

Commissioner's Advice to Inspectors

Inspectors' Jurisdiction to consider items or services not expressly requested in the original application

Inspectors often see cases where the applicant expresses a need for an item during the course of the application/review that was not specifically requested on the original application form. This Advice covers Inspectors' jurisdiction in such cases.

(i) The function of the Secretary of State

A Social Fund application must be made "in such form or manner as may be prescribed". The form and manner in which applications are to be made are prescribed in the Social Fund (Applications and Miscellaneous Provisions) Regulations 2008.

It is the role of the Secretary of State to decide whether the application has been made correctly i.e. in the form and manner set out in the regulations. His role in this respect is purely an administrative one. In practice, this means that the Secretary of State's decision relates solely to whether the application has been made properly and in the manner prescribed. If he decides that an application is incomplete or fails to contain material particulars, he will then decide whether the application should be placed before the decision-maker or whether the applicant should first be required to provide information to complete the form. As part of this process, the Secretary of State is not making any findings about the items for which the application is made and his decision does not bind the decision-maker to the scope and content of the application. As the role of the Secretary of State is a purely administrative one, it falls to the Inspector to establish as a matter of fact the nature of the needs for consideration.

(ii) The Inspector's Jurisdiction

The Inspector has jurisdiction to review a social fund determination that has been reviewed. S.38 (13) of the Act says that a social fund determination means a determination made under the Contributions and Benefits Act by an appropriate officer. The determinations made by an appropriate officer are whether to make an award, the amount of the award, whether the award is to be repayable, whether it is to be paid by instalments or whether it is to be paid to a third party.

These determinations can only be made if an application has been made for "a payment such as is mentioned in s.138(1)(b) – a payment to meet other needs (needs other than maternity or funeral expenses) in accordance with directions given. Payments can be made by means of a:

““budgeting loan” means a loan awarded in circumstances specified in directions issued by the Secretary of State for the purpose of defraying an intermittent expense;

“community care grant” means a grant awarded in circumstances so specified for the purpose of meeting a need for community care;

“crisis loan” means a loan awarded in circumstances so specified for the purpose of meeting an immediate short term need;”

It follows that if an application has been made for a community care grant, crisis loan or budgeting loan, and that application has been determined and reviewed, the Inspector has jurisdiction. The Inspector’s jurisdiction encompasses the application as a whole and is not dictated by the actions of the Secretary of State in accepting the application as properly made.

The Inspector is required to consider all the circumstances of the case, in particular the nature, extent and urgency of the need (Section 140(1)(a) of the Act) and to have regard to any new evidence which has since been produced (Direction 2 to Inspectors). In the case of a community care grant application, the need to be determined is the need for community care in the circumstances specified in Direction 4. Similarly in the case of a crisis loan the need to be determined is the need to meet an immediate short term need in the circumstances specified in Direction 3. In view of this the Inspector has wide jurisdiction to consider items not specifically itemised on the original application form, the need for which becomes apparent during the life cycle of the application. This might be because the applicant has asked for an additional item or because the Inspector has identified an additional need.

There are instances in the Secretary of State’s guidance which underline the above intention and approach. For example, Part 2, Paragraphs 121 and 122, which relate to CCGs under Direction 4(a)(i) provide as follows:

.....“***What types of need may be considered***

120. If the applicant has only asked for one item, consider if the CCG should include any other item that will be needed in connection with the move from institutional or residential care.

Furniture, household equipment, connection charges

121. You may either

- *Award a CCG for specific items of furniture, furnishings, bedding, connection charges, household equipment which the applicant needs or*

- *Pay an amount sufficient to meet the need where the application cannot be itemised accurately”.....*

(iii) The Inspector’s approach to determining needs requested after the original application

Although Inspectors have wide jurisdiction this does not mean that additional needs must always be considered; it is important to make reasonable use of discretion when deciding whether to include an additional need in the review. Important considerations are likely to include the link between the additional need and the thrust of the original application; and the link with the crucial issues in the case including the reasons for qualification. It is also important to consider the likely consequences of refusing to look at any additional need. For example, is it an urgent need that would play a very important role in promoting community care? Inspectors should also be mindful of possible delays if the applicant makes a separate application to Jobcentre Plus. There may also be instances where a separate application for an item that might otherwise have been paid, is likely to fail because the applicant is no longer in a grant situation having received a sizeable payment; or where the value of a potential award for the additional item is less than £30.

Generally speaking, it will normally be appropriate for an Inspector to consider additional needs where:

A clear link exists between the additional need(s) requested and the reasons for qualification and circumstances which have given rise to the need(s).

The following case example helps to illustrate this basic principle:

A young mother is setting up home after spending several months in a refuge where she fled to escape violence from her former partner. She wants various household items including a cooker, beds and bedding, seating and carpets for her new home. Direction 4(a)(iii) is met. An award for the items will ease exceptional pressures on the applicant and her family. The Reviewing Officer makes a partial award and the applicant asks for a review. In response to the Statement of Issues the applicant says she meant to include saucepans in her application. She wonders if she can now be considered for these.

In this scenario the need for the saucepans is clearly linked to the reasons for the application and to the reasons for qualification and circumstances which have given rise to the need. It would, therefore, be reasonable for the Inspector to consider the need for saucepans as part of his review.

If, however, the applicant in response to the Statement of Issues had said she also wanted to be considered for clothing for her daughter who had outgrown most of her clothes the

Inspector's approach would most likely be different. The need for clothing for the child has arisen in different circumstances to the household items initially requested and is not closely linked to the reasons why D4(a)(iii) is met. The Inspector may decide, therefore, not to consider the additional need for clothing. The Inspector should advise the applicant to make a fresh application for the clothing if he considers it appropriate to do so.

Whilst Inspectors will generally be guided by the principles which have been outlined, the principles must nevertheless be viewed in fairly broad terms. Inspectors may encounter many different situations and should be flexible to the particular circumstances of an individual case. Inspectors need to consider whether it is right to ask an applicant to go through the process of making a further application for an additional item if it is reasonable and practical to conclude the matter as part of the decision under review. Equally, it may not be appropriate for the Inspector to take jurisdiction where a request for an additional item raises new and crucial issues, possibly requiring additional or extensive enquiries at what is already an advanced stage of the review process.

Inspectors may also see cases where someone refers to items/expenses not on the original application, but where the applicant is merely offering this information to help build a clearer picture of the overall situation. For example, the applicant applies for a grant for beds and clothing for his children. The children have health problems and 4(a)(iii) is relevant. In the SOI the Inspector explains that he will be looking at whether the family are facing exceptional pressures, and asks the applicant to tell him more about the family's general circumstances. In response the applicant says that he is fed up with the condition of his home. His home hasn't been decorated "for years" and this is getting him down. His children are not sleeping properly and they are being bullied at school due to their appearance, and this is not helping how he feels. They are desperate for clothes and beds. It is not suggested that Inspectors routinely investigate or consider possible needs which are raised in this way. The Inspector will normally be alerted to the possibility of determining an additional need because of a clear indication from the applicant that he wishes to be considered for an award.

Additional needs identified by the Inspector

There may, however, be instances when an Inspector identifies and decides to determine an additional need even if no formal application or request for the need has been made by the applicant. For example, a very vulnerable applicant who meets the conditions of direction 4(a)(ii) has been refused a community care grant for a replacement bed. During the course of the review the Inspector identifies that the applicant also has an urgent need for more bedding. In these circumstances the Inspector may decide to determine the need for bedding.

Inspectors may also deal with cases where an applicant remains in need of an item at the time of the Inspector's review, even though an award for the item has previously been made by the DM/RO. For example, an applicant is awarded a grant under 4a(ii) for items including a bed and bedding. The applicant suffers from serious mental health issues, receives no support from anyone else, and rarely leaves his home. In response to the SOI he explains that he remains without a bed because his cooker broke down shortly after the RO's decision and so he spent the money on a new appliance. In this situation the Inspector would have jurisdiction to include the need for the cooker in the review.

N.B. In all cases where the Inspector decides to determine an additional need he will need to check whether a separate application for the need is currently under consideration, or whether any recent applications have been made and determined for the need.

Inspectors should also note that whilst an additional need may come to light at any point in the course of the review process, the date of the original application will always be the relevant date should Direction 7 fall for consideration.

(iv) Change in the Nature of the Need

By the time of the Inspector's review the applicant has sometimes met the need by borrowing money. Given that the Inspector has jurisdiction to consider additional needs, it follows he also has jurisdiction to determine the need as originally expressed or, alternatively, as it now exists i.e. the need to repay borrowed money. The borrowing of money is a relevant change of circumstances that the Inspector must take account of and it is suggested that in cases where the nature of the need changes, the Inspector will normally determine the need as it now exists, in addition to determining the need as originally expressed. This may mean asking relevant questions about the loan, repayment arrangements, impact of owing the money, etc.

The above principles will apply even when the original expense was a low priority, or was specifically excluded. For example, an applicant may apply for a grant to buy distinctive school uniform. By the time of the Inspector's review she has bought the uniform with money borrowed from her grandmother. The loan has to be repaid as soon as possible. Although the application was for an excluded need, the Inspector will need to take account of the change of circumstances and determine the need to repay the debt, which is not excluded. However when deciding whether to make an award, the nature of the original need will still be a relevant factor to consider at this discretionary stage. In the case of the distinctive school uniform, for example, even if the Inspector concluded the debt was a high priority need he may still refuse an award on the basis it would not be appropriate to pay for a debt incurred to buy an excluded item. Equally, an Inspector may decide it would be inappropriate to pay for a debt when the borrowed money was used to purchase a low priority need that the budget could not have met.

(v) The Reviewing Officer's decision and Direction 1 flaws

Inspectors may see cases where the applicant has requested an additional item subsequent to his initial application, but prior to the Reviewing Officer's decision. If the Reviewing Officer does not determine the new need but advises the applicant to make a fresh application, the Inspector will have to consider whether the Reviewing Officer acted reasonably in doing so. Even though the Reviewing Officer may have had jurisdiction to consider the additional need it will not be routine to flaw the Reviewing Officer if he does not do so. If the Inspector is satisfied the Reviewing Officer's approach was reasonable in the circumstances of the case, then a Direction 1 flaw is unlikely to be appropriate for this reason alone.

There will be cases, however, where the only reasonable course of action for the Reviewing Officer was to determine an additional need. For example, someone requests a range of household items to set up home from scratch after being in care for four years, but forgot to include bedding. In this situation the bedding would be strongly linked to the overall thrust of the application and the reasons for grant qualification, and to refuse to include it in the overall determination would be unreasonable and should lead to a direction 1 flaw.

If the Reviewing Officer does not comment on an additional need that has been expressed this is also likely to constitute a Direction 1 flaw. This is because the Inspector is unlikely to be satisfied that the Reviewing Officer had full regard to all relevant circumstances in reaching his decision.