

DERBYSHIRE COUNTY COUNCIL

CABINET

28 July 2015

Report of the Strategic Director for Adult Care

TRANSFER OF THE INDEPENDENT LIVING FUND

ADULT SOCIAL CARE

1. Purpose of the Report

To approve arrangements regarding the transfer of responsibilities following the closure of the Independent Living Fund.

2. Information and Analysis

The Independent Living Fund (ILF/ “the Fund”) was established in 1988 to provide financial support to people with disabilities which would maximise their control over their daily support and other needs. The Fund was established as a trust and is administered separately from the Department of Work and Pensions. Consequently eligibility for support from the Fund was determined by decision makers working for the Fund using their own criteria. As a result, those in receipt of ILF monies had their care funded differently to others who may have had similar care needs but were funded via the social care system.

In 2010, the Government announced plans to close the Fund. Despite a number of high profile legal challenges being made, which led to a further period of consultation, the decision to close the fund in 2015 was made and for responsibility to be devolved to local authorities. The Governments stated rationale for this change was:

- To end the arrangement in which currently some of those in receipt of ILF monies have their care funded differently from those who do not have ILF funding who have similar needs.
- To ensure that “all disabled people will be supported solely by Local Authorities in the mainstream system in a consistent way” and “this will allow the care and support needs of existing ILF users to be met within one cohesive social care system”.

Transitional arrangements have been put in place by the Government. ILF users received their last payment in June 2015 and as from 1 July 2015 responsibility for meeting their care needs transferred to local authorities. Transition funding has been made available to local authorities by central government to allow existing ILF care packages to be maintained at existing levels for up to 9 months.

There are 184 people in receipt of ILF awards in Derbyshire at 30 May 2015 and the expenditure from the Fund totals £3.020m p.a.

Arrangements have already been put in place to make contact with all recipients to notify them of the closure of the Fund, the change timetable and to inform them that after 1 July 2015 a review of their future support requirements will take place. This initial contact has been made jointly with ILF case workers and users have had the opportunity to discuss matters concerning the ILF closure and what it will mean to them.

Between August and December 2015 it is planned for our allocated workers to reassess all ILF recipients in line with the Derbyshire Offer and to apply eligibility decisions based on the new Care Act definitions. The review will establish the person's eligibility for a personal budget from Derbyshire Adult Care. The review format will be the same as that used for all people in receipt of support services paid for by Adult Care. Clients will also need a co-funding financial assessment to determine the amount they are expected to contribute towards the support they receive (if any).

New care and support plans will need to be agreed and implemented by the end of December 2015. This is to allow time for any residual employment responsibilities to be fulfilled and will help individuals with forward budget planning for financial year 2016-17. There is currently no indication of any further transition funding to local authorities beyond March 2016.

There is no requirement for the Council to ring-fence ILF transfer monies and no specific entitlements for individuals to receive a personal budget equivalent to their previous entitlement under the fund up to the end of March 2016. The purpose of the transfer fund is to cover the costs of support services until personal budgets are agreed and put in place. The amount being transferred is the total of direct support costs at 30 June 2015. This transfer does not include an element to pay for the costs of the reviews and assessments that will be required.

It is anticipated that reviews will identify that some needs of some people could be met by accessing support or services that they do not currently use and which are not paid for directly by the local authority. Consequently some personal budgets could be lower than the current level of ILF awards. This has a number of implications for people in receipt of the award and potentially for

people employed by award holders. The joint reviews undertaken with ILF case managers have made fund users aware of this possibility. The potential for different eligibility criteria to be applied by Councils has also been included in correspondence from the ILF to clients about the transfer of funding. It will not be clear until the individual assessments by Council staff have occurred whether a recipient will face a reduction in the total support to be provided.

The formal reviews will determine eligibility for support and establish eligible needs and create a personal budget. This will reflect the cost of support to be purchased. The arrangements for arranging support will be the same as for all other personal budget holders and it is anticipated that support provided by personal assistants will continue to be provided through a Direct Payment arrangement. A direct payment arrangement does bring more employer responsibilities and more extensive employee rights than attach to employing a personal assistant under the ILF. Advice about these responsibilities will be provided by the Direct Payments support team.

2.1 Consultation and Equality Impact Assessment

Extensive consultation has already been carried out by central government regarding its proposals to close the fund and the intention of the former ILF recipients to be assessed by local authorities. Individual consultations have also taken place through individual reviews that have been undertaken by ILF and Council staff and will continue within the process being outlined. In addition the Council will be writing to representative groups to explain the proposed course of action and to invite comments. Feedback will be analysed and used to review the process and timescales outlined in this report. Any issues requiring further consideration arising from the consultation with individuals or represented groups would be the subject of a further report to Cabinet.

The Council is aware of the high level of opposition to the Government's proposals which were considered by the High Court during judicial review proceedings. In meetings with disability campaigners and in media interviews Derbyshire members, including the Cabinet Member and his deputies have opposed the closure of the ILF.

The main reason for people opposing the closure of the Fund was that they were concerned that their care packages would be reduced and their quality of life would be adversely affected. The Council acknowledges these concerns but believes that it may be possible to identify alternative ways of meeting needs which are not eligible at the conclusion of reassessments. This has been the experience of the Council during the process of reviewing packages of support against the revised eligibility criteria agreed by the Council in June 2014.

The Council has also given consideration to the Governments Equality Impact Assessment (EIA) carried out during its decision making process and is aware of widespread concern that ILF recipients could face reductions to their overall support package or to the way support is provided, although some users will in fact benefit. The Council will be conducting its own EIA which will further inform any decisions and assessments made in respect of individuals. Again, should the EIA raise any significant issues these would be reported back to Cabinet for further consideration.

There is a clear expectation on local authorities to have a proactive and meaningful dialogue with the former ILF recipients to ensure that an effective transfer of responsibilities is achieved and the Council is committed to this approach. This will be further informed by the outcome of the Councils own Equality Impact Analysis. Each package of ILF support is individual and therefore the mitigation of any adverse impact of each review will be particular to the person affected.

It is acknowledged in both government guidance and by the Council that the new needs assessment may identify elements which are not considered eligible support needs by reference to Care Act eligibility criteria and this could have an adverse impact on the service user. Whilst it is the clear intention for the assessments and review process to seek to agree outcomes and reach agreement with the client in the event of this not being possible a dedicated review team will be created for further review of decisions and adjudication if assessments are disputed.

3 Financial Considerations

Final details of the money to be transferred to Derbyshire County Council were released on 30 June 2015. That commitment is presently £3.020m p.a. There is an additional financial liability for Derbyshire Adult Care created by the transfer and the application of the authority's co-funding scheme. The financial contributions that ILF recipients make to the ILF are a larger proportion of the overall cost of the package provided than they will make under the Derbyshire co-funding scheme. This gap is estimated to amount to £0.400m p.a. and will create a potential total financial liability of £3.402m p.a. at the end of the transfer expiry period in 2015-16 if all support arrangements remain unchanged and there are not any natural closures of packages.

The money to be transferred to Derbyshire County Council to meet this new responsibility is a transitional payment of £2.204m for 9 months which leaves an overall funding shortfall in 2015-16 of £0.347m. It has been confirmed that any funding for subsequent years will be decided as part of the next Spending Review. The ongoing financial commitment cannot be established until all reviews are completed and the level of future funding is confirmed, so the figures detailed above represent the maximum potential commitment that the

Council may have to find. The scale of this potential commitment has been identified on the relevant risk registers. Any significant changes to these figures would be reported back to Cabinet Member.

4 Human Resources Considerations

This is a new responsibility for the Council that will be delivered by dedicating 3 staff on a 12 month temporary basis to undertake the assessments and reviews required. These posts will be funded from the Care Act 2014 implementation grant which recognises that there an increased number of assessments will be undertaken.

5 Other Considerations

In preparing this report the relevance of the following factors has been considered, equality of opportunity, health, environmental, transport, property and crime and disorder considerations.

6 Background Papers

None

7 Key Decision

Yes

8 Is it necessary to waive the call-in period?

No

9 Officer Recommendations

- 9.1 That the arrangements regarding the transfer of responsibilities following the closure of the Independent Living Fund are approved.
- 9.2 For the matter to be subject to a further report to Cabinet, as necessary, once feedback from individual assessments, interested party consultation and Equality Impact Assessment is known.

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