

CONSULTATION QUESTIONS

Consultation – General Comments

West Lothian welcomes the opportunity to comment on the future of the Independent Living Fund (ILF hereafter) in Scotland post the closure of the UK ILF in 2015. West Lothian acknowledges that the position in relation to future arrangements is still 'open-ended'; however, we offer the following comments and raise the following issues on the basis of information available to date via both the consultation document and current experience of how the ILF has operated up until now.

Protection of existing ILF recipients

The consultation document states that the 'only aspect that is clear is **the Scottish Government's intention that current recipients should not have their existing funding taken away unless their personal circumstances change and they become ineligible**'. West Lothian acknowledges that the proposed closure of the ILF in 2015 and uncertainty about arrangements thereafter has generated considerable anxiety for current recipients and we support the principle of protection for existing recipients. However, this commitment does raise a number of issues which will require to be addressed, including:

- Funding – the consultation document states that the commitment to existing recipients is 'subject to sufficient levels of funding being devolved from the UK Government to the Scottish Government for this purpose'. The document clarifies this commitment further on page 6 by stating it is 'subject to the UK Government devolving the full allocation of funding determined on the basis of expenditure at the point of transfer and sufficient levels of funding continuing to be devolved in future years'.

The UK Government has committed that Scotland will receive an allocation of the ILF resource based on the level of expenditure in Scotland at the point of transfer. However, what remains unclear and yet crucial in planning future arrangements, is whether this annual funding allocation will be frozen at the 2014-15 level and this amount subsequently allocated year on year or whether annual reductions will be applied. Information provided by the ILF has suggested that the annual funding allocation may be subject to an annual reduction based on assumed rates of attrition and recoverable unspent funding to individuals and that this could amount to as much as 9%. If this were to be the case, and should the rate of attrition not be as the UK Government predicts, this would have a considerable impact on the level of annual funding transfer and, therefore, on the funding available to support the Scottish Government's commitment to protect existing users.

However, pending confirmation of the proposals for ILF funding transfer to Scotland, West Lothian has chosen to respond to this consultation on the basis that the ongoing funding allocation will be based on the amount frozen at the 2014-15 level.

- Eligibility Criteria – the consultation document states that existing ILF recipients will have their current funding protected 'for so long as they continue to meet the eligibility criteria *which gave them access to the Fund*'

and later that this 'commitment is subject to the caveat that a change occurring which equates to an individual becoming ineligible in terms of ILF *current* eligibility criteria'.

Currently, people receiving ILF funding are doing so on the basis of a range of eligibility criteria depending on when they first received their ILF award – between 1988 and 1993 there was no requirement for a minimum local authority contribution; between 1993 and 2008 there was a requirement for a £200 per week minimum local authority contribution before any additional funding could be applied for via the ILF; between 2008 and April 2010 this rose to £320 and from May 2010 this amount has been £340 per week. In addition, from June 2010 there was an additional requirement that applicants had to be in work for at least 16 hours per week.

It is, therefore, unclear if the commitment to protect funding will be based on an individual's eligibility at the time of their first award – which will mean that whoever is administering the transferred funding will need to develop mechanisms for operating several funding processes – or will be based on current eligibility criteria which could potentially mean that some individuals would lose their funding with even a slight change in their circumstances.

In addition, ILF eligibility criteria can vary from those of local authorities and, therefore, protection of existing ILF recipients under the ILF criteria will not address the issue of a 'two-tier' system.

- Models for delivery of a new Fund – the consultation document outlines four possible options for the distribution of funding in Scotland with Option 1 proposing that local authorities administer the Fund on a local basis. The consultation document states under Option 1 that 'there are two ways to devolve the resource to local authorities. The first to devolve the finance to Local Authorities who can then *decide the extent of protection for existing users.....* The second would use legislation to *ensure that all ILF recipients receive an award in line with the Scottish Government's commitment to recipients*, administered by Local Authorities'. However, if Ministers have agreed that protection for existing ILF recipients is 'the only aspect that is clear' then local authorities would not, in fact, be able to decide the extent of protection and, therefore, it would seem potentially inaccurate to state that a possible disadvantage of Option 1 is that 'existing users may find their packages reduced to ensure equity within a council'.

In addition, the consultation document appears to suggest that Option 1 provides less security to existing recipients as 'Local Authorities will decide on the interaction between the ILF award and the Local Authority contribution to the individual's overall package. Local Authorities will still have the power to change the level of their support as part of their reassessment criteria'. However, given that the majority of ILF recipients in Scotland are also in receipt of local authority care and support, this issue is as true for Options 2, 3 and 4 as it is for Option 1.

It should be clarified that the Scottish Government commitment to protect existing ILF recipients will apply to *all* models and options for the future delivery and administration of the Fund. There is also a need to clarify if this protection is 'for life'.

- The impact of Welfare Reform – ILF eligibility criteria require that the recipient must be in receipt of the highest rate of three rates for the care component of Disability Living Allowance (DLA). DLA is in the process of being replaced by Personal Independence Payments (PIP) which has only two rates for the care component. It is also anticipated that there will be less people eligible for the enhanced rate of PIP than are currently eligible for the high rate of DLA. Clarification is needed on how the Scottish Government will be seeking to address this within the context of its commitment to protect existing ILF recipients.

Question 1

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

There are several aspects of the ILF which are believed to have worked well including:

- Offered flexibility and greater choice and control over care and support arrangements
- Actively supported people with complex care and support needs to live independent lives within their community
- People in receipt of ILF funding value this support greatly
- Local authorities supported people to apply to the ILF and ensured that they were in receipt of the qualifying amount of care and support

However, there are a number of elements to the scheme which have not worked so well and which it is hoped any future arrangements will be able to address. These include:

- The variations within ILF eligibility criteria and in relation to local authority criteria as outlined above – this leads to the operation of a two-tier system
- There are differences between ILF and local authority charging and service user contribution policies, e.g. the ILF requires the person to contribute half of their DLA care component award or the ILF disregards a recipient's partner's earnings but takes their occupational pensions into account
- There are differences between what ILF funding can be spent on – based on ILF 'Qualifying Support and Services' – and the local authority approach to Self-Directed Support (SDS) with the ILF provisions being more restrictive
- There has been variation in the take up of ILF across Scotland by people whose needs would potentially make them eligible – this issue will be hard to address within the context of a commitment to protect existing ILF recipients.

- The ILF has not been open for applications from people aged 65 or over – this is clearly discrimination against people solely on the basis of age
- The closure of the ILF to new applicants from June 2010 has generated an inequality between those people in receipt of ILF, and who will continue to receive this due to having applied prior to June 2010, and those who can no longer access this opportunity.

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?

This question is based on the assumption that money from the year on year resource allocation from the UK Government will continue at the same rate and, further, that the predicted rate of attrition will prove accurate. Even if this were to be the case, the amount of money released will be relatively small and would not be sufficient to support a system which would invite new applications for funding on the same basis as the protected existing ILF recipients. Indeed, such a system would only promote the ongoing inequality of a two-tier system. Any funding made available via attrition is also unlikely to be enough to address the age discrimination issue by enabling applications from people aged 65 and over.

It is, therefore, necessary to consider alternative uses for any funding released and these are outlined further in the answers to subsequent questions.

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?

The DWP have concluded that the ILF is not sustainable in its current form. If the available resource is simply that which is transferred from the Treasury then West Lothian would agree with the Scottish Government that 'a Scottish ILF would be equally unsustainable'.

Given the commitment to protect existing ILF recipients, any money remaining in the transferred funding pot after this commitment has been met is likely to be only a small amount. In addition, further consideration is needed of some of the implications of this commitment – if it is intended to maintain this protection for as long as existing recipients remain eligible for ILF, then what is the Scottish Government's position in relation to allocating inflationary uplifts to recipients to enable them to sustain their current level of support? If an existing recipient's needs increase, does their protection extend to being able to apply for top up funding to enable them to have their care and support needs met and to maintain their independence or is it expected that responsibility for responding to such changes will sit elsewhere? Depending on decisions made in relation to these issues, both

of these examples could impact on the availability of any money released by attrition reducing it still further.

There are, however, opportunities to consider how any available resource could be utilised and these are considered in further on in our response.

Question 4

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

Given that the overall money in the pot will be determined by the UK Government and its agreement with the Scottish Government on the amount to be transferred and, again, given the commitment to protect existing ILF recipients, it is unclear what is meant by this question. However, West Lothian believes that the best chance of maximising the impact of the resource available after pre-existing commitments have been met is to involve local authorities in its disposal as part of an integrated approach to the delivery of care and support focused on underpinning independent living. This could include support for community capacity building, access to employment initiatives or joint funding opportunities with local projects.

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?

The consultation document highlights a number of areas where the targeting of available resources could impact positively on an individual's ability to live more independently, including supporting people in transition; supporting people into employment; preventative initiatives to avoid or delay the need for higher levels of support; learning, leisure and civic participation and the provision of equipment and technology. However, it has to be acknowledged that the amount of funding likely to be available from the transferred budget due to attrition is going to be very small and so awarding this to individuals will mean limited and potentially unequal access and impact across Scotland.

West Lothian is aware of the future demands which will be placed upon local authorities highlighted in the Christie Report (2011) and of the need to redesign services to respond to the challenges ahead. However, it would wish to note that, whilst there has been significant funding provided to support this process in older people's services and children and young people's services in the form of Change Funds, no such provision has been made available to support the reshaping of adult services and the delivery of independent living for disabled people, including those with complex needs. Therefore, it may be that consideration could be given as to whether the available resource from the ILF transferred budget could form the basis of an Adult Change Fund topped up by additional funding from the Scottish Government in line with support being made available to other groups.

Question 6

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

West Lothian would support Option 1 as being the most appropriate for Scotland once funding has been devolved to the Scottish Government – this is for the following reasons:

- Local authorities already deliver support to most of the people currently in receipt of ILF funding and administration of devolved ILF funding by local authorities would fit with a joined up approach to future changes, including the implementation of Self-Directed Support and Health and Social Care Integration
- The DWP have not confirmed whether any transferred budget allocation will include an allocation for administrative costs but it is felt that this will be unlikely. Option 1 offers the most cost effective option for the administration of the devolved funding as local authorities already have systems and processes in place to support this and are experienced in awarding cash payments in lieu of services in the form of Direct Payments.
- The organisations suggested under Options 2, 3 and 4 may have additional training and infrastructure needs in order to be able to administer the devolved funding.
- As highlighted in the response to Question 1, there are a range of anomalies between ILF and local authority provision – although, existing ILF recipients will be protected, devolving responsibility for the administration of ILF funding to local authorities provides the potential to address some of these issues in the future, particularly in working towards a unified approach to eligibility for support.
- There has been concern expressed by existing ILF recipients at the prospect of local authorities administering the devolved funding. However, the Scottish Government would have the option of ring-fencing this budget in order to demonstrate their commitment to protecting current ILF 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.

Whilst the ILF does not appear to discriminate on the basis of most of the equality groups, there are a number of ways in which the current ILF provision is discriminatory including:

- People aged 65 and over are excluded from applying
- People with very high level support needs are effectively excluded from applying as their total weekly package exceeds the ceiling amount

- People are in receipt of ILF on the basis of a range of different eligibility criteria with different requirements attached
- Despite potential eligibility, there are many people who have not applied to the ILF and there are geographical variations in take up which are not linked to level of need
- Variations in charging policies across local authorities have also had an impact of the level of take up in different areas

Additional Comments

There are a number of other issues which will require to be addressed as ILF funding is devolved to the Scottish Government, particularly if Option 1 is the selected option for the administration of the funding. These include:

- People using ILF funding still employ self-employed Personal Assistants – given HMRC advice on the definition of self-employment, local authorities do not fund self-employed PA's via Direct Payments
- The ILF will pay the award to people who are Benefits Appointees even if they do not have Power of Attorney or Guardianship – local authorities are legally prevented from doing this
- The current ILF approach to funding is based on 'Qualifying Support and Services' whereas care and support from local authorities is increasingly based on outcomes-focused approaches and the implementation of the wider framework of options under the Self-Directed Support legislation will further underpin an outcomes-focused rather than service led approach

Conclusion

West Lothian has endeavoured to highlight the issues that require consideration in relation to the arrangements for the future use of resources devolved following the UK Government's decision to close the ILF and looks forward to receiving information on the outcome of the current consultation.