

# the Journal

and the Digest of Decisions

Issue 31 Summer 2005



**This issue:**

**Help with clothing expenses**  
**An update on Human Rights issues**  
**Cases involving representatives**



INVESTOR IN PEOPLE

**irs**

**Independent Review Service**  
for the Social Fund

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## Editor's Letter

Welcome to the 31st edition of the IRS Journal and Digest. Some of the areas covered by our writers are:

- Help with clothing
- Human Rights
- The Launch of the Commissioner's Annual Report

We are constantly looking at ways to improve the content of the Journal and we value all feedback from our readers. Please let me know if there is anything we can change or include to better meet your needs. We are particularly interested to know if there are any topics you would like to see featured in future editions. You can contact me at the usual IRS address, by telephone on 0121 606 2111 or by e-mail at [np@irs-review.org.uk](mailto:np@irs-review.org.uk) I look forward to hearing from you.



Natalie Penrose

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# News

## Workshops held at the IRS

The IRS is piloting a new way of delivering free workshops for people working in Jobcentre Plus. Over the summer, a series of six all-day workshops will be held at the IRS premises in Birmingham. Jobcentre Plus offices from all over the UK are invited to nominate people to attend these.

Holding the sessions centrally in Birmingham means that:

- Offices can nominate as many people as they can spare – rather than having to shut the Social Fund section down for an entire day to take advantage of the training.
- People from different offices will be able to discuss and share their different practices.
- People from different offices will receive the same training, helping to standardise the way Social Fund is delivered across the UK.

There is more information about this workshop programme on page five. If you would like to book a place on a workshop, please contact **Lorraine Moran** on **0121 606 2141** or email her at **Lmm@irs-review.org.uk**

## Social Fund Commissioner's Annual Report and Launch

The Commissioner reports annually to the Secretary of State. His report for 2004/5 will be published in July 2005. To see a copy of the new report visit **www.irs-review.org.uk** at the end of July.

Last year the Commissioner formally launched the report for the first time. An article about the launch is on page seven. The launch for 2004/5 report will take place in the autumn.

## New Self Instruction Packages

We are constantly developing new self instruction packages. The full range of packs available are shown on the inside of the back cover.

FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE

## IRS Freephone

The IRS introduced a freephone number in Autumn 2004. The number is 0800 096 1926.

Since introducing freephone the numbers of customers choosing to provide their evidence by phone has increased by around 10%.

FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE  FREEPHONE



# Help with Clothing

WHEN DO SOCIAL FUND APPLICANTS RECEIVE COMMUNITY CARE GRANTS FOR CLOTHING? WHAT FACTORS ARE TAKEN INTO ACCOUNT? **BOB JAMES** WRITES ABOUT FEEDBACK THAT THE IRS HAVE RECEIVED FROM OUR EXTERNAL PANEL AND COMMENTS ON THE RESEARCH WE HAVE RECENTLY CONDUCTED INTO THIS AREA

The IRS has always taken great care to ensure that the quality of Inspectors' decisions is subject to full and fair internal scrutiny. However, it is only more recently that there has also been independent, *external* scrutiny of our work. In order to build some independent scrutiny into our quality assurance processes the Social Fund Commissioner appointed an external scrutiny panel in 2003.

The panel consists of a diverse group of 11 people from a cross-section of backgrounds and with a wide range of experience. The panel's primary objective is to look at and comment on how the IRS handle complaints. As part of their case examinations they consider whether the cases have been handled fairly, whether the IRS approach has been impartial and whether the IRS approach has been clear, informative and easy to understand throughout the process.

The report of one external panel raised concerns regarding applications for clothing. The panel had commented that they had seen cases that indicated Inspectors had a bias against making awards for clothing. They felt the approach to clothing applications was not always fair and impartial. The panel believed applications for clothing were given less consideration than applications for household items even though clothing is a basic need. In the light of these comments, the IRS decided to undertake research examining the way Inspectors approach applications for help to meet the cost of clothing. The main objectives of the research being to:

- Identify Inspectors approach to clothing, particularly in relation to priority.
- Establish if there is any evidence of bias.
- Examine possible reasons as to why Inspectors should look less favourably at requests for clothing compared to other needs.
- Determine whether, if bias exists, this is a general bias regarding clothing or whether it is more evident in certain types of cases. Also, whether such bias might extend to award amounts.

As part of the project the Inspectors were invited to comment on their own approach and attitude when dealing with clothing requests. In addition, current and past Social Fund guidance was examined to assess the impact this may have on Decision Makers. The main focus of the project, however, was an examination of all decisions in respect of clothing applications over a period of two months. This encompassed decisions made by Reviewing Officers as well as those made by Inspectors.

## The Case Examination

Reviewing Officers had made a full or partial award for clothing in 23% of the cases examined. Following the review by an Inspector this figure increased to 70%.

The examination revealed the most common reason given by Reviewing Officers for refusing clothing requests (where Direction 4 was met) was “normal replacement – can budget from benefit”. Inspectors will almost invariably find a Direction 1 error if this is the sole reason for the Reviewing Officer’s decision. This because this type of reasoning does not show that all relevant considerations have been taken into account. The Reviewing Officer must show that he has considered the full extent and urgency of the need and the likely impact an award would have in terms of meeting the aims of the Direction.

When assessing the urgency of the need, Inspectors most often based an award under Direction 4 on the need for an applicant to have a change of clothing plus adequate protective clothing. Although, individual circumstances are taken into account and Inspectors will award more

or less clothing if the circumstances demand.

The examination revealed no evidence to suggest that Inspectors approach award amounts for clothing differently to other items.

The examination revealed some uncertainties amongst Inspectors in how to approach requests for clothing when the only part of D4 met is Direction 4(a)(v) – see case 1.

The examination also revealed a small number of Inspectors’ decisions that were considered unsatisfactory.

I have shown below the details of four cases where unsatisfactory decisions were made at some stage of the process. These cases illustrate specific points relevant to community care grants and the importance of fair and impartial decisionmaking.

## Case 1

Mr A is a single man aged 34. He receives Jobseekers Allowance (Income Based). He has a history of alcohol abuse. He was homeless for 12 months before securing hostel accommodation. He has lived at the hostel for nearly six months. At the hostel he has received help with his addiction problems and has not touched alcohol for three months. He will continue to receive support from his counsellor for the foreseeable future. He is now moving into his own unfurnished tenancy as part of a planned programme of resettlement. He has applied for a Community Care Grant to meet the cost of furniture and clothing. The only clothing he has is a thin lightweight jacket, a pair of worn jeans, two t-shirts and a pair of trainers that “leak” water.

The Reviewing Officer found Direction 4(a)(v) met. He awarded Mr A a grant for a cooker, bed, bedding, sofa and living room carpet. He refused a grant for clothing on the grounds the need did not meet the conditions of the Direction, saying “clothing would not help him set up home”.

On review, the Inspector paid an increased grant under Direction 4(a)(v) to include an amount for clothing. The Inspector considered the lack of suitable clothing available was clearly having an adverse affect on his ability to successfully set up home and settle in the area. For this reason, the Inspector concluded that an award for clothing would meet the terms of Direction 4(a)(v).

The Reviewing Officer’s approach was considered wrong in this case. However, when asked, some Inspectors had also admitted uncertainty in dealing with requests for clothing under Direction 4(a)(v) given that the aim of the Direction is to help a person *set up home*. To remove this uncertainty, the Commissioner’s Advice relating to Direction 4(a)(v) has been amended. The advice now states that as well as allowing for needs directly related to the home such as furniture, the Direction is wide enough to encompass a range of needs. The advice now reads as follows:

“The aim of the Direction is to help the applicant to “set up home” in the community following a period during which he has been without a settled way of life. The implication is that the “home” should enable the applicant to establish a settled way of life.

Setting up home primarily involves finding somewhere to live, related tasks such as applying for housing benefit, as well as furnishing the property and making it habitable. As well as allowing for things related directly to the home such as furniture, the Direction is wide enough to encompass a range of needs. For example, an award for clothing would come within the terms of the Direction if the applicant’s lack of suitable clothing was having an adverse impact on his ability to successfully set up home”.

## Case 2

Mrs D is a lone parent aged 34. She has a 13 year-old daughter. She suffers from depression for which she is prescribed medication. In August 2004 she had fled from her home to escape a violent relationship. She moved into a women's refuge with her daughter. Here she received help and counselling. When she fled her home she had to leave furniture, personal belongings and clothing behind. Her daughter is now being bullied at school. Mrs D feels that this is in part because of her appearance. In February 2005 Mrs D and her daughter moved from the refuge into an unfurnished Housing Association property. She applied for a community care grant for furniture and clothing for her daughter. The Reviewing Officer found Direction 4(a)(iii) met and paid a grant for furniture. The Reviewing Officer refused an award for clothing for Mrs D's daughter. He commented that clothing was an ongoing need that should be budgeted for from weekly benefit.

On review, the Inspector paid an increased award to cover the cost of clothing for Mrs D's daughter. The Inspector decided the Reviewing Officer's decision was not supported by the evidence in the case. He had failed to take account the full nature, extent and urgency of the need for clothing. The Inspector considered the Reviewing Officer had not given weight to relevant considerations. Mrs D's daughter's lack of clothing was due in some part to their having to flee their home leaving belongings behind. As a result of her appearance her daughter was being bullied at school. Mrs D was having problems to get her to go to school at all. This was exacerbating her depression and feelings of helplessness. In all the circumstances, the Inspector decided that a high priority was appropriate for clothing for Mrs D's daughter. An award to enable Mrs D to bring her daughter's stocks of clothing up to an adequate level would have a substantial and immediate effect in terms of easing the exceptional pressures on Mrs D and her family.

## Case 3

Mr H is a single male aged 22 with chronic mental health problems. He requested a community care grant for various replacement household items plus £100 for clothing. He did not attend the review interview. The Reviewing Officer found Direction 4(a)(ii) met but said all needs were medium priority. The budget could meet high priority needs only.

On review, the Inspector obtained further information from Mr H. Mr H said his clothing was ripped and too small. He needed trousers, shirts and a coat. He was extra large size and clothing was expensive. Because of his lack of clothing he no longer wanted to go out. He felt that people were staring at him and laughing. His CPN was concerned that his mental health was deteriorating. The Inspector paid a grant for a cooker and a living room carpet. The Inspector decided clothing was medium priority. He said that an award for clothing would not have as much effect as an award for Mr H's high priority needs.

In this case, the Inspector's decision was not considered sustainable. Mr H's mental health problems make him vulnerable. There is evidence that his mental condition is deteriorating. His lack of clothing is a major contributory factor to this situation. The Inspector's decision was changed and a community care grant paid following an internal review.

## Case 4

Miss R is a single woman aged 36. She is sick with depression and alcoholism. She has other health problems related to her alcohol addiction and has a history of short-term admissions into hospital. Her doctor has recently persuaded her to attend AA meetings. Miss R requested a community care grant for clothing. She said she had two tops and two pairs of trousers that she washes daily. She needed a coat, shoes, underwear as well as extra "general" clothing. The Reviewing Officer found Direction 4(a)(ii) met but refused an award. He commented that additional benefits are in payment in recognition of Miss R's problems. The Reviewing Officer said Miss R could use these benefits to replace her clothing as and when needed.

The Inspector did not consider the Reviewing Officer's decision to be correct. The Reviewing Officer had not established Miss R's weekly outgoings and there was no evidence to support his assertion that Miss R could use the additional benefits to meet her clothing needs. Nor did the Reviewing Officer's decision address the urgency of Miss R's needs at this point in time. The Inspector went on to make an award for clothing. The Inspector commented that it was particularly important that Miss R had adequate clothing so that she was able to continue to attend the AA meetings. This was a key factor in helping her to overcome her problems and maintain herself in the community. The Inspector decided her need for clothing was high priority.

## Summary

The four case examples shown above are amongst the more extreme of those examined. The results of the case examination were for the most part positive. Nevertheless, there were a small number of cases where clothing had been wrongly refused by Inspectors.

The four decisions shown above illustrate the importance of all Decision makers approaching requests for clothing from a neutral starting point. The decisions demonstrate just how important suitable and adequate clothing can be to a person who is unsettled or vulnerable through either their

life style or the nature of their health problems.

We are grateful to the external panel for highlighting the subject of grants for clothing in their report. Whilst our research revealed no evidence of “bias” among Inspectors it did confirm the need for Decision Makers to be open minded in approach and to consider all the circumstances of a case when deciding priority. We will continue to monitor this area and plan to hold a similar exercise in the near future. The external panel will also feedback on this issue as and when it arises in the cases that they see.

# New

## IRS Workshops for Decision Makers in Jobcentre Plus

IRS workshops are usually held at local Jobcentre offices. This has been effective as it has allowed us to train large numbers of people at once and also deal with consistency issues in a particular office or area. We still offer these types of workshops and are currently taking bookings.

However, smaller offices have reported that they find it hard to arrange workshops of this type. This is because smaller offices are not able to provide the 10 –12 attendees that we normally require to take a booking.

To try to combat such difficulties, we are developing a programme of workshops to be held at the IRS premises in Birmingham. These workshops will be similar to those delivered by our roving workshop presenters, but will be able to take advantage of the resources at the IRS offices.

The main benefits of the IRS in-house workshops are:

- The workshops are free of charge.
- Offices are invited to nominate as many – or as few – attendees as their business permits.
- As attendees will be from offices from all over the United Kingdom, the workshops present a rare opportunity to share best practice, discuss common problems and identify solutions from a wide range of geographical areas.
- Delivering the same training to people from different offices at the same time will help to standardise the approach taken across the United Kingdom – as recommended by the National Audit Office’s recent report.
- Attendees will be free of the distractions they would normally expect when working at their home offices, and will be able to focus more on the workshop itself.
- Attendees will be asked in advance to nominate any specific issues that they would like covered, to ensure that the training session best meets their needs.

The workshops will be held at the IRS premises in Birmingham, only minutes away from New Street Station and Birmingham city centre. Initially, six all-day (approximately 10.00am- 4.00pm) workshops are being offered.

The workshops are:

<b>12<sup>th</sup> July</b>	Evidence, priority and amounts to award
<b>21<sup>st</sup> July</b>	Evidence and crisis loans
<b>3<sup>rd</sup> August</b>	All day in-depth Social Fund workshop
<b>13<sup>th</sup> September</b>	Evidence and crisis loans
<b>22<sup>nd</sup> September</b>	Evidence, priority and amounts to award
<b>29<sup>th</sup> September</b>	All day in-depth Social Fund workshop

Places on the workshops will be limited to approximately 20 people per session, on a strictly first-come, first-served basis – get your nominations in now if you want to ensure a place for one of your team. Reserve your place now by contacting **Lorraine Moran** on **0121 606 2141** or by email: **Lmm@irs-review.org.uk**

# Representatives & Advisors

STEVE JONES OUTLINES THE PROCEDURES THE IRS FOLLOWS WHERE AN APPLICANT HAS A REPRESENTATIVE

Representatives such as the Citizens Advice Bureau, Welfare Rights organisations, Solicitors or a friend or family member can play an important role in helping an applicant with their review. This help can range from simply giving advice to actually making the application for review on behalf of their client.

The IRS has procedures for dealing with cases where there is a representative. These procedures are designed to:

- Ensure the law is applied correctly.
- Protect the confidentiality of an applicant's personal information.
- Keep both parties informed of any actions taken on a case.

## The need for 'consent'

Where the application for an Inspector's review is made by a representative rather than the applicant themselves, the law (The Social Fund (Applications for Review) Regulations 1988) requires the applicant gives his or her written consent to that application being made.

For this reason, the IRS cannot accept review applications made by a representative unless they include the customer's written consent.

We also need to be sure that the customer wants an IRS review. The consent must therefore be dated after the review at Jobcentre Plus.

## Protecting an applicant's personal information

In most cases before a decision is made the Inspector will send out a letter detailing the facts and issues in the case, together with a copy of the most important papers relating to the case. Both of these will contain personal and often sensitive information about the applicant, as will the Inspector's decision. The IRS has a duty to ensure

that the applicant's personal information is not released to anyone without their express permission to do so.

For this reason on the new IRS1 application form we are giving applicants the choice of whether or not they want personal information sent to a representative.

Where it is not clear where the customer wants the papers sent we will contact him or her to find out. Wherever possible we will do this by telephone in order to ensure that the case is progressed as quickly as possible.

## Keeping both parties informed

Both the applicant and their representative have an interest in the case. Therefore we will keep both parties informed of the action taken on the case at each stage in the review whether this is seeking consent, issuing the facts and issues of the case, granting an extension of time, or issuing the decision itself. Even in cases where the applicant has not given permission for personal information to be released to a representative, we will nevertheless inform the representative of the action we have taken.

## Summary

In order make the review process as quick and efficient as possible it would help if representatives could ensure that:

- Any application for an Inspector's review made on behalf of the applicant includes the applicant's explicit consent.
- The consent is dated after the Reviewing Officer's decision.
- It includes the applicant's permission for their personal information/papers to be released to the representative.

# Raising Awareness, Reporting Back and Debating Reform

**DONNA BATEMAN** WRITES ABOUT THE LAUNCH OF THE SOCIAL FUND COMMISSIONER'S 2004 ANNUAL REPORT

The Social Fund Commissioner is required, by statute, to report annually in writing to the Secretary of State for Work and Pensions on the standard of Inspectors' reviews. The Secretary of State publishes the reports each July. Over time, the annual report has evolved and now contains information on wider issues arising from the operation of the Social Fund as well as the work of Inspectors and the Independent Review Service.

On 8 September 2004, the Commissioner, Sir Richard Tilt, hosted a formal launch of his annual report for 2003/2004 at the Royal Over-Seas League in London. This was the first time a Social Fund Commissioner has held such an event.

## Why have the launch?

Our experience shows that knowledge of the review process is, at best, patchy, and take up of the independent review is relatively low. This is surprising given how simple it is to apply for a review, the high likelihood of success and the speed with which Inspectors complete their reviews. For example, during 2003/2004:

- Inspectors' reviews of community care grant decisions accounted for 2.4% of the initial applications made to the Social Fund.
- Inspectors overturned about 56% of community care grant decisions, 41% of crisis loan decisions and 16% of budgeting loan decisions.
- Inspectors delivered most of their reviews within 12 days and urgent crisis loans within 24 hours.

The main aim of the launch was to help improve knowledge of and raise awareness about the right to an independent review. Its purpose was to encourage attendees to use their influence to ensure that people are aware of their right to

independent review and can exercise it. It was inevitable, however, at such an event, for the debate to widen into one about Social Fund policy in general.

The launch was well attended with representatives from a wide range of adviser, charitable and voluntary organisations – both at director level and frontline staff, academics and researchers, MPs,



*The 2003/2004 Social Fund Commissioner's Annual Report*

the Department for Work and Pensions and other Government bodies. IRS staff, including Inspectors, were also present to answer questions about the review and provide information about the ongoing range of services we offer, such as self-instruction packages and workshops, to raise awareness of the independent review and to help improve knowledge about the Social Fund and its decision making and review process.

## Speakers

The Commissioner opened the launch by drawing attention to the main themes covered in his annual

report for 2003/2004 in each of the three main strands of the work of the IRS:

- Independent statutory reviews of discretionary Social Fund decisions.

- The working poor are the biggest single group of the poor and the minimum wage is set low.
- It is hard to persuade people about relative poverty.



- Many of the people responsible for developing policy and strategy to deal with poverty never come into contact with the less well off.
- The Social Fund helps many people but a lot are still turned away.
- The experience of applying for a Social Fund payment is humiliating.
- Loans from the Social Fund are repaid by deductions

- Feedback and advice on operational and policy matters.
- Information and training.

He emphasised the aim of the launch and asked the attendees to use their influence to ensure that people are aware of their rights to independent review and that these rights are safeguarded.

We were pleased to welcome two guest speakers to the launch, Polly Toynbee, Social Affairs Correspondent at The Guardian, and Sue Middleton, Director of the Centre for Research in Social Policy (CRSP) at Loughborough University, who is currently working on a research project exploring the contribution the discretionary Social Fund makes to reducing poverty and social exclusion. Both speakers delivered thought provoking presentations which gave rise to a number of questions and comments from the audience.

Polly Toynbee's presentation focused on her book "Hard Work: Life in Low Pay Britain"<sup>1</sup>. The main themes of her presentation included:

from benefit and there is no flexibility to juggle finances.

- People on low income are often forced into high interest loans.
- The Social Fund should be more like a state bank since financial exclusion keeps people below the poverty line.

Sue Middleton's presentation explored the purpose of the Social Fund and its effectiveness. She emphasised the following points:

- The Social Fund exists because significant numbers of people have too little income to meet their needs.
- Social Fund loans compound the problems of low income.
- There will always be a need for the Social Fund, even if people on low income have greater access to financial services.
- The rate of errors in decision making and delays in processing applications are unacceptable.

These administrative problems need to be addressed urgently in order to ensure that help gets to the most vulnerable people as quickly as possible:

- There is little evidence that payments from the Social Fund are well targeted.
- Only a small percentage of those that are eligible to apply to the Social Fund do so.
- Research has shown that the worst poverty can be found amongst those who regularly move in and out of work. Such people are often not eligible for a budgeting loan.
- The Social Fund needs a major overhaul.

CRSP is undertaking research which will explore the fund's contribution to Government objectives on reducing poverty and social exclusion, and will assess proposals for reform.

There was a lively response from members of the audience; those who participated in the debate had a clear interest in the Social Fund and had obviously given a lot of thought to the issues raised. The main themes arising from the debate included the following:

- Increasing numbers of people cease to receive a qualifying benefit because, for example, of child tax credit.
- Government has done a lot in relation to child and pensioner poverty but benefit rates for people of working age have fallen behind.
- The long term sick and disabled are most at risk of poverty, but often receive incapacity benefit so have no access to community care grants or budgeting loans.
- Direction 4(a)(ii) which provides help for those who need help to remain in the community rather than enter some form of care is outdated. The people at whom it is aimed are vulnerable but if entry into care may not be a likelihood for them, they do not qualify.
- One attendee re-affirmed the view that applying for a Social Fund payment could be a humiliating experience, particularly because of the amount of information people had to give about their needs and circumstances.

As many of the points raised by the audience focused on Social Fund policy rather than the work of the Independent Review Service, the Commissioner invited representatives from the Department for Work and Pensions to respond to the general points raised. In particular, they emphasised the wide acceptance that Social Fund needs reform. In the longer term, this will take account of the wider issues raised by reports such as Citizens Advice's "Unfair and Underfunded" (by Alan Brown, National Association of Citizen's Advice Bureaux, October 2002) and the Select Committee's report of its inquiry into the Social Fund (The Social Security Committee's Third Report - 'The Social Fund' - 27/03/2001).

### The future

We wanted the launch to help stimulate interest in the Social Fund and its review process and raise its profile amongst advocacy organisations. The presentations were certainly interesting and sparked much discussion



among people who are in a position to make a difference. We hope that all the attendees got something out of the day or learnt something new and extend our thanks to all those who came.

Initially, the launch was intended as a one-off event. However, given the level of interest in attending the event, the success of the presentations and the issues raised, the Commissioner will be holding a second formal launch of his annual report for 2004/2005 following its publication this summer.

# Human Rights and the Social Fund – An Update

**CARLO RIODA** UPDATES READERS ON DEVELOPMENTS IN THE FIELD OF HUMAN RIGHTS

Issue 23 of the Journal provided an introduction to the Human Rights Act 1998 (“the Act”) and its relevance to the Social Fund. This article provides an update on the Act and the IRS response to it.

## **What is the Human Rights Act?**

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 domestic law. The Convention restrains the signatory States from interfering with the Convention rights of its citizens. It also imposes positive obligations on States to take action to protect the Convention rights of its citizens. It is these positive obligations that are most likely to be the issue in Social Fund decision making. The question will usually be whether a Social Fund payment is required in order to fulfil a positive obligation under the Convention.

## **Do Social Fund Decision Makers have a duty to consider the Act?**

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 certain of 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. The Convention rights should form a background to all decision making.

## **What does this mean in practice?**

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 Social Fund Decision Makers to take a much more flexible approach to the interpretation and application of the law, where this is necessary to avoid the breach of Convention rights.

Where it is not possible to reach a compatible interpretation or application of the law a Social Fund Inspector’s response will depend upon the kind of legislation involved. Primary legislation (Acts of Parliament) must be followed. In the case of subordinate legislation (regulations, social fund directions, etc) an Inspector’s response will depend on the nature of the incompatibility. In some cases it may be appropriate to apply the subordinate legislation. In other cases it may be appropriate to refer the issue to the Secretary of State, and/or to approach the High Court for a declaration on the validity of the legislation in question.

## **What has the IRS done to prepare Inspectors for this?**

In order to prepare for the coming into force of the Act, the IRS sought the opinions of a number of experts in field of Human Rights legislation. The Social Fund Commissioner decided to issue Advice, having consulted Counsel, and liaised with the Department for Work and Pensions. This Advice sets out in greater detail how Inspectors should generally approach human rights issues, and can be accessed via the IRS website ([www.irs-review.org.uk](http://www.irs-review.org.uk)). Inspectors have also received training on how to identify and address human rights issues.

In all cases Inspectors consider whether there may be a human rights issue. If an Inspector thinks there may be such an issue he will seek advice from the in-house Research and Development team. Cases that may raise serious human rights issues or that

are particularly difficult are referred to a Case Issues Team for detailed consideration.

### **How many cases have Human Rights issues?**

The vast majority of cases do not involve any human rights issues. However, in a small minority of cases Inspectors have identified issues, or applicants have suggested their human rights have been breached.

To date, the Social Fund cases that have raised the most serious human rights issues have involved crisis loan applications for living expenses. Typically, these cases have involved people with health problems, who have been without food, money, or the means to obtain food or money, and legislation has prevented the award of a community care grant, a budgeting loan, or a crisis loan.

There has been only one case where an Inspector has considered that refusal of a Social Fund payment would breach an applicant's Convention rights. The case involved an insulin-dependent diabetic who had cashed and lost her incapacity benefit. She was left without money, food, or the means of obtaining money or food. She needed food, without delay, in order to control her diabetes and to avoid a diabetic coma. She was not in receipt of a qualifying benefit and so the eligibility conditions set out in Directions 25 and 8 meant that a community care grant and a budgeting loan could not be awarded. She had a Social Fund debt of £1000, and so the Social Fund debt restrictions set out in Direction 18 precluded the award of a crisis loan. It was not possible to interpret the Directions in a compatible way, and so the case was referred to the Secretary of State. The Convention rights relevant to this case included the right to life (Article 2), and the right not to be subject to degrading treatment (Article 3).

There has been a number of other living expenses cases that have raised serious human rights issues, although in these cases it was not considered that refusal of an award would breach the applicant's Convention rights. A couple of these cases involved applicants who were persons subject to immigration control, who were not receiving benefits. Even if there were a positive obligation to assist these applicants, primary legislation would have prevented the award of a social fund payment (s115 of the Immigration and Asylum Act 1999). In one case an applicant had been receiving assistance from a local authority. In this case if there had been an obligation to assist the applicant in order to avoid a breach of his Convention rights it was felt that the

responsibility to provide assistance would have been the local authority's.

There have been some additional crisis loan claims for items that have raised human rights issues, in particular issues around degrading treatment (Article 3) and respect for home, family and private life (Article 8). Typically, these cases have involved claims from people who were not in receipt of a qualifying benefit, with £1000 or more of Social Fund debt. They had some health problems and lacked adequate sleeping or cooking facilities. The eligibility conditions set out in Directions 25 and 8 would preclude the award of a community care grant or a budgeting loan. The Social Fund debt restrictions set out in Direction 21 precluded the award of a crisis loan. On the facts of these particular cases it was not felt that refusal of an award would breach the applicant's Convention rights. However, the potential for breaches of human rights in this area is clear.

There have been a number of cases involving requests for repairs and improvements to applicants' homes, which were not minor. Such expenses are excluded from payment under Directions 23(2)(f) and 29(d). These cases typically involved health problems and difficult living conditions. The right to respect for home, family, and private life was in issue (Article 8). However, in all these cases Inspectors concluded that whilst circumstances were difficult, refusal of an award would not breach anyone's Convention rights. In many of these cases, even if there had been a positive obligation to provide assistance the Social Fund was unlikely to have been responsible for providing that assistance. In some cases local authorities may be responsible, or a housing improvement agency may be able to provide assistance. In some cases non-excluded Social Fund assistance may be able to meet a need, for example, freestanding heaters may be an alternative to a central heating boiler.

### **Has there been a Judicial Review challenge?**

Since the Act came into force there has been one judicial review challenge of an Inspector's decision on human rights grounds. The decision was made by an Inspector in Northern Ireland. The Northern Ireland Social Fund scheme is virtually identical to the scheme in the rest of Britain. However, in addition, the following expenses are excluded for grants and crisis loans: "costs associated with home or personal security measures other than only locks, bolts,

door chains and door viewers for outside doors and windows”.

The applicant wanted an intruder alarm and various other security items to protect his home and family. The family had been suffering harassment and intimidation. The family car had been burnt out. They had received a written threat, and items had been stolen from outside their home. The applicant and his wife suffered from severe depression and other health problems. Their health had deteriorated because of the harassment. They lived close to the applicant’s parents who suffered from considerable health problems, and who relied on the applicant for care and support. The Police had advised the applicant to move, or failing that to improve security. The applicant did not want to move home.

The Social Fund Inspector excluded the items requested as costs associated with home or personal security measures. The Inspector did not consider that refusal would breach any of the applicant’s Convention rights.

The applicant argued in his judicial review challenge that there was a positive obligation to provide assistance, and that refusal had breached his right to life (Article 2), the right not to be subjected to degrading treatment (Article 3), and the right to respect for his home, private and family life (Article 8). He also argued that there had been a breach of the right to enjoyment of the Convention rights without discrimination (Article 14) – the exclusion applied in Northern Ireland, but not in the rest of the United Kingdom.

The judge held that Article 8 was not engaged (the case did not come within the ambit of Article 8). There was no positive obligation to make a Social Fund payment. If Article 8 were engaged the decision to refuse assistance could be justified under Article 8(2), and so there was no breach of Article 8. He concluded that there was no breach of Articles 2 or 3 – providing help of the sort requested would place an impossible or disproportionate burden on the State. He found that Article 14 was inapplicable because the Convention rights in issue were not engaged. However, if those rights were engaged, the exclusion was justified. He added that if there were a duty under Article 2 or otherwise the Social Fund Inspector would not be the agency to fulfil the duty, and so his decision did not violate Convention rights.

## Are there any new developments?

Since the Act came into force there has been a significant number of judgments on the interpretation of the Act, and on the rights conferred by the Act. It is not possible to review these developments in an article of this kind. However, the IRS held a seminar in June 2004 reviewing developments in human rights law. Two experts in human rights law, Richard Gordon QC and Professor David Feldman, addressed the seminar and answered questions on human rights matters. The Social Fund Commissioner is considering minor refinements to the Advice he has issued on the Act, and has advised the Department for Work and Pensions about the proposed changes.

In due course the Commissioner plans to issue revised Advice, and also to publish Support Notes to supplement the Advice. The IRS will continue to liaise with the Department for Work and Pensions in relation to the revision of Directions, to reduce the risk of a breach of Convention rights, particularly in relation to claims for living expenses. There will also be continued monitoring of developments in human rights law.

### Where to find out more about the Human Rights Act

Social Fund Commissioner’s advice on the IRS website – [www.irs-review.org.uk](http://www.irs-review.org.uk)

The Department for Constitutional Affairs Human Rights Unit Pages contains useful links to relevant legislation, case law, and publications -[www.humanrights.gov.uk](http://www.humanrights.gov.uk)

Her Majesty’s Stationery Office provides access to the Human Rights Act 1998 - [www.hmso.gov.uk](http://www.hmso.gov.uk)

The European Court of Human Rights provides information about its workings, as well as the text of the European Convention on Human Rights and a database of its case law – [www.echr.coe.int](http://www.echr.coe.int)

The British and Irish Legal Information Institute provides a database of United Kingdom legislation and case law – [www.bailii.org](http://www.bailii.org)

Liberty has produced a guide to human rights and how to enforce them – [www.yourrights.org.uk](http://www.yourrights.org.uk)

# Do you need help with Social Fund training?

## Workshops

Workshops are ideal for groups who want to learn together, and provide an opportunity for participation between the attendees and the trainers. They are aimed at adviser organisations, Social Fund Decision Makers and other Jobcentre Plus staff who have contact with potential applicants to the Social Fund.

A wide range of workshops are available. For more information log onto the IRS website at [www.irs-review.org.uk](http://www.irs-review.org.uk) or contact Lorraine Moran on **0121 606 2141** or by e-mail at [Lmm@irs-review.org.uk](mailto:Lmm@irs-review.org.uk)



## Self Instruction Packs

We appreciate that not everyone can attend a Workshop. Self Instruction Packs are intended for anyone who needs to work alone. Students can work at their own pace, and the Packs are divided into units, so they can be tackled in bite-sized chunks. Each unit has a self-assessment section so the users can check their progress and revisit any areas of uncertainty.

Most of the Self Instruction Packs are aimed at both adviser organisations and Jobcentre Plus staff, and cover a range of levels of expertise. The following packs are available:

- **The Social Fund – a Basic Overview.**
- **Community Care Grants.**
- **Crisis Loans.**
- **Budgeting Loans.**
- **Evidence in the Social Fund Context.**
- **The Social Fund for Jobcentre Plus staff.**
- **The Social Fund for Pensions Service staff.**
- **Decision Making and Reviews.**

The packs can be downloaded from our website [www.irs-review.org.uk](http://www.irs-review.org.uk)

If you need hard copies of the Packs, these can be provided free of charge. Contact Lis Martin on **0121 606 2222**, by email at [em@irs-review.org.uk](mailto:em@irs-review.org.uk) or write to her at the IRS:  
**Independent Review Service. 4th Floor Centre City Podium. 5 Hill Street. Birmingham. B5 4UB**

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