

# **Support Notes on Commissioner's Advice: Direction 49**

## **1. General approach**

Inspectors should always make a decision on the primary application; this is the type of payment for which the applicant has actually applied. The secondary decision is always the decision that stems from the use of Direction 49.

## **2. When is it appropriate to use Direction 49 and determine the other type of payment?**

Direction 49 should normally be used if there is a clearly arguable case for the other type of payment based on the information supplied by the applicant, for example, the applicant has applied for a crisis loan and clearly qualifies for a community care grant.

## **3. When is it not normally appropriate to use Direction 49 and determine the other type of payment?**

Direction 49 should not normally be used if there is no arguable case for the other type of payment based on the information supplied by the applicant. For example, where there are health problems but Direction 4(a)(ii) is clearly not met.

## **4. Separate application for the same need already under consideration**

If the Inspector is the first decision maker to consider using Direction 49 and determining the other type of payment he should check whether any other decision maker is considering a separate application for the same need.

If the Decision Maker and/or the Reviewing Officer used Direction 49, there is no need to make such a check. This is because the date of determination referred to in Direction 49 can apply to any of the decisions.

## **5. How do Inspectors know when the Reviewing Officer has used Direction 49 and determined the other type of payment?**

Whether the Reviewing Officer has used Direction 49 and determined the other type of payment is a matter of fact. In some cases, this is absolutely clear from the decision; in other cases, it is a matter for the Inspector's judgement.

Generally, the Reviewing Officer has used Direction 49 and determined the other type of payment if:

- He has made an award of the other type of payment.
- He has said that he has used Direction 49.
- He has refused an award of the other type of payment and given clear reasons based on the individual circumstances and facts of the particular case under review and linked these to the relevant tests of the direction.

Unless the Reviewing Officer's decision clearly falls into one of the above situations the Inspector is unlikely to be able to conclude, as matter of fact, that the Reviewing Officer has used Direction 49 and determined the other type of payment.

It is important to look at whether the Reviewing Officer has actually used Direction 49 and determined the other type of payment, or simply noted his thought processes in deciding whether or not to use Direction 49.

Those cases where the Reviewing Officer has made an award of the other type of payment will be evident and require no further comment. Some examples follow to illustrate the other two situations:

### **“The Reviewing Officer has said that he has used Direction 49.”**

If the Reviewing Officer has said that he has “used Direction 49”, or has used phrases such as “applied Direction 49” or “invoked Direction 49”, then the Inspector will normally conclude that the Reviewing Officer has used Direction 49 and determined the other type of payment. Neither the merits of the case nor whether there was a clearly arguable case for the other type of payment are relevant here.

However, the above is different to the Reviewing Officer noting that he has “considered Direction 49” or “had regard to Direction 49” in deciding whether the other type of payment was appropriate.

**Example 1:** *The applicant is a single man who applies for a community care grant to buy a cooker. The Reviewing Officer does not find any part of Direction 4 met and concludes a grant cannot be paid. He goes on “I have used Direction 49 to consider a crisis loan. However, the applicant is in good health and can maintain an adequate diet without a cooker. Direction 3 is not met in this case as there is no serious risk to his health or safety without an award.”*

In this example the Reviewing Officer has clearly stated that he has used Direction 49 and the Inspector will normally conclude that Direction 49 was used and a crisis loan was determined, no matter how brief the decision.

**Example 2:** *The applicant is a single man in good health who applies for a community care grant to buy a dining table and chairs. The Reviewing Officer does not find any part of Direction 4 met and concludes a grant cannot be paid. He goes on “I have invoked Direction 49 and considered a crisis loan. However, there is no serious risk without the items.”*

In this example the Reviewing officer has again stated that he has used (invoked) Direction 49. The fact there was not a clearly arguable case for a crisis loan in this situation does not matter. The Inspector will normally conclude that the Reviewing Officer used Direction 49 and determined a crisis loan in this case.

**Example 3:** *The applicant is a single woman who applies for a community care grant to buy a washing machine. The Reviewing Officer does not find any part of Direction 4 met and concludes a grant cannot be paid. He goes on “I have considered Direction 49 and whether a crisis loan might be appropriate. However a washing machine is not necessary to prevent serious risk.”*

In this example the Reviewing Officer has said that he has considered Direction 49 and whether the other type of payment might be appropriate. He has given brief reasons to explain why a crisis loan is not payable. However, considering whether to use Direction 49 and actually doing so are different things. The Reviewing Officer has not said he has used Direction 49; nor has he gone on and given reasons based on the individual circumstances of the case to explain his decision. The Inspector will normally conclude that the Reviewing Officer did not use Direction 49 and determine a crisis loan in this case.

**“The Reviewing Officer has refused an award of the other type of payment and given clear reasons based on the individual circumstances and the facts of the particular case under review and linked these to the relevant tests of the Direction.”**

**Example 4:** *The applicant is a 58 year old woman who lives alone. She has chronic health problems and receives DLA (mobility). The Reviewing Officer finds Direction 4(a)(ii) is met and awards a grant for a cooker but refuses an award for a fridge and washing machine on priority grounds. His decision continues “Direction 49 allows me to determine an application for a community care grant as an application for a crisis loan, so I have considered whether a crisis loan might be payable for a washing machine and a fridge. It is not in doubt that Mrs A has chronic health problems. However, her daughter lives close by and takes Mrs A’s washing to her own home to do. Her daughter also shops for Mrs A on the occasions she feels too unwell to do it herself. Although I accept that these items are needed in an emergency, I do not find that the award of a crisis loan is the only means of preventing a serious risk to Mrs A’s health or safety. For these reasons a crisis loan is refused.”*

In this example, the Reviewing Officer has again said that he has “considered” whether a crisis loan might be appropriate. However, unlike example 3, he has given clear reasons based on the individual circumstances of the case, linked to the relevant parts of the direction to explain his decision. The Inspector will normally conclude that Direction 49 was used in this case.

**Example 5:** *The applicant is a lone parent with two children aged 6 and 8. She has applied for a crisis loan for a washing machine and clothing for her two children. The Reviewing Officer’s decision says, “I must first consider whether the award of a community care grant is appropriate. As Income Support is in payment Mrs B is eligible to be considered for a community care grant. Direction 4(a)(iii) is the only part of the direction that might apply. I accept that her washing machine breaking down has led to some difficulties. However, she is able to wash by hand and can use a launderette for larger items. Her two children both have some clothing albeit old and worn. Whilst I accept there are some pressures in their situation I do not consider the pressures facing the family are exceptional. Direction 4(a)(iii) is not met. I will now also consider the crisis loan Mrs B has applied for.”*

In this example, the Reviewing Officer has also said that he has considered whether a grant is appropriate. He has given reasons based on the individual circumstances of the case and linked these to the tests of the direction. The fact that the Reviewing Officer has said he “must first consider” the grant and then “I will now also consider” the crisis loan suggests he has gone through the same process with both types of payment. The Inspector is, therefore, likely to conclude that the Reviewing Officer has used Direction 49 and determined the other type of payment.

**Example 6:** *The application is for a community care grant. The Reviewing Officer finds Direction 4(a)(iii) met but refuses an award on priority. He goes on "In my opinion Mr C does not have expenses to meet in an emergency or as a consequence of a disaster. A crisis loan is not payable."*

In this example the Reviewing Officer has not mentioned Direction 49 at all. He has quoted one of the tests of Direction 3 but has not linked it to the circumstances of this particular case nor has he explained why the test in the direction is not met. The statement he has used could easily apply to a wide range of cases. It is unlikely the Inspector will be able to conclude that the Reviewing Officer has used Direction 49 and gone on to determine a crisis loan in this case.

## **6. What should the Inspector review and account for?**

If the Inspector has gone through the proper process and is satisfied that the Reviewing Officer used Direction 49 and determined the other type of payment, then it is appropriate for the Inspector to review both decisions and count both. This is even if he decides that there was no need for the Reviewing Officer to use Direction 49 and determine the other type of payment.

If the Reviewing Officer determined the primary application only and the Inspector reviews that application and does not make his own decision on the other type of payment, the Inspector should only count one decision.

If the Reviewing Officer determined the primary application only and the Inspector has gone on to review that application and make his own decision on the other type of payment, the Inspector should count both decisions.

## **7. Directions 1 and 2 to Inspectors**

As the power provided by Direction 49 is discretionary, it is incumbent on the Inspector to ensure that the power has been exercised reasonably. If the Reviewing Officer has not used Direction 49 and determined the other type of payment but should have done, this will be an important error and the decision will fail Direction 1.

If the Reviewing Officer has used Direction 49 and determined the other type of payment but did not need to, this in itself is unlikely to be a Direction 1 error in most cases. If the Reviewing Officer has made an error when making his secondary decision, for example, in the amount of award, this is likely to be the basis of the Direction 1 error, not the use of Direction 49.

Any Direction 1 or 2 issues around Direction 49 can only relate to the primary application.

If the Reviewing Officer has used Direction 49 to make a decision on the other payment, important errors in both the primary and secondary decisions are relevant and should be identified and recorded.

*Amended Advice and Support Notes Effective from 27 March 2006*