

Support Notes on Commissioner's Advice: Direction 49

1. General approach

No Support Notes.

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

No Support Notes.

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

No Support Notes.

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

If the Inspector is the first decision maker to consider using Direction 49 to determine 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. Where the relevant conditions are met, when should an Inspector use Direction 49(1) or (2) to 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.

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

Direction 49 should not normally be used if there is not a clearly 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.

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

Whether a Decision Maker or Reviewing Officer (DM/RO) has used Direction 49 to determine 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 DM/RO 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 or invoked 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 DM/RO's decision clearly falls into one of the above situations the Inspector is unlikely to be able to conclude, as matter of fact, that Direction 49 has been used to determine the other type of payment.

It is important to look at whether the DM/RO has actually used Direction 49 to determine the other type of payment, or simply noted his thought processes in deciding whether or not to use Direction 49.

Those cases where the DM/RO 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 DM/RO has said that he has used Direction 49

If the DM/RO 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 DM/RO has used Direction 49 to determine 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 DM/RO 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, there has not been a disaster and so Direction 3 is not met in this case."*

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 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, there has not been a disaster, and so Direction 3 is not met.”*

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 3: *Mrs A is a 58 year old woman who lives alone. She has chronic health problems and receives DLA (mobility). She has applied for a grant to replace items damaged in a disaster and stated in her application form that she was not applying for and did not want a crisis loan. The Reviewing Officer finds Direction 4(a)(ii) is met and awards a grant for a cooker. However, the budget is under a lot of pressure and he 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 as a consequence of a disaster, 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 2, 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 4: *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 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.

8. What should the Inspector review and account for?

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

If the DM and RO 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 DM and RO 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.

9. 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.

Agreed by the Quality Forum 13 February 2002. Effective from 2 April 2002.

Revised by the Quality Forum 27 March 2006. Effective from 27 March 2006.

Revised by the Quality Forum 21 November 2011. Effective from 25 November 2011.