


<b>Commissioner Decision Report</b> 27th May 2015	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Robert McCulloch-Graham, Education Social Care and Wellbeing, Corporate Director	<b>Classification:</b> [Unrestricted or Exempt]
<b>Independent Living Fund Transfer</b>	

<b>Originating Officer(s)</b>	Jack Kerr, Education Social Care and Wellbeing, Strategy and Policy Officer
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	A Healthy and Supportive Community

### Executive Summary

The Independent Living Fund (ILF) was a discretionary trust operated by central government. The ILF provided funding to disabled people to purchase care and support services which help to enable them to live independently in the community rather than in a residential setting.

In 2010 the Government took the decision to close the ILF to new users and transfer responsibility to Local Authorities. Following a legal challenge, this process commenced in December 2014, and from 30 June 2015 funding will be devolved to local government. From this point local authorities in England, in line with their statutory responsibilities, will have sole responsibility for meeting the eligible care and support needs of current ILF users. There are currently twenty-eight ILF clients in Tower Hamlets.

Given the delay in transfer, it is recommended that the council continues the ILF payments to clients that were determined by DWP for the final three quarters of 2015/16. This will protect the care and support needs of existing ILF clients transferred to the Local Authority for one year until they are mainstreamed into LBTH Adult Social Care.

### Recommendations:

The Commissioners are recommended to:

1. Determine whether the allocation of monies to ILF clients is considered to be a grant within the meaning of the Secretary of State's directions.
2. If these awards are considered to be grants, to delegate authority to the Corporate Director of Education, Social Care and Wellbeing to make the awards until the end of 2015-16 in accordance with the criteria outlined in this report.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The Department for Work and Pensions (DWP) objective is to ensure all funding available for social care is spent by local authorities in accordance with the national eligibility criteria applied to all individuals within that Local Authority. The DWP have concluded that delivering this funding through the mainstream care and support system, which is overseen by Local Authorities, is preferable because this model is a fairer way of distributing this funding and has embedded local democratic accountability. This change will ensure that all individuals are assessed and supported through a single, cohesive system with one assessment and administrative system for each individual.
- 1.2 The Independent Living Fund will be transferred to LBTH Adult Social Care on the 1<sup>st</sup> July 2015. It is recommended that LBTH continues to make payments to existing clients in accordance with the determinations previously made by DWP for the remainder of 2015/16 to enable a smooth transition for these highly vulnerable clients. During this period all clients will be assessed or reviewed against the authority's application of the national eligibility criteria for Adult Social Care and appropriate support put in place before current payments are stopped.

## **2. ALTERNATIVE OPTIONS**

- 2.1 There is not a requirement on Local Authorities to provide additional support beyond the national eligibility criteria, and ILF payments could be stopped with immediate effect from 1 July 2015. However given the vulnerability of this client group, it is recommended that funding is continued for the remainder of 2015/16 in line with the ILF/LGA ADASS Code of Practice (November 2014).

## **3. DETAILS OF REPORT**

### **3.1 Background**

The Independent Living Fund (ILF) was originally established in 1988 when direct payments could not be made by local authorities to enable disabled people to purchase their own care and support. It is a Non-Departmental Public Body of the Department for Work and Pensions which was set up as a national resource dedicated to the financial support of disabled people enabling them to choose to live in the community as opposed to residential care. Operating as a discretionary trust it provides funding to disabled people and works alongside, but outside of, the mainstream care and support system. Almost all ILF users receive support from both systems, but under different eligibility and charging systems. The most common use of ILF money is to employ personal assistants.

- 3.2 In 2010 the Government took the decision to close the ILF to new users and transfer responsibility to local authorities. On 8 December 2014, the High Court announced its decision on the judicial review case between two ILF users and the Secretary of State for Work and Pensions. The court dismissed

the claimants' application for judicial review and upheld the government's decision to close the Independent Living Fund (ILF) on 30 June 2015. The Department for Work and Pensions (DWP) policy objective behind this is to ensure all funding available for social care is spent by local authorities in accordance with the national eligibility criteria applied to all individuals within that Local Authority. Currently some ILF users receive different levels of funding compared to people with similar needs. The Government believes that ILF users should have their care and support needs assessed and met in the same way as all other users of the social care system. The DWP have concluded that delivering this funding through the mainstream care and support system, which is overseen by local authorities, is preferable because this model is a fairer way of distributing this funding and has embedded local democratic accountability. This change will ensure that all individuals are assessed and supported through a single, cohesive system with one assessment and administrative system for each individual.

- 3.3 The Government has committed to protecting the care packages of existing users until the 30th June 2015 upon which time funding will be devolved to local government. From this point local authorities in England, in line with their statutory responsibilities, will have sole responsibility for meeting the eligible care and support needs of current ILF users.

#### **3.4 Profile of ILF Clients in Tower Hamlet**

There are twenty-eight ILF clients transferring across to Tower Hamlets Council. Currently 27 of the 28 ILF clients are known to LBTH Adult Social Care.

- 3.5 The type of need is varied but in almost all of the cases of the level of need is severe, whether this is for a learning disability or a physical disability. The types of need supported include:

- Mobility issues (20 of 28 ILF clients receive support for needs that include mobility related issues)
- Motor control (17 of the 28 ILF clients receive support for needs that include motor control issue)
- Sensory impairment and communication issues (14 of the 28 ILF clients receive support for needs that include sensory impairment and communication issues)
- Cognitive Function (11 of the 28 ILF clients receive support for needs that include limited cognitive function)
- Mental Health (9 of the 28 ILF clients receive support for needs that include mental health issues)
- Learning disability (22 of the 28 ILF clients receive support for needs that include a learning disability)

- 3.6 The Government has applied a five per cent attrition rate to ILF clients transferring across to the Local Authority. This means that as this group shrinks as the government expects, and is also mainstreamed into LBTH Adult Social Care, the financial implications should only be a short term pressure.

### **3.7 Financial Implications**

Currently, the total annual gross offer awarded to all ILF clients in Tower Hamlets is £513,589. Following the closure of the ILF on 30th June 2015 the ILF will immediately transfer three-quarters of the annual cost of care (less 3.75% for the government's 5% annual attrition rate they have projected for this group) to Tower Hamlets Council for the twenty-eight ILF clients in Tower Hamlets. This equates to a total net commitment of £321,376 in 2015/16.

- 3.8 In the short term it is proposed to use this money to continue to maintain the current awards as determined by the ILF. However, all ILF clients transferring to LBTH Adult Social Care will receive a review within the next financial year (2015/16) to evaluate their funding and assess them in line with the 'Fair Access to Care' (FACs) criteria as defined in the Care Act. They will then be mainstreamed into Tower Hamlets Adult Social Care, with the cost of their care absorbed within the funds transferred by ILF. It is anticipated therefore that there will be no financial impact from this change.

## **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1. The expected transfer of funding as a result of the closure of the ILF is £321,376. It is expected that the money received will be used to maintain the current levels of award for the clients who will transfer to the authority's care.
- 4.2. During 2015/16 the clients will be assessed on the relevant criteria and mainstreamed into Adult Social care, it is anticipated that their care costs will be contained within the ILF and existing resources.

## **5. LEGAL COMMENTS**

- 5.1. On 17 December 2014, the Secretary of State made directions pursuant to his powers under sections 15(5) and 15(6) of the Local Government Act 1999 (Directions). Paragraph 4.ii of the Directions stipulates that the Council's functions in relation to grants will be exercised by the Commissioners until 31 March 2017. This report is seeking the Commissioners' approval to formalise the grants to individual service users which may be deemed consistent with the Directions and the functions the Commissioners are required to exercise.
- 5.2. The Council has the power under section 1 of the Localism Act 2011 to "do anything that individuals generally may do" and that extends to doing things "for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area". This power is referred to as the general power of competence and includes the award of grants. The scheme as set down seems to be consistent with the Council's statutory powers.
- 5.3. The Council is obliged, to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness" as a best value authority under section 3 of the Local Government Act 1999. Therefore, the Council must also make provision within the grants to ensure delivery of the

projects in line with the application and approval and in the event of non-delivery to protect the Council's position. Therefore, robust monitoring requirements need to be in place to ensure that the money is spent only on the agreed care and that the level of care received is that which is appropriate

- 5.4. The Council must also be able to show the direct benefit accrued from the money spent under each grant.
- 5.5. However, it is clear that when the ILF fund joins the mainstream funding or the Service then the position must be reviewed to ensure that the Council applies the national eligibility criteria fairly across all service users. The Council should also (with the Best Value Duty in mind) consider how best to meet the needs of these service users which may not be in the fashion of this existing grant. However, understandably this would then be in the context of the funding of the whole of the ESCW directorate rather than in respect of the individuals in receipt of the ILF currently.
- 5.6. The Care Act 2014 (the 2014 Act) came mostly into effect from 1 April 2015. The previous power of Local Authorities to be able to set their own level of eligibility under the Fair Access to Care Services criteria was replaced with national eligibility criteria as set out in s.13 of the 2014 Act and the Care and Support (Eligibility Criteria) Regulations 2014.
- 5.7. Where the national eligibility criteria are met the Council is under a duty to meet those identified need for care and support. Where the eligibility criteria are not met the Council has discretion to meet those needs and must exercise that discretion lawfully, reasonably and proportionally. Failure to do so will risk a complaint and a claim of judicial review against the Council.
- 5.8. Local Authorities are under a duty to review all packages of social care provided to adults with a need for care and support by 31 March 2016 by virtue of the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015. Consequently, the individuals identified as receiving ILF currently shall be expected to have their current support reviewed in light of the provisions of the 2014 Act within the timeframe identified in this report.
- 5.9. It may be that the Council would wish to consider prioritising the reviews of those individuals who are currently receiving ILF.
- 5.10. Sections 31 to 33 of the 2014 Act and the Care and Support (Direct Payment) Regulations 2014 set out the duty upon the Council to provide direct payments where certain conditions exist. Any arrangement of a direct payment to the individuals currently received ILF shall need to be agreed within this statutory framework.
- 5.11. In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector

equality duty). This needs to be reflected in the process and fully considered prior to the approval of any grant and prior to any changes to the grant.

- 5.12. The Council must ensure that any grants are given out on a non-profit basis. Where a grant includes a profit element it no longer remains a grant and would be considered to be procurement activity. In such circumstances this means that the Council would have failed in its duties to properly procure the subject matter of the grant in accordance with the Council's constitution and the prevailing law.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. This change in service will impact disabled people living in Tower Hamlets. Currently some individuals receive funding solely through local authorities whereas others receive funding from the ILF in conjunction with, or independently of, local authorities. This means that people with similar needs are being served differently by the social care system depending on whether they applied to the ILF during the time it was open for applications.
- 6.2. Some individuals, particularly those with lower levels of need, may have their care package changed or reduced as LAs prioritise spending based on their assessment criteria in line with local priorities. If there are reductions in care packages for some individuals it could have a knock-on impact on their families, carers and/or personal assistants. These impacts may include further investment of family time in caring responsibilities and some users needing to change who their personal assistants are or reduce their wages. However, these impacts are very difficult to quantify and depend significantly on individual circumstances. ILF users would be entitled to the same care and support that all others who use the mainstream care and support system are entitled to.

## **7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 7.1 NA

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1. NA

## **9. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 9.1 NA

## **10. EFFICIENCY STATEMENT**

- 10.1 NA

## **11. Safeguarding Implications**

- 11.1 NA

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- List any linked reports [if Exempt, Forward Plan entry MUST warn of that]
- State NONE if none.

### **Appendices**

- List any appendices [if Exempt, Forward Plan entry MUST warn of that]
- State NONE if none.

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- List any background documents not already in the public domain including officer contact information.
- These must be sent to Democratic Services with the report
- State NONE if none.

### **Officer contact details for documents:**

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