

# Client representative guidelines

## Part 5.3: Executors and appointees for the deceased

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## Introduction

1. While the majority of applications for devolved assistance follow the standard process for determination and payment, the system also needs to be able to respond to unexpected events in the lives of clients. The most fundamental of these is the death of the client, either while their application is still being processed or while they are in receipt of ongoing payments.
2. Processes around Death and Bereavement must carefully balance the need to treat people with dignity, fairness and respect against the Governments wider responsibilities and obligations to deliver the commitments to fiscal responsibility in Our Charter.
3. The following principles apply:
  - Everyone will be treated with dignity, fairness and respect at all times
  - Reporting a date of death will be handled as sensitively as possible
  - Social Security Scotland will act as quickly as possible to establish the most appropriate death arrears payee or appoint an appropriate person to act when an application is in progress, pay any outstanding arrears of assistance and keep overpayments to a minimum
  - Social Security Scotland will inform individuals of any other eligibility they may have to bereavement support

## Dealing with applications of deceased clients

4. The method by which Social Security Scotland is notified of the death will determine what verification is required in order for it to be recorded and for the appropriate actions taken.

### Death of client reported

5. When Social Security Scotland is made aware of a date of death of a client the date of death should be verified as quickly as possible.
6. There may be various ways in which Social Security Scotland becomes aware of the death of a client:

### Automated report

- **Tell Us Once** is a service that can be accessed when a death is being registered that allows it to be reported to most government organisations in one go. Where a death has been reported to the 'Tell Us Once' system the verified date of death is broadcast to Social Security Scotland without the need for any person to report this directly to Social Security Scotland
- **DWP** - where a date of death has been reported to DWP and deemed as verified it will be broadcast to Social Security Scotland. This will advise us of the date of death only and further follow up enquiries may be required to identify an Executor or appoint an Appointee as feed will provide the date of death only

## Direct report

- **Direct reporting to Social Security Scotland** - Someone who knew the client may call or write in and report the death. This individual, the '*death reporter*', could be a family member, friend, a representative from a welfare rights organisation or other person. The '*death reporter*' will not always be the Executor, potential Appointee or indeed beneficiary, of any potential estate and therefore their role at this stage is limited to that of reporting the death.
7. It is also important to note that as soon as the client dies any other pre-existing relationship types end. If the person reporting the client's death is on SPM as their Power of Attorney, Guardian, Appointee or Third Party Representative relationships should be terminated on SPM. (Refer to 'Ending the relationship between a client representative and a client on SPM')
  8. In cases where the death is reported directly to Social Security Scotland the information should be taken and verification requested, and the person should also be signposted to the Tell Us Once system to ensure wider broadcast of the reported death.
  9. To ensure compliance with information governance and data protection principles Social Security Scotland must only hold the death reporter's information until the Executor details have been established or an Appointee has been appointed.

## Death Verification

10. There are serious implications of recording a date of death on SPM in error and when a death is reported, verification will be required to ensure that the correct date is recorded and that no awards are stopped in error.
11. Verification can be one or a combination of the following:
  - Verified date of death from "Tell Us Once"
  - Verified date of death through CIS feed from DWP
  - National Records of Scotland data
  - Death certificate – the original document or a certified copy where it has not been possible to verify through any of the other routes listed above. (Refer to operational guidance 'Verify a date of death')
12. In Scotland deaths must be registered within eight days. Where a death cannot be verified within eight days then Social Security Scotland will take the appropriate steps to verify the death.

## Steps to verify a death

13.
  - Enter the non-verified date of death (Refer to operational guidance 'Record the death on the person record')
  - Issue a request for information (documentation to verify the date of death and Executor details) and suspending payments after 14 days to keep overpayments to a minimum therefore reducing the potential for any recovery action once the death is verified
  - Check for spouse, civil partner or any previous appointees, Attorneys or Guardians in the DWP computer system or SPM
  - Write to last known address or known third party requesting Next of Kin (NOK) details and documentary evidence of death
  - If no reply wait for 12 months then make a formal decision noting the date of death accepted as date xx/xx/xx

## Payments

14. Where Social Security Scotland has become aware of the death of a client, which has not yet been verified, the appropriate request for information should be issued in accordance to allow payments to be suspended after 14 days. (Refer to suspension guidance)

## Payment made after death

15. There will be cases where verification of a death is received too late for Social Security Scotland to stop a payment. When a person dies their bank account is frozen as soon as the bank becomes aware and once an account provider (bank, building society) becomes aware that a claimant, holding a sole account, has died they would normally return any credits received after that date.
16. However, where a payment has been made after the client's death, any portion of the payment that relates to entitlement for a period after their death will be an overpayment as a result of official error. If it is not returned by the bank then the client's estate is liable to repay the value of any assistance that was paid in respect of a period after the individual's death. See operational guidance for overpayments.

*Social Security (Scotland) Act 2018 Section 69*

## Who should take over a client's applications and entitlements when they die?

17. On the death of a client any existing Client Representative relationship such as a Power of Attorney, Guardian or Appointee ends. While the death reporter may be recorded on SPM as an existing Client Representative as soon as the client dies that relationship ends and Social Security Scotland needs to establish who should manage their applications and entitlements after death.

### Executor

18. An Executor is the person responsible for gathering a person's assets after they have died and distributing them to the people entitled to them (beneficiaries). They can be nominated in the deceased's Will if they have one (an Executor-nominate), or by the Sheriff Court if they did not have a Will (Executor-dative). An Executor-dative will normally be the surviving spouse or civil partner. If there is no such person, another person directly entitled to inherit from the estate may be able to apply.

### How will Social Security Scotland be able to tell if there is an Executor?

19. Social Security Scotland should make enquires with the Sheriff Court to confirm who has been appointed as Executor and to obtain an inventory of any estate.
20. If the Sherriff Court is unable to confirm an Executor, the agency can make contact with known relatives of the deceased (details of which the deceased may have provided in their application e.g. next of kin) in order to establish who is to be appointed Executor. Only after the Executor has received Confirmation from the Sheriff Court will they have the legal authority to uplift and administer the deceased's assets.

### How to verify an executor has authority to act for the client

21. Social Security Scotland can make enquires with the Sheriff Court to confirm who has been appointed as Executor and to obtain an inventory of any estate.
22. However, an Executor should be able to provide documentation called a grant of Confirmation, which is issued by the Sheriff court, to evidence the fact that they have the legal authority to receive payments belonging to the dead person. The Executor has no legal authority to handle or deal with the deceased's estate unless they can produce this confirmation to act on behalf of a deceased client.
23. If the Sheriff Court is unable to confirm an Executor, the agency can make contact with known relatives of the deceased (details of which the deceased may have provided in their application e.g. next of kin) in order to establish who is to be appointed Executor.
24. When obtaining the grant of Confirmation the original document or a certified copy should be seen and returned to the Executor when verified.

### **Executor is an organisation/solicitor**

25. Where the executor is an organisation/corporate executor you should their personal details such as their date of birth or National Insurance Number should not be recorded.

### **What can an Executor do**

26. Where there is an existing Executor they will automatically be able to act for the deceased client and will also be the Death Arrears Payee (DAP).
27. They will take on responsibility for their outstanding applications and entitlements and be able to do anything the client could have done in respect of their benefits. If there is a pending determination of entitlement an Executor has the authority to instruct Social Security Scotland to either withdraw or progress the application to its conclusion. They can also request a redetermination or appeal. They will receive the payments/arrears and be responsible for arranging to repay any debts from the client's estate.

### **How long does it take an Executor to receive confirmation**

28. The length of time will vary depending on how quickly the executory process begins after the client dies and the complexity of the estate. If the estate is relatively simple Confirmation can be obtained around 3-6 months after the date of death but it could take longer.
29. Social Security Scotland should wait until the Confirmation process has been finalised before making any payments. The reason for this is that the grant of Confirmation provides the necessary proof that the Executor has the legal authority to receive and administer the deceased client's benefit entitlement.

### **What if no Executor can be identified?**

30. Where no Executor has been appointed (this could be for a variety of reasons which may include the small size of an estate), Social Security Scotland will attempt to appoint a person to act on behalf of the client in connection with their applications and entitlements.

*Social Security (Scotland) Act 2018 Section 85B(6)*

### **Making appointments for the Deceased**

31. Appointees can only be made in connection with forms of assistance paid under section 24 or 79 of the Social Security (Scotland) Act 2018. This means they cannot be appointed in connection with entitlement to Carer's Allowance Supplement (CAS). Best Start Foods or Job Support Payment.
32. The only legal test that must be met in order to make an appointment for a deceased client is that there is no Executor already appointed on the deceased client's estate. While it is possible that assets of the estate could be stolen after death, unlike living clients deceased clients cannot be subject to financial exploitation, coercion or other abuse.

*Social Security (Scotland) Act 2018 Section 85B(6)*



33. An assessment of the suitability of the individual to be appointed is therefore made in accordance with an order of priority set out in policy which closely mirrors the existing Scots law of succession.
34. The order of priority should be applied as follows:
- a. Spouse/civil partner
  - b. Children - or their direct descendant
  - c. Parents
  - d. Full siblings – or their direct descendants (nieces and nephews)
  - e. Half siblings – or their direct descendants (half nieces and nephews)
  - f. Grandparents
  - g. Aunts and Uncles – or their direct descendants (cousins)
  - h. Half Aunts and Uncles – or their direct descendants (half cousins).

### **How will Social Security Scotland identify who should be appointed**

35. Social Security Scotland can take information from the prospective appointee during a recorded telephone call or by a signed declaration on form to apply the hierarchy.
36. Any person applying to be appointed to handle the benefits of a deceased client will be required to sign a declaration. This will confirm the individual being appointed is not aware of any Executor or other person who takes precedence over them in the order of priority.

### **What can an appointee do?**

37. An appointee can do anything the client could have done in relation to determination of their entitlement to assistance. They receive payments on behalf on the client that would have been due up until the client's death. These payments should then be placed in the deceased's estate.

### **How long will an appointment last?**

38. An appointment for the deceased should only be in place for as long as it takes to conclude any outstanding applications, re-determinations or appeals, and any arrears of assistance have been paid.
39. However, the default period for review of all appointments is 5 years, if in the unlikely event an appointment was still in use after this time it should be reviewed by Social Security Scotland to ensure it is still appropriate.

### **When is an appointment not needed**

40. An appointment is not appropriate if there are no outstanding applications, re-determinations or appeals and if no arrears of assistance are due.

### **Appointment ends before all outstanding actions complete**

41. If an appointee requests that the appointment ends, it should be terminated and the appointment process repeated to identify the next person in the order of priority. This would

also apply if the appointee dies while an application/redetermination/appeal or arrears is outstanding.

42. A new appointee would be able to proceed with or withdraw any pending applications, re-determinations or appeals.

### **Appointee not co-operating**

43. If an appointee is non-compliant with attempts or requests for information, is non-contactable, or has gone away, Social Security Scotland must process the application to its conclusion, using the information that is available. This could mean making a decision using partial or insufficient evidence.

### **More than one person suitable for appointment**

44. There may be cases where more than one relative falls within the same level of the order of priority, and there should be multiple beneficiaries of the client's estate. Where this happens it is expected individuals will agree the most suitable person to be appointed and in the event of any outstanding arrears of assistance the person appointed should pay the sum to the client's estate/apportion it accordingly.

### **Request for termination of an appointment**

45. Social Security Scotland must consider whether to terminate an appointment for a deceased person when requested to do so by anyone who appears to have an interest in the financial affairs of the deceased individual.

*Social Security (Scotland) Act 2018 Section 85B(13)*

46. This could happen in several circumstances:

### **A person presents after the appointment has been made who states that they are the executor of the deceased's estate**

47. Where a person comes forward who says they are the Executor of the estate verify this see 'How to verify an executor has authority to act for the client' above and terminate the appointment. Ensure the executor is aware of any actions the appointee has taken since they were appointed.

### **A person presents who argues that they are higher than the appointee in the order of priority**

48. Where a person comes forward and says that they are a blood relative of the client and who would be higher in the order of priority than the appointed person, ask them to provide evidence of their relationship to the client, this could be a marriage certificate or a birth certificate. If verified terminate the appointment and follow the appointment process to make a new appointment, ensuring the declaration has been completed. Ensure the new appointee is aware of any actions the original appointee has taken since they were appointed.

### **A person disagrees that someone else on the same level of the order of priority should have been appointed**

49. Where a person comes forward and disagrees with the appointment of another person on the same level of the order of priority as them (e.g. siblings who are estranged), the person who applied to Social Security Scotland first should take precedence.

### **A person alleges that the appointed person has misrepresented their relationship to the client with fraudulent intent**

50. Where an allegation is made that a person has given false information to Social Security Scotland in connection with an appointment that misrepresents their relationship to the client in order that they can be appointed, refer this to the Fraud and Error Resolution Division. (Refer to operational guidance 'Complete fraud referral form').
51. If the allegation is substantiated terminate the appointment and repeat the process to identify the person who should have been appointed according to the order of priority.

### **Client passes away and arrears of an existing entitlement are due**

52. Where a client passes away after entitlement has been determined<sup>1</sup> but with an outstanding payment, an Executor has a pre-existing right to receive the money. The Executor will be paid any assistance that is due, and this would become an asset of the deceased's estate. If no Executor has been appointed, and no steps are being taken to begin this process, Social Security Scotland should attempt to make an appointment of another person to receive assistance on the individual's behalf.

### **Client dies before a determination of entitlement**

53. The Social Security (Scotland) Act 2018 section 37 creates a duty to determine valid applications for assistance, and this includes where the client has died after they have submitted the application. There is no basis for Social Security Scotland to withdraw that application or any outstanding request for re-determination or appeal. However see 'Death at appeal stage' below.
54. Where there is an Executor for the deceased client they will automatically be able to act for them and will also be the Death Arrears Payee (DAP). Where there is no Executor, Social Security Scotland can appoint a person to act on behalf of the deceased. That appointee can then do anything that the client could have done in connection with the determination of their entitlement to benefit (including making an initial application, re-determination or appeal).

*Social Security (Scotland) Act 2018 Section 85B(1)&(6)*

### **DWP Death Arrears Appointees**

55. If a DWP Death Arrears Payee (DAP) is showing on CIS/Searchlight/Insight, Social Security Scotland should not assume this is the person who should act for the client for their

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<sup>1</sup> Where the client passes away within the dispute period for a recent determination an appointee may also be required to exercise those dispute rights.

devolved benefits. This is because DWP have a different order of priority than Social Security Scotland. All procedures set out in these guidelines must be followed.

## **When Social Security Scotland are unable to identify an individual to act or receive any assistance that is due**

56. Where Social Security Scotland has exhausted attempts to find someone to act we must proceed to process the application to its conclusion, using the information that is available. This may mean that a determination is made with partial information or insufficient evidence. For example, in the event of the death of a client in receipt of a disability assistance, medical records are sent back to the health board after death and Social Security Scotland may not be able to write to the deceased or their GP.
57. Dispute rights for this determination of entitlement will remain valid, re-determination and appeal requests can be made up to a year after the original determination.
58. Where the determination results in a payment and there is no executor or traceable successors, arrears will be paid to the Office of Queen's and Lord Treasurer's Remembrancer (QLTR) via the National Ultimus Haeres Unit. If there has been a death and there is apparently no spouse, civil partner and no blood relatives, it may have been reported to the Ultimus Haeres Unit already by the relevant authority.  
(Refer to operational guidance for death and bereavement).
59. This Unit investigates to identify a beneficiary for a person's estate and takes the relevant actions to do so. Legitimate heirs for unclaimed estates can appear later and, provided they prove that they are a successor then the assets of the estate can be paid to them in line with the policies of the QLTR.
60. Social Security Scotland will be expected to have taken and documented all reasonable steps, as set out above, to determine a beneficiary prior to referring to QLTR.

## **Debt and Executors**

61. Debts are paid out of the estate of the person who has died. They must be settled before an executor can distribute any of the estate to beneficiaries. The executor will normally wait at least 6 months after the date of death before distributing the estate. During this period the executor will normally place a deceased estates notice in The Gazette and a local newspaper to help identify creditors who are owed money by the estate. Once two months and one day has passed since the deceased estates notice was placed in The Gazette, and six months has passed from the date of the client's death, the executor will be able to pay any debts from the estate without the executor being personally responsible for money owed to any unidentified creditors. If the debts are greater than the assets of an estate there are rules for paying out what assets there are to creditors.
62. Where a client has died with a debt to Social Security Scotland it will be considered a 'creditor' and the executor will calculate how much can be paid back.
63. Funeral Support Payments are treated as a funeral cost and are a priority debt this means it should be repaid before other debts the client may have had. If someone applied for a Funeral Support Payment for the funeral of a client who was aged 18 or over when they died, and they had money or assets in their estate, they may need to be used to repay the Funeral Support Payment award. (Refer to operational guidance on recovery from estates)

## Debt and Appointees

64. Appointees for the deceased are not liable for any overpayments incurred by the client while they were alive. However, if the same individual was acting for the client and receiving payments for them prior to death they may have a liability in some circumstances. See decision maker guidance for overpayments.

## Executor or person to be appointed lives outside Scotland

65. The executor of the client's estate, or person most suitable in the order of priority could live in any country, there is no restriction on whom Social Security should appoint. The practicalities of for example attendance at a tribunal hearing are for them to consider.

## Death at appeal stage

66. Where a client dies with a pending appeal the Scottish Courts and Tribunals Service should be informed as soon as possible and details provided of anyone who is acting for them. Where no details are forthcoming the First-tier Tribunal may use its case management powers to strike out the appeal. If an Executor or Appointee later comes forward they may apply to have the appeal reinstated.

## Posthumous applications

66. No posthumous applications for assistance can be made to Social Security Scotland by the Appointee.