

the journal

and digest of decisions

Independent Review Service for the Social Fund

Autumn 2002 issue 23

refugees & asylum seekers | human rights
Inside: exclusions | shared parenting | direction 4(a)(v)



INVESTOR IN PEOPLE

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Independent Review Service
for the Social Fund

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Editor's letter

Welcome to the 23rd edition of the journal. The subject matter of this edition has been chosen to cover particular issues that you, our readers, have asked for. The articles cover a breadth of areas, including asylum seekers and refugees, and how they interact with the Social Fund. I am particularly pleased to include an article by Bharti Patel from the Refugee Council.

We have also been asked to deal with areas around Social Fund exclusions, shared parenting and Direction 4(a)(v). I hope they are helpful and informative, both to Social Fund practitioners, and to those with a more general interest in the Fund.

You will also notice that, for the first time, the numbering of the digest is the same as the main journal. They had been different to one another because the digest began life some time after the original journal. Again, in response to readers' requests, I am pleased to introduce that change.

As usual, I would welcome any feedback you may have on the journal, and suggestions for future issues. You can contact me on 0121 606 2166 or by e-mail at pgm@irs-review.gov.uk I very much look forward to hearing from you.



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News

Workshops

We deliver workshops to the Department for Work and Pensions and welfare rights agencies to help provide a greater understanding of the Social Fund. They are held in a venue of your choice, are for a minimum of 12 people and are free of charge. Since April 2002 we have provided workshops to 179 welfare rights and government agencies. If you would like to receive further details about the workshops we provide, please contact Judy Deakin or Dave Moore on the Business Team (see contact details below).

Self instruction packages

We produce a self-instruction package about the Social Fund. A package is available giving:

- a basic overview of the Social Fund.

Other packs will be available before the end of the financial year. If you would like to receive a self-instruction package, please contact Pat Instone on the Business Team (see contact details below).

Raising awareness

We issued a range of leaflets to welfare rights agencies in Scotland, Yorkshire and Humberside, the North East, the North West and the West Midlands. In the next six months the leaflets will be issued to the South East, East Midlands, Eastern Region, London, the South West and Wales.

To increase the awareness of the right to an independent review, we attended the NACAB conference in York and the CAB Scotland conference. We have also continued to be active in writing articles about the Social Fund for external publications. Since April 2002 we have written articles for Shelter, and for Poole Council for Voluntary Services.

All of our publications are issued free of charge. If you would like to receive copies, or if you would like us to write an article for your publication, please contact Jan Simkins or Avril Wharton on the Business Team (see contact details below).

Regional meetings with Social Fund managers

We attend annual meetings with Social Fund managers and other managers in each region to discuss issues arising from regional reports compiled by the IRS. These reports give an overview of each district's performance and other Social Fund issues. We have recently held meetings in Scotland, Newcastle, Salford and Yorkshire & Humberside. The programme of visits will continue throughout the year, based on the new regional structure.

Alternative telephone service available

Deaf or hard of hearing customers who have a text phone can now call us on 0845 300 1964.

IRS external focus contacts

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Delivery of area directorate meetings and reports

Patricia Instone or Jim Davies-Shuck. **Tel:** 0121 606 2160 or, **eMail:** pi@irs-review.org.uk or jds@irs-review.org.uk

If you live in Northern Ireland you should contact the Office of the Social Fund Commissioner. Please see the back cover for details.

Refugees & Asylum Seekers

What *really* happens when you're new to the UK?

Bharti Patel of the Refugee Council outlines her experiences of people new to the UK, and highlights some of the key events between arrival and accessing the Social Fund



As long as there is conflict throughout the world there will be asylum seekers and refugees. In the UK the Home Office received 71,700 applications for asylum in 2001. Each year about 45 percent of asylum applicants are allowed to remain. Refugees have a huge amount to offer all aspects of society, and mainstream agencies can play a crucial role in helping them to settle in the UK. To achieve this aim, it requires an appreciation of the challenges that refugees face when trying to rebuild their lives, and some of those issues are outlined in this article.

Arrival in the UK

Most asylum seekers arrive in the UK alone and with nothing. Many will have left behind everything, including loved ones and personal possessions, in order to flee to a place of safety. Once here, life as an asylum seeker can be very challenging, and the lifestyle is one that is bound up with uncertainty, stress and poverty. On average, asylum seekers wait 13 months for an initial decision on their claim for asylum. If the case goes to appeal, then there is a further wait of six months. The asylum process can be intrusive, with individuals being put through a mill of lawyers, immigration interviews and appeals.

Whilst the legal process takes its course, asylum seekers are supported through a separate support system which is administered by the National Asylum Support Service (NASS), a Government department. This means that asylum seekers are not entitled to mainstream benefits or housing assistance. Asylum support is based on dispersal away from London and the South East. Individuals

are supported financially at subsistence levels of around 70 percent of the usual Income Support rates and accommodation is allocated on a “no choice” basis. These support arrangements have been in place since April 2000 and are widely considered to isolate individuals from their communities. Income levels at this stage are well below the poverty line, and asylum seekers cannot improve their finances since they are not allowed to work for the first six months. This ongoing background of very limited resources often means that when the time comes for the individual to be recognised as a refugee – usually when he has been in the UK for a couple of years – he is still likely to be without furniture, personal possessions, or even adequate clothing.

In spite of this type of experience, refugees are often hugely resilient and enterprising, and are desperate to make a contribution to society. They are well placed to do this because refugees tend to be well skilled and well qualified. For example, Home Office research found that 33 percent of refugees were likely to have a university degree, whilst 51 percent came from a professional or managerial background. In spite of this, the research found that unemployment rates amongst refugees was disproportionately high, ranging from 75 to 90 percent.

Difficulties even when refugee status is granted

To compound matters, once an asylum seeker receives a positive decision, he only has 28 days to leave the National Asylum Support Service framework.

Given this short time frame, it is often a challenge to effectively access mainstream benefits or employment as well as find alternative accommodation. At present, allocation of National Insurance (NI) numbers by the Department for Work and Pensions is a particular problem, and this impacts especially on this stage in the process. As well as affecting the speed with which permanent benefits can be awarded, the wait for an NI number can jeopardise employment prospects, and can increase the risk of homelessness or destitution when delays are severe.

Access to clear and reliable information about benefit entitlements remains a challenge for refugees today. This is a crucial area, particularly given the ever-changing framework of Social Security regulations, and the strict rules which surround the backdating of benefits where individuals do not claim the right benefit at the right time.

Language barriers

Language too can be a real barrier. When things go wrong, it may be very difficult for refugees to deal with day to day problems in the way that most of us would do comfortably. The extent of the difficulties this creates can be quite substantial, and is generally much more than just a trivial inconvenience.

When problems like this occur, advocacy and interpreting tools are essential. Agencies should try - and indeed some are under a duty - to ensure appropriate provision of translated materials and interpreters. Many refugees rely heavily on their communities and support organisations. Refugee Community Organisations can provide a useful link between refugees and host communities, but they are often stretched for resources, and run on the goodwill of volunteers.

Some refugees may, as a result of past experiences, have encountered physical or psychological injuries. This may not always be apparent because of the language barrier. In particular, the incidence of mental health problems amongst refugees is high. Those same language barriers, plus a lack of knowledge about entitlements particularly affect this group, and this leads to individuals not getting the help they need. Survivors of torture and organised violence, for example, should be able to access long term medical care, therapy and counselling through the NHS or specialist agencies.

Bharti Patel is a Senior Policy Advisor with the Refugee Council, which gives practical help and promotes refugees' rights in Britain and abroad. More detail can be found at www.refugeecouncil.org.uk



The applicant and her partner had two very young children. She applied for a community care grant (CCG) for household items as the family was being rehoused. She was disabled, and had been homeless for nearly two years. She was in the middle of custody proceedings about her eldest son.

The family's circumstances were such that a CCG would be appropriate but for the fact that the applicant was not receiving a qualifying benefit. Her partner was refused asylum, and so he had no recourse to public funds. This meant that her Income Support rate provided for only one adult rather than a couple. And since the applicant's Incapacity Benefit rate was more than that Income Support calculation, the latter was not payable. The effect of this was that she could not be considered for a CCG. She was rightly awarded a crisis loan by the Reviewing Officer, the only payment available to her from the discretionary Social Fund. The Inspector confirmed this.

The applicant disagreed and said that the decision was flawed in law because the decision about Income Support was erroneous in law. In addition, she said that it was incompatible with Articles 8, 12, and 14 of the Human Rights Act. She referred to the freedoms that promote family life, and she contended that she was a victim of discrimination on grounds of her disability.

The Customer Service Team Inspector appreciated that case law is still developing in this area. Nevertheless, he found that the evidence did not support the applicant's view. He found that only Article 8 had possible relevance. In essence, the applicant was arguing that the Inspector's decision had interfered with her rights under Article 8.

However, the Inspector's decision was justifiable under Article 8(2) because:

- (a) it was in accordance with the law; and
- (b) the Social Fund is cash-limited. Such a decision is necessary to secure fairness between applicants, and is necessary in a democratic society for the protection of the rights and freedoms of others.

On that basis, the Inspector's decision was compatible with Article 8.

Conclusion

Refugees will all 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 their experience once they arrive in the UK, involving as it does a number of difficult processes, dealings with Government departments, and complex procedures. There are numerous opportunities for the process of settling into the UK to fail. One of the final stages will usually be an approach to the Social Fund, and getting the right decision at the earliest stage will often provide the key to a permanent and successful foothold in the community. An appreciation and understanding of what these Social Fund applicants have gone through already is vital in ensuring that applications are handled sensitively, and that individuals can gain proper access to the Fund.



Human Rights and the Social Fund - an introduction

Carlo Rioda gives an overview of the Human Rights Act and explains why it raises issues for the Social Fund and its decision makers

The Human Rights Act 1998 (“the Act”) came into force on 2 October 2000. It incorporates most of the rights expressed in the European Convention on Human Rights (“the Convention”) into UK domestic law. This means that in theory, citizens should now be able to enforce their Convention rights in the domestic courts, without recourse to the European Court of Human Rights. However, in practice, the lack of case law means that there are uncertainties about the precise ways in which Convention rights will apply. This article introduces the Act, and sets out what some of the most likely issues may be for the Social Fund.

The legal framework

Section 6 of the Act makes it unlawful for a public authority to act in a way that is incompatible with a Convention right, unless it is required to do so to give effect to primary legislation.

The term, “public authority”, includes “any person ... whose functions are functions of a public nature”, and so this includes Social Fund Inspectors, Reviewing Officers and Decision Makers. It follows that Social Fund Decision Makers have a duty to consider human

rights issues even if an applicant has not raised them.

In addition, Section 3 of the Act requires that, “so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights”. This requires the Courts to take a much more flexible approach to the interpretation and application of the law, where this is necessary to avoid a breach of Convention rights. All of this confirms that the Convention rights should form a backdrop to decision making in the Social Fund.

Increasing awareness

Inspectors are seeing more references to human rights in correspondence from applicants and their representatives. Often applicants simply assert that their rights have been violated, without making reference to particular Convention rights. However, references to particular rights are increasing too. As awareness of the Convention grows, and as case law expands, Inspectors and other decision makers are likely to see more frequent and more detailed arguments about human rights issues.

The right to life

Article 2 is about the right to life, and this imposes an obligation on the State to protect people against threats to their lives. It may be that an applicant asserts this right in relation to sparse home conditions, and the risks that he perceives may arise from that.

In the Social Fund context, human rights challenges are most likely to focus on whether the State has a positive obligation under one of the Convention rights to provide Social Fund assistance. But even where the State has a positive obligation, there may be difficulties determining which of the many agencies of the State is (or are) responsible for meeting the obligation.

The right to respect for private and family life...

Article 8 is likely to raise most issues for the Social Fund. It provides that “everyone has the right to respect for his private and family life, his home, and his correspondence”.

The European Court of Human Rights has found breaches of Convention rights where, for example, contact between parents and children has been restricted unreasonably. Examples of the sorts of issues in such cases are covered in Mervyn Batchelor’s article on page 10. There may also be issues where assistance is required to maintain family ties. This could include cases involving contact between a parent and child living in different locations.

The right to a fair hearing

Article 6 concerns the right to a fair trial. In the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 is unlikely to present problems for Inspectors for two reasons:

- Inspectors have jurisdiction over community care grants, budgeting loans, and crisis loans. Since awards from this part of the Social Fund scheme are discretionary, applicants are unlikely to have a “right” that is being determined by the Inspector, and so Article 6 would not be applicable;
- in relation to the non-discretionary elements of the grant and loan scheme, such as eligibility, there is the potential for Article 6 to apply. However, the natural justice elements in the Inspector’s independent review, coupled with the opportunities for a judicial review, mean that a breach of Article 6 is unlikely.

Summary

At present there is a lack of case law that relates closely to human rights issues in the Social Fund context. There is some uncertainty as to the implications of the Convention rights for Social Fund decision making. Similarly, the case law on the Act itself is in its early stages. There are uncertainties as to exactly how public authorities such as Inspectors should approach decision making where there are issues of incompatibility.

Given the lack of clarity in the law, the Social Fund Commissioner is seeking Counsel’s opinion, with a view to preparing Commissioner’s Advice for Inspectors. Once the Advice has been finalised the implications of the Act for the Inspector’s review will be explored in further detail in a forthcoming issue of the Journal. In the meantime, Social Fund decision makers, in order to comply with the Act, must consider human rights issues as they arise, whether or not an applicant has raised them. In most cases there are unlikely to be any significant human rights issues, but decision makers must be alert to a minority of cases where real issues do emerge.

Article 2

(1) Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- in defence of any person from unlawful violence;
- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 6

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) & (3) [These relate to criminal offence matters]

Article 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime for the protection of health or morals, or for the protection of the rights and freedoms of others.

Community Care Grants under Direction 4(a)(v)

Did you know..?

When can grants be paid under Direction 4(a)(v)? Craig Cooling gives the background and answers some of your questions



though an alternative route to grant qualification generally exists for any families facing exceptional pressures.

Setting up home in the community

The “home” here must be permanent accommodation, or temporary accommodation that will lead to permanent accommodation. The process of setting up of home will generally include finding a property and dealing with associated administrative matters such as contacting fuel and water companies, as well as making the property habitable.

Because the process of setting up home is more than simply locating somewhere to live, applicants who have begun

What is Direction 4(a)(v)?

Direction 4 sets out a number of ways an applicant can qualify for a grant. Part (a)(v) is one of these. The intention of the Direction is to help people who do not have a stable or settled place to live. It provides for assistance “where such assistance will help the applicant to set up home in the community as a part of a planned resettlement programme following a period during which he has been without a settled way of life”.

To qualify - and so be considered for - an award, an applicant has to satisfy **all** three of the specific elements of the Direction, which are:

- setting up home in the community
- as part of a planned resettlement programme
- following a period without a settled way of life.

Who does it help?

The other three branches of Direction 4(a) date from 1988, but this part of Direction 4 was only introduced in April 1999. Generally it sets out to help people who have had a period of homelessness or been without a settled way of life in some way, and who need help to set up home. Families too can satisfy this Direction,

programmes after accepting or moving into their property may also satisfy the Direction. For example, an applicant may have found somewhere to live, or indeed may have moved in, but may still have little or no furniture. In such a case it would still be possible to meet the qualifying conditions, since it would be hard to argue that the applicant had completed the process of “setting up home”.

Planned programme of resettlement

The programme must be a series of things or events that are planned to happen. The applicant must be actively participating in the programme, rather than it being simply available if desired. It must help the applicant:

- to set up home in the community; and
- resettle in some other way beyond merely setting up home. For example, to take up training or work experience schemes, or assist with budgeting skills, life skills, or something similar.

Who has to be running the programme?

Anyone can run the programme. The status of the planner is less important than the existence of the plan.

Key workers, other professionals, family members, or even the applicant himself could run such a programme.

Without a settled way of life

The applicant must have had a period of homelessness or have been without settled accommodation. For example the applicant may have been staying in a hostel, or staying with a variety of friends.

Where an applicant's way of life is unpleasant, that does not in itself mean that the way of life is unsettled. Generally if the applicant has a settled place to live, however undesirable that may be, then it is unlikely that he will be "without a settled way of life".

How long must the applicant have been without a settled way of life?

There is no minimum period for the applicant to have been without a settled way of life. However his unsettled state must have become his way of life.

Can refugees or asylum seekers satisfy this direction?

Yes. Indeed the Secretary of State's guidance was amended in April 2000, and specifically says that "people who have been without a settled way of life may have been ... staying in temporary accommodation provided by the Home Office pending a decision on their application for asylum in this country". In addition, that guidance suggests planned programmes of resettlement may be run by voluntary bodies (such as the Refugee Council) which are funded by the Home Office. As noted earlier, anyone can run a programme of resettlement; it need not necessarily have been run by a publicly funded body or charity.

Where can I get more information or help with this direction?

Issue 16 of the Digest of Decisions included the Social Fund Commissioner's advice to Inspectors on this subject. It is also available in the Information Centre on the IRS website: www.irs-review.org.uk

In addition the Secretary of State offers guidance in his Social Fund Guide. You can find this in the Publications/Resource centre of the Department for Work and Pensions (DWP) website: www.dwp.org.uk

The IRS also offers workshops about Direction 4(a)(v) to representative organisations and to DWP decision makers. They are free of charge and can be delivered at a venue of your choice. Further details and a booking form may be found on our website, or alternatively you can call Lorraine Moran, of the IRS Business Team, on **0121 606 2141**.



The applicant was a single man aged 23, and was a refugee. He had no health problems. He applied for a community care grant for household items and decorating costs as he now had a home of his own, which was an unfurnished Council tenancy. He did not have the means to furnish it. Direction 4(a)(v) was the only possible way he could be considered for a grant.

The Reviewing Officer decided the conditions in Direction 4(a)(v) were not met because he had not had an unsettled way of life. That was because he had not been staying in a hostel. The Inspector rightly said that this reasoning was wrong because it was clear the applicant was setting up home following an unsettled way of life.

The applicant was given leave to remain in the UK around May 2001 while he was living in London. He tried to get a hostel place there but was unsuccessful. He stayed with various friends, latterly in Huddersfield. He moved there because housing is cheaper. He approached an organisation that helps asylum seekers and refugees to get housing, and as a result was given the unfurnished Council tenancy.

In his decision the Inspector concentrated on the minimal role played by the refugee organisation. That role was limited to simply identifying potential accommodation. So the Inspector found that the applicant was not setting up home as part of a planned programme.

What the Inspector overlooked was the applicant's efforts to make a home for himself in this country, of which getting accommodation was just a part. To begin with, he had been actively seeking accommodation and making steps himself to get it. In addition to this he was doing more than simply signing on as available for work. He was taking a 26-week course to acquire English language skills, written and oral, as he had a poor command of English. This course required him to attend college for three days a week. It was linked in with job search to help him find realistic employment. The evidence from his training co-ordinator was that he was working hard at this, and his need to furnish his home was linked in to his efforts to improve himself and find work.

From this the Inspector should have concluded that the applicant had a plan of his own devising which involved several elements. These were getting accommodation, actively learning the language of the country in which he was going to settle, and a structured approach to equipping himself to obtain work. He had a set of intentions and went about organising how to achieve these objectives.

Putting all this together, the Inspector should have concluded that this constituted a rudimentary resettlement programme of the applicant's own devising. Setting up home was a part of that. All the requirements of Direction 4(a)(v) were met in this case.

It is normally the case that a resettlement programme will be run by someone other than the applicant. This case is a reminder that decision makers need to be alert to what the evidence in a particular case is saying even when an applicant has not made a specific case themselves. As was the case here, an applicant's very limited English can make it difficult for him to highlight his programme in detailed terms.

The applicant was unhappy with the Inspector's decision that a grant could not be awarded. Looking at the case afresh, it could be seen, as above, that D4(a)(v) was met. The case was re-opened and a grant was awarded to meet some of the applicant's needs.

Exclusions: when help can't be given

There are some needs that the Social Fund cannot help with. **Kevan Hands** outlines some situations where help is excluded

For most types of needs, help from the Social Fund can be considered. But there are certain expenses that the law says cannot be paid for out of the Fund. These “exclusions” are set out in the Secretary of State’s Directions 23 and 29, which relate to crisis loans and community care grants. In Northern Ireland there is one additional exclusion relating to home or personal security costs (see Digest entry 23.5 inside this issue).

Some of the exclusions present quite difficult questions of interpretation, and it is those areas that are highlighted in this article. Reviews at the Independent Review Service (IRS) show that those difficult areas relate to the exclusions about:

- housing costs;
- medical items; and
- any expenses which the local authority has a statutory duty to meet.

Generally, the onus is on the decision maker to show that an exclusion applies. Sometimes, however, there are exceptions to the exclusions (see “Housing costs” below, for example), and in those cases it will be for an applicant to show that the exception applies in his case. Since applicants will not usually be experts in the Social Fund field, decision makers should normally bring these matters to the attention of the applicant, and make appropriate enquiries in order to reach a sound judgment.

Housing Costs

This exclusion says that “housing costs, including repairs and improvements to...the home” are excluded. Commonly, such applications involve boilers, central heating systems, windows and doors, shower installations or general household repairs.

However, an exception to the rule is that minor repairs and improvements are not excluded. This issue - whether the repair or improvement is minor - is usually the one on which such cases turn. Decision makers at the Agency frequently argue that the cost of the work is the key factor. But although cost is one relevant factor in deciding whether a repair or improvement is minor, it is not the only one.

The nature and extent of the work, the time needed to complete it, as well as the cost should be considered. Indeed, the Social Fund Guide [paragraph 2301] advises that “it is normally the type of work, not the cost which determines if it is minor.”

This underlines that it is important for decision makers to have as much detail as possible about the repair or improvement, preferably including a cost breakdown, how long the work will take, what it will entail and the type of work involved. This may come from a professional tradesperson, or it may come from the applicant.

Medical Items

Help cannot be given “in respect of...a medical, surgical, optical, aural or dental item or service”. The main issue here is normally whether a particular item is classed as a medical item. Case law (*R v. Social Fund Inspector, ex parte Connick*) confirms that an item of ordinary everyday use cannot be regarded as a medical item. And just because an item is needed because of a medical problem, that is not enough to make it an excluded medical item. So, using a common example from our casework, items such as “anti-allergy” bedding needed to help manage eczema or an allergy, would not be a medical item.

To ensure the right approach, decision makers should ask two questions, in order:

1. ***Is the item an item of ordinary everyday use?***

If it is, then the exclusion does not apply. If it is not, then ask:

2. ***Is the item manufactured for the sole purpose of curing, alleviating, treating, diagnosing or preventing a medical condition?***

If it is, then the exclusion applies.

Items that are manufactured for the sole purpose of monitoring a medical condition will also generally be regarded as a medical item. This is because monitoring

is not an end in itself, it is part of the diagnosis and treatment of a condition. This means that blood pressure or blood sugar monitors, for example, would be excluded as medical items.

However, some items alleviate the consequences of a medical condition rather than the condition itself, and decision makers should be alert to this. Examples of this sort of item are walking aids, incontinence pads, and other aids and adaptations that disabled people need to help them do ordinary tasks. Similarly, a wig to deal with hair loss resulting from a medical condition would not be excluded. None of these examples would generally be regarded as medical items, so would not be excluded.

Casework has shown that the most difficult issues for decision makers involve wheelchairs and special types of bed. A bed is an item in ordinary everyday use, so help is not excluded. Wheelchairs, by comparison are not items in ordinary everyday use for the general population, so the second question would need to be asked. And turning to the second test, they do not diagnose or cure a medical condition. Although the consequences of a person's medical condition might be assisted by the use of a wheelchair, the link to the medical condition itself is too indirect. Therefore, the medical items exclusion does not apply.

Local Authority Statutory Duty

Direction 29(b), which affects only community care grants, says that grants cannot be awarded "in respect of any expense which the local authority has a statutory duty to meet". The types of expense most commonly at issue here are things such as the provision of wheelchair ramps, disabled shower facilities, stairlifts and household modifications required due to a person's disability.

The local authority has various "duties" (which come from Acts of Parliament) to meet certain expenses on behalf of disabled people. Normally an assessment is used to establish whether or not there is a duty. Some of these payments are mandatory and some are discretionary. It can be difficult for decision makers to establish whether a local authority is duty-bound to meet a particular expense, or whether it only has the power to do so.

Where the local authority has made an assessment, and accepted that a grant is necessary, then the issue should be clear enough for the Social Fund decision maker. There is a statutory duty on the local authority, and therefore the Social Fund exclusion will apply.

By contrast, in cases where no assessment has been made, or the local authority has made an assessment but not found the work to be necessary, the issues are less clear cut. In most of these cases, the decision maker will be unable to show, on the balance of probabilities, that there is a statutory duty for the local authority to meet the expense. For that reason the exclusion is unlikely to apply.

Particular care is also needed when the local authority refuse a discretionary grant because they decide a grant is not necessary. That decision will not automatically mean that the case for a Social Fund payment is therefore less urgent. This is because in determining whether it is necessary to make arrangements to meet the person's need, the local authority is entitled to take into account not only the urgency of the need, but also the pressure on its own resources. In other words, it could decide that even though a particular facility is urgently needed, it is not under any obligation to provide it because its budget is hard pressed. So for the Social Fund decision, careful consideration of all the circumstances will need to be given in the normal way.

Summary

There are many other exclusions which have not been examined in detail here. Some are more difficult in application than others, and we have sought to add clarity to some of those. The onus is on the decision maker to show that an exclusion applies to a particular category of need, not on the applicant to show that it doesn't. As such, it is essential that interviews and written enquiries gather the right evidence to deal with the issue at hand.

More information

The Social Fund Commissioner's Advice Notes on this subject are available in the Information Centre of the IRS website: www.irs-review.org.uk

- The Interpretation of Exclusions
- Exclusions: Medical items
- Direction 29(b) [Local Authority Statutory Duty]

Issue 18 of the Digest of Decisions, inside **IRS Journal 22**, contained an updated index of decisions which illustrate numerous issues involving exclusions. The current issue of the Digest, enclosed, also covers some further cases which centre on exclusions.

When the children come to stay...

Many parents share access arrangements for their children, and household items may be needed to make that possible. **Mervyn Batchelor** looks at when Social Fund help might be available

In IRS Journal 17 (October 2000), Gill Collinge explained the background to what was termed “shared parenting”. This term is a convenient way of describing those cases in which the applicant’s contact or relationship with children who do not normally live with him is an issue. Since then, the Human Rights Act 1998 (“the Act”) has come into force. This means that Inspectors also have to bear in mind the backdrop to decision making which that Act provides. In particular, Article 8 provides that “everyone has the right to respect for his private and family life...”

The child’s best interests

Family life includes a wide range of relationships. It may extend beyond biological or legal family relations if there is a relationship of a family kind. Where an applicant has a blood or adopted child, it would be difficult to argue that this does not amount to a family, even where the individuals have not so far been a feature of each other’s lives.

Where a child is involved, the focus must be on the best interests of the child. The general legal and social policy is that those interests are best served by maintaining contact with their parents, should their parents separate. The same considerations would apply even where the parents may never have actually lived together.

Issues for decision makers

Community care grants and crisis loans can complement the efforts of applicants and others in supporting the parental role. For Social Fund decision makers, the most difficult issues are around:

- whether Direction 4(a)(iii) is met. ie, are the applicant and his family facing exceptional pressures?
- will an award ease exceptional pressures on both the applicant and his family?
- the priority (high, medium or low) for payment of a grant if those conditions are met
- is a crisis loan under Direction 3 appropriate in cases where a grant cannot be paid?

These types of cases most commonly involve requests for furniture and household items so that the applicant



can fulfil their parenting role for the periods when they have access or contact. Very often the provision of a separate sleeping facility at the “absent” parent’s home is a key element of the application. Sometimes items are needed to add to an existing home so that access arrangements can be implemented or re-started. Other cases may involve the initial setting up of a new home after separation, and the absent parent wanting to equip that home for the children to stay overnight from the outset.

Two particular considerations are generally important here:

- any pressures caused by the children lacking access to the items when they are living with the applicant; and
- any threat to the child’s continued contact with the applicant, or to the contact being set up in the first place.

Each situation should be viewed objectively. Key facts in deciding these matters are:

- the nature of any existing contact arrangements;
- how long it has been since contact was broken if that is the case;
- what the plans are for establishing contact; and
- the likelihood of this coming about.

Approach to case work

To meet the conditions in Direction 4(a)(iii), both the applicant and his family must be facing exceptional pressures. In their casework, Inspectors sometimes see decisions which fully accept that the applicant is facing exceptional pressures, but which do not accept that those pressures extend to, and affect, the applicant's family (i.e. the child). Often the argument for this is that the child has an established and usually settled home elsewhere. And that any pressures are solely as a result of the applicant's decision to embark on the shared parenting arrangements.

However, such an approach would undermine the principle of what is best for the child. The decision maker should consider whether the facts as they are presented show that exceptional pressures exist, not whether a different set of facts may prevent those pressures. In other words, the decision maker should ask himself whether children sharing an applicant's bed several nights a week, with the applicant sleeping on the floor, contributes to exceptional pressures; not whether the children could return at night to their other parent's home which already has beds.

And in considering whether a grant will ease exceptional pressures on the family, it is important to remember that it is not necessary for a child to consciously feel or experience such pressures. The question is whether the pressures exist. Therefore babies, or young children, are as capable of being part of a family facing exceptional pressures as anyone else.

It has to be borne in mind that the Social Fund is cash-limited, so priority is often an issue. It might not be possible to meet some or all of an individual's needs in relation to the care of children, even where the need is quite pressing. But decision makers should, as before, bear in mind that continued contact with both parents is generally in the child's best interests. So just as in the example above, arguments should not be based on alternatives which would work against those best interests. As in all cases, the priority of the need will depend on consideration of all the circumstances in the round.

Priority is unlikely to be a problem in respect of crisis loans since most loans budgets can support such awards. But other factors such as an applicant's existing Social Fund debt, or his ability to repay a loan, may affect the amount of any award. More commonly, though, the crucial issue will be whether or not the conditions in Direction 3 are met. Particular care would be needed before concluding that changes to the access regime

might provide an alternative, or "other means", to a crisis loan. Attention would also have to be given to identifying any risk to the applicant's mental, as well as physical health, if a crisis loan is refused. For example, the effect of a decision which effectively denied plans to continue or instigate access arrangements.

The following example from IRS casework briefly illustrates some of the issues involved. It highlights the difficulties in deciding both qualification and priority issues in community care grant cases.

Miss A's two sons were in their early teens. They had gone to live with their grandmother some months before the application for a grant was made. This had happened twice before. There was little contact between the boys and Miss A - a meeting at Christmas to exchange presents, and another with one of the boys on his birthday. The grandmother had forbidden telephone contact, and the applicant had little idea of how her sons had reacted to what was going on. The applicant was trying to regain contact, including overnight stays, through the courts, and separately by negotiating with the grandmother. She wanted beds and bedding for them as their old ones had been thrown out due to bed wetting.

Despite the limited contact between the boys and their mother, the evidence showed a stressful situation for all concerned, and that for the mother to have the means for her sons to stay with her would ease the exceptional pressures on all of them. The applicant made the point that a court would not contemplate allowing overnight stays if the home was not suitable for them. However, there was no time scale over which this issue was likely to be decided, and negotiating independently with the grandmother seemed unlikely to resolve the issue in the mother's favour.

Having found Direction 4(iii) met, the Inspector would have to consider the priority of the needs. In other words, the impact that providing beds and bedding for the boys now was going to have in terms of easing the exceptional pressures on the family as a whole.

Summary

When we look at shared parenting cases, we are not applying any principles that are fundamentally different to the approaches we take in other cases. We need to take a broad view of such concepts as exceptional pressures, priority, and the crisis loan provisions. This should ensure that decisions reflect the wider legal and social context, and that Social Fund decision making promotes the best interests of applicants' children.

Access issues

- an update from Journal 21

Al Judge & Dave Moore highlight the particular problems that refugees and asylum seekers may have when they deal with the Social Fund

Asylum seekers and refugees may face special difficulties when they need to access the Social Fund. In this article we look at some of those potentially problematic areas.

Language barriers

The language barrier is perhaps the most obvious source of difficulty. Application forms may be misunderstood, and vocabulary limitations may reduce an applicant's ability to describe their needs clearly and effectively. Answers may be unclear, or lacking in detail, which if not dealt with may hamper the ability of the decision maker to make a speedy and informed decision.

The best opportunity for good information gathering is at the face to face interview. Some Department for Work and Pensions offices use their own staff to translate information at interviews. Their familiarity in dealing with benefit matters makes this doubly helpful. However, more often than not applicants rely on family, community members or other representatives for this service. A lack of knowledge about the Social Fund by the translator may reduce the effectiveness of any translation.

Even when there are difficulties, the decision maker still has an inquisitorial role. In other words, a duty to ask for information which will resolve the crucial issues in the case. Decision makers may need to allow more time than usual, or consider phoning applicants or representatives, in order to resolve issues where there are language or other difficulties.

Cultural barriers

There may be cultural reasons why refugees and asylum seekers might view their needs differently to those of other groups. For example, it is the norm in some cultures for a mother to share a bed with her small child. In this example, if the mother was applying for help to buy a double sized bed, the cultural position would be one of the relevant considerations.

National Insurance numbers

Feedback to the IRS from welfare rights groups suggests that there is a waiting period for interviews and allocation of National Insurance (NI) numbers in most districts.

The delay in the allocation of an NI number can lead to applicants being refused a Social Fund application form until the NI number has been allocated, or until it can be seen that regular benefit itself has been awarded.

This should not be the case. Everyone has the right to make an application to the Fund, and to do so without hindrance. If a person's status in terms of a NI number is an issue, then the decision maker has the opportunity to make any necessary enquiries once the application has been made.

Crisis loans

We have seen cases where decision makers have delayed, or refused to make, a decision on a crisis loan application until an award of benefit has been made. The delay is usually said to be necessary in order for the decision maker to be certain that the applicant can repay any loan.

Again, these delays should not happen. The relevant law and Directions say that decision makers must:

- have regard to the likelihood of repayment and the time within which repayment is likely; and
- not award a crisis loan in excess of the amount which the applicant is likely to be able to repay.

Like all Social Fund matters, these questions need to be decided on the balance of probability. So the decision maker does not have to be certain about benefit entitlement; simply whether it is more likely than not that an award of benefit will be made from which the applicant can repay a loan. This approach should avoid the delays which refugees and asylum seekers sometimes report at a time when they are generally seeking help to deal with an urgent, crisis situation. The importance of the crisis loan application in these circumstances cannot be overstated, since the other routes to Social Fund help - community care grants and budgeting loans - will be blocked on eligibility grounds.

Conclusion

Decision makers should be alive to the special problems that groups such as asylum seekers and refugees may have. Being aware of these difficulties, and making arrangements to help overcome them, can go a long way towards making a difference to access.

Summary

of the Social Fund Commissioner's Annual Report

During 2001/2002:

2001/2002

Work Activity

- Inspectors delivered 25,681 decisions;
- they changed 60 per cent of community care grant decisions, 34 per cent of crisis loan decisions and 10 per cent of budgeting loan decisions.

The Standard of Social Fund Inspectors' Decisions

- case readers examined 1,672 decisions (six and a half per cent of our total workload);
- I issued advice to Inspectors on a range of topics including repeat applications, procedure for Inspectors' reviews and the interpretation of exclusions;
- we have introduced an improved process for the delivery of the review to help applicants to understand the important issues in their cases and enable them to participate meaningfully in the review;
- we received 1,748 complaints about Inspectors' decisions, of which 253 were upheld (less than one per cent of our total workload).

The Standard of Administration

- We cleared almost 99 per cent of reviews where no further action or information was needed within 12 days;
- we have introduced a number of measures to make our service more accessible for applicants, including distributing widely information to raise awareness and introducing local call rate telephone numbers;
- we received 123 complaints about our service, of which we upheld 38 (0.1 per cent of our total workload).

Important Issues Arising

Our casework, and contact with applicants and adviser organisations have highlighted the following key issues:

- access to the fund;
- access to the review;
- community care grant budget and priorities;
- industrial action at the Benefits Agency;
- research that could be undertaken to establish the effects and outcomes of the Social Fund;
- repayment of Social Fund loans;
- clearance times for reviews at the Agency; and
- the need to review the items and services excluded from the Social Fund.

Sharing Information and Expertise

- we delivered 230 workshops to almost 2,800 people;
- we published three issues of the Journal and Digest of Decisions and distributed more than 4,500 copies of each issue;
- we met people from a wide variety of organisations and attended several conferences.

Resources

- we spent £3.16 million, giving a cost per decision of £123.

A full copy of the report can be downloaded from the Internet at www.irs-review.org.uk and/or obtained by telephoning us on 0121 606 2187.

You may also purchase further copies of the report by contacting any major bookshop and quoting reference **ISBN 1 84123 482 6**.

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