

	<p><b>Adults and Safeguarding Committee</b> <b>23 April 2015</b></p>
<p><b>Title</b></p>	<p><b>The Independent Living Fund transfer</b></p>
<p><b>Report of</b></p>	<p>Jon Dickinson, Assistant Director, Adults and Communities</p>
<p><b>Wards</b></p>	<p>All</p>
<p><b>Status</b></p>	<p>Public</p>
<p><b>Enclosures</b></p>	<p>Appendix 1: Independent Living Fund - Feedback from the consultation Appendix 2- Equalities Analysis (EqA)</p>
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**Summary**

The Independent Living Fund provides funding for disabled people with high care needs to live independently in their own homes. The Fund is administered by the Department for Work and Pensions. Generally, people receiving payments from the Independent Living Fund also receive care services from the Council.

From 30 June 2015 the Independent Living Fund will close and funding will transfer to the Council from 1 July 2015.

This report makes a number of recommendations on how the transfer will be managed in Barnet.

**Recommendations**

1. That the Adults and Safeguarding Committee approve the recommendations on the transfer of the Independent Living Fund as set out in paragraphs 2.2.4, 2.3.3 and 2.4.3 of this report:
  - 1(a) That approval is given to the Adults and Communities Delivery Unit to assess the care and support needs of Independent Living Fund users in accordance

**with the national adult social care eligibility criteria for adults with care needs, adopted by Barnet Council in April 2015 in line with the requirements of the Care Act 2014.**

**1(b) That approval is given to assess financial contributions towards care in accordance with Barnet Council's adult social care community based Fairer Contributions Policy.**

**1(c) That approval is given for a 6 month transitional protection scheme for those individuals who require it during the transition from Independent Living Fund financial support to Barnet Council adult social care support.**

## **1. WHY THIS REPORT IS NEEDED**

### **Legislative Background**

- 1.1 The Independent Living Fund was established in 1988 to provide discretionary cash payments directly to people at the highest level of social care need. The Independent Living Fund is administered by an independent trust, which is an Executive Non-Departmental Public Body of the Department for Work and Pensions (DWP).
- 1.2 In 2007, the Department for Work and Pensions published an independent review of the Independent Living Fund, which raised concerns about the discretionary nature of the Independent Living Fund and low take up among different client groups, particularly older people. The review recommended the integration of the Independent Living Fund within local authority social care budgets.
- 1.3 From June 2010 no new applications could be made for Independent Living Fund payments. Existing users would still receive payments providing they continue to satisfy the conditions of entitlement.
- 1.4 In December 2012, following consultation, the Government announced that the Independent Living Fund would close completely and that responsibility for supporting existing users would fall to councils and devolved administrations. Following a successful legal challenge to the Court of Appeal, the decision to close was delayed pending an equalities impact assessment on the closure decision.
- 1.5 Following this impact assessment, in March 2014, the Minister for Disabled People announced that the Fund would close with effect from 30 June 2015 and funding would transfer to councils in England and the devolved administrations in Scotland, Wales and Northern Ireland.
- 1.6 This decision has also been subject to a legal challenge to the Court of Appeal, but this challenge was not upheld by the Court. The planned programme of closure has therefore proceeded and from 1 July 2015, responsibility for care and support payments provided by the Independent

Living Fund will be transferred to councils in England and devolved administrations in Scotland, Wales and Northern Ireland.

- 1.7 The Care Act 2014 statutory guidance sets out the framework within which the transfer should be managed. The guidance advises that local authorities can continue with the same level of care funding following the transfer until a care needs assessment has been completed. Furthermore, local authorities should take reasonable steps to make a user aware of any changes to a user's personal budget following the transfer.

### **Independent Living Fund**

- 1.8 Nationally there are around 17,000 users of the Independent Living Fund (ILF) who receive payments worth around £300 million a year. These ILF payments are in addition to any care services or payments made by local authority social services. Independent Living Fund payments can be spent on personal care and domestic assistance needs; dressing; cooking; personal hygiene etc.

- 1.9 There are two types of ILF users:

- Group one Independent Living Fund users who qualified for payments prior to 1993. These users can receive a maximum award of up to £815 per week.
- Group two ILF users who qualified for payments after 1993. Those users who qualified can receive payments of up to £475 per week.

- 1.10 For most users there are key conditions of entitlement:

- They must be living in the UK for at least 26 weeks a year;
- Receive at least £340 worth of support (care) per week or £17,680 a year from local authority social services;
- Entitled to the higher rate disability living allowance care component (personal independent payments);
- Have savings or capital of less than £23,250.

- 1.11 All users of Independent Living Fund payments are also required to undergo a financial assessment. The assessment of contributions made by the Independent Living Fund is made under a different policy to the financial assessment of contributions towards care made by councils. The Independent Living Fund financial assessment is a flat rate charge based on benefits received.

### **Independent Living Fund closure programme**

- 1.12 The Independent Living Fund has embarked on an extensive closure programme since the decision was made to close and transfer funding in 2015. The decision itself was subject to public consultation.

- 1.13 ILF users have received a transfer review and support visit from an Independent Living Fund assessor. Where possible, these reviews have been undertaken jointly with local authority social care workers. The reviews have also given the user an opportunity to discuss matters concerning the closure of the Independent Living Fund and how the transfer will be managed.
- 1.14 Information about the transfer has been sent to all users. Local advice and advocacy support arrangements have been made available to the Independent Living Fund office.
- 1.15 There are data sharing arrangements between the Independent Living Fund and councils to ensure the smooth management of the transfer. Councils have been provided with information about people receiving payments in each local authority area; names; addresses; the amount of funding; reviews undertaken.

### **The Independent Living Fund in Barnet**

- 1.16 There are 90 people in Barnet who are currently receiving payments from the Independent Living Fund. All of the Independent Living Fund users in Barnet have received a review visit from an Independent Living Fund officer. A third of these reviews have involved social care workers from Adults and Communities. These reviews are in addition to the normal care reviews undertaken by social care workers within Adults and Communities.

### **Payments**

- 1.17 The total gross value of Independent Living Fund payments received by people living in Barnet is £1,882,000 a year. The net value is £1,574,000 (after deducting client contributions). The average award for each person is £402 (gross) per week and £336 (net) per week.
- 1.18 In Barnet there are 11 Group one users (pre-1993 applicants) who receive a total of £374,000 (gross) per year, £334,000,889 (net) and 79 Group two users (post-1993 applicants) who receive a total of £1,508,000 (gross) per year, £1,240,000 (net). The gross amount is the value of the Independent Living Fund payment before a client contribution, the net amount is the actual amount paid after deducting client contribution.
- 1.19 In addition to receiving payments from the Independent Living Fund, the 90 people transferring across have been assessed as having care needs by Adults and Communities. There are 79 people receiving care services provided by the London Borough of Barnet at a cost of £1,830,000 a year.
- 1.20 The authority is to receive funding from the Department for Communities and Local Government to fund the additional expenditure, however the mechanics of how this will be received into the Council's financing arrangements is yet to be confirmed. The expectation is that the Council will receive a grant of £1.574m to fund the increased net financial expenditure and this is considered further in section 5.2 of this report

## **2. REASONS FOR RECOMMENDATIONS**

### **Managing the transfer in the London Borough of Barnet**

2.1 It is proposed that the financial and care assessment of Independent Living Fund users will be mainstreamed within the Council's adult social care service in Adults and Communities. These users will be assessed in accordance with the assessment and support planning policies adopted by Committee following the introduction of the Care Act 2014

### **2.2 Care Assessments**

2.2.1 There are 79 people receiving Independent Living Fund payments who also receive care services either as a managed personal budget or as a direct payment from the Council. The remaining 11 users (all Group one) do not receive care funding from the Council and rely on funding from the Independent Living Fund to pay for their care.

2.2.2 The eligibility criteria to receive payments from the Independent Living fund is different from the care eligibility criteria for Councils. There may be people who currently receive funding through the Independent Living Fund who may find that this level of funding may change following a care needs assessment made under the Councils care and eligibility criteria, which are the national criteria introduced by the Care Act 2014 from 1 April 2015.

### **Consultation**

2.2.3 The consultation has shown that there is a large degree of anxiety among Independent Living Fund recipients about the transfer. These concerns are reflected in issues raised during the national consultation on the closure decision. The outcome of consultation has showed that 46% of those who responded to the questionnaire disagreed or strongly disagreed with the proposal to assess the care and support needs of those receiving Independent Living Fund Payments in the same way as people assessed as receiving other care services. This compared with 41% who agreed or strongly agreed.

### **Recommendation**

2.2.4 It is proposed that Independent Living Fund users' assessments are carried out using the care needs and support planning assessments used by Adults and Communities for adults in need of care, in accordance with statutory guidance issued under the Care Act 2014. All Independent Living Fund users in Barnet will have their care needs and support reviewed. These reviews will generally take place in the 3 month period before and 3 months after the transfer. As care needs are reviewed, support plans will be developed.

### **Reasons for recommendation**

2.2.5 The Independent Living Fund operates under a different eligibility care criteria to councils. The Care Act 2014 requires councils care needs assessment to

be outcome focused. The transfer of funding and mainstreaming of care and support assessments will ensure that those Independent Living Fund transferees will receive the same assessment as other people receiving council care services.

## **2.3 Financial Assessments**

- 2.3.1 All Independent Fund Service users are also required to pay a contribution towards the payment they receive. The assessment made by the Independent Living Fund is separate to the financial assessment undertaken by the Council. There are 90 users who have been assessed by the Independent Living Fund to pay an average contribution of £66 per week towards the costs of care they receive. The average assessed contribution under the Council's community based contributions policy is £39.50 per week. From 1 July 2015 those people transferring across from the Independent Living Fund may have a reduction in the amount of contributions they pay towards care.

### **Consultation**

- 2.3.2 The outcome of consultation showed that 41% of those who responded to the questionnaire agreed or strongly agreed that those receiving Independent Living Fund payments should be financially assessed in the same way as other people receiving care services. This compared with 29% of people who disagreed or strongly disagreed.

### **Recommendation**

- 2.3.3 It is proposed that as care funding is mainstreamed that all Independent Living Fund transferees are assessed in accordance with the Council's policy on assessing contributions towards community based services.

### **Reasons for recommendation**

- 2.3.4 The financial assessment of contributions under the Council's community based contributions policy is fairer because it is based on ability to pay, taking into account income and outgoings. The financial assessment undertaken by the Independent Living Fund is a flat rate charge based on the types of benefits received and does not take into account the additional costs incurred because of a person's disability.

## **2.4 Transitional Protection**

- 2.4.1 There will be a number of people whose level of care funding, received through the Independent Living Fund, may change following a review of care needs and support. This change is mainly because of the differences in the eligibility criteria and types of care that can be paid for by the Independent Living Fund and the Council.

## **Consultation**

- 2.4.2 Independent Living Fund users were consulted on the option of providing for a 4 month transitional protection scheme where there was a reduction on care funding following the transfer. The outcome of consultation showed that 46% of those who responded to the questionnaire disagreed or strongly disagreed with the proposal to give transitional protection of 4 months. This compared with 32% who agreed or strongly agreed with this proposal.

## **Recommendation**

- 2.4.3 It is proposed that a scheme of transitional protection is introduced which will mitigate against any reductions, for those receiving Independent Living Fund funding, following a review of care needs. In those cases where there is a reduction in the amount of support, previously provided by the Independent Living Fund, this reduction will not take place until 6 months after the date of review.

## **Reasons for recommendation**

- 2.4.4 A scheme of transitional protection will give people sufficient time to make any adjustment in care arrangements following the transfer. Following consultation, the recommendation is to extend the transitional protection period from 4 to 6 months

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 It is a legal requirement that all councils in England will have the funding transferred from the Independent Living Fund from 1 July 2015. The closure programme has been managed by the Independent Living Fund. It is for councils to decide how care and support needs will continue to be met following the closure. The alternative option would have been to ring fence the funding.
- 3.2 The option of ring fencing Independent Living Fund payments to existing users is not recommended. Transferring funding to the mainstream budget within Adults and Communities would enable care needs assessment and support to be met on a more consistent, effective and equitable way. The Care Act 2014 also places a requirement on care assessments to be outcome focussed. Assessing and mainstreaming the Independent Living Fund will ensure that care needs and outcomes continue to be met.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 The localised transfer of the Independent Living Fund will be managed by the customer finance team and locality teams within adult social care. There will be a planned programme of transfer:
- All those affected or their carers will be contacted and informed about how the transfer will be managed in Barnet;

- Payment arrangements will be set up to ensure continuity of service and care continues to be provided. Whenever possible payments will be made through a Direct Payment.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

5.1.1 The transfer of Independent Living Fund will help to support and deliver the following 2013/16 Corporate Plan priority outcomes:

- “To sustain a strong partnership with the local NHS, so that families and individuals can maintain and improve their physical and mental health”.
- “To promote a healthy, active, independent and informed over 55 population in the borough so that Barnet is a place that encourages and supports residents to age well”.
- “To promote family and community well-being and encourage engaged, cohesive and safe communities”.

5.1.2 The Health and Well-being Strategy 2012-15 echoes many themes of the new policy framework with its emphasis on promoting independence and wellbeing whilst ensuring care when needed. The reform agenda links directly with three of the main strands of the strategy: Well-being in the community; How we live; and Care when needed. In particular, ‘Care when needed’ identifies plans for developing increased independence for older people, improving support for residents in care homes and improving support for carers.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The Independent Living Fund function and associated funding provided by the Department for Work and Pensions will transfer to the Council from 1<sup>st</sup> July 2015.

5.2.2 The Department for Local Government and Communities have yet to announce the amount that will be transferred to support the function transfer. As set out in paragraph 1.17, it is expected to be in the region of £1.574m a year.

5.2.3 The clients will be financially assessed for their full care package, i.e. the element currently provided by the Council and the former Independent Living Fund element under the Council’s community based contributions policy. No amendment will be required to this policy. As set out in paragraph 2.3.1 this is likely to reduce the average contribution from £66 per week to £39.50.

5.2.4 The transfer could lead to a cost pressure of £123,000 per year on a full year effect as set out below:



	£'000
Increase cost to Adults and Communities services	1,882
Less client contributions towards their care	(185)
<b>Net cost increase to Adults and Communities</b>	<b>1,697</b>
Expected funding transfer from the Department for Communities and Local Government	1,574
<b>Funding shortfall</b>	<b>123</b>

5.2.5 The cost pressure arising in 2015/16 will be in the region of £92,000 given the part year transfer. From 1<sup>st</sup> April 2016 this will be in the region of £123,000.

5.2.6 The Council's medium term financial strategy does not have any provision at this time for the increased pressure, therefore the Adults and Communities delivery unit will need to identify opportunities to absorb the shortfall on a recurring basis. If this is not achievable then it will be reflected in the budget monitoring and performance report to the Performance and Contract Management Committee.

### 5.3 Legal and Constitutional References

5.3.1 The Care Act 2014 consolidates and replaces several different pieces of legislation into one legislative framework. There is a specific legislative requirement to have a new eligibility threshold in place for care assessments from April 2015. The Department of Health also issued statutory guidance on 23 October 2014, which all councils in England are required to follow.

5.3.2 Under Sections 23.26 to 23.40 the statutory guidance sets the framework within which the transfer will be managed by councils:

- All duties and obligation under the Care Act 2014 will apply during the transfer process, including the duty to consider a person's well-being and outcomes;
- The need to carry out assessments which are proportionate; based on information they already know about the Independent Living Fund user;
- Local authorities can continue with same level of funding if the Council has not carried out an assessment prior to the transfer;
- Local authorities must involve the person in care and support planning; be aware of care arrangements already in place;

5.3.4 The responsibilities of the Adults and Safeguarding Committee are contained within the Council's Constitution - Section 15 Responsibility for Functions (Annex A). Specific responsibilities for those powers, duties and functions of the Council in relation to Adults and Communities including the following specific functions:

- Promoting the best possible Adult Social Care services.

5.3.5 Adults and Safeguarding Committee is responsible for the following:

- Working with partners on the Health and Well-Being Board to ensure that social care interventions are effectively and seamlessly joined up with public

health and healthcare, and promote the Health and WellBeing Strategy and its associated sub strategies.

- Ensuring that the local authority's safeguarding responsibilities is taken into account.

## **5.4 Risk Management**

5.4.1 The Council will need to ensure that the work associated with Independent Living Fund transfer is consistent and mainstreamed within the review and assessment work of Adults and Communities. An operational team within Adults and Communities will manage the transfer. Risk will be monitored and escalated accordingly through the Risk Management process within Adults and Communities. The financial impact will also be monitored to mitigate the impact on cash flow.

## **5.5 Equalities and Diversity**

5.5.1 On 1 October 2012, new provision in the Equality Act came into force banning age discrimination in health and social care. This is in line with the duties incumbent on all public bodies through s149 of the Equality Act 2010 to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

5.5.2 Adults and Communities works within London Borough of Barnet's policy framework for equalities. Specifically ASC embraces the principles of equal opportunities and valuing the diversity of Barnet Residents and service users. It will:

- Comply with LBB Equal Opportunities Policy.
- Comply with 2010 Equality Act and Public Sector Equality Duty requirements to pay due regard to equality.
- Use data to support Service Access and Redesign and Business Planning so that the services we provide offer value for money and are targeted to need.
- It will contribute to the delivery Of Barnet's Strategic Equality Objective that Citizens will be treated equally, with understanding and respect and will have equal access to quality services which provide value to the tax payer

Adults and Communities offers services to users within this framework, and undertakes relevant positive action to ensure social care is accessible to groups with different equalities characteristics; for example producing easy read information for people with learning disabilities and offering interpreters for service users.

5.5.3 Age discrimination should be considered broadly: younger people may perceive that older people receive more favourable treatment from services as

well as older people perceiving that they are less favourably treated. The perception does not mean that all age groups should therefore be offered identical support or services. However, it does require the local authority to have a transparent and fair rationale for different approaches or support offered to different age groups, which target need, just as it already does for current positive action in place, such as providing interpreters.

- 5.5.4 There is a general risk applicable to all local authorities, which may face an increased level of potential legal challenge from individual users or groups, who challenge on the grounds that the council has failed to pay due regard to equalities under the Public Sector Equality Duty. . Nationally there have been legal challenges based on equalities legislation: for example the 2011 challenge to Birmingham City Council on its proposed change to its adult social care eligibility criteria.
- 5.5.5 It is not viable going forward to maintain separate care and funding arrangements for Independent Living Fund users as funding is transferred over to the council. Mainstreaming care and financial assessments will reduce inequities and ensure transferees are treated in the same way as other people with assessed care needs.
- 5.5.6 An Equalities Impact Assessment has been undertaken on the transfer of the Independent Living Fund. and is attached as Appendix 2 to this report. The transfer will be monitored and reviewed to assess its impact.
- 5.5.7 In summary Barnet Council is required to implement the Government's decision to close the Independent Living Fund. This follows two judicial reviews and a Court of Appeal Decision.

Barnet have carried out an EIA to gather data about ILF recipients in Barnet and used this to consider the impact of change on this group. The EIA is showing a negative impact. This is because recipients will experience upheaval because of the change in arrangements and may experience a reduction in funding. Barnet has consulted on these proposed changes and paid particular attention to the feedback from those affected. It is recognised that the decision will affect people with a disability and care who are in receipt of Independent Living Fund Payments. To mitigate the negative impact and address concerns that were raised during the consultation the Council will:

- Introduce a care needs assessment for each individual affected and/or their carer to promote choice and the continuation of independent living.
- Set up transitional arrangements which will protect payments for up to 6 months
- Provide named contacts and support during the transitional period;
- Provide the opportunity for Independent Living Fund recipients to find out about other sources of support available;
- Communicate with all Independent Living Fund users on how care assessment and support planning will be undertaken;
- Provide for a scheme of transitional protection where there is any reduction in funding.

- Take fully into account how an individual's particular disability/ disabilities may affect the communication needs for each individual.
- This is fully set out in the Improvement Plan which accompanies the EIA

## **5.6 Consultation and Engagement**

5.6.1 The main proposals contained within this report were subject to public consultation. The consultation questions focussed on the three main proposals on the management of the Independent Living Fund Transfer; care assessments; financial assessments; transitional protection.

5.6.2 The outcome of consultation is set out in Appendix 1 of this report. The feedback from consultation has been incorporated within the proposals of this report.

## **6. BACKGROUND PAPERS**

6.1 The Care Act 2014 at:

[http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga\\_20140023\\_en.pdf](http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf)

6.2 The Care Act 2014: statutory guidance for implementation at:

<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

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