

Commissioner's Advice to Inspectors

The Interpretation of Exclusions

Directions 23 and 29 prescribe several categories of expense for which community care grants and/ or crisis loans cannot be awarded.

This Advice deals with the general principles according to which specific exclusions should be interpreted. Advice on how to interpret certain specific exclusions can be found in separate papers (see *Useful links* section below).

1. General interpretation of directions

Case law from Judicial Review judgments has established some general principles for interpreting directions. They should be interpreted in "a common sense manner so as to give effect to their obvious intent" (Woolf LJ in *Stitt (no.1) et al*); but this "does not extend to a departure from the ordinary meaning of language" (Mann LJ in *Healey et al*). Dictionary definitions can be useful here, in order to ascertain the "ordinary meaning" of the words used. It is recommended that Inspectors generally use the *New Shorter Oxford English Dictionary*, which is the one most widely used by the courts.

Exclusionary directions, like all others, should be interpreted according to these principles.

2. Interpreting the exclusions

Historical parallels

Many of the exclusions are worded similarly to exclusions in the old Single Payments scheme. The *Connick* judgement suggests that Social Security Commissioners' decisions on the meaning of the exclusions in the old scheme can be persuasive when interpreting the same words and phrases in the context of the Social Fund. However the interpretations under the old scheme are not binding and should not be followed slavishly.

Real ambiguity

If, after all the above principles have been applied, there remains more than one interpretation of a direction that could reasonably be right, Inspectors should choose the narrowest one – that is to say, the one that will exclude the smallest number of expenses. This is based on the general principle of social security law that any exclusionary or disqualifying provision "ought to be construed in favour of the person who would suffer from its application."¹ However it only applies where there is real ambiguity in the wording of the direction. It does not mean that the wording of the Directions should be twisted or strained, in order to avoid applying the exclusion wherever possible.

3. The burden of proof

The effect of Directions 23 and 29 is to exclude whole categories of need from the Fund. They prevent Inspectors looking at the extent and urgency of the need and the other merits of the case. For this reason, the burden of proving that the directions apply in the individual case rests with the Inspector. This flows from the principle that "he who asserts must prove".

As always, the standard of proof is the balance of probabilities; the evidence must show that it is more likely than not that the expense falls within an excluded category.

¹ Trevor Buck, *Social Fund Law and Practice*, 2nd Edition (2000), p.141.