

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Agents, Appointees, Attorneys and Deputies Guide (AAADG)

September 2011 amendment package

1. The Agents, Appointees, Attorneys and Deputies Guide is now the responsibility of the Decision Making and Appeals (Part of Legal Group) (DMA). This amendment package brings the guide up to date with current legislation.
2. This amendment package affects parts 1, 4, 5 and 6 and also inserts Appendix 16, 17, 18, 19 and 20.
3. This amendment package is issued in PDF format only,

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double-sided prints.
4. You can access the AAADG and individual amendment packages via the DWP website at www.dwp.gov.uk/publications/specialist-guides/
5. Remove the sheets in the left hand column and insert new sheets in the right hand column.

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Personal Acting Bodies and Corporate Other Payees

Personal Acting Body

- 1150 A PAB is a named person appointed to look after all or some aspects of a customer's affairs.
- 1151 A PAB can be appointed by:
- the courts to administer all aspects or specified aspects of a customer's affairs **or**
 - an officer (acting on behalf of the Secretary of State) to administer all aspects of a customer's affairs relating to benefits, pensions and allowances
- 1152 The following OP types are known as PABs:
- **PoA** – appointed by the customer and legally supported
 - **EPoA** – and, where appropriate, appointed by customer and registered with OPG
 - **LPA** – appointed by the customer and registered with OPG
- 1153 In the above list only deputy and those appointed by the court in Scotland have a higher status than a DWP appointee for payment of benefit.

Example

If the customer has a PAB whose status appears above 'appointee' in the above list, an officer (acting on behalf of the Secretary of State) **cannot** usually authorize an appointee to administer the customer's affairs relating to benefits, pensions and allowances. The only exception is when the existing PAB no longer has authority to act, or the Department has received written confirmation that the PAB no longer wants to act on the customer's behalf.

- 1154 The customer's PAB is responsible for reporting all changes in:
- the customer's circumstances but only where the customer has lost capacity **and**
 - their own circumstances that the Department may require, eg a change of name or address or change of account.

1155 - 1169

Corporate Other Payee

- 1170 A COP is not a named individual, but an organization appointed to act for a customer, eg:
- a LA
 - CH
 - an AHA **or**
 - a firm of solicitors.

Note: This list is not exhaustive.

- 1171 COPs are dealt with in the same way as PABs, eg treat a receiver acting for an organization in the same way you would treat a receiver who is an individual.

- 1172 The following OP types can be COPs:
- **deputy** – appointed by the CP in England and Wales
 - **controller** – appointed by the Office of Care and Protection in Northern Ireland
 - **Power of attorney** – appointed by the customer and legally supported
 - **appointee** – appointed by an officer acting on behalf of the Secretary of State.

1173 -

Power of Attorney

1220 A PoA is a formal instrument by which one person (a donor) empowers another (a donee, who is the attorney) to act on his behalf either generally or in specific circumstances.

1221 The PoA can be granted to:

- an individual
- two or more individuals, i.e. joint attorneys **or**
- an organization.

1222 If you receive a claim or enquiry from a person who claims to have been appointed as a customer's attorney, see *Attorney* in *Part four* of this guide.

1223 - 1229

Appointee

1230 An officer acting on behalf of the Secretary of State can authorize someone else to act on a customer's behalf if the customer is incapable of managing their own affairs. This is called an appointment to act and the person or organization appointed to act is called an appointee.

1231 Appointee action should only be authorized if a customer is incapable of managing their own affairs even if they require some support to do this, e.g. due to a mental or extreme physical disability they are unable to make a claim or continue to manage an existing claim. Appointee action is not appropriate for customers who are capable of dealing with their own affairs.

Example

Appointee action is **not** appropriate if the customer merely needs someone to:

- collect their money from the bank, building society or Post Office® **or**
- help them to budget

1232 An appointee can be:

- an individual, e.g. a relative or friend **or**
- an organization, e.g. an LA or a NH.

1233 If someone requests appointee action and you are satisfied it may be appropriate, see *Appointee* in *Part five* of this guide.

1234 - 1239

Parent/Guardian

- 1240 A DLA or VA officer acting on behalf of the Secretary of State must authorize:
- in England or Wales, a parent or guardian to act on a child's behalf for the DLA
 - in Scotland, a guardian to act on a child's behalf for the DLA and/or War Pensions benefits only. The guardian is usually the child's parent.
- 1241 For guidance about authorizing a parent or guardian to act on a child's behalf, refer to your existing business procedures.
- 1242 - 1299

Customer/Attorney presents a Lasting Power of Attorney

- 4141 Where the customer presents a LPA you need to check for two things:
- i. That it has been registered with the CP. It will have the court's stamp on the front page and be perforated in the centre (this will not be there for early LPAs); and
 - ii. That it gives authority over the customer's finances. If it only gives authority over the customer's personal welfare then it is of no use for benefit purposes. The person should be referred to the OPG – Tel: 0845 330 2900.
- 4142 Whilst the LPA may give authority over the person's finances we should check that there are no restrictions on the payment of benefit to the attorney eg, that in respect of benefit the LPA is only to be used once capacity has been lost. [If such an LPA is presented it may suggest that the attorney is acting without the knowledge of the claimant, in which case it may cast doubt about the motivation of the attorney. Where this arises we should let the OPG know what has transpired].
- If you are satisfied on both counts (in para 4141) then it can be accepted and benefit paid to the attorney.

Customer has capacity

- 4143 If the customer has capacity they must be reminded that whilst their benefit is paid to the person holding the power of attorney, they retain responsibility for telling us of any change in their circumstances – *you should send the letters at Appendix 16*.
- 4144 You must also tell the attorney that they should inform us when capacity is lost. This is an important consideration should any overpayment subsequently arise. (If you are dealing with the attorney directly then you can tell them verbally; if not then you should write to them. You should make a note of having done this.)

Customer does not have capacity

- 4145 Where the customer has lost capacity it is important that the attorney understands the requirement to let us know about any change in the customer's and their own circumstances.

4146 - 4149

Two or more attorneys

4150 The customer can authorize more than one attorney to act over their affairs.

Power of Attorney document allows attorneys to act separately

4151 Where the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, the document will state that the attorneys are authorized to act “jointly and severally”. (for LPAs you may see the words “together and independently”, this has the same meaning as “jointly and severally”). You can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements.

Power of Attorney document does not allow attorneys to act separately

4152 If the customer authorizes two or more attorneys but does not authorize them to act separately the document will not authorize them to act “jointly and severally” but will only authorize them to act “jointly”. (For LPAs you may see the word “together”, this is the same meaning as “jointly”). Any application must be made jointly and signed by all parties. All payments in respect of the customer must also be paid jointly to the attorneys. Because CIS only allows you to input one PAB, a joint attorney case would have to be maintained clerically.

Either attorney declines to act on the customer’s behalf

4153 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, but one or more then decline to act on the customer’s behalf, there are only two options available:

- make payment direct to the customer **or**
- if the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see Part five of this guide

You cannot make payment to only one attorney under a joint PoA.

4154 - 4159

Part five – Appointee

Introduction

5000 An officer of grade EO (Executive Officer) or above acting on behalf of the Secretary of State can authorize someone else to act on a customer's behalf **only** if the customer is incapable of managing their own affairs. This is called an appointment to act and the person or organization appointed to act is called an appointee.

NB: An appointment must never be made because it is 'convenient' either for the Secretary of State or prospective appointee. An appointee is not appropriate if the customer is simply unable to get to the bank, building society or post office. Nor is it appropriate simply because the customer no longer wishes to manage their own affairs. (See the Chapter on Power of Attorney for an alternative approach).

5001 An appointment to act can only be made in favour of a person aged 18 or over.

5002 At any one time, there must only be **one** appointee acting on the customer's behalf for **all** benefits administered by the Department.

5003 An appointee can be an:

- individual, e.g. a friend or relative **or**
- organization or representative of an organization, e.g.:
 - a limited company
 - a firm
 - the AHA
 - the LA
 - a solicitor **or**
 - the matron of a CH or NH

Note: This list is not exhaustive.

5004 An appointment to act is made under Regulation 33 of the Claims and Payments Regulations 1987.

5005 An officer of grade EO or above acting on behalf of the Secretary of State can also revoke an appointeeship under Regulation 33 of the Claims and Payments Regulation if the appointee is not acting in the customer's best interests – see also para. 5400.

5006 **It is important to determine whether an individual is acting in a personal or a professional capacity.**

Part five

Appointee

- 5007 If the appointee is acting in a personal capacity, use his or her NINO as an identifier.
- 5008 If the appointee is acting as an employee of a Corporate Organization, use CIS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. CIS will generate a unique 6 digit ID for the organization.
- 5009 Each office should retain a list of registered care homes and the registered person who is appointed to act.

When appointee action is not appropriate

- 5010 An appointee is not appropriate if the customer already has an OP of an equal or higher authority. These are:
- deputies appointed by the CP in England and Wales
 - controllers appointed by the Office of Care and Protection in Northern Ireland
 - judicial factor appointed by the court in Scotland
 - guardian appointed by a court in Scotland
 - curators bonis appointed by a court in Scotland
 - tutors appointed by a court in Scotland
 - appointees previously authorized by an officer acting on behalf of the Secretary of State
 - parent/guardian - only used for DLA (appointee action not applicable if child under 16).
- 5011 The exceptions to this rule are when:
- the existing OP no longer has authority to act, e.g. the Secretary of State has revoked an existing appointeeship **or**
 - written confirmation has been received that the existing OP no longer wants to act (note that court appointments can only be revoked by the court itself)

5012

Responsibilities of an appointee

5050 If an officer acting on behalf of the Secretary of State authorizes an appointee, the appointee becomes fully responsible for acting on the customer's behalf in all the customer's dealings with the Department. This includes:

- Claiming benefits, including completing and signing any claim forms – see also para. 5407 for ESA and Jobseekers Allowance claimants.

Note: A claim form received from a corporate appointee which uses a signature stamp rather than a manuscript signature is not acceptable. The form would need to be returned for a manuscript signature. If the person is acting for the corporate appointee then ideally they should sign “Joe Bloggs acting as the agent/representative of the corporate appointee” or similar. If the organisation has followed procedures correctly then this should not be a problem – see para 5222 et seq. If you have any doubts then you should if possible check with the person who signed the BF56 directly.

- collecting/ receiving benefit payments **and**
- reporting changes in circumstances.

5051 The appointee is also responsible for reporting any changes in their own circumstances that the Department may require, e.g. a change of name or address or change of account.

5052 - 5099

Request for an appointee received

5100 A request for an appointment to act may be made by:

- the person or organization wishing to become the appointee **or**
- someone acting on the customer's behalf stating that an appointee is needed

5101 If you receive a request from someone wanting to be the customer's appointee, or a person acting on the customer's behalf states an appointee is needed:

Step	Action
1	Access CIS and check if the customer already has an OP of a higher authority acting on their behalf
2	an OP of an equal or higher authority already acting for the customer, tell the enquirer: <ul style="list-style-type: none">– they cannot be the appointee (but such an enquiry would suggest that this person does not realise there is another person already acting for the customer. If this causes a problem then we should suggest they discuss and let us know if anything is to change.)

LA/CTB appointee

5102 If you are approached by someone that is, an individual not a COP, who says they have been appointed by the LA, then provided this is confirmed (see below), you can accept the person as an appointee for benefit purposes. There is no need to interview the person or visit the customer. However, you must ask the person to complete and sign a BF56 (can be done by post); in Part 7 you should write "LA approved appointment". You must send a BF57 confirming the appointment.

Re: confirmation. The LA should have given the appointee written proof of his appointment. Failing that, you must contact the LA.

5103 - 5149

Considering the need for an appointee

- 5150 Before an appointee to act can be authorized, the:
- customer must be visited by a visiting officer to make sure:
 - they are incapable of managing their affairs – but see Para 5225 below and
 - an appointee is required and
 - prospective appointee (if one has been nominated) must be interviewed to make sure they are suitable and willing to act.
- 5151 **Note:** Although the customer and the prospective appointee can be visited at the same time, ideally they should be interviewed separately. This is to make sure that the customer is not under any pressure from the prospective appointee. However, in exceptional cases, if you believe that it would cause less stress to the customer, you can permit the prospective appointee to remain during their interview. But, you must ensure that they do not answer the questions or try to influence your decision on the customer's ability to manage their own affairs.
- 5152 **Note:** If the request to be the appointee comes from someone already appointed under reg 43 of the Claims and Payments Regulations, that is, they are acting for a child u/16 who is now approaching their 16th birthday, then it will not be inappropriate to interview the child and existing appointee together. It may be helpful to have another adult present but this is not essential. Do not delay the process to try and arrange this.
- 5153 **Remember:** **An appointment must never be made because it is 'convenient' either for the Secretary of State or the prospective appointee. The customer must, because of mental incapacity (or, exceptionally, severe physical disability), be incapable of managing their affairs. If challenged we must be able to justify our decision to make an appointment. And at all times we must be able to provide the necessary paperwork to show that we followed departmental procedures.**

5154 - 5159

Completing the BF56 appointee application form

- 5160 When considering an appointment to act, form BF56 must be completed.
Form BF56 Part:
- **1-6** is completed when the prospective appointee is visited/interviewed

Part five

Appointee

- **7** is completed when the prospective appointee and the customer have been visited and a decision made on the application. **Note: This must be authorised on behalf of the Secretary of State. Failure to do so may compromise the validity of the appointment.**
- **8** is given to the appointee.

5161 For an example of form BF56, see Appendix 1.

5162 - 5169

Visiting the customer

5170 Appointee action should only be taken where the customer is incapable of managing their affairs. This will usually be because the customer is mentally incapable but, exceptionally, may also be appropriate when the customer is physically disabled, eg if they have suffered a severe stroke. (see 5183)

5171 The purpose of the visit to the customer is to enable the visiting officer to make an independent assessment of their ability to manage their financial affairs and, more specifically, their ability to understand how to make and manage a claim to benefit. The visiting officer must assess whether the customer shows comprehension of the rights and responsibilities of making the claim.

5172 If the customer is physically disabled, the visiting officer must assess whether the disability is such that they are incapable of managing their own affairs, eg if the customer can understand and sign a claim form (even if it has to be completed for them), they may only require an agent to help with the collection of payments.

5173 Where possible you should arrange the visit so that it best suits the customer. They should be given every opportunity to show that they are capable of handling their affairs. That said, the guidance here cannot be prescriptive. For example, some customers may be at their most alert in the morning others in the afternoon, which could mean that if we visit at the wrong time we could get the wrong impression of the customer's capabilities. All you can do is look for any helpful information on file and speak to the prospective appointee or any other person involved with the customer. But do not delay any visit if this information is not immediately to hand.

5174 - 5179

Interviewing the prospective appointee - guidance for the Interviewing Officer

Restrictions on residential care home or nursing home staff (CH/NH)

- 5200 If the prospective appointee is connected with the customer's CH/NH, there are restrictions on their appointment. **Do not** authorize as the appointee:
- a member of staff at the customer's CH/NH (other than the warden or matron) **unless** they are a relative/friend of the customer. If you decide to authorize a member of staff who is also a relative or friend as the customer's appointee, you **must** inform the CH/NH manager
 - the warden, proprietor matron or trustee of the customer's CH/NH **merely for the administrative convenience of the home**. You should establish whether a friend or relative is willing and suitable to act on the customer's behalf
 - the matron or warden of the home **until** enquiries have been made to establish whether the organization or owner, eg the LA, would be willing to act as the appointee.
- 5201 Where the organization becomes the appointee, the proprietor, warden or matron may still collect benefits on their behalf, provided they are authorized to do so by the organization. The organization should complete the certificate at Part 4 of form BF57, or provide a similar letter of authority.

5202 - 5209

If an individual is the prospective appointee

- 5210 If an individual is the prospective appointee, you may interview them:
- in your office
 - at their home **or**
 - if the prospective appointee is a proprietor, trustee, warden or matron, at the CH/NH
- Note:** This list is not exhaustive.
- 5211 Once you have established the relationship and are happy to proceed with the interview, the next step is to decide on their suitability to act as the appointee.

Note: If benefit is already in payment and an appointee is needed because the customer has lost capacity, you should not disclose any details about the customer's savings, income etc during the interview. Until such time as we have approved the appointment the prospective appointee has no legal standing and so no right to know anything about the claimant's circumstances. Once appointed, this changes because he then has responsibility for letting us know of changes in circumstances.

You should state this part of the interview by asking about the existing relationship. Type of question you would ask:

Step	Action
1	<p>if the relationship of the prospective appointee to the customer is not known, this needs to be established. The issue here is that if there is a family member, next-of-kin or executor and none of these are aware that a third party is seeking to become the appointee, we will need to clarify the situation. This applies equally to prospective COPs. We also need to know whether there is an existing authority e.g. PoA, deputy, in existence for the claimant. <i>We need to try and prevent family disputes arising later.</i></p> <p>You should ask the prospective appointee if he knows of any next-of-kin, family member, executor</p> <p>- if he does not then unless you have reason to doubt him the interview should proceed</p> <p>- if he does or you doubt his answer, then further enquiries should be made. That said, the issue of delay needs to be considered. If the prospective appointee cannot provide contact details, we do not hold anything on file and there is no obvious other way of obtaining the information, then you should not delay the process further. This will have to be the case even where you doubt his answer. However, even where you approve the appointment and put benefit into payment, you should still try and resolve any doubts as best you can.</p>
2	<p>Once you have established the relationship and are happy to proceed with the interview, the next step is to decide on their suitability to act as the appointee.</p> <p>Note: If benefit is already in payment and an appointee is needed because the customer has lost capacity, you should not disclose any details about the customer's savings, income etc during the interview. Until such time as we have approved the appointment the prospective appointee has no legal standing and so no right to know anything about the claimant's circumstances. Once appointed, this changes because he then has responsibility for letting us know of changes in circumstances.</p>

You should start this part of the interview by asking about the existing relationship. Type of question you would ask:

- what dealings do they already have with the customer's finances?
- what arrangements, if any, have they made to pay the customer's bills eg; utilities, rent, mortgage etc.
- do they have access to the customer's bank account?
- what will be their day to day involvement with the customer?

The answers should help inform your decision.

3

make sure the prospective appointee:

- understands the roles and responsibilities of an appointee - that is, take through BF56 **and**
- is willing and able to accept and fulfil the duties

4

explain the methods of payment options:

- i. The department's preferred option is to pay into an account in the name of the appointee managed on behalf of the customer – an "appointee account". The banks will set up such an account; or
- ii. The appointee's own account;

The appointee may suggest the following:

- iii. The customer's existing account to which the appointee has access;
- iv. An existing joint account between customer and appointee;

Note: If the appointee insists on payment in to iii. or iv. we must explain that this will only be arranged if the bank gives its approval. This is required because banking law requires that the account holder is capable of managing their account; where they cannot the account would usually be frozen or closed. We must tell the appointee to speak to the bank. However, we should pay benefit into the account until told that it has been closed.

- v. An existing joint account between the appointee and a third party.

If the appointee insists on option v. then you must explain that this will not be possible. We do not accept it as safe banking for benefit purposes. Tell the appointee that he will be paid via the cheque system until such time that he gives us an alternative account.

Note: You must record any discussions about methods of payment.

- | | |
|---|---|
| 5 | tell the prospective appointee the Secretary of State can revoke appointeeships if an appointee does not act in the customer's best interest |
| 6 | Inform the prospective appointee that if the appointment is approved that it will be reviewed in due course to ensure that it is working well and to confirm whether the customer still requires an appointee. But explain that if any issues affecting the appointment arise at any time we should be contacted. |
| 7 | give part 8 of form BF56 to the prospective appointee; also give them the Aide-Memoire (see appendix 7) |
| 8 | if you decide to agree the appointeeship at the visit explain what will happen next to the appointee e.g. a new claim will be decided, an existing award will continue etc. If you have taken a BF57 with you to the visit, and this is good practice, then complete and hand this to the appointee. If you do not have a BF57 say you will send one in due course. If you decide not to make a decision at the visit because you are uncertain about the customer's incapacity and require further medical evidence you should explain this. If you think the prospective appointee is best placed to obtain this e.g. from the customer's doctor then he should be told; if you need to discuss with the department's doctors then you should do this as quickly as possible. If at the end of this process you decide to make the appointment then you should tell the appointee, by phone if possible. You should explain what will then happen (see above); you must also send the BF57. |
| 9 | if the decision is made: <ul style="list-style-type: none">• not to appoint the prospective appointee, see Appointment to act not approved in this part of the guide or• to appoint the prospective appointee, see Appointment to act approved in this part of the guide |
-

5212 - 5219

If an organization is the prospective appointee

5220 If an organization is the prospective appointee, eg a LA or AHA, action depends on whether the organization is:

- already acting as an appointee for other customers **or**
- not already acting as an appointee for other customers **and**
- whether they have submitted medical evidence with their application.

Organization already acts as appointee for other customers

- 5221 If the organization already acts as appointee for other customers, the appointeeship can be authorized immediately after:
- your visit (if this has been appropriate – see below) to the customer confirms their incapacity to manage their own affairs **and**
 - an authorized representative of the organization has:
 - completed form BF56 to show the organization’s (not the representative’s) details **and**
 - stamped form BF56 with the organization’s official stamp.

Organization does not already act as appointee for other customers

- 5222 If an organization does not already act as an appointee for other customers, a visit must be made to:
- decide that the customer needs an appointee – but see below
 - discuss the roles and responsibilities of an appointee, **and**
 - make clear that, as an appointee, the organization is responsible for making sure that any of their representative(s) authorized to collect the customer’s payments are acting in the customer’s best interest.
- 5223 **Note:** When an organization is applying to become an appointee they must authorize an employee to complete form BF56 on their behalf.
- 5224 On being appointed by the Secretary of State, the organization must also complete the certificate at part 4 of form BF57, or provide the employee with a similar letter of authority.

Organization submits medical evidence with application

- 5225 If the application is accompanied by medical evidence then a visit to the customer may not be necessary. The evidence must unequivocally indicate that the customer is incapable of managing their benefit affairs. The evidence should come from a professional who knows the customer and is in a position to comment on their condition eg a GP, consultant, psychiatrist. If there is any doubt then you should either clarify with the Organization and/or seek advice from the department’s doctors. You should err on the side of caution and visit if you believe that is the only means of removing any doubt.

- 5226 The organization will need to provide the employee with a letter of authority authorizing that person to act.

Someone other than authorized person contacts the department on behalf of COP

- 5227 If a call is received from someone who states they are calling on behalf of a corporate appointee ie from a house manager, psychiatric nurse etc. take the following action:

1. Ask them for the corporate ID number of their organisation.
2. Ask them for their head office address (it is this postcode that the corporate ID will refer to)
3. Ask them for the contact name or position held of the person responsible for the organisation at head office.

All of this information can be verified via PD153.

Once it is accepted that the ID of the person calling is correct, the enquiry can be dealt with.

5228 - 5249

Appointee needed but no one nominated

- 5300 If a visiting officer decides a customer needs an appointee but no one has been nominated, make attempts to identify a suitable person, e.g.:
- a spouse
 - a relative or close friend
 - an organization, e.g. a LA or AHA **or**
 - the proprietor of a CH/NH, but only if no other suitable person is found.
- 5301 If a suitable person is not available, the visiting officer must inform the customer's local social services and the relevant benefit section.
- 5302 If social services cannot help then as a last resort we will have to contact the OPG - 0845 330 2900. A court appointed deputy may be the only option.

Changing an appointee

Potential appointee nominated

- 5303 If the current appointee no longer wishes to act (NB: The withdrawal can be made by phone or in writing.) and nominates another person or organization to act, take the following action:
- suspend payment of benefit; unless benefit is being paid into the customer's own account, then arrange for the existing bank account details to be removed from CIS
 - begin BF56 action with the new prospective appointee
 - it is not always necessary to visit the customer unless there is a reason to do so. The prospective appointee should be interviewed and the form BF56 completed as normal. If the prospective appointee is already acting as an appointee, whether as an individual or corporate appointee, it is unlikely that a visit/interview will be required. But you will still need to ask them to complete a form BF56
 - Send a BF58 to the ex-appointee.
- 5304 As per step 2 of 5211 until such time that the new appointment is made you should not disclose any details about the customer's existing circumstances. Clearly the prospective appointee will be aware that benefit is being received and may be aware of much else about the customer but we should not add to that knowledge until the appointment is confirmed.

5305 Once the appointment is confirmed then it may be useful, depending on the time the customer has already been on benefit, to undertake a full benefit review so that the appointee starts afresh. How this is done is up to each benefit but payment should not be delayed whilst whatever steps are taken.

No other appointee nominated

5306 Take the following action:

- suspend payment of benefit; unless benefit is being paid into the customer's own account, then arrange for the existing bank account details to be removed from CIS
- contact social services as a matter of urgency
- follow up with BF56 action as appropriate.
- send a BF58 to the ex-appointee.

Existing appointee claims another benefit

Where an existing appointee claims another benefit for the person he represents you must first confirm that he is the appointee before deciding the claim. There are three ways you can do this:

- i. Check CIS/CIS to confirm that he is the appointee for the other benefit. See below, but this should not be used in isolation without taking the further step of
- ii. Asking the existing benefit section if they have the BF56 to hand. If yes, ask for a copy to be sent. If not because it has been sent to Heywood then, finally,
- iii. Ask the appointee if he has his BF57.

If ii and iii are not available then, unless you have doubts about the veracity of his statement that he is the appointee or doubts about the said incapacity of the customer, you can use the CIS/CIS record as confirmation and decide and pay the claim accordingly. You must make a note of the steps taken to verify the appointeeship.

5307 - 5349

Secretary of State's decision on the application

Appointment to act not approved

5350 If the officer acting on behalf of the Secretary of State decides not to authorize an application:

Step	Action
1	notify the prospective appointee that their application was unsuccessful – if you have your own letter then continue to use it otherwise there is a letter at Appendix 18
2	keep a record of the reason for the non-approval and file with the customer's clerical papers

5351 If no one else was nominated to act, see *Appointee needed but no one nominated* in this part of the guide.

5352 - 5359

Appointment to act approved

5360 If the officer acting on behalf of the Secretary of State authorizes an application:

Step	Action
1	complete form BF56 at 'FOR OFFICIAL USE ONLY' and keep it with the customer's clerical papers
2	see Action following verification of a PAB/COP in Part six of this guide.

5361 - 5399

Revoking an appointment

5400 There are four circumstances where an appointment can be revoked:

- if the appointee does not act appropriately within the terms under which the appointment was granted, an officer acting on behalf of the Secretary of State can revoke their authority
- if there is sufficient evidence that the customer is capable of acting for themselves and does not need an appointee to act for them over their benefit affairs – see also 5402 below.
- where the appointee himself becomes incapable. Where the Secretary of State is satisfied that this is the case - standard evidence considerations apply - he should take normal action to appoint a replacement.
- where the appointee no longer wishes to continue. Hopefully he will provide a replacement otherwise we will have to contact social services.

Note 1: *Revocation may arise as a consequence of the Appointee Review process. This is the process whereby the Secretary of State carries out a post-appointment check to ensure that an appointee is still needed and that the appointee has been and will continue to meet his responsibilities in full.*

Note 2: *When allegations of abuse are received it is essential that we react quickly. If there is abuse then any delay will compound the problem. The Secretary of State needs to be seen to be taking any allegations seriously. His responsibility is to ensure that the benefit being paid to the appointee is being used for the benefit of the customer and if that is in question then he needs to take appropriate action.*

Revoking the appointment because the appointee is not acting in the best interest of the customer

5401 If there is evidence that the appointee is not acting in the best interests of the customer follow the procedures below:

Step	Action
1	discuss the case with the nominated/appropriate officer – do not revoke the appointment without their approval. In this circumstance if you know other benefits are in payment you should also alert the appropriate section.
1A	If it is agreed by the nominated/appropriate officer that the evidence of mismanagement is overwhelming, then there is no need to follow the process set out in the steps below. Instead payment of benefit should be stopped immediately whilst the

Part five

Appointee

	case is further investigated. The Secretary of State must act quickly and be seen to be so doing to prevent any further loss of benefit to the customer. Although it is not possible to 'define' these cases - each case must be considered on its merits - it is likely that the evidence would have come eg from social services, a LA or police adult protection team.
2	If 1A does not apply, if the nominated/appropriate officer agrees, interview the appointee (and the customer if needed), to explain the situation
3	if you cannot contact the appointee for interview write to the appointee explaining that we are considering revoking the appointment – if you have your own letter for this purpose then you should continue to use it otherwise there is a draft letter at Appendix 17.
4	Allow the appointee two weeks to respond
5	If there has been no response within that time then, unless there are grounds for extending this period, you will have no option but to stop payment and revoke the appointment – go to step 8
6	if the appointee is available for interview show the appointee the notes printed on the back of form BF57. An example of form BF57 and the Aide Memoire at appendix 5
7	<p>if the appointee responds in writing and you are satisfied that he should be allowed to continue in his role then you must re-send him the Aide Memoire at append 5. If you are not satisfied, and interviewing him is still not an option, then you will have no option but to stop payment and revoke the appointment – go to step 8.</p> <p>If the appointee has been interviewed and you are satisfied that he should continue, then you should contact him to let him know, sending him the Aide-Memoire at the same time. If you are not satisfied then revoke the appointment and stop payment – go to step 8</p>
8	record your reason(s) for revoking the appointee's authority and keep it with the customer's clerical papers
9	recall the IOP, if appropriate

10	end the OP/COP relationship(s) in CIS.
11	<p>The revoking of the appointee should broadcast across the benefit systems; however, if you are aware of any other benefit in payment then you should also notify that benefit directly. This includes the LA if HB is in payment and HMRC if tax credits are in payment. You can do this by phone, e-mail – for HMRC you should contact Pauline.fitzgerald@hmrc.gsi.gov.uk or by sending a copy of the BF58 – you should make a note that this has been done</p>
12	send for form BF58 to the ex-appointee - An example of form BF58 is shown at Appendix 3
13	if a customer still needs an appointee and another person has been nominated, take appropriate action as shown in this part of the guide
14	if no one else has been nominated, see <i>Appointee needed but none nominated</i> in this part of the guide
15	<p>Finally, you should consider whether you need to alert others to the abuse. By 'others' we mean LA Adult Services, the OPG or the police. Not all revocations will warrant such referral but at the forefront of your thinking must be the necessity to prevent the appointee having the opportunity to commit acts of further abuse.</p> <p>It is not possible to provide a definitive list but the type of case which is likely to warrant such action could include: the appointee works in a care environment where he/she has contact with other vulnerable adults; the amount of money being misused is such that the police should be involved.</p> <p>If you already have arrangements/partnership agreements in place for making referrals then these should, of course, continue.</p> <p>There are judgements to be made but if in doubt about whether to make a referral you should discuss with your manager. Legal Group, DMA Policy would also be happy to advise.</p>

Revoking an appointment – request received from the customer

5402 Whilst it should be the appointee who reports an improvement in the customer's condition, if the customer themselves reports this and asks that they become responsible for their benefits, take the following action:

- i. Refer the case for a visit to the customer as a matter of priority;
- ii. At the same time send the letter below to the appointee (or ask the benefit section to issue the letter urgently).
- iii. If the appointee agrees that the customer is capable then no visit will be needed. Just arrange for payment(s) to be made in the name of the customer (Note: the customer will need to complete DP GEN with their account details).
- iv.. If the appointee contests our proposed action make a note of what is said and pass this through to the appropriate visiting service. They will decide how to use the information at the visit. At this time do not interfere with any benefit payments.
- v. At the end of the visit the visiting officer will make a recommendation.

THE LETTER

Dear

You currently act as the appointee for ...

He/She contacted us on ... to say that he/she no longer requires you to act as his/her appointee. He/she says that he/she is now capable of managing his/her benefit affairs.

If someone is able to manage their own benefits then the Secretary of State must revoke any existing appointment.

We now intend to visit [name] to confirm that he/she is indeed capable of managing his/her own benefit. The visit will take place within the next few weeks.

However, if you feel that [name] is now capable of managing their benefits a visit will not be required. Please let us know either by letter or call the above number.

If you do not feel this is correct you can make representations about this by contacting us as above. We will still need to visit in order to assess his/her capacity to manage but will take into account anything you have told us when making our decision.

Yours sincerely

Case conferences

5403 It is not unusual for the department to be invited to a case conference involving LA, the police and other voluntary groups to discuss individual cases concerning vulnerable adults. The official departmental line is that we *should be wary of attending*. The reason for this is that you are likely to be asked for personal information about a customer but any disclosure to a third party should be in response to a direct request from that third party. Providing information at a conference cannot meet that requirement as it is may be the case that there is justification for disclosure to some of the parties present – they could individually justify a request and disclosure - but not all. So any attendance would involve a data protection risk. But it is not ruled out. You just need to be aware of who is attending and be very careful in what you disclose.

Ending an OP/COP relationship

6100 You may need to end the relationship between a customer and their OP/COP when:

- the OP dies
- the customer dies
- the OP/COP is no longer authorized to act on the customer's behalf
- the OP/COP no longer wants to act on the customer's behalf **or**
- an OP/COP with a higher authority is appointed

6101 To end an OP/COP relationship:

Step	Action
1	use your existing business procedures to recall the IOP, if appropriate
2	end the OP/COP relationship in CIS
3	if another benefit is being paid notify the appropriate section – this includes the LA if HB is in payment and HMRC if tax credits are in payment – for HMRC you should contact pauline.fitzgerald@hmrc.gsi.gov.uk .
4	send form BF58 to the OP/COP. An example of form BF58 is shown at Appendix 3
5	if the OP is an appointee who is the registered person at a RCH/NH, send draft letter DLIS 216 to the LA's Registration Officer. An example of draft letter DLIS 216 is shown at Appendix 8

6102 - 6149

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Appendix 16

Letters for use where power of attorney is granted by a capable customer

i. For the customer

Dear Sir/Madam

You have granted [Name] power of attorney over the management of your social security benefit affairs. This authorises that person both to claim benefits on your behalf and to receive payment of those benefits on your behalf.

You should bear in mind in particular the obligation to report changes in your circumstances in relation to any benefit claim. I am writing to let you know that, although you have granted the above named this power of attorney, because you remain capable of managing your own affairs, then you remain responsible for notifying us of any change in your circumstances which may affect your benefit. What this means is that if your circumstances do change, then you will either need to ensure that the attorney does notify us or you will have to report the change yourself. If neither of you report the change and an overpayment results, we can recover this from you and you may also be liable to prosecution?.

I have copied this letter to the person named above.

ii. For the person granted power of attorney

Dear Sir/Madam

You have been granted power of attorney over the management of the social security benefit affairs of [name]. This authorises you to both to claim benefits on their behalf and to receive payment of those benefits on their behalf.

You should bear in mind in particular the obligation to report changes in a claimant's circumstances in relation to any benefit claim. I am writing to let you know that, although you have been granted this power of attorney, because the person named above remains capable of managing their own affairs, then they remain primarily responsible for notifying us of any change in their circumstances which may affect their benefit. What this means is that if their circumstances do change, then if neither of you report the change and an overpayment results, we can recover this from the claimant and they may also be liable to prosecution.

Appendix 17

Appointee not suitable

Dear Sir/Madam

You recently applied to be the appointee for [name of customer/claimant].

I am writing to tell you that the Secretary of State has decided that you are not suitable to act for the above named person.

The reason for this decision is [explain here].

If you wish to discuss this decision you should contact the above number.

Yours faithfully

Appendix 18

Doubts about appointees behaviour

Dear

Reference:-

As the person appointed to act on behalf of the above named you are required to be responsible for dealing with their social security affairs and this includes claiming and receiving social security benefits and pensions. Any money you receive on their behalf must be used in their interest; this includes paying for a nursing home or a carer and meeting their everyday costs.

We have been advised that you may not be carrying out these tasks with regard to Mr/Mrs..... and that certain fees and costs are not being paid to This includes non-payment of personal expenses due on a weekly basis.

In order for the appointeeship to continue we need to discuss this matter with you and ask that you contact us within 7 days to arrange an interview.

In the mean time all benefit payments have been suspended.

Please contact me on the number above.

Yours sincerely

Appendix 19

Appointee Review Process

To comply with legal requirements appointees for adults and people who have been appointed to act on behalf of children must have their appointments reviewed. This is to ensure that appointed persons are fulfilling their responsibilities. Reviews will also determine if adult customers still have the continuing need to have a person to act on their behalf.

Reviews take place:

- every eight years for appointees who represent working age customers; or
- when the Local Services (LS), Team Leader (TL) or the decision maker (DM) indicates an earlier review is appropriate.

Case types which are excluded from the review process are:

- fraud cases;
- Special Rules;
- deceased customers;
- Appeals;
- Corporate Appointees;
- Power of Attorneys; and
- Deputies.

Case Controls (CC)

When CCs are set for subsequent reviews they must be set, taking into account the 8 year duration of the appointment or if the LS, the TL or the DM have recommended that an earlier review is appropriate.

Action to take to review the appointed person

To review an appointed person:

Step	Action
1	check if the customer is deceased or a review has not been performed in the last 8 years
2	issue form BF57A enclosing a 2 nd class reply envelope
3	set a CC in the appropriate dialogue for 14 days
4	note appropriate dialogue (Notepad) with 'form BF57A issued'.

Form BF57A returned before Case Control (CC) expires

If form BF57A is returned before the CC expires:

Step	Action
1	delete the CC
2	check if the appointee has fully completed form BF57A
3	check if there are any issues with the appointee's response such as the appointee has stated they are not meeting their responsibilities. If this is the issue you should telephone the appointee immediately to get more details. If you have not been able to speak to him after three attempts, suspend payment of benefit. You should send the letter at Appendix 20
4	telephone the appointee if there are any other issues that need further investigation. If you cannot get a reply after three attempts write to the appointee. Set a CC for 7 days
5	if there are no issues with the appointee's response set a CC in appropriate dialogue 'Appointee review due' for the next review date
6	note appropriate dialogue (Notepad) with 'Appointee review completed – no issues'.

Form BF57A not returned before Case Control (CC) expires

354 If form BF57A is not returned before the CC expires:

Step	Action
1	if possible contact the appointee by telephone
2	explain form BF57A must be signed confirming the appointment has been reviewed and the appointee has received a list of their responsibilities
3	ask the appointee to return form BF57A
4	if the appointee states they did not receive/mislaidd form BF57A or you cannot contact the appointee by telephone issue a duplicate BF57A marked '2 nd request' and include a 2 nd class reply envelope
5	reset a CC for 14 days
6	note appropriate dialogue (Notepad) with 'Duplicate form BF57A issued'
7	if form BF57A is not returned consider whether case should be referred to Local Services.

Form BF57A returned but not fully completed

If form BF57A/BF57B is returned but it is not fully completed:

Step	Action
1	return form BF57A to the appointee explaining what the appointee needs to complete and enclose a 2 nd class reply envelope
2	reset a CC for 14 days
3	note appropriate dialogue (Notepad) with 'form BF57A returned to appointee for completion'
4	if form BF57A is not returned before the CC expires, take action as above.

Appointee states customer can manage their own affairs

If the appointee states the customer can manage their own affairs on completion of form BF57A or by telephone:

Step	Action
1	record details of the telephone call
2	delete the CC
3	take business as usual action to remove the appointee
4	note appropriate dialogue (Notepad) with 'Appointee review complete. Appointee no longer required'.

Appointee states customer cannot manage their own affairs and appointee wishes to relinquish the appointment

When you receive form BF57A or speak to an appointee on the telephone and they state that the customer cannot manage their own affairs and they wish to relinquish their appointment:

Step	Action
1	record the details of the telephone call
2	take business as usual action to appoint a new appointee
3	note appropriate dialogue (Notepad) with 'Appointee review completed – change of appointee.'

Appointee has ticked the box to state they wish to discuss

appointment

If the appointee has ticked the box to state they wish to discuss the appointment:

Step	Action
1	delete the CC set for return of form BF57
2	telephone the appointee to discuss the appointment (make three attempts)
3	if the appointee thinks that the appointment is still appropriate record the details
4	note appropriate dialogue (Notepad) with 'Appointee review completed – no issues'.

Appointee has ticked the box to state they wish to discuss their appointment and after three attempts you cannot contact them by telephone

If the appointee has ticked the box to state they wish to discuss their appointment and after three attempts you cannot contact them by telephone:

Step	Action
1	write to appointee requesting that they telephone to discuss their appointment
2	set a CC for 14 days
3	note appropriate dialogue (Notepad) with 'No response to 3 telephone contacts to discuss appointment. Appointment contacted in writing.'

Appointee contacts the Department before the Case Control (CC) expires and the appointment is still appropriate

If the appointee contacts the Department before the CC expires and the appointment is still appropriate:

Step	Action
1	delete the CC
2	record the details
3	note appropriate dialogue (Notepad) with 'Appointee review completed – no issues'.

Appointee contacts the Department before the Case Control expires and the appointment is no longer appropriate

If the appointee contacts the Department before the CC expires and the appointment is no longer appropriate because the customer can manage their own affairs, a new appointee is required because they do not want the appointment to continue or they are not meeting their responsibilities:

Step	Action
1	delete the CC
2	record the details
3	take business as usual action to remove the appointee
4	note appropriate dialogue (Notepad) with ' Appointee review complete. Appointee no longer required '.

Appointee has not contacted the Department before the Case Control expires

If the appointee has not contacted the Department before the CC expires:

Step	Action
1	You should discuss with your team leader. The fact that the appointee has not replied must give cause for concern. It may be appropriate to suspend payment of benefit whilst further investigation is carried out. If you do suspend then you should refer the case to LS for an urgent visit. If suspension is not thought appropriate then you should write to the appointee again as above.
2	reset the CC for 7 days
3	note appropriate dialogue (Notepad) with ' Appointee wishes wishes to discuss appointment. Duplicate letter issued '.
4	if the appointee does not reply, consider suspension as above and referral to Local Services for a home visit.

Appendix 20

Dear Sir/Madam

You recently replied to a review of your role as the appointee for [name]. In your reply you said that you thought you were not meeting your responsibilities as an appointee.

We have tried to phone you three times to discuss this but have been unable to speak to you.

We have now suspended payment of all benefits pending the resolution of this matter.

If you do not contact us **within seven** days of the date of this letter we will assume that you no longer wish to act as the appointee and will make alternative arrangements.

