

Support Notes On Commissioner's Advice Capital Resources (BL Cases)

1. *Introduction*

No support notes.

2. *Order of consideration*

The capital rules set out in Direction 9 represent one of the final considerations in the decision making process. This is evident from the fact that Direction 9(1) links its operation to 'any budgeting loan which would but for this direction be awarded'.

Paragraph 16 of Part 4 of the Social Fund Guide suggests that a decision maker can refuse an application for a budgeting loan without consideration of an applicant's personal circumstances, where excess capital is sufficient to meet the full amount requested. However, this is inconsistent with the terms of the Secretary of State's Direction 9, which have precedence over the Secretary of State's guidance. A decision maker should consider matters such as eligibility, qualification, priority and the budget before looking at the capital rules.

3. *The effect of capital resources on decision outcomes*

Example 1

A 59 year-old woman, whose partner is 60, makes a budgeting loan application of £500 to purchase footwear and clothing. They have capital resources of £2370. Because the partner is 60, the relevant capital allowance is £2000. There is therefore excess capital of £370.

The Inspector, after taking into account all the relevant circumstances of the case, has decided that, but for Direction 9, a budgeting loan of £460 is possible.

In this case the potential award of £460 must be reduced by the amount of the excess capital (£370) to £90. As Direction 10 provides that the minimum amount for a budgeting loan award is £100, no award can be made in this case.

For the calculation of total capital resources, Direction 9 refers decision makers to the legislation on capital in the Pension Credit, Income Support and Jobseeker's Allowance regulations. Some examples of different types of capital follow:

- Money held in current accounts and savings accounts
- National savings certificates
- Fixed term investments
- Life insurance or endowment policies
- Friendly societies personal deposit accounts
- Trust funds
- Property other than the applicant's home
- Notional capital

There are a number of types of capital which can be disregarded in certain circumstances. One important disregard concerns arrears of benefit payments. Many payments of benefits arrears¹ can be disregarded for a period of 52 weeks following payment of the arrears. In certain circumstances where benefit arrears amount to £5000 or more and there has been an official error, the period of disregard can be substantially longer².

Normal benefit income does not become capital until after the expiry of the relevant benefit period. So, if an applicant is paid a fortnight's income support, after the expiry of 14 days any of the income support remaining will become capital.

Example 2

Mr A applies for a budgeting loan of £500. He is single and 50 years old. He owns his own home, in which he lives. He received a payment of £300 in respect of income support arrears 3 months ago. He has £1200 in a building society savings account which requires 3 months notice for the withdrawal of cash. He has no Social Fund debt. He satisfies the eligibility and qualifying conditions for a budgeting loan. The Inspector decides that but for Direction 9, a budgeting loan of £345 is appropriate.

In this case the applicant owns a residential property. This capital asset can be disregarded under the relevant regulations, as it is the principal home in which Mr A lives. The arrears of income support were received less than 52 weeks ago and can be disregarded. The money in the building society account cannot be disregarded, despite the notice period. The relevant capital allowance in this case is £1000 as Mr A is below 60, and he does not have a partner aged 60 or over. The excess capital is therefore £200. A reduced budgeting loan of £145 (£345 - £200) can therefore be awarded.

¹ See paragraph 68 of Part 4 of the Social Fund Guide for a list of relevant benefits.

² See paragraph 69 of Part 4 of the Social Fund Guide for fuller details.

4. Capital Below the Direction 9 Limits

No Support Notes.

5. Further note: arrears of benefit and notional capital

Cases involving arrears of benefit or ‘notional capital’ can raise some complex legal issues. It is suggested that Inspectors seek advice from the R&D team on such cases.

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