

# the Digest of Decisions

Issue 28 Summer 2004

**Inside:  
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INVESTOR IN PEOPLE

*irs*

Independent Review Service  
for the Social Fund

Welcome to the 28<sup>th</sup> edition of the Digest of Decisions.

This digest complements the articles in the journal and covers:

- Mental Health
- Asylum seekers and refugees
- IRS Customer Service Team (38(5) reviews)
- Crisis loans

As usual, we hope you find this edition helpful. All feedback on the content of the digest is welcome. You can write with feedback to the usual IRS address or e-mail us on [np@irs-review.org.uk](mailto:np@irs-review.org.uk)

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# Mental Health

- Impact of lack of contact with children

Case 28.1

## Application Details

Mr H applied for a community care grant (CCG) on 7 January 2004 for travelling expenses and overnight accommodation costs to visit his two daughters aged 6 and 4 who lived with their mother over 100 miles away. A court decision had been made to allow Mr H to visit one weekend a month. He had only seen them 12 times in the last 4 years and wanted to visit once a month from January 2004 to March 2004.

Mr H felt very depressed and suicidal about the lack of contact with his daughters. His mental health had recently deteriorated and he felt the lack of contact was part of the reason for this. Mr H was prescribed medication for severe depression and saw a psychiatrist regularly. His depression caused him to have panic attacks and hear voices. His daughters were also distressed at the lack of contact with their father.

Mr H was in receipt of Income Support and Disability Living Allowance (DLA) both care and mobility components.

## The Reviewing Officer's Decision

The Reviewing Officer (RO) decided that given Mr H's severe depression and suicidal tendencies there was a risk of care. He considered that Direction 4a(ii) was met and that an award for travelling costs and overnight accommodation would help Mr H to remain in the community rather than enter institutional or residential accommodation in which he would receive care. The RO considered that although Mr H's visits to his children would help his depression to some extent they would not have a substantial and immediate effect in improving or resolving his circumstances and in helping him remain in the community. The RO decided this was a medium priority need. A CCG was refused.

## The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) was not satisfied the decision was reached correctly as it was not supported by the facts of Mr H's case. The SFI agreed with the RO that Direction 4(a)(ii) was satisfied but also considered that an award would ease exceptional pressures on Mr H and his children and that Direction 4(a)(iii) was also met.

The SFI took into account the effect the lack of contact was having on Mr H and the deterioration in his mental health because of this. Mr H's daughters were also distressed by not seeing their father and the SFI decided that an award for return travel costs and overnight accommodation to allow the family some contact was of high priority. The SFI made an award for one return visit with overnight accommodation for each of the three months Mr H had requested.

## Comment

The RO's priority consideration was wrong. Mr H had provided evidence to show that the lack of contact with his children was having a detrimental effect on his mental health. The RO should have found that an award to allow Mr H to visit his children would have a substantial and immediate effect in improving or resolving his circumstances and in helping him remain in the community. Given the effect the lack of contact was having on the whole family the RO should also have considered whether an award would help to ease exceptional pressures on Mr H and his children.

Mervyn Batchelor's article 'When the children come to stay' in Journal 23 highlights the importance of maintaining contact between children and their parents. The most important statute dealing with the position of children is the Children Act 1989. The general legal and social policy is that it is in the interests of children that they maintain contact with their parents should they separate.

## **Mental Health**

- Lack of information - further enquiries

**Case 28.2**

### **Application Details**

Mr R applied on 9 April 2004 for a community care grant (CCG) for a washing machine, living room and bedroom carpets and curtains.

He was in receipt of Income Support and was registered as unfit for work with anxiety state.

### **The Reviewing Officer's Decision**

The Reviewing Officer (RO) did not offer Mr R an interview. He made his decision on the information available to him on the application form.

The RO took into account that Mr R was suffering from anxiety state but did not consider that an award would help Mr R to remain in the community rather than enter institutional or residential accommodation in which he would receive care and decided that Mr R did not qualify for a CCG.

### **The Social Fund Inspector's Decision**

Mr R had sought representation from his care worker who had assisted him in his request for an independent review.

In her statement of issues the Social Fund Inspector (SFI) asked Mr R's representative to provide her with more information about Mr R's health problems. She also asked how Mr R was affected by the lack of the items he was applying for.

In his response Mr R's representative explained that Mr R suffered with severe depression and anxiety. He needed encouragement to deal with basic daily tasks and a high degree of support to help him cope with daily life. Due to anxiety attacks Mr R would not go out unaccompanied and spent a lot of time at home. He saw a psychiatrist twice a month and had regular appointments with his own GP. Mr R sustained an arm injury 2 years ago, which had led to some loss of feeling and movement. This made it difficult for him to wash dress and prepare meals. Mr R had no carpets; the floors in his home were concrete and dusty. His property was on the ground floor and without curtains Mr R felt that people were looking in at him. The lack of the items was adding to Mr R's depression because he spent so much time indoors. Mr R's representative described how Mr R would not change his clothing for days on end and that it was extremely difficult for him to hand wash or go to the launderette. His support workers did not have time to deal with Mr R's laundry. Mr R had recently applied for Disability Living Allowance (DLA) and was awaiting the decision on this.

The SFI decided the decision had not been reached correctly as the correct procedures had not been followed, and Mr R had not had sufficient opportunity to put his case to the RO. The SFI took into account the new information provided by Mr R's representative and decided that Direction 4(a)(ii) was met as an award for all of the items would help Mr R to remain in the community rather than enter institutional or residential accommodation in which he would receive care. Given the effect the lack of the items was having on Mr R the SFI considered that an award for carpets, curtains and a washing machine would have a substantial and immediate effect on his circumstances. The budget was able to meet all high priority needs and an award was made.

## Comment

The Secretary of State's Direction 33 states that if the Decision Maker's decision cannot be changed wholly in the applicant's favour the applicant must, except in certain cases, be given an opportunity to attend a face to face interview or, if willing take part in a telephone review. Social fund decision makers have an inquisitorial jurisdiction (*R v. Social Fund Inspector, ex parte Taylor* 24 November 1997). They have a duty to investigate and to establish the facts of the case.

Direction 33 ensures that the rules of natural justice are complied with and that the facts of the case are established. In this case firstly the RO knew very little about Mr R's health problems. Secondly Mr R's health problems may have meant that he was not able to engage properly in a face-to-face or telephone interview. There are other ways of obtaining information such as written correspondence. Mr R should have been offered an interview, however the most crucial thing was to exercise the inquisitorial role and to establish the facts of the case.

## Mental Health

- Priority Consideration - link to mental health

Case 28.3

### Application Details

Mr C applied for a community care grant (CCG) on 20 February 2004 for a cooker, a bed, bedding, pots and pans, crockery, cutlery, seating, carpets, curtains and clothes storage.

Mr C had spent about one and half years in a hostel for people with mental health problems. Mr C was moving into his own home as it was felt he was ready to live independently in the community. Whilst at the hostel he was given emotional and practical support, help with benefit claims, help with life skills and with accessing services.

Mr C had long-term depression, anxiety and panic attacks and was prescribed medication. He was receiving support from an outreach worker who was also representing him in his application for a CCG. This support included emotional care and general advice on living independently. Mr C's flat was overlooked and there was no floorcovering apart from lino in the kitchen.

Mr C's doctor had written a supporting letter stating that given Mr C's mental health problems it was very important for him to have a home in which he felt safe and secure. He was concerned that if Mr C was not able to furnish his home adequately his mental health could be affected. Mr C had spent periods in a psychiatric hospital, the last stay being for 3 months before moving into the hostel. He also said that Mr C suffered from Obsessive Compulsive Disorder (OCD) and it was very important that he had somewhere to store his clothes. Mr C became very agitated and unsettled if he was unable to put his things away.

### The Reviewing Officer's Decision

The Reviewing Officer (RO) decided that Mr C's severe mental health problems and lack of any basic items in his new home put him at risk of care. He considered that Direction 4(a)(ii) was met, as an award for all the requested items would help Mr C to remain in the community rather than enter institutional or residential accommodation in which he would receive care. The RO considered that the most important items in Mr C's circumstances were the same as anyone setting up a new home. He considered the basic items providing cooking and sleeping facilities were of high priority. The RO awarded Mr C a cooker, bed, bedding, pots and pans, crockery and cutlery. The RO gave the remaining items medium priority.

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) was not satisfied the RO had reached his decision correctly as it was not supported by the facts of Mr C's case. The SFI agreed with the RO that Direction 4(a)(ii) was satisfied. He considered that given Mr C's mental health problems it was important that he had some privacy and a comfortable living room and bedroom to rest and relax. The SFI also took into account that the lack of clothes storage preventing Mr C from keeping his home tidy was affecting his mental state and causing him stress and anxiety. Given this the SFI decided that seating, clothes storage, curtains to allow Mr C privacy and bedroom and living room carpets along with the items already awarded by the RO were high priority and an award was made.

### Comment

In his article in this edition Jim Colgan covers how people with mental health problems may have particular difficulties, which makes some items more important to them than to people without these problems. People with mental health problems may have special needs and careful consideration is needed when dealing with these types of cases.

## Mental Health

- Priority considerations - previous award

Case 28.4

### Application Details

Miss N applied for a community care grant (CCG) on 24 March 2004 for seating and a fridge. Her existing seating was falling apart and unusable; her fridge was 11 years old and had broken down.

Miss N had severe and enduring mental health problems for which she took medication. She also suffered from arthritis in her back, legs and hands causing her pain and distress. She was unable to go out and received Income Support and higher rate Disability Living Allowance (DLA) care and mobility. Her medication caused her to be clumsy when walking about the house and handling things. Miss N was extremely reliant on her sister who visited daily to cook and clean for her. She also accompanied Miss N on her regular visits to the hospital. Since her fridge had broken Miss N's sister had to shop daily leaving her less time to care for Miss N. The lack of any suitable seating meant that Miss N was spending more time in bed.

Miss N had received a CCG in July 2002 for seating. She had used this money to buy a cooker.

### The Reviewing Officer's Decision

The Reviewing Officer (RO) decided that Direction 4(a)(ii) and 4(a)(iii) were satisfied. He considered that an award would help Miss N to remain in the community rather than enter institutional or residential accommodation in which she would receive care and also help to ease the exceptional pressures faced by Miss N and her sister. He considered that a fridge, which would allow Miss N's sister to shop less frequently and give her more time to care for Miss N, was a high priority need, and an award could be made for this item. However he decided that seating was a low priority need as Miss N had received an award for this in July 2002 and did have some seating although it was in poor condition.

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided the Reviewing Officer's decision was not reached correctly as he had not taken all relevant considerations into account. The RO had not taken into account Miss N's evidence that she had purchased a cooker with the award made for seating in July 2002 or the impact that the lack of seating was having on Miss N. Given Miss N's mental and physical health problems and that the state of her existing seating meant she was spending more time in bed the SFI considered that seating was also a high priority need. An extra payment was made to Miss N for seating.

### Comment

The statutory basis for deciding whether to pay an award comes from s140(1) of the Social Security Contributions and Benefits Act 1992\*. The decision maker has to have regard to all of the circumstances of the case, and in particular, as far as CCGs are concerned, to the nature, extent and urgency of the need, amongst other things. However previous awards may occasionally be relevant. If there is a history of previous awards not having been spent as intended it may be appropriate to consider a third party payment.

In Miss N's case the RO based his priority consideration on the fact that Miss N had already received an award for seating in July 2002. He did not take into account that she had bought a cooker with this award. He should have also considered the impact that living without this item would have on Miss N's mental and physical health problems.

\* as amended by the Social Security Act 1998.

# Mental Health

- Available for work

Case 28.5

## Application Details

Mr F applied for a community care grant (CCG) on 20 March 2004 for a cooker, seating, towels, and carpets for his living room and bedroom.

Mr F was in receipt of income-based Jobseekers Allowance. He was living with his mother in a senior citizen's property but she passed away in December 2003 and Mr F had to leave this accommodation. He had obtained his own tenancy but only had a bed and bedding and some pots and pans. Most of his mother's furniture belonged to the council.

Mr F was receiving bereavement counselling and had seen a psychiatrist when he was younger due to anxiety and hearing voices. He was not taking any medication.

## The Reviewing Officer's Decision

Mr F failed to attend his review interview or to respond to the Reviewing Officer's (RO's) enquires.

Based on the information available to him and given that Mr F was signing as available for work the RO considered that no part of direction 4 was met and a CCG was refused.

## The Social Fund Inspector's Decision

Since his initial application Mr F had sought advice and help from a representative. In his statement of issues the Social Fund inspector (SFI) asked Mr F's representative a number of questions. These included how long Mr F had been receiving counselling, requesting more information about Mr F's health problems and information about how Mr F was managing without a cooker.

In his response the representative told the SFI that Mr F was receiving help from a project that primarily worked with people suffering from mental health problems. Mr F had a long history of mental illness; he heard voices and had intrusive thoughts. He had recently been assessed by the Community Mental Health Team and was waiting for a Community Psychiatric Nurse to be allocated. Mr F found it difficult to function and interact with people as he was constantly plagued by voices that contradicted what he was thinking and wanting to do. He often went for long periods of time without washing or bathing himself and struggled to feed himself. He regularly went without food, which resulted in him losing weight and becoming unwell. The representative also told the SFI that Mr F had no seating and only had a microwave, which did not allow him to cook a full range of meals.

The SFI decided that the RO had made his decision correctly however based on the new information the SFI made a new decision. He considered that given Mr F's mental health problems and inability to care properly for himself Direction 4(a)(ii) was satisfied. An award for all of the requested items would help Mr F to remain in the community rather than enter institutional or residential accommodation in which he would receive care. The SFI considered that the most important items in Mr F's circumstances were those providing him with a basic diet, personal hygiene and a comfortable area in which he could rest and relax. The SFI gave high priority to Mr F's need for a cooker, seating, towels and living room carpet and an award was made for these items.

## Comment

Many people with illness or disability continue to sign as available for work. This may have some bearing on the extent of illness or disability, although it is a crude measure. The fact that someone has signed as available for work is not the best evidence about that person's health or ability to work or function normally in the community. In addition, many illnesses and disabilities do not preclude a person from working, although their range of employment may be limited, either in type or duration.

The fact that someone is signing as available for work, or is in fact able to work, does not, in itself, indicate that his health problems do not place him at risk of entry into institutional or residential accommodation in which he will receive care. Whether or not a person can work, they may need help to remain in the community. In Mr F's case his recent assessment by the Community Mental Health Team could lead to him not signing as available for work in the near future.

## Mental Health

- Influence on the priority of needs

Case 28.6

### Application Details

Miss A applied for a community care grant (CCG) on 2 March 2004 for a cooker, pans, crockery, cutlery, bed, bedding, carpets, curtains, sofa, table and chairs, hoover, iron and ironing board and washing machine.

Miss A suffered from chronic depression and paranoia for which she was receiving treatment. Her problems had led to eating disorders and acts of self-harm including cutting herself and taking an overdose. She was attending psychology therapy twice a week. Miss A had been living with her elderly parents for the last 3 years but had also spent time in bed and breakfast accommodation, psychiatric hospital, prison, probation and bail hostels. She found it very stressful living with her parents especially as her mother was food obsessive and spent most of the day cooking.

Miss A had now obtained her own unfurnished tenancy.

### The Reviewing Officer's Decision

The Reviewing Officer (RO) invited Miss A to attend a review interview at the local office. Miss A did not attend and given her mental health problems the RO decided to telephone Miss A to ascertain if she wanted to conduct the interview over the telephone. Miss A told the RO that due to her health problems she was sometimes unable to complete everyday tasks. She was receiving therapy for her condition and extensive therapy for her eating disorder, bulimia nervosa. Miss A stated that a table and chairs were very important to her as it would provide discipline and encourage eating in a controlled situation. She was finding it very difficult to follow the advice of her therapist, as she currently had to eat her meals off a tray on her lap.

The RO decided that Miss A qualified for a CCG. Given her mental health problems and history of hospitalisation he considered that there was a risk of care. The RO considered Direction 4(a)(ii) was satisfied as an award for all of the items would help Miss A to remain in the community rather than enter institutional or residential accommodation in which she would receive care. He considered that an award for a cooker, pans, crockery, cutlery, bed, bedding, carpets, curtains, sofa and a table and chairs to allow her to progress with her rehabilitation would have a substantial and immediate effect in improving or resolving Miss A's circumstances and in helping her remain in the community. These were high priority items and an award was made.

The RO considered that the iron, ironing board, hoover and washing machine would only have a noticeable effect on Miss A's circumstances. As the budget was not able to meet medium priority needs a payment could not be made for these items.

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO had reached his decision correctly and confirmed the decision. The SFI was satisfied that the RO had given Miss A the opportunity to provide the relevant evidence and had reached a right decision.

## Comment

An applicant has a responsibility to provide information in support of his case. However, a decision maker has an inquisitorial role, a duty to establish the facts. For ROs an interview will often be the best way of doing this. Where an applicant does not attend it may be an appropriate and sensible use of the inquisitorial role to make further enquiries by other means, particularly if there are health or other problems that may make it difficult for the applicant to engage in the review process.

In this case the RO had used his inquisitorial role to find out further information about Miss A's circumstances. This contrasts to some of the earlier cases where the evidence was not sought by the RO and the information did not come to light until the SFI's decision.

## Crisis Loan

- Living expenses

Case 28.7

### Application Details

Mr C applied for a crisis loan (CL) for living expenses on 3 February 2004. Mr C was in receipt of income-based Jobseekers Allowance and in good health.

Mr C had received £155.90 benefit including some arrears on 30 January. He stated on 3 February that he had spent all of this money and had no money to last him until his next payday. Mr C was currently staying in a homeless hostel.

Mr C said that he had spent £85 of this money on hotel accommodation for the 30 January, 31 January and 01 February. The remainder of the money (£70.90) he had spent on food and toiletries over the last 4 days.

### The Reviewing Officer's Decision

At the review interview the Reviewing Officer (RO) asked Mr C for details of the hotel and permission to contact them if necessary. Mr C gave the RO the name of the hotel and said that he could contact them but it was unlikely that anyone would answer the phone because the office was often unmanned. The RO telephoned the hotel and was able to speak to the manager. However they had no record of Mr C having stayed with them. The RO advised Mr C that the hotel had no record of him staying there. Mr C was unable to explain why this was and said maybe he had stayed at another hotel and had got confused. The RO asked Mr C the name of the other hotel but Mr C did not know, neither could he tell the RO where this other hotel was.

The RO considered Mr C's evidence about how he had spent the remaining £70.90 was lacking in detail, as Mr C could not provide any further explanation of exactly how and when he had spent this money. Given the conflicting evidence and the lack of detail as to how Mr C had spent his money the RO did not consider that Mr C had shown he was without sufficient resources to meet his immediate short-term need. The RO decided Direction 14 was not satisfied and a crisis loan was refused.

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO had reached his decision correctly. The SFI considered that Mr C was not without sufficient resources to meet his immediate short-term needs. Direction 14 was not satisfied.

### Comment

In the order of consideration for crisis loans, Direction 14 is usually the first stage at which the reliability of the applicant's evidence is a major issue. For this reason, where the decision maker rejects the evidence that forms the basis for the whole application, the application is likely to fall at Direction 14.

The RO identified a problem with Mr C's evidence and gave him the chance to comment on this and provide clarification. However, Mr C was unable to explain the inconsistency and conflict in his evidence and the RO decided it could not be accepted as fact.

# Asylum Seekers

- No recourse to public funds

Case 28.8

## Application Details

Mr Q applied for a crisis loan (CL) on 5 February 2004 for food and living expenses.

Mr Q had entered the UK with Dutch travel documents in March 2002. He had been receiving Income Support but this was withdrawn in May 2003 on the basis that he was subject to immigration control. Mr Q was appealing against this decision with help from the Citizen's Advice Bureau. He did not have a passport to confirm his immigration status and his Dutch travel documents did not show him to be of Dutch nationality.

Since his benefit was withdrawn Mr Q had received some financial assistance from the Somali community but this had ceased. He had mental health problems and was very unbalanced. Mr Q had spent 2 months in hospital from September 2003 to November 2003 under the Mental Health Act. The hospital found some funding for him on a short-term basis and on discharge the Mental Health Team had helped him with meals so had a local café. Mr Q had been going without meals for two to three days at a time. He had his own tenancy but was under threat of eviction.

## The Reviewing Officer's Decision

The Reviewing Officer (RO) decided that Mr Q was a person subject to immigration control and that a social fund payment could not therefore be made by virtue of section 115 (1)(h) of the Immigration and Asylum Act 1999. A CL was refused.

## The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) confirmed the RO's decision to refuse a CL. She advised that the local authority might be able to provide assistance, for example, under section 21 of the National Assistance Act 1948. She advised that subsection 1(A) of section 21 should not preclude assistance, given Mr Q's mental health problems.

## Comment

Section 115 of the Immigration and Asylum Act 1999 provides that a person subject to immigration control (save in prescribed circumstances) is not entitled to most benefits, including Social Fund payments. Asylum seekers who are caught by section 115 may be supported by the National Asylum Support Service (NASS) through a mixture of accommodation, vouchers and cash.

Mr Q did not fall into one of the prescribed exceptions to section 115. Nor was he an asylum seeker. However, he may have been able to gain assistance from the local authority. Under section 21 of the National Assistance Act 1948 local authorities can provide accommodation (including board and other services). Subsection 1(A) of section 21 prevents assistance for a person coming within section 115 of the Immigration and Asylum Act 1999 if his need for care and attention has arisen **solely** because he is destitute or because of the physical effects (or anticipated physical effects) of his being destitute. However, Mr Q's need would not arise solely because of these factors, but in part because of his mental health problems and so assistance should not be precluded (see, for example, *R v. London Borough of Wandsworth, ex parte O* [2000] EWCA Civ 201).

## Asylum Seekers

- Direction 4(a)(i) not met - National Asylum Support Service (NASS)

Case 28.9

### Application Details

Mr K applied for a community care grant (CCG) on 03 March 2004 for a cooker, a three-piece suite, 5 single beds, a double bed, bedding, wardrobes and a television.

Mr K was married and had 5 children. The family were asylum seekers and had been granted leave to remain in the UK in March 2003. As Mr K had health problems the family were allowed to stay in National Asylum Support Service (NASS) accommodation until they moved into their own tenancy in March 2004. The NASS accommodation was a furnished self-contained flat. The family were responsible for their own personal care and day to day tasks. Mr K had a heart condition and had recently had an operation to remove a pacemaker. He also had diabetes and along with Income Support was in receipt of Disability Living Allowance (DLA) care and mobility.

### The Reviewing Officer's Decision

The Reviewing Officer (RO) considered that as Mr K and his family had been living in NASS accommodation prior to obtaining their own tenancy Direction 4(a)(i) was met. An award would help Mr K to establish himself in the community following his stay in institutional or residential accommodation in which he received care. The RO decided that Mr K's need for a cooker, seating, beds and bedding were high priority and an award was made for these items.

The RO considered that Mr K's need for wardrobes and a television were of insufficient priority for an award to be made.

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) did not consider that the RO had reached his decision correctly as he had not applied the law in the right way.

The SFI did not accept that the accommodation provided by NASS for Mr K constituted institutional or residential accommodation in which care was received. The family were already living independently in the community whilst in the NASS accommodation. The SFI considered that given Mr K's health problems and the lack of basic items in their new home an award would help to ease the exceptional pressures faced by Mr K and his family.

The SFI decided that the most important items in Mr K's circumstances were those providing a basic diet, rest and sleep. He agreed with the RO that a cooker, seating, beds and bedding were of high priority and confirmed the award.

## Comment

SFG paragraph 2401 states: 'Institutional or residential care' means care received in accommodation similar to that described in para 2408 where the applicant is a resident and receives 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.

Although Direction 4(a)(i) does not usually apply in cases where applicants are leaving NASS accommodation both Direction 4(a)(iii) and (v) may be relevant. For asylum seekers with no family Direction 4(a)(ii) or (v) may be the only parts of the qualifying conditions that are relevant. Our casework shows that many asylum seekers receive help setting up home as part of a planned resettlement programme. This might be from the local housing department or other places such as a refugee advice centre. For more information on asylum seekers and refugees see the article in Journal 23 by Bharti Patel of the Refugee Council.

# Asylum Seekers

- No planned resettlement programme

Case 28.10

## Application Details

Mr N applied for a community care grant (CCG) on 15 March 2004 for furniture and household items.

Mr N came to the UK from Afghanistan in May 2002 as his life was in danger. He was in the South initially and was then dispersed to the North West where he lived in National Asylum Support Service (NASS) accommodation. Mr N was refused leave to remain in August 2003 and was waiting a further decision. He had to leave NASS accommodation in November 2003 and stayed with various friends.

Mr N had a key worker from a housing provider who helped him access courses at college and obtain accommodation. However when Mr N reached 18 years old in January 2004 he was no longer supported.

Mr N had acquired his own tenancy and moved in on 20 February 2004. He had borrowed carpets and a bed from a friend who had told Mr N that there was no rush to return these items. Mr N was having meals at a friend's flat that was in the same block. They enjoyed this arrangement, as neither Mr N nor his friend knew many other people in the area.

## The Reviewing Officer's Decision

The Reviewing Officer (RO) did not consider that Mr N qualified for a CCG as no part of Direction 4 was met. The RO was satisfied that Mr N had been without a settled way of life but did not consider that Mr N was setting up home as part of a planned resettlement programme.

## The Social Fund Inspector's Decision

In his statement of issues the Social Fund Inspector (SFI) asked Mr N whether he had received a decision on his asylum status, whether he was participating in a planned resettlement programme and how the lack of the items he had applied for affected him.

In his response Mr N confirmed that he had received exceptional leave to remain in the UK. He had received some help from a housing provider, which had involved basic advice on education, employment and benefits and help with any housing problems. This support had stopped nearly 2 months before Mr N had moved into his own tenancy and was not linked to him setting up home. Mr N was still using a borrowed bed, which he did not have to return for some time. However, Mr N told the SFI that he had now fallen out with his friend who had been providing him with meals. Mr N was currently eating takeaway food which he found expensive and he was running out of money before his next benefit was due.

The SFI agreed with the RO that there was no evidence Mr N was setting up home as part of a planned resettlement programme or that any part of Direction 4 was met. However, given Mr N's new information the SFI made a new decision. He considered that although Mr N had a bed he could use, the lack of cooking facilities would cause a serious risk to Mr N's health and safety. The SFI decided that a crisis loan (CL) for a cooker, pots and pans, crockery and cutlery was the only means of preventing this risk.

## Comment

It is not enough for an applicant to be receiving help for Direction 4(a)(v) to be met. They have to be setting up home as part of a planned resettlement programme.

Setting up home involves finding somewhere to live (and related tasks such as applying for housing benefit), and making the property habitable.

The programme must involve more than simply finding the applicant somewhere to live, helping him move into the property and furnish it. This could involve a wide variety of things such as budgeting advice, benefit advice, asylum advice, cooking skills. This list is not exhaustive.

The applicant must also be actively participating in the programme. The fact that help is available as and when asked for (for example, from a key worker) would not in itself suggest that there is a planned programme of resettlement.

Although Mr N had received some help from the housing provider this had stopped two months before he had been allocated his own tenancy. This support was not linked to Mr N setting up in his new home.

# Asylum Seekers

- Exceptional pressures

Case 28.11

## Application Details

Mrs M applied for a community care grant (CCG) on 29 March 2004 for household items and decorating costs. Mrs M was married and in receipt of income-based Jobseekers Allowance for both herself and her husband.

Mrs M and her husband were asylum seekers from Iran. Mrs M's husband came to Britain in February 2003 and was granted indefinite leave to remain. He moved in with his parents into a one bedroom flat. Mrs M arrived in the country around September 2003. Initially she was in National Asylum Support Service (NASS) accommodation but when she was granted indefinite leave to remain in January 2004 she moved in with her husband and his parents. Mr M's parents were not happy with this situation and put pressure on Mr and Mrs M to leave. Mr and Mrs M applied for and were then granted their own tenancy in March 2004 due to overcrowding. Mr and Mrs M spoke limited English and were finding it difficult adapting to the new culture.

At the time of the application Mrs M was about 3 months pregnant and was suffering from morning sickness. The couple had no furniture or household equipment and were sleeping on the floor with a pillow and a blanket. Their new property was damp. They were mainly eating cold food and sometimes had a hot meal if friends invited them round.

## The Reviewing Officer's Decision

The Reviewing Officer (RO) decided that Mrs M did not qualify for a CCG. He did not consider that an award would ease exceptional pressures on Mrs M and her husband as they were not under any more pressure than any other family seeking asylum. The RO did not consider that any other part of Direction 4 was met.

## The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) considered that the RO had not interpreted or applied the law correctly as he had applied the wrong test when considering whether an award would ease exceptional pressures on Mrs M and her family. The SFI decided that given the long period of unsettled living, the overcrowding at Mr M's parents, the difficulties they were having adapting to the new culture and their current living conditions Direction 4(a)(iii) was satisfied. An award would ease the exceptional pressures faced by Mrs M and her family.

The SFI had received further information from Mrs M explaining that the nearest Halal food shop was some distance away and that they had been rationing food as they did not have a fridge.

The SFI was satisfied that Mr and Mrs M's need for a cooker, bed, bedding, seating, crockery, cutlery, pans, curtains and a fridge was high priority and could be paid. These items would provide them with a proper diet, somewhere to rest and sleep comfortably and some privacy. He decided the remaining items a microwave, washing machine, vacuum cleaner, television and decorating were less important and were medium priority. As the budget was only able to meet high priority needs an award could not be made for these other items.

## Comment

Refugees usually have had very difficult experiences before they arrived in the UK. Many will have experienced violence, or faced serious threats to their lives. Added to this is the experience once they arrive in the UK, involving as it does a number of difficult processes.

Secretary of State guidance (paragraph 2750 of the Social Fund Guide) recognises that all families, including those on a low income, face pressures at various times; and so suggests this in itself is not a reason to award a grant.

However, the pressures on Mr and Mrs M went beyond such pressures, and were exceptional. Their previous living conditions were overcrowded and difficult, they lacked basic items in their new home, they were finding it hard to adapt and also Mrs M suffered from pregnancy related health problems. The RO used the wrong pool of comparison when he used other families' seeking asylum. The pool of comparison was too narrow and therefore required Mr and Mrs M to meet a more stringent qualifying standard. The RO should have found that the family's circumstances were such that an award would help to ease the exceptional pressures faced.

## Customer Service

- Evidence provided after the SFI's decision - Section 38(5) review

Case 28.12

### Application Details

Mr O applied for a community care grant (CCG) on 11 February 2004 for 2 beds, a cooker, pots and pans, crockery, cutlery, a sofa, a safety gate, a high chair, carpets and a table and chairs.

Mr O was single and in receipt of income-based Jobseekers Allowance. He had separated from his partner in January 2003 and was homeless for about a month before moving in with a friend. Mr O then moved to Scotland in January 2004 because his ex-partner now lived there with Mr O's son. Mr O was allocated an unfurnished tenancy. He was sleeping on the floor and relying on friends for hot meals; he had no furniture or household equipment.

Mr O's 19-month-old son stayed with him up to 3 times a week as access had been agreed. He slept on the floor with Mr O on clothes and towels. Sometimes Mr O saw his son at his ex-partner's but this usually ended in arguments.

Mr O was suffering from depression and was receiving treatment from his doctor. As a result of a car accident 2 years ago he was suffering from headaches and back pains, for which he received physiotherapy, and he was having difficulty sleeping.

### The Reviewing Officer's Decision

The Reviewing Officer (RO) said that although Mr O was sometimes caring for his son he did not consider that this was putting exceptional pressure on Mr O and his family. He did not consider that any part of Direction 4 was satisfied and refused a CCG. The RO did not consider a crisis loan (CL).

### The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found that the RO had not reached his decision correctly as it was not supported by the facts of Mr O's case.

The SFI took into account the cumulative effect of Mr O's very poor living conditions, the problems seeing his son and his ongoing and long-term health problems. Given this he considered that a CCG would help to ease the exceptional pressures faced by Mr O and his family.

The SFI considered that the most important items in Mr O's circumstances were those providing both himself and his son with a proper diet, safety facilities and somewhere comfortable and warm for them to both rest and sleep. He gave high priority to a cooker, pots and pans, crockery, cutlery, sofa, double bed, single bed, a safety gate and living room carpet. The SFI decided that although the remaining items would add to the comfort and convenience of Mr O's home they were less important in easing the exceptional pressures on Mr O and his son. As the budget could not meet medium priority needs these items were not awarded.

The district's budget was under pressure and although able to meet all high priority needs prices were being restricted. Although the amounts Mr O had requested were reasonable, due to the pressures on the budget the SFI reduced the amounts he awarded.

### Complaint from customer

Following the SFI's decision a letter was received from Mr O stating that the £90 he had been awarded for his bed was not sufficient to buy a bed suitable for his needs. Mr O enclosed a letter

from his physiotherapist, which gave more information about Mr O's back and neck problems and suggested that Mr O would benefit from an orthopaedic bed.

In light of this new information a SFI on the IRS Customer Service Team (CST) carried out a further review and awarded Mr O £149.99 for an orthopaedic bed. This was less than Mr O had requested but as the budget was under pressure the CST Inspector had paid Mr O enough for him to buy a suitable bed from retailers such as Argos or Index. Mr O was paid an additional £59.99.

## **Comment**

Section 38(3) of the Social Security Act 1998 provides for a SFI to review a determination which has already been reviewed by the Reviewing Officer. Section 38(5) of the same Act allows a SFI to review a determination made either by himself or some other SFI.

Section 38(5) was introduced into the legislation to allow an Inspector's decision to be changed. As a decision would only need to be changed if there was something wrong with it, it is reasonable to conclude that the purpose of Section 38(5) is to allow errors in decisions to be corrected. Errors can range from minor errors of presentation to substantial errors of fact or law.

An error may arise in a decision:

- when an Inspector makes a mistake; or
- when an Inspector makes a decision in ignorance of relevant evidence that is received after the decision is issued and shows that it was based on an incorrect view of the relevant facts. Such further evidence will usually relate to circumstances which existed at the time the Inspector's decision was made.

In Mr O's case, his evidence indicated that given his health problems he required an orthopaedic bed, which cost more than he had been paid. The most appropriate way to deal with this situation was to carry out a further review.

### Application Details

Miss B applied for a community care grant (CCG) on 24 February 2004 for a cooker.

Miss B had been using a microwave, which had now broken, and she had to use her neighbour's cooker. He was not very happy about her going in and out of his house.

Miss B was diabetic and received Income Support with a disability premium.

She had applied for a crisis loan for a cooker on 4 February but had been refused.

### The Reviewing Officer's Decision

Miss B did not attend her review interview. The Reviewing Officer (RO) considered that Direction 7 applied, as this was a repeat application. He did not consider that there had been a relevant change in Miss B's circumstances. A community care grant was refused.

### The Social Fund Inspector's Decision

In her statement of issues the Social Fund Inspector (SFI) asked Miss B whether there had been a change in her circumstances since making her application for a cooker on 4 February. In her response Miss B said that when she first applied for a cooker she did have a microwave she could use, however this had since broken.

The SFI considered that the RO had reached his decision correctly, however taking into account the new information Miss B had provided he decided that there had been a relevant change in her circumstances and Direction 7 no longer applied.

Given Miss B's diabetes the SFI was satisfied that Direction 4(a)(ii) was met and an award would help Miss B to remain in the community rather than enter institutional or residential accommodation in which she would receive care. He considered that the cooker was a high priority need and an award could be made.

### Complaint from customer

Following the SFI's decision a letter was received from the RO pointing out that the Inspector had accepted Miss B qualified for a grant under Direction 4 (a)(ii) when all he knew about her health problems was that she had diabetes. There was insufficient evidence to be satisfied that Miss B was at risk of going into care and that an award would help her to remain in the community. Little was known at this stage about the severity of Miss B's condition or how it affected her on a daily basis.

In the light of this complaint a SFI on the IRS Customer Service Team (CST) carried out a further review. He telephoned Miss B to obtain further information about her health problems and how they affected her. Miss B told the CST Inspector that she had diabetes for which she had to take twice daily insulin injections. Her doctor had advised her to eat regularly and, wherever possible, to try and stick to set meal times and supplement these with frequent snacks too. She had been feeling sick a lot lately and had been unable to keep food down. She had lost about 3 stones in weight during the last year or so. Miss B also told the CST Inspector that she had suffered about 8 hypoglycaemic attacks during the past six months or so when paramedics attended and gave her injections to bring her round. The last time she was taken to hospital was about 18 months ago when she was kept in for a week. Miss B had been feeling depressed recently and she also felt undernourished.

The CST Inspector was not satisfied that the original SFI had reached the correct decision based on the information available to him at the time. However, given the new information provided by Miss B the CST Inspector was satisfied that there was a risk of care and that an award would help Miss B to remain in the community rather than enter institutional or residential accommodation in which she would receive care. He decided the award of £290 for a cooker was appropriate.

### **Comment**

Section 38(5) review is likely to be appropriate when a decision contains an important error. This will be the case whether or not the outcome of the decision will be affected. An Inspector's decision should be legally sound, reasonable and procedurally correct, and the outcome should be one that is adjudged right in all the circumstances of the case. Where a decision does not meet these standards it is likely to contain an important error.

An important error is:

- an error on which the decision turns; an error at one of the stages of the decision making process which knocks the decision "off course" and makes the rationale incorrect;
- a failure to observe the rules of natural justice; ie: that there is no bias and the applicant is given sufficient opportunity to put his case;
- an outcome which is adjudged not to be right in all the circumstances of the case, despite the decision having been made correctly.

A Section 38(5) review is likely to be appropriate to correct such errors; to ensure the correct rationale for a decision, or natural justice or a right outcome.

# 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 intent<sup>1</sup>.
- 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 together<sup>2</sup>.
- 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)<sup>3</sup>

### 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.)

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

<sup>2</sup> *Idem*

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