

# Commissioner's Advice to Inspectors

## Approach to Budgets

This Advice deals with the Inspector's duty to have regard to the state of the district office budget. The duty to have regard to the budget applies to community care grants, crisis loans and budgeting loans. However, the way the budget impacts differs for each and so the advice deals with each separately.

### Community Care Grants

Section 140(1) of the Contributions and Benefits Act 1992 as amended by the Social Security Act 1998 provides:

In determining whether to make an award of a community care grant or a crisis loan to the applicant or the amount or value to be awarded an appropriate officer shall have regard, subject to subsection (2) below, to all the circumstances of the case and, in particular –

(e) Any relevant allocation under section 168(1) to (4) of the Administration Act 1992.

#### 1. Determine the priority first

Case law (*R v Social Fund Inspector, ex parte Taylor* [1998] C.O.D. 152) established that priority must be decided without any consideration of the budget allocation or its state. Priority of the need is to be decided on the basis of the nature, extent and urgency of the need, taking account of the Secretary of State's guidance. Priority may be assessed as high or medium or low.

#### 2. The role of the budget in decision making

Once the priority of the need has been decided the Inspector needs to decide whether to make an award and the amount of any award on the basis of all the circumstances of the case. One of these is the state of the District Office budget. Directions 40 to 42 set out the principles of budget management. The budget is to be managed to give priority to high priority needs throughout the budget year. The annual budget cannot be overspent. This means it is incumbent on the Inspector to meet the range of needs the budget is capable of meeting.

#### 3. Identify the state of the budget

The factors which show the state of the budget are the percentage variation of actual spend from planned spend and how that position has been reached. Relevant evidence will include:

- The District budget profile (planned spend) to the relevant month end.
- Actual spend to the relevant month end.

- The percentage of any over or underspend against planned spend.
- Area Decision Maker's guidance on the level of priority that may be met from the budget.
- Any evidence about the types of needs the budget has been meeting or typical amounts awarded for specific items.
- Information about outstanding work. A budget may on the face of it appear to be underspent but this may be solely because there is a backlog of cases to be decided.

#### *In-year allocations*

When a District office receives an in-year allocation, or has some money taken away, the period over which the remaining budget, together with any additional allocation, has to be managed begins on the date of the change.

The District Office will normally re-profile the budget over the remainder of the year. Where it has not been re-profiled, the Inspector should assume it has been apportioned in the same ratios (not percentages) as the original budget profile.

#### *Changes in the state of the budget*

Case law established that a change in the state of the budget is capable of being a relevant change in circumstances for the purpose of the second stage of the Inspector's review. The Inspector should have regard to such changes.

### **4. Take account of the budget**

Having identified the state of the budget it has to be weighed, together with all the circumstances of the case, including the nature, extent and urgency of the need. The Inspector should make awards for needs that merit payment in the light of the state of the budget. Where a District office budget is not spending as planned the Inspector may make awards for a different range of needs, in terms of their nature, extent and urgency, than the budget has been meeting. The degree to which Inspectors may do this will relate directly to the degree of over or underspend. The greater the variance from planned spend the more prepared the Inspector should be to make an award that runs counter to the range of needs the District office has been meeting.

#### *On target*

As a general guide, where there is only a small difference between planned spend and actual spend the budget might be regarded as on target. Where the evidence shows the budget is on target, the Inspector will generally make awards for needs that are comparable in terms of their nature, extent and urgency with the range of needs the budget has been meeting.

Where the evidence shows that the budget is on target and has been meeting all high priority needs the Inspector will generally award those items he assesses as high priority since those will be comparable with the level of needs the budget has been meeting.

Where the evidence shows that the budget has not been meeting all high priority needs, the Inspector will need to make a careful judgement about whether the needs he is considering are comparable to those the budget is able to meet. For example, the evidence in a case may show that a budget has been making awards for cookers and beds only. Such an approach is not supported in law because it does not allow for the exercise of discretion in the context of all the circumstances of the individual case. Nevertheless, it does give an indication of the extent of the pressures on the budget. From this the Inspector can gauge whether the need, albeit not necessarily a cooker or bed, is equal in terms of its nature, extent and urgency to those the budget is able to meet.

### *Overspent*

Where the budget is overspent the approach will depend on the extent of the overspend, how that position was reached and over what period. The degree of the overspend will relate directly to the degree to which the Inspector makes an award for needs in a narrower range than the budget has been meeting. The greater the overspend the more prepared the Inspector should be to do so. An overspend may mean:

- refusing some high priority needs
- meeting a narrower range of needs than the budget has been meeting or the Area Decision Maker's guidance suggests it may meet
- awarding lower amounts than requested
- awarding all high priority needs, perhaps because the overspend is slight or because they are so compelling in terms of their nature, extent and urgency.

### *Underspent*

Where the budget is underspent the approach will depend on the extent of the underspend, how that position was reached and over what period. The degree of the underspend will relate directly to the degree to which the Inspector makes an award for needs in a wider range than the budget has been meeting. The greater the underspend the more prepared the Inspector should be to do so. An underspend may mean:

- Awarding a greater range of needs than the budget has been meeting.
- Awarding the amounts requested if they are within a reasonable range.
- Awarding the same range of needs the budget has been meeting, perhaps because the underspend is slight

## 5. Discretion

The discretionary nature of the scheme means that there must always be scope for the exceptional case (providing there is some money left in the budget). The Inspector may make an award that runs counter to the planned spend where the nature, extent and urgency of the need, or other compelling consideration warrants such action.

## Crisis Loans

Crisis loans are paid from the same budget as budgeting loans. However, in all other respects the legal provisions are the same as those for community care grants. However, the application of the legal provisions to crisis loans is quite different to that for community care grants. Qualifying crisis loans are, by their nature, very urgent and will generally be high priority. The state of the loans budget, although relevant, is therefore less likely to affect the decision about whether to make an award.

## Budgeting Loans

Section 140(1) (A) of the Contributions and Benefits Act 1992 as amended by the Social Security Act 1998 provides:

Subject to subsection (2) below, in determining whether to make an award of a budgeting loan to the applicant, or the amount or value to be awarded, an appropriate officer shall have regard to-

- (a) such of the applicant's personal circumstances as are of a description specified in directions issued by the Secretary of State; and
- (b) the criteria specified in paragraphs (b) to (e) of subsection (1) of section 140

The criteria specified in section 140 (1)(e) is:

Any relevant allocation under section 168(1) to (4) of the Administration Act 1992.

## 6. Determine the "priority" first

Priority has a different meaning in the context of budgeting loans than in community care grants or crisis loans. It is about the quantum of payment the applicant can access, relative to other applicants, rather than about the urgency of need. It is expressed as a figure. It is clear from the wording of direction 53 that priority is to be decided without any consideration of the budget or its state. Priority is to be decided on the basis of the applicant's *personal circumstances* as defined in directions 50 and 51, and the *weightings* accorded to those circumstances by direction 52.

## **7. Role of the budget in decision making**

The budget is one of the relevant factors in deciding whether to make an award and the amount of any award. The Area Decision Maker's guidance on the maximum amount available to each applicant is to be taken into account to enable effective control and management of the budget throughout the budget year. The annual budget cannot be overspent.

## **8. Identify the state of the budget**

The factors which show the state of the budget are the percentage variation of actual spend from planned spend and how that position has been reached. Relevant evidence will include:

- District budget profile (planned spend) to the relevant month end.
- Actual spend to the relevant month end.
- The proportion of any over or underspend against planned spend.
- Area Decision Maker's guidance on the maximum amount available to each applicant. This is routinely applied in the District Office and as such is good evidence of how the budget reached its current position

### *In-year allocations*

When a District office receives an in-year allocation, or has some money taken away, the period over which the remaining budget, together with any additional allocation, has to be managed begins on the date of the change.

The District Office will normally re-profile the budget over the remainder of the year. Where it has not been re-profiled, the Inspector should assume it has been apportioned in the same ratios (not percentages) as the original budget profile.

### *Changes in the state of the budget*

At the second stage of the review the Inspector is required by direction to take account of any relevant changes in the state of the budget.

## **9. Take account of budget**

Having identified the state of the budget, the Inspector is required to decide the maximum amount available to the applicant. The Area Decision Maker gives guidance on what the maximum amount should be. This is not binding on the Inspector. The state of the budget is a key factor that will help the Inspector to decide the appropriate maximum amount.

### *On target*

Where the evidence shows the budget is on target the Inspector would generally use the maximum amount suggested in the Area Decision Maker's guidance as the basis for deciding the amount to award.

### *Overspent*

Where the evidence shows the budget is overspent the approach will depend on the extent of the overspend. In general terms the Inspector would determine a maximum amount that is relative to the degree of overspend. So an overspend of 10%, for example, would generally lead to a maximum amount of 10% less than that suggested by the Area Decision Maker.

### *Underspent*

Where the evidence shows the budget is underspent the approach will depend on the extent of the underspend. In general terms the Inspector would determine a maximum amount that is relative to the degree of underspend. So an underspend of 10%, for example, would generally lead to a maximum amount of 10% more than that suggested by the Area Decision Maker.