

Commissioner's Advice to Inspectors

Direction 14

The Secretary of State directs that:

A social fund payment under direction 3 shall only be awarded to an applicant if at the date when the application is determined:

- (a) he is aged 16 or over; and
- (b) he is without sufficient resources to meet the immediate short-term needs of himself or his family, or both himself and his family.

This Advice deals with the interpretation of Secretary of State's Direction 14. It should be read in conjunction with the Commissioner's Advice on *Crisis Loans and Resources*.

1. "...at the date when the application is determined..."

Where there is more than one date of determination (e.g. initial decision, review decision, Inspector's decision), the phrase "...at the date when the application is determined..." should be interpreted as potentially applying to any of these dates of determination¹.

2. The burden of proof

According to the principle that "he who asserts must prove", the burden of proof is on the applicant to show that he is without sufficient resources to meet his immediate short-term needs. If the applicant does not provide sufficient evidence of acceptable quality to establish this point (on the balance of probabilities), then he will not be eligible for a crisis loan.

3. Immediate short-term needs

What are immediate short-term needs?

Needs which require to be addressed in the immediate short-term are capable of satisfying the eligibility requirements of Direction 14. A need does not have to be especially pressing or grave to constitute an immediate short-term need. However, in order to be immediate, a need must be sufficiently pressing for it to be required to be addressed now:

¹ There is some judicial support for this interpretation in relation to the meaning of "at the date of the determination" in the context of Direction 8: *R v. Social Fund Inspector and Secretary of State for Social Security, ex parte Davey* [1998] EWHC Admin 984 (19th October, 1998).

Example

Mrs E lives on a remote Scottish island. She suffers from health problems and receives incapacity benefit. In 4 weeks her cooker is to be repossessed, at which point she will require a new cooker. At least 3 weeks will be required in order to obtain the delivery of a cooker from a reputable supplier. Mrs E has applied for a crisis loan for a cooker, arguing that it will be a disaster for her if she is left without a cooker.

Mrs E has an immediate short-term need in respect of a cooker. Although she will not lose her present cooker for 4 weeks, the need in respect of the cooker is sufficiently pressing that it requires to be addressed now, given the length of time needed to secure delivery. It is unlikely that Mrs E will be able to show that she needs to meet expenses as a consequence of a disaster, and so she is unlikely to meet the qualifying conditions set out in Direction 3. However, this does not alter the fact that she satisfies the eligibility conditions for a crisis loan under Direction 14.

Had Mrs E applied for a cooker months before the repossession, she would not at that point have had an immediate short-term need in respect of a cooker.

Relationship with Direction 3

Crisis loan awards may, in principle, be made under Direction 3 in anticipation of serious damage or serious risk to health or safety, where an applicant has to act imminently to avert such risk or damage. It would not be a commonsense interpretation of the direction to require that the serious damage or risk must already have occurred, or be in the process of occurring. (See Advice on Direction 3: Emergency/Disaster.) The term, “immediate short-term need”, used in Direction 14, is sufficiently “elastic” to accommodate the approach to Direction 3, described above.

Items in respect of which there is a long-term need as well as an immediate short-term need

An applicant may have an immediate short-term need for an item, irrespective of whether there is also a longer-term need for that same item.

Items in respect of which there is not an immediate short-term need cannot be awarded by way of a crisis loan

Where an applicant is without sufficient resources to meet his immediate short-term needs, Direction 14 does not provide that an award can only be made in respect of immediate short-term needs. However, primary legislation does prevent the payment of a crisis loan in respect of items for which there is not an immediate short-term need. This is because section 138(5) of the Social Security Contributions and Benefits Act 1992² defines a crisis loan as “a loan awarded in circumstances so specified for the purpose of meeting an immediate short term need”.

² As amended by the Social Security Act 1998

Considering needs together

When considering whether an applicant has sufficient resources to meet his and/or his family's immediate short-term needs, the Inspector should consider all the immediate short-term needs together. Unless an applicant has sufficient resources to meet all his and his family's immediate short-term needs immediately, then he is eligible for a crisis loan.

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