

Commissioner's Advice to Inspectors

Direction 3: Only means

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).

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This Advice deals with the interpretation of the phrase "If the provision of such assistance is the only means by which...". Direction 3 imposes additional qualifying conditions which are covered separately in the Commissioner's Advice on "Direction 3: Serious Risk", and "Direction 3: Emergency/Disaster".

1. The burden of proof

Once the Inspector is satisfied that there is a serious risk to health or safety without an expense, he must then decide whether a payment for the requested expense is the only means by which this may be prevented.

It would be unreasonable to expect an applicant to prove systematically that every source of help apart from a crisis loan was unavailable to him. For the purposes of Direction 3, therefore, a crisis loan will generally be the only means of preventing serious damage or serious risk etc, unless the facts show otherwise. This means that the burden of proof is on the Inspector to prove that an alternative means of preventing the damage or risk is available. The standard of proof, as always, is the balance of probabilities. A finding that other means are available must be supported by evidence. The fact that other means are *possibly* available is not enough.

2. Reasonableness

It must be reasonable for the applicant to make use of the “other means”. It is not, for example, reasonable to expect the applicant to resort to illegal activities in order to meet his need. It may also be unreasonable, for example, to expect an applicant to leave his established home and move into bed and breakfast accommodation because he lacks a particular household item which is required as a consequence of a disaster. Such an expectation is unreasonable because the proposed solution is disproportionate to the need.

On the other hand, it is generally reasonable to expect an applicant who needs to meet expenses in an emergency or as a consequence of a disaster to use resources that he has earmarked for another purpose (unless this would itself cause serious damage or risk to his health or safety).

3. Other social fund payments as other means

Other Social Fund payments (and, by extension, potential Social Fund payments) are amongst those types of capital resource that Inspectors should disregard for the purposes of Directions 14. The mere possibility of the applicant receiving a budgeting loan, either if he applied for one in the future or on an application he has already made, should not be considered as other means of meeting the need. Inspectors should not hypothesise about the success or otherwise of an application for a budgeting loan.

When moving on to Direction 3 the Inspector has to satisfy himself that the award of a crisis loan 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. If the applicant actually has money available, even if he had intended to spend it on something else, a crisis loan may not be the only means.

It is a circumstance of the case that the applicant has money available to him (again from any source) to meet his need. This may lead the Inspector to conclude that the award of a crisis loan is not the only means of preventing serious risk etc. However, where the spending of that money would leave the applicant in another crisis situation, it is unlikely that the Inspector would suggest that this money would be other means available to the applicant.

Commissioner's Advice on Direction 3: Only Means
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