

Support Notes on Commissioner's Advice The Interpretation of Exclusions

1. General interpretation of directions

There is only one correct interpretation of a Direction – the accurate one. As the Social Fund Commissioner and his Inspectors are the expert body, this means that (until the High Court tells us otherwise) the correct interpretation is the one that we decide is accurate. The interpretation of a direction should generally be the same in every case: the words mean what they mean and should not change on a case-by-case basis.

Where there is Commissioner's Advice on a particular exclusion, this should not be difficult to achieve. However, there is not (and probably will never be) Commissioner's Advice on every single exclusionary provision. Therefore, if an Inspector is intending to apply one of the more uncommon exclusions, it is recommended that he consult the R&D team about it. This should help to improve consistency of decision-making.

2. Interpreting the exclusions

Historical parallels

The pre-1988 Single Payment Regulations, and the Social Security Commissioners' interpretation of them, can be found in the 1987 version of *Mesher*, a copy of which is kept by ???.

Real ambiguity

An example of a real ambiguity is on the question of debts that the applicant has incurred for the purpose of buying items that would be excluded from the Fund. Directions 23 and 29 are silent on this specific issue. It would be possible to interpret these directions as implicitly covering debts incurred for excluded items. However, it would also be reasonable to say that, as the directions do not explicitly exclude these needs, they are not excluded. As the latter interpretation is the narrower one, and is reasonable, it should be preferred. It is therefore the accurate interpretation.

3. The burden of proof

One example will serve to illustrate this Advice on the burden of proof. This is where the applicant applies for school uniform and there is no evidence to suggest whether or not that uniform is "distinctive" ("distinctive school uniform is excluded by Direction 23(1)(a)(iii)). In this case, the Inspector will not have enough evidence to conclude that the exclusion applies. The correct decision will therefore be to find that it does not.