

Commissioner's Advice to Inspectors

Ability to Repay

Section 140(1) of the *Social Security Contributions and Benefits Act, 1992* says that "in determining whether to make an award or the amount... to be awarded, an appropriate officer shall have regard to...

(d) where the payment is repayable, the likelihood of repayment and the time within which repayment is likely."

The whole of this decision-making process must be carried out in accordance with the Secretary of State's directions. Direction 11 says that "no budgeting loan shall be awarded in excess of the amount which the applicant is likely to be able to repay." Direction 22 says that "no crisis loan shall be awarded in excess of the amount which the applicant is likely to be able to repay."

This Advice is appropriate in looking at the ability to repay both budgeting loans and crisis loans.

1. The purpose of section 140(1)(d) and Directions 11 and 22

Crisis loans and budgeting loans are repayable. Paragraphs 3 to 5 of Part 5 of the Social Fund Guide shows that the Secretary of State sets loan allocations at a level which exceeds the amount of the actual cash limited provision in anticipation of loans being repaid. It is therefore important that loans are recovered effectively.

In April 2006 the DWP amended guidelines on repayment terms and repayment rates for Social Fund Loans. The standard and maximum repayment rates were lowered for loans; this demonstrates a clear steer for the Scheme to act as a responsible lender, and not to encourage those on benefit to run up and maintain large debts. This is equally valid for crisis loans and budgeting loans.

To help achieve this, section 140(1)(d) of the Social Security Contributions and Benefits Act, 1992 and directions 11 and 22 require Inspectors to have regard to whether the applicant is likely to be able to repay any loan offered to him and the length of time it is likely to take to repay the loan.

2. The likelihood of repayment and the likely repayment period

The law requires that decision makers have regard to the likelihood of the applicant repaying any loan offered, and the time within which repayment is likely. This issue arises at the end of the decision-making process. Before this, the Inspector should already have made a preliminary finding on how

much to award. He should then go on to decide whether the applicant is likely¹ to be able to repay this loan within a reasonable period of time.

If the applicant is likely to be able to repay the full amount, then the Inspector should go ahead and award it. If the applicant is unlikely to be able to repay the full amount, but could repay a lesser sum, the Inspector should consider awarding this amount (as a budgeting loan) or fewer/cheaper items (as a crisis loan). In any event, the Inspector's award should not exceed the amount the applicant is likely to be able to repay.

Relevant considerations are likely to include:

- The level of the applicant's income.
- Whether the applicant has a regular income; and if not, whether he is likely to get one in the foreseeable future (crisis loans only).
- The level of his current repayments to the Social Fund and his other financial commitments.
- Whether the applicant is managing on his current income.
- The terms of repayment the Secretary of State is likely to set.
- The likely consequences of refusing a loan, or restricting the amount (crisis loans only).

In making his decision, the Inspector should weigh up all of these factors together.

¹ "Likely" in this context means more likely than not.

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