

Commissioner's Advice to Inspectors

Direction 49

Direction 49 – Crisis Loan applications treated as Community Care Grant applications and vice versa

49.(1) Where an applicant applies for a crisis loan and-

(a) direction 3(6) to (9) does not apply; and

(b) information supplied by the applicant in support of the application indicates that a grant may be appropriate; and

(c) there is no application for a crisis loan, or for a grant, to meet the same need which is being considered by a decision maker, or by a social fund inspector, as at the date of determination,

the decision maker may (in the circumstances set out in paragraph (1A) only), determine the application as an application for a grant.

(1A) The circumstances mentioned in paragraph (1) are when the application is for-

(a) living expenses where direction 3(2) is met, but a crisis loan cannot be awarded because the maximum amount referred to in direction 18 has already been reached, or

(b) living expenses where such expenses are incurred in caring for a prisoner or young offender on release or on temporary licence under Rule 9 of the Prison Rule 1999 or, in Scotland on temporary release under Part XIV of the Prisons and Young Offenders Institutions (Scotland) Rules 1994, or

(c) travel expenses where the applicant, or a member of his family, or someone that the applicant or a member of his family has care for, is stranded away from home.

(2) Where an applicant applies for a grant and the information supplied by the applicant in support of the application indicates that a crisis loan may be appropriate the decision maker may determine the application as an application for a crisis loan, provided there is no application for a crisis loan, or for a grant, to meet the same need which is being considered by a decision maker, or by a social fund inspector, as at the date of determination.

This Advice deals with the use of the powers provided by Direction 49.

1. General approach

In certain circumstances Inspectors are required to make a decision on both a community care grant and a crisis loan:

- Where an applicant has applied for both a community care grant and a crisis loan for items, using the new combined SF300 application form, Inspectors should make a decision on both types of payment.
- Where an applicant has applied for a crisis loan for items (but not a grant), and Direction 4(a)(i), (ii) or (iii) are met, Direction 3(6) to (9) compel the Inspector to make a grant decision; and the Inspector should also make a decision on what the applicant actually applied for, a crisis loan.

In cases where an Inspector is not required to make a decision on both a grant and a crisis loan, Direction 49 gives the Inspector the power to consider both a grant and a loan in certain circumstances. The power to consider a grant on a crisis loan application is much more limited than the power to consider a crisis loan on a grant application.

An Inspector has discretion whether to use the power conferred by Direction 49; but this discretion must be exercised reasonably.

The Direction 49 power does not change one type of application into another, but allows an additional type of determination to be made. For example, where an applicant has applied for a crisis loan, a crisis loan decision must be made; where an Inspector chooses to use Direction 49 on that crisis loan application, he makes a grant decision in addition to the crisis loan decision.

A decision is always required on the primary application; this is, the type of payment for which the applicant has actually applied. Direction 49 allows for an additional determination, or secondary decision, in some circumstances.

2. In what circumstances can the Direction 49 power be used?

The power under Direction 49(1) to consider a grant on a crisis loan application is much narrower than the power under Direction 49(2) to consider a crisis loan on a grant application. Where an applicant has only applied for a crisis loan, use of the Direction 49(1) power is expressly limited to applications for the following three expenses, to which, Direction 3(6) – (9) do not apply:

- living expenses, where a crisis loan cannot be paid because the Direction 18 maximum Social Fund debt of £1500 has already been reached; or
- living expenses which could be paid under Direction 4(a)(iv); or
- travel expenses where the applicant, or a member of his family, or someone that the applicant or a member of his family has care for, is stranded away from home.

Use of the power in Direction 49(2) to consider a crisis loan on a grant application is not limited to particular expenses. There is a very wide range of expenses in relation to which use of Direction 49(2) may be appropriate.

The following conditions are common to Direction 49(1) and (2) and must both be met before an Inspector can make a secondary decision in addition to a decision on the primary application:

- information supplied by the applicant in support of the application indicates that the other type of payment may be appropriate; and
- there is no application for a crisis loan, or for a grant, to meet the same need which is being considered by a decision maker, or by a social fund inspector, as at the date of determination.

3. Information supplied by the applicant...indicates the other type of payment may be appropriate

A secondary decision can only be made under Direction 49 where the information supplied by the applicant in support of the application indicates that the other type of payment may be appropriate.

Where the evidence does not suggest the other type of payment may be appropriate, Direction 49 cannot be used. However, in some cases decisions makers will need to seek further information from applicants to allow an informed decision as to whether use of Direction 49 would be appropriate. Where an applicant provides further information that shows that the other type of payment may be appropriate, it may then be possible to use Direction 49 to make a secondary decision.

4. Another application for a grant or crisis loan to meet the same need is not under consideration at the date of determination

Decision makers cannot use Direction 49 to determine the other type of payment if, at the date of determination, there is a separate application for either type of payment for the same need under consideration by any other decision maker, including an Inspector.

The date of determination is usually the date of the Inspector's decision. However it could also be the date of the Reviewing Officer's or Decision Maker's decision in some cases. For example, the date of the Reviewing Officer's determination could be used where the applicant would be disadvantaged by the wrong decision having been made by the Reviewing Officer if the date of the Inspector's determination is used.

5. Where the relevant conditions are met, when should an Inspector use Direction 49(1) or (2) to determine the other type of payment?

Where the relevant conditions have been met there is a power, rather than a requirement, to determine the other type of payment. Inspectors should normally use that power where, on the face of the information provided:

- an award of the other type of payment will clearly result, i.e., a community care grant payment will be made on a crisis loan application, and vice versa; or,
- there is a clearly arguable case for the other type of payment, even if this does not result in a payment. This is likely to be less frequent.

6. In what circumstances would use of Direction 49 generally be inappropriate?

It is not normally appropriate to use Direction 49 to determine the other type of payment in the following circumstances:

- Solely because the applicant has asked for, or said he would be willing to accept, the other type of payment.
- Where the same reason is appropriate for the refusal of an award of both a community care grant and crisis loan, for example an excluded item.
- Solely because the applicant is not eligible for the type of payment for which he has applied.
- Where there is not a clearly arguable case for the other type of payment based on the information supplied by the applicant.

7. How should Inspectors decide whether a Decision Maker or Reviewing Officer has used Direction 49 to determine the other type of payment?

In reviewing the use of Direction 49, the Inspector is not looking at the merits of the case. He is looking at whether, as a matter of fact, the Decision Maker or Reviewing Officer has used Direction 49 to determine the other type of payment. In deciding this, the Inspector should expect to see one or more of the following:

- an award of the other type of payment,
- a clear statement that Direction 49 has been used
- clear reasoning based on the circumstances of the particular case and the directions relevant to that case, rather than general statements that could relate to any case.

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