

National Assembly for Wales

[Health and Social Care Committee](#)

[Factual briefing from Welsh Government officials on the consultation on future care and support arrangements for Independent Living Fund recipients](#)

Additional information from the Welsh Government

During the Committee's meeting on 21 January 2015 Welsh Government officials agreed to provide the Committee with:

- case studies demonstrating how the level of care and support currently provided to recipients of the ILF will differ to that provided via direct payments;
- confirmation of whether responsibility for the ILF has been transferred from the UK Government to the Welsh Government by a transfer of function order; and
- clarification of whether legislative competence has been transferred to the National Assembly for Wales to enable the Welsh Government to bring forward any primary or secondary legislation which may be required following the transfer of responsibility for the ILF to the Welsh Government.

The Committee received a response from Welsh Government officials on 29 January 2015.

- case studies demonstrating how the level of care and support currently provided to recipients of the ILF will differ to that provided via direct payments;

There are no case studies available on the differences between ILF and Direct Payments (DP) to illustrate the potential different levels of care and support in respect of these funding streams. This is because ILF do not have rates that compare directly to DP rates as these vary across local authorities and are based on local needs and resources. There are swings and roundabouts that work both ways in relation to this.

Whilst the ILF has tended to use the direct payment rate as a guide to a reasonable local wage to pay a personal carer this has not been binding, therefore some ILF users may employ support that is paid at rates of pay above that allowed by the local authority. Conversely, the ILF may be paying slightly less than the direct payment rate, in particular if following a transfer review visit there had been a subsequent uplift in the direct payment rate paid by the local authority.

For example, if an ILF user had a previously agreed an hourly rate with their agency or Personal Carer that was higher than the locally applied DP rate and the DP rate was subsequently increased by the Local Authority, the ILF user would continue to pay for their care on their currently agreed rate which then may be lower than the revised DP rate.

- confirmation of whether responsibility for the ILF has been transferred from the UK Government to the Welsh Government by a transfer of function order;

The short answer to this is no. The UK Government has decided that funding previously allocated to the DWP to administer ILF across Britain should, from 1 July this year, be distributed to the devolved administrations to determine how these funds should be used. The ILF is a discretionary Trust which was set up by virtue of a Trust Deed which set out its functions. There is no statutory responsibility for the fund which could be transferred from the UK Government to the Welsh Government.

- and clarification of whether legislative competence has been transferred to the National Assembly for Wales to enable the Welsh Government to bring forward any primary or secondary legislation which may be required following the transfer of responsibility for the ILF to the Welsh Government

Should the National Assembly for Wales wish to legislate in light of acquiring funds that were previously provided to the ILF whether it

has competence or not will depend on exactly what the Assembly wanted to do. That is, what organisation, agency or body it may wish to administer ILF in the future. The National Assembly already has the competence to enable it to administer a scheme which is the same or similar to the ILF. The National Assembly has legislative competence in relation to Health and Health Services (Heading 8 Schedule 7 to the Government of Wales Act 2006 (GOWA) and Social Welfare (Heading 15 Schedule 7 GOWA). Therefore if the purpose of any equivalent ILF fund was to give financial support to disabled people to enable them to live in the community any legislative provision would relate to one or more of the subjects under those headings and therefore be within the Assembly's competence. Questions of competence always have to be considered with the proposed provisions in mind, however, if the purpose of any legislation was to enable or support the distribution of funds to support disabled people then it is considered that it would already be within the Assembly's legislative competence.