

**Please provide the policy and/or guidance relating to changing of responsibility for a child in receipt of Child Disability payment.**

- **Change in child responsibility**

A change in who is responsible for the child that receives Child Disability Payment can affect their award.

We may be contacted by someone who is not an applicant or third party representative on a claim and wishes to transfer responsibility for the child to them. Client advisors must confirm with the client on the record if the person is authorised to take responsibility for the child.

If someone else, other than the applicant, reported the change in child responsibility follow the guidance for change of circumstance reported by a third party representative.

**When an online form is submitted**

- Social Program Management (SPM) automatically saves the form in PDF format
- SPM raises a task onto the 'Child Disability Payment Change of Circumstances' work queue.

**When a paper form is sent by post**

- The mailroom raises a task manually for the change of circumstances work queue
- This will show within the child's person record, in the attachments.

**When the client reports the changes over the phone**

1. Take details from the client about the change in responsibility, for example, from one parent as the principal carer to another parent. Get as much information as you can.
2. Inform the client that this could impact any eligibility to Low Income Benefits they may be receiving.
3. Create a new task on SPM to record the details of the new person who will be responsible for the child.
4. End the call.

- **Processing the change in responsibility on SPM**

1. To process the task, follow the processes of:
  - new child responsibility
  - end of child responsibility.

2. Call the new person who will be responsible for the child, using the details provided. Ask them to provide consent to record:
  - the details of their new child responsibility
  - any related change of circumstances, like a change of address
  - any further details they think we might need.

Try phoning three times during the day, at different times to reach the person. Record details of each attempt with a brief description and the evidence that's needed. Inform the client that they may be eligible for Low Income Benefit. You may consider suspending a case when the client failed to provide the requested evidence within the specified period.

3. Create a client record for the new person who will be responsible for the child.
4. End the relationship evidence on the child's client record for the original person.
5. Create a new relationship evidence on the child's client record for the new person who will be responsible for the child. Request evidence from the client if needed. Type 'Parent / guardian'.
6. Update the payment details.
7. Follow the steps under 'Update the Integrated Case to end the responsibility benefit' section to end child responsibility.
8. Add a participant to a Product Delivery Case.
9. Delete the original person.
10. Check the client's identity.

If the identity check is pass send a notification letter to both parents to update them about their obligation. This is a manual letter explaining that the change in child responsibility is complete.

If the identity check fails refer the case to Local Delivery. If Local Delivery check fails, revert to the original person from step 4. If the original person

- has died or
- is not eligible to receive the award any more, because is out of the country, there is court order or is in alternative accommodation such as prison or hospital

suspend the case manually and send a manual letter to inform about the suspension decision: Change of Circumstances

\_ManualLetter\_NoInformationProvided\_SuspendingCase details - Objective ECM.

11. Check if the previous parent/guardian is the primary client on Scottish Child Payment.

If so raise a task to the respective Low Income Benefit case owner to inform them about the responsibility change. This could impact Low Income Benefit eligibility for the client.

12. Check the child's record to ensure the change was made.

- **Processing any payment correction cases**

A payment correction case may be created, due to

- a medical change in circumstance
- a non-medical change in circumstance
- an error.

- **Medical change in circumstance**

To process the payment correction follow the payment correction guidance.

### **Non-medical change in circumstance or error correction**

You only need to process a payment correction for the changes reported within 8 weeks from the date of death.

For any error correction and changes reported after the 8 weeks from the date of death, refer this task to the Interventions team.

### **Change of circumstance reported by a third party representative**

A third party representative may contact us about a client's change of circumstances. If authorisation has been recorded on the client's SPM record, a client adviser can accept the following change of circumstances:

- change to the number of children in household
- change in family circumstances. This might include marriage or separation
- change to income
- change to a health condition.

Client advisers should not accept the following change of circumstances from a third party representative:

- bank details
- address
- change of phone number
- change of email address.

Exceptions to this may be:

- The client is on the phone, passes security and then hands over to their representative
- The third party representative advises that the client is unable to call themselves for reasons such as:
  - being incapacitated through illness
  - being in hospital
  - being imprisoned.

In this instance the client adviser should

- make a note of the call and see if they can call the client to confirm.
- if not, the adviser should ask for proof such as confirmation from a professional:
  - If the proof is satisfactory, the changes to bank details, telephone number and address can be made
  - If the adviser is uncertain, they should contact their line manager.

The client adviser should create a note on the client's record on SPM, including:

- date and time of the call
- third party representative details. If they are a professional, such as a social worker or a doctor, take the details of the organisation too.
- the information that was discussed
- any information that was disclosed to the third party representative
- any information that was changed.

## **Reason for the check**

A child is someone who is under 16 years old. Children cannot receive Child Disability Payment directly. Social Security Scotland will pay assistance to an adult on the child's behalf. This adult must have authority to act on behalf of the child. Most parents have this authority. This is because the law already gives them a set of rights and legal duties<sup>1</sup>. These are called parental rights and responsibilities. One of these parental rights is the right to act on the child's behalf in connection with the child's right to social security assistance. Parental rights and responsibilities apply until the child is 16 years of age. The only exception to this is the responsibility to provide guidance to the child which exists until the child reaches 18 years of age.

1 The Children (Scotland) Act 1995, s1 and s2.

If an applicant does not have parental rights and responsibilities for a child, then they cannot act on behalf of a child unless we appoint them to act. We can only appoint a person on behalf of a child if there is no person who meets each of the following criteria:

- has parental rights and responsibilities for the child,
- lives with, and looks after, the child,
- is practically 'able and willing' to act on behalf of the child.

1. What does it mean to be 'able and willing' to act on behalf of a child?

If the answer to any of these questions is no, then a person may not be 'able and willing' to manage the child's entitlement to assistance:

- Are they capable of arranging for the assistance to be spent in the child's interests?
- Are they capable of appealing decisions if this is required?
- If Social Security Scotland made an error when determining the child's entitlement to assistance, would the person notice?
- If the child's circumstances changed, would they notice and tell Social Security Scotland?
- Are they willing to manage the child's entitlement to assistance?

### **Who gains parental rights and responsibilities for a child**

A child's mother gains parental rights and responsibilities when the child is born<sup>1</sup>.

1 Children (Scotland) Act 1995, Section 3(1)(a)

A child's father gains parental rights and responsibilities when the child is born, if he was married to the child's mother when the child was conceived or after. It does not matter if the marital relationship between the mother and father has now ended.

Fathers can alternatively gain parental rights and responsibilities by either of the following methods:

- being registered as the child's father on the child's birth certificate on or after 4 May 2006
- both mother and father agreeing that the father is to have parental rights and responsibilities and the mother enters into a formal agreement with the father called a Parental Responsibilities and Parental Rights Agreement
- getting an order from the court giving him parental rights and responsibilities.

A woman can become a child's second female parent if they :

- are in a civil partnership or in a same-sex marriage with a woman at the time they have the egg donation, embryo transfer or donor insemination treatment which produces a child,
- are the partner of a woman undergoing egg donation, embryo transfer or donor insemination treatment, and the mother has agreed that her partner should be the child's second parent and her partner is registered as the child's parent,
- apply to the court for an order giving the second female parental rights and responsibilities.

Where a couple used surrogacy they can apply for a court order treating them as the child's parents after the child is born. The woman who bore the child remains the mother until the court order is granted. This is only possible where the gametes of at least one of the couple have been used.

Other people with an interest in the welfare of the child such as:

- grandparents
- step parents
- aunts
- uncles

can apply to the Court for an order giving them one or all parental rights and responsibilities. The Court will make the decision about who should have parental rights and responsibilities based on what is in the child's best interests.

### **Further enquiries after the applicant has stated that they do not have parental rights and responsibilities or has left the question unanswered**

If the applicant stated that they do not have parental rights and responsibilities, or they left the question unanswered, then the case manager must contact them to confirm:

- they understood the question
- their answer to the question.

If the applicant's answer is that they do not have parental rights and responsibilities for the child, then the case manager should follow the section of the guidance titled 'the applicant does not appear to have parental rights and responsibilities'.

If, after discussing the question with the case manager, the applicant's answer is that they do have parental rights and responsibilities, the case manager must decide if they can be satisfied on the balance of probabilities that the applicant has parental rights and responsibilities. If the case manager is satisfied then the child responsibility check is complete. If the case manager is not satisfied, then they must ask the applicant for supporting information.

### **The applicant does not appear to have parental rights and responsibilities or be capable of using Child Disability Payment in the interests of the child**

The guidance in this section applies if, after making further enquiries with the applicant,

- the case manager is not satisfied on the balance of probabilities that the applicant has parental rights and responsibilities

- the applicant confirms with the case manager that they do not have parental rights and responsibilities
- the applicant does not seem capable of using the Child Disability Payment in the interests of the child

The case manager will need to explain to the applicant that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child or that they are capable of using Child Disability Payment in the interests of the child. There is no right of appeal if the applicant disagrees with this.

If there is not enough supporting information to confirm that the applicant has parental rights and responsibilities, then the case manager should consider appointing the applicant if they seem capable of using the Child Disability Payment in the interests of the child. At this stage, case managers should not discuss the possibility of the applicant being appointed to act on the child's behalf until it is established that there is no other person who meets all of the following criteria:

- has parental rights and responsibilities for the child
- lives with, and looks after, the child
- is 'willing and able' to act on the child's behalf in place of the applicant.

A person does not need to live with, and look after, the child all of the time so long as they are willing and practicably able to act on the child's behalf.

The case manager must enquire with the applicant to see if there is another person who meets all the criteria described in the previous paragraph. If there is, then the case manager cannot appoint the applicant or anyone else

The case manager should follow the guidance in the next section titled "another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act". If either the applicant advises that there is no person who meets all of these criteria or the applicant refuses to disclose information about this, the case manager should follow the guidance below in the section titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

### **Another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act**

If, after making enquiries with the applicant, it appears that another person with parental rights and responsibilities lives with, and looks after the child, and is 'able and willing' to act on the child's behalf, the case manager should ask the applicant for this person's contact details. The case manager should then contact this person to confirm that they're willing to act on the child's

behalf. If the new applicant is willing to act on the child's behalf, they'll take over responsibility for the accuracy of the information contained in the application. Because of this, the new applicant must be given an opportunity to review this information and make changes if they do not agree with any part. The steps that the case manager should take to do this are set out in operational guidance.

Case managers should follow the guidance in the next section if after contacting the person with parental rights and responsibilities it appears that they are either not willing to act for the child or do not live with, and look after the child.

If the applicant refuses to give the contact details of anyone who may meet the criteria, then that does not change the fact that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child. Case managers can explain to the client that they have the right to request that they are appointed on behalf of the child. However, case managers should explain the process that Social Security Scotland will follow when considering the appointment. This is so that the applicant can make an informed decision. This process is explained in the section below titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

### **No person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act**

The applicant may explain that there is no other person who meets all of the criteria below:

- has parental rights and responsibilities for the child
- looks after the child
- is willing and able to act on the child's behalf in place of the applicant.

If this is the case, the case manager should explain, at this stage, that Social Security Scotland may appoint the applicant to act on behalf of the child. The following should be explained to the applicant in order for the applicant to make an informed decision about whether they would like to ask to be appointed on the child's behalf:

- Social Security Scotland may only appoint a person on behalf of a child if there is no person who meets all of the following:
  - parental rights and responsibilities for the child
  - lives with, and looks after, the child
  - is willing and able to act on behalf of the child in place of an appointee



- Insofar as possible, Social Security Scotland must seek the views of the following people before making the appointment:
  - the child
  - persons with parental rights and responsibilities for the child
  - any adults who live with, and look after, the child
  - anyone who appears to have interest in the welfare of the child, including any social worker who is currently allocated to the child, the lead professional in the child's plan (if the child has a child's plan),
  - the requirement to seek these people's views "insofar as possible" means Social Security Scotland will not seek the views of a person if doing so would put anyone at risk of harm or the person would find it very distressing. Social Security Scotland will not seek the views of a child if Social Security Scotland thinks this would worry, upset or confuse the child.

After this has been explained to the applicant, the case manager should ask the applicant if they would like to request that they are appointed on behalf of the child. In exceptional circumstances, it might be the case that there is no one who meets all of three of the criteria above but there is someone who has parental rights and is willing and able to act for the child but does not actually living with the child and / or looking after the child. In which case, instead of the applicant requesting an appointment, the applicant may decide to arrange for that person to take over responsibility for the application. In which case, the case manager should follow the guidance in paragraph 38 of the chapter.

**Please provide the policy and/or guidance relating to backdated payments for a child in receipt of Child Disability payment.**

**Overview of disability benefit payment correction cases**

**What are Payment Correction Cases?**

Underpayments and overpayments happen when clients are paid too little, or too much of a benefit award. They are common and can happen for many different reasons. When they are created on SPM, they result in Payment Correction Cases. The way payment correction cases are managed depends on the factors that led to them occurring in the first place.

Payment correction cases need to be actioned so that:

- the client is paid what they are owed (underpayments)
- the debt team can start debt recovery (overpayments, client liable)
- the debt can be written off (overpayments, client not liable).

As they are processed, they are:

- checked for correctness
- classified and categorised
- submitted for review
- approved and activated.

Informing the client of their overpayment or underpayment and explaining the next steps is an important part of the payment correction case journey.

**What leads to a payment correction case?**

Underpayments and overpayments are created in SPM as payment correction cases.

Payment correction cases are effectively a type of product delivery case. For disability benefits, these can happen when a change that effects eligibility, entitlement or payability is applied to:

- the integrated case
- product delivery case
- the client record.

The change may be due to:

- a change in circumstances leading to the reassessment of an active product delivery case i.e. change in medical needs
- a redetermination or appeal
- error correction.

## **Who deals with payment correction cases?**

Payment correction cases will be actioned by either:

- the disability benefit operational team that created the payment correction case
- the interventions team
- the client experience team.

## **Date of entitlement**

The date of entitlement is the first date from which Child Disability Payment is paid. This can be:

- Backwards test met date: the day after the first day the backwards test is met or is likely to be met
- Application received date<sup>1</sup>: the date the application is received
- Individual details submitted date<sup>1</sup>: the date on which the full name and date of birth of the individual is submitted to Social Security Scotland. This is part one of the application process.

1 Child Disability Payment regulations 20 (3) (4) (5)

In most cases the application received and the individual details submitted dates will be the same.

However if the application received date comes within 6 weeks after the individual details submitted date, then the date of entitlement will be the individual's details submitted date unless the backwards test / forwards test has not been met.

If both:

- the application is received more than 6 weeks after the individual's details submitted date
- there is no good reason why the application was not received within the 6 weeks

then the date of entitlement will be the application received date<sup>1</sup>, unless the backwards test / forwards test has not been met.

1 Child Disability Payment regulations, s.20(1),(2),(3),(4),(5) and (6)

## **Over-payments and under-payments**

Individuals may be liable to repay Social Security Scotland if:

- they have received an higher payment than they are entitled to

- they have received a payment they are not entitled to of Child Disability Payment or short-term assistance<sup>1</sup>.  
*1 Child Disability Payment regulations, regulation 33 (1)*

Individuals may be due more money than they have received if they:

- have not received all or a component of Child Disability Payment to which they are entitled<sup>1</sup>
- have received a lower rate of Child Disability Payment than they are entitled to

of Child Disability Payment or Short-term Assistance<sup>2</sup>

*1 Child Disability Payment regulations, regulation 32(1)(b)(i)*

*2 Child Disability Payment regulations, regulation 32(1)(b)(ii)*

For more information on how payment errors are to be handed please go to the Payment Error Chapter

### **When a payment can be made**

Child Disability Payment should be paid every four weeks, in arrears. Where Special Rules for Terminal Illness apply, Child Disability Payment should be paid weekly, in advance<sup>1,2</sup>.

*1 Child Disability Payment regulations, regulation. 25 (a)*

*2 Child Disability Payment regulations, regulation 25 (b)*

The first payment should be backdated to the date of application if the individual satisfies the backwards test. Once they has provided part one of an application, they have six weeks to complete the full application.

Payments will be backdated to the date they registered the application if they:

- complete the application within 6 weeks
- are eligible for the Child Disability Payment

If they complete the application after the 6 week period without a good reason, payment will start from the date that the completed application is received. If the individual can give a good reason then the start date of their award is the date that they registered the date of application<sup>1</sup>. An explanation of what constitutes good reason can be found in the Applying for Child Disability Payment chapter.

*1 Child Disability Payment regulations, regulation. 24 (5)*

A case manager should decide what constitutes a good reason<sup>1</sup>. For example, it may be that an individual does not submit a full application within the 6 week period because of:

- an action by social security Scotland
- an individual's disability prevented them from submitting an application.

For more information on what constitutes a good reason, please refer to the Applying for Child Disability Payment chapter .

*1 Child Disability Payment regulations, regulation 24 (6)*

The case manager can set the date of application as the date when the backwards test is satisfied if:

- the individual submits the application in full
- the individual does not yet meet the criteria for the backwards test of 13 weeks<sup>1</sup>

For more information on the backwards and forwards test and how do deal with applications that do not yet satisfy the backwards test, please refer to the Backwards and Forwards test and the Applying for Child Disability Payment chapters.

*1 Child Disability Payment regulations, regulation. 24(2)*

There are circumstances in which Child Disability Payment can be paid at a daily rate. This may be applicable to individuals living for a prolonged period in a care home or a residential educational establishment.

If the individual has a period of absence from the institution, they may be paid at a daily rate. The daily rate is one-seventh of the weekly rate.

The daily rate should be calculated from the day the individual goes on leave and ends the day after the individual returns to living in a care home<sup>1</sup>. For more detail on this please refer to the Effect of time spent in care homes and residential educational establishments chapter.

*1 Child Disability Payment regulations, regulation 19(4)*

- the date Social Security Scotland receives their application
- the date a Benefits Assistance under Special Rules in Scotland (BASRiS) form is signed (up to a maximum of 26 weeks prior to application being received).

This date can be no earlier than 26 July 2021.

*1 Child Disability Payment regulations, regulation 15(3)(4)*

**Please provide the policy and/or guidance relating to circumstances where two parents/persons who are attempting to claim for a child in receipt of Child Disability payment including the criteria for how it is decided/determined which person/parent should be deemed as the primary carer or responsible person thus the application be changed into that person's name.**

## **Change in child responsibility**

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We may be contacted by someone who is not an applicant or third party representative on a claim and wishes to transfer responsibility for the child to them. Client advisors must confirm with the client on the record if the person is authorised to take responsibility for the child.

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4. End the call.

### **• Processing the change in responsibility on SPM**

1. To process the task, follow the processes of:
  - new child responsibility
  - end of child responsibility.
2. Call the new person who will be responsible for the child, using the details provided. Ask them to provide consent to record:

- the details of their new child responsibility
- any related change of circumstances, like a change of address
- any further details they think we might need.

Try phoning three times during the day, at different times to reach the person. Record details of each attempt with a brief description and the evidence that's needed. Inform the client that they may be eligible for Low Income Benefit. You may consider suspending a case when the client failed to provide the requested evidence within the specified period.

3. Create a client record for the new person who will be responsible for the child.

4. End the relationship evidence on the child's client record for the original person.

5. Create a new relationship evidence on the child's client record for the new person who will be responsible for the child. Request evidence from the client if needed. Type 'Parent / guardian'.

6. Update the payment details.

7. Follow the steps under 'Update the Integrated Case to end the responsibility benefit' section to end child responsibility.

8. Add a participant to a Product Delivery Case.

9. Delete the original person.

10. Check the client's identity.

If the identity check is pass send a notification letter to both parents to update them about their obligation. This is a manual letter explaining that the change in child responsibility is complete.

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  - being imprisoned.

In this instance the client adviser should

- make a note of the call and see if they can call the client to confirm.
- if not, the adviser should ask for proof such as confirmation from a professional:



- If the proof is satisfactory, the changes to bank details, telephone number and address can be made
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The client adviser should create a note on the client's record on SPM, including:

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- Are they capable of arranging for the assistance to be spent in the child's interests?
- Are they capable of appealing decisions if this is required?

- If Social Security Scotland made an error when determining the child's entitlement to assistance, would the person notice?
- If the child's circumstances changed, would they notice and tell Social Security Scotland?
- Are they willing to manage the child's entitlement to assistance?

### **The case manager makes further enquiries – general guidance**

The purpose of making further enquiries is so that the case manager can be satisfied 'on the balance of probabilities' that the applicant does have parental rights and responsibilities for the child. 'On the balance of probabilities' means, based on all the information that we know about the child and the applicant, it appears more likely than not that the applicant has parental rights and responsibilities for the child.

In addition to having parental rights, applicants should be capable of using the child's Child Disability Payment in the interests of the child. Case managers have the discretion to ask applicants for supporting information which shows that the applicant cares for the child. Applicants who care for their child on a part-time basis are capable of using the child's Child Disability Payment in the interests of the child. For example, a person with parental rights who cares for their child every second weekend can receive Child Disability Payment on behalf of the child and would not normally need to provide supporting information.

Case managers should only consider asking for care-of-the-child supporting information if they have reason to believe that the applicant might not be in a position to care for the child. This will only be in exceptional circumstances. For example, if the applicant explains that they live abroad and the child lives with their other parent in Glasgow. The supporting information could be, for example, a letter from the child's nursery, GP or school addressed to the applicant.

If the applicant is unable to provide this information, then they may not be capable of using Child Disability Payment in the interests of the child. Case managers should following the guidance in the section below, titled, "the applicant does not appear to have parental rights and responsibilities or be capable of using Child Disability Payment in the interests of the child".

Making further enquiries with the applicant can involve asking the applicant:

- questions
- to send documents as supporting information.

The case manager's approach to making further enquiries will depend on the reasons for the further enquiries. The reasons for the further enquiries could be any or all of the following:

- because the applicant has stated that they do not have parental rights or responsibilities or has left the question unanswered
- because the applicant's address does not match the child's
- Social Security Scotland or the Department for Work and Pensions have a record of someone else being responsible for the child.

Any of these are referred to as 'reasons for making further enquiries'.

The approach by case managers to making further enquiries should be 'proportionate' and 'targeted'.

'Proportionate' means not asking for more information than is necessary to satisfy the case manager that on the balance of probabilities the applicant has parental rights and responsibilities. Generally case managers should ask the applicant questions and only ask the applicant to send supporting information if this is needed. Supporting information is needed if, without it, it appears that on the balance of probabilities that the applicant does not have parental rights and responsibilities.

'Targeted' means that the questions that the case managers asks should be about the reason for making the further enquiry. The aim of a question is to see if the applicant has a reasonable explanation. If they do, then this should usually be enough for the case manager to be satisfied on the balance of probabilities that the applicant has parental rights and responsibilities. This means the child responsibility check will be complete.

If the applicant has already submitted supporting information about the child as part of the application, then the case manager can look at this for the purpose of satisfying themselves on the balance of the probabilities that the applicant has parental rights and responsibilities for the child.

### **Deciding who will act on a child's behalf**

A person must have legal authority to act on behalf of a child in connection with Child Disability Payment.

Many parents will have legal authority to act on behalf of the child, because they have certain legal rights associated with being a parent. These are known as parental rights and responsibilities.

One element of parental rights and responsibilities is the right to act as the child's legal representative. Parental rights and responsibilities are defined in law as:

- to safeguard and promote the child's health, development and welfare
- to provide the child with direction and guidance, in a manner appropriate to their stage of development

- if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis
- to act as the child's legal representative.

For information about the right to act on behalf of a child, see 'Legal authority to act on the child's behalf'.

A person who wishes to receive an award on behalf of a child must be willing and practicably able to act on the child's behalf, in addition to having legal authority to act on behalf of the child.

A person who does not have legal authority can only act on a child's behalf in connection with Child Disability Payment if Social Security Scotland appoints them. A person can be appointed if it appears to Social Security Scotland that there is no person who meets all of the following criteria:

- has authority to act on behalf of the child
- lives with, and has care of, the child
- is willing, and practically able to act on behalf of the child.

For guidance about situations where more than one person wishes to act on behalf of a child see 'Resolving disputes about who should act on behalf of a child'.

- If a person states that they have legal authority to act on behalf of a child

If a person states that they have legal authority to act on behalf of the child, the case manager should:

- verify that the person has legal authority to act on behalf of the child
- ensure that the person is practicably able to act on the child's behalf.

If the case manager is satisfied that the person has legal authority to act on behalf of the child, and is practicably able to act, the case manager may decide that person will be responsible for acting on behalf of the child.

If the child resides with a person with legal authority to act on their behalf for only part of the week, that person may still be practicably able to act on behalf of the child. There is no minimum number of days a week that a child must reside with any one person for them to be practicably able to act on their behalf.

- Example: A child lives with a parent for two days a week

Akil is five years old. Akil's mother makes an application for Child Disability Payment on their behalf. Akil's dad tells Social Security Scotland that Akil lives with him and that there is a court order in place. The case manager reviews the court order and notes that both parents still have legal authority to act on behalf of Akil. Akil lives with their dad 5 days a week and with their mother for 2 days a week. Based on the circumstances of the case, there is no information to suggest that Akil's mother is not practicably able to act on their behalf.

Where it is established that the person does not have legal authority to act on behalf of the child, or it is unclear whether they have legal authority, see 'If the person states they do not have legal authority to act on behalf of a child'.

A case manager may discuss a child's award with anyone who has legal authority to act on behalf of the child. The person does not necessarily have to be receiving the award on behalf of the child to discuss the child's award.

### **If a person states that they do not have legal authority to act on behalf of a child**

If a person states that they do not have legal authority to act on behalf of a child, the case manager should identify:

- what the person's relationship with the child is
- if there is anyone who does have legal authority to act on the child's behalf.

It will be more appropriate for someone else to act if they:

- have legal authority to act on behalf of the child
- live with and have care of the child
- are willing and practicably able to act on behalf of the child.

If the case manager is satisfied that they cannot identify anyone with legal authority to act on behalf of the child, who is capable of acting on the child's behalf, they should consider appointing the person who does wish to act on behalf of the child.

### **If it is unclear whether the person has legal authority to act on behalf of a child**

If it is unclear whether a person has legal authority to act on behalf of a child, the case manager should verify whether the person has those rights.

The case manager should then either follow the guidance under 'If the person states they have legal authority to act on behalf of a child' or 'If the person states they do not have legal authority to act on behalf of a child' as appropriate.

### **The applicant does not appear to have parental rights and responsibilities or be capable of using Child Disability Payment in the interests of the child**

The guidance in this section applies if, after making further enquiries with the applicant,

- the case manager is not satisfied on the balance of probabilities that the applicant has parental rights and responsibilities
- the applicant confirms with the case manager that they do not have parental rights and responsibilities

- the applicant does not seem capable of using the Child Disability Payment in the interests of the child

The case manager will need to explain to the applicant that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child or that they are capable of using Child Disability Payment in the interests of the child. There is no right of appeal if the applicant disagrees with this.

If there is not enough supporting information to confirm that the applicant has parental rights and responsibilities, then the case manager should consider appointing the applicant if they seem capable of using the Child Disability Payment in the interests of the child. At this stage, case managers should not discuss the possibility of the applicant being appointed to act on the child's behalf until it is established that there is no other person who meets all of the following criteria:

- has parental rights and responsibilities for the child
- lives with, and looks after, the child
- is 'willing and able' to act on the child's behalf in place of the applicant.

A person does not need to live with, and look after, the child all of the time so long as they are willing and practicably able to act on the child's behalf.

The case manager must enquire with the applicant to see if there is another person who meets all the criteria described in the previous paragraph. If there is, then the case manager cannot appoint the applicant or anyone else

The case manager should follow the guidance in the next section titled "another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act". If either the applicant advises that there is no person who meets all of these criteria or the applicant refuses to disclose information about this, the case manager should follow the guidance below in the section titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

### **Another person with parental rights and responsibilities lives with, and looks after the child and is able and willing to act**

If, after making enquiries with the applicant, it appears that another person with parental rights and responsibilities lives with, and looks after the child, and is 'able and willing' to act on the child's behalf, the case manager should ask the applicant for this person's contact details. The case manager should then contact this person to confirm that they're willing to act on the child's behalf. If the new applicant is willing to act on the child's behalf, they'll take over responsibility for the accuracy of the information contained in the

application. Because of this, the new applicant must be given an opportunity to review this information and make changes if they do not agree with any part. The steps that the case manager should take to do this are set out in operational guidance.

Case managers should follow the guidance in the next section if after contacting the person with parental rights and responsibilities it appears that they are either not willing to act for the child or do not live with, and look after the child.

If the applicant refuses to give the contact details of anyone who may meet the criteria, then that does not change the fact that there is not enough supporting information to confirm that they have parental rights and responsibilities for the child. Case managers can explain to the client that they have the right to request that they are appointed on behalf of the child. However, case managers should explain the process that Social Security Scotland will follow when considering the appointment. This is so that the applicant can make an informed decision. This process is explained in the section below titled 'no person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act'.

### **No person with parental rights and responsibilities lives with, and looks after the child and appears able and willing to act**

The applicant may explain that there is no other person who meets all of the criteria below:

- has parental rights and responsibilities for the child
- looks after the child
- is willing and able to act on the child's behalf in place of the applicant.

If this is the case, the case manager should explain, at this stage, that Social Security Scotland may appoint the applicant to act on behalf of the child. The following should be explained to the applicant in order for the applicant to make an informed decision about whether they would like to ask to be appointed on the child's behalf:

- Social Security Scotland may only appoint a person on behalf of a child if there is no person who meets all of the following:
  - parental rights and responsibilities for the child
  - lives with, and looks after, the child
  - is willing and able to act on behalf of the child in place of an appointee
- Insofar as possible, Social Security Scotland must seek the views of the following people before making the appointment:

- the child
- persons with parental rights and responsibilities for the child
- any adults who live with, and look after, the child
- anyone who appears to have interest in the welfare of the child, including any social worker who is currently allocated to the child, the lead professional in the child's plan (if the child has a child's plan),
- the requirement to seek these people's views "insofar as possible" means Social Security Scotland will not seek the views of a person if doing so would put anyone at risk of harm or the person would find it very distressing. Social Security Scotland will not seek the views of a child if Social Security Scotland thinks this would worry, upset or confuse the child.

After this has been explained to the applicant, the case manager should ask the applicant if they would like to request that they are appointed on behalf of the child. In exceptional circumstances, it might be the case that there is no one who meets all of three of the criteria above but there is someone who has parental rights and is willing and able to act for the child but does not actually living with the child and / or looking after the child. In which case, instead of the applicant requesting an appointment, the applicant may decide to arrange for that person to take over responsibility for the application. In which case, the case manager should follow the guidance in paragraph 38 of the chapter.

- When to seek advice

Case managers should seek advice if:

- Social Security Scotland is not aware of any adult with parental rights and responsibilities who is willing and able to act for the child and
- the applicant does not request that they are appointed.

• **A third party representative may contact us about a client's change of circumstances. If authorisation has been recorded on the client's SPM record, a client adviser can accept the following change of circumstances:**

- change to the number of children in household
- change in family circumstances. This might include marriage or separation
- change to income
- change to a health condition.

• Client advisers should not accept the following change of circumstances from a third party representative:



- bank details
- address
- change of phone number
- change of email address.
  
- Exceptions to this may be:
  - The client is on the phone, passes security and then hands over to their representative
  - The third party representative advises that the client is unable to call themselves for reasons such as:
    - being incapacitated through illness
    - being in hospital
    - being imprisoned.
  
- In this instance the client adviser should
  - make a note of the call and see if they can call the client to confirm.
  - if not, the adviser should ask for proof such as confirmation from a professional:
    - If the proof is satisfactory, the changes to bank details, telephone number and address can be made
    - If the adviser is uncertain, they should contact their line manager.
  
- The client adviser should create a note on the client's record on SPM, including:
  - date and time of the call
  - third party representative details. If they are a professional, such as a social worker or a doctor, take the details of the organisation too.
  - the information that was discussed
  - any information that was disclosed to the third party representative
  - any information that was changed.

**Please provide the policy and/or guidance relating to someone continuing to receive payments when it is clear they should not be and the entitled child is not benefiting from those payments.**

### **Change in child responsibility**

A change in who is responsible for the child that receives Child Disability Payment can affect their award.

We may be contacted by someone who is not an applicant or third party representative on a claim and wishes to transfer responsibility for the child to them. Client advisors must confirm with the client on the record if the person is authorised to take responsibility for the child.

If someone else, other than the applicant, reported the change in child responsibility follow the guidance for change of circumstance reported by a third party representative.

#### **When an online form is submitted**

- SPM automatically saves the form in PDF format
- SPM raises a task onto the 'Child Disability Payment Change of Circumstances' work queue.

#### **When a paper form is sent by post**

- The mailroom raises a task manually for the change of circumstances work queue
- This will show within the child's person record, in the attachments.

#### **When the client reports the changes over the phone**

1. Take details from the client about the change in responsibility, for example, from one parent as the principal carer to another parent. Get as much information as you can.
2. Inform the client that this could impact any eligibility to Low Income Benefits they may be receiving.
3. Create a new task on SPM to record the details of the new person who will be responsible for the child.
4. End the call.

- **Processing the change in responsibility on SPM**

1. To process the task, follow the processes of:
  - new child responsibility
  - end of child responsibility.
2. Call the new person who will be responsible for the child, using the details provided. Ask them to provide consent to record:
  - the details of their new child responsibility
  - any related change of circumstances, like a change of address
  - any further details they think we might need.

Try phoning three times during the day, at different times to reach the person. Record details of each attempt with a brief description and the evidence that's needed. Inform the client that they may be eligible for Low Income Benefit. You may consider suspending a case when the client failed to provide the requested evidence within the specified period.

3. Create a client record for the new person who will be responsible for the child.
4. End the relationship evidence on the child's client record for the original person.
5. Create a new relationship evidence on the child's client record for the new person who will be responsible for the child. Request evidence from the client if needed. Type 'Parent / guardian'.
6. Update the payment details.
7. Follow the steps under 'Update the Integrated Case to end the responsibility benefit' section to end child responsibility.
8. Add a participant to a Product Delivery Case.
9. Delete the original person.
10. Check the client's identity.

If the identity check is pass send a notification letter to both parents to update them about their obligation. This is a manual letter explaining that the change in child responsibility is complete.

If the identity check fails refer the case to Local Delivery. If Local Delivery check fails, revert to the original person from step 4. If the original person

- has died or
- is not eligible to receive the award any more, because is out of the country, there is court order or is in alternative accommodation such as prison or hospital

suspend the case manually and send a manual letter to inform about the suspension decision: Change Of Circumstances

\_ManualLetter\_NoInformationProvided\_SuspendingCase details - Objective ECM.

11. Check if the previous parent/guardian is the primary client on Scottish Child Payment.

If so raise a task to the respective Low Income Benefit case owner to inform them about the responsibility change. This could impact Low Income Benefit eligibility for the client.

12. Check the child's record to ensure the change was made.

- **Processing any payment correction cases**

A payment correction case may be created, due to

- a medical change in circumstance
- a non-medical change in circumstance
- an error.

- **Medical change in circumstance**

To process the payment correction follow the payment correction guidance.

- **Non-medical change in circumstance or error correction**

You only need to process a payment correction for the changes reported within 8 weeks from the date of death.

For any error correction and changes reported after the 8 weeks from the date of death, refer this task to the Interventions team.

### **Change of circumstance reported by a third party representative**

A third party representative may contact us about a client's change of circumstances. If authorisation has been recorded on the client's SPM record, a client adviser can accept the following change of circumstances:

- change to the number of children in household
- change in family circumstances. This might include marriage or separation
- change to income
- change to a health condition.

Client advisers should not accept the following change of circumstances from a third party representative:

- bank details
- address
- change of phone number
- change of email address.

Exceptions to this may be:

- The client is on the phone, passes security and then hands over to their representative
- The third party representative advises that the client is unable to call themselves for reasons such as:
  - being incapacitated through illness
  - being in hospital
  - being imprisoned.

In this instance the client adviser should

- make a note of the call and see if they can call the client to confirm.
- if not, the adviser should ask for proof such as confirmation from a professional:

- If the proof is satisfactory, the changes to bank details, telephone number and address can be made
- If the adviser is uncertain, they should contact their line manager.

The client adviser should create a note on the client's record on SPM, including:

- date and time of the call
- third party representative details. If they are a professional, such as a social worker or a doctor, take the details of the organisation too.
- the information that was discussed
- any information that was disclosed to the third party representative
- any information that was changed.