

1. Principles of decision-making

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The principles of decision-making apply to every decision by case managers. The Tribunals will not overturn decisions that are in line with these principles.

This section explains how case managers can make decisions which are in line with the principles.

2. The principles

Decisions must be:

- lawful
- reasonable and rational
- made following a fair procedure
- compatible with the individual's existing rights

3. Decisions that are lawful

The rules of entitlement to ADP must be understood and followed correctly.

The rules that this guidance explains come from the following pieces of legislation:

- [the Disability Assistance for Working Age People \(Scotland\) Regulations 2021\(link is external\)](#)
- [the Social Security \(Scotland\) Act 2018 \(link is external\)](#)
- [the Social Security Administration and Tribunal Membership \(Scotland\) Act 2020\(link is external\)](#)
- [the Social Security Information-sharing \(Scotland\) Regulations 2021\(link is external\)](#)

A case manager might read an explanation of a rule in the guidance and be unsure of how it applies to an individual's case. It might seem that there is more than one possible meaning. Generally, wording in the guidance has been taken from legislation. Words in legislation are usually given their plain English meaning unless given a specific definition in the regulations. If a specific definition has been set out in the regulations this will also be available in the guidance. If a case manager is unsure as to the meaning or interpretation given in the guidance, they should make use of decision-making tools available to them.

Case law is another source of law which case managers should be aware of. Case law develops when a Court or Tribunal (sometimes referred to collectively as 'the Courts') issue a decision about how the rules apply to an individual case. Case law often explains how the rules should be applied to future cases. Relevant case law will come into existence by individuals appealing determinations by case managers to the Courts.

The guidance will be updated to reflect any relevant case law that decision makers need to know.

A failure to follow the rules correctly when making a decision will result in a decision which is unlawful.

4. Decisions that are reasonable and rational

Decisions must be based on all relevant information and must not be based on information that is irrelevant. An example of a decision that is based on irrelevant information would be a case manager making a conclusion on the individual's ability to walk based on facts that relate to how well the individual swims, or making a

conclusion based on facts contained in an outdated medical report that related to a past period when the individual's mobility and daily living needs were different. When making a decision, one or more factors will count in favour of deciding one outcome over another. Some factors will be more persuasive than others. Decision makers must decide how much importance or 'weight' to attach to each factor. Factors which count in favour of the same outcome form a set of factors. Decision makers must decide overall which set of factors is most persuasive. This is sometimes described as weighing up the competing sets of factors and reaching a balanced decision.

Decision makers must make decisions in a consistent way so that individuals in similar situations are treated the same. Case managers can only decide two cases differently if there is a rational justification for reaching a different decision in each case.

Even if a decision maker considers both:

- all the relevant circumstances
- no irrelevant circumstances

decisions can still be unreasonable and irrational.

However, this would only be the case if the decision is one that no decision maker acting reasonably could make based on the circumstances of that case. Decision makers must justify their decisions with reasons which clearly and logically explain how they reached that decision.

Sometimes, a decision maker's reasoning can show a misunderstanding of the relevant rules. In this case, the decision would not be reasonable. This is true even if someone could apply the rules correctly and reach the same outcome.

Since the reasoning would not be clear and logical, the decision is out of step with the principles of decision-making. The reasoning given to the individual should give the individual confidence that the decision maker applied the correct rules to the facts of the case, taking all relevant factors into account and no irrelevant factors.

5. Decisions that are made following a fair procedure

Decisions must be the result of following a fair process. Decisions must also be taken impartially, meaning that a case manager is not biased. Even if there is no actual bias, decisions that have the appearance of bias are not fair to the individual. The decision maker must make it known if they encounter a case where there is a conflict of interest. If there is a conflict, the decision maker must have no part in the decision.

- Example: A case manager has a conflict of interest

A case manager is asked to look at a new application for ADP. They look at the details and realise that the individual is their friend's brother, Andrew. This is a conflict of interest.

The case manager notifies their line manager that they have received a case where there is a conflict of interest. The line manager accepts this and transfers Andrew's case to another case manager.

Case managers must complete mandatory 'unconscious bias' training to make sure that they do not treat the individual unfairly without meaning to. Unconscious biases are social stereotypes about certain groups of people that are formed unconsciously.

6. Decisions that are compatible with individual's existing rights

Individuals have certain legal rights which existed before the law on entitlement to ADP was created. Individuals continue to have these legal rights. The principle of compatibility means that both the rules on ADP and decisions by case managers

must be compatible with these pre-existing legal rights. A rule or decision which is incompatible with a legal right is sometimes called an 'unlawful interference' in that right.

This decision-making guidance, and the law on ADP has been designed to respect the individual's pre-existing legal rights. Therefore, all that a case manager needs to do to respect the individual's pre-existing legal rights is to follow:

- the decision-making guidance
- the operational guidance
- guidance on processing personal information in accordance with the GDPR.

Examples of sources of law where these pre-existing rights are found are:

- the [European Convention on Human Rights\(link is external\)](#) and the [Human Rights Act 1998\(link is external\)](#)
- the [Equality Act 2010\(link is external\)](#) (which is a set of anti-discrimination laws)
- the [Data Protection Act 2018\(link is external\)](#)
- the General Data Protection Regulation (GDPR).

The European Convention of Human Rights is an international treaty. The convention contains articles which guarantee a number of basic human rights. In addition, protocols have been signed, which are to be regarded as additional articles to the Convention.

The Human Rights Act 1998 gives effect in the UK to the rights and freedoms guaranteed under the European Convention on Human Rights. Public authorities, including Social Security Scotland and the courts are under a duty to act compatibly with the Convention rights.

A simplified version of selected articles from the European Convention on Human Rights and its protocols is available [here\(link is external\)](#).