution towards their support until the point of the local authority re-assessment. At this time a financial assessment will be carried out in accordance to the Fairer Charging policy.
- 9.2. We do not yet know the total funding that will be transferred to Merton. There is a financial risk as the process of funding is still unclear
- 9.3. The funding position from 2016/17 onwards will be subject to the next spending review cycle.

10 LEGAL AND STATUTORY IMPLICATIONS

- 10.1. The council currently has a duty to assess needs of disabled persons who may need community care services under the NHS and Community Care Act 1990 and the Disabled Persons (Services Representations and Consultation) Act 1986. When the Care Act 2014 is brought into force, assessments will be required under sections 9-12 of that Act and services will be provided to persons assessed to be eligible under national eligibility criteria set by regulations. The Council will be required to set a personal budget as part of care and support plans and provide direct payments in appropriate cases.
- 10.2. In considering the options for supporting ILF customers, the council must also have regard to consultation responses and to its Public Sector Equality Duty.
- 10.3. Case law establishes that the council must not rule out any alternative options prior to consultation and must take the responses to consultation conscientiously into account in finalising any proposals.
- 10.4. The Council's public sector equality duty is set out in section 149 of the Equality Act 2010, which provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. Relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 10.5. To meet the public sector equality duty, the Council must assess the risk and extent of any adverse impact of proposals and the ways in which such risk may be eliminated before the adoption of a proposed policy. An equalities analysis has been completed to enable this assessment to be undertaken as referred to in section 11 below.

11 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 11.1. The full Equality Impact Analysis is detailed in Appendix B
- 11.2. The key findings of this initial assessment are:
 - Merton's vulnerable residents are affected, in particular those people with disabilities (learning and physical) and older people
 - Despite any reduction or cessation of services the council will still continue to meet its statutory duties and minimize any adverse impact on service users and carers. Service users will be assessed and provided with services in accordance with the council's statutory duties. Although in some cases

- this may mean changes to the services they currently receive their needs will be continue to be met and they will receive the same level of service as other service users with similar assessed needs.
- The council will promote the ethos of greater independence for service users (where possible), maintaining the 'person-centred' approach working together with partners from the health and voluntary sectors, as well as tapping into existing social capital.
 - The potential negative impact of these proposals have been identified and communicated with a mitigation plan developed as detailed in section 6 of the report.

12 CRIME AND DISORDER IMPLICATIONS

12.1. None specific to this report

13 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

13.1 The Council will need to ensure that the work associated with ILF re-assessment and disputes is undertaken in a consistent way as failure to do so would leave the Council open to challenge.

13.2 If people aren't happy with the level of care and support for their assessed need, there may be disputes and complaints that will need managing

14 BACKGROUND PAPERS

- CLOSURE OF THE INDEPENDENT LIVING FUND (ILF) , DWP, 6 MARCH 2014
- ADASS AND LGA RESPONSE TO THE FUTURE OF ILF

15 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A Summary of the consultation exercise undertaken
- Appendix B Equality Impact Assessment

Appendix A

Notes from Independent Leaving Fund consultation meeting

Introduction

The meeting took place on 10 February 2015 at All Saints Centre. In attendance were 9 ILF users, with carers and Lyla Adwan-Kamara from Merton Centre for Independent Living. Attending from Merton Council were Rahat Ahmed-Man, Head of Assessment and Commissioning, Jenny Rees, Service Manager, Older People, Physical Disabilities and Sensory Impairment, Sandra Mak, Team Manager, Older People, Physical Disabilities and Sensory Impairment and Kris Witherington, Consultation and Community Engagement Manager.

The following note captures the comments made by attendees about the options being considered; the questions they raised and the answers provided and the actions agreed. It is a summary rather than a transcript but captures the points being made by the individuals involved and any responses.

Options

The four options being considered were presented.

Responses

Option 1

Users agreed that this option should not be considered by the council. Reducing ILF funding would lead to deterioration in users' lives.

Option 2

This was the option preferred by all users although users understood that the council would need to provide additional funding to the social care budget from 2016. Users believe that the notes from the ILF should sufficiently demonstrate the value of the support to users and that they have a right to this support. They further believe that the ILF offers control over daily life whereas care assessments do not respond quickly to changes and that the ILF offers flexibility in arrangements when travelling outside of the borough.

Users believe that some of the other administrative arrangements currently in place should also be maintained, like separate bank accounts for ILF funding for those who already have them.

Option 3

Users expressed concern about the assessment process and eligibility criteria that would be used since in their view social care assessments follow a very different model to ILF assessments. Users felt ILF focuses on independence, quality of life and giving users control whereas care assessments focus on essential needs. Users were concerned that on the new Care Act eligibility criteria that will be used in social care assessments independence is only included in guidance notes and would not be a statutory obligation.

Users also felt reassessment was unnecessary given that long term conditions were unlikely to have improved since the original ILF assessment. Users felt that their care needs were already assessed by Merton but the ILF offered a different model that fills in gaps in the care criteria.

Option 4

Users agreed that should any changes to ILF support occur then sufficient time should be allowed for them to plan their lives properly. It is already too late to be discussing changes that could be implemented in July 2015.

If existing structures are maintained for the first year then users should be involved in deciding what arrangements are put in place and test any changes before they are implemented. Volunteers taking part in any planning should be supported and not end up out of pocket. Any further review of arrangements in the future should also allow enough time for users to plan.

Questions and responses

Q: What happens to IFL funding after the first 12 months of funding stops?

A: There will be no further funding from central government so care and support needs would need to be met from social care budgets. Council and social care budgets are under huge pressure so it will be challenging to maintain ILF funding. Any decision to continue to maintain ILF funding is likely to have to be reviewed frequently.

Q: Will ILF funding be index linked and staying as is means no pay increase for PA's?

A: Not known at this stage

Q: What are the assessment criteria used by social care and what happens if users do not agree with the assessment?

A: Merton currently uses the Fair Access to Care eligibility criteria but this would be replaced by the nationally set Care Act criteria. Care is assessed on need as that is a statutory obligation, not budget, and using the same criteria means everyone is treated fairly. There would not be any guarantee that funding would remain the same once switched to personal budgets but this would be based on need. Assessments are done in partnership with customers. When agreement cannot be reached other social workers may be brought in to revisit the assessment.

Q: Will we still be in control of employing our own PA's?

A: Yes, being funded through Direct Payments would maintain the principle of choice and flexibility.

Q: How frequently do reassessments take place?

A: Try to reassess all customers annually but we will also react to changes in circumstances. Care and support packages change frequently in response to needs.

Q: ILF currently has a low level of administrative costs, around 2-3%, where as local authorities spend more. How will the transfer of the funds to Merton impact on the resources available.

A: Merton does not plan to take any money in administrative costs

Q: Will 24 hour care be covered?

A: 24 hour care is already covered in current eligibility if that meets needs. A number of customers already received 24 hour care regardless of whether they received ILF.

Q: How will those users not at the meeting get involved in the consultation?

A: They are being contacted directly, either by phone or through home visits.

Q: How will the decision be made and how will what we say influence decision makers as they are not here to listen to us.

A: A report will be submitted to Cabinet for the meeting on 9 March. The report will include all the options and all the responses from users as we do want to listen and work with people affected. No decision has been taken on whether any of the options would be recommended to cabinet by officers.

Q: Are there any plans for any further meetings with users?

A: Not at the moment but any task group or other mechanism looking at 2016/17 would involve users.

Other comments

The national campaign to save the principle of the ILF, a national funding pool that focuses on quality of life, is continuing.

Merton needs to use a different definition of independence that moves away from functionality and is about control over lives.

It is important to remember that ILF is not about what users want but what they are entitled to.

Actions

- To share social care eligibility criteria and assessment questions with users so they could compare these to ILF
- To share the total budget for ILF users in Merton when known
- To find out if Merton provides training for PA's and if training is required for insurance
- To develop plans for a task group or other mechanism to involve users in planning for 2016/17

- To inform ILF users of the recommendations officers make to Cabinet on the options.

Summary of consultation via telephone calls made between 9 – 13 February 2015

- 5 ILF users expressed on the telephone that option 2 is their preferred option because this would give them stability in terms of planning for care. They commented that the ILF has worked very well for them in terms of giving more control and independence in their care arrangements. In general, they felt that the administrative aspect of the ILF has been very effective and they have always been well-informed by the ILF in relation to all the changes.
- 1ILF user indicated that option 4 is the preferred option because it was felt that his health may deteriorate over the next 12 months but does not wish to have any changes in the current care package so soon.
- 1ILF user's representative mentioned that they would attend the Consultation Meeting but did not attend. Two telephone messages were left on 11th and 12th February but no response so far. We do not have an e-mail address for the representative hence unable to gain their view. The user has severe dementia so it would not have been feasible to consult them directly.

Consultation by home visit

- One ILF user's parent preferred to be visited at home for consultation and Sandra Mak carried out a home visit on 11th February. The ILF user has several physical and cognitive impairments hence the parent (who lives in Clapham and works full time) said that they preferred option 2 because it would give her daughter more stability in the provision of a live-in care package.
- It was acknowledged that the ILF award has been valuable in financing the existing care package and enabling people with disabilities to have more control and independence. The parent also commented that the ILF payments run very smoothly and the staff are very helpful whenever they have any query. They would prefer to have a separate bank account for the ILF transfer fund if the cabinet approves for option 2 to be implemented. If there is a Task Group for Merton's ILF users, the parent would be interested to participate.

Consultation by e-mails

- 3 ILF users/ representatives requested consultation via e-mail and the list of four options was sent for comments (between 9th to 13th February). Still awaiting their replies on the preferred option. These users either have several physical disabilities that they are not able to hold the phone or speak hence their representatives preferred consultation to be done by e-mail. They declined a telephone consultation because they would like more time to reply to us with their preferred option.

Summary of Consultation on the preferred options for ILF transfer

- None of the ILF users and carers who participated in the consultation exercise prefer option 1.
- 14 ILF users expressed a preference for option 2.
- 1 ILF user prefers option 3.
- 1 ILF user would like option 4.
- 4 ILF users have not responded yet.