

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 Social Security Contributions and Benefits Act 1992 (as amended)

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.

Direction 42 – Budget responsibilities of Decision Makers for grants

42. (1) Decision makers must have regard to the relevant community care grants allocation by:

(a) taking account of guidance issued by the Area Decision Maker about the current level of priority that may be met from the relevant allocation

(b) referring to the budgetary information issued by the Area Decision Maker to ascertain the current budgetary position.

(2) Decision Makers must be satisfied that any award they make in the period of the allocation does not, in the aggregate with other awards in that period, exceed the allocation.

1. Determine the priority first

Case law has established that priority must be decided without any consideration of the budget allocation or its state.¹ 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.

Direction 40 sets out the principles of budget management. Direction 40(1) provides that decision makers must have regard to the budget, by taking account of the Area Decision Maker's budgetary information and his guidance as to the level of priority that may be met from the budget. The Secretary of State's guidance suggests that decision makers should, "[t]hroughout the allocation period, aim to meet high priority needs before those of lower priority".² Inspectors should meet the range of needs the budget is capable of meeting.

¹ *R v Social Fund Inspector, ex parte Taylor* [1998] C.O.D. 152.

² Social Fund Guide, Part 5, Paragraph 58.

Decision makers are also required by Direction 40(2) to ensure that any grant award they make, in combination with other awards, does not exceed the district's budget allocation. The Secretary of State's guidance suggests that "the budgetary aim is that the total value of payments made meet the level of the BDC's annual budget without exceeding it".³

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 how the budgetary position has been reached, including the level(s) of priority that have been met, restrictions on award amounts, 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, it will generally be appropriate to analyse the position of the budget on the basis of the budget spend from the start of the year. This should generally be compared with the new budget allocation reprofiled on the basis of the percentages set out in 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.

³ Social Fund Guide, Part 5, Paragraph 52.

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 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 same range of needs the budget has been meeting, perhaps because the underspend is slight

5. Discretion

An Inspector has discretion as to whether to base his decision on the current position of the budget, or to base his decision on the position of the budget at the time of the Decision Maker's or Reviewing Officer's decisions. In exceptional cases, an Inspector may decide to base his decision on an earlier, more favourable budget position, for example, if there has been maladministration.

Even where an Inspector has decided that a need has a level of priority that is comparable with the level of priority that the budget can meet an Inspector may decide that an award is not appropriate. Such an approach could be adopted for a number of reasons, for example:

- The existence of resources from which the need may be met.
- The possibility that some other person or body may wholly or partly meet the need.

Exceptionally, an award may be refused because:

- Although a district budget can meet all levels of priority, an award would do so little to promote community care, that a payment of public funds would not be appropriate.
- The cost of the item is disproportionate to the nature, extent, and urgency of the need, and could lead to applications of higher priority being refused.⁴
- Recent awards in respect of the same need have not been used to buy a serviceable item.
- An award would be contrary to public policy.

Crisis Loans

There is one national loans budget from which crisis loans and budgeting loans are paid. Decision makers are required by section 140(1)(e) of the Social Security Contributions and Benefits Act 1992 (as amended) to have regard to this budget when deciding whether to award a crisis loan and when deciding on the amount of any award.

Direction 41 (below) sets out the principles for budget management in relation to loans. In contrast to Direction 42, it does not provide that the loans budget cannot be overspent. However, it does require decision makers to take account of the Secretary of State's guidance about priorities for the loans budget in general, and any guidance the Secretary of State may issue on constraints on the award of crisis loans.

The Secretary of State's guidance suggests that:

- Where the award of a crisis loan is the only means of preventing serious damage or serious risk to the health or safety of the applicant or a member of his family the application will by its nature be of high priority.
- Crisis loan needs have first claim on the loans budget, above that of budgeting loans⁵.
- Unless decision makers are notified otherwise there are no budgetary constraints on the payment of crisis loans.⁶

⁴ *R v Social Fund Inspector, ex parte Taylor* [1998] C.O.D. 152.

⁵ Social Fund Guide, Part 3, paragraphs 315 and 316.

⁶ Social Fund Guide, Part 5, paragraph 37.

The Secretary of State has the power to issue guidance on constraints on the award of crisis loans, but he has indicated that he would only do so in exceptional circumstances.⁷ He has not yet issued such guidance.

In practice it would be rare for the state of the loans budget to have an impact on a crisis loan decision.

Budgeting Loans

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

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), (d) and (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.

Direction 41 – Budget responsibilities of Decision Makers for loans

41. (1) In determining an application for a loan, Decision Makers must have regard to the national loans budget (which is the “relevant allocation”) by:

- (a) applying the current budgeting loan baseline figure issued by the Secretary of State for the purpose of determining budgeting loans;
- (b) taking account of the guidance issued by the Secretary of State about priorities for the loans budget in general;
- (c) taking account of any guidance about constraints on the award of crisis loans as the Secretary of State may issue.

(2) Where the Secretary of State issues guidance referred to in (1) (c), this will be notified to Decision Makers by the Area Decision Maker.

(3) In having regard to the national loans budget, Decision Makers should note that:

- (a) the annual national budget for budgeting loan and crisis loan payments is arrived at by combining annual treasury funding with the amount of forecast loan recoveries for the year;

⁷ Social Fund Guide, Part 5, paragraph 38.

(b) the baseline figure referred to in direction 40(f) and directions 32, 52 and Social Fund Inspector's direction 4 is set at the start of the budget allocation period, and varied as appropriate during that period, with the aim of spending the annual budget in full; variations in the baseline figure are kept to a minimum so as to provide maximum consistency of budgeting loan award amounts available throughout the year;

(c) the baseline figure reflects the budgetary position of the loans budget as it is arrived at by taking account of the amount of the budget spent and loans recovered so far, and the forecast demand and recoveries for the rest of the year.

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 direction 50, 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 decision makers must have regard to in deciding whether to make an award of a budgeting loan and the amount of any award. As with crisis loans, the directions do not preclude the award of a budgeting loan that would cause an overspend on the single national loans budget.

However, Directions 41, 53, 32(4) and Direction 4(3) to Inspectors limit the manner in which decision makers may have regard to the budget.

Decision makers are directed by Direction 41(1) to have regard to the loans budget by applying the current budgeting loan baseline amount issued by the Secretary of State. Direction 41(3)(c) states that the baseline figure reflects the budgetary position of the loans budget. Separate Commissioner's Advice explains that directions require the baseline figure to be applied to the relevant weighting figure prescribed by Direction 52, in order to arrive at the maximum amount that an applicant can access by way of a budgeting loan.

Inspectors have no power to vary the maximum amount on the basis that the budget is underspent or overspent.