

Principles of Decision Making

This chapter describes the approach to making determinations on Scottish Adult Disability Living Allowance (Scottish Adult DLA):

- reviews
- re-determinations

This guidance is for case managers working for Social Security Scotland. In this chapter, the case manager will be referred to as 'you'. Social Security Scotland will be referred to as 'us' or 'we'.

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Following our principles

Access to social security is a human right in Scotland. Our social security system is built on our core principles of:

- dignity
- fairness
- respect

Find out more about how these principles:

- are reflected in everything we do in the Decision Making Aid
- are closely linked to our trust-based approach
- shape how we make decisions

Putting our principles into action

In your role you will put these values into action. You play an important part in ensuring that disabled people are able to access all of the support they're entitled to.

By following our principles, you'll help Scotland become a country where disabled people:

- are treated fairly
- are trusted to know what's best for them
- can reach their full potential

Enabling people to access assistance

Your role is to award assistance to those you determine meet the eligibility criteria, using the information and decision-making tools available to you. We have a statutory duty to ensure people receive the assistance they are entitled to¹, and you play an important role in fulfilling that responsibility.

1 Social Security (Scotland) Act 2018, section 24.

Decision-making should follow the Right First Time principles, which ensure fairness and can reduce the occurrence of errors at the earliest opportunity.

There may be times when you encounter information that appears counterfeit, inconsistent, contradictory or inherently improbable.

Such information should never be disregarded.

If you have information that suggests potential fraud regarding an existing case, you should consider contacting the Fraud and Error Risk Analysis and Control team who can support you through making a referral into the fraud investigation team

Related reading

- Eligibility criteria
- Right First Time: A practical guide for public authorities in Scotland to decision-making and the law
- Fraud advice for decision makers

Types of decisions

You use your skills and expertise to make different types of decisions when processing award reviews.

The decisions that you make can be described as either:

- process decisions
- determinations of entitlement

Process decisions

In the context of Scottish Adult DLA, a process decision is a decision about whether the process of challenging determinations by way of re-determinations as set out in the Social Security (Scotland) Act 2018 has been followed properly. It is also

relevant where someone has made a request for an award of Scottish Adult DLA, where they previously had an award of Scottish Adult DLA or DLA, but they have not made this request within a year of the previous award ending.

When Social Security Scotland makes a process decision and the individual disagrees with the decision, they can appeal to the First Tier Tribunal.

There are three process decisions which you might make in the Scottish Adult DLA context:

- To reject a request for a re-determination which is not made in the format we require¹.
- To reject the reason an individual has given for not making a re-determination in the time period required².

1 Social Security (Scotland) Act, s41(3)

2 Social Security (Scotland) Act, s42

Determinations of entitlement

A determination of entitlement is the decision about a person's entitlement to disability benefits.

For Scottish Adult DLA recipients, it is the outcome of one of the following¹:

- a determination without an application, such as a review
- a re-determination

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

People have challenge rights if they are unhappy with the determination we make. These rights include:

- Requesting a re-determination
- Appealing to the tribunal.

Making determinations

You must make a determination when carrying out an initial transfer determinations, reviews and re-determinations.

The determination always includes a decision about whether the individual continues to meet the eligibility criteria for Scottish Adult DLA.

If they do, a determination also includes a decision about:

- what rate of Scottish Adult DLA the individual is entitled to
- when their new entitlement begins
- whether there will be a scheduled review in the future, and when this will be

If they do not, a determination also includes a decision about:

- When their entitlement ends
- Whether an overpayment has occurred.

You must make determinations:

- in a timely manner
- based on relevant information and decision-making principles
- without including irrelevant information, such as informal observations, in your decision-making
- without gathering more information than is necessary to make a determination

Related reading

- Applying for Scottish Adult DLA chapter
- Scottish Adult DLA - Eligibility - Rates and criteria chapter
- Choosing an Appropriate review period chapter
- Residence and presence chapter
- Re-determinations chapter
- First-tier Tribunal chapter
- Upper-tier Tribunal chapter
- Gathering Supporting Information chapter [section on not having good cause]

Findings of fact and conclusions of law

The decision-making process for determining entitlement to Scottish Adult DLA involves making a series of smaller decisions. These allow you to make a decision on an individual's entitlement.

These smaller decisions are either:

- a finding of fact
- a conclusion of law

A finding of fact means deciding that a detail relevant to an individual's award review, such as how their disability affects them, is accurate. This is done based on the information you have available. You may need to use decision-making tools to help you do this if there is not enough information or where you are identify a relevant inconsistency.

A conclusion of law means applying the eligibility criteria for Scottish Adult DLA to the facts you have established. This is done to determine the appropriate level of entitlement.

Getting determinations right

All our decisions should follow the principles set out in the Scottish Government guidance “Right First Time – A practical guide for public authorities in Scotland to decision-making and the law”.

Additionally, all our decisions have to meet the standards required of administrative decision making. Tribunals are less likely to overturn decisions that are in line with these standards.

All our decisions should also reflect the principles set out in the Social Security Scotland Charter and the Social Security (Scotland) Act 2018¹.

1 SS (Scotland) Act 2018, s1.

The standards of a good decision

Decisions must be:

- Lawful
- reasonable and rational
- made following a fair procedure
- without influence of conscious or unconscious bias
- compatible with the individual’s existing rights.

Lawful decisions

You must make sure that you fully understand the Scottish Adult DLA rules and know how to interpret and apply them. These rules, as well as their correct interpretation, are set out in the Rates and Criteria chapter of the Scottish Adult DLA decision-making guidance.

If you are unsure how to follow a rule, you should always use the decision-making guidance, speak to your team leader, or request a case query with the Decision Support Team.

How the rules are interpreted and applied might change due to case law. This can happen when an individual appeals a determination we have made to the Tribunal.

The decision-making guidance will be updated to reflect any changes brought about by case law. If you do not follow this updated guidance, the determinations you make will be unlawful.

Reasonable and rational decisions

Decisions must

- be based on *all* relevant information and
- not be based on information that is irrelevant.

Any information that relates to the case at hand is potentially relevant. Therefore, you should never pre-judge the relevance of a piece of information, for instance, based on its source alone. For example, you shouldn’t disregard a piece of additional

supporting information just because it has been produced by a member of the individual's wider support network, rather than by a professional.

In order to ascertain whether the information at hand is relevant, you should always review the information provided and refer to the guidance to establish the value of the piece of supporting information.

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 dress themselves based on facts that relate to how well the individual communicates.

Another example would be a case manager making a conclusion based on facts that come from an outdated medical report relating to a time when the individual's care needs were different.

Determining if a piece of information is relevant is different to identifying a relevant inconsistency. You should refer to the Understanding and Interpreting Information Decision Making Guidance chapter for more information on identifying relevant inconsistencies and next steps.

Related reading

- How to choose the right decision-making tool
- How to make a robust determination of entitlement
- Social Security Scotland Charter

Decisions that are made following a fair procedure

Decisions must be made following a fair process. Following the decision making guidance and operational guidance every time ensures that all individuals are treated in the same way and that our decisions are consistent. You can only decide two cases differently if there is a rational justification for this outcome.

However, this does not mean that all individuals with the same condition should be given the same award. We take a person-centred and needs-based approach. For more information on these, see the Decision-Making Aid.

Decisions must also be taken impartially, meaning that you should not be biased in your decision-making. Even if there is no actual bias, decisions should not have an appearance of bias as it would undermine the credibility of Social Security Scotland.

Bias can play into a determination in different ways. For example:

- you might know the individual whose review you process personally, which is a conflict of interest because it could appear that you cannot make an objective decision – regardless of whether you think you can or not.
- you might have unconscious bias towards the individual, based on, e.g. their disability, the fact they have children, their perceived sexual orientation, etc.

You must make it known if you encounter a case where there is a conflict of interest. If there is a conflict, you cannot be involved in processing the case.

Decisions made without unconscious bias

Everyone has unconscious biases. These are judgments or assumptions we make about people or situations without realising we're doing so.

Disabled people are frequently affected by non-disabled people's biases, and the assumptions they can lead them to make.

In your interactions with disabled people applying for, or receiving, our benefits, you must do your best to identify and counter these biases and assumptions.

Your own unconscious bias might lead you away from taking a trust-based approach and making accurate and informed decisions. You might not be immediately aware you're doing this.

Inaccurate assumptions might arise from:

- prejudice against disabled people or people in receipt of benefits
- stereotypes about people with particular characteristics
- thinking you understand a disability because you know someone with the same condition
- the fact an individual isn't at home when you phone to speak to them
- the way an individual communicates

You must always do your best to:

- recognise when you might be making assumptions
- actively challenge your own biases, and the biases that exist in society in general

Related reading

- Unconscious bias: Imperial College London (resource)
- Series of modules under the 'Civil Service Expectations': series of modules on the Civil Service Learning Platform.
- training to counteract it in your belief and actions

Decisions that are compatible with individual's existing rights

Individuals have certain legal rights which existed before the law on entitlement to Scottish Adult DLA was created. For example, the rights provided by the European Convention on Human Rights.

This decision-making guidance, and the law on Scottish Adult DLA has been designed to respect these existing legal rights. To make sure that you protect an individual's legal rights you must follow the decision-making guidance, the operational guidance and the guidance on processing personal information in accordance with the UK GDPR.

Unreasonable and irrational decisions

Even if you consider both:

- all the relevant information
- no irrelevant information

decisions can still be unreasonable and irrational.

This is the case if the decision you have made is one that no-one acting reasonably could make based on the circumstances of that case. You have to justify all your decisions with reasons which clearly and logically explain how you reached that decision.

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

Since the reasoning would not be clear and logical, the decision is out of step with the principles of decision-making.

For example, a case manager decides that an individual is entitled to the highest rate of the care component of Scottish Adult DLA as they satisfy both the daytime and night-time condition. In the notice of determination they state that their decision about the individual meeting the daytime condition is based on the fact that the individual needs assistance with bodily functions, such as bathing and eating, during the day. They further explain that the individual satisfies the night-time condition because they need repeated attention every night for a few hours after going to bed in order to settle and fall asleep. Once they are asleep, usually around 10 pm, their partner gets ready for bed as part of their ordinary domestic routine.

This decision would not be reasonable because the case manager has wrongly applied the rules. The fact that the individual requires repeated attention to settle after going to bed should have been considered as part of their daytime needs. This is because “night” is defined as the period of inactivity that begins after the household shuts down for the night, usually assumed to be between around 11 pm and 7 am.

The reasoning you set out in the decision report for the individual should give them confidence that you have:

- applied the correct rules to the facts of the case
- taken all relevant factors into account
- not taken any irrelevant factors into account.

Why are good decisions important?

We are aiming to get all our decisions right first time.

Making appropriate and correct decisions means that:

- disabled people receive the right support from first decision, without having to challenge our decision
- we don't have to revisit decisions through the re-determinations and appeals process, which saves time and resources for both disabled people and Social Security Scotland
- disabled people's trust in our core principles – dignity, fairness, and respect – will grow stronger over time
- we can reach some of the most vulnerable people in Scotland and reduce stigma.

Making a robust determination of entitlement

This section covers the cognitive aspect of the decision-making process. The process of making a determination consists of:

- finding of facts
- making conclusions of law

A robust determination of entitlement means that you have enough relevant information to, on the balance of probabilities, establish the facts of the case at hand and make a conclusion of law.

This information can come from:

- the review form
- information on the individual that we've received from DWP
- any supporting information available
- any decision-making tools you used

It also means that you have made the determination based on the standards for good decisions set out in this chapter.

Related reading

- The balance of probabilities
- Finding of fact and conclusions of law
- Decision-making tools
- Getting determinations right
- Making robust decisions – example section

What to consider when making a determination of entitlement

You must consider all of the relevant information on the individual's circumstances that is available to you in order to establish facts.

This could include:

- the review form

- change of circumstances form
- information on the individual that we've received from DWP
- any supporting information, if available, including confirmation from a professional and the statement of support
- information gathered through using decision-making tools, where necessary.

Decision-making tools include:

- any information recorded from follow-up phone calls with the individual
- additional supporting information from a professional and/ or the individual's wider support network
- decision-making and medical guidance
- advice received through a case discussion
- colleague support

Related reading

- Decision-making tools
- Establishing if information is relevant
- Types of information not to consider
- Gathering Supporting Information chapter

Establishing if information is relevant

During case familiarisation you might conclude that some information is not relevant. You should not use the irrelevant information to establish the facts of that case.

Information might not be relevant if, for example:

- it describes the prognosis, symptoms or impact of a condition in relation to people in general when you've already established the individual experiences the condition differently
- it covers a period of time that is not relevant to the individual's review
- it was provided by a person, or organisation, who is unlikely to be familiar with the individual, their conditions, disability or needs
- you've found inconsistencies in the information provided and established that it's more likely than not that one or more pieces of information is inaccurate or untrue.

For example, the individual's description could differ from the GP's account of their needs. The individual could state that their needs have increased recently. As their GP last saw them 6 months ago, you establish that it is more likely than not the GP is describing the individual's symptoms before the recent change.

Read more about establishing relevance and quality of supporting information.

The balance of probabilities

All determinations are made on the balance of probabilities. This means that if something is more likely than not, it's considered a fact for the purposes of decision-making.

We're not looking to be satisfied that any information is true 'beyond reasonable doubt' – that is a higher degree of certainty used in criminal justice decision making.

When considering any information, we start from a position of trust. Where information conflicts, and this inconsistency is relevant, you should consider the value of each piece of information and decide which is more likely to be accurate.

Making decisions on the balance of probabilities

You must establish the facts of a case on the balance of probabilities for:

- every decision that forms part of a determination of entitlement
- the determination of entitlement

You must consider all the relevant information you have when making decisions on the balance of probabilities.

If you have to consider contradictory information, you must decide which account is more likely than not to be accurate.

We always start from a position of trust. Trust in what the individual has told us should be the baseline assumption during the decision-making process. However, this trust is not absolute. If there are details which suggest that information is more likely than not to be untrue, you should explore these inconsistencies and may decide that the information is not an accurate reflection of the facts. There could also be information from the individual which is so inaccurate it suggests it may be intentionally misleading. See 'enabling people to access assistance' for what to do in these circumstances.

Similarly, the balance of probabilities does not mean that the individual must be given the benefit of the doubt if there is not enough information to establish the facts of the case. In this case, you would need more information.

Decisions which are straightforward

In some cases making decisions on the balance of probabilities will feel easy. This could be because:

- there is a lot of available information
- the pieces of information are consistent with one another
- the individual's circumstances are very straightforward

For example, you could have a case where:

- an individual receives Scottish Adult DLA as they have severe depression that impacts on their care needs throughout the day

- you are aware from their case file that their symptoms impact their ability to communicate independently, meaning they require frequent support, including through someone speaking on their behalf and encouraging/prompting them to speak
- the individual sets out in their review form that they now require frequent prompting at every mealtime to eat and get help to wash and dress due to struggling with their energy levels
- has recently changed their medication to a medication that has known side effects that can impact appetite and energy levels
- sets out that they do not have any night-time needs

The information provided is more closely related to attention with bodily functions rather than continual supervision, and the individual does not have night-time needs. Therefore, you should be able to answer easily whether it is more likely than not that this individual requires frequent attention throughout the day in connection with their bodily functions. This will allow you to make a determination in line with guidance that the individual continues to be entitled to the middle rate of the care component of Scottish Adult DLA through satisfying the daytime care condition.

Decisions which are complex

In some cases making entitlement decisions on the balance of probabilities will be more difficult. This could be because:

- some information is missing
- there are inconsistencies
- the individual's circumstances are very complex

If this is the case, you'll need to establish on the balance of probabilities which information is more likely to be true in order to:

- resolve relevant inconsistencies
- close existing gaps that are relevant to establishing the individual's entitlement

To do this, you'll need to:

- carefully establish value between the information available
- use your judgement

If more information is needed

In some cases, you may need more information to make a decision on the balance of probabilities. This could be because:

- there are relevant gaps in the information

- there are relevant inconsistencies in the information
- the individual's circumstances are very complex

By relevant we mean that if the information that is the source of the inconsistency was taken as fact, it would impact the individual's entitlement. For example, exploring the gap or inconsistency would enable a decision as to whether the individual satisfies the:

- lowest rate care component, or whether their needs are not significant enough to be entitled to Scottish Adult DLA (i.e. entitlement to lowest rate care component of Scottish Adult DLA v no entitlement)
- daytime care condition, where you have already established that they satisfy the night-time care condition (i.e. entitlement to highest rate of the care component of Scottish Adult DLA v entitlement to middle rate of the care component of Scottish Adult DLA)
- lower rate of the mobility component, where you have already established that they satisfy the middle rate of the care component (i.e. entitlement to middle rate of the care component only v entitlement to middle rate of the care component and lower rate mobility).

All other gaps and small inconsistencies are unlikely to be relevant and do not need to be explored. For example, you have established the facts that an individual requires frequent attention from another person throughout the day in connection with washing and dressing themselves, as well as with toileting and eating.

There is some indication in the information they have provided that they are unable to prepare a cooked main meal for themselves, but this is too vague for you to understand whether that's indeed the case. This gap is not relevant, as the individual being able or unable to prepare a cooked main meal would not change their level of entitlement to the care component. This is because they already satisfy the condition for the middle rate of the care component due to requiring frequent attention throughout the day in connection with their bodily functions.

If the existing gaps and inconsistencies are relevant, you must explore them by using one or more decision-making tools. This could include contacting the individual or their representative with follow-up questions.

If the information needed cannot be gathered, you must use whatever information is available to make a decision based on the balance of probabilities whether the individual meets the eligibility criteria for the component in question. If there is not enough information to conclude that the individual has any needs that relate to the criteria, you should make the decision that they don't meet the relevant criterion.

If you are unsure whether you have enough information to make that decision, you should request a case discussion or speak to your team leader.

Related reading

- Decision-making tools
- Making robust decisions – example section
- Supporting Information chapter
- Understanding and Interpreting Information [section on establishing value of information]
- Scottish Adult DLA - Care Component - Eligibility Criteria and Definitions chapter
- Scottish Adult DLA – Mobility Component – Eligibility Criteria and Definitions chapter

Types of information not to consider

There are some types of information which should never be considered. This is to ensure that we make fair and robust decisions in line with our principles.

These types of information include:

- informal observations
- assumptions about individuals, their credibility and needs based on biases

Informal observations

The UK Government's disability benefits system uses 'informal observations' during the decision making process. These can be gathered at Personal Independence Payment assessments in addition to the information gathered from

- the individual's answers to the assessment questions
- how the individual carries out the functional parts of the assessment.

Informal observations made during Personal Independence Payment assessments could include the assessors opinion on:

- how well or unwell the individual appears
- the individual's weight
- how the individual makes their way into the assessment room

In our Scottish disability benefits system, informal observations must never be part of:

- establishing the facts of a case
- making decisions that form part of a determination of entitlement

This is because informal observations rely on uninformed and untested assumptions that do not comply with our core principles of treating people with:

- dignity
- fairness
- respect

You must never use informal observations, for example:

- noting how an individual is able to sit down, stand up or perform movements that require co-ordination, such as lifting a cup to their mouth to drink during a home visit from local delivery staff, to fill in a review form for Scottish Adult DLA
- noting how an individual speaks on the phone, such as how energetic or positive they sound, and allow that to influence your trust in the individual's account of their mental health condition

- noting that an individual who told us that they rarely leave the house due to severe anxiety is out when answering your phone call
- seeing how well a review form has been filled in by an individual who is dyslexic
- assuming that an individual is less deserving of receiving disability assistance, or does not need it, based on how reliable or responsive they appear to be when you are trying to reach out to them for more information.

Instead, you should use relevant information, such as

- the review form
- information provided by DWP
- any supporting information, if available
- any relevant information from decision-making tools (e.g. guidance, case discussions)

to establish an individual's entitlement. Refer to the Making a robust determination of entitlement section for more information.

Decision-making tools

Decision-making tools can help you reach a fair and robust determination of entitlement.

Before deciding

- whether decision-making tool(s) are needed to help you make the correct determination
- which decision-making tool(s) is the most likely to provide you with the information you need

you need to familiarise yourself with the case at hand.

Case familiarisation

Case familiarisation is mandatory and should be completed at the beginning of each decision-making process.

It helps you to identify and understand relevant information that has been provided, such as:

- the review form
- available supporting information
- information on the individual that we've received from DWP
- information from previous determinations made in relation to the individual's entitlement.

Case familiarisation also helps you to understand if you need more information about the individual's needs. Note that some individuals will not provide supporting information with their review form. Where it has not been provided, you will only need to gather or request confirmation from a professional in some cases. Refer to the Relevant Considerations chapter for guidance.

To gather all the relevant facts and make the correct determination, you may have to:

- use several decision-making tools
- return to a tool that you have used earlier in the process

Additional supporting information should only be requested from the individual if it would not be possible to make a determination without it.

The decision-making tools available to you are:

- Decision-Making Guidance
- contacting the individual or their representative with follow-up questions
- case discussion

- medical guidance
- colleague support
- supporting information

There is no hierarchy in importance between decision-making tools. You need to determine on a case-by-case basis which tool is best, or if using several of these tools is appropriate. To make this decision, you need to consider the following:

- which tool is most likely to provide you with the information you need to make a determination of entitlement
- is the tool in question appropriate? For example, if the individual has told us they do not want to receive phone calls, you should not phone them with follow-up questions.
- Will the use of the tool significantly delay the decision-making process? For example, requesting additional supporting information might add another few weeks to the time it takes to process someone's award review.

Decision-making guidance

The decision-making guidance (DMG) interprets and explains our policy. It is our single source of truth when it comes to policy and its interpretation. It sets out the principles you should follow to make decisions. Reviewing relevant chapters of the Decision-Making Guidance is essential during the decision-making process.

You can see an overview of the different Decision-Making Guidance chapters for Scottish Adult DLA on IKM.

The decision-making guidance is a living document which is updated regularly. You therefore should use IKM to access this guidance. You can save IKM pages in your Favourites in your browser.

You should never save versions of the decision-making guidance locally or create your own guidance. This is because over time local versions would diverge from the most up-to-date version of the decision-making guidance and could lead to wrong decisions.

If you discover gaps, inconsistencies, or errors in the decision-making guidance, you can use the feedback function on IKM to make sure these issues are being addressed. You can find the feedback form on the right-hand side on the landing page for the Scottish Adult DLA Decision-Making Guidance. Alternatively, you find the feedback function by scrolling to the bottom of the individual chapter pages.

Contacting the individual or their representative with follow-up questions

The information provided in the following might be unclear or insufficient to make a determination:

- supporting information

- the review form

In this instance, you can contact the individual or their representative by telephone to ask follow-up questions on the information they have provided.

When speaking to the individual to ask follow-up questions, you must make sure that your conversation does not become, or feel to the individual like, a consultation. Consultations are only available for Adult Disability Payment.

You should be aware that supporting information is not written by the individual, but either by:

- a professional
- someone from their wider support network

The individual might not be able to provide answers on supporting information, particularly if we've gathered it on their behalf. In these instances, it might be best for you to contact the information provider with follow-up questions, if possible.

Case discussion

You can request clinical-based advice during a case discussion with a practitioner if you're:

- unsure of how to progress a case
- unable to make a determination

For policy or legal advice, you can request a 'case query', which is a case discussion with our Decision Support Team. If necessary, they will liaise with Scottish Government policy or legal colleagues for advice.

Medical guidance

You can use medical guidance to help you understand:

- the impact a health condition or disability might have on the individual's needs
- typical symptoms or prognosis of a health condition
- the impact treatment might have on the individual's needs

We use the following sources of medical guidance:

[A to Z list of common illnesses and conditions | NHS inform](#) ;

[Health A to Z - NHS \(www.nhs.uk\)](#) ; [Scottish health information you can trust | NHS inform](#)]

The operational guidance provides more information on when and how you can seek:

- medical guidance
- advice from practitioners

Colleague support

Colleague support can come from your line manager or other team leaders. You should use this tool to discuss and share knowledge around processes and systems.

For example, you could use it to find out whether, in general, supporting information provided by professionals based outside Scotland is accepted by us.

Colleague support is an informal decision-making tool. You cannot use it to justify a determination or decision.

For example, you could not use it to ask a decision team leader for their view on information provided by the individual. This applies to all information in review form and supporting information.

Additional supporting information

Additional supporting information can come from a professional or the individual's wider support network.

Requesting additional supporting information should not be used as the default decision-making tool. Rather, it should only be used if you've established that it is the most appropriate tool in the scenario at hand.

If the individual has provided additional supporting information with review form, you must consider it during the decision-making process, even if the review form provides enough detail to make a determination.

Making robust decisions – example section

Example: A case manager can make a robust decision straightaway

Esther is 63 years old and lives alone. She has been entitled to the lowest rate of the care component for Scottish Adult DLA for a number of years. Esther recently experienced a further decline in her health. Her daughter prompts her to report a change of circumstances to Social Security Scotland.

Esther's daughter and Esther's neighbours were already supporting her by providing attention throughout the day with washing, dressing and preparing meals. Esther's daughter now has moved Esther in with her and her partner in order to provide more continual support and supervision.

In her review form, Esther explains that she contracted Covid about 8 months ago and has not managed to fully regain her fitness and strength since. Esther can become breathless very easily from minimal activity and needs continual supervision from another person in relation to her bodily functions. For example, she is prone to dizziness and overexertion when moving around indoors and then can stumble and fall if no-one helps her to steady herself. This is because doing so can leave her breathless. When this happens, it can take between 5 to 10 minutes to recover. Due to Esther's exhaustion and lack of strength, she is unable to eat independently. She isn't able to grip cutlery effectively and struggles with getting food to her mouth..

Esther also reports that as a result of this, she has had a number falls over the past few months. Most of these have occurred at home. Once she slipped in the bath and hurt her right wrist when trying to stop her fall. Whilst she did not break the wrist, it has felt painful and stiff ever since. Esther has had handrails installed in her bathroom to prevent further falls, which she now uses for additional stability when her daughter assists with washing and bathing. The case manager considers this to be a reasonable aid to reduce the need for supervision with falls, but not practicable in relation to Esther's need for attention when washing and bathing due to her breathlessness and exhaustion.

Esther now also needs frequent supervision throughout the day as she can find it impossible to getting to and from the toilet independently. She requires support to lower herself to and lift herself from the toilet. She also used to change her incontinence pads independently, but she now requires support with this task.

Esther reports that she uses the toilet before bed and in the morning when she wakes up and so this is not a night-time need. She doesn't report any other night-time needs.

Esther explains that she now also has difficulties moving around outdoors. She used to be fine walking on her own using a walking stick, but due to her general exhaustion and breathlessness, Esther now struggles to walk more than a few minutes before she needs to sit down to rest. It takes her about 10 minutes to feel rested enough to continue walking, but the period of rest required for her to continue walking increases from break to break. If she is unable to sit and rest, she can start to feel dizzy, due to breathlessness, and stumble.

Esther also reports that she has been struggling with keeping herself safe outdoors, as most of her attention is now occupied with moving slowly and carefully and making sure she breathes normally. She explains that there have been a few near misses with traffic. Additionally, when she feels exhausted and breathless, Esther can also become disoriented and overwhelmed, which in turn causes her to worry about being lost. As a result, Esther doesn't feel safe venturing outside alone. She only leaves the house occasionally and only when accompanied by her daughter, her daughter's partner, or a neighbour.

Esther does not take any medication and has not been to see her GP since her covid infection. She does not provide any supporting information with her change of circumstances form.

The case manager reviews Esther's change of circumstances form. From the information provided they establish that Esther has symptoms of frailty and requires support with a number of bodily functions, such as:

- moving around indoors
- eating, drinking and taking nutrition
- washing, bathing and personal hygiene
- continence and use of toilet
- moving around outdoors

There are no significant inconsistencies or gaps in Esther's form. The case manager therefore proceeds to making a determination without requiring confirmation from a professional or using any decision-making tools.

They establish that Esther has satisfied the daytime condition of the care component, and she is therefore entitled to receive the middle rate. Esther's difficulties with moving around outside also meet the eligibility criteria for the lower rate of the mobility component.

The duration of Long Covid and other post-Covid conditions are still largely unknown. However, frailty is a degenerative condition. It is therefore unclear how Esther's needs are going to develop over time. The case manager therefore determines that an indefinite award is not appropriate for Esther. They set a review period of 5 years.

Example: An individual doesn't provide enough detail to make a determination

Sandy (aged 68) is in receipt of the lowest rate of the care component of Scottish Adult Disability Living Allowance due to depression and is now due a scheduled review.

They regularly struggle with motivation and low energy. Sandy regularly doesn't manage to prepare food or get dressed and ends up missing meals and wears the same clothes for days and nights on end. They take Duloxetine, which the case manager uses medical guidance to confirm is an anti-depressant.

In the review form, Sandy indicates that they have experienced changes since their last determination, and they request a change of circumstances form. On the change of circumstances form, Sandy describes now also experiencing difficulty with taking care of themselves and experiencing fluctuations in how they are impacted by their condition. They also mention that their GP has increased the dosage of their medication in response to their increased symptoms. However, the form is lacking in details about how significant this impact is, and whether these needs are limited to the day, or also occur throughout the night. The case manager needs further information before they can make a determination on Sandy's entitlement. The case manager decides to contact Sandy with follow-up questions.

On the phone, Sandy seems hesitant to talk about their needs and whether or not these also include night-time needs. They tell the case manager that they are mostly fine and only struggle sometimes when they are not in a good place.

The case manager concludes that the phone call has not provided the answers they need to establish Sandy's level of need. Furthermore, the information that Sandy did provide was inconsistent with the level of needs suggested by their review form and medication. The case manager is aware that individuals can struggle to talk about their conditions and needs. They also take into consideration that Sandy might currently be experiencing a period of depression and might therefore not be able to engage with them about their application. Therefore, they conclude that it is more likely than not that there is a reasonable explanation for this inconsistency. However, they still require more detail to make a determination. They decide that additional supporting information would be the best decision-making tool to fill the gaps in Sandy's change of circumstances form.

The case manager asks whether Sandy might have someone from their wider support network who could provide additional supporting information. Sandy confirms that their brother keeps an eye on them and that they see him every day. Sandy is happy to give their brother's contact details so he can provide additional supporting information.

The case manager sends a supporting information request to Sandy's brother. In his response, the brother explains that Sandy generally struggles a lot with depression and a mood disorder and that their symptoms have become more severe over the last 6 months. Their mood can be very changeable and when feeling positive they tend to stop taking their medication and refuse support but these times are

infrequent and short lived. He generally sees Sandy every day and visits in the morning and evening to provide reminders and encouragement with routine tasks such as attending to personal hygiene, taking medication and encouragement to eat. Sandy's brother regularly spends more than an hour each time he visits supporting Sandy with their needs, as he is aware that Sandy will not carry out such tasks without his support. Sandy also experiences insomnia at times but manages this independently and does not have any related care needs. When the brother is not able to provide support to Sandy, he explains that they tend to 'let things slide' and need additional support to get back into a routine again.

With this additional supporting information the case manager is able to draw conclusions about Sandy's new level of needs. Although Sandy said that they are mostly fine and only struggle sometimes, the support provided by their brother suggests they experience the difficulties they describe more frequently. Their changeable mood and tendency to stop taking their medication or engage with the support available to them, suggests they may find it hard to admit the severity of their needs. Their brother, who sees them regularly, is well placed to provide additional information.

The case manager now has the information they require to make a robust decision on Sandy's entitlement. They award Sandy the middle rate of Scottish Adult Disability Living Allowance care component as they have satisfied the daytime condition through requiring continual support throughout the day.

Example: A decision is possible but difficult due to lack of information

Imran, 58, is in receipt of the lowest rate of the care component of Scottish Adult Disability Living Allowance due to his asthma. He reports a change of circumstances. Imran describes significantly worsened symptoms. His now poorly controlled asthma causes him to become very out of breath. He explains that he uses an inhaler, a reliever, as medication to control his symptoms.

Imran provides a description of how his increased breathlessness affects him. He requires assistance with washing and dressing himself, as he experiences shortness of breath wheezing due to the mild exertion. Due to his shortness of breath, Imran becomes dizzy when washing and requires support to wash his hair and to get in and out of the bath. This has led to injuries in the past. Imran requires someone to watch him closely because of this. Due to his symptoms, Imran now has toileting accidents as he is unable to get to the toilet in time. This means his wife has to support him when he needs to move around the house and with his hygiene by supporting him with additional washing and bathing.

He also becomes breathless when moving around the house and has to pace himself or rest frequently. Imran also explains that he struggles with eating and drinking, as his condition can cause Imran to be unable to use cutlery at mealtimes due to the exhaustion from being out of breath. Imran generally needs support using cutlery at each mealtime.

His symptoms are frequently worse at night and early in the morning, when he often struggles to breathe, coughs a lot and also experiences tightness in his chest area. This can make it impossible for him to sleep through the night. Imran can also feel dizzy and drowsy in these moments.

Imran's wife has to ensure that he is propped up in bed, as he cannot breathe well when lying flat. If Imran slides down the bed, he can become more breathless. His wife also has to administer Imran's inhaler as he often becomes panicked at night. She then has to help Imran settle back to sleep due to how unsettled he can become. Imran sets out in his application form that this happens most nights of the week and takes at least half an hour for his wife to help him from the onset of symptoms.

Imran experiences acute asthma exacerbation regularly and describes that these attacks tend to come on suddenly. During these asthma attacks, his symptoms become worse and he struggles to breathe.

Imran has regular check-ups with his GP.

Based on existing knowledge of Imran's condition, and medical guidance, the case manager identifies a significant inconsistency between the impact Imran has described on the one hand and the medication he takes and the fact that his condition is not being managed by a specialist on the other hand. With the information available, the case manager is unable to make a robust determination. They do not see any reasonable explanation for the inconsistency.

They think that this inconsistency is significant, as

- there is conflicting information about the severity of Imran's needs. Individuals with poorly controlled asthma will typically use more effective medication and will have been referred to a specialist. As Imran is seen regularly for his condition, it is more likely than not that his GP would have prescribed medication that is appropriate for his symptoms and would have referred him.
- depending on what information can be established as fact, Imran's entitlement would differ. Imran's symptoms, as described in his application form, mean that he is likely to satisfy both the daytime and night-time conditions. However, his medication would typically be prescribed to people with mild asthma, who would likely only satisfy the daytime or night-time condition.

The case manager therefore decides that a confirmation from a professional is required. They ask Imran to provide his GP's contact details and send a supporting information request to Imran's GP.

The GP provides a short statement that confirms Imran's condition and lists his prescriptions. The GP explains that

- Imran's symptoms have only recently deteriorated
- He has recently been referred to a specialist but most likely is still waiting for his first appointment letter
- His medication is currently under review.

The confirmation did not include a detailed account on Imran's care needs. This is fine, as the role of confirmation from a professional is to broadly confirm the individual's disability, condition, or needs. As this piece of supporting information has resolved the inconsistency between severity of symptoms, medication, and clinical support, and Imran's condition and needs are straightforward, the case manager now has enough information to go ahead and

- establish the facts of the case
- make a conclusion of law

They determine that once he has met the backwards test Imran is entitled to the higher rate of the care component of Scottish Adult DLA, as he satisfies both the daytime and the night-time condition. Imran requires frequent attention throughout the day with his bodily functions, and prolonged attention in connection with his bodily functions at night. They set a review date of 18 months because they expect Imran to see a significant improvement in his symptoms once his condition is better controlled.

Example: A case manager establishes whether confirmation from a professional is needed and a consistency needs to be explored

James (aged 69) has been in receipt of the lower rate of the care component for Scottish Adult DLA for three years due to back pain which he has had since a bad cycling accident four years ago. His scheduled review is coming up.

James needs assistance with a number of bodily functions during the day, including washing himself, dressing and undressing as well as managing his toilet needs and moving around indoors due to pain and stiffness in his back. This because, although the hairline fracture caused to one of his vertebrae healed as expected, the pain in his back has only slightly improved since his accident. James also has mechanical back pain and is prescribed co-codamol as required for pain.

In his review form, James states that he now requires his partner to prompt him in relation to, eating, drinking and communicating with others.

After case familiarisation, the case manager establishes there is an inconsistency in James' review form and what the case manager knows about James' circumstances: Based on the information available, James' need for prompting is more likely than not to be unrelated to his accident, but it is unclear what causes this care need and how significant it is.

The case manager considers whether the existing inconsistencies in James' review form are relevant, i.e. whether they would prevent them from establishing James' level of needs and therefore would have to be explored. They consult the Decision-Making Guidance chapters setting out the care component criteria for Scottish Adult DLA.

They know from James' case file that James requires assistance with several bodily functions during the day, caused by his accident. James has not provided any information indicating a change to these needs. He therefore still satisfies the daytime condition for the care component for Scottish Adult DLA as he requires frequent attention throughout the day. His need for prompting, which currently is unexplained, would not impact on James' entitlement. Therefore the case manager decides that this inconsistency is not relevant.

They determine that James continues to be entitled to the lower rate of the care component and set a review period of three years.