

# Support Notes on Commissioner's Advice Direction 31

## **1. What does direction 31 require?**

Direction 31 requires the DM or RO to review a determination where there appears to have been a relevant error or relevant changes of circumstances. Direction 2 to SFIs allows Inspectors to take a relevant change of circumstances into account, where appropriate.

## **2. What action will the Inspector take?**

As with an RO's decision to refuse to accept a late review request, the applicant would not have recourse to an Inspector if the RO refused to conduct a review under direction 31. However, the Inspector is recognised as an expert by the High Court. Where an Inspector points out that there appears to be a relevant error in an application, this would carry considerable weight. It is unlikely that a Reviewing Officer would not accept that there appears to be a relevant error in a determination if this has been pointed out to him by an Inspector.

## **3. When would an Inspector suggest that a review under direction 31 may be appropriate?**

An Inspector would generally, but not exclusively, suggest that direction 31 be invoked in direction 7 cases. However, where it is clear that there has been an RO review on the previous application, Inspectors should bear in mind that it may be more appropriate to advise the applicant to ask for an IRS review of that decision rather than suggest to the RO that it be reviewed under direction 31. This would not be appropriate if there were no chance of the review succeeding or being accepted because of a TFM issue.

**Example 1** Mr W is a single man. He has an 11 year old son who he has been seeing one day a month for some years. He is now finding it difficult to collect and return his son in one day and has agreed with his ex-wife that his son can stay overnight. On 1 October 2001 he applies for a bed/bedding to allow him to do this. The DM refuses this application stating that 4(a)(iii) is not met. He considers that as Mr W and his son have not lived in the same house for a number of years and have had little contact with each other they are not a family. Mr W does not pursue a review of this application.

On 1 November 2001 Mr W applies for a bed and bedding for his son to stay with him and there has been no relevant change of circumstances. The RO correctly applies direction 7 to this application and Mr W applies for an SFI review.

On examining the application of 1 October, for the purposes of direction 7, the Inspector sees that the DM was wrong in his interpretation of direction 4(a)(iii).

As the Inspector can only review the application of 1 November, he confirms the RO's decision to apply direction 7. However, his decision also includes a paragraph to the RO pointing out that the determination made on the application of 1 October appears to have been based on a mistake in relation to direction 4(a)(iii) and therefore must be reviewed under direction 31.

**Example 2** The situation is the same as above except that the application of 1 October is for a bed, bedding and cooker. Mr W needs the cooker as the one he has is in poor condition. The DM refuses the application for the same reason and Mr W does not pursue a review of this application.

On 1 November, Mr W applies for only the bed and bedding and the RO correctly applies direction 7 these items. In his request for an SFI review, Mr W tells the Inspector that if he cannot get the bed and bedding his ex-wife will stop his contact with his son. He also notes that his cooker has been condemned by British Gas and thrown out and he now has no cooking facilities.

The Inspector considers that there has been a relevant change in Mr W's circumstances in relation to his need for a bed and bedding and decides that direction 7 does not apply to these items. He considers that there also appears to be a relevant change in Mr W's circumstances in relation to his need for a cooker. However, as Mr W has not applied for a cooker in his application of 1 November, the Inspector cannot make a decision on this item. His decision also includes a paragraph to the RO pointing out that the determination made on the application of 1 October appears to have been based on a mistake in relation to direction 4(a)(iii) and that there also appears to have been a relevant change of circumstances and therefore must be reviewed under direction 31.

#### **4. Further note: Drafting issues.**

In drafting his decision, the Inspector must be careful to show that he is not reviewing the previous application himself. His decision could include wording along the following lines:

"I have no power to review the application of ... However, I have looked at this application for the purposes of... and it appears that the determination was based on a mistake... (e.g., in relation to direction 4(a)(i)). Where a determination appears to have been based on a mistake as to the directions, the RO must review that determination under direction 31" or

"I have no power to review the application of ... However, I have looked at this application for the purposes of... and it appears that the determination was made in ignorance of a material fact. Where a determination appears to have been made in ignorance of a material fact, the RO must review that determination under direction 31"

“I have no power to review the application of ... However, I have looked at this application for the purposes of... and there appears to be a relevant change of circumstances, which I am not able to take into account, in relation to the applicant's need for a bed. Where there appears to be a relevant change in the applicant's circumstances, the RO must review that determination under direction 31”