

Principles of Decision Making

Index

1. This chapter covers the following topics:

- Introduction
- Who makes decisions
- Person-centred decision-making
- The Scottish Social Security Charter
- The decision-making guidance explained
- Types of decision
- Principles of decision-making
- Avoiding mistakes

Introduction

2. This chapter explains the principles of good decision-making.

Who makes decisions?

3. Decision makers are employed by the Scottish Government (the Scottish Ministers) to determine entitlement to Child Disability Payment (CDP) on behalf of the Scottish Ministers.

4. The Scottish Government has produced this decision-making guidance because they are responsible for decisions. The decision-making guidance is referred to as the guidance in this chapter. The term case manager is used in a general way to refer to anyone who works for Social Security Scotland and makes decisions affecting individuals who have applied for or are entitled CDP.

Person-centred decision-making

5. The Scottish Government is committed to both:

- creating a system of social security that meets the needs of the people of Scotland
- ensuring that the values of dignity, fairness and respect are embedded in the system.

6. Case managers should take a person-centred approach to decision-making by:

- considering how the individual's condition affects them
- taking into account all of their circumstances
- listening to the individual
- treating them as an individual
- recognising that the individual understands their own life best

- considering the individual's support network, caring responsibilities and work responsibilities
- making sound judgments about the impact that an individual's condition has on them
- approaching decisions from a position of trust
- only seeking one source of supporting information from a professional where possible.

The Scottish Social Security Charter

7. The Scottish Social Security Charter sets out what the individual can expect from the Scottish Government and Social Security Scotland. The Charter commits the Scottish Government to:

- making decisions in a consistent and accurate way
- aiming to get determinations right first time
- being honest, providing clear reasons for determinations
- explaining what to do if the individual disagrees with that determination.

8. Determinations which follow this guidance will be:

- consistent, accurate and clear
- in line with the Charter commitments.

9. The Charter is available to read in full online [LINK]

<https://www.gov.scot/publications/charter/>.

The decision-making guidance explained

10. The purpose of the guidance is to guide case managers on how to apply the law on entitlement to CDP to individual cases. The law on entitlement to CDP is sometimes referred to in the decision-making guidance as 'the rules'.

11. The rules come from the following pieces of legislation. These are:

- the Disability Assistance for Children and Young People (Scotland) Regulations 2021
- the Social Security (Scotland) Act 2018
- the Social Security Administration and Tribunal Membership (Scotland) Act 2020
- the Social Security Information-sharing (Scotland) Regulations 2021.

12. The guidance explains the rules and how to apply the rules to the facts of a case.

13. The case manager must make a decision by considering all the supporting information and applying the rules to the facts of a case. Decisions must be in line with the 'principles of decision-making' which are explained later in this chapter.

Types of decision

14. The decisions that case managers make can be described as:
- ‘process decisions’
 - ‘determinations of entitlement’.

Process decisions

15. A process decision is a decision about whether a procedural requirement is met. The procedural relate to:

- applying for CDP
- determining entitlement to CDP
- carrying out a re-determination for CDP
- appealing a determination of entitlement for CDP.

16. An example of a procedural rule is one about requests for a re-determination of a determination of entitlement to CDP. They must be made within 42 days from the date the individual is informed of the determination¹. Another procedural rule is that requests for a re-determination can be made after 42 days but only if the individual has a ‘good reason’ for not requesting a re-determination sooner and the request was made not more than one year after the individual was given notice of the determination².

*1 CDP Regs, reg 37(1)
1 SS Act 2018, s41(4)*

Determination of entitlement

When Social Security Scotland decide the outcome of an application for assistance or of a determination without application, this is called a determination of entitlement. If a Tribunal or Court decides what assistance an individual is entitled to, this is also called a determination of entitlement.

1 SS Act 2018, s50 (Decisions comprising determination)

17. The determination will always include a decision about both:
- whether or not the individual satisfies the eligibility rules for CDP
 - what components of CDP and at what rates the individual is entitled to, if these rules are satisfied.

Findings of fact and conclusions of law

18. The decision-making process for determining entitlement to CDP will involve making a series of smaller decisions. These allow the case manager to make an overall decision on entitlement. These smaller decisions are either:

- a ‘finding of fact’
- a ‘conclusion of law’.

19. A finding of fact is a decision that a factual circumstance is accepted to be true. This is based on the available supporting information. For example, a case manager could accept as facts that:

- the individual has a physical disability
- the disability prevents the individual from being able to prepare a cooked main meal for themselves if they have the ingredients.

20. Case managers must look at all the available supporting information to establish the facts.

21. Case managers may be unable to make a decision straight away because there is insufficient supporting information. In this case, they will need to work with the individual to gather more supporting information.

22. Case managers must make findings of fact on ‘the balance of probabilities’. This means that a factual circumstance must be accepted as true if evidence shows that it is more likely than not that it occurred.

23. The ‘balance of probabilities’ is an easier test to meet than ‘beyond reasonable doubt’ which is the standard test for finding facts in criminal trials. However, it does not mean that the individual must be given the benefit of the doubt if there is not sufficient supporting information.

Example: A case manager works with the individual to gather additional supporting information

Sofia is 9 when she and her family move from Latvia to Scotland. Sophia is dyslexic and may have autism though she does not have a formal diagnosis. Sofia meets the residence and presence conditions to be entitled to CDP. However the circumstances surrounding her family’s move to Scotland mean Sofia’s mother does not have access to any supporting information from a professional. She provides a detailed explanation of Sofia’s needs in the application form.

The case manager starts from a position of trust and does not doubt the reasons why no supporting information is available. However, there is not enough information about Sofia’s needs for the case manager to make a determination of entitlement on the balance of probabilities.

The case manager works with Sofia’s mother to gather more supporting information. This new information is enough to allow the case manager to make a decision based on the balance of probabilities.

The case manager reviews all the supporting information and determines that Sofia is not entitled to any component of CDP. This is because, while she requires attention and supervision during the day, it is not more than is reasonably required for someone Sofia’s age without a disability.

24. There are cases with contradictory supporting information. With these, case managers should decide whether there is enough supporting information in favour of one finding of fact over another.

25. Case managers may find that there is not enough supporting information to satisfy them that a circumstance actually occurred one way or the other. In this case, a case manager cannot yet make a determination that the individual is entitled to CDP because there is not enough information for a case manager to make a determination. The case manager should follow the ‘collaborative process for gathering supporting information’.

Conclusions of law

26. A conclusion of law is a decision about how a rule applies to the individual’s case, having regard to the accepted findings of fact.

Example: A conclusion of law

Mhari is 4 when her fathers apply for CDP. A GP provides supporting information in the form of a medical report about Mhari which provides information about her needs. The information in the report informs the case manager that Mhari has spina bifida. She must use a catheter and requires assistance to empty the catheter every two to three hours each day. These are findings of fact.

The assistance Mhari requires to empty the catheter is attention to her bodily functions. A qualifying criterion for the lowest rate of the care component of CDP is that the individual is so severely physically or mentally disabled that they require attention from another person for a ‘significant portion of the day’.

The case manager considers how much time needs to be taken up caring for the individual for it to amount to a ‘significant portion of the day’. Using the guidance, the case manager concludes that the time taken up each day to care for Mhairi comes within the range of care-giving that would be regarded as taking up a ‘significant portion of the day’ for the purpose of this rule. This conclusion by the case manager means that Mhari is entitled to the lowest rate of the care component of CDP. The decision that Mhari requires care for ‘a significant portion of the day’ is a ‘conclusion of law’ because it is a decision about how a legal rule applies to findings of fact.

Principles of decision-making

27. 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.

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

The principles

29. Decisions must be:
- lawful
 - reasonable and rational
 - made following a fair procedure
 - compatible with the individual’s existing rights.

Decisions that are lawful

30. The rules of entitlement to CDP must be understood and followed correctly. Case managers should always seek advice if they are unsure how to follow a rule.

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

- the Disability Assistance for Children and Young People (Scotland) Regulations 2021
- the Social Security (Scotland) Act 2018
- the Social Security Administration and Tribunal Membership (Scotland) Act 2020
- the Social Security Information-sharing (Scotland) Regulations 2021.

32. 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.

33. 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.

34. 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.

Decisions that are reasonable and rational

35. 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 that are contained in an outdated medical report that related to a past period when the individual's mobility and care needs were different.

36. 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.

37. 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.

38. 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.

39. Even if a decision maker considers both:

- all the relevant circumstances
- no irrelevant circumstances

decisions can still be unreasonable and irrational.

40. 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.

41. 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.

42. 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.

Decisions that are made following a fair procedure

43. 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.

44. 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 CDP. They look at the details and realise that the individual is their partner's younger cousin, Cody. 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 transfer's Cody's case to another case manager.

45. 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.

Decisions that are compatible with individual's existing rights

46. Individuals have certain legal rights which existed before the law on entitlement to CDP was created. Individual's continue to have these legal rights. The principle of compatibility means that both the rules on CDP 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.

47. This decision-making guidance, and the law on CDP 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].

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

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

49. 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.

50. 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.

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

Avoiding mistakes

52. A case manager could make a mistake by:

- making findings of fact that are not supported by the evidence
- making conclusions of law that are based on a misunderstanding / misinterpretation of the rules or based on irrelevant facts.
- dismissing certain relevant facts as unimportant without considering the rules carefully

- giving reasons which do not make clear and logical sense, in light of the relevant rules and the evidence.

This list is not exhaustive.