

# Commissioner's Advice to Inspectors

## Exclusions: Direction 29(b)

Section 140(1) of the *Social Security Contributions and Benefits Act, 1992*<sup>1</sup>, as amended, says that Inspectors shall, "in determining whether to make an award of a community care grant... or the amount or value to be awarded,... have regard to all the circumstances of the case and in particular -

(c) the possibility that some other body or person may wholly or partly meet the need.

The whole of this decision-making process must be determined in accordance with the Secretary of State's directions. Direction 29 says that "a community care grant may not be awarded in respect of...

(b) any expenses which the local authority has a statutory duty to meet;"

### 1. Introduction

According to Direction 29(b), community care grants cannot be awarded for an expense which the local authority has a statutory duty to meet. Such duties derive from Acts of Parliament such as the *Chronically Sick and Disabled Persons Act, 1970* and the *Housing Grants, Construction and Regeneration Act, 1996*, which require local authorities to meet certain expenses on behalf of disabled people. However it can often be difficult to establish whether a local authority is duty-bound to meet a particular expense or whether they merely have the power to do so.

### 2. Mandatory grants from local authorities

There are various grant schemes operating in different parts of the United Kingdom, which are set up on a statutory basis (e.g. Disabled Facilities Grants under the *Housing Grants, Construction and Regeneration Act, 1996*). Some of these grants are mandatory and some are discretionary. Where an expense requested by a Social Fund applicant would attract a mandatory grant from a local authority, this expense will be excluded by Direction 29(b). The possibility that a discretionary grant might be awarded for a particular expense is not sufficient to cause Direction 29(b) to come into effect.

### 3. The *Chronically Sick and Disabled Persons Act, 1970*<sup>1</sup>

This Act imposes a duty on local authorities to make arrangements to meet the needs of disabled persons in a variety of ways, including "the provision of practical assistance for that person in his home." However the duty only applies where the local authority is satisfied that these arrangements are "necessary". Where it appears that the local authority may have a duty to provide, the following differentiated approach is advised.

**(i) Where the local authority has accepted that the provision of facilities is "necessary"**, it is under a binding duty to make arrangements to meet the need(s). Making an application to the Social Fund is not a legitimate way of carrying out this duty. It would represent an improper attempt on the part of the authority to sidestep

---

<sup>1</sup> Or the *Chronically Sick and Disabled Persons (Northern Ireland) Act, 1978*.

its own obligations. It is clear from the mandatory Policy Guidance issued by the Secretary of State under section 7 of the Local Authority Social Services Act, 1970 that Social Services departments have the lead role in community care. They should not be trying to shift the costs that attend this responsibility onto another branch of government. In these circumstances, it can therefore be concluded that there is a statutory duty on the local authority to meet the expenses. Direction 29(b) will apply.

**(ii) Where the local authority has made an assessment, but decided that the provision of facilities is not “necessary”,** the duty under section 2(1) of this Act does not apply. Direction 29(b) will therefore not apply to the Social Fund application.

The fact that a local authority does not deem a particular expense to be “necessary” for the purposes of this Act, should not automatically cause the Inspector to conclude that the need for it is not urgent. In determining whether it is necessary to make arrangements to meet the person’s need, the local authority is entitled to take into account not only the urgency of the need, but also the pressure on its own resources. In other words, it could decide that even though a particular facility is urgently needed, it is not under any obligation to provide it because its budget is hard pressed.

**(iii) Where no assessment of need has been made,** the local authority may have an underlying obligation to meet the need, but it will almost certainly not be possible for the Inspector to establish this. To do so would involve prejudging the results of the assessment. Given that the local authority is entitled to take its own financial resources into account when making this assessment, the Inspector will not be able to forecast the outcome with any confidence. This means that Direction 29(b) will not apply.

---

<sup>1</sup> Or Section 136(1) of the *Social Security Contributions and Benefits (Northern Ireland) Act, 1992*