

Process Id# :: 0011
Process Name :: Assisted Decision Making / 'On Behalf Of' Policy
Date Last Updated :: 15/5/2022

Description ::

The NSSO normally engages exclusively with the data subject (employee/pensioner) on queries or case processing, with the exception where acting on the request/instruction of the controller (LHR). Occasionally instances arise where it may be appropriate for other individuals to act as an agent or advocate 'on behalf of' the data subject and be provided with information. Such scenarios *may* include ::

- i. The data subject is a member of a trade union or relevant third party scheme (ie: AVC scheme)
- ii. Solicitors seeking salary & pension information as part of a court order (ie: pension adjustment orders);
- iii. The data subject is incapacitated/seriously ill and others need to act on their behalf;
- iv. The data subject has diminished capacity for decision making, keeping in mind the spirit of the provisions of the [Assisted Decision Making \(Capacity\) Act 2015](#) and its (to date limited) enactments.
- v. The data subject is deceased. While data protection law no longer applies, there is a need to carry out certain processes for the estate/next-of-kin at what is a difficult time for relatives.

This list is not exhaustive and sample resolutions follow below to aid understanding of NSSO staff. Scenarios such as these are rare and will be evaluated by the Data Protection Officer on a **case-by-case** basis, weighing up the balance between the right to data privacy and to competing rights that might be presented. This policy is to help with the understanding of why and how such decisions will be reached.

Principles to guide decisions ::

Where someone ('advocate') contacts the NSSO seeking to advocate on behalf of a data subject the NSSO will initially seek a copy of authorisation **from the data subject** that the third party is approved to act on their behalf.

This authorisation can manifest in a number of ways ::

- i. Correspondence from the data subject, provided directly to the NSSO or via the 'advocate', that permits the NSSO to deal with the 'advocate'. Preferably such consent is received in writing but the data subject can give consent over the phone;
- ii. Wording of Court mandate/order;
- iii. Ability of data subject to give approval, if the disclosure is in the data subjects interest;
- iv. If the advocate has a potential self-interest and/or ethical mandate (medical staff, legal representative);
- v. If the advocate is noted as next-of-kin. It is noted the right of the 'next of kin' are very limited, see 19.35 of the [guidance video](#) from the Decision Support Service which clearly states a next of kin does not have legal authority as a decision maker or the right to access information.

The NSSO is legally obliged to meet data law regulations, but will keep what is in the best interest of the data subject in mind and deal with requests in a sensitive matter. As the NSSO is a processor it does not have a controllers powers to determine access & disclosure and will sometimes be required to seek the views/authorisation of the controller of the scheme. As a processor there is discretion where the party is acting for the data subject. This document deals with how to establish with confidence that the party is acting on the data subjects behalf.

Laws in Place :: Opening Post addressed to another person

[Section 53](#) of the Communications Regulation (Postal Services) Act 2011 states ::

53.— (1) **A person commits an offence if he or she, without the agreement of the addressee and, in the case of a person who is a postal service provider or an employee or agent of a postal service provider, contrary to his or her duty, intentionally—**

- (a) delays, detains, interferes with or **opens, a postal packet addressed to another person** or does anything to prevent its delivery or authorises, suffers or permits another person (who is not the addressee) to do so,
- (b) discloses the existence or contents of a postal packet referred to in paragraph (a), or
- (c) **uses for any purpose any information obtained from a postal packet referred to in paragraph (a).**

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction, to a class C fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €75,000 or imprisonment for a term not exceeding 5 years or both.

(4) This section does not apply to any person who is acting—
(c) under other lawful authority.

The Data Protection Commission have advised on the use of Section 53 as a mitigation to certain types of potential data breaches involving the postal service, but it is important to note any no individual has a right to open an addressee's post without their authorisation unless acting under lawful authority.

The NSSO will always seek to verify the data subject's authorisation and if that cannot be provided, then it will seek sight of the lawful authority. This will sometimes be a challenging matter and will be managed sensitively, but needs to be done to protect the rights of the data subject in the first instance.

Access & Control ::

Consents will be documented by NSSO staff.

Sample Scenarios ::

The NSSO contacted by a nurse in a care home advocating for pensioner. Pensioner moved house into residential care and has no family to advocate on their behalf. Pension has stopped being paid as no response was received from pensioner to annual PSS correspondence to their home.

A PSS control is to cease making pension payments to pensioners where post is returned to PSS as 'not at this address'. This is to avoid over-payments as this is often an indication that the pensioner may now be deceased. Where the pensioner has moved house they usually contact the PSS about the non-payment of pension and update their address details. In this case, the nurse was able to supply limited information on behalf of the pensioner. This **did not require the disclosure of personal information to the nurse** and the pension was re-instated and back-dated.

The NSSO was contacted by staff at a mental health facility advocating for a patient who had fled a challenging domestic situation. The patient's salary was being paid into a bank a/c to which they had no access. They sought to return full control of the patient's finances to the patient and for the NSSO to pay into a new a/c.

This case presents an obvious opportunity for financial fraud and relates to someone in a particularly vulnerable situation. The NSSO engaged with the health facility to determine how to best authenticate authorisation in the absence of ID. We verified the request with other senior officials in the facility to get a second authentication on the request and as a lock that a staff member might be misrepresenting the case.

A series of questions were prepared from the file that only the data subject would know. The answers along with written consent from the data subject was facilitated by the hospital staff and permitted us to deal with the staff on their behalf. The NSSO engaged with the staff to find a SEPA compliant financial provider who could provide an a/c.

Family seeking to change address/contact details of a family member ?

I am writing to you in connection with a change of address for my mother XX. My mother is now residing in a nursing home as she has dementia. Her residence XX has been sold and she is residing with me/at a care home. As her daughter I am looking after her affairs and I would be grateful if her pension information can be sent to my/this address....

- a) This process will evolve in line with the full go-live of the [Decision Support Service](#), its guidance and the codes that will be introduced.
- b) In situations such as this the NSSO will check who the 'next of kin' is as previously listed by the data subject. While being listed as next of kin **does not bring decision making authority**, it can provide comfort in initial dialogue that the person advocating has an existing relationship, but no more.
- c) As the listed home address was now sold (should be confirmed by NSSO staff on the [property registrar](#)) post to this address will be misplaced and should be paused pending clarification of the situation.
- d) The NSSO has an obligation to data accuracy and must update its records once verified.

- e) The NSSO will seek to validate the request with the data subject in the first instance.
- i. This means the NSSO will contact the data subject via phone as post is no longer an option.
 - ii. As the NSSO may not have phone numbers for the data subject we may ask the advocate to provide such a number or to be present at an agreed time where we will call the advocate, who can put the data subject on the line.
 - iii. The data subject will be asked a number of (reasonable) questions by NSSO staff about their career for comparison to what we have on file to verify they are the data subject and not someone personating the data subject for convenience.
 - iv. Once the identity is confirmed we will ask for authorisation to deal with the advocate going forward and ask is there any limitations they wish to put in place (eg changing bank accounts).
 - v. If the data subject is unable to receive phone calls, for example if they are hard of hearing, we would ask the advocate to print off Form 11 for the data subject to fill in and return.
- f) Where the data subject has limited capacity to validate the request, such as in this case suffering from dementia, a coma or other such limitation, then subject to the evolving guidance of the DSS, we will seek sight that the advocate will be asked to display ensuring power of attorney, or the appropriate documentation declaring them a DMA, CDM or DMR (see from 4.23 of the [DSS guidance](#)).

Process for nominating an agent to act on your behalf ([form 11](#)) ::

Pending the full go-live of the Decision Support Service and their plans for a register of 'decision supporters' the NSSO is currently implementing the following process.

If you feel you are unable to manage your financial affairs you can ask that another person (known as an agent) acts on your behalf. They can act on your behalf on a temporary or long-term basis. The form for initiating this process is attached and also applies where a customer is unexpectedly unable to manage their own affairs.

Becoming an agent:

An agent must be over the age of 18 years and be one of the following:

- a family member
- a person who has been appointed to be a care representative of the customer
- a person, other than the medical practitioner who signed the form, who appears to the NSSO to have a good and sufficient interest in the welfare of the customer
- Where the customer is resident in a care centre for a continuous period of four weeks or more, and where no other suitable person is available and willing to be appointed, a representative of the care centre may be appointed to act as agent.

The agent will be responsible for ensuring that:

- the payment is used for the benefit of the customer;
- monies are not spent on items or services that the customer has an entitlement to and are available
- the payment is lodged to an interest bearing account for the benefit of the customer
- any changes in the customer's circumstances are reported to the NSSO.

Ward of Court or Enduring Power of Attorney

In the case of a ward of court or a person appointed under an enduring power of attorney, the NSSO will make payments directly to the Committee of the Ward or to the Attorney where requested. These payments will be made to a nominated bank account. It should be noted that the concept of Ward of Court is being transitioned out within three years of commencement of the Act.

Care Homes ::

Where the customer is resident in a care centre for a continuous period of 4 weeks or more and wishes to have a representative of the care centre appointed to act as their agent, the customer or their representative should contact the manager of the care centre to put the arrangement in place.