

Commissioner's Advice to Inspectors

Direction 4(a)(ii)

Direction 4(a)(ii):

Subject to directions 25 and 26, a social fund payment may be awarded to promote community care –

(a) by assisting an applicant with expenses, including expenses of travel within the United Kingdom, (except those excluded by these directions) where such assistance will –

....

(ii) help the applicant, a member of his family or other person for whom the applicant (or a member of his family) will be providing care, to remain in the community rather than enter institutional or residential accommodation in which he will receive care.

This Advice deals with the approach to take when considering applications under Direction 4(a)(ii).

1. General principles for interpreting Direction 4(a)(ii)

The following principles for the interpretation of Direction 4(a)(ii) are derived from case law:

- Direction 4(a)(ii) should be interpreted in a common sense manner so as to give effect to its obvious intent¹.
- Direction 4(a)(i) and (ii) should be read together, and a technical interpretation of either 4(a)(i) or (ii) should not be adopted where this would conflict with the obvious policy which is to be discerned from 4(a)(i) and (ii) when read together².
- Direction 4 as a whole contrasts being in the community on the one hand with being in institutional or residential accommodation in which care is received on the other hand. The concepts of community, and of institutional or residential accommodation in which care is received, bear the same meaning in Direction 4(a)(i) as they do in 4(a)(ii)³

¹ *R v. Secretary of State for Social Services & Social Fund Inspector, ex parte Stitt, Sherwin and Roberts*, Divisional Court (February 21, 1990)

² *Idem*

³ *R v. Social Fund Inspector, & Secretary of State for Social Security, ex parte Healey, Stitt, and Ellison*, Court of Appeal (November 29, 1991).

2. The questions an Inspector needs to ask himself

When considering Direction 4(a)(ii), Inspectors need to decide whether an award for the expenses requested will help the applicant or other relevant person to remain in the community rather than enter institutional or residential accommodation in which he will receive care.

There are two basic requirements here, both of which must be satisfied, if an applicant is to qualify under Direction 4(a)(ii):

- There must be a risk of the applicant or other relevant person entering institutional or residential accommodation in which he will receive care.
- An award for the particular items requested must help the applicant or other relevant person to remain in the community...rather than enter institutional or residential accommodation in which he will receive care.

3. The risk of entry into institutional or residential accommodation in which the applicant or other relevant person will receive care

The nature of the risk

Direction 4(a)(ii) is about the avoidance of an outcome...entry into institutional or residential accommodation in which care will be received. This is underlined by the use of the phrase, "rather than", and by the contrast between being in the community on the one hand, and being in institutional or residential accommodation in which care is being received on the other. It follows that the concept of risk is inherent in Direction 4(a)(ii), and the risk in question is entry into institutional or residential accommodation in which care will be received.

The concept of institutional or residential accommodation in which care is received has the same meaning in Direction 4(a)(i) as in 4(a)(ii). The Secretary of State's guidance (SFG 2408) provides a non-exhaustive list of examples of institutional or residential accommodation which might provide care:

- Hospitals
- Residential care homes
- Nursing homes
- Homes and hostels
- Prisons and youth centres
- Foster care

The guidance also suggests that the applicant or other relevant person should be receiving a significant and substantial amount of care, supervision or protection because they are unable to live independently in the community or might be a danger to others in the community if they were to do so (SFG 2401).

Inspectors need to identify clearly the nature of the particular risk(s) facing the applicant or other relevant person. In some cases an applicant may be at risk of losing his home or of having to move to different accommodation. However, in many

of these cases the risk will not be of entering institutional or residential accommodation in which care will be received.

Direction 4(a)(ii) is concerned with the risk of “**entry**” into institutional or residential accommodation in which care will be received. It does not require, for example, that the stay should be a long one. The risk of an entry leading to a short stay may come within the scope of the direction. That is not to say, however, that the risk of any entry will suffice. There must be a risk of entry into institutional or residential accommodation in which the applicant will receive care:

because of the applicant’s, or other relevant person’s, inability to function independently in the community; or

because that person might present a danger to others in the community.

The level of risk

There must be a rational relationship between the award and the avoidance of the outcome. It follows that in order to satisfy the direction there should be a present or reasonably foreseeable risk of entry into institutional or residential accommodation in which the applicant or other relevant person will receive care.

The direction will not be met where the risk is fanciful or negligible, or where it represents a remote possibility at some point in the future...because there would not be a rational relationship between an award and the avoidance of the outcome in such circumstances.

The requirements in relation to risk as a whole

There must be a present or reasonably foreseeable risk of the applicant or other relevant person entering institutional or residential accommodation in which he will receive care because of inability to function independently in the community, or because he presents a danger to others in the community.

4. Will an award for the particular items requested help the applicant or other relevant person to remain in the community...rather than enter institutional or residential accommodation in which he will receive care.

Reducing the risk of entry

Direction 4(a)(ii) is about the avoidance of risk of a particular outcome. Assuming that the requisite risk is present, an award for particular items will only satisfy the terms of Direction 4(a)(ii) if it would reduce the risk of entry into institutional or residential accommodation in which care will be received.

An award need not prevent entry into institutional or residential accommodation. However, it must reduce the risk of such entry. Even where entry is inevitable an award may be appropriate if it would delay entry into institutional or residential accommodation.

In deciding whether an award will reduce the risk of entry, Inspectors need to identify clearly what the risk is in a particular case, what factors give rise to the risk, and what impact an award would have directly and/or indirectly. They will then have to form a judgment as to whether an award would reduce the risk.

Deciding on individual items

The starting point and the general approach should be to look at each item requested individually. The Inspector needs to ask himself, in relation to each individual item, "Will this item reduce the relevant risk?".

However, Inspectors need to stand back and to consider things in the round. Sometimes a holistic examination of the circumstances may show that a group of items when taken together will reduce the relevant risk, although they would not do so individually.

5. Factors bearing on the assessment of risk and the potential effect of an award

In reaching a proper assessment of these matters Inspectors should consider all the circumstances of the case. It is important that Inspectors consider the circumstances objectively, and that they consider the effects of the combination of all the circumstances. It is therefore important to establish the facts of the case, particularly in the following areas:

- Does the applicant/ family have any health, social, or other problems?
- What are the applicant's/ family's living conditions?
- What are the applicant's/ family's general circumstances?
- What needs does the applicant/ family have, and what impact is the lack of items having?
- How would an award for the items requested affect the applicant/family?

Relevant circumstances/factors may include:

- Physical health problems or disability
- Mental health problems or disability
- Learning difficulties
- Behavioural problems
- Social and other problems (including drug or alcohol dependency)
- Living conditions
- Level of ongoing care
- Previous entry into institutional or residential accommodation
- The character and reasons for a potential entry into care
- Whether the expenses are needed to complement other forms of care in the community
- Age, particularly when combined with other factors
- The effects an award would have
- The consequences of not making an award
- Any combination of the above

The relative importance of different factors will vary from case to case.

6. Priority under Direction 4(a)(ii)

The general principles for determining priority under Direction 4 apply. However, one of those principles is that Inspectors should consider to what extent an award would fulfil the aims of the qualifying part(s) of Direction 4. In assessing the extent to which an award will fulfil the aims of Direction 4(a)(ii), Inspectors should consider the immediacy and the extent of the risk of entry into institutional or residential accommodation in which care will be received. They should also consider how quickly and to what extent an award for each item requested would reduce the risk of entry into such accommodation. (See, for example, paragraphs 3324 to 3327, and paragraph 3329 of the Social Fund Guide.)