

# Principles of Decision Making

## Index

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

## Introduction

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

## Who makes decisions?

2. Decision makers are employed by the Scottish Government (the Scottish Ministers) to determine entitlement to Adult Disability Payment (ADP) on behalf of the Scottish Ministers.
3. The Scottish Government has produced this decision-making guidance because they are responsible for decisions. The decision-making guidance is referred to as the guidance in this chapter. The term case manager is used in a general way to refer to anyone who works for Social Security Scotland and makes decisions affecting individuals who have applied for or are entitled ADP.

## Person-centred decision-making

4. The Scottish Government is committed to both:
  - creating a system of social security that meets the needs of the people of Scotland
  - ensuring that the values of dignity, fairness and respect are embedded in the system.
5. Case managers should take a person-centred approach to decision-making by:
  - considering how the individual's condition affects them
  - taking into account all of their circumstances
  - listening to the individual
  - treating them as an individual
  - recognising that the individual understands their own life best
  - considering the individual's support network, caring responsibilities and work responsibilities

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

## **The Scottish Social Security Charter**

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

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

7. Determinations which follow this guidance will be:

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

8. The Charter is available to read in full online [LINK]  
<https://www.gov.scot/publications/charter/>.

## **The decision-making guidance explained**

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

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

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

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

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

## **Types of decision**

13. The decisions that case managers make can be described are:

- ‘process decisions’
- ‘determinations of entitlement’.

### **Process decisions**

14. A process decision is a decision about whether a procedural requirement is met. The procedure will relate to:

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

15. An example of a procedural rule is one about requests for a re-determination of a determination of entitlement to ADP. They must be made within 42 days from the date the individual is informed of the determination<sup>1</sup>. Another procedural rule is that requests for a re-determination can be made after 42 days but only if the individual has a ‘good reason’ for not requesting a re-determination sooner and the request was made not more than one year after the individual was given notice of the determination<sup>2</sup>.

*1 ADP Regs, reg 54(1)  
1 SS Act 2018, s41(4)*

### **Determination of entitlement**

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

*1 SS Act 2018, s50 (Decisions comprising determination)*

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

### **Findings of fact and conclusions of law**

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

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

These smaller decisions may be integrated and influence each other rather than be standalone. For example, the inability to make a conclusion of law may mean that the decision maker needs to first make a finding of fact.

- A finding of fact is a decision that a factual circumstance is accepted to be true. This is based on the available supporting information. The ‘facts’ that will be needed are based on the descriptors that the client will be assessed against. This is the information that they will need to know to help them decide which descriptor applies. For example, a case manager could accept as fact that the individual has a physical disability.

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

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

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

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

22. Applying the balance of probabilities to every fact of the client’s case is not necessary. Rather, case managers should use their judgement where there are gaps in the facts. They will use the information they have about the clients’ needs and their disability or condition, to determine that on the balance of probabilities, other facts also apply to the client.

When making those deductions, case managers need to be able to explain why on the balance of probabilities they have determined that those facts are also likely to be the case.

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

Octavia is 18 when she moves from Mexico to Scotland. She is dyslexic and may have dyscalculia though she does not have a formal diagnosis. Octavia meets the residence and presence conditions to be entitled to ADP. However the circumstances surrounding her move to Scotland mean she does not have access to any formal supporting information. Octavia provided a detailed explanation of how her disability impacts her ability to carry out every day activities in the application form.

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

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

The case manager reviews all the supporting information and determines that Octavia is not entitled to any component of ADP. This is because, while she needs assistance to be able to make complex budgeting decisions and needs an aid or appliance (other than glasses or contact lenses) to be able to read or understand basic written information, she obtained a score of less than 8 for the daily living activities when the case manager made their determination.

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

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

### **Conclusions of law**

25. A conclusion of law is a decision about the application of the eligibility criteria to the client's facts. Conclusions of law make up the determination and need to be based on the eligibility criteria.

[Links to eligibility criteria] Judgements about the balance of probabilities may also play a role in conclusions of law. A case manager may need to make an assessment on the balance of probabilities as to which descriptor applies to the client in terms of the reliability criteria. This is a tool to assist in deciding which descriptor is correct for the client.

### **Example: A conclusion of law**

Adam is 18 when he applies for ADP. A GP provided supporting information in the form of a medical report about Adam which provides information about his needs. The information in the report informs the case manager that Adam has Profound and Multiple Learning Disability (PMLD). He must have a carer to help with cooking and washing.

Adam cannot prepare and cook food or wash and bathe at all without the need of another person to wash his entire body. The qualifying conditions for the enhanced rate of the daily living component of ADP are that an individual's ability to carry out

daily living activities is severely limited by their physical or mental health condition, and they meet the required period condition.

The case manager considers the daily living activities impacted by Adam's condition and scores him accordingly on completion of this process. The case manager is able to use their judgement on the balance of probabilities to help them determine which descriptors apply to Adam in terms of the eligibility criteria. Using the guidance, the case manager concludes that Adam also meets the required period condition. These conclusions by the case manager mean that he is entitled to the enhanced rate of the daily living component of ADP. The decision that Adam meets the required period condition and score to qualify for the enhanced rate of the daily living component of ADP is a 'conclusion of law' because it is a decision about how a legal rule applies to findings of fact.

## Principles of decision-making

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

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

### The principles

28. Decisions must be:

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

### Decisions that are lawful

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

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

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

31. A case manager might read an explanation of a rule in the guidance and be unsure of how it applies to an individual's case. It might seem that there is more than one possible meaning. Generally, wording in the guidance has been taken from legislation. Words in legislation are usually given their plain English meaning unless given a specific definition in the regulations. If a specific definition has been set out in

the regulations this will also be available in the guidance. If a case manager is unsure as to the meaning or interpretation given in the guidance, they should make use of decision-making tools available to them.

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

33. The guidance will be updated to reflect any relevant case law that decision makers need to know. A failure to follow the rules correctly when making a decision will result in a decision which is unlawful.

### **Decisions that are reasonable and rational**

34. Decisions must be based on *all* relevant information and must not be based on information that is irrelevant. An example of a decision that is based on irrelevant information would be a case manager making a conclusion on the individual’s ability to walk based on facts that relate to how well the individual swims, or making a conclusion based on facts that are contained in an outdated medical report that related to a past period when the individual’s mobility and daily living needs were different.

35. When making a decision, one or more factors will count in favour of deciding one outcome over another. Some factors will be more persuasive than others.

36. Decision makers must decide how much importance or ‘weight’ to attach to each factor. Factors which count in favour of the same outcome form a set of factors. Decision makers must decide overall which set of factors is most persuasive. This is sometimes described as weighing up the competing sets of factors and reaching a balanced decision.

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

38. Even if a decision maker considers both:

- all the relevant circumstances
- no irrelevant circumstances

decisions can still be unreasonable and irrational.

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

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

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

### **Decisions that are made following a fair procedure**

42. Decisions must be the result of following a fair process. Decisions must also be taken impartially, meaning that a case manager is not biased. Even if there is no actual bias, decisions that have the appearance of bias are not fair to the individual.

43. The decision maker must make it known if they encounter a case where there is a conflict of interest. If there is a conflict, the decision maker must have no part in the decision.

### **Example: A case manager has a conflict of interest**

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

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

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

### **Decisions that are compatible with individual's existing rights**

45. Individuals have certain legal rights which existed before the law on entitlement to ADP was created. Individuals continue to have these legal rights. The principle of compatibility means that both the rules on ADP and decisions by case managers must be compatible with these pre-existing legal rights. A rule or decision which is incompatible with a legal right is sometimes called an 'unlawful interference' in that right.

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

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

47. Examples of sources of law where these pre-existing rights are found are:
- the [European Convention on Human Rights](#) and the [Human Rights Act 1998](#),
  - the [Equality Act 2010](#) (which is a set of anti-discrimination laws)
  - the [Data Protection Act 2018](#)
  - the General Data Protection Regulation (GDPR).
48. The European Convention of Human Rights is an international treaty. The Convention contains Articles which guarantee a number of basic human rights. In addition, Protocols have been signed which are to be regarded as additional articles to the Convention.
49. The Human Rights Act 1998 gives effect in the UK to the rights and freedoms guaranteed under the European Convention on Human Rights. Public authorities, including Social Security Scotland and the courts are under a duty to act compatibly with the Convention rights.
50. A simplified version of selected articles from the European Convention on Human Rights and its protocols is available [here](#).

### **Avoiding mistakes**

51. A case manager could make a mistake by:
- making findings of fact that are not supported by the evidence
  - making conclusions of law that are based on a misunderstanding / misinterpretation of the rules or based on irrelevant facts.
  - dismissing certain relevant facts as unimportant without considering the rules carefully
  - giving reasons which do not make clear and logical sense, in light of the relevant rules and the evidence.

This list is not exhaustive.

**End of chapter**