

Commissioner's Advice to Inspectors

Direction 3: Emergency/ Disaster

Direction 3 – Crisis Loan qualifying conditions

3. (1) Subject to paragraphs (6) to (9) and directions 14, 14C, 16 and 17, a social fund payment may be awarded to assist an applicant to meet expenses (except those excluded by these Directions) as provided in this direction.

(2) If the provision of such assistance is the only means by which serious damage or serious risk to the health or safety of that person, or to a member of his family, may be prevented a social fund payment may be awarded to assist an applicant to meet expenses-

(a) in an emergency, or as a consequence of a disaster, in the case of expenses referred to in paragraph (4); or

(b) as a consequence of a disaster in the case of expenses referred to in paragraph (5).

(3) Where a social fund payment is being awarded under direction 4(a)(i) to the applicant or other person mentioned in that sub-paragraph, a social fund payment may be awarded to assist the applicant to pay rent in advance which is payable to a landlord who is not a local authority.

(4) The expenses referred to in paragraph (2)(a) are –

(a) living expenses;

(b) (except where paragraph (3) applies) rent in advance which is payable to secure fresh accommodation where the landlord is not a local authority;

(c) charges for board and lodging accommodation and residential charges for hostels, but not deposits, whether included in the total charge or not;

(d) travel expenses where the applicant is stranded away from home; or

(e) the cost of repaying the emergency credit on a pre-payment meter for a past supply of fuel for heating, lighting or cooking in order for the supply of fuel to be restored.

(5) The expenses referred to in paragraph (2)(b) are expenses for items or services other than those included in paragraph (2)(a).

(6) ...

(7) ...

(8) ...

(9) ...

(10) ...

(11) This direction applies in respect of an application for a payment under this direction made on or after 4 April 2011.

This Advice deals with the qualifying conditions of Direction 3(2)(a) and (b), applicable to applications made on or after 4 April 2011. In particular, it focuses on the requirement that certain expenses must assist an applicant to meet expenses “in an emergency, or as a consequence of a disaster” and certain expenses must assist an applicant to meet expenses “as a consequence of a disaster”.

Separate Advice on “other means” and “serious risk” covers the additional qualifying conditions imposed by Direction 3(2).

1. Expenses which may qualify by assisting an applicant to meet expenses “in an emergency, or as a consequence of a disaster”

Direction 3(2)(a), in conjunction with Direction 3(4), provides that the following five categories of expense may qualify for a crisis loan, either by assisting an applicant to meet expenses in an emergency or by assisting an applicant to meet expenses as a consequence of a disaster:

- (a) living expenses;
- (b) (except where paragraph (3) applies) rent in advance which is payable to secure fresh accommodation where the landlord is not a local authority;
- (c) charges for board and lodging accommodation and residential charges for hostels, but not deposits, whether included in the total charge or not;
- (d) travel expenses where the applicant is stranded away from home; or
- (e) the cost of repaying the emergency credit on a pre-payment meter for a past supply of fuel for heating, lighting or cooking in order for the supply of fuel to be restored.

In cases involving Direction 3(4) expenses, the issue will usually be whether the applicant needs assistance to meet expenses in an emergency. This is because disasters are more serious and extreme events, which occur less frequently than emergencies.

However, it is important to note that in some cases restrictions imposed by Directions 16 and 17 may limit awards for D3(4) expenses to expenses required as a consequence of a disaster. In some cases, Direction 7(2) and Direction 14C(3) may also impose restrictions on the circumstances in which a crisis loan can be paid.

2. Expenses which may qualify by assisting an applicant to meet expenses “as a consequence of a disaster”

The effect of Direction 3(2)(b), is that for all expenses, other than rent in advance payable under D3(3) and the five categories of expense listed in D3(4), in order to qualify for a crisis loan, an award must assist an applicant to meet expenses, “as a consequence of a disaster”; an emergency will not suffice.

This requirement applies to all expenses other than D3(3) and (4) expenses; for example, it applies to clothing, household furniture and equipment, household repairs, and travel where an applicant is not stranded away from home.

3. “in an emergency”

The interpretation of the phrase, “in an emergency”, is important in cases involving D3(4) expenses. The term “emergency” is not defined in the law or directions, however the long-standing advice of the Social Fund Commissioner is to interpret the phrase as follows:

“An unforeseen circumstance or pressing need, either of which requires immediate remedy or action.”

The Secretary of State has recently added an equivalent definition to his guidance, which although expressed slightly differently, has the same effect:

“An emergency generally means a situation causing the applicant to have a pressing need or an unforeseen circumstance either of which requires immediate remedy or action”.

The direction looks at the applicant’s current circumstances, and not at how those circumstances arose. This means, for example, that the direction is wide enough to cover self-inflicted crises.

Note that the direction refers simply to expenses required “in an emergency”, not ‘as a consequence of’ an emergency. The emergency does not have to be a separate event that causes the applicant’s need. The applicant’s needy situation may itself be an emergency.

Where an applicant has to act imminently in order to avert serious damage or serious risk to his health or safety in the future, there is likely to be an emergency. It would not be a common-sense interpretation of the direction to require that the risk or damage must already have occurred (or be in the process of occurring) before an “emergency” had arisen.*

* Directions “should be interpreted in a common sense manner so as to give effect to their obvious intent”, per Woolf L.J. (as he then was), in *R v. Secretary of State for Social Services and the Social Fund Inspector, ex parte Sherwin* Divisional Court (February 21, 1990).

4. “as a consequence of a disaster”

This section provides initial advice on the basic approach to interpreting the phrase, “as a consequence of a disaster”. Some cases will require particularly fine judgements. We will consider adding to this advice when we have seen more cases where the occurrence of a disaster has been an issue.

Again the term, “disaster”, is not defined in the law or directions. In deciding whether an applicant needs to meet expenses as a consequence of a disaster Inspectors should consider the following:

The starting point is that a disaster is greater than an emergency; a disaster is a more serious or extreme event than an emergency. Some situations may be both an emergency and a disaster; the two are not mutually exclusive.

In some cases it will be obvious that a disaster has occurred; for example, where a major fire or flood has led to widespread destruction or damage to property and possessions, and such incidents are given as examples of disasters in the Secretary of State’s guidance. However, it is very important to remember that a disaster is not limited to events such as fire, flood, gas explosion or chemical leak. For example, a disaster can be associated with severe injury or damage to a person, and is wide enough to encompass a broad range of individual situations and circumstances. Whether or not a disaster has occurred remains a question of fact to be determined in all the circumstances of the individual case.

The scale of the event is relevant. It may be easier to decide there has been a disaster where a whole community or locality has been affected. However, an event affecting a much smaller area, or an event affecting a much smaller group of people, or one individual, can be a disaster. For smaller scale events to be regarded as a disaster it is likely that there would need to be a significant event with marked consequences.

Where one individual or household is affected, an event would normally have to be very serious, with very significant consequences that place the applicant and/or his family into an extreme situation, in order to find that a disaster has occurred. In some cases it will be obvious that a disaster has occurred, for example, where a fire destroys a person’s home. However, not all incidents will be as clear cut and events affecting individuals will sometimes require very fine judgements.

A common sense interpretation of the direction does not require that a disaster must have occurred or taken its course so as to produce consequences. A crisis loan may be payable where an applicant needs to take imminent action in order to avoid the consequences of a disaster.

For expenses to qualify under Direction 3(2)(b) a disaster is required; however, an award for the expenses must also assist the applicant to meet expenses **as a consequence** of that disaster. The direction requires a causal link between the expense in question and the disaster.

Where an item has been damaged or destroyed in a disaster, causation is likely to be clear. However, causation may be demonstrated in other ways. For example, an injury suffered in a disaster may increase an applicant's need for an item he has not previously had.

In some cases it may be possible to establish causation even though a significant period of time has elapsed since the occurrence of the disaster.

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Agreed by the Quality Forum 07/08/01. Effective from 04/02/02.
Amendment agreed by the Quality Forum 11/06/03. Effective from 11/08/03.
Amendment agreed by the Quality Forum 24/01/12. Effective from 07/02/12.