

Support Notes on Commissioner's Advice

Ability to Repay

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

No Support Notes.

2. The likelihood of repayment and the likely repayment period

If the applicant has income, then at some point he will need to repay his loan. If that income is benefit income, money will be deducted from regular benefit payments until the loan is repaid. If he is working, different arrangements can be made to repay any loans. The issue is normally, therefore, not whether the applicant will be able to repay the loan at all, but whether his financial situation will remain manageable if any proposed loan is awarded. This will generally depend on the level of his income, outgoings and existing debt(s) to the Social Fund. In principle, the higher his income, and the lower his outgoings, the greater the size of loan he is likely to be able to afford to repay.

Generally, it will be appropriate for the Inspector to base his considerations on the applicant's current income and outgoings. However, there may be cases where it is reasonable to take account of anticipated changes. Examples might include where an applicant will shortly reach age 25, or pension age, or where a baby is soon due to be born to the applicant or his partner. These are specific events when benefit income increases. Similarly, if a regular weekly commitment is due to be cleared very soon, the Inspector may find it reasonable to take account of this, particularly if any proposed loan will not fall due for repayment immediately.

It would not generally be appropriate, however, to take account of the general increases in benefit rates that take place each April.

Whether the applicant has a regular income (crisis loans only)

In rare cases, a crisis loan applicant may have been refused benefit and, as a result, does not have a regular income. For example, he may have recently arrived from abroad and failed the "habitual residence" test; or he may have significant "notional capital". In these cases, the first question is whether he is likely to receive a regular income in the foreseeable future. Often there will be a clear end to the period without benefit – the rules about notional capital and habitual residence do not usually prevent applicants from receiving benefit indefinitely. However, if the applicant is unlikely to get a regular income in the foreseeable future, then Direction 22 will probably prevent a payment as the applicant does not have the means to repay a loan.

The repayment framework

The rate of repayment, and the time over which loans have to be repaid, are determined by an officer acting on behalf of the Secretary of State. However the terms that are likely to be set are relevant to the question of ability to repay, so Inspectors need to consider the likely terms. This requires Inspectors to consider the Secretary of State's guidelines on repayment periods and rates. Inspectors should be mindful of the possibility that where the full amount requested by the applicant cannot be awarded because of repayability limitations, then it may be appropriate to consider a lower amount.

The repayment period

Neither the law nor the Directions set a maximum limit on the length of time over which loans have to be repaid. However, the loans budget relies on outstanding loans being repaid in order to fund further loans, and the Secretary of State suggests a framework for recovering loans to help achieve this. He suggests that loans should normally be paid back within a period of 104 weeks, and that in exceptional circumstances this can be extended to 130 weeks.

Extending beyond 104 weeks is likely to be very rare when deciding a budgeting loan application. The Secretary of State's guidance clearly envisages budgeting loans usually being repaid within the normal timeframe. Where an applicant already owes loan repayments over more than 104 weeks, this is likely to suggest that the applicant cannot afford any further budgeting loans at present, particularly if he has multiple other debts as well.

Crisis loans are for the most urgent needs and, if it is reasonable in all the circumstances of the case, may be more likely to warrant an exceptional repayment period of up to 130 weeks. For example, it may be reasonable to consider a longer repayment period where there is an exceptionally urgent need, or where there is a particularly imminent serious risk to health or safety.

The likely repayment rate

When calculating weekly rates of repayment, officers are guided to take account of the applicant's available income, any continuing commitments ⁽¹⁾ and the possibility of additional commitments during the repayment period.

The Secretary of State's guidance suggests standard weekly repayment rates of between 5% and 12% of an applicant's income:

- If there is no evidence of other commitments, the repayment rate should be set at 12% of the applicant's income (not counting any housing costs);⁽²⁾
- If the applicant's commitments do not exceed 15% of the IS, JSA or ESA personal allowance for a single person aged 25 or over⁽³⁾, the repayment

rate should be set at 10% of the applicant's income (not counting any housing costs);

- If the applicant's commitments do exceed 15% of the IS, JSA or ESA personal allowance for a single person aged 25 or over, the repayment rate should be set at 5% of the applicant's income (not counting any housing costs).

(1) 'Commitments' in this context means things like debt repayments, fines and other regular outgoings. Applicants are asked to record these on application forms. Do not include money spent on normal food and fuel costs, nor any existing Social Fund repayments.

(2) Income in this context means the applicant's available income. This is usually the IS, JSA, ESA or PC personal allowance for the applicant, and his partner if he has one, including any premiums (but not counting any housing costs); plus child tax credit and child benefit for any dependent children.

(3) 15% of the IS, JSA or ESA personal allowance for a single person aged 25 or over is always a fixed monetary figure. For example, based on benefit rates for 2010-11, the figure is £9.82 (ie. £65.45 x 15%).

Guidance goes on to suggest that there may be times when a higher repayment rate, up to a maximum of 20% of the applicant's income, may be agreed. However, officers are advised that if they set rates above 12% they must fully document their reasons, and must confirm that the applicant can afford the repayments. (In the past DWP faced heavy criticism about high repayment rates, and since the revised budgeting loan scheme was launched in April 2006 there has been a very strong steer not to set rates higher than 20%).

Guidance advises officers that there are five repayment options, of which a minimum of one and a maximum of three can be offered to the applicant. These are:

- the appropriate award amount at the standard repayment rate (5%, 10% or 12%);
- the appropriate award amount at a higher than standard repayment rate, not exceeding 20%;
- an amount equal to the standard repayment rate multiplied by the remaining number of weeks;
- an amount equal to the maximum repayment rate (20%) multiplied by the remaining number of weeks;
- the appropriate award amount at a revised repayment rate. This is determined by adding all outstanding debt to the proposed loan and dividing by 104 weeks. This is often referred to as 'rescheduling' all of the applicant's loans, and results in the same weekly repayment rate being agreed for all outstanding loans including the proposed loan.

The Guide states that officers should use their own judgement in each individual case when deciding on the most suitable repayment rate. In practice, however, calculations are normally made automatically by the Social Fund computer system, and it is rare for officers acting on behalf of the Secretary of State to stray from these recommendations.

Other relevant considerations

If the evidence shows that the applicant is having serious difficulty repaying current debts, or is consistently struggling to make benefit last, the Inspector should carefully consider all of the relevant circumstances in deciding whether to award a new loan. Evidence of serious difficulty coping with current debts could include court action (or the threat of it) by creditors, or evidence of health suffering under the stress of debt repayments. A string of recent crisis loan applications because of spent money or something similar might also indicate problems. It may also be important to consider the possibility that the applicant might need help in the foreseeable future, perhaps by way of a crisis loan, especially if the proposed loan is a budgeting loan and this would take the applicant up to the £1500 maximum loan figure.

Inspectors should also bear in mind that a loan for certain items, or to pay off a debt, may enable an applicant to save money, thereby potentially improving his ability to repay. For example, he may struggle to manage on his income because of launderette charges or buying take-away meals; or, in budgeting loan cases, he may be struggling because of repaying a separate debt for furniture & household equipment which is currently being paid at a higher rate than his BL repayment would be. In these examples, an award for a cooker and/or washing machine, or an award to repay a debt, may reduce weekly outgoings so that the applicant is better able to manage on his income.

For crisis loans in particular, it is also important to consider the consequences of refusing a loan or restricting the amount. This is because the applicant may be willing to make greater sacrifices to pay for an item that is exceptionally urgent, than he would for a less urgently needed item. The Inspector must weigh up the consequences of the applicant not having the items he needs, against the consequences of burdening him with a new loan.

Re-scheduling

Loans are always repaid consecutively, in the order that they were taken out. An applicant will not be asked to repay two loans at the same time. Loans are normally repaid at the rate agreed when each loan was accepted. So when the final repayment is made on one loan, the amount of weekly repayments might change as repayments move onto the rate agreed for the next loan.

'Rescheduling' refers to the recalculation of previous separate, individual loan repayment rates into a new, single repayment rate which is then applied to all of the previously agreed loans. Rescheduling may happen because an applicant asks for it, or because a Decision Maker considers it is necessary to

enable a prospective new loan to be offered. But loans cannot be rescheduled without the applicant's agreement.

An applicant may indicate to an Inspector that he has difficulty in repaying his Social Fund loans. This may be due to a change in circumstances, e.g. a reduction in the size of the family or its income, or increased commitments. The Inspector can advise the applicant to contact Jobcentre Plus about the possibility of his repayment rate being changed. However, the Inspector would need to make clear that any reduction in repayments would be likely to extend the overall repayment period, which might in turn impact on the applicant's ability to have a further loan at a later date.

Whatever advice the Inspector gives on altering repayments, he must not imply that re-scheduling of loans is certain, as the decision can only be made by an officer acting on behalf of the Secretary of State.

3. Drafting issues

Where the Inspector is confirming an award made by a Reviewing Officer and the applicant's ability to repay is not in dispute, it is unnecessary to make any reference to this issue. Even when the Inspector is increasing the award, or awarding a new loan, it will not always be necessary to say anything in the decision about the likelihood of repayment. However some cases are likely to require additional reasoning. For example:

- where the applicant currently does not have a regular income (crisis loans only);
- where the applicant himself suggests that he cannot afford a loan, or cannot cope with the current rate of repayment;
- where the applicant is clearly having difficulties managing his current income;
- where the Inspector is planning to award a loan that would take the applicant beyond the recommended 104 week repayment period, or over the 12% standard repayment rate;
- where the Inspector cannot award the full amount requested because repayments would exceed the recommended 104 weeks, or would involve taking more than the standard repayment rate.

In the last two situations, the Inspector should avoid appearing to dictate repayment terms to the officer acting on behalf of the Secretary of State. He should show that he is aware of the Secretary of State's framework for loan repayments, but confine his explanation to the issue of whether the applicant is likely to be able to repay the loan within a reasonable period of time.

4. Examples

The following examples illustrate how the above principles might be applied.

Example 1 (crisis loan): Mr U is 22. His JSA income is £51.85. He has applied for a crisis loan for clothing and footwear. He has an existing Social Fund debt of £450, payable over 80 weeks at a uniform rate of £6.12 per week. He is supposed to pay £5 a week towards a £100 fine but has fallen behind and still owes £40. Before considering the issue of repayability, the Inspector was planning to award him a crisis loan of £100.

The Inspector notices that Mr U is having some difficulty meeting his current commitments. However she considers that by the time he starts repaying a new crisis loan, he is likely to have finished paying his fine. On this basis, she decides that Mr U is likely to be able to repay a £100 loan, provided that the repayment rate is no more than he pays at the moment.

This leads her to consider what repayment terms the Secretary of State is likely to set. She finds it likely that the Secretary of State will try to recover the loan within the 104 week recommended period. There are therefore a number of possible options:

- The Secretary of State may decide to offer repayment terms for the new loan at 10% of Mr U's applicable amount, having taken account of his other debts. This would mean repayments of £5.19 – less than his current Social Fund repayments. Under these terms, the new loan would take 20 weeks to repay, thereby increasing Mr U's total repayment period to 100 weeks.
- The proposed loan may be offered over a period of 24 weeks, thereby taking the total debt to 104 weeks. This would require Mr U to repay the £100 loan at a rate of about £4.17 per week – again less than his current repayment rate.
- Alternatively, the Secretary of State could offer to reschedule the entire debt, including the proposed loan, over a period 104 weeks, which would mean repayments of £5.29 – still less than the current repayment rate.

Accordingly, the Inspector decides that Mr U is likely to be able to repay a loan of £100 within a reasonable period of time.

Example 2 (crisis loan): Ms E is 21, and lives in a rented flat. Her JSA income is £51.85. She has applied for a crisis loan of £210 for a cooker and £40 for cooking equipment. At present she is managing by buying takeaways, but says she cannot afford this. She is repaying a catalogue debt of £400 at £7 a week and says the stress of repaying her debts is making her depression much worse. She has applied for four crisis loans for spent money in the last five months. Her current Social Fund debt is £540, payable over 106 weeks (an average of £5.09 per week). Were it not for the issue of repayability, the Inspector would award a crisis loan of £210 for a cooker and £40 for cooking equipment as requested.

The Inspector considers what the likely repayment terms would be if he awarded Ms E a loan

of £250. He finds it very unlikely that the Secretary of State would allow her to extend her repayments beyond 130 weeks. He therefore considers that there are two realistic possibilities. Either Ms E would be asked to repay her £250 loan over 24 weeks at about £10.40 per week; or she would be encouraged to reschedule all her loans over 130 weeks, resulting in a weekly repayment rate of £6.08. The Inspector recognises that having a cooker would enable Ms E to save some money, but he nevertheless considers that she could not afford to repay any more than she is at the moment.

The Inspector has a difficult judgment to make. On the one hand, he is conscious of the urgency of Ms E's need for cooking facilities, and recognizes that having her own cooking facilities is likely to help her save money on her daily living expenses. On the other hand, he considers that repaying a further loan will cause her some hardship, particularly as she has all the expenses of a home to run (compared to, for example, someone getting the same rate of benefit but who lives in their parents' household).

Taking into account all the circumstances, he decides not to refuse a loan altogether, but to restrict the amount of the award to £120. This is not sufficient to buy a new, full-size cooker, but it is sufficient to enable her to buy a tabletop mini-cooker and some basic cooking equipment for one person. Repaying this loan would not be easy for Ms E, but the Inspector is satisfied that she is likely to be able to make these repayments without getting into an unmanageable financial situation.

Example 3 (budgeting loan): Mr H has applied for £220 a budgeting loan for household furniture and equipment. In principle, the Inspector calculates that Mr H can be awarded the £220 he asked for. He already owes £981.76 to the social fund, which is being repaid over 104 weeks at £9.44 each week, out of his benefit of £65.45. He also has a catalogue commitment of £15 each week.

The Inspector looks at what Mr H would be likely to be asked to repay if this further loan were to be awarded. Repaying the loan within 104 weeks would take Mr H's rate of repayment to around £11.56 – or just over 17% of his income. This would be well outside the Secretary of State's normal repayment rate framework, which would suggest a repayment rate of 5% for a person with additional commitments of £15 each week. The Inspector may decide that Mr H's weekly commitments would be unmanageable if the further proposed loan was paid, and that he would not be in a position to repay a further loan at this time. It may also be prudent to signpost Mr H to an organisation like the Citizens Advice Bureau, who may be able to help him seek a lower catalogue repayment and/or help with budgeting his income.

Example 4 (budgeting loan): Ms W has applied for a BL of £270 to repay the full amount of her catalogue debt for furniture and household equipment. In principle, she would be able to have this amount as a BL. She is repaying the catalogue debt at £15 a week. Ms W currently owes £817 to the social fund which she is repaying at £7.86 a week, over 104 weeks, from

her £65.45 weekly benefit.

To repay an extra £270 within 104 weeks would mean that Ms W would have to repay all her loans at £10.46 each week. This would equate to around 16% of her benefit. However, this would go well beyond the Secretary of State's normal maximum repayment rate of 12%. In any event, she is already paying back at that normal maximum rate. It is also worth noting that if Ms W did not owe any money to the Fund, the normal loan repayment framework ($£65.45 \times 12\% \times 104$) would suggest that her maximum total Social Fund debt should be around the £817 mark; and she already owes this amount.

The Inspector may consider that a further loan at this stage would not amount to responsible lending; particularly as this is a budgeting loan application, where there is little to justify exceptional repayment rates or periods. In spite of the likely benefits to Ms W, the Inspector may decide that she is unlikely to be able to repay a further loan within a reasonable time.

Example 5 (budgeting loan): Mrs W has asked for a BL of £390 to buy furniture, which she could be awarded in principle. She is a lone parent of one child with a total benefit income of £141.65. Her current Social Fund debt is £790, repayable at £14.81 over 54 weeks. Mrs W has other weekly commitments, and these have recently increased to £26 a week. This is for two private loans and these will take about two years to repay. Also, two weeks ago she accepted a crisis loan to tide her over, as her regular weekly benefit money ran out after four days.

The Inspector considers the repayment terms that the Secretary of State is likely to set. She finds it likely that the Secretary of State will try to recover the loan within no more than 104 weeks. Options for determining repayments are likely to include:

- the Secretary of State offering repayment terms for any new loan at 5% of Mrs W's applicable amount, having taken account of her current debts.
- the Secretary of State rescheduling the entire debt, including the proposed loan, over a period 104 weeks.

The Inspector then weighs up the likely impact of each option. Repayment at 5% would come to £7.09. Mrs W could have a loan offer based on this repayment rate over the remaining number of weeks, i.e. £7.09 multiplied by 50 weeks. This comes to a potential loan offer of £354.50.

If Mrs W were offered the full £390 this would increase her total debt to £1,180. If the Secretary of State determined the revised rate by dividing the total debt (including the proposed loan) by 104 weeks, this would mean repayments of £11.35 a week (equivalent to over 8% of Mrs W's income).

Again, this calls for a difficult judgment. On the one hand, this would be less than Mrs W is already repaying. However, those repayment terms were set when her financial situation was different; her overall financial situation has changed recently due to additional

commitments and, based on DWP guidance, the Secretary of State may decide that any repayment terms set for a new loan should not exceed 5%.

It would still be reasonable for the Inspector to award the full £390 as there is room for rescheduling, and this would actually reduce Mrs W's current repayments. This would be a right decision. However the Inspector may still decide to restrict the loan offer to the lower figure of £354.50, having taken account of Mrs W's overall current financial position. The Inspector may see this as the preferred option as it also leaves Mrs W with slightly more flexibility in case she needs another crisis loan again in the foreseeable future.

Given that Mrs W has recently run out of money and needed a crisis loan to tide her over, the Inspector may decide to ask her for some more information about how she is managing on her current income and with her existing commitments. This information is likely to provide better support for the Inspector's decision on repayability.

Example 6 (budgeting loan): Mrs S wants a budgeting loan of £1,000 for furniture and clothing. She is a lone parent of one child with a total benefit income of £141.65. Her current Social Fund debt is £784.60, including BLs of £300. This is due to be paid back at £10.90pw over 72 weeks. The Inspector calculates that Mrs S can be considered for a further BL of £512 in principle.

Mrs S's other weekly commitments are £25.00. She has two catalogue debts totalling £450.00, which will take around 12 and 24 weeks to repay.

The Inspector considers the likely repayment terms. He finds it likely that the Secretary of State will aim to recover the further loan within no more than 104 weeks. Options for determining repayments are likely to include:

- offering repayment terms for any new loan at 5% of Mrs S's income, having taken account of her current debts.
- rescheduling the entire debt, including the proposed loan, over a period 104 weeks.

The Inspector then weighs up the likely impact of each option. Repayment at 5% would come to £7.09. Mrs S could have a loan offer based on this repayment rate over the remaining number of weeks, i.e. £7.09 x 32 weeks. This comes to a potential further loan offer of £226.88.

If Mrs S were offered the full £512, this would increase her total debt to £1,296.60. If the Secretary of State determined the revised rate by dividing the total debt (including the proposed loan) by 104 weeks, this would mean repayments of £12.47 a week (equivalent to almost 9% of Mrs S's income). The Inspector also notes that if Ms S did not owe any money to the Fund, the normal loan repayment framework (£141.65 x 5% x 104) would suggest that her maximum total Social Fund debt should be around the £736 mark; and she already owes more than this.

This calls for a considered judgement. Mrs S is already repaying at a rate equivalent to almost 9% of her income. Her existing commitments are not going to be repaid for 3 and 6 months respectively. And her foreseeable Social Fund repayments are already higher than they would normally be given her other current (catalogue) commitments.

In these circumstances it may not amount to responsible lending if the Inspector awarded the maximum permissible loan of £512. It would probably result in all of Mrs S's loans being rescheduled over 104 weeks, thereby increasing her repayments. Rather, the Inspector may consider restricting the award to £226.88, having taken full account of Mrs S's financial position. Although very much less than she asked for, a loan of this amount will help, given the types of expenses Mrs S needs to meet.

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