

the Digest of Decisions

Issue 30 Spring 2005

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Independent Review Service
for the Social Fund

Welcome to the 30th edition of the Digest of Decisions.

This Digest focuses on issues that are topical in 2005. We have particularly chosen subjects that our readers have told us they would like to see featured in the Digest.

Some of the topics include:

- Distinguishing between priority and qualification
- Award amounts and budget considerations
- Direction 49
- Shared parenting

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

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Application Details

Mr H applied for a community care grant (CCG) on 4th February 2004 for a winter coat, socks, jumpers, scarf and gloves, a replacement birth certificate and a replacement passport. He lost these items following a burglary in September 2003, which left him with only one set of clothes and limited proof of his identity.

He applied for a grant immediately following the burglary and received a CCG for two pair of trousers, shoes, a shirt, underpants and a jacket. He made this further application for extra items of clothing because he was worried his supplies would not be warm enough for winter. The items are not the same so Direction 7 does not prevent an award from being determined.

Mr H is 72 years old, has diabetes, a sleep disorder, and hypertension. He also has arthritis causing him very limited mobility due to stiffness and pain in his joints. He is having tests for chest pains, and recently had an eye operation. He receives regular outpatient treatment for his arthritis and attends a diabetes clinic. Tasks like shopping and housework cause him a great deal of pain, and he pays a neighbour to do these things for him. He receives Attendance Allowance due to his care needs.

The first decision maker accepted that Mr H was in one of the situations that grants are for, as a CCG would help him to remain in the community rather than enter care. A payment was refused on priority grounds, on the basis that he had recently had a CCG for clothing.

The Reviewing Officer's Decision

The Reviewing Officer said he was not offering an interview because a partial award could be paid. The Reviewing Officer then confirmed the original decision, adding that a payment for a birth certificate or passport had insufficient priority because Mr H could use other things like his tenancy agreement as forms of identity.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) was not satisfied the decision was reached correctly. Firstly, this was because social fund law required that Mr H should have been invited to an interview. The Reviewing Officer said an interview was not needed as he could pay an award, but then went on to refuse a payment. In addition, an interview would have been particularly useful in terms of obtaining evidence about Mr H's extra clothing needs. Secondly, the SFI did not find the Reviewing Officer had dealt with qualification for a grant in the right way. While he agreed that the combined effect of Mr H's health problems presented a reasonably foreseeable risk that he will enter care, it was not evident that all the items requested would have a role in helping Mr H to remain in the community.

The SFI asked Mr H some questions about his need for a new passport and birth certificate. In reply Mr H explained that since the burglary he had been allowed to continue cashing his order book at the Post Office without proof of identity because he is known to the staff there. They had however been encouraging him to get proper identification.

Mr H sometimes uses his tenancy agreement as proof but found that not everyone accepts this. He was also concerned that without a passport he could not travel abroad. He said he had been unable to attend his sister's funeral because of this.

The SFI was satisfied that Direction 4a(ii) was satisfied for clothing, as an award would help Mr H to remain in the community rather than enter care. This is because clothing will afford him some extra warmth and protection and help him to manage his health. The SFI acknowledged the difficulties Mr H faced being unable to afford a replacement passport and birth certificate, but despite these problems Mr H had managed to continue cashing his benefit payments. The SFI decided that, unlike the need for clothing, there was no link between the birth certificate and/or passport and the threat that Mr H will enter care. A payment for these items was refused because Direction 4a(ii) was not satisfied. An award would have no effect in helping him to remain in the community rather than enter care.

The SFI obtained more information about Mr H's current need for clothing and went on to make a high priority award for a winter coat (£40), jumpers (£30) and socks (£8). A high priority was given because an award would have a substantial and immediate effect on his situation and in meeting the aims of Direction 4a(ii). Mr H was paid a grant of £78. The gloves and scarf were seen as less pressing and refused on priority grounds.

Comment

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, decision makers 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.

In this instance there is a link between the risk Mr H will enter care due to his health problems, and his need for clothing to keep him warm and protected. But there is no such link where his request for a passport and birth certificate is concerned and so a payment is refused at the qualification stage. To do otherwise and attach a priority to such needs could in theory lead to a payment that was not intended, for example where there is a change in the level of priority that the budget can meet.

Application Details

Mr F applied for a community care grant (CCG) on 12/7/04 for a washing machine £300, a cooker £300, a bed £160, fridge £180 and curtains £200.

Mr F had given an overall comment suggesting that his belongings were all either old, shabby, or broken. The first decision maker did not find he was in any of the situations that grants are for and refused a payment.

The Reviewing Officer's Decision

The Reviewing Officer interviewed Mr F and established that he had suffered with depression for the last 5 years, and had been prescribed some medication. No more information was recorded. *(The reason why the interview record was this brief was not clear).*

He decided that in view of Mr F's living conditions and depression the conditions of Direction 4a(ii) were satisfied. He went on to refuse a payment on priority grounds, concluding that Mr F's current facilities were not shown to be beyond all use.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) did not find the Reviewing Officer's decision had been reached correctly. There had been insufficient information to conclude that Mr F was at risk of entering institutional or residential accommodation in which he will receive care. The Reviewing Officer should have made more enquires about both Mr F's health and the extent and urgency of his needs.

The SFI wrote out to Mr F, asking him some further questions. Mr F told the SFI he had spent 5 days in hospital last year due to his mental health problems, and this was his 3rd short stay in hospital in as many years. Also, he currently felt housebound for most of the time because he did not feel safe when outdoors. He thought people were watching him all of the time. He was in contact with a community psychiatric nurse and a psychiatrist. He had been placed on some stronger medication the previous month because his feelings of paranoia had worsened. As a consequence he had difficulty in concentrating on tasks, and had been neglecting himself of late. Since disposing of his washing machine two months earlier he had tried using a launderette two miles from his home but it was stressing him out and he felt unable to continue doing this. He added that he felt suicidal and lonely.

Mr F said he was able to use his cooker but it looked dirty and he wanted a new one. It depressed him to look at his cooker. But although he was still able to cook meals he sometimes had nothing to eat because he was not always up to going shopping for food. His fridge was about 20 years old and had been broken for some time.

He had curtains in his living room and some adjustable blinds in his bedroom. Although the blinds fitted the window he felt they did not block out all the light and were not affording him total privacy. He felt uncomfortable with this and wanted to replace the blinds with curtains, and replace his living room curtains due to their age. Finally, every time he tried to repair his bed base it became worse, and his mattress was uncomfortable. He was not sleeping properly.

The SFI decided that in view of the extra information Mr F had provided about his health the conditions of Direction 4a(ii) were satisfied for each of the items requested.

The SFI found a high priority award included a washing machine, a fridge and a bed. The first two items would help him to overcome the limitations presented by his mental health problems and the bed was basic to his need to obtain proper rest. In view of Mr F's mental health difficulties the SFI acknowledged that a new cooker or new curtains would help his situation to some extent. But he already had the means to cook food and maintain a basic degree of privacy in his home. An award would not have the same effect as the high priority items. It would not have a substantial and immediate effect in helping him to remain in the community rather than enter care. These were found to be medium priorities.

Mr F's area was only paying high priorities, and reducing the amounts paid for items. Despite this the budget was 3% overspent. In view of this the SFI decided a payment could not be made for Mr F's medium priorities. He based the payment for high priorities on high street and catalogue prices because of the pressure on budget funds, and awarded Mr F a washing machine £200, a bed £120, and a fridge £119.

Comment

Decision makers need to carefully weigh evidence about physical and mental health problems in deciding whether the conditions of Direction 4a(ii) are satisfied for a particular expense.

In this example (and unlike case 1 overleaf) the SFI found there was a qualifying need for all of the items requested, and so the case turned on priority issues.

Even though Mr F already had a cooker and some window coverings he wanted to replace them. This was important to him, and given that Mr F felt suicidal and spent a lot of time indoors the SFI was satisfied that a grant to replace his existing facilities would have some effect in meeting the aims of Direction 4a(ii). These particular expenses fell at the priority stage, because they were not important enough for the budget to afford.

Application Details

Ms S applied for a community care grant (CCG) on 27/7/04 for a dehumidifier £90, a washing machine £350 and a tumble dryer £200.

Ms S had recently been involved in a traffic accident and was knocked off her bicycle. She was left with a badly disabled left hand and a broken wrist. Her hand was still in plaster. In addition, she had suffered a separate accident that left her other arm badly burned and she was receiving skin graft treatment. She was not expected to recover for many months. She also had eczema, asthma and hay fever.

She lived with her 85 year old mother. Her mother has severe arthritis in the majority of her joints. She had tried to help Ms S with daily chores, particularly following the accidents, but she was limited in the kinds of things she could manage.

Their washing machine had broken down. Neither Ms S nor her mother could manage to wash by hand, and Ms S had a lot of difficulty getting to the nearest launderette. Ms S's dehumidifier had worn out. Her breathing difficulties had worsened recently and she had been advised by her GP to use a dehumidifier in her home.

The first decision maker accepted that Direction 4a(iii) was satisfied, as an award will ease exceptional pressures on Ms S and her mother. A payment was refused on priority ground because of the limited information given about the condition of Ms S's appliances.

The Reviewing Officer's Decision

Ms S had a telephone interview with the Reviewing Officer and told him that a friend of hers had looked at her appliances and advised her that they would not be worth repairing. In any event she had owned these items for many years and they were in a very dilapidated state. The Reviewing Officer told her he could accept this as fact. Ms S then sent him a letter with some revised price estimates. She had found a washer dryer available for £439.90 and a dehumidifier for £79.99. The Reviewing Officer was satisfied these items are high priority needs and based his award on Ms S's revised estimates. He said this was appropriate in light of budget pressures.

The Social Fund Inspector's Decision

Ms S asked the Social Fund Inspector (SFI) to look at the amount of the award again. She said she had spent £225 of the £519.89 on the dehumidifier, leaving her with £294.89 for a washer dryer. She planned to use this money as a deposit, because the model she had seen for £439.90 had been sold and all the other models she had seen cost over £500.

Ms S had sent the SFI some pages from a high street catalogue to support her claim. The SFI looked at this and found that dehumidifiers could be bought for £79.99, £129 and £149.95. In light of this he asked Ms S if she could explain how she might have come to spend £225 on a dehumidifier. Similarly, using the same catalogue as a guide the SFI pointed out that washer dryers could be bought for around £300. He asked Ms S if there was anything else he should know about her particular needs and why models costing this amount might be unsuitable.

As Ms S did not reply to the SFI's letter he proceeded with his review using the information that was already provided.

He agreed that the items are high priority for a payment. He also noted that the amount spent on grants was in line with plans set out at the beginning of the year. The Area Decision Maker's guidance advised that only high priorities could be paid and it was appropriate to reduce award amounts in order to manage funds.

The SFI was satisfied Ms S's original price estimates were within a range of prices considered appropriate for an item of serviceable quality. However, the SFI decided to limit the grant payment because there was evidence to show that the CCG budget was only being managed by reducing the amounts for high priority needs. He was satisfied the Reviewing Officer's award was sufficient to buy items of a serviceable quality.

The SFI said that Ms S had appeared to spend considerably more on a dehumidifier than had been awarded. He found she had made her own choices on how to spend the grant money, and it was not appropriate to increase the award because of this. He upheld the Reviewing Officer's decision.

Comment

In this case the amounts originally requested could be adjudged to be within a range of prices considered appropriate for an item of serviceable quality, but it was appropriate to reduce the award because of the pressure on the CCG budget. There was scope for buying items of serviceable quality for less than the original estimates provided. Ms S had provided a second set of price estimates that were lower than the first, and it was appropriate for the Reviewing Officer to base his award on those lower amounts.

Ms S said she had spent far in excess of the amount given for the dehumidifier, leaving herself unable to purchase a washer dryer. Her rationale for this was less than clear. A further payment was not deemed appropriate.

Direction 49

- Cases where another part of the scheme is more appropriate.

Case 30.4

Application Details

Mr M applied for a crisis loan (CL) on 18/8/04 for a fridge freezer.

Mr M receives Income Support for himself, his partner, and their 5 year old daughter. He also receives Incapacity Benefit. The fridge freezer had broken down and Mr M and his family were shopping for food each day.

Mr M takes medication for a heart condition and is under the care of a cardiologist. Both his partner and his daughter have asthma and use inhalers. He has two other children by his ex-partner and he helps to look after them during the school holidays because his ex-partner works.

The cardiologist had placed Mr M on a strict diet, including special meals and drinks that must be kept refrigerated. Mr M was using his neighbour's fridge but this was proving inconvenient to all concerned. Mr M has depression, and his inability to store his foods at his own home was making him feel worse.

The Reviewing Officer's Decision

The Reviewing Officer established that Mr M was still storing his special drinks and food in his neighbour's fridge. He upheld the first decision to refuse a crisis loan, finding Direction 3 was not satisfied for a payment. In particular, this was because he did not consider a crisis loan is the only way of preventing serious risk or serious damage to the health or safety of Mr M or his family.

The Reviewing Officer said he was posting Mr M a community care grant (CCG) application form.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the Reviewing Officer did not take all relevant considerations into account, because it was appropriate for the Reviewing Officer to consider a CCG as part of the review of Mr M's crisis loan application.

The SFI checked with the local office and it was confirmed that Mr M had not made any subsequent grant or loan applications. Taking account of the extent and impact of the family's difficulties the SFI found Direction 4a(iii) was satisfied, as a grant will ease exceptional pressures on Mr M and his family. The exceptional pressures arose out of the overall health problems within the family, the treatment Mr M was receiving, and the impact that the lack of a fridge freezer was having.

Mr M told the SFI there is a food shop about 15 minutes from his home but he couldn't manage physical tasks because of his heart condition, and shopping for food each day was making his partner breathless. Mr M's relationship with his neighbour had deteriorated and there had been arguments about his continued use of the fridge.

The SFI considered there was a pressing need for a fridge freezer, to both help the family overcome the difficulties they faced shopping daily, and so Mr M had somewhere suitable to store his medication. As a grant would have a substantial and immediate effect in easing the exceptional pressures faced the SFI found an award held a high priority, and went on to make a grant payment. As the need had been met by way of a CCG this meant that the SFI refused a CL.

Comment

Direction 49 allows a decision maker to make a decision on both a community care grant and a crisis loan, if appropriate. This is a discretionary power and where discretion exists it must be exercised, and exercised reasonably. There is no requirement to treat an application for a community care grant as an application for a crisis loan, or vice versa, in every case. Direction 49 should be used if the information supplied by the applicant in support of his application indicates that the other type of payment may be appropriate.

In this case, Mr M applied for a crisis loan but the evidence he gave should have put the Reviewing Officer on notice to consider a community care grant. There was no need for Mr M to make a separate CCG application. Indeed, had he done this then there would be every possibility that Direction 7 (which affects repeat applications) would prevent that application from being determined.

Reviewing Officer's are always sent copies of a SFI's decision, and in cases like this one the Reviewing Officer can benefit from the SFI's explanation of the law, thereby ensuring that similar errors do not continue in future.

Direction 49

- Cases where another part of the scheme is more appropriate.

Case 30.5

Application Details

Mr A applied for a community care grant (CCG) on 28/7/04 for a cooker £200, a fridge £100, a bed £90, a set of bedding £40, a sofa £100, and a wardrobe £60. Mr A received Income Support for himself only. He took pain killers for a back condition. He had moved to this country six months earlier. He had stayed at various temporary addresses until being offered an unfurnished council flat.

The first decision maker refused a grant and using Direction 49 awarded a crisis loan for all the items except for the wardrobe. This came to £530.

The Reviewing Officer's Decision

The Reviewing Officer interviewed Mr A and it was established that his tenancy agreement included a cooker and a fridge so he did not need help with these items. He was sleeping on the floor. The Reviewing Officer told Mr A about the grant qualifying conditions set out in Direction 4. He asked Mr A about his back condition. Mr A said his back was sore because he was sleeping on a bare floor and he had no coverings. Mr A had nothing more to add.

The Reviewing Officer found Mr A was not in one of the situations that CCG's are for. He decided the conditions of Direction 49 were satisfied and it was appropriate for him to consider a crisis loan.

He went on to find Direction 3 satisfied for a bed, bedding, and sofa. Awarding the amounts Mr A had asked for, the Reviewing Officer offered him a loan of £230. He did not find this same test was satisfied for a wardrobe and a loan was refused for this, along with the cooker and fridge that were no longer required.

Because Mr A had not accepted the first decision maker's loan offer (including a cooker and fridge) the Reviewing Officer replaced the loan of £530 with a revised award of £230.

The Social Fund Inspector's Decision

Mr A's representative asked the SFI to consider converting the loan to a grant. It was explained that Mr A had come to this country because he has family here, including his mother. Also, that he is under a police curfew and must stay in his recently acquired tenancy between the hours of 6pm and 6am. It was pointed out that he was therefore spending 12 hours at a time in his home without some basic facilities.

The SFI asked Mr A's representative some further questions about his need for the items requested, his health, his relationship with his family, and about any support he was receiving in setting up his home. It turned out that he only sees his mother once a month. Their relationship is good. His back problem was worsened by his living conditions but he was still able to manage his own daily chores and routines. And he was not receiving any support in setting up his home.

The SFI agreed that Mr A was not in any of the situations that grants are for. He found the Reviewing Officer was right to consider a crisis loan. It was within reason to award a sofa as well as a bed because of Mr A's back problem. He acknowledged that Mr A wanted a wardrobe, but he did not find that the absence of a wardrobe would present a threat of serious risk or serious damage to his

health or safety. And the Reviewing Officer was right to withdraw the previous loan offer for a cooker and a fridge because Mr A did not need help with these expenses.

The SFI was satisfied the Reviewing Officer's decision was reached correctly and is the right one in all the circumstances.

Comment

In this case it was identified at the outset that a crisis loan was appropriate and that Direction 49 should be used. This was because of the evidence that was presented about Mr A's health and his living conditions.

Mr A produced extra information about his circumstances, and although he faced some difficulties he was not in any of the situations that grants are for.

This case also shows that it is occasionally appropriate for awards to be reduced. In particular, in this instance Mr A had applied for two items he did not urgently need and the Reviewing Officer was right to take this part of the award away.

Travel expenses

- Priority and on-going travel needs

Case 30.6

Application Details

Mr H applied for a community care grant (CCG) on 5/4/04 for travel expenses for the cost of 3 visits to stay with his friend.

Mr H lives with his wife and two teenage daughters. For several years Mr H has had chronic fatigue syndrome, severe depression, and anxiety. He rarely leaves his home due to the level of his fatigue, and this in turn worsens his depression and causes him mood swings. This affects his wife and children considerably. His wife is his sole carer and provides physical and emotional support during each day.

Three times each year Mr H goes to stay at his friend's house, some 30 miles away. The friend meets him at the train station and provides full care and support until Mr H is ready to return home. These visits not only help Mr H when his depression worsens, they also provide much needed relief for his family.

The first decision maker was satisfied the conditions of Direction 4a(iii) were met and found a high priority award could be given to one visit. The other visits were found to be medium priority as they were less pressing. As the budget was only meeting high priorities a payment was made for one visit.

The Reviewing Officer's Decision

Mr H asked the Reviewing Officer to pay the other two visits. He could not attend an interview and told the Reviewing Officer he wanted his decision made on the information he had already given.

As Mr H visits his friend only 3 times a year the Reviewing Officer reasoned that one visit will meet the most immediate need. The other two visits were likely to be too far off to warrant more than a medium priority. The Reviewing Officer noted that Mr H had requested £80 per visit but the first decision maker had contacted the local rail network to establish the cost of a ticket, which was £59.80 return, provided the return journey was made within 1 month of the outward journey. The Reviewing Officer did not change the decision.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) asked Mr H if he had made the first trip to his friend's house, and when he expected the future visits to take place. Mr H had yet to travel, but accepted that the return ticket he had already been awarded was sufficient to meet his needs. He planned to visit his friend the following week. He had arranged future trips for mid-August 2004 and December 2004.

The SFI's decision was completed on 30th April 2004. He agreed that the award for one return journey is high in priority. The SFI did not consider a grant for the remaining two trips would have the same effect. In reaching his conclusion he explained that the first of these two trips would not take place for another 3 ½ months. He did not find any urgent need for Mr H to meet these expenses. He also pointed out that there could possibly be changes in Mr H's circumstances, or in the cost of future tickets. Unlike the award paid by the Reviewing Officer, a grant for the later journeys would

not have a substantial and immediate effect in easing exceptional pressures on Mr H and his family. The SFI agreed that these are medium priority needs and found the Reviewing Officer's decision was the right one in all the circumstances.

The SFI invited Mr H to make a fresh grant application for his other visits nearer the time.

Comment

Mr H's visits are a long-term arrangement, but it is not automatic that high priority will be given to three visits simply because this is how often Mr H has been travelling. The Reviewing Officer used his discretion properly in deciding the later visits were too far off to warrant a high priority.

Should Mr H make another application for travel expenses closer to the date of travel then Direction 7 (which affects repeat applications) ought not prevent his application from being determined. In this example the urgency and importance of the need to travel is likely to increase with the passage of time. This would be a relevant change in the circumstances.

It could not be guaranteed that a future application would succeed. This would be determined on the evidence presented. The priority of an award would depend on all of the circumstances, including Mr H's state of health at the time.

Application Details

Mrs D applied for a community care grant (CCG) on 23/6/04 for repairs to her caravan and for a cooker (£250) and a carpet (£70).

Mrs D is a single parent with six children. They lived in a caravan, which was parked up at a roadside and could not be moved because it needed repairs. Mrs D thought these repairs would cost £1,770. The home was cold and draughty. Mrs D's cooker had broken beyond repair and she had no carpet for her main living area.

The first decision maker found that Direction 29(d) excluded a grant for the repairs to Mrs D's home, because the cost of the work indicated the repairs were likely to be more than minor. He accepted that a grant for a cooker and carpet would ease exceptional pressures on Mrs D and her family and paid these high priority needs in full. His decision was made on 25/6/04.

The Reviewing Officer's Decision

The Reviewing Officer interviewed Mrs D on 22/7/04 and established that she had just moved into her sister's home on a temporary basis. She had not spent the grant and planned to buy the carpet and cooker once the repairs were made and her family could return to the caravan. Mrs D told the Reviewing Officer that she is a traveller and that living in a caravan was her normal way of life.

More information was obtained about the condition of the caravan. A friend of Mrs D's had examined her caravan and told her it would take him between 7 and 10 days, working 6 to 7 hours a day, to complete the work. This included repairs to the sides, the ceiling, the floor, a skylight, a window and a door.

The Reviewing Officer looked at this work in the round, because it was all intended with the common aim of making the caravan more secure and better insulated. Taking account of the amount of work involved, the time it would take, as well as the cost, the Reviewing Officer decided this was more than minor and therefore excluded.

The Reviewing Officer felt there could be no telling how long it would be before Mrs D could return home, but seeing as she had already been paid for a cooker and carpet he did not disturb the award. There had been no overpayment.

The Social Fund Inspector's Decision

Mrs D sought an Inspector's review because she believed the Reviewing Officer was in breach of her human rights because he had refused her vital repairs to her home, and her sister's property was overcrowded. Mrs D said that without support she would most probably have to scrap her caravan and find somewhere else to live. She did not want to do this.

The SFI was satisfied the Reviewing Officer had applied Direction 29(d) correctly and that the repairs could not be considered for a grant payment. He agreed with the Reviewing Officer that Mrs D should not have been paid a grant for a cooker or for carpet, but she was not required to repay this money.

The SFI considered the likely impact of refusing a grant for the repairs. It would most likely mean

that Mrs D could not return to her caravan. He did not find this decision contravenes any of the articles set out in the European Convention On Human Rights. In reaching this conclusion he acknowledged the difficulties Mrs D faced. He understood that Mrs D describes herself as a traveller and therefore had a preference for a certain type of housing. However the SFI identified that Mrs D would always have the option of contacting her local authority and asking them to help her find suitable housing.

Comment

The Human Rights Act 1998 incorporates most of the rights expressed in the European Convention On Human Rights into domestic law. It came into force on 2 October 2000. SFIs must act in a way that is compatible with the Convention Rights. The Social Fund Commissioner issues advice to SFIs to help them identify and deal correctly with human rights issues.

A SFI must consider whether deciding the case under domestic law (in this case Direction 29 refers), without regard to the Convention rights, would breach any of the Convention rights.

Article 8 of the European Convention On Human Rights provides for a right to respect for private and family life and the home.

In exceptional cases a state may have a positive obligation under Article 8 to help someone to remain in their home, or to provide them with accommodation or shelter. The facts did not show that Mrs D fell within this category.

Even if the state were to have such an obligation in this case, a Social Fund decision maker would need to consider whether another public authority would be responsible for providing assistance. The determination of responsibility will depend on an examination of the statutory context of the particular need in question. In this case, the local authority would probably be responsible, as they have statutory duties and powers to provide accommodation, as well as powers to help with some repairs.

Application Details

Miss J applied for a community care grant (CCG) on 20/8/04 for a central heating boiler and 5 radiators.

Miss J is 80 years old. She lives alone. She has arthritis and asthma. She is particularly susceptible to cold weather. She owns her home. She has never had central heating.

The first decision maker asked Miss J about the work involved. A friend of Miss J's had obtained some quotes. The work would take about 3 days to complete. A registered gas fitter would install the boiler and radiators in 5 rooms in her home, and make the necessary plumbing and electrical connections. It would cost in the region of £1700.

The decision maker found this work was more than minor and therefore excluded under Direction 29. A grant was refused.

The Reviewing Officer's Decision

Miss J was not able to attend an interview at her local office and agreed to speak with the Reviewing Officer over the telephone. He explained the reasons for the decision and Miss J confirmed that the information provided about the central heating installation was correct. It was understood that up until now she had managed with a small water heater in her kitchen. This provided hot water for the kitchen sink only. When Miss J used her upstairs bathroom she washed with cold water. She did however have a walk-in shower that heats its own water. She had two medium size electric bar fires. These were okay, but she had to move them about from room to room.

The Reviewing Officer did not change the original decision to refuse a grant.

The Social Fund Inspector's Decision

Miss J asked the Social Fund Inspector (SFI) to review her application. In her letter she referred to her human rights and her need for basics like warm water and heating.

The SFI sent Miss J a letter summarising the keys issues and facts. He also asked her some further questions. Miss J replied and confirmed that she had managed with her current facilities for a number of years with no significant difficulty. However she wanted it understood that she was fed up with moving heaters about her home, and not having hot water in the upstairs basin.

The SFI explained that he did not underestimate the difficulties that Miss J faced. But having considered the nature and extent of the work, the time, and the skilled labour required to complete the task, as well as the cost, he decided that the expenses required are not minor in nature. The exclusion at Direction 29(d) therefore applies and a grant cannot be paid.

The SFI was satisfied this decision did not breach any of the articles set out in the European Convention On Human Rights. Miss J's situation was difficult but she had access to some heating and hot water in her home. The decision to refuse a grant was not in breach of her right to respect for her home or her private life.

The SFI advised Miss J about a separate Government initiative that might be able to help. Warm Front is the Government's main grant-funded programme for tackling fuel poverty. The scheme was launched in June 2000 and before its name changed to Warm Front it was called the Home Energy Efficiency Scheme. Grants of up to £2,500 are available to persons who are over 60 and receive an income-related benefit. The grant provides insulation measures and, for those who do not have an existing heating system, a central heating system for the main living areas of the household.

Comment

Firstly, it is important to note that the expenses requested were clearly excluded from the CCG scheme by the Secretary of State's Direction.

In this case the decision to exclude a CCG for a central heating system was not in breach of any of the Articles set out in the European Convention on Human Rights. This was because Miss J already had some means of heating her home and to obtain hot water, albeit in a limited fashion. In any event, the state has separate provision for this type of need and the Social Fund is not the Agency that is responsible.

Local Home Improvement Agencies, or where there is not one in the locality, Local Authority Environmental Health departments, can provide assistance with such work, as well as Home Improvement Trusts, which provide low cost loans to homeowners to effect repairs and improvements.

In this case Miss J could also consider making a separate CCG application for non-excluded alternatives, such as freestanding heaters.

Evidence

- The inquisitorial role

Case 30.9

Application Details

Miss H applied for a crisis loan for living expenses on 27/9/04. She said she had not received her giro cheque, expected on 25/9/04, and her Jobcentre Plus office had decided not to replace the money pending investigations. No further enquiries had been made.

Mr B is a friend of Miss H. As she is homeless she routinely uses Mr B's address for post, including her fortnightly giro cheques. Miss H said she went to Mr B's house on 25/9/04. There was no answer at the door, but she suspected Mr B was inside. She said this left her with no money for food, and she was arrested for shop lifting the following day. She then returned to Mr B's home on the Monday, and Mr B said he had not received any post for her that weekend. Her Jobcentre Plus office had established that the giro cheque had been cashed at the Post Office on 25/9/04.

The first decision maker refused a crisis loan at Direction 14, finding that it was unlikely Miss H had not received the giro cheque.

The Reviewing Officer's Decision

The Reviewing Officer refused an award for a number of reasons. Firstly, he rejected Miss H's evidence because this was the 3rd time this year that she had made an application for living expenses. Secondly, the Reviewing Officer said Miss H had told him she knew Mr B was at home on 25/9/04 because Mr B's key was in the door. The Reviewing Officer presumed Miss H knew this because she had tried her own key in the door. In light of this the Reviewing Officer doubted the circumstances surrounding Miss H's visit to Mr B on 25/9/04 (*though he did not explain this*). Finally, the Reviewing Officer said Miss H had friends who could help her.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found the decision had not been reached correctly.

The Reviewing Officer had not presented any information about the previous applications for living expenses. The SFI could not conclude that there were any similarities between these previous applications and the circumstances now described. She gave little weight to this matter.

Miss H had a face-to-face interview with the Reviewing Officer, and had signed her interview statement to say it was an accurate record. But this gave no mention of Mr B's key being in the front door. Furthermore, as this issue was a concern for the Reviewing Officer the SFI found he should have put this matter to Miss H, and she could not be satisfied this had happened. Finally, the interview record showed that Miss H had stored her belongings at the homes of friends. It did not show that she could also turn to these friends for help with food.

The SFI found the Reviewing Officer's conclusions were not supported by the facts. Furthermore, he had not used his inquisitorial role properly.

On the evidence that was presented the SFI was satisfied it was more likely than not that Miss H was without sufficient resources to meet her immediate short term needs (Direction 14). She also found the conditions of Direction 3 met, and went on to offer Miss H a crisis loan for living expenses for the period 27/9/04 to 8/10/04 (the day before Miss H was next due a benefit payment). Miss H had requested £94 but the most that the law allowed under Direction 18 was £71.55.

Comment

Direction 34 deals with the manner in which interviews should be conducted. This states that if an applicant is interviewed in person by the Reviewing Officer he must be given an explanation for the reasons of the decision complained of, plus an opportunity to make any representations including the provision of additional information in relation to his application.

This clearly shows that in this case the Reviewing Officer had an obligation to let the applicant know the case against them.

In addition, the Secretary of State provides guidance to decision makers that highlights their inquisitorial role. This guidance states that further investigation may be necessary if:

- There is insufficient information
- There is any reason to doubt the validity of the application

In this case, this guidance ought to have put the Reviewing Officer on notice to ask the applicant about her previous applications, to ask if she actually had a key to her friends home and whether she had tried using this, and to ask if her friends could provide her with food until her next income was due.

Evidence

- Natural justice

Case 30.10

Application Details

Mrs J applied for a crisis loan for living expenses on 25/8/04 following the reported loss of her money.

Mrs J explained that she cashed her order book for £83.66 at about 4.14pm on 24/8/04. She said she recalled putting the order book back into her jeans pocket and the notes in her jacket pocket, together with £3.66 in coins. She used a £5 note to pay for cigarettes and a paper. She sat on a bench and had a cigarette. She then went to a charity shop, and later on went to a frozen food supermarket to do her shopping. On the way there she put her hand in her jacket pocket and noticed the notes had gone but the coins were still there. She retraced her steps and asked a security officer (at the shopping centre) if the money had been handed in. She saw little point at this stage in reporting this matter to the police. At the review interview she had 34 pence left. She had used the remainder to buy milk and crisps.

The first decision maker refused a crisis loan at Direction 14, finding that it was unlikely Mrs J had lost her money. He felt she would take better care of her income.

The Reviewing Officer's Decision

The Reviewing Officer decided to refuse Mrs J's application because there was a discrepancy between the time that she said she cashed her order book and the time established by him, which was 11.39am. He also noted that at the interview she wore a coat with deep pockets. He did not consider it was likely her money might have come out of the pockets.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found the decision had not been reached correctly.

It was not clear from the interview statement that the Reviewing Officer had put the discrepancy in the encashment times to Mrs J. Neither was it evident that the Reviewing Officer had asked Mrs J to explain how she could have lost the money from her jacket.

The SFI considered that Mrs J had provided a fairly comprehensive account of what had occurred between cashing her benefit and realising that the majority of it was missing. It was appropriate to give more weight to her evidence because of this. The SFI noted the discrepancy in the encashment times, but did not find this matter to be so compelling. Neither could the SFI conclude it was unlikely that the notes had not gone missing from Mrs J's pocket.

The SFI found the Reviewing Officer had not given Mrs J a sufficient opportunity to put her case, because she did not know the case against her.

On the evidence that was presented the SFI was satisfied it was more likely than not that Mrs J was without sufficient resources to meet her immediate short term needs (Direction 14). Mrs J had requested £50 for herself and her daughter. As this was less than the maximum that the law allowed the SFI met her request in full.

Comment

There is a natural justice issue here, because the Reviewing Officer had concerns about the differences in the timing of the benefit encashment, and concerns about how money could have come out of Mrs J's coat pockets. It was not clear that these issues were raised with her, so she was prevented from commenting on the case against her.

Direction 35 requires that the Reviewing Officer must make a written record of any representations made by the applicant in relation to his case during the interview and this must be agreed with the applicant. This applies to both face-to-face interview and telephone interviews.

In a situation where the Reviewing Officer uses information he says he obtained during the interview, but is not part of the written record, it is unlikely that the Inspector would conclude that the decision had been reached correctly. It would not be sustainable on the evidence.

Interviews

- Crisis loan applications made by telephone

Case 30.11

Application Details

Mr O contacted his local Jobcentre Plus office on 11/10/04 because he had spent all of the Jobseeker's Allowance payment of £111.30 received on 5/10/04. His call was passed over to a "crisis loan direct" section. They took his application details by telephone using a form designed for that purpose, and he told them he had spent his income on paying off some of his debts. He had no money at all for food, and no food left. He said he had not eaten since the day before. He had made no previous applications to the Social Fund. He did not provide a telephone number to be called back on.

The first decision maker decided Mr O's case on 11/10/04. He accepted that Mr O had spent his benefits, but concluded that a refusal under Direction 3 will not bring risk to his health because he is supposed to budget for his living expenses.

Mr O attended his local Jobcentre Plus office later that same day. He signed a review document provided by his local office. This document referred to a separate page where he could give his comments, but it was not clear in this instance that Mr O was given this extra page to complete, so no further information was provided. This document was then faxed to the crisis loan direct section, for the Reviewing Officer to consider.

The Reviewing Officer's Decision

The Reviewing Officer's decision was also made on 11/10/04. No attempt was made to contact Mr O prior to the Reviewing Officer completing his review. He upheld the original decision, adding that Mr O could have made other arrangements to pay off his debt in small payments and that Mr O had made his own choice. The Reviewing Officer found no risk to health or safety.

The Social Fund Inspector's Decision

Mr O completed an IRS 1 form on 12/10/04 seeking an Inspector's review. He said he had no receipts for paying off his debts, and that he faced starvation without some assistance. On this form he included a mobile telephone number he could be contacted on.

The Social Fund Inspector (SFI) telephoned Mr O, who explained that he had owed a friend about £80 for a few weeks, and the friend was also short of money, and desperate that he pay him back. He knew it would leave him short of money for his own needs, but this is what happened. The rest of his money had gone on general living expenses, and by the time he made his loan application he had nothing left.

The SFI did not find the Reviewing Officer reached his decision correctly. There were two main reasons for this:

The Reviewing Officer had not taken all relevant considerations into account, because Direction 33 required him to offer Mr O an interview before completing his review and this had not happened. Also, the SFI found that the Reviewing Officer had not interpreted social fund law correctly at Direction 3. The SFI considered that Direction 3 is wide enough to cover self-inflicted crises. Even accepting that Mr O's choosing to spend his money on debts might be considered unwise, this does not automatically mean that he does not face a threat to his health or safety.

The SFI found Mr O's evidence to be consistent and there was no reason to doubt his explanation. The SFI decided that Mr O was in an emergency and a crisis loan for the period 11/10/04 to 18/10/04 (the date before his next benefit payment was due) is the only way of preventing serious risk or serious damage to his health or safety.

Mr O had requested £80, but the most that the law allows is 75% of the appropriate personal allowance, and this came to £47.70. The SFI was satisfied it was likely that Mr O could repay this amount within a reasonable period of time, and therefore offered him a crisis loan for this amount.

Comment

Provision has been made for crisis loan applications to be completed by telephone, as well as in writing, and it was clear in this instance that Mr O's area had set up a separate section to deal with such cases, and they were not based at Mr O's local office.

This does not remove the requirement on the Reviewing Officer to offer Mr O an interview. In this case, and seeing as the Reviewing Officer was not minded to change the decision in Mr O's favour, the Reviewing Officer was obligated to offer Mr O the opportunity of being interviewed in person, unless Mr O agreed to take part in a telephone discussion. The duty rests with the Reviewing Officer to make the necessary arrangements.

A telephone interview can also take place where it is not practicable to interview the applicant in person. The reasons for this would need to be properly documented in the decision.

Direction 33

- Sufficient opportunity to attend an interview

Case 30.12

Application Details

Miss K applied for a community care grant (CCG) on 9/8/04 for a bed (£80) and a wardrobe (£70) for her 8 year old son.

Miss K stated in her application form that her son had come to live with her.

The first decision maker checked benefit records and established that Miss K had been claiming Income Support for her son for the last month. But on the information presented he concluded there was no evidence of exceptional pressures. He found no part of Direction 4 satisfied and refused an award.

The Reviewing Officer's Decision

Miss K wrote to the Reviewing Officer on 24/8/04. She asked for her case to be looked at again. She said her son was living with her now because her ex-partner could not cope with him any longer. She added that her ex-partner lived over 100 miles away and it was not practical for her son's belongings to be moved this distance. In any event her ex-partner would not agree to this, as it was planned that her son would still go and visit him from time to time.

The Reviewing Officer wrote to Miss K on 26/8/04. In his letter he invited Miss K to telephone him on 2/9/04 if she wanted an interview. She should call at 11 am, and he would then call her back. He explained that if she did not do this he would take it that she did not want an interview and he would proceed with his review.

Miss K did not call at the allotted time. The Reviewing Officer confirmed the original decision, finding there were some pressures but they were not clearly exceptional.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) did not find the Reviewing Officer reached his decision correctly because he should have offered Miss K the opportunity of attending a face-to-face interview. Direction 33 required that the Reviewing Officer should have invited her to an interview, and only with Miss K's agreement could a telephone interview take place instead. She had not been given these options.

The SFI asked Miss K some further questions. It turned out that her son has behavioural problems and her ex-partner had started taking medication for anxiety and depression. He no longer felt able to cope with the demands of their child.

The SFI was satisfied the conditions of Direction 4a(iii) were met. Miss K's son had been sharing her single bed. The SFI decided a grant for a bed is high priority, to allow them both to rest properly and to help them set up their home together. Miss K had room in her own wardrobe for most of her son's clothes. The SFI did not find a grant for a wardrobe would have the same effect and gave it medium priority. As the budget could only meet high priorities a payment was not made for the wardrobe. The £80 requested for the bed was met in full.

Comment

Direction 33(1) generally requires that the applicant must be given the opportunity of attending an interview in person. One exception to this is where the applicant has agreed both to forego the opportunity of being interviewed in person and to take part in a telephone interview.

In this case the letter that was sent to the applicant did not mention the opportunity of being interviewed in person. Neither had the applicant agreed to take part in a telephone interview. For these reasons the applicant was not deemed to have been given a sufficient opportunity to put her case.

Interviews

- How partial awards affect interview offers

Case 30.13

Application Details

Mr Z applied for a community care grant (CCG) on 26/7/04 for a sofa £150, washing machine £200, crockery £10, cutlery £5 and pans £15.

He had been in prison since January 2003. He was due for release on 2/8/04. He explained that he had been homeless before entering prison and had no possessions of his own. A friend had made arrangements for him to rent a bed-sit.

The first decision maker was satisfied that the provisions of Direction 25 were satisfied, as Mr Z had applied for a CCG within 6 weeks of his planned release from prison, he needed help to establish himself in the community following his stay in care, and it was likely he would receive a qualifying benefit upon discharge from prison.

The decision was made on 28/7/04 and a CCG was refused on priority grounds. In reaching his conclusion the decision maker noted that Mr Z had indicated on his application form that the bed-sit was leased on a part-furnished basis. In the decision makers experience this was likely to include the basic items that Mr Z would need to help him set up his home.

The Reviewing Officer's Decision

Mr Z wrote to the Reviewing Officer on 9/8/04. He had left prison and was claiming Jobseeker's Allowance (Income Based). He said the decision was wrong and he had not got anything.

The Reviewing Officer accepted it was unlikely that the landlord might provide kitchen utensils. He said that in view of this he could make a partial award and therefore an interview was not necessary. He went on to find a grant for cutlery, crockery and pans high in priority. The budget could meet all high priorities and reasonable amounts. The Reviewing Officer paid the £30 Mr Z had requested for these items.

The Social Fund Inspector's Decision

Mr Z said he was washing clothes at the local launderette and he did not mind this for the time being. But he felt he should at least have some seating for his home.

The Social Fund Inspector (SFI) wrote to Mr Z and asked him what the landlord had provided him. Mr Z said he had a cooker, a bed, some carpet and curtains. These were basically the items left by the previous tenant, but they would do for now. The landlord had not supplied any seating. Mr Z had asked him about this but the landlord had refused to help.

The SFI accepted Mr Z's evidence as fact. He found Mr Z's need for somewhere to sit in his new home was basic to his ability to establish himself. A grant would have a substantial and immediate effect in helping him to establish himself following his stay in prison. An award was high in priority and Mr Z was paid an extra grant of £150 for a sofa. The SFI agreed with the £30 already paid for kitchen utensils, and he found a grant for a washing machine held only medium priority, meaning a payment could not be made.

Comment

In circumstances where the Reviewing Officer is not minded to revise the determination wholly in the applicants favour, Direction 33 (1) generally requires that the applicant be given the opportunity of being interviewed in person.

One exception to this rule, as set out in Direction 33(3) b, is where the original award was a partial award or a partial award can be made on review.

In this case the Reviewing Officer relied on this part of the Direction in deciding he did not need to offer Mr Z an interview. This was because he could pay Mr Z a partial award of £30 for utensils.

However, Direction 33(4)(b) requires that, even when a partial award has or can be made, the applicant may be given the opportunity of being interviewed if the Reviewing Officer has determined that it would be appropriate to conduct an interview in the applicant's case.

This is a discretionary area. However, where there are gaps in the evidence it will often be appropriate for an interview to take place. It must be remembered that Reviewing Officers have an inquisitorial role, and the Secretary of State guides decision makers that further investigation may be necessary if there is insufficient information.

In this case, it was necessary to find out more about the items the landlord had provided Mr Z and an interview was appropriate. This could take the form of a face-to-face interview, or the Reviewing Officer could have chosen to telephone Mr Z or write to him.

Budgetary issues

- Amounts to award and budget considerations

Case 30.14

Application Details

Miss K applied for a community care grant (CCG) on 26/8/04. She and her two children (ages 3 and 5 years) had just moved to a new council tenancy and needed help with household items. Prior to that they had shared a friends home for 3 months, having fled their old home due to domestic violence and left their belongings behind.

The first decision maker accepted the conditions of Direction 4a(iii) were satisfied and made an award of £1240.94.

The Reviewing Officer's Decision

The Reviewing Officer increased that award by a total of £130. In doing so, he gave the full £100 requested for one bedroom carpet. He also paid the full amount for pans, cutlery, a cot, bedding, curtains and towels.

He based other amounts on high street and well known catalogue prices. This included a grant for a sofa £200, 2 beds £170, and 1 living room and 1 bedroom carpet £200. He also awarded a washing machine, cooker, crockery, kettle, and a fridge.

The only items the Reviewing Officer refused were a wardrobe and chest of drawers. He considered these to be medium priority needs that the budget could not meet.

The Social Fund Inspector's Decision

Miss K received the decision letter giving her a breakdown of the award. She was unhappy with the amounts paid, and the decision to refuse her a wardrobe and chest of drawers. She nominated a representative to act on her behalf, and the Social Fund Inspector (SFI) asked them to explain what the grant had been spent on, and if there was anything else she ought to consider when she looked at the importance of the items refused by the Reviewing Officer.

In reply to the papers Miss K's representative explained that the family were storing their belongings in boxes and suitcases. The SFI was satisfied that a grant for a wardrobe or drawers would not have as much effect as the things already paid. It would not have a substantial effect in easing the exceptional pressures faced and remained medium in priority.

By the end of July Miss K's area had spent 12.99% more on grants than they had planned for. This had happened despite Area Decision Maker's guidance that only high priorities could be met. The SFI noted that by the end of August the situation had not improved. She found a payment could not be made for Miss K's medium priority needs. She also found the Reviewing Officer was right to reduce some of the amounts paid for high priorities because of the budgetary pressures.

Miss K had bought most of the items for the amounts she had been awarded, but it turned out she had failed to buy a sofa or bedroom carpets for the children. She had managed to borrow a sofa off her aunt, and she was told she could keep this until she could afford one of her own. She had purchased a small rug for each bedroom. She had run short of money because she spent some of the grant on carpet for the bathroom, hall, and kitchen.

The SFI was satisfied the Reviewing Officer's decision had been reached correctly and she did not change the decision. She said it had been reasonable for the Reviewing Officer to reduce

some of the amounts, and he had given Miss K enough money to buy items of serviceable quality. She concluded that Miss K had set her own priorities in deciding to spend the grant on things it was not meant for, and the overspent budget could not support another payment because of her actions.

Comment

In this case the amounts Miss K had requested were reasonable, but the Reviewing Officer only paid some of them in full. This was considered to be the right approach because of the extent of the budget overspend.

Being satisfied that the Reviewing Officer had awarded sufficient amounts to buy items of serviceable quality, the SFI sought to establish if there was any reason why the award may have proven insufficient.

The fact that Miss K had chosen to buy things she had not applied for, thereby leaving herself without her own sofa or bedroom carpets, did not make the Reviewing Officer's decision wrong. In this instance, Miss K had managed to borrow a sofa and had bought some rugs. Although the situation was not ideal, it did not make an extra payment for the same items appropriate, in part because of the pressures on the budget.

Budgetary issues

- Underspent budgets and amounts to award

Case 30.15

Application Details

Mrs J applied for a community care grant (CCG) on 27/8/04. She and her four children moved to the United Kingdom in January 2004. They had been living in B&B accommodation before moving to their tenancy in July 2004. Mrs J spoke no English. Two of her children (ages 10 and 13 years) had incontinence and used pads for protection. Her younger children aged 2 and 4 years were in good health.

The family had been without beds, bedding, comfy seating, a table and chairs, cutlery, crockery and clothes storage.

The first decision maker refused an award because he had no evidence that Direction 25 was satisfied. This was because he found no record that Mrs J was receiving a qualifying benefit.

The Reviewing Officer's Decision

The Reviewing Officer established that Mrs J was receiving clerical payments of Income Support and that the conditions of Direction 25 were satisfied. He went on to make an award of £940 under Direction 4a(iii). This was for two sets of bunk beds at £100 each, 4 sets of bedding at £45 each, a single bed for £70, a 3 piece suite for £440, crockery £25 and cutlery £25. In completing his review on 4/10/04 he found that the CCG budget could only meet high priorities throughout the year. He met Mrs J's estimates in full except for the bunks beds, which were instead based on the prices found at a local store.

The Social Fund Inspector's Decision

Mrs J had requested £150 for each set of bunk beds and she was unhappy with the total of £200 paid for these items. She also asked the SFI to consider paying a grant for the items that the Reviewing Officer had refused.

The Social Fund Inspector (SFI) agreed that a grant for the remaining items held medium priority. But he found the decision to refuse a payment for all these things, together with the decision to reduce the award for bunk beds, did not show that the Reviewing Officer had taken all relevant considerations into account. The decision had not been reached correctly.

The Area Decision Maker's guidance advised that high priority needs could be paid, but crucially, by the end of September the area had spent 11.57% less than they had planned for and there were no clear reasons for this. The Reviewing Officer had not shown regard to the state of the budget. The SFI was satisfied the budget could support a payment for the more urgent and pressing of Mrs J's medium priority needs. This included a table and chairs. The SFI said that taking the young ages of Mrs J's children into account a table and chairs would provide them with somewhere suitable to take meals. He acknowledged that the family had been storing clothes in piles on the floor, but he did not consider this medium priority need for storage to be so urgent or pressing. He found the budget could not support a payment to meet this expense.

The SFI awarded the £200 requested for a table and chairs, and as Mrs J had not yet spent the Reviewing Officer's award he increased the award for bunk beds by £100 to a total of £300. He did not change the other amounts as these had already been paid in full.

Comment

Once the priority of the need has been decided the Inspector needs to decide whether to make an award and the amount of any award on the basis of all the circumstances of the case. One of these is the state of the District Office budget. Directions 40 to 42 set out the principles of budget management. The budget is to be managed to give priority to high priority needs throughout the budget year. The annual budget cannot be overspent.

The Inspector should make awards for needs that merit payment in the light of the state of the budget. Where a District Office budget is not spending as planned the Inspector may make awards for a different range of needs, in terms of their nature, extent and urgency, than the budget has been meeting. The degree to which Inspectors may do this will relate directly to the degree of over or underspend. The greater the variance from planned spend the more prepared the Inspector should be to make an award that runs counter to the range of needs the District Office has been meeting.

In this case the Area Decision Maker had guided that only high priorities could be paid. The Inspector had regard to this but found the amount spent on grants was such that some of Mrs J's medium priorities could be paid.

The amounts Mrs J had requested were all reasonable. Given both this, and the budgetary position, it was not sustainable for the Reviewing Officer to reduce the amounts he paid.

Direction 4a(iii)

- Shared parenting

Case 30.16

Application Details

Mr R applied for a community care grant (CCG) on 1/7/04 for a bed and a set of bedding, and bedroom carpet and curtains.

Mr R is a single person who receives Jobseeker's Allowance. He has a 14 year old daughter, Miss P, who lives with her mother. Mr R had recently reached an agreement with his ex-partner, enabling Miss P to stay at his home every weekend and during part of the school holidays. He had lived in his privately rented home for a number of years. The property has two bedrooms so there is room for Miss P to stay, but the second bedroom had only been used for storage up until now and Mr R did not have the facilities to allow her to sleep over.

The first decision maker looked at the situations that grants are for. He decided the conditions of Direction 4a(iii) were not satisfied, as an award will not ease exceptional pressures on both the applicant and his family.

The Reviewing Officer's Decision

The Reviewing Officer interviewed Mr R and it was understood that his situation was unchanged. He told the Reviewing Officer that he felt upset that Miss P could not stay with him. He added that up until now he had regularly visited her at her mother's address every weekend, and at other times he had taken her to the park or on shopping trips. Sometimes she dropped in to see him on her way home from school.

The Reviewing Officer upheld the original decision. In reaching his conclusion on Direction 4a(iii) he acknowledged that Mr R is upset but found that because he is a single person a grant will not ease exceptional pressures on a family. In reaching his conclusion the Reviewing Officer highlighted the fact that Miss P's mother claims Income Support for her.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) was not satisfied that the Reviewing Officer had interpreted the Secretary of State's Direction in the right way. He considered that Mr R's relationship with his daughter is such that they must be regarded as a family.

The SFI did not consider that the Reviewing Officer had used his inquisitorial role correctly either. This is because he had failed to ask Mr R how Miss P was affected by the current access arrangements.

In reply to the SFI's further questions the following new information was provided. Mr R had never lived with his daughter Miss P. He had separated from her mother many years ago and when Miss P was still a baby they had reached an informal understanding that he could see her whenever he chose. Miss P lived in the next street to her father. During the last 18 months or so she had been allowed some more independence and she was basically able to move between her parents two homes as she saw fit. But there was an established arrangement that she always returned to her mother's home at night time, because her father did not have a spare bed. Mr R said his daughter was fine about this, but he would personally prefer it if she could sleep over. He had applied for the grant as he felt the current arrangement had gone on for long enough. He had recently approached Miss P's mother who was in agreement that Miss P could sleep over if she wanted to.

The SFI had regard to the effects of the shared parenting arrangement that had been agreed

between Mr R and his ex-partner. The SFI recognised that it was not ideal that Miss P could not sleep over at her fathers home. This was a source of some pressure, particularly to Mr R. But the best evidence presented in this case showed that Miss P and Mr R continued to see a lot of each other because of the flexible access arrangement and the locality of their homes. The arrangement was longstanding and was not causing Miss P any particular difficulties. The SFI did not find that Miss P was facing exceptional pressures. As Direction 4a(iii) was not met a CCG could not be paid.

In this case the SFI did not go on to consider a crisis loan.

Comment

There is no definition of family in the Social Fund law or directions. For the purpose of Direction 4, decision makers should take a broad and flexible approach to the definition of "family". This should include couples (with or without children, married or unmarried, heterosexual or homosexual), and both nuclear and extended family.

The applicant does not have to be in receipt of benefits payments before their child is considered part of their family.

For Direction 4(a)(iii) to be met, an award must ease exceptional pressures on both the applicant and his family. This means that

- The applicant must have a family;
- both he and his family must be under exceptional pressures; and
- an award must ease the pressures on both him and them.

In this case the SFI was satisfied that Mr R and his daughter are a family, but did not pay a grant because Mr R's family was not under exceptional pressures.

Direction 4a(iii)

- Shared parenting

Case 30.17

Application Details

Mr J applied for a community care grant (CCG) on 9/7/04 for a cot £100, a pushchair £50 and a playpen £50.

Mr J was in prison between November 2003 and February 2004. Following his release he lived at a hostel for a short time until he managed to obtain an unfurnished two bedroom flat. He made a Social Fund application in March 2004 for household items and had been awarded a grant under Direction 4a(i) for a cooker and utensils, a bed and bedding, a sofa, a lounge carpet, and two pair of curtains.

Mr J explained that he was now seeking help with the items that he needed so that his daughter, Miss A, could stay with him.

The first decision maker found the conditions of Direction 4a(i) were no longer satisfied because Mr J had stabilised at his current address for some months now and had already received the basic support needed so he could live there. A grant would no longer help him to establish himself in the community following his stay in prison.

The Reviewing Officer's Decision

Mr J had a telephone interview with the Reviewing Officer on 23/7/04. The Reviewing Officer explained the reasons for the refusal and Mr J agreed that he was basically settled in his home now, but he felt he should be paid a grant because of the difficulties regarding his daughter's care. Miss A was 2 ½ years old and quite a handful. Her mother, Ms C, was taking Prozac for her depression and she was desperate for Mr J to take a more active role in looking after Miss A. Their homes were just 10 minutes away by bus. Ms C was in a relationship and her partner had been living with her since December 2003. He and Mr J did not get on so Mr J had to either take his daughter out for a walk, or take her to his home for a short time.

The Reviewing Officer accepted that Mr J was part of a family. He acknowledged there were some difficulties. But while Ms C might like Mr J to look after their daughter more often, there were already two adults in the maternal home to look after the child, and Mr J could still see his daughter on a regular basis. He did not find the family's pressures were exceptional and a grant payment was not made.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found the Reviewing Officer had not reached his decision correctly because he should have asked Mr J more about his ex-partners depression, plus the nature of their childcare agreement. This was particularly because Mr J said his ex-partner was desperate for him to help out more. The reasons for this ought have been explored.

The SFI wrote to Mr J and asked him some further questions. In reply Mr J told the SFI that he used to live with Ms C until he was imprisoned and she kicked him out. She wants him to spend more time with Miss A because Miss A had difficulty understanding why Mr J no longer lives with them. Furthermore, Ms C's partner does not take an active role in looking after Miss A, and Ms C finds her depression is worsening. Last month she started taking medication because she could not

cope. Mr J could borrow Miss A's pushchair whenever she comes to his house. It is expected that she would spend 3 nights a week with Mr J.

This new information led the SFI to make a grant payment. Taking account of both the extent of Mr J and Miss A's relationship before he entered prison, together with what was now known about the effects of current access arrangements, the SFI was satisfied a grant would ease exceptional pressures on both Mr J and his family.

The SFI decided that the most pressing need was for a cot, as this would allow Miss A to sleep at Mr J's home. This was high priority. The playpen was not seen as being so important. And as Mr J could borrow his ex-partners pushchair this need was not found to be very urgent either. A grant for these remaining requests would not have a substantial and immediate effect in easing the exceptional pressures faced by Mr J and his family so the SFI gave these needs medium priority for a grant.

The evidence about the grants budget showed Mr J's area was consistently meeting only high priority needs. The SFI awarded the £100 requested for the cot and refused a payment for the other items.

Comment

In cases where a parent and child live separately it may be important to examine how close their relationship has been in the past when considering what effect their current situation is having. In this case it was established that Mr J used to live with Miss A and that the current care arrangements were having a detrimental effect on not only Mr J but also his daughter and his ex-partner.

Decision makers have a duty to obtain necessary information, and in this case this meant asking Mr J more about his relationship with his daughter, and the impact that access arrangements were having on his family.

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 intent¹.
- 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 together².
- 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)³

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.)

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

² *Idem*

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