

## CONSULTATION QUESTIONS SUGGESTED RESPONSE.

### Question 1

What aspects of the current ILF worked well and what elements did not work so well?

- 1.1 Fife Council agrees that ILF is a valuable resource for existing ILF recipients. ILF is a fund which has benefited and continues to benefit many individuals, families and carers. ILF has been instrumental in promoting independent living and has provided greater choice, control and flexibility with support options to individuals affected by disabilities.
- 1.2 Fife Council has been pivotal in supporting individuals to access ILF (pre 2010 closure) in addition to ensuring eligible individuals have been assessed and supported to receive Local Authority funding – a necessary requirement to qualify for ILF (post February 1993). Fife Council is fully supportive of promoting independent living, choice and control.
- 1.3 Viewed from a historical perspective, ILF was a cutting edge progressive approach to the promotion of meaningful independent living for people affected by disability. This has undoubtedly been a vital resource for those who have accessed the fund (whilst open). However, with current developments in personalisation and self-directed support legislation, the potential to expand independent living options for people affected by disabilities is increasing across the whole social sector – applicable to all (eligible) over the few.
- 1.4 Difficulties with current ILF arrangements have been reported as follows<sup>1</sup>:
  - Inequality pervades ILF with four different eligibility criteria within existing ILF criteria.
  - The fund is closed to new applicants who live with similar complex disabilities to existing ILF recipients.
  - ILF is discriminatory – excludes people over 65 years.
  - ILF is subject to arbitrary decision making.
  - ILF lacks transparency in its accountability.
  - ILF as it is currently administered is awarded paternalistically and lacks adequate alignment with the current personalisation agenda.
  - ILF is limited in terms of use, the ILF Deed of Trust<sup>2</sup> (Annexure dated 3rd July 2013) prescribes “cleaning and other domestic duties, cooking and preparing food and drink, laundering and ironing, shopping, personal hygiene and grooming, dressing, eating, drinking, physical movement such as turning, walking and supervision in order to avoid

<sup>1</sup> Henwood and Hudson (2007), Review of the Independent Living Funds. Report by independent consultants DWP January 2007, available at <http://www.dwp.gov.uk/docs/rilf-full.pdf>; Henwood (2012), What next for the independent living fund? The Guardian 21.8.12, available at: <http://www.theguardian.com/social-care-network/2012/aug/21/independent-living-fund-melanie-henwood>

<sup>2</sup> ILF Deed of Trust (2013), <http://www.dwp.gov.uk/docs/trust-deed.pdf>

substantial danger to himself or others” (ILF Deed of Trust, Second Schedule, ILF 2006 Annexure dated 13/07/13). This has resulted in limited options for some recipients, e.g., an ILF personal assistant cannot do an errand on the person’s behalf but can accompany the person to do the errand. Under SDS, the individual has far greater choice and control over the outcome focussed goals.

- The charging policy for ILF contributions is inconsistent. ILF disregards employment income of a spouse/partner but can increase ILF contribution when the spouse/partner retires with pension income. This has resulted in recipients having to surrender their ILF award as they are unable to afford the contribution.

## Question 2

Should the money that becomes available after existing ILF recipients no longer need it be used in the same way for others in the future? If so, why? If not, how else might the money be used?

2.1 The Scottish Government asserts that that the one “clear aspect” of the changes to the current ILF arrangements is that the Scottish Government has the

*“intention that current recipients should not have their existing funding taken away unless their personal circumstances change and they become ineligible ... [Scottish Government] seek to implement a scheme which allows current recipient’s to continue to receive the same award as they would have had, had the fund not been abolished, for so long as they continue to meet the eligibility criteria which gave them access to the fund” (p.3, para 2).*

The Scottish Government’s commitment to continue to meet existing recipient’s awards for as long as they are eligible means there will only be a relatively small residual fund available to support others outside of the ILF funding. It is suggested the final total figure to be devolved to Scotland will be around £50m (p.3, para 4) and based on current ADSW projections and the ILF suggested 9-10% attrition rate, there may be approximately £3m for a Scotland wide residual fund to promote independent living for individuals affected by disabilities.

Fife Council suggests that the residual fund, after all existing recipients receive their awards, should not be used as an ‘in-lieu’ ILF fund. It would be an unsatisfactory use of the resource. To use it for others in the same way will perpetuate the inequality inherent in the current system.

2.2 To make new awards through a residual funding stream could prove too complex to manage and allocate fairly for local authorities, Scottish Government, Non Departmental government bodies or for a partnership or Trust. For example,

- Who would be eligible for the ‘residual’ fund? How would this

be assessed fairly?

- By what eligibility criteria would the fund be allocated, as the ILF eligibility criteria will no longer apply due to the fund closure?
- How can the small residual fund be fairly distributed geographically, whilst being used as an effective and efficient resource to promote independent living?

### 2.3 “How else might the money be used?”

2.3.1 Add the residual fund to the Integrated NHS and Social Care budget – use universal eligibility criteria to address those in greatest need. **OR**

2.3.2 Invest in Community Capacity Building across Scotland to promote Independent Living - targeting the hardest to reach groups by category and geography. This fits with current roll out of Self Directed Support aimed at promoting independent living, choice and control. **OR**

2.3.3 Invest in an Adults Change Fund, for example, Adults to Older People in Transition, Older People as carers and/or Adults with Mental Health issues.

2.4 Whatever sum results from the negotiation between the Scottish and UK Government based on expenditure at the point of transfer (p.9), we suggest that the following questions must be considered and responses made widely available to all stakeholders:

- How much will be transferred?
- Will this be ring fenced for existing ILF users?
- Is funding time limited? How long will the UK government continue to fund ILF?
- Will the fund be tapered in future years?
- Is the rate of attrition to be tapered year on year until the fund closes?
- Will there be a fixed amount year on year?
- Will there be gaps in funding which Local authorities will have to fill due to attrition?
- Will Scottish Government’s commitment to ILF users bring a SG commitment to underwrite any shortfalls due to attrition and/or inflation costs?

### Question 3

If the available resource is simply that which is transferred from the Treasury, how would you like to see it used if it was not to be a continuation of the existing approach?

3.1 Fife Council do not support a continuation of the existing approach as there is a limited fund which is unevenly distributed. Additionally, the UK government will not increase the fund to take account of new applicants as the ILF is closing in March 2015. The amount to be

transferred is contingent on Scottish expenditure at the point of transfer, estimated to be around £50m (p.9). Therefore, a Scottish ILF (with associated administration costs drawn from the transferred fund) is financially untenable and sustains existing inequalities (as highlighted in question 1).

3.2 Fife Council agrees with the Scottish Government's commitment to support existing ILF recipients to continue to receive their awards for as long as they are eligible and a UK funding stream continues (p.3, para 3).

3.3 At p.6, para 6 it clearly states we are being asked to consider two key issues, namely

1. "How the Scottish Government can use the remaining small resource (after current users are protected) efficiently and effectively"; And
2. "How any new system could be administered?"

For the first part, we agree that existing ILF users should continue to receive their awards as it would be unfair on those who have built their independent lives around the fund. Any withdrawal of the award where eligibility remains will adversely impact on individuals, carers and families. Fife Council fully supports choice, control, flexibility and citizens to lead independent lives as evidenced with our proactive approach to implementing self-directed support in Fife.

3.4 The remaining small resource is projected by the ADSW to be around £3million for the whole of Scotland (based on the attrition of ILF funding since 2009/2010 drawn from ILF Quarterly Statistics).<sup>3</sup> It is not yet known whether the UK Government will taper the fund annually via an attrition rate of around 10% or provide a fixed annual sum.

- How this residual fund could be used is discussed further in questions 4 and 5.
- How any new system can be administered is addressed in question 6.

3.5 The following suggestions are common views gathered through this Consultation, any available resources should be,

- Subsumed into local authority social care budgets and allocated in accordance with eligibility criteria. And/or
- Managed locally by local authorities and the monies should be used to target those most in need.

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<sup>3</sup> ILF, (2013), Statistics, <http://www.dwp.gov.uk/ilf/publications/corporate-publications/statistics/>

It should be noted that absorbing an overall transferred fund into existing local authority budgets does not take account of the commitment to protect existing recipients. In addition, Group 1 users (pre 1993) could have an implied contract for life-long ILF support. Removal of a separate 'ILF fund' from existing users could bring a potential for legal challenges, which could prove costly for the fund administrator.

#### **Question 4**

What innovative ways might there be for increasing the overall amount of money in the pot?

- 4.1 It is difficult to suggest innovative ways to increase the fund as it is unclear to what "the overall money in the pot" refers. For example, it may refer to the total ILF fund devolved to Scotland from the UK Government, or the total residual fund, based on the p.6 direction to only consider the remaining small resource after funds are protected for existing users. Fife Council supports innovation and creativity to promote independent living for all citizens.
- 4.2 If this question is referring to the small residual fund, one innovative suggestion is to use it as a change fund for user led groups in rural and hard to reach areas. Explore investment with an aim of investing in self-sustaining, not for profit projects which could reinvest revenue to ultimately reduce the financial pressure on local authority/Scottish Government finances while promoting community capacity building.

#### **Question 5**

With any available resource, where is the most effective area to target resources which can have the biggest impact on an individual's ability to live more independently?

- 5.1 Fife council welcomes the views expressed on pp.10-11 which highlight the need to support individuals during transition periods (across the lifespan), in addition to promoting a preventative approach and encouraging participation in lifelong learning, citizenship, social leisure and civic participation.
- 5.2 Of note throughout the case studies helpfully provided in the consultation (p.8, p.10), is the recurring issue of social isolation and the subsequent negative impact on individuals' physical and mental wellbeing. Social isolation is not a prescribed matter within the ILF Deed of Trust (see q.1) but appears to have been a key issue positively addressed through ILF to date. As social isolation does not score significantly within limited local authority eligibility criteria, an available resource provided through a residual fund could be used to address social isolation and recognise this as a primary barrier to independent living.

5.3 For adults affected by mental ill health, the development of 'core and cluster' facilities which also provides flexible support with intermediate care could be an effective use of available resources.

5.4 An adults (affected by disability and mental health issues) change fund, which also addresses geographical inequality.

## Question 6

Once funding has been devolved to the Scottish Government, which option do you think will be most appropriate for Scotland?

6.1 From the four options for the administration of the ILF fund post March 2015 presented, Fife Council supports option 1 – a local authority administered fund (page12, para 3) for the reasons set out below.

6.2 Fife Council agrees that existing ILF recipients should continue to receive their awards (eligibility and UK funding dependent) as the adverse impact on existing recipients, carers and families to arbitrarily remove the fund would be unfair.

6.3 The option for local authorities to administer the fund with conferred discretion to decide the extent of protection for existing ILF recipients "with direction from the Scottish Government" (p.12, para 3) offers the widest scope for local authorities to continue to support individuals affected by disabilities at local level. In addition local authority fund management,

- Promotes equality of service provision within local authority areas.
- Maintains responsibility for use of the Fund at a local level.
- Individuals would benefit from Local Authority expertise
- Local authorities offer the most cost effective infrastructure to support continued management of existing ILF packages, ensuring maximum benefit for individuals.
- The local authority will be involved whichever option is chosen as local authorities contribute to 92% of existing Scottish ILF users support packages.
- ILF/independent living fits with the Self Directed Support Agenda currently being rolled out by Fife Council.
- A local authority administered fund fits with the current health and social care integration, which is led by local authorities and Health.
- ILF can be streamlined into one system with the potential to rationalise eligibility criteria.
- Fife Council supports ring fencing of the fund for existing recipients, based on current knowledge and dependent on future UK funding arrangements.
- No conflict of interest for local authority duties.

6.4 Fife Council acknowledges the following disadvantages will require to

be addressed:

- It is recognised that a local authority administered fund has the potential to sustain the disparity in funding between Local Authority areas based on existing expenditure.
  - Existing users may find the local authority contribution separate from their ILF packages reduced to ensure equity within the local authority.
  - Potentially lacks portability across local authority areas which could adversely impact on a person's ability to access employment opportunities or make other lifestyle changes
- 6.5 There is a lack of information around options 2-4 to be able to formulate a fully informed response on each option.
- 6.6 The remaining options 2-4 (Scottish Government, Non Departmental Public Body and New Partnership/Trust respectively) would most likely have higher administration costs than local authorities. Local authorities have established expertise in assessment, support planning and individual budget support through direct payment and are at the forefront of implementing SDS.
- 6.7 A Scottish Government led ILF fund could provide potential for working co-productively and promote equitable distribution over a period of time. However, this option is less tenable as there is a conflict of interest as policy makers and potential cash distributors, with limited expertise ready to administer the devolved fund.
- 6.8 An existing agency or non-departmental public body is a vague reference to an unknown potential option. It is unclear how such a body could streamline the inequalities inherent within the current system (see q.1).
- 6.9 A new partnership/and or Trust has the potential to promote co-production and possibly portability. However, administration costs may be highest out of all options which may reduce funding available for fund recipients.

### **Question 7**

To assist with our partial Equality Impact Assessment in relation to the future development of a sustainable Fund to support disabled people in Scotland to live independently, please describe any equality issues (in relation to age, disability, sex, sexual orientation, gender re-assignment, race, religion or belief, pregnancy and maternity and marriage and civil partnership) that you feel may arise and suggest ways in which these could be addressed.

- 7.1 Continued protection of the current ILF maintains on-going discrimination on grounds of age for Group 2 (post 1993) recipients. This could be addressed to some extent through residual funding as an adult to older people transition fund (as discussed at question 5)
- 7.2 There is no further information to suggest discrimination

beyond age, postcode area and new claims barred.

## **8. Additional Points for consideration**

- 8.1 ILF recipients' capacity. DWP ILF operates under a benefits appointee system for some current ILF recipients. For some recipients who may no longer be deemed to have capacity to make decisions or manage their finances, their ILF funds may be managed by a benefits appointee. This system is peculiar to the DWP/benefits legislation but is not feasible in Scotland. Guardianship/PoA may be required for some ILF recipients who are deemed to lack capacity.
- 8.2 Consideration should be given to the differences between local authority and ILF funded personal assistants, as ILF funded employment arrangements have the following implications:
- HMRC implications for self-employed Personal Assistants.
  - Employing family members is permissible under ILF, but only in exceptional circumstances under direct payment.
  - Domestic support is prescribed under the ILF Deed of Trust.
  - Portability. How will ILF travel with a person between geographical areas?
- 8.3 Clarity is requested around what is meant by 'protection' and 'commitment' to existing ILF recipients. At p. 3 there is a strong inference that existing recipients will continue to receive ILF equivalent awards whichever option is chosen (as long the recipients remain eligible and the UK Government continues to devolve funding). The remaining small residual fund is that which will support independent living more broadly in a way yet to be decided, please refer to question 4 and 5.

However, at p.6. para 3, the 'commitment' to protect existing recipients appears to be potentially diluted with the suggestion that 'a change occurring' includes changes can be made to the eligibility criteria which could exclude existing recipients from the fund. This is further supported at p.10 para 2, which discusses "co-producing new eligibility requirements" should a new fund emerge. Further, at p.12 para 3, it is suggested that local authorities could have discretion to decide on the level of protection for existing ILF recipients, with Scottish Government direction.

This contradicts the Scottish Government's commitment to protect existing ILF recipients and requires clarification. If the Scottish Government provides a clear commitment to protect existing ILF recipients, key questions this raises include:

- Is this protection for life?
- To what extent will the welfare reforms, particularly (DLA replacement) PIP, affect the eligibility criteria?