

Support Notes on Commissioner's Advice

Direction 3: Serious Risk

1. "damage" or "risk"

The timescale of a "risk" cannot be precisely defined. Inspectors will have to weigh the evidence and reach a conclusion on the balance of probabilities. A fairly broad approach is appropriate. The key question is whether the risk of serious consequences is foreseeable. The consequence does not have to be immediate, but is unlikely to be reasonably foreseeable if it is several years down the line.

2. "serious"

The following examples illustrate how to apply the Advice on assessing whether or not a risk is "serious".

Example 1:

Ms P applies for a crisis loan following a fire which has destroyed all the contents of her home. She applies for a crisis loan for numerous items including a stairgate. She is the single parent of a two year old child and is on Incapacity Benefit because of mobility difficulties. The child is healthy, but he has only recently started to walk and is unsteady on his feet. He has a habit of getting up in the night and going downstairs. Ms P is worried that he might fall and hurt himself.

The Inspector finds Direction 3 met in this case. If the child were to fall down the stairs, the consequences are likely to be serious. In addition, the evidence about the little boy suggests that there is a significant chance that he might fall. These two factors together mean that there is a serious risk to his safety.

Example 2:

Mrs W also applies for a crisis loan for a stairgate that is needed as a consequence of a disaster. She has two daughters aged eight and six. She is a single parent and is worried that one of them might fall down the stairs and hurt herself. There is no evidence that the children have any difficulties with mobility or co-ordination.

The Inspector in this case finds Direction 3 not met. It is true that, if one of the children were to fall down the stairs, the consequences are likely to be serious. However the chances of a healthy child of six or eight falling down stairs are slim. For this reason, the risk to their safety is not serious. On the other hand, if there was evidence that Mrs W had mental health problems and that her (disproportionate) anxiety about the risk to her children was likely to cause her condition to deteriorate seriously, Direction 3 might be met.

3. “health or safety”

No support notes.

4. Items and living expenses

This section is not intended to describe in detail the circumstances in which a crisis loan should be awarded for particular items. However it is important that Inspectors adopt a consistent approach to the various questions that need to be answered. Whether the lack of an item presents a serious risk to health or safety is a question of fact. It has to be decided from the evidence before the Inspector, including any inferences which may reasonably be drawn from that evidence.

Sleeping facilities

Sleep is an essential human need. The effects of inadequate sleep could well be serious. Even if the applicant is managing to sleep, the state of his sleeping facilities or the way he is having to manage (e.g. sleeping on the floor) may, depending on his circumstances, cause him further problems (e.g. back problems).

The test is still whether there will be serious damage or serious risk to his health or safety. As the Advice makes clear, this means something more than mere discomfort. However, the following considerations may be relevant:

- How the applicant is managing without the item he wants. Where, for example, is he sleeping? How is this affecting him now? What are the foreseeable consequences of his continuing to sleep in this way?

- Any health problems the applicant has, and whether these might increase the importance of adequate sleeping facilities to his health, or make it harder for him to use any facilities he has.
- The applicant's age, vulnerability and other circumstances. As in all cases, Inspectors will need to take account of the likely consequences of leaving the applicant without the items.

Cooking facilities

If a person cannot get an adequate diet, there is likely to be serious damage or a serious risk to his health or safety in the foreseeable future. The key question is therefore likely to be whether the person can get an adequate diet without cooking facilities. This is a question of fact, and will depend on the evidence in each case. However the following questions may be relevant:

- How the applicant is managing to feed himself without the items (e.g. eating cold or pre-cooked food, or using cafés or takeaways), and how he says this is affecting him.
- Whether the applicant has any health problems, which might increase the importance of cooked food to his health. Also, whether he has any problems (e.g. mobility problems) which might make it harder for him to go out and buy, for example, takeaways or pre-cooked food.
- The applicant's financial resources: for example whether he is on a reduced rate of benefit, has significant debts or other outgoings. There may also be other factors that would make it financially difficult to feed himself without cooking facilities of his own.
- The applicant's age, vulnerability and other circumstances.

The fact that the applicant does not have cooking facilities does not automatically mean that there will be serious damage or serious risk to his health or safety. Nevertheless, it is important to consider the likely consequences, in the applicant's individual circumstances, of leaving him without these things.

Other items and living expenses

The test to apply is the same for other items as it is for cooking and sleeping facilities. Is the lack of the items likely (on the balance of probabilities) to result in serious damage or serious risk to health or safety? As ever, it is important to consider the foreseeable consequences of not making an award.

In the particular case of living expenses, it is likely that even a very short period without such basic things as food or power may result in serious risk or serious damage to health or safety.

Support Notes on the Commissioner's Advice on Direction 3: Serious risk
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