

Commissioner's Advice to Inspectors

Direction 4 to Inspectors

- 4 (1) If in reviewing a budgeting loan determination initially, a social fund inspector is satisfied that the decision was reached correctly, having regard to the factors in direction 3, the social fund inspector in reviewing the determination thereafter must, have full regard to:
- (a) the applicant's personal circumstances as they existed at the time the original determination was made;
 - (b) the material facts confirming applicant's personal circumstances which existed at the time the original determination was made;
 - (c) any new evidence supporting the material facts which confirm the applicant's personal circumstances existing at the time the original determination was made and which has since been produced;
 - (d) any other material fact which existed at the time the original determination was made and any new evidence supporting that fact which has since been produced
 - (e) both the state of the relevant allocation and local guidance issued by the Area Decision Maker as to the maximum amount available to each budgeting loan applicant; and
 - (f) any increase in the amount repayable to the social fund by the applicant or his partner or both since the date of the original determination and, where there has been such an increase, any sums repaid to the social fund since the date of the original determination
- (2) For the purposes of paragraph (1) (a) to (c), in relation to the applicant's personal circumstances, the social fund inspector shall only have regard to those circumstances which are applicable to him and which are specified in directions issued by the Secretary of State pursuant to section 140 (1A) of the Social Security Contributions and Benefits Act 1992

- (3) For the purposes of paragraph (1) (e) above, the social fund inspector shall take into account any relevant change of circumstance which has occurred in the period commencing on the date of the original determination and ending on the day on which the social fund inspector makes his determination

This advice deals with the Inspector's approach to Direction 4 to Inspectors and covers the approach for budgeting loans. Direction 4 sets out the second stage of the review process.

1. When does the Inspector use Direction 4?

If, after applying the tests in Direction 3, the Inspector is satisfied that the decision was legally sustainable and made fairly, in accordance with the correct procedure, the Inspector must go on to consider Direction 4. If there is a Direction 3 error, the Inspector cannot go on to consider Direction 4.

Direction 4 should not be used in place of Direction 3. If there is an important error in a key stage in the decision making process, a Direction 3 error should be identified.

2. The tests in Direction 4

Direction 4 goes further than a judicial review test and considers the merits of the case. However, the tests for budgeting loans are very rigid. The Inspector must have regard to the applicant's personal circumstances at the time the original determination was made. He can only consider changes since that date which concern the guidance suggested by the Area Decision Maker, the state of the budget or any increase in the amount repayable to the fund by the applicant or his partner.

Direction 4 (1)(a): the applicant's personal circumstances as they existed at the time the original determination was made;

Direction 4 (1) (b): the material facts confirming the applicant's personal circumstances which existed at the time the original determination was made;

In 4 (1) (a) and (b), the Inspector must decide if, at the date of the original determination, the applicant's personal circumstances as specified in Directions 50 and 51, and the material facts confirming these, have been determined correctly.

Direction 4 (1) (c): any new evidence supporting the material facts which confirm the applicant's personal circumstances existing at the time the original determination was made and which has since been produced;

Direction 4 (1) (d): any other material fact which existed at the time the original determination was made and any new evidence supporting that fact which has since been produced

In 4 (1) (c) and (d), the Inspector can take account of any new evidence and supporting material facts which have come to light since the date of the original determination. However, these must have existed at the date of the original determination. If new evidence is presented, which did not exist at the date of the original determination, the Inspector cannot consider this in his review.

Direction 4 (1) (e): both the state of the relevant allocation and local guidance issued by the Area Decision Maker as to the maximum amount available to each budgeting loan applicant;

Direction 4 (3): For the purposes of paragraph (1) (e) above, the social fund inspector shall take into account any relevant change of circumstance which has occurred in the period commencing on the date of the original determination and ending on the day on which the social fund inspector makes his determination

In 4 (1) (e) and 4 (3), the Inspector must have regard to the guidance suggested by the Area Decision Maker to determine the applicant's maximum amount, and any changes in this guidance since the date of the original determination. He must also have regard to the state of the district budget including any variation from the planned spend against profile. If such changes or variations exist, the Inspector can make a new decision, taking the current guidance and budget position into account. However, the applicant's personal circumstances must remain fixed at the date of the original decision.

Direction 4 (1) (f): any increase in the amount repayable to the social fund by the applicant or his partner or both since the date of the original determination and, where there has been such an increase, any sums repaid to the social fund since the date of the original determination

In 4 (1) (f), if the Inspector decides to make a new decision, based on factors in Direction 4 (1) (d),(e) and 4 (3), he must also consider the amount repayable to the fund by the applicant or his partner. 4 (1) f instructs the Inspector to consider if there has been an increase in the amount owed to the fund by the applicant or his partner since the date of the first decision, and if there has been, any amount repaid. This part of the direction relates to the likelihood of repayment and the Inspector will consider this when determining repayability on a potential award.

If the amount owed to the fund has increased since the date of the original decision, the Inspector must take this into account. If the inspector decides to make a new decision awarding or increasing a loan, the increase in the amount of debt outstanding may affect the applicant's ability to repay any such loan.

3. Following the Direction 4 review

If, after the Direction 4 review, the Inspector concludes the personal circumstances have been applied correctly, the applicant's maximum amount has been determined correctly, and there has been no relevant change in the Area Decision Maker's guidance or state of the budget, he will confirm the decision using his powers under section 38 (4) (a) of the Social Security Act 1998.

If, however, any new evidence that existed at the date of the original determination has been produced, if there has been a change in the guidance issued by the Area Decision Maker, or there has been a variance in the state of the budget, he will make a fresh decision using his powers under section 38 (4) (b) or (c) of the Social Security Act 1998.