

**UPDATE REPORT
INDEPENDENT LIVING FUND (ILF)**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to provide Community Services Committee with an update on the forthcoming proposed transfer in respect of the Department of Work and Pensions (DWP) Independent Living Fund (ILF) to the Scottish Independent Living Fund (SILF).
- 1.2 This report will provide the background to the decision to close the ILF, the legal challenges submitted and the outcome of these.
- 1.3 The report identifies a current Judicial Review of the decision to close the fund and details the potential impact this decision may have on the proposed transfer.
- 1.4 The report also identifies financial implications which require to be addressed prior to the transfer date.
- 1.5 The report identifies actions required to be taken by Social Work to support clients currently in receipt of ILF to ensure a seamless transfer.
- 1.6 Community Services Committee are asked to note the content of the report.

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2.0 INTRODUCTION

- 2.1 The purpose of this report is to provide Community Services Committee with an update on the forthcoming proposed transfer in respect of the Department of Work and Pensions (DWP) Independent Living Fund (ILF) to the Scottish Independent Living Fund (SILF) following the announcement that the ILF Fund will close.
- 2.2 The Independent Living Fund was established in 1988 to provide discretionary cash payments directly to disabled people who have the highest level of social care need. The fund is administered by an Executive Non-Departmental Body of the Department for Work and Pensions (DWP) and has been accessed by individual local authorities who have been able to draw down resource on behalf of people with disabilities.
- 2.3 There are two groups within ILF – Group 1 relates to clients who were able to apply directly to the fund without social work assistance, therefore these clients may not be known to Argyll and Bute Social Work. Group 2 relates to clients who have ILF to top up their local authority funding towards their care and support, all group 2 clients are known to Social Work.
- 2.4 In 2012, the UK Government announced ILF would close in March 2015. The Fund in England would be transferred to Local Authorities, however, in Scotland a consultation took place whereby a decision to transfer the ILF to a new Scottish ILF was made by the Scottish Government in April 2014.
- 2.5 Due to a legal challenge in November 2013 about the UK Government's decision to close the Fund in 2012, the date of closure was extended to July 2015. Since then, there has been a further Judicial Review Appeal Hearing regarding closure of the Fund. This Hearing took place on 22 October 2014 and a decision on the outcome of this Hearing is expected by end of November 2014.
- 2.6 Since the announcement of the creation of the Scottish Independent Living Fund (SILF) Argyll and Bute Council have ensured that all clients in

receipt of ILF known to us (Group 2) have been kept informed of the proposed transfer of the Fund. DWP are responsible for informing Group 1 clients.

3.0 RECOMMENDATIONS

3.1 Community Services Committee is asked to note the content of the report.

4.0 DETAIL

Background

- 4.1 **The Independent Living Fund** consists of 2 funds currently administered from the DWP which provide additional financial assistance to service users in need of care and support to maintain them in their own homes.
- 4.2 **Group 1:** fund was set up in 1988 with awards made to individuals who applied directly to the Funds, to purchase care and support to maintain them in their own homes. This is a private arrangement between ILF and the individual with no input from the local authority. The Group 1 users are protected by Data Protection legislation which means that ILF is unable to share information about the individual (and the support they are receiving) with the local authority. The local authority may also be providing support but will not necessarily be aware that the individual is in receipt of funding from ILF.
- 4.3 On the information available it appears that within Argyll & Bute there are 4 people in this group.
- 4.4 **Group 2:** fund was set up in 1993 when the Group 1 Fund closed to applicants. Group 2 clients could only receive funding following social work assessment and an agreed minimum amount of funding being provided by the local authority (threshold sum). There is a written agreement between ILF and the local authority detailing the financial commitment to the support package. ILF is seen as a 'top-up' to local authority funding. Each case is reviewed every 2 years by Independent Living Fund Assessors in conjunction with social work. Currently, there are 80 people in receipt of Group 2 payment.

ILF Closure Plans

On 18 December 2012 the UK Government announced the closure of the ILF on 31 March 2015 and the transfer of responsibility for supporting ILF users to local authorities in England and the devolved administration in Scotland which included responsibility and finances being devolved to the Scottish Government.

- 4.5 An appeal of the closure was submitted in April 2013 by ILF clients to the High Court claiming the decision to close the fund was unlawful. This

appeal was dismissed and a further legal challenge was lodged. This challenge was upheld in November 2013 by the Court of Appeal. It was deemed that the closure decision had breached the Equality Act's public sector equality duty, because adequate information had not been given to the minister, making the decision to close the fund, to assess the effect on ILF clients and their ability to live independently.

- 4.6 This judgment required the UK Government to reconsider its closure decision, ensuring all legal obligations are met.
- 4.7 In June 2014, the decision to close the fund was reconsidered by the UK Government, in compliance with the previous legal challenge findings. As a result, the original decision to close ILF and transfer non-ring-fenced funding to local authorities was reinstated however; the closure date would be delayed by three months until 30 June 2015.
- 4.8 During this time, notwithstanding the legal challenges, the Scottish Government held a consultation on the proposal of the future use of resources devolved following the UK Government's original decision to close ILF. This consultation took place from August - November 2013.
- 4.9 Following the consultation, on 11th April 2014, the Scottish Government advised that following negotiations with the UK Government to transfer management of the current Independent Living Fund (ILF) to the Scottish Government, a new Scottish Independent Living Fund (SILF) would be set up to protect and enhance services when the UK Government scheme closes in 2015.
- 4.10 It is proposed, the Scottish Government's SILF will come into effect in July 2015, subject to the full allocation of funding being devolved to the Scottish Government.
- 4.11 The budget for the SILF will be made up of the transfer of the current funding levels alongside an investment from the Scottish Government of £5.5 million.

Current Position

- 4.12 Since the outcome of the decision by the UK Government in June 2014 to continue with the closure of the fund a further legal challenge has been lodged.
- 4.13 Following a ruling made at the High Court in August 2014 that the decision made in June 2014 to reinstate closure plans breach equality legislation, an appeal was heard at a full Judicial Review Hearing on 22nd October 2014. At the time of writing, a decision had not yet been made on the outcome of this review, it is anticipated that a decision will be made by end of November 2014.
- 4.14 Should the Judicial Review Hearing rule in favour of the appeal the

proposed transfer of the ILF to the Scottish Government will be postponed

Operational Impact

- 4.15 Argyll and Bute Council have an appointed contact Officer linked with ILF who has registered with the DWP ILF as the secure link and will keep up to date with the proposed closure and transfer of the Fund. These details will be forwarded to the SILF.
- 4.16 In July 2014, a letter was distributed to introduce the Local Authority Contact Officer to all individuals in receipt of ILF and their Care Managers. This letter provided information regarding the consultation on changes from ILF to SILF and also enclosed a news release supplied by the Scottish Government. The Contact Officer will keep each individual updated with any further information when received.
- 4.17 In addition, the Contact Officer has attended Helensburgh, Campbeltown & Bute's Local Forum meetings as carers and service users have requested information on Self Directed Support, Direct Payments and ILF.
- 4.18 At a meeting with representatives from the DWP and Scottish Government on 31 October, confirmation was obtained that £47,500,000 is the forecasted revenue for a full year transfer, however, the figure of £35,400,000 will transfer to the Scottish Government for the date the SILF commences (July – April 2015). The assumed attrition of this figure is 5% per annum and transfer monies do not include administration costs. Any debt incurred by ILF clients will be transferred to the DWP and a separate agreement will be set up between DWP and the client. This will not impact on the award made by the SILF.
- 4.19 Throughout 2014, Group 2 ILF clients have been reviewed by ILF Assessors jointly with Social Work representation. It has been identified that DWP do not automatically factor in to the award any increase required in relation to the national minimum wage during day hours and sleepovers or auto enrolment for pension contributions. Therefore, Care Managers with the support of the contact officer will be required to identify these additional costs and contact the ILF Assessor to request an uplift. Assuming the current Judicial Review is not upheld, this will require to be completed by end of December 2014 as all ILF Assessor posts are due to be terminated.
- 4.20 In preparation for the transfer, Scottish Government has established a Scottish ILF Project Board including representation from Scottish Government, Self-directed Support Scotland, Enable, Glasgow Centre for Inclusive Living, PAMIS, Cosla and Social Work Scotland. The purpose of this Board is to plan communications and co-produce advice and information for the Scottish Government Minister for Public Health who is responsible for SILF.
- 4.21 It is anticipated that the operation of the SILF will have two phases – Phase 1 will relate to existing clients of ILF and the transfer. The Project

Board has recommended that there should not be any changes from the procedures and processes of the current UK ILF system when it changes over to the SILF in the interim. Negotiation has been successful to transfer ILF IT systems to assist with the transition and familiarity of the fund administration. There is a proposal for the SILF to be test ready in shadow by April 2015.

- 4.22 It has been noted that no decision has been made at this point in relation to the responsible body for administering the funds other than confirmation that the transfer of money from the UK Government will go to the Scottish Government. It is anticipated that a decision regarding the responsible body will be discussed at the next Project Board on 5 December and communicated thereafter.
- 4.23 Phase 2 relates to new applicants to the new SILF. No date has been set as yet for applications, however, it has been confirmed that the SILF will be open to new applicants at some point through 2015.
- 4.24 Local Authorities have been encouraged to feedback to the Project Board via their Social Work Scotland link person. Feedback presently provided relates to the future of the SILF given the attrition rate is 5% per annum and the status of Award Managers where appropriate relevant powers are not in place such a POA, Financial Guardianship as appointeeship will no longer be applicable.
- 4.25 The UK ILF have a communication strategy in place and plan to write to all ILF clients in March 2015 to confirm the closure and transfer of the fund and request any unspent funds must be returned. Simultaneously, the SILF Project Board will also write to all clients advising that the fund is being transferred and they will receive their next payment from the SILF. Concerns have been raised that clients will require support on receipt of the letter from UK ILF to ensure only unaccountable unspent funds are returned. Support will be provided by Care Managers and the Contact Officer.

5.0 CONCLUSION

- 5.1 Subject to the outcome of the current Judicial Review Appeal Hearing, a date will be set when clients in receipt of ILF residing in Scotland will see funds transfer to the Scottish Government in the form of the Scottish Independent Living Fund. Should the Appeal be dismissed, the transfer will take place in July 2015. However, should the Appeal be upheld, the likelihood is that the transfer will still take place but be delayed.
- 5.2 Both ILF and the new SILF have communication strategies to inform clients of the closure and transfer of the Fund.
- 5.3 Actions required to be taken by Social Work staff to support clients with the closure of ILF and transfer to SILF are as follows:

By the end of December 2014

- Ensure current award is sufficient to comply with National Minimum Wage legislation in relation to both day time and sleepover duties.
- Ensure current award is sufficient to fund auto-enrolment pension contributions for Personal Assistants.
- Make contact with relevant ILF Assessor with full details of funds required to ensure compliance with the previous two points.

By end of March 2015

- All ILF clients are supported to reduce anxiety over changes to the Fund.
- All ILF clients to be offered support to ensure only unaccounted for unspent ILF funds are returned.
- Ensure any clients with DWP appointees have appropriate alternatives in place where relevant.

6.0 IMPLICATIONS

6.1	Policy	None.
6.2	Financial	If required uplifts not identified the Council will be required to meet the shortfall.
6.3	Legal	There is currently a Judicial Review Appeal Hearing in the Court of Appeal, which will conclude by end of November 104.
6.4	HR	None.
6.5	Equalities	None.
6.6	Risk	As identified within report.
6.7	Customer Service	None.

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