

# Support Notes on Commissioner's Advice

## Direction 14

### 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 determination.

It is for Inspectors to decide which date of determination is most appropriate for use in a particular case, on the basis of all the circumstances. This means that changes in circumstances that occur during the course of the review process may or may not affect whether Direction 14 is considered met. The following examples illustrate this point.

*Example 1:* Miss U applies for a crisis loan of £100 for a bed as her bed was destroyed in a disaster. In the meantime, Miss U has been using a bed she has borrowed from a friend. The friend has told Miss U that she will be taking the bed back, when she has obtained a tenancy of her own. She has not yet obtained a tenancy. The Reviewing Officer refuses an award on the basis that Direction 14 is not met, because, at the time of his decision, there was not an immediate short-term need for a bed.

By the time the Inspector receives the case (15 March), there has been a change in circumstances. Miss U's friend has now obtained a tenancy, and plans to retrieve her bed on 19 March. The Inspector finds that the Reviewing Officer's decision was reached correctly, but taking account of the change in circumstances, he makes a new decision and finds Direction 14 met. In doing so, he has decided that it is most appropriate to take the phrase, "the date when the application is determined", to refer to the date of his own decision. In this case, the change in circumstances *has* influenced the decision on Direction 14.

*Example 2:* Mr N loses his money on Monday and applies for a crisis loan for living expenses on the same day to last him until his next benefit payment (on Thursday). The Decision Maker and Reviewing Officer deal with the case on Monday and Tuesday respectively. They both refuse him a payment because they do not accept his evidence.

The Inspector receives the case on Friday, by which time Mr N has received his benefit. However, Mr N still faces considerable financial difficulties. On examining Mr N's evidence, the Inspector decides that the Reviewing Officer was wrong to reject it. She decides that in this case it is appropriate to make the decision the Reviewing Officer should have made and finds Direction 14 met. In doing so, she takes "the date when the application is determined" to refer to the date of the Reviewing Officer's decision. In this case, therefore, the change of circumstances (the fact that Mr N has now received benefit) *has not* influenced the decision on Direction 14.

## **2. The burden of proof**

In the order of consideration for crisis loans, Direction 14 is usually the first stage at which the reliability of the applicant's evidence is a major issue. For this reason, where the Inspector rejects the evidence that forms the basis for the whole application, the application is likely to fail at Direction 14.

For example, if the applicant applies for a crisis loan on the basis that he has lost all his benefit, and the inspector rejects the evidence about the alleged loss, then the application is likely to fail at Direction 14.

However the inspector may, in some cases, reject only part of the evidence. He may, for example, accept the applicant's evidence about losing his money, but reject his assertion that he has no food or power. In such a case, the application is likely to pass Direction 14, though it will not necessarily pass Direction 3.

### *Order of consideration*

Direction 3 comes after Direction 14 in the order of consideration and is 'subject' to it. For this reason, Inspectors should always address the issue of Direction 14, although not necessarily in their decision, before moving on (if appropriate) to consider Direction 3.

There may be situations where it is acceptable to move on beyond Direction 14 without reaching a firm conclusion on whether or not it is met. These would be applications that were clearly destined to fail for some other reason (e.g. because there were obvious "other means" available to the applicant), but for which it would require long and detailed argument to explain why Direction 14 was or was not met. In such situations, it makes practical sense to focus the decision letter on the clearest reason for refusal.

However even in these (rare) situations, the Inspector should not skip over Direction 14 as if it wasn't there. If, for example, the Inspector is unsure whether to accept that the applicant has lost his money, he must mention these doubts about the evidence in his decision letter. He must do this even if he decides that he does not have to reach a final conclusion on the issue because the application clearly fails on other grounds. To overlook the issue creates potential difficulties for the future because by making a decision on Direction 3 without referring to Direction 14 at all the Inspector has implied that he considered Direction 14 satisfied. The applicant might later write in with evidence to show that the "other means" that had seemed to be available to him is not actually a practical option. And this might leave the new Inspector in the awkward situation of having to tell the applicant that actually he did not accept that the money had been lost in the first place. An applicant in this situation might reasonably complain that he had not been told the real case against him.

## **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.

It is suggested that in the vast majority of cases, where there is a present need for an item, there will be an immediate short-term need for that item:

*Example:* Mr A applies for a crisis loan of £60 for a wardrobe. At present he is storing his clothes in a suitcase and finds this unsatisfactory. Direction 14 is met in this case. Although the need for the wardrobe is not very urgent and is unlikely to meet the tests of Direction 3, it is a present need, and Mr A is unable to meet it from his own resources.

Where there is not a present need for an item, Inspectors should consider carefully whether the need in question is sufficiently pressing for it to be required to be addressed now. This point is illustrated by the example in the Advice Note.

#### *Considering needs together*

This Advice means that, in practice, very few crisis loan applications for items will fall at Direction 14. In most cases involving items, the crucial issues will be around Direction 3.