



BRIEFING PAPER

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The closure of the Independent Living Fund (ILF)

By Tim Jarrett

1. Summary

The Independent Living Fund (ILF), a central Government financial resource for disabled people, closed on 30 June 2015, with funding devolved to Wales, Scotland and local authorities in England.

This note sets out the background to the ILF, how the ILF worked, the decision by the then Coalition Government to close it and the subsequent legal challenge (which was unsuccessful).

A separate note, entitled [Local replacements for the Independent Living Fund \(England\)](#) (CBP 7788), provides information on funding under the new arrangements.

2. A brief history of the Independent Living Fund

The Independent Living Fund was set up as a national resource dedicated to the financial support of disabled people, enabling them to choose to live in the community rather than residential care. It was sponsored by funding from the Department for Work and Pensions (DWP).

Although Government-funded, the ILF was a non-departmental public body which operated as an independent and discretionary trust fund managed by a board of trustees. A legally binding trust deed set out the powers and procedures of the trustees and the eligibility criteria for help from the fund.

The **original fund** was set up in 1988 as an interim measure until the implementation of community care legislation and a review of social security benefits for people with disabilities. It was wound up in 1993, but due to its popularity, a commitment was made to maintain a fund to provide support.

The **Independent Living (Extension) Fund** replaced the original fund, which was closed to new applications. It maintained payments to people who applied under the pre-1993 system.

The **Independent Living (1993) Fund** applied to all new applications post-1993 to 2007. The 1993 Fund was created with slightly different rules – mainly, the condition that social services should provide a weekly financial contribution – to take on new applications.

2 The closure of the Independent Living Fund (ILF)

From October 2007, the ILF operated a single fund – the **Independent Living (2006) Fund**. The 2006 Fund covered two main groups of ILF users:

- former Extension Fund users. This maintained the pre-1993 system and no new applications were accepted. The maximum award payable was £815 per week.¹ If a recipient went into a care home or hospital, payments might be suspended, although a retainer may be paid for up to four weeks for any carer that was employed;
- former 1993 Fund users and applications received before June 2010. The Fund worked in partnership with local authorities to devise joint care packages, which were a combination of services or direct payments from the local authority and cash from the ILF. Until it closed to new applications in June 2010, an application to the ILF could only be made through social services. The Fund then arranged for one of its own social workers to discuss an applicant's care needs, negotiate an appropriate package and provide advice and assistance with meeting any duties as an employer to carers. ILF payments were made in four-weekly arrears and amounted to a maximum of £475 per week.²

3. Eligibility criteria

Awards were discretionary, but there were basic guidelines to which the trustees of the Fund must have had regard. To qualify for help from the ILF, an individual would normally have to continue to fulfil all of the following conditions:

- get social services support worth at least £340 a week or £17,680 a year. This could include direct payments or services from their local authority, e.g. going to a day centre;
- be living in the UK for at least 26 weeks a year;
- have less than £23,250 in savings or capital. This included any money their partner had, if applicable;
- be in receipt of or be entitled to the highest rate care component of Disability Living Allowance (DLA).³

3.1 Changes from May 2010

In May 2010, the ILF began to limit *new* applications to people working at least 16 hours a week and who satisfied the eligibility criteria set out above. The new eligibility criteria did not affect existing beneficiaries. The ILF also increased the threshold sum that local authorities were required to meet in order to access ILF funding from £320 to £340 per week. An explanation of the changes for new applications was set out in an Equality Impact Assessment carried out in relation to the changes:

Trustees duties

ILF Trustees have a duty to take reasonable steps to ensure that expenditure does not exceed the amount of Public Funds provided by the Secretary of State for Work and Pensions by way of grant. They may incur personal liability if they fail to do so.

ILF Trustees must only make payments from the Fund in accordance with the powers and obligations conferred by the ILF Trust Deed. The Third Schedule to the Deed requires trustees, when exercising their powers to make payments, to give priority

¹ Independent Living Fund, [Independent Living Fund payments](#), ILF circular 01/10, June 2010

² As above

³ Independent Living Fund, [ILF eligibility](#) [retrieved using Wayback Machine website, as of 24 October 2010]

firstly to existing beneficiaries of financial assistance from the Fund and secondly to candidates in remunerative work of at least 16 hours per week.

[...]

Mitigation

Until 2008 ILF was able to accept all applications that it received. In 2008 prioritisation measures had to be introduced. In 2009 ILF available resources meant that ILF was able to accept more applications than in the previous year and accordingly restrictions were relaxed based upon feedback that ILF had received from interested parties such as local authorities.

By prioritising new applications only from candidates who are in paid employment of more than 16+ hours per week, ILF is unlikely to achieve the take up level that funding for the year would permit. All applicants to ILF are, by definition, severely disabled. Otherwise they would not meet the ILF eligibility criteria. Currently ILF has no satisfactory method of distinguishing between applications according to merit.

In order to ensure that available resources are focussed where they are most needed, Trustees intend to consult with local authorities and disabled people's organisations as soon as possible on the options for accepting applications from other candidates.

Conclusion

ILF Trustees recognise that the changes that they have decided to introduce from 1 May 2010 are likely to have an adverse effect on certain groups of potential candidates for ILF funding.

However Trustees have an overriding legal responsibility to take reasonable steps to ensure that they do not spend more than the amount of public funds allocated. In addition they have a duty to allocate funds in accordance within the priorities specified within the ILF Trust deed.

Therefore Trustees have decided that they are only sufficient resources available to fulfil the two priorities specified in the Trust deed. It is likely that this will leave some limited funding available to meet the cost of additional applications and to that end Trustees will consult with interested parties as soon as possible on the most appropriate allocation of any additional resources.⁴

4. The application process

Applications to the ILF were made via local authority social services departments following an assessment of the individual's care needs. If the applicant was assessed as requiring a care package involving at least £340 worth of services and/or cash from the authority, the local authority would support an application to the ILF.

If the ILF accepted an application, an assessor and a local authority social worker visited the applicant together. It was at this stage that the applicant's care needs were discussed by all three parties and an agreement reached about the amount and type of care needed. The ILF assessor would then submit a written report making recommendations about the care package.

Successful applicants received their cash award of up to £475 per week once the ILF was notified of how the money was to be used; for example, which care agency would be employed.

⁴ Independent Living Fund, [Equality Impact Assessment](#), March 2010, pp2 and 3 [retrieved using Wayback Machine website]

Applications from June 2010 onwards

In June 2010 a decision was made to close the ILF to new applications for 2010-11 as the ILF budget for that year had been allocated.⁵ The ILF's strategic policy director, John Fuller, explained at the time that "as a cash-limited discretionary fund, the ILF can refuse eligible applications" although this was the first time it had done so.⁶ The ILF added that the decision to close to new applications was made to "ensure that the existing 21,000 ILF users' awards continue at their current level", and that the ILF could not "afford to increase individual awards above the amount already paid, other than additional support to meet some of their employer responsibilities, and in response to certain changes in their income".⁷

5. ILF payments and contributions

Payments to recipients of the ILF were made four-weekly in arrears and were normally paid into the recipient's bank account. Money from the ILF was wholly ignored ("disregarded") when means-tested benefits were calculated and when a local authority assessed charges for domiciliary care (i.e. at home) services.

5.1 Contributions from the ILF recipient

Recipients were expected to put at least half of their DLA component towards the cost of their care. The exact amount depended on a financial assessment, based on income support rules. Applicants who were part of a couple had their capital and income assessed jointly, except any earnings. If someone lost their eligibility for the highest rate of the DLA care component, the ILF payments continued if a review of the decision or an appeal to the [First-tier Tribunal](#) is pending. Payments were suspended for the duration of any further appeal.

Means-tested benefits

Applicants in receipt of income support (IS) or income-based jobseeker's allowance (JSA), income-related employment or support allowance or pension credit guarantee credit would have been expected to contribute any severe disability benefit (or pension credit equivalent).

Contributions were calculated by working out the applicant's income (excluding earnings), and deducting any allowances and an amount the applicant would have got if they were on income support (excluding the severe disability premium).

5.2 Managing payments

The *Disability Rights Handbook* stated that if the ILF was used to employ carers, it was important to check the status of the care/personal assistants that are employed. The handbook stated:

If you employ a worker directly, you should assume you are the employer unless you have checked that they are self-employed. You have all the responsibilities of an employer – eg paying employer's national insurance contributions, etc. HMRC [HM Revenue and Customs] has a simplified way of collecting tax in these situations. If the

⁵ The measures taken to manage within available funding are based on an allocated budget of £348m for Great Britain and £11.2m for Northern Ireland.

⁶ "[Disabled people denied ILF cash](#)", *Community Care*, 21 June 2010

⁷ Independent Living Fund, [ILF protect users awards to manage within funding](#), press release, 17 June 2010 [retrieved using Wayback Machine website]

decision causes any difficulty, you could discuss it with your local tax office. In addition, you can contact the ILF for general advice.⁸

Information on further sources of advice is set out in section 7 of this note.

6. The closure of the Independent Living Fund

6.1 Announcement of the closure

In December 2010, the then Coalition Government announced that, following a review of the ILF, it had concluded that “the model of the ILF as an independent discretionary trust delivering social care is financially unsustainable”.⁹ A decision was made to close the ILF permanently for new applications.

The announcement was made in a written ministerial statement by the then Parliamentary Under-Secretary of State for Work and Pensions, Maria Miller, who also confirmed that the ILF would continue to operate for the benefit of existing recipients:

It remains the priority of the Independent Living Fund and the Government to safeguard the position of the existing recipients of the Fund and we will:

- In 2011, following the publication of the report by the Commission on the Funding of Care and Support, carry out a formal consultation. This will inform decisions on determining how best to continue to support existing users of the ILF in to a social care system based on the principles of personalised budgets, the findings of the Commission and recognising the importance of the support that ILF users have built their lives around. We will consult fully with disabled people, particularly current users of the Independent Living Fund and their families, local authorities and other interested parties, including the devolved administrations;
- Support the ILF to continue to administer existing awards throughout this Parliament; and
- Fully protect the programme budget for existing recipients of the Independent Living Fund within DWP throughout this Parliament.¹⁰

6.2 Consultation on the closure

In December 2011, Ms Miller announced that the Government would be consulting on the issue of the future funding for the ILF alongside its wider review of social care in England. In addition, it was announced that the DWP would be working with the governments in Wales and Scotland to examine options for future support.¹¹

A public consultation on the future of the ILF was launched by the DWP on 12 July 2012, alongside wider proposals to reform the funding of social care.¹² The consultation was open until 10 October 2012.¹³

⁸ Disability Alliance, *Disability Rights Handbook*, 35th edition, p160

⁹ [HC Deb 13 December 2010 c85WS](#)

¹⁰ As above

¹¹ [HC Deb 5 December 2011 c8WS](#)

¹² See Department of Health, *Caring for our future: reforming care and support*, Cm 8378, July 2012

¹³ Department for Work and Pensions, *Government launches consultation on the future of the Independent Living Fund*, press release, 12 July 2012

6.3 Government response to the consultation

The Government published its [response](#) to the consultation on 18 December 2012, announcing that the ILF would close in March 2015.

The Government proposed that, following the ILF's closure, responsibility for supporting ILF users would fall to local authorities in England and the devolved administrations who would "determine how ILF users in each of those parts of the UK are supported within their distinct care and support systems".

The then Parliamentary Under-Secretary of State for Work and Pensions, Esther McVey, made a statement to the House, stating that to "to ensure a smooth transition the Government and the ILF will be working with the social care sector in England to produce a code of practice to guide local authorities on how ILF users can be supported through the transition".

The Minister explained that the ILF would be conducting a "transfer review programme" over the next two years "which will ensure that the details of the care arrangements are captured and shared with their local authority and help those users not currently receiving any local authority funding to engage with the mainstream care system so they can access the services they are eligible for", and that the Fund would "begin an intensive and ongoing programme of engagement with users and key stakeholders on how the transition process will work".¹⁴

The consultation response provided further information on the Government's stance on local authority ring-fencing of funding for current ILF users:

Many users asked that, if funding is devolved to local government, it was ring-fenced to meet the needs of current ILF users. The government's position on how local authorities manage their finances is clear. The ring-fencing of funding prevents local authorities from meeting local needs in a flexible and responsive way. The needs of ILF users may change over time and local authorities are required to meet the care needs of all disabled people in a consistent way. We understand that when assessed ILF users may have current care packages reduced. Local authorities may choose to manage any changes to care packages in different ways, providing some transitional protection where required, but this needs to be considered on a case by case basis after a detailed assessment of user needs.¹⁵

The consultation response also provided more detailed information on a "transfer review programme" to guide local authorities on the transfer of care support:

[Group 1 users¹⁶] will be required to meet with representatives of their local authority. The joint review will help these users establish a relationship with their local authority and ensure the local authority is fully aware of their needs. These discussions will be about how they can be supported after 2015 and will not impact their current care packages. It will also provide an opportunity for the individual to receive information about the mainstream care and support system including the range of universal services they may be eligible for. We know that local authorities will need to be informed in advance of the transfer of Group 1 users in their area as well as be provided with relevant data to plan for future care arrangements. We will be working with Group 1 users and local authorities closely to make sure that local authorities have all the information they require, and that users have been given full information

¹⁴ [HC Deb 18 December 2012 c99WS](#)

¹⁵ Department for Work and Pensions, [Government response: Consultation on the Future of the Independent Living Fund](#), Cm 8240, December 2012, p9, para 9 and p10, para 11

¹⁶ Group 1 users are those who applied to the original ILF fund between 1988 and 1992.

about the nature of any data transfer and given their consent before any such transfer takes place.¹⁷

6.4 Transfer review programme

On 19 March 2013, the DWP published transfer review programmes for ILF users, to set out the process by which their support would be transferred from the ILF to local authorities in the period leading up to the closure of the ILF in March 2015.¹⁸

Separate programmes were published for users in [England](#), [Scotland](#), [Wales](#) and [Northern Ireland](#).

The announcement stated that transfer review programme visits to ILF users would commence on 2 April 2013 and were to be completed by 31 December 2014.

7. Legal challenge to the ILF's closure

In April 2013, the High Court rejected a judicial review challenge to the closure of the ILF brought by five severely disabled ILF service users.¹⁹ The claimants contended that the Government had failed to conduct a lawful consultation exercise and had failed to properly assess the impact of the closure of the Fund.

The claimants subsequently appealed to the Court of Appeal on the grounds that:

- the Secretary of State for Work and Pensions had failed, in making the decision to close the fund lawfully, to discharge the public sector equality duty (PSED);
- the consultation which preceded the decision had been inadequate;
- the decision had been based unlawfully upon the assumption that proposals in a Government White Paper, [Caring for the Future, reforming care and support](#)²⁰ and [draft Social Care Bill](#) would pass into law; and
- the High Court judge in dismissing such arguments had failed to give adequate reasons for his decision.

The Court of Appeal dismissed grounds 2 to 4 of the claim but upheld the first claim that the Minister for Disabled People was in breach of the PSED under the [Equality Act 2010](#). The Court found that there was no evidence that the Minister had had her attention drawn to the positive obligation to advance equality of opportunity pursuant to the PSED.

Responding to the ruling, the then Minister for Disabled People, Mike Penning, said:

We are disappointed with certain aspects of today's decision, and we will be examining the judgment very carefully and considering the implications before deciding on the most appropriate way forward, which includes seeking leave to appeal.²¹

Further information on the PSED is available in the Library briefing paper [The Public Sector Equality Duty and Equality Impact Assessments](#).

Following the Court of Appeal's decision, the transfer review programme (TRP) and all additional closure related activity ceased. The DWP website stated:

¹⁷ Department for Work and Pensions, [Government response: Consultation on the Future of the Independent Living Fund](#), Cm 8240, December 2012, p26, paras 12–14

¹⁸ Department for Work and Pensions, *ILF publish transfer review programme*, 19 March 2013

¹⁹ [Bracking & Ors. R \(on the application of\) v Secretary of State for Work and Pensions & Anor](#) [2013] EWHC 897

²⁰ HM Government, [Caring for the Future, reforming care and support](#), Cm 8378; July 2012

²¹ ["Disabled people win living fund case against government"](#), *BBC News*, 6 November 2013

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The ILF is aware that this new position may cause uncertainty amongst users and stakeholders and, to minimise any disruption in service, it will recommence a new support and review programme from [...] 18 November 2013.

All visits planned as part of the TRP have been cancelled as this programme was designed to support users with transfer to local authorities. The new support and review visits will ensure that the ILF continues to fulfil its requirements to visit users to monitor eligibility, check that the support they receive is still appropriate and fulfil its governance and fiduciary responsibilities. They will not include any discussion around alignment or transfer.

The ILF is in the process of writing to all users to explain the position and outline the next steps. If ILF users have any questions, they can contact their case worker in the normal way.²²

8. Revised date for the ILF's closure

8.1 New closure date of 30 June 2015 and post-closure funding arrangements

On 6 March 2014, the then Coalition Government announced a revised closure date for the ILF – 30 June 2015 – and also published a new equality analysis (see section 8.2). Announcing the decision, the then Minister for Work and Pensions, Mike Penning, said:

Before receiving the Court of Appeal's judgment, the ILF had been making excellent progress to deliver its transfer review programme—an ambitious and complex programme to enable both local authorities and ILF users to prepare for the transfer to the new arrangements. The suspension of closure activity, to allow time for the future of the ILF to be fully considered, means that asking the ILF to complete the transfer programme within the original time scales would involve an unacceptable degree of risk. For that reason, I will be asking the ILF to resume closure activity immediately, to deliver a re-planned programme that will achieve closure by 30 June 2015. This will allow additional time to ensure that adequate transfer arrangements have been made in respect of all ILF users.²³

The ILF published a [guide](#) for users on maintaining their ILF award until June 2015.²⁴ The Government stated that it will also be developing plans to monitor the actual impact of the closure of the ILF on former users and disabled people more generally.²⁵

²² Department for Work and Pensions News, *Re-introduction of a standard review programme*, 18 November 2013

²³ [HC Deb 6 March 2014 cc66-67WS](#)

²⁴ ILF, [ILF user guide - A guide to maintaining your ILF award until June 2015](#), March 2014

²⁵ Department for Work and Pensions, [Closure of the Independent Living Fund: equality analysis](#), p26, para 93

8.2 New Equality Analysis

In light of the Court of Appeal's judgment, the Government conducted a new [equality analysis](#) (EA) of the decision to close the ILF to fulfil the requirements of Public Sector Equality Duty (PSED) under the *Equality Act 2010*.²⁶

In the EA, the Government acknowledged that the closure of the ILF and the transfer of funding to devolved administrations would mean monetary changes to the value of the support ILF users receive under the prevailing arrangements. However, the Government stated that the effect of the closure would be mitigated by the changes to local authority support for the disabled introduced since the ILF was established, for example direct payments and the move towards personalisation of care.²⁷

The EA stated that:

Since the ILF was established the mainstream care and support system has evolved significantly. In 1988 there was no clear legal provision for LAs [local authorities] 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.²⁸

In addition, the EA cites further legislative developments across the devolved administrations which may soften the impact of the closure, noting that recent or pending legislative changes would "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".²⁹

The consequences of the closure of the Fund for each jurisdiction are explained in the EA document. In relation to England the EA stated:

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.

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.³⁰

The EA added that, at that point:

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.³¹

²⁶ Department for Work and Pensions, [Closure of the Independent Living Fund: equality analysis](#), 6 March 2014

²⁷ Further information on direct payments and personalisation is set out in the Library briefing paper, [Social care: Direct Payments from a local authority \(England\)](#) (SN3735)

²⁸ Department for Work and Pensions, [Closure of the Independent Living Fund: equality analysis](#), 6 March 2014, paras 14

²⁹ As above, pp6–7, paras 15–19

³⁰ As above, paras 40-41

³¹ As above, p13, para 42

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The EA stated that until those proposals are finalised, it will not be possible to assess the impact of the closure of the ILF on users in Scotland and Wales. It does note, however, that “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”.³²

In Northern Ireland, the Northern Irish administration already funded the ILF.

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³² As above, p13, para 42