

A Consultation on the future use of resources devolved following the UK Government's decision to close the Independent Living Fund (August-November 2013)

CONSULTATION RESPONSE

The Association of Directors of Social Work (ADSW) represents senior social work managers and Chief Social Work Officers in local government in Scotland. We welcome the opportunity to submit views and comments to the Scottish Government on the future of the Independent Living Fund in Scotland.

Summary of ADSW Response

1. ADSW acknowledges the real concerns that ILF users and their families have about the future of their funding when the current Independent Living Fund ceases in March 2015. We strongly support the principle of protection for ILF users and warmly welcome the Ministerial commitment to protection set out in the consultation paper.
2. That protection should apply unambiguously to all four consultation options for the future management of ILF funds transferred to Scotland from 1st April 2015. Unfortunately, some statements in the consultation paper seem to imply that the protection afforded to current ILF users would be less under Option 1 (transfer to Local Authorities), than it would be under the other options that involve a national ILF Fund run by different agencies: Option 2 (Scottish Government), Option 3 (an existing agency or Non Departmental Public Body), and Option 4 (a new Partnership and/or Trust. As we evidence on pages 6 and 7 of our response, we are concerned that such statements may bias some consultation responses against Option 1.
3. Other aspects of the commitment to protect current ILF users also require clarification, including whether it is for life, how inflation in support costs funded by ILF payments is to be addressed, and how eligibility is affected by Welfare Reform. The detailed information in our submission is intended to assist consideration of these matters.
4. ADSW acknowledges that ILF is highly valued, and in the past was a trail blazer for direct payments and self-directed support, before these models were widely adopted by local authorities. It is also important to recognise the key role played by Scottish local authorities in encouraging and assisting application to ILF (before the closure of the scheme to new applicants), including where necessary making sure that applicants received sufficient local authority services to qualify for ILF.
5. Nevertheless we agree with the findings of the 2007 Independent Review of ILF which expressed concerns about the discretionary nature of ILF, the wide inequity in take up geographically and in relation to need, the discrimination against older people, arbitrary restrictions on what ILF could be spent on, and anomalies created by having different sets of rules between ILF and Local Authorities despite ILF criteria requiring receipt of local authority care services.
6. Some of these anomalies can be addressed under Option 1 (transfer to Local Authorities), but most of the £50 million or so expected to be transferred to Scotland will be needed for protected current ILF users, and the remaining funds will be too small to address the

geographical and other inequities that the current ILF model has produced. A more holistic approach is needed that links the former ILF funds to health and social care partnership support for Self Directed Support, and to wider public and third sector support for independent living.

7. ADSW agrees with the suggestions in the consultation paper that funding should be targeted on areas which have the biggest impact on a person's ability to live more independently. We agree with examples given in the consultation paper, including: supporting people in transition (for example from services for young people to support and opportunities for adults, and also in transition to older age); short-term support into employment; prevention and low level support to reduce or defer more intensive needs developing; support around lifelong learning and citizenship, leisure and civic participation, and developing or maintaining social networks; and equipment and telecare to support independent living. Other initiatives such as community capacity building could be added to this list.
8. However, the Association is concerned that the amounts of ILF funding available (after funding the protection of current ILF users) will be far too small to make significant impact on delivering innovation and prevention for and with adults with disabilities. For older people's services there is a £100m annual Change Fund to reshape and redesign services to better support independent living through innovation and prevention. There is also a separate Early Years Change Fund for children and young people's services and (on a smaller scale) for Reducing Reoffending, but none currently for adults with disabilities or mental health problems.
9. At the same time, local authorities and their partners are increasingly redesigning services for adults to invest more in prevention and innovation under the drivers of fiscal austerity, increasing numbers of disabled people in the population, and Self Directed Support. These developments could be greatly assisted by a focussed Change Fund for Adult Services. This would require additional Scottish Government Funding for a similar period to the Reshaping Care Change Fund for Older People. Transferred ILF funding that is not required to protect existing ILF users would be best used as part of a larger Change Fund.
10. Our submission includes the options appraisal of the four options presented in the consultation paper for the management of the transferred ILF funds from 2015. Option 1 (transfer to local authorities) is supported because it has the best fit with both Self Directed Support policy and with Health and Social Care Integration. At least 93% of ILF users in Scotland are already receiving local authority care services, and are therefore within scope of both key policies going forward.
11. Option 1 has the least administrative cost. Local authorities already have much of the infrastructure in place, having trained and experienced assessment and care management, financial assessment, income maximisation and administrative staff. Through the growing number of direct payments, councils have experience in awarding cash payments to individual people to help meet their needs for care and independent living. Option 1 also presents opportunities to rationalise eligibility criteria, charging regimes (ILF is currently not "free"), and financial assessment rules.
12. Nevertheless we recognise that a number of disability organisations, and probably many current ILF service users, have been strongly opposed to transferring post-2015 ILF funding to local authorities. We understand concerns that councils would use ILF cash to meet other budget shortfalls in services that are not primarily about supporting independent living for disabled people. These concerns should now be allayed by the decision of the Scottish Government to protect individual ILF users who remain eligible for support. In addition, ADSW would support the ring-fencing of all ILF monies

transferred to councils. The ring-fencing of Scottish Welfare Fund payments to local authorities offers a useful precedent for protecting a transferred former DWP resource, augmented by additional funding. If the funds were transferred as part of a Change Fund, as we recommend, then similar governance and accountability requirements would be established, as is the case with other Change Funds, including the involvement of the Third Sector, and representatives of users and carers in expenditure decisions.

DETAILED RESPONSE

Before answering the specific questions in the consultation document we would like to respond positively to the protection being offered to current service users and also identify some issues that require further clarification.

Protection of existing ILF users

ADSW recognises the concerns that ILF users and their families have had about the future of their funding when the current Independent Living Fund ceases in March 2015. ADSW believes that disabled people should be supported to live the lives they choose rather than fear financial loss and curtailed independence. We strongly support the principle of protection for ILF users, although some of the details as to how this is best achieved require further consideration.

We therefore welcome the Scottish Government's statement on page 3 of the consultation document that it intends:

... that current recipients should not have their existing funding taken away unless their personal circumstances change and they become ineligible. We will therefore seek to implement a scheme which will enable current recipients to continue to receive the same award as they would have had, had the Fund not been abolished, for so long as they continue to meet the eligibility criteria which gave them access to the Fund. Our ability to support such a scheme is subject to sufficient levels of funding being devolved from the UK Government to the Scottish Government for this purpose.

We note that that "**subject to sufficient funding**" is further defined on page 6 of the consultation document as:

... subject to the UK Government devolving the full allocation of funding determined on the basis of expenditure at the point of transfer and sufficient levels of funding continuing to be devolved in future years.

The UK Government has already made financial savings in ILF expenditure, since the Fund closed to new applicants in June 2010. Annual expenditure in Scotland fell by nearly 6% between 2011-12 and 2012-13, and is projected to fall again over the next two years before transfer:

Table 1: Numbers of ILF users and expenditure, 2009-10 to 2012-13 and future projections

Scotland		Average number of users	Average weekly spend per head	Annual spend	Change in average number of users in year		Change in annual spend	
		No	£	£'000	No	%	£'000	%
2009-10	actual	3,639	£321	£60,905				
2010-11	actual	3,658	£327	£62,465	19	0.5%	£1,560	2.6%
2011-12	actual	3,454	£324	£58,281	-205	-5.6%	-£4,184	-6.7%
2012-13	actual	3,284	£321	£54,975	-170	-4.9%	-£3,307	-5.7%
2013-14	projected	3,101	£323	£52,270	-183	-5.6%	-£2,705	-4.9%

2014-15	projected	2,910	£325	£49,376	-190	-6.1%	-£2,894	-5.5%
2015-16	projected	2,724	£325	£46,213	-186	-6.4%	-£3,163	-6.4%

Sources: ILF Quarterly statistics to June 2013; thereafter ADSW projections

According to these figures, expenditure is projected to be £49 million in 2014-15; however, this is at current prices: in reality there will need to be some upwards adjustment in the average ILF spend per user (above the £325 per week) to take account of inflation and, possibly, more complex needs as the current service users age. The ILF transfer figure may well be closer to £55m-£60m.

The **key issue of concern** is whether the 6% annual funding reduction continues each year after 2015. Will the amounts transferred go into the Scottish expenditure block at their 2014-15 values, without any subsequent reduction (except in relation to future decisions about the total size of the Scottish Budget) or will a rate of decline be built in by HM Treasury for future years? At the time of writing, a clear decision on this key issue does not appear to have been communicated, although we understand that the ILF transfer to the Scottish Government is more likely to be on a “frozen” 2014-15 basis rather than on the much less favourable “annually reducing” basis, and our responses to the Scottish Government’s consultation are based on that assumption.

That said, there remain **some questions about the Scottish Government’s commitment to protecting existing ILF users:**

1. Does it apply to all options for the future management of transferred funds?
2. Is the protection “for life”?
3. How is inflation dealt with?
4. How might current eligibility be affected by Welfare Reform?

(1) Protection under Option 1

The consultation paper describes the commitment as “the only aspect that is clear” (p3). Unfortunately, this clarity is partly undermined by other statements in the consultation paper, which read as if they pre-date this commitment and have not been subsequently amended. In the section on “**models for delivery of a new Fund**”, on page 12, there is the suggestion that protection could be weaker under Option 1:

If option 1 (Local Authorities) is the preferred method of administration, there are two ways to devolve the resource to Local Authorities. The first approach would be to devolve the finance to **Local Authorities who can then decide the extent of protection for existing users**, with direction from the Scottish Government. The second approach would use legislation to ensure that all ILF recipients receive an award in line with the Scottish Government’s commitment to recipients, administered by Local Authorities. [*Emphasis added*]

If Ministers have agreed protection for current ILF recipients, local authorities will not be able to then “decide the extent of protection”, and would not wish to do so. Protection should be more clearly stated as **protection on all models for future delivery**. (Furthermore there is no practical difference between the two approaches mentioned in this paragraph: “direction from the Scottish Government” and “legislation” achieve the same outcome, since both would have to spell out that ILF payments to current users are protected, provided that they continue to meet the criteria).

Given the Minister’s commitment to protecting ILF funding for existing recipients, it cannot be true that a potential disadvantage of Option 1 (transfer to local authorities) is that:

Existing users may find their packages reduced to ensure equity within a council. (Page 12)

The Scottish Government commitment to protecting ILF payments for current recipients **must apply to all options for the future administration of the fund**, and if that is vested

with local authorities (under “Option1”), then that is what “direction from the Scottish Government” would spell out. Councils therefore would not be able to reduce the ILF packages for existing users.

There is further confusion about the meaning of protection under Option 1 on pages 13-14:

Under any national system (options 2-4), the Scottish Government would intend to provide a degree of security to individuals for the ILF award, (for as long as they meet the eligibility criteria) subject to the UK Government devolving the full allocation of funding, determined on the basis of expenditure at the point of handover. For option 1, the Scottish Government aim to provide the same degree of security for the ILF award component of the award. However, Local Authorities will be responsible to administer it and decide on the interaction between the ILF award and the Local Authority contribution to an individual’s overall package. Local Authorities will still have the power to change the level of their support as part of their reassessment criteria.

The suggestion here is that there is less protection under Option 1 because councils could reduce the non-ILF element in a person’s total package, ie the local authority care and support services that the person is receiving. But, if that is really a risk (and it cannot be done legally without a full needs assessment), then it is also equally a risk on Options 2-4. Local authorities currently provide or fund care and support to at least 92% of ILF users in Scotland¹, and the question of “the interaction between the ILF award and the Local Authority contribution to an individual’s overall package” therefore arises on all options for the future administration of ILF funding, and not just on Option 1.

The suggestion that there is less protection for current ILF service users under Option 1 is simply false. Potentially this is a serious problem in the consultation paper because it could well bias some responses against Option 1.

(2) Protection for life

The duration of protection appears to be for life, provided that sufficient funding is transferred and ILF users still meet their original eligibility criteria. It is therefore puzzling that the consultation paper states on page 9:

For all **new** awards, it would not be possible to assume that anyone who is successful will have that resource “for life” as has been mistakenly believed with the current system because that would simply replicate the inequities of the current system.

Page 10 also suggests that there might not be protection for life on some future models:

Other national models talk about a potential move away from the “awards for life” assumption that the current ILF system implies.

(3) Protection and inflation

Will the sums transferred from ILF to the Scottish Government for 2015-16 be uprated for inflation in subsequent years? If not, then the quantity of support that protected ILF users could purchase with their funding would diminish over time. In a period of austerity, Local Government finance settlements have flat-lined, which means that some Councils have not been able to find resources to increase social care expenditure for inflation. If ILF users had their funding protected in real terms they may be better off than many other people receiving social care services. Further discussion is needed on these issues

(4) Protection and welfare reform

During its existence, access to ILF was dependent on two financial criteria:

¹ All 2,595 Group 2 users, whose eligibility for ILF depends on receiving local authority care and support, plus an estimated 299 of the 557 Group 1 users, based on published DWP UK data on the proportion of Group 1 users (54%) known to have local authority care and support services.

- receipt of the highest rate of the care component² of Disability Living Allowance (DLA); and
- receipt of local authority funded care services to a specified value (latterly £340 per week).

The Scottish Government recognises (pages 6-7) that

...disabled people and unpaid carers are also subject to changes through Welfare Reform at a UK level and care package reviews at a local level. For an individual, it is often not the impact of any one change that is important, but the cumulative impact of many changes. The decision regarding the ILF is just one component, but for those in receipt of ILF, it is an important one. The Scottish Government recognises this and whilst it cannot look to mitigate the impact of all these changes, it will consider the interaction between the welfare and social care system and any potential new system in Scotland.

Disability Living Allowance has been replaced nationally by Personal Independence Payments³ (PIP) since 10 June 2013 for new claims from working age claimants (16-65). A rolling programme of conversion from DLA to PIP will be carried out for all existing working age claimants of DLA over the next 4 years (October 2013-October 2017).

Differences between DLA and PIP are likely to mean that many claimants currently eligible for the highest rate care component of DLA will not be eligible for the enhanced rate of the care component of PIP, and vice versa. Projected figures from DWP impact assessment suggest an overall reduction of those eligible for enhanced rate PIP compared to highest rate care component of DLA of around 20%⁴.

Application for PIP requires completion of an application form, followed in the majority of cases by assessment by a healthcare professional. There has been a significant level of appeals related to Employment and Support Allowance awards, which are similarly assessed. Appeals can take many months to process. A large proportion of decisions have been overturned in favour of the appellant. If PIP is subject to similar levels of appeal, there is a risk of significant disruption to current ILF users.

ADSW welcomes the commitment given by the Scottish Government to examine these impacts further, however, the issue is more pressing in relation to clarifying the protection for existing ILF users rather than for "any potential new system in Scotland" since potential uses for former ILF funding not required to sustain current ILF users do not need to be linked to DLA or PIP.

Further consideration is therefore needed to clarify the commitment to protect current ILF users on all four issues outlined above.

² This means that the service user had daytime care (frequent attention) and/or continual supervision needs, and night-time attention (prolonged or repeated) and/or supervision needs (watching over).

³ Unlike DLA, there is no differentiation between day and night needs for PIP. The care component of PIP is paid at two rates, the standard rate and the enhanced rate. Assessment is based on the assistance required with 10 activities. Points are ascribed according to the level of assistance required. 8 points are required for an award of the standard rate of the care component, 12 points for the enhanced rate.

⁴ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220176/dla-reform-wr2011-ia.pdf.

CONSULTATION QUESTIONS

Question 1

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

ADSW acknowledges the important role that the Independent Living Fund (ILF) has played in supporting people with complex care needs to lead independent lives. We agree with the statement by the DWP that ILF proved “that disabled people, including those with very high support needs, could significantly increase their quality of life if given direct control over funding for their care and support”⁵. In many ways, ILF was a trail blazer for what is now referred to as self-directed support, before this model became more common with local authority direct payments.

In Scotland, the value of direct payments⁶ has increased each year from £2.1 million in 2001 to £59.4 million in 2011-12; ILF spend in Scotland was almost the same at £58 million in 2011-12. Local authorities are now preparing to implement from April 2014 the new Self Directed Support Act, which represents a step change in delivering more choice and control for people who need social care services.

ADSW also acknowledges that ILF is highly valued by people fortunate to have been able to access these funds (as many more have not). The several case studies included in the Scottish Government’s consultation paper provide a helpful and timely reminder of the very real value that ILF users place on these funds. Nevertheless, the consultation paper and equalities impact assessment (also published in August 2013) sometimes reflect a simplistic and false perception that ILF alone made independent living possible whereas local authority services only meet basic needs:

The Scottish Government understands that the ILF positively enhances people’s quality of life by giving them greater independence and by helping them to increase their social participation. There is a suggestion that the policy positively impacts on the lives of people with disabilities, enabling them to be part of society as opposed to just existing on life and limb assistance from Local Authorities.(Scottish Government EQIA⁷, page 2-3)

ADSW is not aware of any local authority that is restricting eligibility to “life and limb”; those using the Scottish Government eligibility guidance⁸ set adult social care thresholds at the “substantial needs” levels. Local authorities support independent living and through COSLA are signed up to the joint policy statement “Our Shared Vision for Independent Living in Scotland”, helpfully included in Annex A of the consultation paper. This vision also underpins the draft guidance on Self Directed Support.

⁵ *The future of the Independent Living Fund*, DWP July 2012; available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220464/future-of-ilf.pdf

⁶ *Self-Directed Support (Direct Payments) Statistics 2012*, Scottish Government September 2012; available at:<http://www.scotland.gov.uk/Publications/2012/09/3245/downloads>

⁷ Scottish Government EQIA, available at: <http://www.scotland.gov.uk/Resource/0043/00430115.pdf>;

⁸ National eligibility criteria for social care were agreed by the Scottish Government and COSLA in 2009 and while originally developed for older people, as part of the response to Lord Sutherland’s report on free personal and nursing care, the criteria were explicitly designed to apply consistently across all adult care groups. See paragraph 1.5 of the eligibility guidance available at: <http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Older-People/Free-Personal-Nursing-Care/Guidance>

Moreover, local authorities in Scotland have played a key role in encouraging and assisting application to ILF (before the closure of the scheme to new applicants), including where necessary making sure that applicants received sufficient local authority services to qualify for ILF. They have also worked hard with ILF staff to reduce the impacts of the often arbitrary restrictions on what ILF can be used for, compared with the flexibility and choice that direct payments, and now wider Self Directed Support, can offer.

It should also be noted that despite acknowledging that ILF was highly valued by users, the independent *Review of the Independent Living Fund*, commissioned by the DWP from leading social care researchers (Henwood and Hudson 2007⁹), was highly critical of many aspects of ILF. Melanie Henwood summarised these criticisms fairly bluntly in a 2012 newspaper article:

The [ILF] model produced inequity, variation in take up, arbitrary decision making and poor accountability. Such a paternalistic approach to allocating cash to support disabled people living independently appears anachronistic and out of tune with modern approaches to personalisation and individual budgets¹⁰.

Despite the best efforts of ILF trustees, management and staff, many of these problems remain and in Scotland need to be resolved by the successor arrangements from 1.4.15 on which the Scottish Government is consulting.

Inequity and variation in take-up

The problem of inequity and variation in take-up has several dimensions; some, but not all of which are recognised in the Scottish Government's consultation paper and interim equalities impact assessment:

- (a) Geographical variation in take up in relation to need
- (b) ILF eligibility criteria discriminates against older people
- (c) Inequities due to changes in ILF eligibility criteria over time
- (d) Inequities due to closure of scheme to new applicants.

(a) Geographical variation in take up in relation to need is recognised in the consultation paper and evidenced by the data it presents in the table on page 5. All ILF users are by definition "severely disabled, whether physically, mentally or sensorially to the extent that he or she needs extensive help in respect of qualifying support and services to enable him or her to live independently"¹¹. The ILF eligibility criteria requires recipients to be receiving or be entitled to the highest rate care component of Disability Living Allowance (DLA - HRCC). While this is not the only criterion, it is noteworthy that the proportion of DLA HRCC claimants who are receiving ILF is low – 6.9% in Scotland, and 4.3% in the UK as a whole (at June 2013)¹². The reason is that ILF was a cash-limited discretionary scheme, that for most of its life operated "below the radar" unknown to many disabled people who would have met its eligibility criteria¹³.

⁹ *Review of the Independent Living Funds*. Report by independent consultants Melanie Henwood & Bob Hudson, DWP January 2007, available at: <http://www.dwp.gov.uk/docs/rilf-full.pdf>

¹⁰ Melanie Henwood: What next for the independent living fund? *The Guardian* 21.8.12, available at: <http://www.theguardian.com/social-care-network/2012/aug/21/independent-living-fund-melanie-henwood>

¹¹ ILF Deed of Trust, page 25, July 2013; available at: <http://www.dwp.gov.uk/docs/trust-deed.pdf>

¹² *ILF User Profile Analysis: Results up to quarter ending June 2013*; available at: <http://www.dwp.gov.uk/docs/user-profiles-0613.pdf>

¹³ Melanie Henwood and Professor Bob Hudson: *End of the Independent Living Fund is the start of a new chapter*. Community Care: 14 December 2010; available at:

In these circumstances local authorities have played a key role in supporting people to access funding, particular in Scotland where we have 10.7% of the UK's recipients of the highest rate care component of DLA, but 17.3% of ILF users and 18% of the UK ILF spend (at June 2013)¹⁴. Nevertheless, the end result has been very wide variation in the proportion of DLA recipients who receive ILF – from 1% in Shetland to 15% in East Renfrewshire:

Table 2: Variation in ILF take-up, as at June 2013

Local Authority	DLA higher care rate	Total ILF Users	
	Jul-13	Nov-12	%
East Renfrewshire	630	94	15%
Argyll & Bute	720	94	13%
Scottish Borders	800	83	10%
West Dunbartonshire	1,160	108	9%
Glasgow	7,680	696	9%
Edinburgh	3,150	257	8%
North Lanarkshire	3,770	307	8%
Aberdeenshire	1,260	102	8%
East Lothian	690	54	8%
Renfrewshire	1,700	132	8%
South Lanarkshire	3,200	232	7%
East Dunbartonshire	720	52	7%
Angus	800	53	7%
Fife	2,650	165	6%
North Ayrshire	1,360	83	6%
South Ayrshire	1,100	67	6%
East Ayrshire	1,310	75	6%
Orkney Islands	140	8	6%
Midlothian	690	38	6%
Perthshire & Kinross	990	53	5%
Inverclyde	910	47	5%
Dundee	1,450	70	5%
Clackmannanshire	410	16	4%
Highland	1,650	64	4%
Stirling	670	25	4%
Aberdeen	1,160	42	4%
West Lothian	1,320	47	4%
Dumfries & Galloway	1,390	43	3%
Western Isles	180	4	2%
Falkirk	1,310	28	2%
Moray	550	11	2%
Shetlands Islands	150	2	1%
Scotland	45,670	3,152	7%

Source: see footnote 6.

Such wide variation geographical variation in ILF take up in relation to need is not easy to resolve.

(b) ILF discriminates against older people. Disabled people aged 65 years or older have similar needs for independent living as younger disabled adults, yet from 1993 older people were unable to apply for ILF. This blatant ageism has its roots in the origins of ILF in the social security system¹⁵, and the link to DLA alone (rather than also to disability benefits for older people). The extension of ILF to older people would obviously have very large costs and is not an option on the table for post-2015; nevertheless, the current system is age-discriminatory, a fact that is not addressed in the Scottish Government's ILF Equality Impact Assessment, published on 12 August 2013¹⁶

<http://www.communitycare.co.uk/blogs/social-care-the-big-picture/2010/12/end-of-the-independent-living-fund-is-the-start-of-a-new-chapter/>

¹⁴ Same source as note 12

¹⁵ See Footnote 2: *Review of the Independent Living Fund* (Henwood and Hudson, 2007) page 29.

¹⁶ Scottish Government: *ILF Closure EQIA*, 12.8.13; available at: <http://www.scotland.gov.uk/Resource/0043/00430115.pdf>

(c) Variation due to changes in ILF eligibility criteria over time

Current ILF users are on a variety of different eligibility conditions, summarised in a simplified version (without DLA issues) in the table overleaf, which also means that their level of needs will vary.

Up to 2008 ILF was able to accept all applicants who applied, but the minimum threshold for the monetary value of local authority care and support necessary to provide ILF eligibility was subsequently raised twice, and in the last 1-2 months before the scheme closed to new applicants, around the end of June 2010, a condition was added that required new applicants to be in work for at least 16 hours per week. **Current ILF users are therefore a mixed group on different eligibility criteria.**

Table 3: changes in selected ILF eligibility criteria

	ILF users in Scotland, June 2013	Dates	Age condition when application accepted	LA Threshold sum per week	Maximum ILF award per week	Paid employment condition?
Group 1	557	1.4.1988 to 31.3.1993	All adults 16+	None	£815	no condition
Group 2	2,595	1.4.1993 to 31.3.2008	Adults aged 16-64	£200	£475	no condition
		1.4.08 to 30.4.2010		£320		no condition
		From 1.5.2010		£340		>16 hours per week

(d) Inequities due to closure of scheme to new applicants. This problem with the current scheme is covered well in the “Inequity” section on page 8 of the Scottish Government consultation document. People who would have been eligible for ILF are likely to have lower total funding (LA only) than people prior to June 2010 who received both LA funding and ILF, even allowing for some increase in local authority funding. Of course, the interface between LA funding and ILF was complex.

Other aspects of ILF that have not worked well include:

- the fact that the ILF scheme was discretionary, rather than based on rights and entitlements;
- restrictions on what ILF could be spent on – as detailed in the ILF Deed of Trust¹⁷. These are more restrictive than local authority powers under Self Directed Support and are not outcomes focussed;
- anomalies within the ILF charging policy¹⁸;
- differences between ILF and local authority charges and financial assessments (means tests);

¹⁷ The ILF Deed of Trust states that ILF funding may only be spent on “Qualifying Support and Services” including: “cleaning and other domestic duties; cooking and preparing food and drink; laundering and ironing; shopping; personal hygiene and grooming; dressing; eating; drinking; physical movement such as turning, walking; supervision in order to avoid substantial danger to him or herself or others”. For example, Personal Assistants funded by ILF cannot walk a person’s dog or take their children to school, but they can assist an ILF user to do these tasks themselves.

¹⁸ For example, partner’s income is disregarded if the partner was working, but not if the partner had retired and was in receipt of an occupational pension: so charges could go up when household income went down.

- differences between the hourly rates paid by ILF for personal assistant payments, and those paid by local authorities within direct payments, often as a contribution to the employment of the same staff;
- differences between the ILF rules around employing family members and the Direct Payment Regulations that apply to local authorities; and
- ILF being paid to benefits appointees to act on behalf of those who lack capacity. The successor arrangements will not be able to continue with this practice.¹⁹

Many of these problems are discussed in detail in the Independent Review (Henwood and Hudson 2007), mentioned earlier.

Question 2

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

Table 1 suggests that the amount of money available from the rate of attrition is likely to be quite small, perhaps £3 million per year initially. (As discussed earlier, this assumes that the ILF transfer from HM Treasury is “frozen” – if not, there will be nothing available from the rate of attrition). Further work is required to establish more robust estimates of the “rate of decline” in numbers of protected current ILF users, so that the quantum of released monies can be better estimated for future years.

In addition, we understand that a further 4% is reclaimed each year by ILF from users who have not spent all their ILF funding. We are not clear whether the ILF expenditure statistics presented in Table 1 above are before or after the 4% is reclaimed; however, if the 4% was on a transferred base of, say, £55 million, that would deliver (initially) a further £2.2 million per year, making a total available for “recycling” of around £5 million per year. As stated earlier, some of the released funding might also be needed for existing ILF users.

These are not large sums, and are clearly insufficient to fund new cases on the same basis as protected ILF users, even if that were that desirable. The released funding is also insufficient to address the geographical and age-related inequalities in the current scheme. These monies would be best spent on **innovation and prevention**, as we set out in our answer to **Question 5**.

Question 3

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

ADSW agrees with the Scottish Government that a “Scottish ILF” is unsustainable if based solely on the existing resource (page 9) but in addition, we do not consider continuing with the existing approach to be desirable, for all the reasons set out in our response to **Question 5**.

¹⁹ It is likely that assessment of capacity will be required by a number of current ILF recipients, with some then requiring a Guardianship application to enable the support arrangements to continue in the current form (particularly where staff are employed or where agency provision is in place and the local authority is not managing the funds and therefore able to commission directly with the provider).

As stated, the money left over each year from the transferred budget – after the funding required by protected existing ILF users who continue to be eligible – will be relatively small. We consider its best use further under **Question 5**.

Question 4

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

It is not clear what this question is seeking. Service innovation and prevention are covered in the next question. Moreover the question continues to see the ILF funding transferred as being separate from the much larger sums spent by local authorities and other agencies to support independent living. The figures quoted on page 4 of the consultation document show that in 2011-12 **Scottish local authorities spent £16 on social care for adults aged under 65 with learning or physical disabilities, for every £1 spent by ILF**. Other council and NHS spend on mainstream services also is essential to supporting independent living: **we need to think more holistically about how rights to independent living are enabled and made real**.

Question 5

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

ADSW agrees with the helpful suggestions set out on pages 10 to 11 of the consultation paper. These include: supporting people in transition (for example from services for young people to support and opportunities for adults, and also in transition to older age); short-term support into employment; prevention and low level support to reduce or defer more intensive needs developing; support around lifelong learning and citizenship, leisure and civic participation, and developing or maintaining social networks; and equipment and telecare to support independent living. Other initiatives such as community capacity building could be added to this list.

However, **how is innovation and prevention for and with adults with disabilities really to be achieved from the tiny residue of the transferred ILF funds**, when for older people's services there is a £100m annual **Change Fund** to reshape and redesign services to better support independent living through innovation and prevention? There is also a separate Change Fund for Children and Young People's services and also (on a smaller scale) for Reducing Reoffending, but none for adults with disabilities or mental health problems.

At the same time, local authorities and their partners are increasingly redesigning services for adults to invest more in prevention and innovation under the drivers of fiscal austerity, increasing numbers of disabled people in the population, and Self Directed Support. **These developments could be greatly assisted by a focussed Change Fund for Adult Services**. This would require additional Scottish Government Funding for a similar period to the Change Fund for Older People (which from 2015-16 is being extended to adults aged 55-64 with "multiple co-morbidity problems")²⁰. Transferred ILF funding that is not required to protect existing ILF users would be best used as part of a larger Change Fund.

²⁰ In September 2013, the Scottish Government announced in the Draft Scottish Budget 2014-15 that the Change Fund for Reshaping Care for Older people would cease in March 2015 and be replaced from 2015-16 by a Reshaping Care Change Fund (of £100m allocated to partnerships via Health Boards, and £20m deployed centrally for national initiatives). The scope would be extended to

Question 6

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

ADSW's option appraisal is attached as an **Annex**, assessing each of the four options in the consultation paper against sixteen criteria. Options 2 and 3, and particularly Option 4, are difficult to assess as there is little information available about how they would work in practice. However, greater clarity here is unlikely to change the overall result which strongly supports **Option 1**: local authority administration of the post 2015 arrangements.

Option 1 is supported because at least 93% of ILF users in Scotland are already receiving local authority care services, and will be within scope of Self Directed Support, being implemented by all councils from 1 April 2014. **Option 1 has the best fit with both Self Directed Support policy and with Health and Social Care Integration.**

Option 1 has the least administrative cost. Local authorities already have much of the infrastructure in place, having trained and experienced assessment and care management, financial assessment, income maximisation and administrative staff. Through the growing number of direct payments, councils have experience in awarding cash payments to individual people to help meet their needs for care and independent living. Arguably Option 1 also involves the least risk of conflicts of interest (although of course there are potential conflicts with other local authority duties and priorities – discussed further below).

However, one potential benefit of transferring ILF funding to local authorities is only available in the longer term. Henwood and Hudson²¹ drew attention to:

The fact that the ILF operates in parallel to the processes operated by councils is also a source of problems. The ILF applies different rules around charging, uprating of payments, treatment of benefits and of occupational benefits and capital limits. For service users, the result is confusion and unwanted bureaucracy in having to cope with the conflicting demands of two systems.

Option 1 alone presents opportunities to rationalise eligibility criteria, charging regimes (ILF is currently not “free”), and financial assessment rules, but only for new cases. The protection that the Scottish Government has announced that it will provide to current ILF users appears to maintain them on current ILF rules, although the precise details require further work.

Given the clear overall advantages of Option 1, we need to consider why a number of disability organisations, and probably many current ILF service users, have been strongly opposed to transferring post-2015 responsibilities to local authorities. We understand that there have been concerns that LAs would use ILF cash to meet other budget shortfalls in services that are not primarily about supporting independent living for disabled people.

include “tacking multiple co-morbidity problems earlier in the 55-65 age-group”. While welcome, this extension to some adults falls short of a Change Fund for all adults with health and social care needs proposed in ADSW's response above.

²¹ Henwood and Hudson: *Independent Living Fund is past its prime*. Community Care, 15 March 2007; available at: <http://www.communitycare.co.uk/2007/03/13/independent-living-fund-is-past-its-prime-write-bob-hudson-and-melanie-henwood/>

The **protection** being offered to individual ILF users by the Scottish Government should be understood – and more clearly stated – as applying to all options 1-4. It should therefore remove a large part of the concerns about Option 1 versus other options. It will require the **ring-fencing of ILF monies transferred to councils**.

But it is also important that former ILF funds that are released by the natural rate of attrition are also protected for independent living from competing budget priorities. If these are also transferred to councils, preferably, as we have argued, as part of a Change Fund, then these funds should be **ring-fenced** transferred ILF budgets in the short to medium term (say 3 years after which the position would be reviewed). The allocation of ILF funds released by the rate of attrition, and the allocation of any Change Fund of which these could form a part, would have to be distributed to councils on the basis of need, rather than on historic demand, given the very large geographical inequity already discussed. The ring-fencing of **Scottish Welfare Fund** payments to local authorities offers a useful precedent for protecting a transferred former DWP resource, augmented by additional funding.

Question 7

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

There are two questions here:

- (a) is the current ILF discriminatory, and
- (b) are there equalities issues that post 2015 arrangement need to address?

ADSW agrees with the Scottish Government's Equality Impact Assessment that there is no evidence that ILF discriminates on grounds of sex, sexual orientation, gender re-assignment, religion or belief, pregnancy and maternity and marriage and civil partnership), although lack of data for all but sex hamper any consideration of ILF uptake compared with the characteristics of the total population of disabled people.

However, we concur with the findings of the review²² by Henwood and Hudson (2007) that key aspects of ILF are discriminatory:

The total numbers of people supported via the ILFs are very small compared with the potential client population. People are also unable to access the ILF for a variety of other reasons associated with the eligibility criteria and operational rules. People with very high support needs are precluded from applying to the ILF, others are also barred from applying to the ILF or are limited in the support they receive, including people aged over 66; former residents of long stay hospitals; people with substantial support needs; some disabled people with partners; disabled people who are parents; black and minority ethnic users; people in education and learning, and people in the final stages of their life. We conclude that the ILF is characterised by an unacceptably high level of inequity that must be addressed as a matter of the utmost urgency.

²² See Footnote 9: *Review of the Independent Living Fund* (Henwood and Hudson, 2007) page ii.

The ability to remedy these defects within the post-2015 ILF successor arrangements is limited to considering how monies released through the natural rate of attrition could be best used. At best this means very slow progress in addressing geographical inequity, and probably little or no extension of funding to older people.

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DRAFT ADSW Assessment of SG Consultation Options for future of ILF in Scotland

	CRITERIA	Option 1	Option 2	Option 3	Option 4	Comments
		Local Authorities	The Scottish Government	An existing agency or Non Departmental Public Body (NDPB)	New Partnership and/or Trust	
1	Limits risk of reduced funding to current ILF users	Yes	Yes	Yes	Yes	Since the SG is protecting payments to current ILF users, all Options must score the same on this criterion.
2	Ensures any funding available for "new cases" goes to promote independent living for disabled people	Probably/ Possibly	Probably	Probably	Probably	Cannot be more than "probable" on any options, as public expenditure not planned more than 3-5 years ahead. For Option 1 this depends on whether the funding is "ring-fenced", and, if not, on local political priorities.
3	Could promote more equitable national distribution, over time.	Yes	Possibly	Probably not	Probably not	This depends on whether, and how, funding is allocated to LAs on Option 1: we assume a needs based allocation for ILF funding not required to support current users. Options 2-4 have no local structure so unclear how current geographical inequity in ILF take-up would be addressed.
4	Relatively lowest administrative costs; hence greatest proportion of transferred funding available for service users	Yes	No	No	No	LAs already have assessment, review, charging, and service commissioning and delivery infrastructure in place (including staff, processes and IT); while additional admin costs are not zero, they are lowest on Option 1
5	Agency has experience in awarding cash payments to individual people to help meet their needs for care and independent living	Yes	No	No	No	LAs are responsible for Direct Payments and now for Self Directed Support implementation
6	Agency has infrastructure in place to review needs of current ILF users and assess needs of any potential new cases	Yes	No	No	No	LAs are main employer of social work assessment staff
7	Individuals would benefit from Local Authority expertise in having their care and support requirements met and a point of contact.	Yes	In part	In part	In part	Option 1: At least 92% of current ILF users are known to their local authority. Options 2-3: "In part" assumes ILF-successor criteria continues to include LA funding of care needs.

	CRITERIA	Option 1	Option 2	Option 3	Option 4	Comments
		Local Authorities	The Scottish Government	An existing agency or Non Departmental Public Body (NDPB)	New Partnership and/or Trust	
8	Places the responsibility for use of the Fund at a local level.	Yes	No	No	No	Unclear how Options 2-4 would have a local dimension. Option 1 does not exclude national guidance.
9	Potential for co-production with services users and carers	Yes	Yes	Yes	Yes	All options have potential for co-production, depending on national guidance. NB Option 4, as described, is about <i>some</i> users and carers leading a new organisation for managing the fund.
10	Potential for harmonising adult social care and ILF eligibility criteria	Potentially, but see comments	No	No	No	If current ILF users are protected so long as they meet their current eligibility criteria, then the possibility of harmonising eligibility criteria only applies to new cases.
11	Can assist with portability of packages enhancing an individual's ability to seek work in a different area or make other lifestyle changes.	Yes (if made part of scheme)	Yes (if made part of scheme)	Yes (if made part of scheme)	Yes (if made part of scheme)	The SG is looking at wider issue of portability of care assessments between LAs, and other measures to reduce "unwarranted variation".
12	Option is best fit with Self Directed Support policy and legislation	Yes	No	No	No	Local Authorities have lead role for SDS Act implementation
13	Option is best fit with Health and Social Care Integration policy	Yes	No	No	No	LAs and Health Boards have duty to integrate adult health and social care under Bill going through Parliament
14	Delivery agency being considered already exists	Yes	Yes	Yes?	No	Option 3 exists by definition, but which agency?
15	Would place disabled people and/or their representative organisations in charge of managing the Fund	No	No	No	Yes, but see comments	Option 4 would mean some users and carers deciding how much funding should be given to new cases, and impacts of changes of circumstances for current users

	CRITERIA	Option 1	Option 2	Option 3	Option 4	Comments
		Local Authorities	The Scottish Government	An existing agency or Non Departmental Public Body (NDPB)	New Partnership and/or Trust	
16	Little or no conflicts of interest	Yes	No	No	No	Option 2: SG is not a service delivery organisation - potential conflict with policy role. Options 3-4: Potential conflict of interest for service users and carers, and representative organisations, if also involved in awarding cash payments under a new scheme to replace ILF