

Commissioner's Advice to Inspectors

The principles of determination incorporating priority

1. Section 140 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) as amended by the Social Security Act 1998.

Once the Inspector is satisfied that the applicant qualifies for an award, he must then go on to decide whether to make an award, the amount of any award, whether the award is repayable, whether the award should be made payable to a third party and whether the award should be made by instalments. Sections 140(1) to (5) of the SSCBA 1992 set out the principles of determination. These are:

- (i) in determining whether to make an award to the applicant, or the amount or value to be awarded, to have regard to all the circumstances of the case (section 140(1));
- (ii) to determine any question in accordance with any general directions issued by the Secretary of State and to take account of any general guidance issued by him (section 140(2));
- (iii) to take account (subject to any directions or guidance issued by the Secretary of State) of any guidance issued by the Area Decision Maker (section 140(5)).

Section 140(1) requires decision makers to have regard to **all** the circumstances of the case and lists the factors which they must consider in doing so –

“in particular -

- (a) the nature, extent and urgency of the need;
- (b) the existence of resources from which the need may be met;
- (c) the possibility that some other person or body may wholly or partly meet it;
- (d) where the payment is repayable, the likelihood of repayment and the time within which repayment is likely;

(e) Any relevant allocation under section 168(1) to (4) of the Administration Act”.

In deciding whether to make an award and the amount or value of that award, Inspectors must have regard to all the circumstances of the case including the five particular factors in section 140(1)(a) to (e) listed above.

2. “The nature, extent and urgency of the need” (Section 140(1)(a))

The nature, extent and urgency of the need(s) are three distinct areas which may be considered individually but which also need to be considered alongside each other so as to build a complete picture.

The nature of the need – In assessing the nature of the need, Inspectors should address what purpose the item or service will fulfil and how important that purpose is. How vital a role will the item or service play in, for example, helping the applicant to establish in the community, or in easing the pressures that exist on the applicant and his family or will it prevent serious risk or damage to health or safety?

The extent of the need - This includes the range of the needs, the number of people affected, the impact of the need on each of those people, and how pressing the needs are.

The urgency of the need - Inspectors should consider how urgent the need is, in conjunction with the above. Based on the facts the Inspector needs to decide what the impact of an award would be, and, the possible adverse effects of not meeting the need together with how likely it is that these effects will occur. Also, the Inspector needs to address how quickly the need has to be met.

The nature, extent and urgency of the needs are the primary factors in what the Secretary of State calls “priority” in Directions 40 and 41 in relation to the budget and in his guidance. The need to prioritise is linked to the budget and the likelihood that the budget will be unable to meet all the demands made upon it by applications that qualify for an award. There are no directions relating to priority. The Secretary of State’s guidance is aimed at achieving a consistent approach by all decision makers to deciding the appropriate priority levels for the needs applied for.

3. “The existence of resources from which the need may be met” (Section 140(1)(b))

The applicant may have resources by way of income or capital which he might be able to use to meet his needs. The issue is not how important it is that he should have the particular item or service in question but rather whether it is more appropriate that he should meet the need himself from his resources.

Some applicants receive premium rates of benefit because of illness or get Disability Living Allowance to help with their need for care. However, it must not be assumed that these benefits are available to meet other needs. When considering an applicant's ability to meet a need from his regular income, any decision must be based on firm evidence about how the benefits are spent. In addition, the mobility component of DLA must never be taken into account as a resource. The Contributions and Benefits Act prevents this benefit being used in any assessment of means for benefit purposes. (There is separate and specific Commissioner's Advice in respect of the treatment of income and capital resources).

The existence of resources from which the need may be met should be considered in the final stages of the decision making process alongside priority and budget considerations.

4. “The possibility that some other person or body may wholly or partly meet the need” (Section 140(1)(c))

Inspectors must have regard to the *possibility* that someone else may be able to meet the need. Where there is such a possibility, the likelihood of such assistance being available, the source, nature, extent and timing of the assistance, and the terms on which such assistance would be provided may all be relevant. There should normally be something tangible in the evidence to alert Inspectors to the possibility of someone else meeting the need. If there is such a suggestion, but it is not conclusive, it is likely that further evidence will be needed.

Where another person or body can only partly meet the need, Inspectors should consider an award to meet the balance if appropriate.

The possibility of another person meeting the need, like the existence of resources, should be considered in the final stages of the decision making process alongside priority and budget considerations.

5. “Where the payment is repayable, the likelihood of repayment and the time within which repayment is likely” (Section 140(1)(d))

Section 140(1)(d) requires that where the award is repayable decision makers shall have regard to the likelihood of repayment and the time within which repayment is likely. This is subject to Directions as decision makers are charged with making a determination in accordance with the Directions (Section 140(2)). Section 140(1)(d) and Directions 11 and 22 will inform the decision as to whether to make an award and if so how much to award. (There is separate and specific Commissioner's Advice in respect of the applicant's ability to repay and repayability considerations).

6. “The relevant allocation” (Section 140(1)(e))

The Social Fund is a budget limited scheme and may not be able to meet all the demands placed upon it. The priority of the needs must be decided without any regard to the budget or the state of the budget. This has been confirmed by case law (*R v Social Fund Inspector, ex parte Taylor*). It is only once the priority of the need has been established that the Inspector should go on to decide whether to make an award and the amount of any award based on all the circumstances including the state of the budget.

The Inspector should make awards for needs that merit a payment in the light of the state of the budget. Where a budget is not being spent as planned the Inspector may make awards for a different range of needs than the budget has been meeting. The impact of priority differs in community care grant cases and crisis loans. For community care grants the Secretary of State has suggested high, medium and low priorities whereas crisis loans will, by their very nature, be high priority if the conditions of Direction 3 are met.

There is separate and specific Commissioner’s Advice relating to both the approach to budgets and award amounts.

7. Priority

The need to prioritise arises because the budget is unlikely to be able to meet all the demands placed upon it. There are no directions relating to priority other than Directions 40 and 41. However, the Secretary of State has used the term in the Social Fund Guide and has given guidance on how to reach some conclusions in relation to it.

Once Inspectors have considered all the circumstances (excluding the budget) and taken account of the relevant guidance, they must then move on to reach a conclusion on the priority of the needs as part of their decision making process. It is not necessary, however, for the high, medium and low terms to be used in drafting the decision. The “nature, extent and urgency” will be fundamental in assessing the priority of the needs. The following factors will all be relevant to priority considerations:

The priority of the need(s) should be linked to the degree to which an award would fulfil the overall aim of the relevant part of Direction 4 alongside the extent to which an award would impact on the applicant and/or family’s situation. The priority of a need should not be decided purely on the general importance of a particular item or service which could apply to anyone. It is important to look at all of the circumstances of the case in the round as there will be some cases where there is not a direct link between the specific need and the reasons for qualification but the needs are still very important in relation to the relevant part of Direction 4.

The facts of the case, relevant when deciding qualification, will also be relevant when considering the priority of the needs. As the judgements in respect of priority are sometimes more finely balanced, it may be necessary to have more information than was needed to determine qualification and/or the Inspector may need to examine the existing evidence more closely.

An application for a range of items may qualify for an award in its entirety but the individual needs within the application may warrant different priority ratings. The Inspector will need to consider all of the circumstances of the case, and weigh up all of the different considerations. In effect, the Inspector will need to fully explore the case and the decision on the appropriate priority ratings will come from this. No item has a pre-determined priority level.

It is possible that the degree to which qualification is met may impact on priority findings. Some applications will clearly meet the qualifying conditions. Others, while still meeting those conditions, will do so less convincingly. The variations possible within the criteria for qualification may subsequently be relevant to priority. A request for an item in a case in which the conditions of Direction 4 are clearly and unequivocally met may, depending on the circumstances, attract a higher priority than a request for the same item in a case where qualification is less obvious or only borderline.

The Guidance of the Secretary of State relating to priority

Prioritising needs helps us to achieve the aims of Directions 40 and 41 and to do so in a consistent way. To help us decide whether the needs we are considering are equal to the needs the budget is able to meet, the Secretary of State has given guidance that provides as follows:

*“It will normally be appropriate to give **high** priority to a need, if:*

- *An award for an item will have a substantial and immediate effect in resolving or improving the circumstances of the applicant and in meeting the aims of the qualifying part of direction 4.*

*It will normally be appropriate to give **medium** priority to a need, if:*

- *An award for the item requested will have a noticeable effect, although not substantial and immediate, in resolving or improving the applicant’s circumstances and in meeting the aims of the qualifying part of direction 4.*

*It will normally be appropriate to give **low** priority to a need, if:*

- *An award for the item requested will have only a minor effect in resolving or improving the applicant's circumstances or in meeting the aims of the qualifying part of the direction".*

"In the above guidance, the word "immediate" can be taken to mean "in the immediately foreseeable future", where, for example, an applicant is about to move into a new home or an application is made in advance of discharge from institutional or residential care (Direction 25(2)(b))."

The Secretary of State further advises that:

"When determining the priority of the need and its relevance to Direction 4, you should refer to the specific paragraphs in Part 2 of this Guide, which refer to the appropriate part of direction 4. You should give higher priority to an application which will have a substantial and immediate effect in improving the applicant's circumstances and on meeting the aims of the qualifying part of direction 4, for example:

- *Where there is a substantial and immediate risk of the applicant being taken into care, and where an award of certain items would significantly reduce that risk;*
- *Where the lack of a certain item would seriously undermine the possibility of a person being established in the community;*
- *Where the provision of a grant would alleviate immediately in a very noticeable and substantial way the exceptional pressures being faced by a family."*

Although the above is guidance, and is prescriptive in its wording, it is likely that the Courts would give it weight particularly that relating to the different levels of priority i.e. the high, medium and low priority categories. There are no directions relating to priority and this is the one area that guides as to the Secretary of State's intentions. This is relevant because of the requirement that all decisions makers take account of the guidance issued by the Secretary of State.

8. Priority considerations and reasoning

The following paragraphs give advice as to the type of factors that will be relevant in the decision making process and priority conclusions. In all cases a fundamental consideration will be the overall importance and urgency of the needs and their impact in meeting the aims of Direction 4.

Direction 4(a)(i)

The length of time spent in care and its consequences, the extent to which help is needed to establish in the community and the extent to which an award will help to resolve these difficulties.

Direction 4(a)(ii)

The extent of vulnerability, the extent and immediacy of any threat to the person's place in the community, the extent to which the illness or other health or other problem links to the threat and the extent to which an award for the needs would lessen these factors and reduce the risk.

Direction 4(a)(iii)

The degree of exceptional pressures and the extent to which an award for the needs in question will address the factors that place the family under exceptional pressures will be relevant here.

Direction 4(a)(v)

The extent of the period during which the applicant has had an unsettled way of life, of any difficulties the applicant is likely to have in moving from an unsettled to a settled way of life, of any risk of returning to an unsettled way of life, may all be important in assessing priority. The extent to which an award for the needs will help an applicant to live a settled way of life will be relevant.

Direction 4(b) – expenses of travel

Visit someone who is ill

The degree of closeness of the relationship, the extent to which the relevant parties rely/depend on each other, the extent of other support/contact available to those concerned and the likely consequences of refusing Social Fund assistance may be relevant.

Attend a relative's funeral

The degree of closeness of the relationship, the period of the relationship and the pattern of contact, the importance of the applicant's attendance, both to the applicant and to others, may be relevant.

Ease a domestic crisis

The nature and extent of the crisis and the degree to which travel would help to resolve it will be relevant.

Visit a child pending a custody hearing

Relevant factors might include when separation occurred and in what circumstances, what the pattern of contact/care has been since, the impact on the parties concerned, any temporary court orders, the proximity of the court hearing and any evidence from third parties such as social workers.

Moving to suitable accommodation

A CCG may be awarded to enable an applicant to meet any necessary fares when moving to suitable accommodation. The circumstances of such payments will be most likely those not covered by Direction 4a and might include a move from one home to another, or where someone currently without accommodation has been offered suitable accommodation and intends to accept it.

9. Crisis Loans

A crisis loan will only qualify for an award if it is necessary to prevent serious damage or serious risk to health or safety. Consequently, priority in crisis loan cases is less of an issue than in community care grants.

The Secretary of State's guidance says that...*"If an award of a crisis loan is the only means of preventing serious damage or a serious risk to the health or safety of the applicant or a member of his family the application will by its nature be of high priority".* And*"Crisis loan needs have first claim on the loans budget above that of budgeting loan applications".*

It is likely that there will be cases where it is appropriate to refuse a community care grant on priority grounds but to award a crisis loan for the need(s). This is because the two types of payment are designed to meet needs in different circumstances:

- Crisis Loans are intended for applicants who are unable to meet their immediate short term needs either:
 - in an emergency; or
 - as a consequence of a disaster.
- Community Care Grants are primarily intended to help vulnerable people to live as independent a life as possible in the community. They are intended to assist people on IS or income-based JSA, Pension Credit or payments on account of such benefits, facing difficulty arising from special circumstances, and in particular to support the policy of care in the community.