

## **Wiltshire Council**

### **Cabinet**

**16 December 2014**

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**Subject: Closure of the Independent Living Fund (ILF) in June 2015**

**Cabinet member: Keith Humphries – Public Health, Protection Services, Adult Care and Housing (excluding strategic housing)**

**Key Decision: Yes**

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#### **Executive Summary**

The Independent Living Fund (ILF) provides funding for disabled people to live in their own homes. Often people receive funding from both their Local Authority and ILF. It has been decided to close the ILF and transfer full responsibility for supporting these customers to Local Authorities from 1<sup>st</sup> July 2015. This paper describes the impact that will have on those customers and on Wiltshire Council, and information about how this transfer will happen.

#### **Proposal(s)**

The main considerations for Wiltshire Council in this transfer of responsibilities are:

- Assessments of 71 Wiltshire ILF recipients
- Transfer of funding
- Transitional Protection

There are financial risks involved in this transfer and we won't know the full costs of the support we will need to fund until after the reassessments have taken place. The proposal is to complete reassessments between January and March 2015, in order to give ILF recipients enough time to make any required alternative arrangements in time for 1<sup>st</sup> July 2015. It is not our intention to fund any transitional payments.

The reason for the closure of the ILF is to enable all customers with a disability to be supported by one social care system (through their Local Authority) to ensure a more equitable and streamlined service. Therefore the transfer of funds will go into the baseline budget for adult social care which will be funding the support for these customers after 1<sup>st</sup> July 2015.

#### **Recommendations:**

- Cabinet notes the closure of the ILF and the need to ensure people with a disability are treated equably in Wiltshire
- Cabinet agrees the ILF budget transfer to the Adult Care base budget

- Cabinet requests an update following the completion of assessments, including a report on any potential transitional arrangements required

**Reason for Proposal**

Wiltshire Council needs to work in a transparent and equitable way, to meet eligible social care needs, whilst managing the potential financial pressures that this transfer may cause.

**Maggie Rae**  
**Corporate Director**

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### **Purpose of Report**

- 1.1 The Independent Living Fund (ILF) is a discretionary trust managed by the Department for Work and Pensions which provides funding to allow disabled people to live independently. It works alongside, but outside of, the mainstream care and support system. Almost all ILF users receive support from both systems, but under different eligibility and charging systems.
- 1.2 The ILF was permanently closed to new applicants in December 2010. The Government consulted on the best way for those currently using the fund to become part of local social care arrangements and decided to close the fund in March 2015. This initial decision to close the fund was quashed by the High Court due to a lack of evidence that the Government had properly considered the impact of the closure on their Public Sector Equality Duty. A new decision was announced on 6<sup>th</sup> March 2014 to close the fund on 30<sup>th</sup> June 2015 and from that point local authorities in England, in line with their statutory responsibilities, will have sole responsibility for meeting the eligible care and support needs of current ILF users.
- 1.3 The reason for the closure of the ILF is to enable all customers with a disability to be supported by one social care system (through their Local Authority) to ensure a more equitable and streamlined service.
- 1.4 The funding transferred to Local Authorities from the Department of Work and pensions will go into the baseline budget for Wiltshire Council adult social care, which will be supporting and funding these customers from 1<sup>st</sup> July 2015.
- 1.5 Some people currently in receipt of support funded through ILF will find that their support will reduce once Local Authorities take over full responsibility for meeting their social care needs. These changes won't be apparent until after those people are assessed.
- 1.6 The purpose of this report is to provide information about the closure of the ILF and to consider the potential impact on customers and on Wiltshire Council.

## Relevance to the Council's Business Plan

- 2.1 The work that Wiltshire Council will need to do to work with ILF users following the Government's decision to close the ILF fits within one of our key priorities and one of our top 12 actions to meet those priorities, "to protect those who are most vulnerable".

## Main Consideration for the Council

- 3.1 **Assessments:** The ILF is reviewing all ILF users across the country (more than 17,000 people). 71 of these ILF users live in Wiltshire. Within Wiltshire some reviews that have happened so far have also involved Wiltshire Council staff. This enables the individual to discuss with both organisations the potential implications to them of the closure of the ILF fund.
- 3.2 The ILF review is not a means to agree a new support plan. Wiltshire Council Adult Care is planning to start a programme of reassessments in January 2015, to enable the process of agreeing new support plans that will be implemented from 1<sup>st</sup> July 2015. These reassessments will need to be undertaken in accordance with the new Care Act national eligibility criteria.
- 3.3 It is expected that some packages of support will reduce in monetary value as part of this process as the eligibility criteria for ILF support is different to the eligibility criteria for social care support. However the DoH has made it clear that working in a personalised way and focussing with individuals on the outcomes to be achieved, is a way of mitigating the impact of this change.
- 3.4 To further mitigate the impact, it is also essential that all ILF users and their representatives have a clear understanding of how their eligible support needs will be met from 1<sup>st</sup> July 2015 as any changes to support packages need to take into account the impact on employees and care providers and ensure that the ILF user is able to meet his or her contractual and legal obligations, for example, make redundancy payments and give notice periods.
- 3.5 It is therefore proposed that all reassessments will be undertaken between January and March 2015, and will be personalised and outcome focussed, and all ILF users will receive a Personal Budget following reassessment – this will enable support plans to be as flexible as possible to meet outcomes, whilst ensuring that eligible needs are met.
- 3.6 If it is agreed that an ILF recipient will need to make an employee redundant as a result of these changes, they will be supported by their social workers to make the relevant request for support from the ILF before it closes.
- 3.7 It is also proposed that the individual care manager will remain allocated to them during the transition, and will undertake a review of support arrangements within six months of the reassessment to ensure that the support plan is working well.
- 3.8 **Transfer of funds:** There will be a transfer of funds from DWP to Local Authorities via the Department of Communities and Local Government for 2015/2016.

- 3.9 Local Authorities should be informed about the value of this grant by the end of December 2014.
- 3.10 The grant will come to Local Authorities as a Section 31 grant in June/July 2015.
- 3.11 The grant will be allocated to the baseline budget for Wiltshire Council adult care. This is because the reason why ILF is being abolished is to create a more equitable and streamlined system of social care support, delivered through Local Authorities, which means that adult care will take over the support and funding for these customers.
- 3.12 In this current financial year ILF funding for Wiltshire residents totals just over £1.3 million.
- 3.13 All ILF users make a personal financial contribution towards their ILF support which is separate to their Local Authority financial contribution. As of September 2014, the total that Wiltshire ILF users contribute to their ILF support is £209,000 per year.
- 3.14 Therefore if Wiltshire Council was required to fund the total amount of support currently being funded through ILF and ILF contributions, the total cost would be £1.5 million. It is anticipated that Wiltshire will receive its portion of the ILF money, however the shortfall resulting from peoples' contributions ceasing would present a financial pressure.
- 3.15 This financial shortfall may be mitigated by the expectation that some ILF recipients will receive less support from adult care than they are currently being funded for through the ILF. Once ILF recipients have been assessed we will know what the cost of their ongoing support will be to Wiltshire Council, and whether this presents any cost pressure.
- 3.16 **Eligibility Differences:** Because the ILF operates under different eligibility criteria to local authorities, ILF funding sometimes meets needs that would be assessed by local authorities as being 'low' or 'moderate' within the current eligibility framework and therefore those ILF users will not be eligible for the same level of support once ILF ends
- 3.17 The Care Act 2014 introduces new national eligibility criteria with a minimum threshold that all local authorities must meet. It is anticipated that this national threshold will be set as a similar level to the current thresholds in Wiltshire. There will however be a new emphasis on 'wellbeing' within the criteria
- 3.18 Therefore many people in receipt of ILF are concerned that, once all their support is provided by local authorities, their support packages will be reduced and it is anticipated that this will be the case for some individuals. Some examples of concern are:
- ILF fund book keeping time for ILF recipients to support them to manage their funding

- 44 Wiltshire ILF recipients employ personal assistants. There is concern that they may be paying them above the rate that Wiltshire Council would fund. There is also considerable concern about the financial impact of having to make personal assistants redundant if the ILF recipient is no longer entitled to this support.
- For some the level of change could be considerable, for example, approximately 30 Wiltshire ILF users use their funding to purchase 24 hour care however their level of eligible need following LA reassessment may not enable them to continue with this level of support

3.19 There is therefore a strong lobby for ILF recipients to be given transitional protection against some of the anticipated reductions in support. The Government guidance is clear that some support packages will be reduced and also suggests that any transitional protection to an individual's support plan be agreed only on an individual basis. This transitional protection could take the form of:

- Commitment to fund existing support for a period of time before implementing changes
- Support to fund impact of changes, for example, redundancy costs of personal assistants

3.20 It is difficult to estimate the impact the changes will have on people's lives without undertaking the reassessments. Nottinghamshire County Council undertook an assessment of 22 of its ILF recipients. In 16 of those cases, there would be no proposed change to support (and therefore the local authority will have to fund the total current package). 3 cases would require CHC assessments (and, if not eligible, again the local authority will have to fund the total current package), 3 would experience changes, with one confirmed reduction in support – the changes would include reduced support with extra cleaning and social time.

3.21 This very small study identified that changes would potentially impact on 14% of recipients. Although somewhat reassuring for ILF recipients, this has implications for local authorities where the transfer of funding won't cover the full cost of current ILF packages.

3.22 Paying redundancy costs of employees/personal assistants is of particular concern to ILF recipients. The ILF has been clear in its guidance that employing a personal assistant means that the ILF recipient becomes an employer, with all the responsibilities that entails, including being responsible for paying tax, NI contributions, and sick pay and so on, and is required to take out employers' liability insurance. They are therefore responsible for meeting redundancy costs.

3.23 However the ILF does have a means of supporting recipients with redundancy payments in specific circumstances. This is dependent on the reason for redundancy and this support may not be available for all, or cover all costs, and so there may still be some people who will struggle financially to meet their employer responsibilities as a result of this change.

3.24 By completing support plans by March 2015, ILF recipients will be able to make a timely application to the ILF if they need financial support, as well as give their employee the required notice. The social workers completing the assessments will need to ensure that ILF recipients are clear about how to make the relevant applications for support in these circumstances.

3.25 There will already be cost pressures associated with the Care Act; supporting ILF recipients above their eligible needs would add further cost pressure. Our intention is to complete all support plans in time for relevant adjustments to packages to be made in time for the transfer on 1<sup>st</sup> July 2015. We therefore have no plan to fund transitional protection.

## Background

4.1 Within Wiltshire there are 71 adults with disabilities who receive funding from the ILF.

4.2 Of those 71 people 70 also receive a service from Wiltshire Council (this means there is only one ILF customer in Wiltshire we don't already provide some support to).

4.3 The types of disabilities that ILF recipients have (as provided by the ILF) is as follows:

Brain damage (inc head injury)	6
Cerebral Palsy	12
Cerebro-vascular (inc stroke)	2
Down's syndrome	3
Motor Neurone Disease	2
Multiple Sclerosis	13
Muscular Dystrophy or Atrophy	3
Other	2
Severe learning disability	13
Spina bifida	3
Spinal injury	12

10 live in the East Locality area
12 live in the South locality area
26 live in the North Locality area
23 live in the West Locality area

4.4 The ILF caseload is made up of Group 1 users and Group 2 users

4.5 Group 1 users are those who applied to the original ILF fund set up in 1988 and did not require a contribution to their support from their local authority.

4.6 Group 2 users are those who applied for ILF funding when the fund was reconstituted in 1993. The key difference is that Group 2 users have care packages which include a minimum of between £200 and £340 per week contributed by their local authority.

4.7 Within Wiltshire there are:

11 Group 1 users - these have all given ILF permission to share their details with Wiltshire Council
60 Group 2 users

### **Safeguarding Implications**

5. If Wiltshire Council does not work with ILF and ILF recipients following the Government's decision to close the ILF, there is potential that individuals will be left at risk as their critical and substantial needs may not be met after April 2015.

### **Public Health Implications**

6. It is important that ILF users are supported to make the best decisions and are enabled to exercise informed choice throughout this process. Equitable distribution of support for all users is to be preferred. An emphasis on wellbeing for all users will support the best interest principles, and ensure that support offered is holistic.

### **Corporate Procurement Implications**

7. No implications identified

### **Equalities Impact of the Proposal**

8.1 Wiltshire Council is required to implement the decision to close the ILF.

8.2 It is recognised that this decision will affect people with a disability who are in receipt of ILF. To mitigate the impact and address the concerns raised, Wiltshire Council will:

- Manage the work within one team.
- Communicate the information about how the reassessments will be done with all ILF recipients.
- Provide the opportunity for ILF recipients to find out about other sources of support available.
- Focus on outcomes with people.
- Ensure reassessments and new support plans are agreed by March 2014 to give sufficient time for people to make changes to support if required.

8.3 It is also recognised that the closure of the ILF will mean that all people with a



disability living in Wiltshire will thereafter be supported within a single system, which will ensure fairness and equity across the county.

- 8.4 Three meetings have been facilitated by Wiltshire Centre for Independent Living with Wiltshire Council Managers to discuss the changes, listen to concerns and provide updates. Further communication with ILF recipients is intended, including arranging a market place event where ILF recipients can meet to discuss other sources of support available

### **Environmental and Climate Change Considerations**

9. No implications identified

### **Risk Assessment**

- 10.1 If people aren't happy with the level of support they will be offered after July 2015, there is the potential for large numbers of disputes and complaints that will need managing, possibly March - June 2015 being a key time as change becomes imminent for the ILF users.
- 10.2 The council will need to ensure that the work associated with ILF reviews and disputes is undertaken in a consistent way as failure to approach this in a consistent way could open the Council up to challenge. As one operational team will be undertaking the reassessments (the Reassessment Team), there is opportunity for there to be consistency in the assessment process and for this risk to be minimised.
- 10.3 There is a financial risk to Wiltshire Council if the whole package of support is continued by Wiltshire Council as, even if the whole of the ILF funding is transferred across, Wiltshire Council will also need to pick up the cost of the individual's ILF personal contribution. The estimated cost of those ILF contributions is £209,000 per year.
- 10.4 There is a financial risk as the process for transfer of funding is still not clear.
- 10.5 As individuals highlight concerns about their situations, there is likely to be media interest.

### **Risks that may arise if the proposed decision and related work is not taken**

- 11.1 If relevant work is not undertaken to ensure that new support plans are agreed and in place from July 2015, individuals will be left at risk of not having their eligible needs met and Wiltshire Council will be placed at financial risk due to having to continue to fund ILF funded support
- 11.2 Not undertaking the work places the reputation of Wiltshire Council at risk and opens up the Council to legal challenge as people will not be treated equally and Wiltshire Council is not behaving reasonably and fairly. There is potential for media interest.

## **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

12.1 There will be a need for adult care to undertake the work in a way that provides a consistent approach to all ILF users and this will need to be communicated to ILF users.

12.2 Disputes will need to be resolved in a timely way to ensure that ILF users aren't left at risk and to ensure that Wiltshire Council will not be funding ineligible needs after July 2015, whilst a dispute is being resolved.

## **Financial Implications**

13.1 As described above, in the current financial year ILF funding for Wiltshire residents totals just over £1.3 million and contributions made by those ILF recipients to their support totals £209,000.

13.2 The financial risks of the closure of the ILF are not yet confirmed because:

- We do not yet know the total funding that will be transferred to us next year, although we are expecting this to be out portion of the ILF budget;
- Final costs associated with this transfer will not be known until all of the ILF users have been reassessed against the new eligibility criteria.

13.3 Mitigating factors are:

- It is the intention that all Local Authorities will be informed about the value of their transfer of funds by the end of December 2014.
- All reassessments will be completed by March 2015, enabling us to understand by then the total cost of supporting ILF recipients after 1<sup>st</sup> July 2015.
- The timescales planned should provide enough time to put any required alternative support arrangements in place (give notice to contracts or employees, make applications for support to pay redundancy costs and so on). We are not anticipating funding any transitional costs.
- The transfer of funds will go into the baseline budget for adult social care.

13.4 Funding for subsequent years will be agreed through the established local authority budget process.

## **Legal Implications**

14.1 New national minimum eligibility criteria will come in to force 1<sup>st</sup> April 2015. Everyone should be assessed against this.

14.2 The draft Personalisation Policy promotes taking a case by case approach to support plans and eligibility. That is, having support plans that meet an individual's outcomes rather than a one size fits all approach, so the costs of support will depend on individual situations and circumstances and we may fund one thing for one person but not for another as a consequence of this. We would not be complying with this policy if we don't undertake the work in this way.

## **Options Considered**

15.1 No options to consider

## **Conclusions**

16.1 The closure of the ILF fund is inevitable and Wiltshire Council needs to agree how it will work with ILF users to reduce risks but provide equitable levels of support. There are financial risks involved, as well as risks to the Council's reputation.

16.2 Recommendations:

- Cabinet notes the closure of the ILF and the need to ensure people with a disability are treated equably in Wiltshire
- Cabinet agrees the ILF budget transfer to the Adult Care base budget
- Cabinet requests an update following the completion of assessments, including a report on any potential transitional arrangements required

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## **Background Papers**

The following unpublished documents have been relied on in the preparation of this report: None