

Closure of the Independent Living Fund (ILF)

06 March 2014

Closure of the Independent Living Fund with transfer of responsibility and funding to local authorities in England and the devolved administrations in Scotland and Wales

Equality duties

1. This document records the equality analysis (EA) undertaken by the Department for Work and Pensions to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to have due regard to the need to:
 - **eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;**
 - **advance equality of opportunity between people who share a protected characteristic and those who do not, which involves having due regard, in particular, to the need to:**
 - **remove or minimise disadvantages suffered by people who share a protected characteristic that are connected to that;**
 - **take steps to meet the needs of people who share a protected characteristic that are different to those who do not. The steps involved in meeting the needs of disabled people that are different from the needs of people who are not disabled include, in particular, steps to take account of their disabilities;**
 - **encourage people who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low; and**
 - **foster good relations between people who share a protected characteristic and those who do not, which involves having due regard, in particular, to the need to tackle prejudice and promote understanding.**

2. In undertaking this EA, the Department has also taken into account the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)¹, and in particular the three parts of Article 19 which recognise the equal right of all disabled people to live in the community, with choices equal to others, the need to take effective and appropriate measures to facilitate full enjoyment by disabled people of this right and their full inclusion and participation in the community. We have also taken particular account of the general obligations in Article 4 of the UNCRPD, Article 4(2) of which states that parties to the Convention should undertake measures to the maximum of available resources with a view to progressively achieving the full realisation of the rights of disabled people. As some people who responded to the consultation² explained in their own words how it could impact on educational or employment opportunities, we have also considered articles 24 and 27:
- Article 24 - education - ensure persons with disabilities are not excluded from the general education system on the basis of disability; and
 - Article 27 - work and employment - safeguard and promote the realisation of the right to work and promote employment opportunities.

The Department has also considered the relevance of the United Nations Convention on the Rights of the Child (UNCRC)³. The UNCRC contains a number of provisions entitling children (under 18 years old) to the protection and care of their parents and legal guardians, and the right not to be separated from them except in limited circumstances. It obliges the state to support parents and legal guardians in rearing children under 18, including through suitable social programmes. In particular it requires that when taking decisions which affect children, their best interests must be considered as a primary concern.

All current ILF users are adults (the youngest user is now aged 20) and so the closure of the ILF will not have a direct impact upon children under the age of 18. We have however, considered whether there might be an indirect impact upon the children of ILF users (bearing in mind that the Convention requires their interests to be treated as a primary concern) and on their relationship with their parents.

Children were mentioned in fewer than five of around 1800 consultation responses received from, and on behalf of, individual ILF users, and in none of these was it clear whether or not the children referred to were under the age of 18. Furthermore, none of the main lobby groups made references to the impact on children under 18. The ILF does not record whether any ILF users have (or have responsibility for) any children, which means there is no data available. In

¹United Nations Convention on the Rights of Persons with Disabilities
<http://www.un.org/disabilities/default.asp?id=259>

² Public consultation: Future of the Independent Living Fund", July 2012 (CM 8366)

³ United Nations Convention on the Rights of the Child
<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

any event, when taking decisions on individual support packages, local authorities will clearly need to take account of the existence of any children under 18 (or looked after by) former ILF users, the parenting and care needs of those children, and the need to maintain and support the parent-child relationship. Based on the available evidence, the Department considers that very few children under 18 are likely to be affected by a decision to close the ILF.

3. Unless otherwise stated all figures included in this document are for the UK but the impact of closure on ILF users living in Scotland, Wales and Northern Ireland could differ from the effect on English users depending upon any decisions made by the devolved administrations.

The Independent Living Fund

4. The Independent Living Fund (ILF) is a Non-Departmental Public Body (NDPB) funded by grant-in-aid from the Department for Work and Pensions (DWP). The fund operates as a discretionary trust, governed by a signed Trust Deed, alongside the mainstream adult social care system for which local authorities (LAs) already take prime responsibility.
5. The ILF currently makes direct cash payments to around 18,000 disabled people enabling them to purchase support and care services. These funds are predominantly used for the employment of a personal assistant or a carer.
6. The ILF, originally set up in 1988, ran until 1993 as a charitable trust. In 1993 the original fund was closed to new applications and a new fund was created. The two funds ran in parallel until 2007 when they were amalgamated under a new Trust Deed.
7. The two funds had different eligibility criteria and this has resulted in two separate groups of users:
 - **Group 1 – Joined ILF before 1 April 1993** – There are approximately 2,800 Group 1 users. While many Group 1 users receive some support from their local authority, this input is not part of their ILF eligibility criteria.
 - **Group 2 – Joined ILF on or after 1 April 1993** – There are approximately 15,200 Group 2 users. Group 2 users have care packages which must include a minimum contribution from their local authority, for the majority of Group 2 users this contribution is currently £340 per week.
8. Due to the differing eligibility criteria⁴ it is probable that there is a wider variation in the levels of need among Group 1 users, whereas Group 2 users (because of the

⁴ The requirement to have a minimum local authority contribution is not part of the ILF eligibility criteria for Group 1 users. Group 2 users have care packages which must include a minimum contribution from their local authority, for the majority of Group 2 users this contribution is currently £340 per week.

requirement to have a minimum local authority contribution) are very likely to have needs that are assessed by their local authority as substantial or critical.

9. **The ILF is not currently open to new applications** – In 2008 the decision was made to switch ILF funding from Annually Managed Expenditure (AME) to Departmental Expenditure Limit (DEL) funding. The key difference is that DEL funding is a controlled and fixed expenditure, allocated to the Department in the Spending Review, usually fixed three years in advance, whereas previously, ILF funding was based on a forecast of expenditure and had been allocated on the basis of demand (AME). The eligibility criteria were also changed at this time, in response to changes in demand and in overall funding allocations, to focus support on those with the greatest needs.
10. The eligibility criteria were further tightened in 2010/11 due to budgetary decisions taken by the previous Government. In anticipation of this change there was a very sharp increase in applications which put the ILF budget under significant pressure.
11. To manage this pressure, the trustees took the decision to temporarily close the fund to new users in June 2010. In December 2010, the Government announced the permanent closure of the fund to new applicants, stating that awards for existing users would be protected until 2015 and that there would be a consultation on the future of the ILF.
12. On 18 December 2012, following a period of consultation, the Minister announced a decision to close the ILF on 31 March 2015 and transfer funding to LAs in England and the devolved administrations in Scotland and Wales. However this decision was quashed by the Court of Appeal on 6 November 2013. This EA has been prepared in order to assist Ministers in reaching a fresh decision on the future of the ILF, in light of the judgment of the Court of Appeal.⁵ It is informed by evidence gathered during the consultation on the future of the ILF undertaken in 2012, along with further representations made to us since the consultation closed.

Background

13. As keeping the ILF open in its current form would not have an adverse impact upon users of the ILF (subject to external factors such as local authority provision remaining the same), this EA concentrates upon the impact if a fresh decision were made to close the ILF, with transfer of responsibility and funding to LAs in England and the devolved administrations in Scotland and Wales.

⁵ *Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, available at <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1345.rtf>.

Policy Outline

14. The Government is fully committed to supporting independent living through personalisation and localisation of care and support. Since the ILF was established the mainstream care and support system has evolved significantly.⁶ In 1988 there was no clear legal provision for LAs to provide direct cash payments for the purchase of care, in the way that has always been a feature of the ILF. In contrast, all LAs now have a statutory duty to assess and fund the eligible care needs of disabled people, and 94% of all ILF users already receive a local authority contribution to their care and support.
15. The Health and Social Care Act 2001 placed a legal duty on LAs in England to offer a direct payment to anyone eligible for community care services. The use of personal budgets has now become part of a wider personalisation agenda, putting individuals at the centre of how their care and support is arranged, ensuring that disabled people secure outcomes that are important to them in the future, and that all users of social care and support services (including those who for one reason or another do not have access to the ILF) can access the full range of care and support services available. LAs cannot take decisions to change an individual's care package without discussion with the user on how their required outcomes can be reached and maintained.
16. In addition the Care Bill, which is currently nearing completion of its passage through Parliament, will significantly reform social care in England. It includes further measures to promote greater independence as well as increasing the control disabled people have over their care and support. In particular, the Bill

⁶ Developments in social care provision since 1988 are set out in 2009, P Thane, *Memorandum submitted to the House of Commons' Health Committee Inquiry: Social Care 2009*, http://www.historyandpolicy.org/docs/thane_social_care.pdf. These include:

1988 – The Griffiths Report. Government Green Paper, '*Community Care: Agenda for Action*', put forward six recommendations for reform of social care services.

1989 – Government White Paper, '*Caring for People*', published in response to the Griffiths Report, put emphasis on LAs making use of third party provision.

1990 – National Health Service and Community Care Act 1990 introduced new LA responsibility, with users entitled to a Community Care needs assessment.

1996 – Community Care (Direct Payments) Act 1996 granted LAs the power to make direct payments, with access to these payments being extended to a range of groups of service users over the following years.

2001 – Health and Social Care Act 2001 placed a legal duty on English LAs to offer a direct payment to anyone eligible for community care services.

2003 – Provisions from the Health and Social Care Act 2001 came into effect in England and personal budgets began to be developed. These were delivered using the existing legislative framework.

2007 - The use of personal budgets became part of a wider personalisation agenda for putting individuals at the centre of how their care and support was arranged.

gives all users of the social care system in England the right to a personal budget and creates a national minimum eligibility threshold which will even out some existing geographical disparities in eligibility. It will also improve the portability of support by placing a duty on LAs to meet the assessed needs of people who move into their area, until they carry out a new assessment of their own and a new package of care is put in place. These measures are expected to come into force from April 2015.

17. Policy and legislative developments in Scotland have similarly focused increasingly on the personalisation of services, reflecting the shifting expectations of people today, where they will be able to exercise choice and control over the support they need. The Social Care (Self-Directed Support) (Scotland) Act 2013 gives people a range of options for how their social care is delivered, beyond just direct payments, empowering people to decide how much ongoing control and responsibility they want over their own support arrangements. The self-directed payment provisions in the Act will come into effect on 1 April 2014.
18. In Wales, the Social Services and Well-being (Wales) Bill is currently at its Committee Stage in the Welsh Assembly, and has broadly similar aims. It aims to transform the way social services are delivered in Wales, promoting people's independence to give them a stronger voice and control. The measures in the Bill are broadly similar to the Care Bill, though the Welsh Bill goes further in that it also extends to children. There is also an emphasis in the Bill on the provision of services to reduce, prevent or delay the need for care and support. The legislation is expected to come into force some time in 2015-16.
19. Taken together, these developments mean that the mainstream adult social care system now provides (or very soon will provide) many of the features currently associated with the ILF such as direct payments and personal budgets, and the choice and control which these give ILF users over the way in which their care and support is managed.

Rationale for Change

20. The developments outlined above provide the context for any decision on the future of the ILF. In addition there are a number of factors in favour of closing the ILF and transferring responsibility and funding to LAs in England and the devolved administrations in Scotland and Wales.
21. First, while there is no doubt that the ILF continues to play a very important role in the lives of its users, the distribution of ILF funding and support has always been geographically uneven, reflecting highly varied levels of engagement by LAs with the ILF. The ILF currently has users in 210 LAs across the UK with around a quarter of those authorities covering around 55% of ILF users. At a regional level, the proportion of disabled people who receive the highest rate of DLA (HRDLA)⁷

⁷ Receipt of HRDLA is one of the qualifying conditions for ILF

who also receive ILF funding is currently 4.2% in England compared with 6.1% in Wales and 6.9% in Scotland. The variations between individual LAs are more significant. For example, in Scotland, the proportion of HRDLA recipients who receive ILF support ranges from under 2% to almost 15%. There are similar variations elsewhere. For example, over 11% of HRDLA recipients in Oldham receive ILF compared with just over 2% in Rochdale (the LA area next to Oldham). If a fresh decision were taken to close the ILF, this would not address the geographical inequality in the next financial year because funding allocations would reflect existing ILF spend in each LA / devolved administration area. However, for the longer term it would remove the underlying factor which causes these geographical disparities i.e. the difference in the willingness of different LAs to engage with the ILF.

22. The closure of the ILF to new users in 2010 has meant that these geographical disparities have not changed. But in addition, it also means that existing ILF users are in a different position compared with disabled people who did not make a claim before the Fund closed to new applications. Whilst the Department fully recognises the importance of considering the impact of closure upon existing ILF users, Ministers also have a responsibility to consider the wider picture for all disabled people.
23. It is increasingly difficult to justify operating a separate source of funding for one group of disabled people. Closing the ILF and transferring the funding to local authorities in England and to the devolved administrations in Scotland and Wales would enable them to use all the funding available for adult social care to support disabled people in a more consistent, effective and equitable way, within a cohesive mainstream system. The government also believes that there would be some benefits for users as the resources available to them for adult social care would be provided from a single source, making things simpler and more straightforward for the user.

Funding

24. In announcing the decision to close the ILF (now quashed by the Court of Appeal judgment on 6 November 2013), the Government stated that funding in respect of former ILF users was to be distributed between LAs in England and the devolved administrations in Scotland and Wales, from April 2015, in a way that reflected the ILF's forecast expenditure in each LA area at the point of closure. In accordance with Government policy the funding devolved to local authorities in England would not be ring-fenced. The Government's position on how local authorities manage their finances is clear; local authorities need to be allowed to meet their statutory responsibilities in a flexible and responsive way and the ring-fencing of funding prevents this, in addition to creating an unnecessary administrative burden. How these funds would be used in Scotland and Wales would be a matter for the Scottish Government and the National Assembly for Wales. Northern Ireland already funds the ILF to deliver services and would therefore need to decide how to spend this funding following closure. Before the Court of Appeal decision, the

Northern Ireland administration was in process of developing specific proposals for supporting former ILF users.

25. On 26 June 2013 it was announced in the context of the 2013 Spending Review that £262m would be made available to local authorities and the devolved administrations in 2015/16. This sum was based on the ILF's forecast expenditure on supporting its users in 2015/16 (if it was remaining open) and on the assumption that the fund would close on 31 March 2015.

Evidence and Analysis

26. This section of the EA explores the potential impact of the closure of the ILF, and devolving funding, which is not ring-fenced, to local authorities and devolved administrations, on individuals with protected characteristics under the Equality Act 2010.
27. The EA will consider each of the protected characteristics under the three limbs of the PSED in turn, paying particular attention to the protected characteristic of disability.
28. The data available for ILF users with other protected characteristics is limited but is also covered in this section (see paragraph 82 onwards below).

Disability

29. The definition of disability used in this EA is that set out in section 6(1) of the Equality Act 2010, which states that:
- "A person (P) has a disability if –
- (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

30. The needs of all disabled people have been considered in the writing of this analysis; in particular the needs of those disabled people who are also ILF users have been taken into account.

31. All ILF users are considered to be disabled people because eligibility to receive ILF funding is dependent upon an entitlement to a higher rate of Disability Living Allowance (HRDLA) or the Enhanced Rate of the Daily Living Component of Personal Independence Payment (PIP). Therefore, closure of the ILF will have a direct effect on disabled people, and in particular, those disabled people who are current users of the ILF.

32. In general, ILF payments are not paid on the basis of a particular disability, impairment or medical condition but rather on individual support needs and the ILF eligibility criteria. ILF users have a range of medical conditions, as can be seen from Table 1. Two conditions are predominant among ILF users: severe learning disabilities and cerebral palsy (33% and 16% respectively). Compared with all people entitled to higher-rate DLA (a broadly comparable group, since all ILF users must be entitled to higher-rate DLA or enhanced rate of daily living

component in PIP), those with learning disabilities are significantly over-represented in the ILF group: 36% of ILF recipients have a learning difficulty (severe and not severe), compared to just 15% of all higher-rate DLA recipients⁸. Therefore closure of the ILF will affect a disproportionate number of people with learning disabilities. However, there is no available evidence that would enable us to assess whether those with learning disabilities would be more significantly affected or affected in a different way when compared with users with other conditions.

Table 1

Main Medical Condition	Number of ILF users	Percentage of users
Severe learning disability	5,844	33%
Cerebral Palsy	2,838	16%
Multiple Sclerosis	1,532	9%
Other – more than one main medical condition	1,233	7%
Down's syndrome	1,035	6%
Spinal injury	972	5%
Brain damage (incl. head injury)	758	4%
Learning disability	621	3%
Cerebro-vascular (incl. stroke)	445	2%
Muscular Dystrophy or Atrophy	417	2%
Arthritis (osteo/rheumatoid/still's disease)	392	2%
Epilepsy	355	2%
Spina bifida	287	2%
Autism	186	1%
Learning disability with autism	162	1%
Friedreich's ataxia	127	1%
Other (all conditions with fewer than 100 people)	764	4%
Total	17,968	100%

ILF data, September 2013

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

It is recognised that at least some of the points considered in the analysis below could be considered under more than one limb of the PSED. The points are to be considered on their merits with no implication that the location of the analysis implies that it is not relevant to other aspects of the PSED.

Concern

33. The Government is committed to breaking down the barriers that disabled people face in playing a full role in society. Barriers such as lack of assistance, inability to access transport and the attitudes of other people can, for example, affect

⁸ Source: DWP Tabtool, May 2013

educational, employment and other 'life' opportunities for disabled people. The ILF has undoubtedly played a significant role in supporting its users to live independently in their own homes, to access educational and employment opportunities and to participate actively in their communities. Closure of the ILF and the fact that the funding transferred to local authorities and the devolved administrations will not be ring-fenced in respect of current ILF users or disabled people more generally, has generated concern that ILF users will, as a result of reductions or changes to their current care and support arrangements, be denied opportunities they now have to participate fully in society

34. The 2012 decision, now quashed, to close the ILF was preceded by a public consultation on the future of the ILF, launched on 12 July 2012. This consultation sought views on a single preferred option: to close the ILF in 2015, with funding devolved to local authorities in England and the devolved administrations in Scotland and Wales, as well as on “how closure could be managed in a way which would minimise disruption to the care and support needs of existing ILF users”. Around 2000 responses were received altogether of which 1700-1800 (apprx. 90%) were from individuals – mostly ILF users, their families or carers.
35. There were a significant number of highly detailed responses to the consultation clearly showing that those respondents had been able to engage with, and respond to, the Government’s proposal. Their responses also showed that they were well aware of the potential implications of the proposal and had been given sufficient information to form opinions about the possible effect of that proposal on them.
36. The most common concerns articulated in the consultation responses from, or on behalf of individuals, were concerning the competence, efficiency and capacity of local authorities to deliver. These were linked to worries about their care packages being reduced and being unable to achieve the same outcomes as they have with the ILF. This is most likely because the ILF provides greater flexibility in the use of funding than most local authorities. It is almost certain that closure of the ILF will mean that the majority of users will face changes to the way their support is delivered, including the real possibility of a reduction to the funding they currently receive. This is because the ILF funds some aspects of care that some local authorities do not and may also provide different levels of flexibility in the use of such funding.
37. Loss of ILF funding could mean that current ILF users will have to make different choices about their daily lives. For example, this might be because they will no longer be able to employ a personal assistant. The extent to which this will occur is impossible to calculate, given the variety of conditions and differences in local provision.
38. Another common concern raised in the consultation was about inability to access social activities, voluntary work or employment either because of reductions in the number of care hours funded, or because the local authority would fund

attendance a day centre rather than pay for a personal assistant to accompany people to activities of their choice.

39. There is little evidence that respondents believed that closure of the ILF would lead to direct discrimination, harassment or victimisation of disabled people. However, a significant number of users did provide more detailed testimony to show how they believed their ability to live independently and to participate fully in society would be compromised.

Examples of ILF user concerns of a loss of independence and control over daily life

“If the ILF were to close completely (he) would lose almost 50% of his care package: He has been scored in the highest funding band on the Local Authority’s Resource Allocation System, but their highest indicative budget would only provide care up to a (limit) for someone living at home. This would mean he could not be looked after at home and would almost certainly need to go into residential care”.

“Before I had ILF my parents who both work full time had to help me with the most basic of tasks (getting undressed, eating dinner, assistance getting to bathroom during the night) making me feel like a burden to my own family. My social life hit a stand still as I was unable to go out and meet friends as I was too unwell to really leave the house.”

“...people like me will end up sitting alone looking out of the window for most of the day unable to even go to the toilet. Until now, despite being severely disabled.....and unable to walk or use my hands or arms, I’ve been able to live a fulfilling life..... [without the ILF] I will be imprisoned at home, and will even have to give up my dogs...”

“...With no ILF and no ring-fencing of money my son’s budget will either be reduced so much that it no longer adequately covers his needs and he will end up with unacceptably substandard care. Or he will end up having to go into residential care which would also not be acceptable to him.”

“Before I was introduced to the ILF I was looked after by the local authority. I had no life at all, just a horrible existence. I didn’t get out of bed for months at a time. I was not encouraged to take part in life with the children. My care was extremely basic – to be kept clean, fed and medicated”

“Without the ILF funding I would either be left to rot in a home or be dead. My support worker and carers are my lifeline; with this funding I am able to live my life. Should this funding be cut, I can honestly say I would not last long in the community. Obviously should I end up in a home, then the money the government are wanting to save...would have to be paid out for my home fees....”

“ILF allows me to do, as closely as possible, what normal human beings do. I do not do ‘activities’ or ‘access the community’ – I go out for a drive, for a picnic, to visit people, the kind of things ‘real’ people do.”

Discussion

England

40. Closure of the ILF in 2015 and the transfer of funding to local authorities will mean that ILF users in England will have all their care and support needs assessed through the mainstream care and support system under a single eligibility and charging regime. Funding will not be ring-fenced for former-ILF users, (or for disabled people in general), and it will be for individual LAs to determine how to allocate the funding transferred to them.
41. This is likely to have an adverse effect on ILF users because of monetary reductions in the amount of support a person receives and because of changes in how that support is delivered. In its joint response to the consultation, the Local Government Association and the Association of Directors of Adult Social Care stated that;

“As ILF recipients transfer into the LA system in 2015, and are subsequently reviewed against the [local authority assessment] criteria, the value of the personal budget calculated through the Resource Allocation System will generally be at a lower level than the initial ILF/LA budget.”

Devolved Administrations

42. The devolved administrations in Scotland and Wales will be free to develop their own proposals for distributing the funding devolved to them in respect of former-ILF users. The Scottish Government published its own consultation document in August 2013 outlining four possible models for distributing the funding in Scotland, including the establishment of a new trust or partnership to administer the funding on a national basis (in Scotland). The National Assembly for Wales had been planning to issue a consultation document on 25 November but, in the light of the Court of Appeal judgment, did not do so. It is not possible to determine the impact of the closure of the ILF on users living in Scotland and Wales before firm proposals have been made, however, if the transferred funding is not ring-fenced for disabled people there is likely to be an adverse impact on ILF users which is broadly the same as that in England. It should be noted that the devolved administrations are subject to the requirements of the PSED as are local authorities in England.
43. The position in Northern Ireland is different as Northern Ireland already funds users living there, but we understand that if a fresh decision were taken to close the ILF the Northern Ireland administration would develop specific proposals for supporting former ILF users.
44. As set out in paragraph 21 above, the geographical distribution of the ILF has traditionally been uneven reflecting highly varied levels of engagement by local authorities. At a regional level the proportion of disabled people who receive the

highest rate of Disability Living Allowance (HRDLA),⁹ who also receive ILF funding, is currently 4.2% in England compared with 6.1% in Wales and 6.9% in Scotland.

Mitigation

45. While it is accepted that closure of the ILF will mean monetary changes to the value of the support ILF users receive under the current arrangements, the crucial point for users will be what outcomes they are able to achieve rather than the money that they personally receive through a direct payment.
46. The impact of this change is likely to vary according to whether the user is a **Group 1** or a **Group 2** user. There are currently around 2,800 **Group 1** users (those who applied to the original ILF between 1988 and 1992) who are not required to have a local authority contribution, although 60% of this Group do have some element of local authority support.
47. **Group 1** ILF users are likely to have less contact with their local authority than Group 2 users; although there may be some Group 1 users who have local authority care and support that is not known to the ILF/DWP, for those ILF users who do not, (or would not if they applied), qualify for local authority support because their support needs are defined as 'low' or 'moderate' there may be a negative impact if, as a result of loss of support, there is a consequential impact on their ability to live independently or to participate fully in society. This impact is impossible to quantify given the variety of health conditions and disabilities and variations in local provision.
48. The position for **Group 2** users is different, as these users are already required to be in receipt of a minimum amount of local authority funding in order to meet the ILF eligibility criteria. For the vast majority of all users this minimum contribution is now £340 a week. The requirement to have this level of local authority funding means that it is reasonable to assume that Group 2 users have support needs that would be defined as 'substantial' or 'critical' under local authority assessment criteria.
49. There are a number of existing or planned features within the local authority system which are likely to mitigate the effect of closure of the ILF on the outcomes individual users achieve and, as a result, on the potential impact on their ability to live independently or to exercise control over their lives.
- As explained at paragraph 14 above, LAs already have a statutory duty to assess and fund eligible care needs for disabled people, and 94% of all ILF users already receive a local authority contribution to their care and support. LAs cannot take decisions to change an individual's care package without discussion with the user on how their required outcomes can be reached and maintained. Prior to the Court of Appeal judgment, the ILF engaged extensively with LAs on the delivery of its programme of activity to ensure a transition for its users to the new arrangements. This included the agreement

⁹ Receipt of HRDLA is one of the qualifying conditions for ILF

of Codes of Practice between the ILF and LAs in England and each of the devolved administrations, with a view to enhancing the effective delivery of the programme.

- Any reductions in the value of care packages will not necessarily undermine those outcomes, local authorities currently offer users both care services and direct payments to meet their needs. Therefore, whilst the closure of the ILF may mean that users receive less money through a direct payment, this may be offset by more care services being paid for directly.
- Provisions in the Care Bill,¹⁰ to be introduced from April 2015 in England will also ensure that outcomes are maintained. National minimum eligibility criteria will be introduced in England which will help to even out some existing geographical variations in eligibility. **Group 2** users are already required to be in receipt of a minimum amount of local authority funding to meet the ILF eligibility criteria. In most cases this is £340 per week.
- In Scotland, the Social Care (Self-Directed Support) (Scotland) Act 2013, expected to come into force in March 2014, gives people a range of options for how their social care is delivered empowering them to decide how much ongoing control and responsibility they want over their support arrangements. The Scottish Government has made public commitments to independent living and to keeping people out of care homes. The Social Services and Well-being (Wales) Bill, currently at its Committee Stage in the National Assembly for Wales, is expected to come into force during 2015-16 and includes measures that are broadly similar to the Care Bill.

50. The consultation response from the Association of Directors of Adult Social Services (ADASS) highlighted one of the greatest issues for existing ILF users as the transition from financial support for social care based on combined local authority and ILF funding, (or ILF alone for a small number of Group 1 users), to the new arrangements. Prior to the Court of Appeal's judgment, as part of their programme of activity for transitioning ILF users to sole local authority support, the ILF launched a Transfer Review Programme (TRP) on 2 April 2013 following intensive engagement with key stakeholders and local authority representatives earlier in the year. The ILF had already completed over 6,300 review visits with review activity completed in almost 5,500 of these. It was on track to complete all activity by December 2014 which would have allowed a period of around three months for preparing final payments to users, transferring data to 210 local authorities and taking forward a range of other essential activities to prepare for closure. This programme has now ceased as the ILF were asked to cease all closure activity from the date of the Court of Appeal judgment. However in the event that a fresh decision is taken to close the ILF, activity to prepare for closure will resume.

¹⁰ The Care Bill is currently nearing completion of its passage through Parliament.

Conclusions

51. All **Group 2** users should be eligible for some local authority support from 2015 in line with the statutory duty placed upon local authorities to fund assessed care needs, if those needs remain similar to current requirements. This is because as referenced above this group are already required to be in receipt of a minimum amount of local authority funding to meet the ILF eligibility criteria. In the vast majority of cases this is now £340 per week.
52. However, as already explained it is probable that the majority of users will face some changes in the way their support is delivered and that a large number of users will experience some reductions to the current funding they receive, including those in Group 2. In some cases ILF users have indicated that they consider the impact would be severe. It is simply not possible to quantify accurately how the closure of the ILF would impact on individual care and support packages or how any funding cuts would translate into the loss of independence or reduce choice and control over their daily lives.
53. For those **Group 1** users not in receipt of any support from their local authority, the loss of ILF funding will most likely have a significant effect. We already know that 60% (1,677 out of 2,773) of Group 1 users have some local authority contribution to their care package, indicating that they may also have support and care needs that might be assessed as eligible for support under the national minimum eligibility criteria. The average local authority contribution for these users is currently £508 per week, however, we cannot assume the level of need would be sufficient to warrant further local authority contribution if ILF payments cease.
54. The remaining Group 1 users (1,096 people) are not known¹¹ to have a local authority contribution. It is possible that these users may have needs which would meet the local authority eligibility criteria, meaning that some of them will be eligible for LA support while some will not. If these users have care and support needs that are defined as moderate or low under local authority assessment criteria, they will not continue to receive funding. In practice, this could mean the loss of a carer or personal assistant as currently funded by their ILF award.
55. As part of the Transfer Review Programme, which has now ceased, all users were to have their ILF support reviewed by independent ILF assessor and a local authority representative. This was to be a key opportunity for users to discuss their care needs with both organisations and receive advice on how they would have made the transition to sole local authority care in 2015. Additionally the ILF had taken steps to engage with all **Group 1** users, those who have known local authority support and those who do not, in order to make sure that local authorities would have all the information required and that users would be given

¹¹ Group 1 ILF users traditionally have less contact with the ILF than Group 2 users, there may be some Group 1 users who have local authority care support that is not known to the ILF/DWP.

full information about the nature of any data transfer, including giving their consent before any such transfer took place.

56. The 2013 Spending Review allocated a total of £262.3m to be transferred to local authorities in England and to devolved governments in Scotland and Wales in 2015-16 (funding for Northern Ireland is already a matter for the Northern Ireland administration), reflecting their new responsibilities towards former-ILF users, based on the premise that the ILF would close on 31 March 2015.
57. Following the closure, local authorities in England would be able to use all available care and support funding to support all users of the social care system in a fair and consistent way. This may help to even out some of the geographical variations that exist within the current arrangements. Closing the ILF would not address this inherent geographical inequality in the following financial year as it is expected that funding allocations would reflect each LA's ILF spend in the previous year, but for the longer term it would remove one factor arising from the differential in the willingness of the LA to engage with the ILF. We cannot systematically identify who could benefit from this reform given the variations in policies and approaches across local authorities and the very large number of users of the mainstream social care system.¹²
58. We cannot predict how the Scottish Government and National Assembly for Wales will allocate this funding if the ILF does close, but we do know that the Scottish Government have already consulted on how ILF money should be used in Scotland and made public commitments to independent living and to keeping people out of care homes. The National Assembly for Wales was about to consult when the Court of Appeal judgment was issued and this process has now stopped. We would expect them to consult should a fresh decision be taken to close the ILF.

2. Advance equality of opportunity between people who share a protected characteristic and those who do not

59. Having due regard to the need to advance equality of opportunity involves, in particular, the need to remove or minimise disadvantages that are suffered by people who share a protected characteristic. It also involves having due regard to the need to take steps to meet the needs of people who share a protected characteristic that are different to those who do not and for disabled people this means taking steps to take account of their disabilities. It also means having due regard to the need to encourage people who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

¹² There are approximately 1.3m users of mainstream social care provision (in England) compared with around 12,500 ILF users.

60. This section will also address the United Nations Convention on the Rights of Persons with Disabilities¹³, in particular;

- Article 19 - recognise the equal right of all disabled people to live in the community, with choices equal to others, the need to take effective and appropriate measures to facilitate full enjoyment by disabled people of this right and their full inclusion and participation in the community, as well as;
- Article 24 - education - ensure persons with disabilities are not excluded from the general education system on the basis of disability; and
- Article 27 - work and employment - safeguard and promote the realisation of the right to work and promote employment opportunities.

Concern

61. A small number of the approximately 2000 plus people who responded to the 2012 consultation on the future of the ILF, and who expressed concern about changes to current care packages, explained how this would affect their lives in practice. Nevertheless, those who did provide further detail explained how they believed this would impact on their ability to live in their own or family home, on their educational or employment status or aspirations, and on their ability to access social or other community-based activities.

62. In addition to those users who expressed fears about having to move into residential care, referenced above after paragraph 40, a number of users stated that with the support of ILF-funded personal assistants they had been able to access higher education and enter employment. Their concern was that they would be unable to continue in higher education or employment if the overall level of support was reduced. As a consequence they would be disadvantaged as the opportunities that had been afforded to them would be reduced.

Opportunity to work and study - *“Through support from the Independent living Fund I have been enabled to go back to University and to enter employment, firstly through casual work as an “expert by experience” for the Care Quality Commission and to then go on to get my first full-time job in 20 years..... I am worried for the day that my 42 hours funded by the ILF disappear(and I am) no longer able to pay for the support I need to lead the meaningful life I currently enjoy thanks to the ILF.”*

“I am an active member of the Disabled People’s movement, which includes being co-Chair of the [a local disability equality forum] that advises [local council] on its disability policies and supports local disabled people. I am also a school governor of a local infants school, and I am involved with [local university] in the training of social work students and medical students. I am able to do all this because of the support of the ILF to pay for personal assistance. However, without this funding I would either

¹³United Nations Convention on the Rights of Persons with Disabilities
<http://www.un.org/disabilities/default.asp?id=259>

be trapped in my own home, or worse institutionalised in a care home.”

63. It is accepted that, with direct payments from the ILF many users have been enabled to access a range of educational, employment and social opportunities. However, the ILF's primary function is simply to make cash payments to enable them to purchase services, most commonly, the employment of a personal assistant or carer. Direct payments have been a feature of the ILF from the outset – at a time when there was no clear legal provision for local authorities to make direct cash payments within the adult social care system.

Discussion

64. It is not possible to accurately quantify the impact of closing the ILF on individuals for both **Group 2** users and those **Group 1** users who meet their local authority's minimum eligibility criteria. This would involve making speculative or predictive assessments that, for example, compare ILF recipients with other disabled people who do not have ILF support; or comparing what individual ILF users receive now with what they could get from 2015 onwards.

65. Clearly, the personal view of ILF users and their representatives are important considerations. As set out above, it is not possible to accurately quantify to what extent these expressed concerns and fears will actually be realised, either to the individuals concerned, or more generally to others, if the ILF is to close and funding be transferred to local government. There is the possibility, in some cases, that responses submitted to the consultation may have been based on an outdated view of local authority provision and delivery of social care and support. It is also the case that, at the time of the consultation, there was uncertainty about the amount of funding that would be made available to local government and the devolved administrations, to reflect their new responsibilities towards former users of the ILF, should the Fund close.

66. The flexibility around how direct payments from the ILF are used has enabled many users to take up a range of employment, educational and social opportunities. However, the developments outlined at paragraphs 14 -19 above mean that the mainstream adult care and support system now includes, (or very soon will include), many of the features currently associated with the ILF such as direct payments and personal budgets.

67. In addition, the Government has taken steps to ensure that there are a number of other initiatives available, which may or may not already be accessed by ILF users. These include those Government initiatives to promote inclusion for disabled people in a number of areas including supporting disabled people's educational aspirations, addressing the employment rate gap between disabled and non-disabled people, enhancing the choice and control disabled people have over their lives and building inclusive communities. The 'Fulfilling Potential – Making it Happen' Action Plan (<http://odi.dwp.gov.uk/docs/fulfilling-potential/making-it-happen-action-plan.pdf>) sets out the cross-Government disability strategy building on previous work, including the Independent Living

Strategy¹⁴, aiming to make the expectations of the UN Convention on the Rights of Disabled People a reality.

68. For disabled people who want to pursue higher education, there are a range of Disabled Student Allowances available. These are payable in addition to other sources of student finance and the amount payable is based on individual needs rather than income. Eligible students can get help with the costs of specialist equipment, non-medical helpers, extra travel costs associated with a person's disability and a range of other additional costs.
69. For disabled people with more complex needs which cannot be met by local authorities, there is also a range of specialist disability employment provision, including Access to Work, Work Choice and Residential Training.
70. A number of those responding to the consultation expressed fears about having to enter residential care and, as a result, would no longer have any choice around their place of residence. As stated above, it is simply not possible to quantify to what extent this is likely to be a consequence of closing the ILF.
71. Data from the Department of Health shows that the overall number of adults of working age in residential care (in England) is not increasing. The total number of working age people in residential care has been falling since 2008-09, but the proportion of all social care users in residential care has been rising (due to greater falls in the number of people receiving other forms of care). Although there has been no discernible change in the general trends around residential care since the ILF was closed to new users in 2010, this data needs to be treated with caution due to the relatively small number of people who may have been eligible for the ILF (had it not been closed to new users). The data does not therefore necessarily indicate that 2010 changes have not had an effect on trends in residential care.

Conclusions

72. Reductions in the monetary value of care packages or changes in the way those services are delivered will not necessarily lead to reduced equality of opportunity for users. Local authorities are already increasingly offering direct payments and personal budgets and planned legislative measures will, broadly, place these arrangements on a statutory footing. Wider Government initiatives as set out above in paragraph 68 means that there are other sources of support available for disabled people who wish to undertake educational and employment initiatives.

¹⁴ Office for Disability Issues, February 2008, 'Independent Living: A cross-Government strategy about independent living for disabled people'.

3. Foster good relations between people who share a protected characteristic and those who do not share it including in particular the need to tackle prejudice and promote understanding.

Concern

73. It is accepted that closure of the ILF, devolving responsibility and funding to local authorities in England and the devolved administrations in Scotland and Wales in 2015, would mean that the majority of ILF users will face some changes to the way their support is delivered. This is because the ILF funds some aspects of care that some local authorities do not and may also provide different levels of flexibility in the use of such funding. The ILF may also provide a greater level of funding than would be available if the local authority had sole responsibility for meeting an individual's care and support needs. As set out earlier in this document, many ILF users responding to the consultation on the future of the ILF, made representations about how they believed closure would affect their daily lives. There is little or no available evidence however, about any specific role that the ILF may have had in helping to build good relationships between disabled people and non-disabled people.

Discussion

74. The main focus of this limb of the Act relates to encouraging the development of the growth of ideas and attitudes which result in good or improved relations between the individuals in different groups, in respect of the growth of relations and structures that acknowledge the diversity of society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms, as well as encouraging the maintenance or improvement of already good relations between individuals in the different groups.

75. As already discussed, the ILF provides direct payments to disabled people to enable them to purchase services, most commonly the employment of a personal assistant or carer. The main purpose has always been to support disabled people and to assist them to make the most of the funding they get in a way that best meets their needs.

76. The ILF does not have a specific remit in this area, however it is accepted that the ILF has contributed to users' ability to engage in social and community activities, that this is likely to have brought users into greater contact with non-disabled people, and that this may well have made some positive contribution to the promotion of understanding and the development of good relationships between disabled and non-disabled people. But there is no supporting data for this nor is there any basis for thinking that closure of the ILF would lead to a lack of understanding or have a negative effect on such relationships.

77. The cross-Government disability strategy, 'Fulfilling Potential-Making it Happen' does much to address attitudes towards disability and disabled people,

emphasising the need for innovative cross sector partnerships with disabled people and their organisations, as well as promoting new ways of working to deliver meaningful outcomes. It underscores the Government's commitment to the UN Convention on the Rights of Disabled People and to bring about the changes needed in communities that have a real and lasting effect on the day-to-day lives of disabled people in order to deliver further lasting change to attitudes and aspirations.

Conclusion

78. As already discussed in this document while the ILF has allowed users the opportunity to participate in public life, or in any other activity in which participation by disabled people is disproportionately low, and in doing so, inadvertently fostering relationships and helping to combat prejudice and promote understanding, there are a number of other initiatives which are expressly levelled at addressing these criteria.

79. The following section of this document explores the potential impact of the closure of the ILF, with funding devolved to local authorities and devolved administrations, on individuals with different protected characteristics in relation to all three limbs of the Public Sector Equality Duty as set out in the Equality Act 2010 (the Act).

Gender

80. The main focus of the ILF is to provide direct payments to disabled people to purchase care to meet their everyday needs. The gender distribution of ILF users is broadly equal as can be seen in Table 2, below.

Table 2: Gender breakdown of ILF users

	Female	Male	Total
Group 1	1,481	1,292	2,773
Group 2	7,290	7,905	15,195
Total	8,771	9,197	17,968
Percentage of total	49%	51%	100%

Source: ILF (Sep 13)

Risk of negative impact – PSED

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

Advance equality of opportunity between people who share a protected characteristic and those who do not

Foster good relations between people who share a protected characteristic and those who do not share it by tackling prejudice and promoting understanding.

81. As the gender distribution of ILF users is broadly equal, there is no evidence to suggest that any fresh decision to close the ILF would have a disproportionate

impact on either gender, or have an adverse impact (in relation to gender) under either of the other limbs of the equality duty set out above.

Carers

82. Some responses to the 2010 consultation raised the potential impact of closure of the ILF on carers, both agency staff and family or friends privately hired by users. Respondents emphasised that if users were unable to keep hiring family and friends as full-time carers, it would have a disproportionate impact on women, on the assumption that carers are more likely to be female.
83. As the ILF does not collect data on the gender of carers employed by users, we cannot accurately model the impact by gender of any fresh decision to close the ILF, in terms of the carers employed directly by ILF users or through an agency. Furthermore, any impact is likely to vary according to individual circumstances and local authority policies, making it difficult to accurately predict the likelihood of knock-on impacts on carers based on their gender.
84. However, for those carers employed through an agency, (around half of the total), they would not necessarily be made redundant even if the ILF user was no longer able to employ them, as they may be redeployed to other clients of the agency.
85. In a situation where an individual is reassessed for local authority care and is not assessed as needing support, it could increase the use of informal care and claims to Carers Allowance.

Race/ethnicity

86. Administrative data on the ethnic background of ILF recipients is held only if a person chooses to disclose this information, and a large number of users have chosen not to do so.

Table 4: Proportion of ILF recipients by ethnicity

Ethnicity	ILF Recipients	All UK Adults
White*	74%	87%
Mixed	1%	2%
Indian	1%	2%
Pakistani or Bangladeshi	2%	3%
Black or Black British	2%	3%
Other (inc. Chinese and Other Asian)	1%	3%
Undisclosed	19%	N/A

Source: ILF (Sep 13) and UK Census 2011 (ONS)

**White includes 'Gypsy / Traveller / Irish Traveller'*

Risk of negative impact – PSED

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

Advance equality of opportunity between people who share a protected characteristic and those who do not

Foster good relations between people who share a protected characteristic and those who do not share it by tackling prejudice and promoting understanding.

87. There is no evidence to suggest that any fresh decision to close the ILF would have a disproportionate impact on any particular race or ethnic group, or have an adverse impact (in relation to race/ethnicity) under either of the other limbs of the equality duty set out above.

Age

88. As shown in Table 5 below, the youngest recipients of the ILF would be in the 18-25 age group. The smallest groups of ILF users are at the youngest and oldest range of the scale.

Table 5: ILF recipients by age

Age (years)	Number of recipients	Percentage of recipients
18-25	1,313	7%
26-35	4,326	24%
36-45	3,923	22%
46-55	4,020	22%
56-65	2,767	15%
65+	1,619	9%
Total	17,968	100%

Source: ILF (Sep 13)

Table 6: Users of the adult social care system in England by age

Age band	Number of Service Users (nearest 100)	
18 to 64	443,600	33%
65 and over	896,000	67%
Total	1,339,600	

Source: NASCIS, Referrals, Assessments and Packages of Care data. (Interim data for 2012-13) & Community Care Statistics, Social Services Activity, England - 2011-12, Final release

89. The ILF user base is comparatively young when considered in the overall context of the adult care and support system, where 67% of service users are 65 and over, compared to 9% of ILF users. The majority of ILF users are between 26 and 55 (68%).

90. Additionally, as table 7 below shows, despite making-up two thirds of the users of the social care system in England, those 65 and over only constitute 51% of the expenditure.

Table 7: Service user expenditure by type of service unit in England 2012-13

Service user	Expenditure £bn	Proportion %
65+	8.8	51
18-64	8.3	49
Of which:		
Learning difficulties	5.2	30
Physical disabilities	1.6	9
Mental health	1.1	7

Source: HSCIC (2013) <http://www.hscic.gov.uk/catalogue/PUB11644>

There is little difference between the age groups in terms of the size of the package they receive from the ILF.

Table 8: Size of ILF package by age

Age (years)	Average package per week (£'s)
18-25	362.32
26-35	349.82
36-45	350.79
46-55	353.54
56-65	338.85
65+	319.97
Grand Total	347.56

Source: ILF (September 13)

Risk of negative impact – PSED

Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

Advance equality of opportunity between people who share a protected characteristic and those who do not

Foster good relations between people who share a protected characteristic and those who do not share it by tackling prejudice and promoting understanding

91. Age is not directly relevant to assessments either by the ILF or by LAs. There is no evidence to suggest that any fresh decision to close the ILF would have a

disproportionate impact on those of any particular age, or have an adverse impact (in relation to age) under either of the other limbs of the equality duty set out above.

Other protected characteristics

Sexual Orientation, Gender Reassignment, Religion/Belief, Pregnancy and Maternity, Marriage and Civil Partnership

92. No data is collected on whether ILF users have any of the other protected characteristics listed above. There is no evidence to suggest that any fresh decision to close the ILF would have a particular adverse impact on those with any of these protected characteristics, or affect the other limbs of the equality duty in relation to these groups.

Monitoring and Evaluation

93. DWP is committed to monitoring the impact of all its policies. We will therefore be developing plans for monitoring the actual impact of the closure of the ILF on those groups who share protected characteristics under the Equality Act 2010, and in particular on former users of the ILF and disabled people more generally.

Next Steps

94. This Equality Analysis will be kept under review; where appropriate we will include any new information and update any relevant data to ensure that this analysis remains up to date.