

Support Notes on Commissioner's Advice

Direction 7: Same item or service

Introductory note - the nature of Direction 7.

It is important to remember that Direction 7 is an essentially procedural measure. The questions it poses are technical in nature and are not related to the merits of the case. Inspectors should not allow their views on the merits of the case to sway their judgement one way or the other.

1. General approach

No support notes.

2. Same item for a different need

No support notes.

3. The scope of the Direction 7 bar

Example: Mr W applies for a cooker. He is refused a payment. Two weeks later he makes a new application for a cooker and cooking utensils. There has been no relevant change in his circumstances. Direction 7 applies to the cooker, but not to the cooking utensils. The priority of the cooking utensils may, however, be affected by the fact that no cooker has been awarded. It may be appropriate to advise the applicant to request a review of his initial application.

4. The burden of proof

Requesting papers

Where the existing evidence clearly shows that Direction 7 does not apply (e.g. the applicant's review request reveals that she has been thrown out of her parents' house), it is not necessary to request the papers of previous applications.

However, if the Inspector is considering applying Direction 7, it will almost always be necessary to request the papers of the previous application(s) concerned. This is because the burden of proof is on the Inspector to show that Direction 7 applies, not on the applicant to prove otherwise.

Copying papers to the applicant

This is a natural justice and customer service issue. It will be dealt with in different ways, depending on what system of case management is in operation, and whether the Direction 7 papers have to be requested separately from the Agency. The principles that should guide the Inspector in deciding what to do are as follows:

- If the Inspector has decided that Direction 7 does not (or will not) apply, Direction 7 papers should not usually be issued to the applicant. They are more likely to confuse him than help him.

- If the Inspector has decided to apply Direction 7, or there is a chance that he will do so, he should send copies of the Direction 7 papers to the applicant. If this can be done before the decision - to give the applicant a chance to comment - so much the better. If this is not practical, the Inspector should send out the papers with his decision.

Direction 7 is likely to be a crucial issue in cases where the RO's decision has been entirely, or almost entirely, based on Direction 7. The Inspector will need to address this in his statement of issues. Even if he does not have the Direction 7 papers available to him (because they have not yet been sent by the Agency), he will normally proceed with the statement of issues in the usual way and within the required timescales. He will highlight for the applicant that Direction 7 is an issue in the case, and he has requested further papers from the local office. In these cases, the Inspector will send the Direction 7 papers to the applicant with the decision.

5. General and specific items

In most cases, where the applicant uses different words to describe what he wants, it will not be possible to conclude that the two requests are for the same item.

Example: Application 1 is for "bedding". Application 2 is for "sheets, pillow cases, duvet". In the absence of any other evidence, it is probably safer to consider Application 2 on the basis that you are unable to conclude from the facts that it is the same item or service.

However there may be some cases where it is reasonable to infer from the evidence that the items are the same.

Example: Application 1 is for "bedding for Jane". Application 2 is for "sheets, pillow cases and duvet for Jane". The amount requested on the first application was £40. The total amount for all the items of bedding requested on the second application was also £40. It may be reasonable in these circumstances, given that the same amounts are being requested and the request is for the same member of the family, to infer that both applications are for the same items. Direction 7 could apply.

6. Number of items

Example: Miss P applies in February for two shirts, a pair of trousers and a coat. She is refused a payment. In March she applies again, this time for four shirts, two pairs of trousers and a coat. There has been no relevant change in her circumstances. Direction 7 applies to two of the shirts, one pair of trousers and the coat. This leaves two shirts and one pair of trousers which can be considered for a payment.

7. Living and travelling expenses: overlapping periods of time

Example: Application 1 is for travelling expenses to visit a sick relative for the period 1 January to 31 March. Application 2 is for the expenses of visiting the

same sick relative for the period 1 March to 30 April. Direction 7 may apply to the period 1 March to 31 March. It will not apply to the period 1-30 April.