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C3 Appointees

About this chapter

HB Reg 68; CTB Reg 82

- 3.00 This chapter gives guidance on
- when an appointee may be needed and what you must consider before making someone an appointee, see *Considering appointee action* later in this chapter
 - the meaning of a claimant being 'unable to act', see *Claimant is 'unable to act'* later in this chapter
 - considering the suitability of an appointee, see *Suitability of appointee* later in this chapter
 - who cannot be an appointee, see *People who are not suitable for appointee* later in this chapter
 - how to appoint someone to act for the claimant, see *Appointee action* later in this chapter
- 3.01 You have discretionary power to appoint someone as the appointee for a claimant who is unable to manage their own affairs. For more information about 'unable to manage their own affairs' see *Claimant is 'unable to act'* later in this chapter.
- 3.02 The person who wants to be the appointee must apply in writing to you before you can consider making them an appointee, see *Considering appointee action* later in this chapter.
- 3.03 You cannot appoint someone if there is already a person appointed as deputy or with power of attorney, or in Scotland a tutor, curator, other guardian or attorney. These people are the equivalent of people appointed by the Local Authority (LA) and exercise all the rights of the person for whom they act.

3.04-3.79

The Mental Capacity Act 2005

3.04 Under the Mental Capacity Act 2005 the court can appoint a 'deputy' to act in relation to particular matters with which the person themselves has difficulty rather than the previous system where once a 'receiver' was appointed, the receiver had general powers to act for the person.

3.05 From 1 October 2007

- a person appointed to act on behalf of another by the Court of Protection for the purposes of claiming and receiving benefits, is known as a 'deputy' rather than a 'receiver'
- continue to deal with a receiver who can demonstrate that they were appointed by the Court of Protection before 1 October 2007, if they satisfy your normal verification procedures
- treat a deputy who applies to you in their capacity as an appointee for HB/CTB purposes as legitimate, if they can satisfy your normal verification procedures

3.06-3.49

Considering appointee action

3.50 If DWP have already accepted a Power of Attorney or appointee, use the same appointee details when processing Housing Benefit (HB) or Council Tax Benefit (CTB).

3.51 To check that a deputy has been given responsibilities that include dealing with the claimant's HB or CTB affairs ask for evidence of the terms of the court order that appointed the deputy.

3.52 When somebody applies to be an appointee, you must consider

- whether the claimant is 'unable to act', see *Claimant is 'unable to act'* below
- the suitability of the potential appointee, see *Suitability of appointee* later in this chapter

3.53-3.79

Claimant is 'unable to act'

- 3.80 Under the regulations, for a person to have an appointee they must be 'unable to act'.
- 3.81 Unable to act is not defined in the regulations but could mean that the person is be unable to manage their own affairs relating to Housing Benefit/Council Tax Benefit (HB/CTB) because of incapacity which
- can be physical or mental
 - does not have to be permanent providing they are unable to manage for the period they have an appointee. This means if the claimant recovers, you must cancel the appointee, see *Review of appointeeship* later in this chapter
- 3.82 It does not cover situations when a tenant
- chooses not to claim despite being able to
 - does not claim because they
 - cannot be bothered to, or
 - are ignorant of the benefit system
- 3.83 Whether a tenant is unable to act is a matter for the LA to decide after considering all the circumstances of the individual case.

3.84-3.99

Suitability of appointee

- 3.100 Appointees must be suitable to do the duties required of them. A suitable appointee is
- acceptable to the claimant
 - capable of managing the claimant's affairs and can be trusted to do so in the interests of the claimant
 - in regular contact with the claimant and has enough knowledge of the claimant's circumstances to notify the LA of relevant changes of circumstances and answer authority enquiries
 - fully aware of the responsibilities of being an appointee, for example aware they are responsible for repaying overpaid benefit
- 3.101 Consider the suitability of a prospective appointee according to the circumstances of each case. Usually close members of the claimant's family would be the most suitable people to act as appointee. Ideally they would already be providing care and support for the claimant. However, in some cases close family friends may be best placed to act for the claimant.

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3.102-3.219

- 3.102 In some cases it may not be immediately obvious there is anyone suitable to be the appointee. In these circumstances you may approach the appropriate social services department for advice. They may have family contacts who could be a suitable appointee who are unknown to the benefit section. If there is no close family or friends, you may need to consider if an officer from the LA should be appointed. If you decide this is appropriate, an officer from the social services or welfare department would be the most appropriate appointee in these circumstances.

3.103-3.129

People who are not suitable for appointee

- 3.130 There should be no potential for a conflict of interest, for example it might be inappropriate to make the claimant's landlord the appointee. However, in exceptional circumstances if no other appointee is available, you may consider a landlord providing they are suitable, see above for guidance on suitability.

3.131-3.159

No application for appointee or appointee resigns or is cancelled by authority

- 3.160 You may become aware that a claimant is unable to manage their own affairs but there has been no written application from somebody wanting to be their appointee. This could happen if the existing appointee resigns or you cancel an appointeeship.
- 3.161 The regulations do not impose any responsibility on authorities to find an appointee for the claimant. However, when benefit is in payment, you may wish to consider identifying a suitable appointee and encouraging them to make a written application. This is done on the grounds that it would further the proper administration of benefit, for example, it would help ensure that changes of circumstances are notified and overpayments avoided.

3.162-3.189

Claimant has appointee for another social security benefit

- 3.190 If the claimant is also receiving another social security benefit they may already have an appointee whom the DWP office have appointed. If they have, regulations allow you to treat that appointee as the appointee for HB/CTB providing that appointee applies in writing to the authority. You do not have to follow the DWP office lead and can reject the their appointee for HB/CTB. However, this would only happen in unusual circumstances.

3.191-3.219

Appointee action

- 3.220 If you decide that appointee action is appropriate, interview the claimant and the prospective appointee to determine that
- appointee action is appropriate
 - the candidate is suitable
- 3.221 There will be some circumstances when you do not need to interview the claimant and prospective appointee, for example if there is medical evidence of incapacity and the appointee is already known to the authority.
- 3.222 You must give prospective appointees clear guidance about
- what is expected of them
 - the responsibilities they will take on if they become the appointee

After the appointment is made you must ensure the appointee, not the claimant, receives all the correspondence.

3.223-3.249

Appointee no longer wants to act for claimant

- 3.250 The appointee may at any time resign from the appointment, they
- do not have to provide a reason for their decision, but
 - must give the authority four weeks notice in writing

3.251-3.279

3.280-3.999

Review of appointeeship

- 3.280 You may review and cancel an appointeeship at any time and give the appointee written notice of the decision to cancel the appointeeship. You do not have to give reasons for the decision to cancel an appointeeship.
- 3.281 There may be a number of grounds for cancelling the appointeeship, for example the claimant recovers and can handle responsibility for their claim, or the appointee does not perform their appointee duties properly.
- 3.282 You should review the status of a deputy periodically since, unlike the previous receiver system, deputies do not have the power to make a decision if they know, or have reasonable grounds to know, the person now has capacity to make the decision for themselves in relation to HB or CTB.
- 3.283 If you cancel an appointee and the claimant still needs one, you will need to consider identifying and appointing another person, see *No application for appointee or appointee resigns or is cancelled by the authority* earlier in this chapter.

3.284-3.999