

Client representative guidelines

Part 5.2: Appointees for adults regarded as incapable

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Introduction

1. Part 5.2 sets out in detail when Social Security Scotland can appoint a person, or organisation, to act on behalf of a client under section 85B(7) of the Social Security (Scotland) Act 2018 (the 2018 Act). This is where on the balance of probabilities the client meets the definition of ‘incapable’ set out in section 1(6) of the Adults with Incapacity (Scotland) Act 2000¹(the 2000 Act):
2. For the purposes of these guidelines an “adult” means a person who is 16 years of age or older. Under the 2000 Act, “incapable” means being incapable (through mental disorder or inability to communicate because of physical disability) of any of the following-
 - acting;
 - making decisions;
 - communicating decisions;
 - understanding decisions;
 - retaining the memory of decisions
3. This must be because of a mental disorder, or inability to communicate because of physical disability which cannot be overcome by the use of aids or help from another person, for example an interpreter. Therefore, a person is not considered to be incapable due solely to an inability to communicate, if that inability can be overcome by human or mechanical aid.
4. The decisions referred to throughout this guidance are those relevant to applying for and receiving social security benefits. It is the client’s ability to carry out the process of making and acting on decisions, relating to the administration of their Scottish social security benefit entitlement, which is the basis for determining whether an appointee is appropriate in the circumstances.
5. An appointment can only be made where:
 - the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000,
 - there is no guardian acting or appointed under that Act,
 - the individual’s estate is not being administered by a judicial factor²,
 - and there is no other person who has authority to act on behalf of the individual and is willing to do so.

Social Security (Scotland) Act 2018 s85B(7)
6. Part 5.2 also sets out the other requirements for making that appointment, the processes that should be followed, and how matters arising out of the appointment should be handled.

¹ <https://www.legislation.gov.uk/asp/2000/4/section/1>

² More information about judicial factors can be found here [Judicial Factors \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/judicial-factors)

How long should an appointment last?

7. An appointment should only be in place for as long as the conditions are met for it to be in place, and it continues to be of benefit to the client. The conditions are set out in paragraph 5 of this guidance. It must be reviewed at least every five years.
8. Where a client is an incapable adult this is most often as a result of an enduring mental or physical disability. However, Scottish Ministers must regularly check that there have not been any changes of circumstances that may mean the appointment should be ended.
9. These could include:
 - the client is no longer considered incapable within the meaning of section 1(6) of the 2000 Act
 - the appointee is no longer willing or able to continue to act
 - the appointee is no longer suitable to act
 - the appointee, or another person or organisation, has been granted the authority to manage their benefits under a financial guardianship or other court order

Making the appointment

10. Appointments are made by trained colleagues in Social Security Scotland's Local Delivery teams. They will make a judgement based on the principles set out in legislation and guidelines, whether the client has capacity to manage their benefits, whether an appointee is needed and whether the potential appointee is suitable. They will also consider the views of others who may be impacted before reaching a decision. Further detail about this process can be found in Parts 5.2.1 to 5.2.5 of the Client Representative Guidelines.
11. Referrals should be made to Local Delivery colleagues from anyone in Social Security Scotland, when it becomes known that a client is believed to be incapable of managing their benefits for themselves.

Identifying when an appointment might be needed

12. There are several ways Social Security Scotland might be alerted to the fact that a client may not have capacity:

Client already has an appointee acting for them in the DWP system

13. Where a client already has an appointee acting for them for their reserved benefits this means that DWP believe that the client is unable to manage their benefits. It should not be assumed this means that they would satisfy the criteria in section 85B(7) of the 2018 Act and require an appointment by Social Security Scotland, but we should always consider whether an appointment is also required for the system of benefits administered by Social Security Scotland.

A third party has made an application in the client’s name and signed it in their own name

14. We may receive an application from a third party, for example a family member, who does not yet have authority to act for the client in relation to their benefits. They may have completed it for the client because they could not see any alternative, or because they want to become an appointee.

A third party has told us that the client cannot manage their benefits

15. A third party such as a relative or care professional may have contacted us directly to ask to become the client’s appointee, because they believe the client is no longer able to manage their benefits for themselves.

A case manager or Practitioner identifies that a client, who does not already have someone acting for them, may not be able to manage their benefits

16. As part of the consideration of new application, or review of disability assistance, the case manager or practitioner may notice that the care, daily living or mobility needs described, suggest the client may lack the capacity to manage their benefits. However, capacity will always be assessed on the client’s ability to act and make decisions and, in so doing, manage their entitlement to benefits administered by Social Security Scotland.

A DWP appointee is showing on Insight

17. The Department for Work and Pensions makes appointments for its Scottish clients where they are unable to manage their reserved benefits. All appointees made by DWP are aged 18 or over. This can happen in two ways:
 - An assessment is made by DWP of the client’s ability to act for themselves, either by a visiting officer or through a paper assessment process
 - DWP identify that an appointment has been made by a Local Authority or by Social Security Scotland and agrees that that appointee can act for the individual for their reserved benefits
18. However, the legal requirements to make an appointment under the Social Security (Scotland) Act 2018 are different from DWP. While we can make some assumptions based on an appointee being present in the reserved benefits system, a DWP appointee has no authority to act for the client in relation to their entitlement to benefits administered by Social Security Scotland.
19. When someone has a DWP appointee we can still use this information because it tells us:
 - that DWP believes the client is unable to act for themselves
 - who is already acting for the client for reserved benefits, and so may be considered a candidate to act for the client in relation to benefits administered by Social Security Scotland
 - the name of a person who would be impacted by any new appointment and whose views should be taken into account.

20. There are a number of other situations where events in the reserved benefits system may be relevant to Social Security Scotland appointees or client representatives.

Part 6 of the Client Representative Guidelines will include detailed guidance about DWP appointees in due course with instructions in operational guidance about action to take.

Requests for a new appointment to be made

21. Requests for a new appointment to be made, can come from anyone with an interest in the client's finances or welfare. Typically this is their main carer, a family member, friend, or a professional acting on behalf of an organisation that has a role in the client's care. This list is not exhaustive and no request should be automatically rejected. Every request should be considered on its own merit.
22. A potential appointee could ask to be appointed :
- by indicating that they want to be an appointee on an application form
 - by contacting Social Security Scotland separately before or after making an application for a benefit.
 - as a result of a conversation with a member of Social Security Scotland staff in the course of assessing an application or in a consultation.

Client reaching the age of 16

23. Clients under the age of 16 are not able to act for themselves, and in all cases will have another person or organisation acting for them to manage their benefits.
24. When a person on recurring benefits reaches the age of 15 and 7 months, the person acting for them will automatically be sent a form requesting information about whether the young person lacks capacity to act for themselves when they reach 16.
25. Where that person indicates an appointee is required, the client will routinely be referred to Local Delivery to complete the appointee assessment. If appropriate, an advance appointment should be made which will take effect on their 16th birthday. Even where the potential appointee is the same person who has been acting for the client as a child, the outcome of the visit should be treated as though it was a new application for appointment.

What information is needed from the potential appointee?

26. To decide
- whether a client needs an appointee; and if so
 - whether the person who has asked to be appointed is suitable,

a referral will need to be made for an officer to carry out a face-to-face appointee assessment.

27. They will need specific information about the context of the visit they are carrying out to help them prepare and to understand what steps they need to take for it to be successful.
28. The referral form is a guide to what information to gather, however in general terms, before making a referral you should know:
- Who is the client - are they over, or about to become 16?
 - Does anyone else have a financial power to act for them (e.g. Power of Attorney or Guardianship order) that would allow them to manage the client's benefits?
 - Who is the person or organisation asking to be the appointee - are they 16 or over?
 - What is their relationship to the client?
 - Do they understand what it means to be an appointee?
 - What are the reasons the appointee believes the client is unable to make decisions and manage their benefits for themselves? (e.g. do they have disabling conditions, have they been struggling to manage other finances)
 - Contact details for the client and potential appointee, including where they could be visited during daytime hours
 - Any other relevant information such as communication or accessibility requirements or indicators from SPM that Local Delivery should be aware of.
 - Whether the client already has a DWP appointee, and if so, is it the same person.
 - Details of other people involved in the client's life who may be impacted and whose views should be considered e.g. friends, family, health or social care workers?

When is an appointment appropriate

29. An appointment under section 85B(7) of the Social Security (Scotland) Act 2018 is only appropriate where Social Security Scotland has confirmed that the client is an adult and on the balance of probabilities meets the definition of 'incapable' set out in the Adults with Incapacity Act 2000, and there is no other person or organisation who has legal authority to act on behalf of the individual and is willing to do so. For example, if there is no other person appointed by the client under a Power of Attorney or appointed by the courts to manage the client's financial affairs.

When is an appointment not appropriate

30. The law in Scotland generally presumes that adults have capacity to make personal decisions for themselves and to manage their own affairs. A decision to appoint someone else to deal with an adult's social security benefits in their place should not be taken lightly. It is important that a person's capabilities are assessed properly, through the process described in Parts 5.2.(1-5) of the guidelines so that someone who can make decisions for themselves is not prevented from doing so, and is instead supported to exercise their rights.
31. Having a particular medical condition or disability does not in itself mean that a person is unable to make decisions for themselves. Likewise if someone is immature or others disagree with their decisions or consider they would act unwisely, this does not necessarily

mean they are incapable of making decisions for themselves. What is important is the person's ability to carry out the process of making decisions in relation to their social security entitlement. People are entitled to make unwise decisions - this does not necessarily mean they are incapable.

32. An appointment should never be made simply because it would be more convenient, either for the appointee or Social Security Scotland. The decision to make an appointment must benefit the client and there should be no other way of achieving that benefit.

Could support be provided to the client that would let them manage their affairs themselves?

33. A potential appointee may approach Social Security Scotland in the belief that the client requires an appointee, but they might simply require support to interact with the social security system, such as from a third party representative or advocate.
34. Efforts should always be made to support a client to exercise as much of their capacity independently as possible. They should be offered help to communicate their views. This could mean using memory aids, pictures, non-verbal communication, advice from a speech and language therapist or support from an independent advocate.
35. If it is decided that a client would benefit from the support of an advocate, they should be referred to the Scottish Government's free advocacy service provided by Voiceability. This would not automatically rule out the need for an appointee, since the client may wish to have some involvement in decisions about their benefits, but remain incapable of managing them appropriately. (Refer to operational guidance 'Advocacy service for clients').
36. Where appropriate clients, carer's and acting bodies should be told about Social Security Scotland's policy which allows for a Third Party Representative to provide help in relation to applications.

Does anyone else already have the power to act for the client?

37. Social Security Scotland can only make an appointment where an adult is incapable and there is nobody else with the legal authority and is willing to act on behalf of the client in order to manage their benefits for them.

This means

- where the client has entered into a legal agreement with another person or organisation that they will act on their behalf if they become incapable (Power of Attorney), or
- where a person has become incapable and court order has been granted to a person or organisation to act for them (Guardianship)*

*This list is not exhaustive.

38. It is important to be sure that the legal representative (Power of Attorney or Guardian) has the power to manage the client's benefits, since there are many forms such powers may take.

Further information about verifying a legal authority to act for another person can be found in Parts 3 and 4 of these guidelines and in operational guidance.

Determining that a person is suitable for appointment

39. Detailed guidance on how Social Security Scotland will determine that an appointee is suitable for appointment can be found in Part 5.2.4 of these guidelines.

Determining whether an organisation is suitable for appointment

40. When an organisation is appointed to act for a client, this is known as a Corporate Appointee. An organisation is usually appointed where there is no individual in the client's life who would be willing or suitable to manage their benefits for them. Consideration should always be given first to whether there is an individual who would be better placed to act.
41. In most cases Corporate Appointees are Local Authorities, Care Homes or Charities or Solicitors which are all regulated bodies. They are often acting for multiple clients at any one time and therefore, while they will still be subject to review, the process for deciding they are generally suitable to be an appointee will not need to be repeated. Many of these will already be acting for clients in the DWP system.
42. Where an organisation does not fall into one of these categories, and is not known to either Social Security Scotland or DWP, further enquiries will need to be made by Local Delivery as part of the appointment process, to determine whether they are suitable to act.
43. Further guidance on how this will be assessed can be found in Part 5.2.4 of these guidelines.

Potential appointee is aged under 18

44. A Social Security Scotland appointee must be 16 years of age or over. This differs from policy in the DWP reserved benefits system, where an appointee must be aged 18 or over. This means that a 16 or 17 year old appointee managing a client's benefits administered by Social Security Scotland cannot also manage their DWP benefits.
45. Although there is no legal requirement for the same person to manage all of a client's benefits, it is usually more practical and avoids confusion about who is responsible for reporting changes, and receiving payments into different accounts.
46. When considering who would be a good candidate to act for a client we should consider the circumstances on a case by case basis, but we should take into account that a younger appointee may be less comfortable with this type of responsibility, or less experienced in managing finances, for example if they are living at home or are still in full time education.

Potential appointee has an appointee, PoA or Guardian acting for them

47. A person who has a DWP or Social Security Scotland appointee, Continuing Power of Attorney, Financial Guardian or Financial Intervenor acting for them would not be considered suitable as an appointee. If anyone being considered as a potential appointee appears to lack capacity themselves we must first verify whether this is in fact the case.

48. See Part 3 Power of Attorney and Part 4 Guardians and court appointed acting bodies of these guidelines for further information about how to verify these powers.
49. Where a potential appointee has a DWP appointee, you may have to check with that person whether in their view the individual could be considered 'incapable' of managing their own benefits.
 - If it is confirmed, a new candidate will need to be identified to become the client's appointee.
 - If a referral has already been made to Local Delivery when this is discovered, advise them of this as soon as possible.

Potential appointee lives outside Scotland

50. An appointee steps into the shoes of the client in relation to their interactions with Social Security Scotland, and must be able to carry out a range of tasks.
51. Some aspects of these duties will require regular contact with the client, such as:
 - reporting relevant changes in the client's circumstances
 - where possible, seeking the client's views, establishing their will and preferences about the management of their benefits,
 - ensuring the client is receiving the benefit of the payments, in whatever form that takes
 - supporting the client to make decisions.
52. While in many cases an appointee actually lives with, or nearby the client, it is not strictly necessary that they do, as long as they are still able to carry out all aspects of the role effectively. The further away the appointee lives, the greater the extra measures we would expect to be in place to help them to fulfil those duties. This should be considered on a case by case basis. We would not expect any associated extra costs of this to be met by the client.
53. If an existing appointee moves to a location that is far away from the client, consider whether to refer the case to Local Delivery to review whether the appointee is still able to act effectively for the client. (Refer to operational guidance for unscheduled reviews)

Client requiring an appointee lives outside Scotland

54. Where a client lives abroad and their benefits administered by Social Security Scotland are exported to that country, it will not be practicable to visit them, however other forms of corroboration should be obtained that the client on the balance of probabilities lacks capacity to manage their benefits, and where possible that the potential appointee is suitable and able to fulfil their responsibilities. You may require written or medical evidence and/or the use of translation services.

Appointee needed but no one nominated/available

55. The need for an appointee may be identified after an application has been made, by:
 - looking at the application,
 - talking to someone named in it; or
 - receiving further information from a third party, for example a GP or Social Worker.
56. There will be times where the person who assisted with making the application is not known, or where they are known, but are unable or unwilling, to act for the client.
57. Where it appears likely that the client would be ‘incapable’, but we are unable to identify an individual to act for them, double check there is no existing DWP or Social Security Scotland appointee, Attorney, or Guardian (by contacting the Office of the Public Guardian Scotland who hold the public register).
58. If this is confirmed, explore whether a corporate appointee can be identified. (Refer to operational guidance)

Appointee non-compliant with attempts to interview or requests for info

59. There may be situations where information suggests that an eligible client requires an appointee, but the person we may think is the most obvious candidate to act for them refuses to co-operate with the appointment process. They might restrict access to the client or refuse to comply with requests for information. Where this happens you should consider whether the client is at risk of harm in the form of financial or other exploitation.
60. Take further advice in accordance with the operational guidance for Clients at risk of harm.

New appointment application approved

61. Where an appointment is approved both the appointee and client should be notified and advised of their rights and responsibilities in relation to the appointment. The appointment should be set up on the client record. (Refer to “Setting up an appointee relationship on SPM”)
62. There may be outstanding actions that need to be taken in relation to the benefits the client has applied for, or is already receiving:
 - Where the client has a live application or applications for benefit, the operational team for the benefit should check that the appointee has agreed its contents and made the formal declaration.
 - If a client is already on a recurring benefit or benefits the operational team for each benefit should:
 - ensure the payment details match those specified on the Appointee Declaration Form
 - issue a duplicate award notification to the appointee which sets out, like the original notification of entitlement, what the client is entitled to, and why. It will also tell them what changes in the client’s circumstances they are expected to report for that benefit.

See operational guidance for ‘Change of responsible person’

63. The client has the right to dispute the appointment but payments should not be withheld while this process is going on.

New appointment application rejected

64. Where an appointment application is declined, both the person who applied to be the appointee, and the client should be notified of the decision, and advised of their right to ask Social Security Scotland to change the decision and make the appointment. They can do this at any time.

Social Security (Scotland) Act 2018 section 85B(14)

(Refer to operational guidance for processing an appointee referral decision)

65. If the application for appointment is declined because the client is not ‘incapable’ and can manage their own benefits with support, check if there are outstanding applications for benefit(s) that are awaiting a determination. The operational team for that benefit should check that the client has agreed the contents of the application and made the formal declaration before a determination is made.

If the application for appointment is declined because the appointee is not considered suitable to act for the client, attempts should be made to identify someone else from the client’s support circle who may be more suitable. See ‘Finding a replacement appointee’ below.

66. If a client is already on a recurring benefit no action is required.

Making an appointment where an application is made under the Special Rules for Terminal Illness

67. Where an application is received for a client through the Special Rules for Terminal Illness (SRTI) route, and they need another person to act for them, work with the Case Manager and/or Practitioner to understand the specific circumstances.
68. Remember that a valid application can be made for a client by any third party under the Special Rules for Terminal Illness. The applicant does not need to be an appointee, attorney or Guardian.
- Payment of benefit should not be unduly delayed while waiting for an appointee assessment; and
 - Neither the client nor their family should be subjected to face-to-face processes that would be distressing in the circumstances.
69. This means that an interim appointment decision may be made by gathering the necessary information and the appointee completing the appointee declaration by telephone. This call must be audio recorded and this should be noted on both the appointment assessment form and SPM.
70. Before speaking to the potential appointee ensure you are familiar with the guidance around SRTI applications and disclosure of information.

71. Where it has not been possible or reasonable to seek the views of the client, in relation to the appointment, Local Delivery should record this at Parts 2 and 3 of the assessment form including the reasons why.
72. Careful consideration should then be given, taking into account the client's prognosis and current situation, as to whether it would be necessary or appropriate to carry out a visit to the client and or appointee at a later time, or to set a short review period.
73. Example - Nancy has lung cancer and secondary brain tumours. In addition to the physical symptoms this has affected her memory, along with her ability to make decisions and express herself.
74. Nancy's son Brian submits an application under the SRTI rules. Information is obtained from a clinician that confirms Nancy's diagnosis and cognitive symptoms and that she is about to be moved from hospital into end of life care at a hospice.
75. After consulting with the Case Manager dealing with Nancy's application, the Client Support Advisor calls Brian and asks him the questions relevant to appointment. They record the circumstances and why it is not reasonable to speak to Nancy, on the Appointee referral form. They audio record the call and read the declaration aloud to Brian asking him to agree to the statements in the declaration. Nancy has a daughter who is called and spoken to briefly. She confirms that the family have decided that Brian is the best person to manage the application. Brian is appointed for Nancy using the information available. SPM and Parts 2 and 3 of the appointee assessment are updated to describe the steps taken to mitigate the circumstances and explain any deviations from the standard appointment process.

Changes of circumstances and unscheduled reviews

76. There will be times when Social Security Scotland becomes aware of a change of either the client's or appointee's circumstances, which means that the appointment will need to be reviewed before its scheduled review date. This could be because someone has requested that an appointment be terminated, a new appointment be made, or both.
77. The client, or any person with an interest in the welfare or financial affairs of the client can request that Social Security Scotland makes an appointment at any time.

Section 85(B)(14) Social Security (Scotland) Act 2018

Reasons related to the client

- the client tells us they believe they are now able to manage to their own affairs
- a third party contacts us to tell us that they believe the client is not incapable

Reasons related to the appointee

- the client no longer wants the existing appointee to act for them
- the appointee wishes to end the appointment or is no longer able to carry out the duties required

- a third party contacts us to tell us that the appointee's behaviour is giving cause for concern e.g. a Social Worker
- information is received that an attorney already has powers to manage the client's benefits
- information is received that a court has granted an order giving another person the power to manage the client's benefits (e.g. Guardianship)

This list is not exhaustive.

Requests for appointment

- A third party applies to be appointed instead of an existing appointee
78. Where any element of any appointment requires review this should be considered as though it was a request for termination. See detailed scenarios below which may result in termination.
79. The following section sets out a number of changes of circumstances that may occur in relation to an appointment. They describe what should be done in each situation as it relates to benefits administered by Social Security Scotland. In some circumstances action may need to be taken to liaise with the Department for Work and Pensions about this change where the appointee is also acting for the client's reserved benefits.
80. Part 6 of the Client Representative Guidelines will include detailed guidance about DWP appointees in due course with instructions in operational guidance about action to take.

Appointee dies

81. Where an appointee dies, the appointment should be terminated immediately, and where possible no further payments should be made to the appointee's account, this may mean suspending the client's benefits temporarily. See detailed guidance on Suspension.
82. You should make an immediate referral to Local Delivery to make a new appointment. If you have identified a substitute appointee, include their details in the referral. However further enquiries may have to be made to identify a new person or organisation to act for the client.
83. You should include information about the death of the previous appointee in the referral to local delivery. It is likely they were a close friend or relative and this should be approached sensitively. It may be that the appointee still had funds of the client's which need to be returned to them, or given to the new appointee when in place. When established, the person dealing with the estate of the deceased appointee should be formally notified that the appointment has ended and that these do not form part of the estate of the deceased.

Appointee becomes unable to carry out responsibilities

84. Where you are informed by an appointee or someone else that an appointee is for any reason unable to act for the client you should treat this as an application for termination of the appointment.

Appointee no longer wants to act

85. Being an appointee is voluntary. An appointee may feel the role is more responsibility than they anticipated, or have personal reasons for wanting to stop. They do not need to give reasons for wanting to end an appointment, but if they offer an explanation you may wish to consider whether any support can be provided or whether they can be signposted to organisations that could help.
86. Where an appointee lets it be known either by telephone or in writing that they no longer wish to act for the client, you should ask them:
 - if they are able to suggest another person who may be able to replace them
 - whether they are able to continue to act for a short period while a new appointment is made.
87. If they can continue to act, make an appointee referral to Local Delivery and include the name of any suggested substitute appointee. The existing appointment should be terminated when the new one is made, but payments can continue in the meantime.
88. If they refuse to continue to act during the transitional period you will need to terminate the appointment immediately and stop payments - refer to operational guidance on Suspension of payments. Where possible, contact any suggested alternative appointee to ensure they are prepared to act for the client and make an urgent referral to Local Delivery.

Dispute between competing “appointees”

89. There could be situations where a person or organisation asks to be appointed when there is already an appointee in place. This could be for a number of reasons, including a dispute about who is the best person to act for the client, such as between family members.
90. Where a person requests to be appointed and there is already an appointee, you should gather as much information about the situation as possible.
91. Without revealing who the existing appointee is or other information about the client
 - Ask why the person wants to apply to manage the client’s benefits (they may or may not know that an appointee is already in place).
 - If it is clear they know there is already an appointee in place and their identity ask them their reasons for wishing to replace that person.
 - If they weren’t aware of the appointee you should inform that someone else is already acting (but not who they are). They may choose to withdraw but if not then take their details as if making a new referral. Inform them that we will be in contact again about this.
92. You should then complete a referral to Local Delivery including as much information as possible about the circumstances. The Client Support Advisor will carry out initial enquiries with the existing appointee/ and or prospective new appointee to identify if there have been any significant changes of circumstances that would merit an unscheduled review of the existing appointment.

93. They will decide whether it would be appropriate to terminate the existing appointment or not. The person applying should be notified of the outcome as if it were an initial application, the existing appointee and client should be notified of the outcome as an unscheduled review.

Someone else contacts us to say they want to exercise a legal authority to act – e.g. Power of Attorney, Guardianship order

94. An appointment can only be made by Social Security Scotland where there is no other person who has the authority to act for the individual and is willing to do so.

Section 85(B)(7)(b)(c)(d) Social Security (Scotland) Act 2018

95. This means that if a person or organisation contacts us at any time and tell us that they have been granted legal authority to act for the client for their benefits, we must first verify the authority (See Parts 3 and 4 of the Client Representative Guidelines) and terminate the existing appointee.
96. Even if the holder of the authority is the same person or organisation as had already been appointed, you must still end the appointment and set them up on SPM with the correct relationship type. See operational guidance for 'Adding or amending a client representative on a client's record on SPM'.

Appointee not contactable/gone away

97. If an appointee does not respond to requests for information or attempts to contact them fail - for example mail is returned as undeliverable by Royal Mail - you should follow the process for the benefit in question as if the appointee was the client.
98. While suspension of payments may be appropriate, no determination should be made to end entitlement if the appointee does not reply. An urgent unscheduled review referral should be made to Local Delivery to investigate whether the appointment is still appropriate and to find out whether there has been a relevant change of circumstances for the appointee or client.

Client on recurring benefit and becomes 'incapable'

99. Where a client is already entitled to recurring benefits such as SCP, CDP or ADP and a change of circumstances is reported, that indicates that the client may now lack capacity to manage their benefits and requires an appointee, the relevant information should be gathered and a referral made to Local Delivery for an appointee assessment.
100. If an appointment is later made the appointee must be notified of the client's entitlements and their duty to report changes in relation to each of the benefits concerned.

Client states they are capable of acting for themselves, or makes an application for benefit either for themselves or a child

101. The client has the right to request that an appointment be terminated at any time. However, if the client has an appointee already acting for them this means that at some point in the past it had been decided that they were not capable of managing their social security benefit entitlement. If contacted directly by the client, proceed with caution and act on the basis that they may not be capable unless we learn otherwise. Be mindful that this could be a sensitive situation.
102. The fact that client is contacting us themselves/acting for themselves could suggest:
- The client does not actually lack capacity and the appointment is inappropriate
 - The client has the capability to understand that they are on benefits and call us, but still lacks capacity and insight into their condition.
 - The appointee and the client have become estranged and the appointee is no longer carrying out their duties as they should on behalf of the client.
 - The client is in an abusive or coercive situation and is reaching out for help.
103. Even if they can't pass identity checks you should note what the client says and take it at face value. Make a referral to Local Delivery for an urgent unscheduled review of the appointment and ensure you include details of the conversation you have had with the client. Local Delivery will investigate further with the client and appointee and decide whether to terminate the appointment.
104. If there is any suggestion that the client is in danger or subject to abuse do not contact the appointee see 'Concerns for the safety or wellbeing of the client' later in this section.
105. If the client has completed an application and signed the declaration themselves you must verify whether they have capacity. The contents of the claim may be inaccurate and the declaration invalid. This should be resolved through a targeted unscheduled review by Local Delivery and if the appointment is inappropriate it must be ended before processing it further.

Client objects to the person/organisation that has been appointed

106. Where the client contacts Social Security Scotland by any method, and expresses an objection to the person or organisation appointed to act for them, this should be treated as a request for termination, and a referral made to Local Delivery. The client is not obliged to provide any reasons for this but if they do, include this detail in the referral. Local Delivery will decide, given all the circumstances whether it is appropriate to end the appointment.
107. We should always be mindful that this could be a sensitive situation such as:
- the appointee and the client have become estranged, and the appointee is no longer carrying out their duties as they should on behalf of the client; or
 - the client may be in an abusive or coercive situation and is reaching out for help.

Third party requests termination because the client is capable, or there are concerns about the appointee

108. As described earlier in Part 5.2, anyone with an interest in the client's welfare or financial affairs may request that Social Security Scotland terminate an appointment. This should be interpreted broadly and could include for example friends, relatives, a health or social care worker.
109. It is possible that where a third party is reporting concerns about the appointment that either they have already been raised with the appointee (who has chosen not to address the issue), or there is a broader concern about how the appointee may react.
110. You should complete an Appointee referral for an unscheduled review :
 - take the details of the person or organisation raising a concern,
 - gather as much information as you can about the background and reasons for the request,
 - include all the information in a referral to Local Delivery to consider termination of the appointment.

Concerns for the safety or wellbeing of the client

111. Clients who are unable to act for themselves are among the most vulnerable in society and a number of government agencies have responsibility for ensuring they are protected from abuse and exploitation, whether financial, psychological, physical or sexual.
112. There will be circumstances in which it may be appropriate to alert the relevant agencies that have statutory duties in relation to that adult. If at any time concerns are raised by the client, a third party, or to Social Security Scotland staff about the safety or wellbeing of a client, particularly where an appointee is in place, take further advice in accordance with the operational guidance for 'Clients at risk of harm'.

Suspending payments

113. There will be times when uncertainty around an appointee means that even though a client is entitled to a recurring benefit, it should not be paid to them:
 - because the person Social Security Scotland has appointed is unable to continue to receive the payments; *or*
 - the appointment is being actively reviewed and the client's funds are potentially at risk.

Paragraph 1 of Schedule 11 Social Security (Scotland) Act 2018³
114. In deciding whether to stop/suspend payments to someone who is appointed you should have regard to the financial circumstances of the client so far as they can reasonably be known, and whether stopping payments temporarily would have a significant impact on their welfare. This may also depend on whether or not you believe they are actually benefitting from the payments under the current arrangements.

³ The Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 come into force on 9 February 2022.

115. However, there are also circumstances where we may be asked to suspend payments during investigation by agencies with statutory duties to protect adults regarded as lacking capacity. This would usually be where there are adult support and protection concerns which Local Authorities are responsible for investigating, or the Office of the Public Guardian (Scotland) has received an allegation that an adults property or financial affairs are at risk from abuse or misuse.
116. By financial abuse we mean:
- having money or other property stolen,
 - being defrauded,
 - being put under pressure in relation to money or other property,
 - having money or other property misused.
- (Refer to operational guidance on suspension of payments)

Who needs to be notified of the outcome of a request to terminate

117. When a request has been made to terminate an appointment this will result in a decision by Local Delivery. Who should be notified depends on the parties to that decision.
- When the request to terminate was made at the request of the client or the appointee, they must both be notified of the outcome.
 - When the request to terminate was made at the request of a third party with an interest in the client's welfare or financial affairs the client, the appointee and the third party must be notified.

Revoking an appointment

118. If following a review of an appointment Local Delivery decide that for any reason an appointment should be ended, they will have recorded their reasons for this in the Appointee Referral Form and both the client and the appointee will be notified in writing that the appointment has been ended.
119. The client, the appointee, or others may ask for this to be reinstated, if they do this should be treated as a request for appointment under s85B(14). However, it is important that relevant history(the previous decision and context) is included in the referral for appointment because it is in effect a review of the decision to terminate the appointment.

Social Security (Scotland) Act section 85B(14)

Is another appointee needed?

120. When any appointment ends this should cause the minimum inconvenience to the client, their appointee and any new appointee, Power of Attorney or Guardian who will be managing the client's benefits. Where possible there should be no gaps in payment for the client unless necessary for their protection.

Finding a replacement appointee

121. Where an appointment has to be ended but the client is still regarded as incapable of managing their benefits, you will need to find another person to act on their behalf. The appointee being terminated may be able to suggest a replacement. However, you should always take into account the circumstances in which the last appointment was terminated.
122. If the appointee has had to be removed you may have to work with other agencies such as the Office of the Public Guardian (Scotland), the local authority or others in the client's support circle to decide if appointment is still the appropriate intervention or whether a Guardianship order or similar is now needed.
123. The documentation in relation to the original appointment may include names of people or organisations which can be pursued. If it's not possible to do so you should refer to operational guidance for identifying corporate appointee.
124. When an appointee changes, you must always:
 - check whether there has been any significant change in the client's capacity/circumstances
 - insofar as is practicable seek, and have regard to the client's views on the new proposed appointment
 - assess the suitability of the appointee, as you would a new appointee
 - seek the views of others who may be affected by the appointment.

Removing the appointment entirely

125. There are three sets of circumstances in which you may end an appointment entirely, without finding a replacement:
 - the client is found to be capable of managing their benefits (with or without support)
 - we are informed that someone else already has Power of Attorney which were not aware of and they have powers to manage the client's benefits
 - we are informed someone already has or will imminently be granted a Financial Guardianship order that includes powers to manage the client's benefits.
126. Where the client has had an appointee and it is no longer needed, Local Delivery should consider whether any onward referral or signposting is required to other forms of support such as the advocacy service, or third sector groups who provide representation services.
127. Where someone wishes to exercise a legal authority to act see 'Someone else contacts us to say they want to exercise a legal authority to act' earlier in these guidelines.

An appointee is unsuitable but is acting for multiple clients

128. Where an appointee is being removed because they have not been acting in the client's interests, check whether they are also acting for any other clients of Social Security Scotland and/or DWP:
- Individuals could be acting for more than one family member, or in cases of financial exploitation could be systematically targeting vulnerable adults.
 - Corporate appointees, such as a care home, may be acting for several of their residents or service users.
129. If they are acting for any other clients, escalate the issue to your manager to consider whether reviews should be undertaken or whether coordination may be required with the local authority or other agencies. The safety of clients should always be paramount and no sudden action should be taken which may put any client at risk, put them in financial hardship, or which would jeopardise investigations by other agencies.

Obtaining medical information

130. The first part of the test for an appointment of this type is to check whether the inability to manage benefits is as a result of a mental health condition, or a physical health condition which prevents them being able to communicate in any way. If the request for the appointment has come as a result of an application for disability assistance, it is likely that the Case Manager for that benefit will already have, or will be looking to obtain information to support the needs set out within that application.
131. In the rare circumstances where there is uncertainty about whether this criteria is met, first check whether any other information is held by Social Security Scotland. If not consider whether clarification of the general nature and effects of the particular health condition should be sought from Social Security Scotland's practitioner.

Appointees and Adult Disability Payment consultations

132. The need for an appointee is most often identified through a claim for disability assistance. Where a client lacks capacity it should in most cases be possible to get information to support their application for ADP from other sources such as their GP or other health or social care professionals. However there may be exceptional cases where a client regarded as lacking capacity is required to take part in a consultation for Adult Disability Payment (ADP).
133. The client is entitled to have a supporter and/or an advocate present if they wish, but they must always be accompanied by the appointee where any information is being sought directly from them that would have a bearing on their eligibility or entitlement.
134. While a consultation is different from other situations, in that the appointee can't stand completely in the shoes of the client, they should still be treated in every other way as if they are the client and both a supporter or advocate would also be available to them through this process.

Death of the client

135. When a client with an appointee acting for them dies, the appointment must be terminated immediately and no further payments should be made to them, even if arrears are due. Any money that the appointee has which belonged to the client becomes part of their estate and should be given to the executor or beneficiary of that estate.
136. Where there is no executor an appointment may need to be made on behalf of the deceased to manage any outstanding matters relating to benefits they were receiving. See Part 5.3 of the Client Representative Guidelines Executors and Appointees for the Deceased.

Entitlement appeals and appointees

137. An appointee can do anything that the client would have been able to do in connection with their entitlement to assistance. This means they can lodge appeals and appear before a tribunal on a client's behalf. It is important that SCTS and or the Upper Tribunal are advised immediately if any form of representative is put in place or removed up until the appeal reaches its conclusion.
138. However, a tribunal can require that the client themselves appear before them where it would be consistent with the overriding objectives of the tribunal to deal with the case fairly and justly.
139. There may also be circumstances where as result of information it has obtained through its inquisitorial function, a tribunal remarks on the appropriateness of an appointment, either in the course of proceedings to a Presenting Officer or in a decision notice or statement of reasons. If this happens see 'Third party requests termination because the client is capable, or there are concerns about the appointee'.
140. The tribunal does not necessarily need to be advised of the outcome of any review that is instigated unless it results in a change/removal, and the appeal is still ongoing.

Appointee assessments and clients living abroad

141. Where a client and their potential appointee are living in another country to which their devolved social security assistance can be exported (see 'Export' in the Decision Maker's Guide for Residence and Presence), it may not be practicable to communicate with the client to give them the relevant information, obtain the views, or to assess their abilities via a face to face visit.
142. You should first check whether there is any possibility of using technology such as video or the telephone, however in all cases it will be even more important to corroborate the client's abilities, will and preferences by other means. This could be through others involved in their care or treatment, such as a doctor, nurse, social worker or social care worker. If they have applied for disability assistance then relevant contact information may be provided within the application. You may also require the help of translation services and or a sign language translator.

Potential appointee says they are in the process of getting legal powers

143. There may be circumstances where nobody has legal authority to act for a client but another person has indicated that they are in the process of getting these powers.
144. You should assess the likely timescales for this power being put in place and if necessary make a referral for an appointment for the interim period, to allow the client to receive any benefits they may be due as quickly as possible.
145. Power of Attorney - Where someone says they are going to get, or are in the process of getting Power of Attorney for the client, you should establish what stage the process is at. This is because for a client to grant Power of Attorney they must have been capable at the time they granted the power to the attorney.
146. If Continuing Power of Attorney (including the power to manage benefits) has already been granted by a client who now lacks capacity, but it is still in the process of being registered with the Office of the Public Guardian (Scotland), you should establish when it was sent to them. If using the expedited registration process this can be as quick as 5 working days however, registration should normally be processed within 30 days. Wait for this to happen because the Power of Attorney needs to be registered with the Office of the Public Guardian in order for it to be valid. Once registration has been verified, update the relationship on SPM and process the application as normal.
147. Guardianship or other court order – where a client no longer has capacity, but the person who wants to act for them says they are going to apply for a Guardianship order, you should make a referral for an appointee to be put in place. This is because the Guardianship process can take 4-6 months and it is important that the client receives any benefits they are entitled to as quickly as possible.
148. If an application for Guardianship is already pending, you may wish to ask the applicant if they have a date for a hearing with the Sheriff. You should not assume that the Guardianship application will be successful. If the hearing is very soon it may be possible to pause activity on any appointee application until it is confirmed, or you may consider making a referral to Local Delivery to consider appointing them in the interim through the usual process.
149. Any interim appointment must be ended when a Power of Attorney or Guardianship which covers social security benefits is in effect. Set a task/reminder to check the outcome of the Guardianship application.

Bank accounts

150. Becoming an appointee only allows that person to manage the client's devolved benefit payments. If they want or need to manage the client's other finances, the appointee must apply to become their financial guardian. An appointee would not usually have access to bank accounts in the client's name.
151. Where someone has an appointee, payments of their benefits administered by Social Security Scotland should be made into a bank account in the appointee's name. Ideally this would not be their current account but one set up specifically for receiving and withdrawing the client's benefits. This is to avoid the client's money being mixed up with the appointee's, or being accidentally spent. This will help the appointee keep track of it more easily.

152. If an appointee does not have a secondary bank account at the time of the appointment, payments can be made into a current account for up to 3 months, after which the appointee should be reminded that they should set up a secondary account. Only where they are good reasons they are unable to do this should their current account be accepted as a permanent payment location. Clearly note the reason for this in SPM. (Refer to operational guidance for processing the outcome of an Appointee Referral)
153. Payments may be made into a joint account only where the client is the other account holder. However, when they are informed an account holder has lost capacity, banks and building societies may decide to temporarily restrict the use of a joint account to essential transactions until a court order/guardianship has been put in place. If a potential appointee has a joint account with a client who lacks capacity, they should discuss this with their bank or building society as soon as possible.
154. Payments of benefits administered by Social Security Scotland for clients with an appointee should never be paid into a joint account if the other named account holder is a third party who would be able access the client's funds.

Someone other than authorised person contacts the Social Security Scotland on behalf of a Corporate Appointee

155. Where an organisation has been appointed to act for a client there will be a named contact who is nominated from that organisation who will interact with Social Security Scotland on their behalf.
156. However, we know that in many organisations people move post or may be absent from work for periods of time and another member of staff may step in for them.
157. If a person contacts Social Security Scotland on behalf of an organisation who is not the named contact they should be able to give you detailed information about the client. You should phone the organisation back, using the contact details that were collected in the appointment application, or through a publicly listed number (e.g. from their web page) to confirm that the person works there and is authorised to act.
158. If the change is permanent, ask the organisation to write to Social Security Scotland to nominate a new named contact.

Overpayments and appointees

159. An appointee has legal authority to act on behalf of the client for matters relating to their entitlement to benefits administered by Social Security Scotland. They complete applications, declarations, receive letters and notifications from Social Security Scotland, and any payments on the client's behalf. Where the client has been overpaid the appointee will have liability for that overpayment, however it will depend on the circumstances whether and how that overpayment is recovered. (Refer to detailed overpayments guidance)

Scheduled reviews

160. The principles of appointment set out in the 2018 Act are clear that an appointment should only last as long as it continues to secure a benefit to the client. In line with that principle, it is required that Social Security Scotland review all appointments at least every five years.
161. The aim of a review is to safeguard the client, to ensure that the appointment is still necessary, and check that it is still securing the benefit it was intended to.
162. When it sets a review date, and decides how the appointment should be reviewed, Social Security Scotland must take account of the circumstances of the individual case.

How often should a review take place?

163. While a review of some sort must take place at least every five years, this does not mean that the appointment cannot be reviewed more frequently, where it is appropriate to do so. Individual circumstances should be considered by the Client Support Adviser.
164. Further detailed information about review periods and factors that should be considered can be found in Part 5.2.5 of the Client Representative Guidelines Making the Decision.

What is a review for?

165. A review is an opportunity to safeguard the client's interests. The aim is to identify areas in which the client or appointee may require support, or where there may have been changes in the client's capacity which mean the appointment is no longer of benefit to them.
 - An appointee can be reviewed by means other than in person, such as by phone or video call (provided they pass relevant identity verification checks).
 - The client should always, if possible, be seen in person, and in the absence of the appointee to ensure they are not under duress. Where it is known in advance that the client will not be able to communicate, efforts should still be made to check the general welfare of the client. If this cannot be done clear reasons should be recorded, particularly where the client lives in a private residence with the appointee.
166. If it has not been possible to see the client face-to-face, or to communicate with them, consider whether it is possible to approach professionals involved in their care, or others with an interest in their welfare or financial affairs for a view.
167. The minimum requirements for any review of an appointment are that it should check:

The client:

 - The client's general welfare and if their basic needs are being met.
 - Whether there has been any significant change in the client's capacity to make decisions or level of independence.
 - Where possible, a view about whether the client is content with the appointment and how their benefits are being spent (i.e. are their views being sought and taken into account).

- Are there other benefits to which the client may be entitled and that have not been applied for, or relevant change of circumstances relating to benefits they are on?
- Are there any new risks emerging or have previously identified risks reduced?
- Has anyone been granted a Guardianship or other order since the original appointment?

The appointee:

- The general welfare of the appointee, and if anything has changed for them (e.g. their health, personal or financial circumstances).
- Are they still happy with the arrangement and able to manage their responsibilities?
- Have there been any significant overpayments in the intervening period as a result of failure to report a change?
- How frequently have they been able to see the client?
- Has the appointee been keeping track of the client's money and how it is spent?
- How have they been using the assistance to the client's benefit? Has any surplus benefit been building up unspent, if so why? What sorts of things have they been able to use it for?
- Is there any additional support that they would benefit from (e.g. signposting to welfare rights or advocacy)?
- Are there any new risks emerging, or have previously identified risks reduced?

168. Note: There is no hard and fast rule about how an appointee should spend the client's benefits other than that they should be spent in the client's interests taking into account their will and preferences. There is no requirement to see detailed receipts, but you may wish to ask to see a recent bank statement from the account the appointee has chosen to use for the client's benefits.

169. While we cannot compel the appointee to show us this, refusal may be cause for concern. If you do see them you should not take copies or retain any documents but should make a general appraisal of what they include.

Reasonable expenses

170. There may be times when managing the clients benefits, or helping them to make use of them, the appointee incurs out-of-pocket expenses.

171. Provided these are:

- reasonable;
 - kept to the minimum necessary; and
 - it can be demonstrated that the client benefited,
- this is not misuse of the client's funds.

172. If the appointee lives in the same household as the client, the proportionate use of their funds towards shared household expenses that are of benefit to them both is also reasonable.

Changing or ending an appointment as a result of a review

173. The majority of scheduled reviews are likely to show no cause for concern. However, the purpose of the review is to identify and address any issues that have arisen and to actively consider whether the appointment should continue. While it is not possible to write a definitive list of matters that might arise, these may include:
- The client has made significant progress through education, treatment, rehabilitation, or development of life skills. They would now be able to manage their benefits either with help, or entirely without support - but this has not been recognised or acknowledged by the appointee.
 - There are signs that the appointee is no longer able to manage the client's benefits effectively. This could be as a result of illness, or other factors in their own life such as drug and alcohol abuse, recent trauma or stress, or other personal or family matters.
 - Information from any source suggests the appointee is engaged in abusive/exploitative behaviour towards the client. This could be financial, psychological, physical or sexual. For example they could be actively stealing from the client or neglecting them.
174. Causes for concern could include:
- the appointee lacking knowledge of obvious changes to the client's living or care arrangements
 - the appointee having failed to report changes of circumstances to Social Security Scotland, leading to repeated overpayments
 - unpaid bills, such as care home fees, rent or utilities
 - change in living conditions, such as lack of heating, clothing that the client should be able to afford
 - the unexplained disappearance of funds or possessions
 - items being purchased which are not appropriate for the person.
175. Financial abuse includes:
- having money or other property stolen
 - being defrauded
 - being put under pressure in relation to money or other property
 - having money or other property misused.
176. Where Local Delivery have concluded that there is a risk, they may choose to set a shorter review period or to end the appointment. They should record their reasons for this clearly on the appointee referral form. The reasons may include sensitive information and it should be remembered that the form may be used in later disputes or appeal proceedings. See 'Confidentiality' later in these guidelines.
177. If you have concerns about financial or other abuse see 'Concerns for the safety or wellbeing of the client' above.

Appointees before 24 January 2022

178. Before the launch of Child Disability Payment on 24 January 2022 some appointments had already been made for clients applying for one-off benefits and Scottish Child Payment. These clients were already on a qualifying income related benefit with DWP, and Social Security Scotland made an appointment based on this through the completion of a simple declaration form. No visit was required to either the client or the appointee before the appointment was made.
179. Appointments made before 24 January 2022 can continue but the law and processes for existing and new appointments for all types of assistance has changed. From that date, regardless of whether someone has a DWP appointee, the following action should be taken:

Situation	Action to be taken
<ul style="list-style-type: none"> An application is received for a client who is understood to lack capacity; and no appointee, or other acting body showing on SPM 	A referral should be considered to Local Delivery to carry out an assessment.
<ul style="list-style-type: none"> An application is received for any form of assistance; and client already has an appointee on SPM but it started prior to 24 January 2022 (i.e. it was created through the declaration process) 	A new referral should be made to Local Delivery to carry out a visit. If the appointment is confirmed the date that it was confirmed should be entered as the new start date of the appointment.
<ul style="list-style-type: none"> Client is on Scottish Child Payment and they have an appointee on SPM which started before 24 January 2022 	The appointment should be reviewed by Local Delivery as soon as reasonably practicable. If the appointment is confirmed, the date that it was confirmed should be entered as new the start date of the appointment.
<ul style="list-style-type: none"> Appointment was made before 24 January 2022 in relation to a one off benefit; and no further applications for assistance made within 5 years of that date 	As it is not in active use the appointment receives light touch review at 5 years. Full review triggered by any application for benefit thereafter.

Disputes

180. Most of the scenarios that would fall into the category of a dispute are described under 'Changes of circumstances and unscheduled reviews' above, however there are also dispute scenarios where a decision has been made not to appoint where the client appointee or others might disagree with Social Security Scotland's conclusion.
181. If the client, potential appointee, recently terminated appointee, or other person with an interest in the client's welfare or financial affairs, ask that an appointment is made or terminated, in certain circumstances this should be treated as a dispute.

Request that an appointment be made from:

Client	others
<ul style="list-style-type: none"> an appointment in place but another person is preferred 	<ul style="list-style-type: none"> a new person or organisation wants to act but there is an existing appointee
<ul style="list-style-type: none"> Social Security Scotland previously decided there was no need for an appointee but client disagrees/thinks they need one 	<ul style="list-style-type: none"> a person or organisation Social Security Scotland refused to appoint, or whose appointment was terminated, disputes this decision and wants to be appointed
Social Security Scotland has not followed its own processes/guidance correctly in making the decision	Social Security Scotland has not followed its own processes/guidance correctly in making the decision

Request that an appointment be terminated from:

Client	others
<ul style="list-style-type: none"> believes they are capable of managing benefits and do not need an appointee 	<ul style="list-style-type: none"> believes client is capable of managing benefits and does not need an appointee
<ul style="list-style-type: none"> objects to the chosen appointee 	<ul style="list-style-type: none"> issue with the chosen appointee
Social Security Scotland has not followed its own processes/guidance correctly in making the decision	Social Security Scotland has not followed its own processes/guidance correctly in making the decision

Who should deal with a dispute

182. Where there is a dispute relating to a previous decision the person who made that decision should not be involved in the dispute process. The process may involve plugging any gaps in the information they gathered, and seeking and considering new information in relation to the matters raised by those involved.
183. Areas of a decision not in dispute should not normally be reviewed unless there has obviously been another error which needs to be addressed. Regardless of who is disputing the decision the focus of any review must always be what is best for the client not the interests of others involved in the dispute.

Gathering further information

184. Information for a review should be gathered in much the same way as it would in a new appointment, but as some facts may be disputed you may need to seek corroboration from others.
185. In gathering further information take care not to reveal information to the parties about one another, or their specific grounds for dispute as this could result in a data breach. Where a third party has raised a concern about an appointment it is likely they will know the identity of the person acting for the client, but not necessarily other information about them or the benefits they are managing for them.

Can an appointee continue to act while a dispute is pending

186. An appointee should generally be able to act for a client and receive their payments while a dispute/request to terminate is pending so that the client continues to receive their benefits during the review.
187. However, there may be circumstances where the request to terminate comes from another organisation with a statutory role in protecting adults at risk, such as the Local Authority or Office of the Public Guardian. These organisations will have considered the impact of the termination of the appointment and will only ask for this action to be taken where it is considered in the interests of the individual.

Who should be notified of the outcome of a dispute

188. Where the dispute is raised with Social Security Scotland by the client, or the former/rejected appointee, they should both be notified of the outcome.
189. Where the dispute is raised by another person or organisation with an interest in the clients welfare or financial affairs:
 - If the dispute is about a decision that the client is capable of managing their benefits, the client and the third party should be notified of the outcome.
 - If the dispute is about a decision that the client is incapable of managing their benefits, the client, the appointee and the third party should be notified of the outcome.
 - If the dispute is about the suitability of person that has been chosen to act as the appointee, the client, the appointee and the third party raising the dispute should be notified of the outcome.

Confidentiality

190. At all stages of the appointment and dispute process, care must be taken to ensure that those involved in the decision are only given information in line with their rights and responsibilities at that time.
191. Until a potential appointee is actually appointed you should not share personal or other information about the client with them, and you should not take instruction from them relating to the client's benefits.
192. When discussing the appointment with others who may have an interest, remember that the client still has a right to privacy. While you may need to ask questions you should take care not to share unnecessary detail about the client or the potential appointee.
193. There may be situations when personal information relating to the appointee is part of a dispute. Again care must be taken to ensure there is not a data breach and that information is only shared where it is relevant to the matters being considered, to the person it is shared with, and where it will not put the client or others at risk.
194. Where a situation such as a dispute looks likely to arise or has been raised it is recommended that advice is sought from Social Security Scotland's data protection officer on what information can be shared. This would also apply to any Subject Access Request made by anyone involved in the appointment process.