

Commissioner's Advice to Inspectors

Direction 2 to Inspectors

If in reviewing a community care grant determination and a crisis loan determination initially, a social fund inspector is satisfied that the decision was reached correctly, having regard to the factors in direction 1, then under direction 2 the inspector must have full regard to:

- (a) all the circumstances, including the state of the budget and local priorities, that existed at the time the original determination was made;
- (b) any new evidence which has since been produced; and
- (c) any relevant change of circumstances.

This Advice deals with the Inspector's approach to Direction 2 in respect of both community care grant and crisis loan reviews.

1. When does the Inspector use Direction 2?

The first part of the review process will be for the Inspector to decide whether the decision was reached "correctly" under SFI direction 1 criteria - i.e. that the decision is legally sustainable, reasonable, and made according to the correct procedures. If there is a Direction 1 error, the Inspector cannot go on to consider Direction 2.

If the Inspector is satisfied that the decision was correctly reached, he must then go on to the second stage of the review under Direction 2. This second stage is in essence a "merits" review of the substance and content of the decision, and Direction 2 is primarily concerned with whether the decision is one that can be adjudged to be right in the circumstances of the case. The Secretary of State offers the following guidance on Direction 2:

"If the Social Fund Inspector (SFI) is satisfied that the decision on a CCG or CL application was both legally sustainable and made in accordance with the correct procedure, he or she should then look at the merits of the decision having full regard to any new evidence and any relevant change in circumstances. The SFI should consider if, taking into account all the circumstances, the Review Officer's (RO's) conclusion is one they agree with. This does not mean that the SFI should reject a determination simply because it is not exactly the one they would have made. The SFI should however, be satisfied that the determination is one that can be adjudged to be right in the circumstances of the case before confirming it".

The Inspector needs to conduct this second stage review in every case where Direction 1 is met, whether or not there is new evidence or a relevant change in circumstances.

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2. The tests in Direction 2

Direction 2(a): all the circumstances, including the state of the budget and local priorities, that existed at the time the original determination was made

Direction 2(a) gives Inspectors the power to change decisions even though there is no new information or relevant change of circumstances; this may sometimes be expressed in decisions as the Inspector taking a 'different view' on the same evidence.

It is likely that Inspectors will confirm the majority of cases passing the tests of Direction 1 (unless there is new evidence or a relevant change in circumstances that has a material bearing on the RO's decision). However, given that Direction 2(a) confers on the Inspector a power to change a decision on the same evidence, there may be a minority of cases where the original decision was legally sustainable, all relevant considerations were taken into account, the law and directions were correctly applied, and the correct procedural steps were followed; but where the use of discretion, although not 'Wednesbury' unreasonable, has led to a conclusion with which the Inspector cannot agree.

It should be rare to change a decision using direction 2(a) and it is important to reiterate that this should not be used when the RO's decision contained one or more important errors that should have led to a Direction 1 flaw.

Direction 2(b): any new evidence which has since been produced

Here the Inspector is looking at any new evidence produced since the decision was made. This new evidence could relate to circumstances as they were at the time of the original decision, or to circumstances at any time since the decision. In both scenarios the new evidence should be relevant to the needs presented in the original application.

Crucial evidence produced at this stage in the application and review process should be analysed carefully. Relevant factors will include whether the evidence differs from other evidence in the papers and whether the applicant had previously been given the opportunity to produce it. Consideration may also be given to whether the applicant was aware or could have been expected to know that the evidence was relevant to their application.

Direction 2(c): any relevant change of circumstances

Here the Inspector is looking at changes of circumstances that have occurred since the decision was made. The change of circumstances must be relevant to the application under review. For example, changes in the applicant's need for the item or service will be relevant, as will changes to the applicant's circumstances that relate to the eligibility or qualification criteria.

This part of the direction does not just cover changes in the applicant's circumstances. Therefore, changes in the law appropriate to the application and on which the decision

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is based will also be relevant, as will changes in the district budget allocation or Area Decision Maker's guidance.

3. Following the Direction 2 review

If, after the Direction 2 review, the Inspector concludes there is no new evidence, no relevant change of circumstances, and that the decision was right in the circumstances of the case, he will confirm the decision.

If making a fresh decision, the Inspector should clearly explain to the Reviewing Officer why he has gone on to make a fresh decision.