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Part five – Appointee

Introduction

5000 An officer of grade EO (Executive Officer) or above acting on behalf of the Secretary of State can authorise someone else, an individual or an organisation, 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 organisation appointed to act is called an appointee.

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
- Organisation or representative of an Organisation, e.g.:
 - a company or firm
 - a LA
 - a solicitor
 - a charity or non-profit Organisation

Note: This list is not exhaustive.

5004 An appointment to act is made under regulation 33 of the Claims and Payments Regulations 1987 or, for UC, PIP and new-style JSA and ESA, regulation 57 of The UC, PIP, JSA and ESA Claims and Payments Regulations 2013.

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

5005 - 5009

When appointee action is not appropriate

5010 An appointee is not appropriate if the customer already has another person or body of an equal or higher authority acting for them. These are:

- deputies appointed by the CP in England and Wales
- controllers appointed by the Office of Care and Protection in Northern Ireland
- guardian appointed by a court in Scotland
- appointees previously authorised by an officer acting on behalf of the Secretary of State

Note: For UC, PIP, and new-style JSA and ESA only, it is not possible in law to make an appointment if another person or organisation holds a power of attorney authority

- parent/guardian - only used for DLA where a child is under 16.

5011 - 5012

Managers of Care Homes in Scotland

5013 Under the Adults with Incapacity (Management of Resident's Finances) (Scotland) Act 2000 managers of care homes can manage the financial affairs of residents of their care homes where the adult has mental incapacity. However that authority does not extend to social security benefits. Therefore the Department would need to consider appointee action if there was no other person of a higher authority already acting over the customer's social security benefit affairs.

5014 - 5049

Responsibilities of an appointee

5050 An appointee becomes fully responsible for acting on the customer's behalf in all the customer's dealings with the Department – they stand in the shoes of the claimant. This includes:

Claiming benefits, including completing and signing any claim forms – see also para. 5407 & 5408 for Jobseekers Allowance, ESA and PIP claimants.

- Reporting change of circumstances
- Spending the benefits in a person's best interests, eg paying care home fees, utility bills, etc.

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 bank account.

5052 - 5099

Request for an appointee received

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

- the person or Organisation wishing to become the appointee or
- someone acting on the customer's behalf stating that an appointee is needed (even though they may not wish to be the appointee themselves)

5101 If you receive a request from someone wanting to be the customer's appointee, or a person reports that a customer's condition is such that an appointee may be needed, then:

Step	Action
1	Check if the customer already has someone of a higher authority acting on their behalf
2	If that is the situation tell the enquirer that they cannot be the appointee (However such an enquiry would suggest that this person does not realise there is another person already acting for the customer. Where this is the case then the only option is to suggest that they

discuss the situation with that person and let us know if anything is to change. Because this will mean telling the new applicant the name of the existing person, you need to be sure that the latest application is a genuine and credible request and not someone fishing for information.

LA/CTB appointee

5102 If you are contacted by a person 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 (this 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 can be authorised, the

- customer must be visited to make sure:
 - they are incapable of managing their affairs. But see para 5184 if the customer is in hospital; and para 5225 which considers the receipt of medical evidence;
- and
- the prospective appointee (if one has been nominated)
 - must be interviewed to make sure they are suitable and willing to act. But see para 5220 if it is an application from a corporate appointee

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.

5152 **Note:** If the request to be the appointee comes from someone already appointed under regulation 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 would 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 for the new claimant – this is the case even where the appointee already acts for someone else. Part:

- 1-6 is completed when the prospective appointee is visited/interviewed
- 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 - 5170

Visiting the customer

(Before a visit you must read Appendix 22 about Trafficking.)

5171 The purpose of the visit to the customer is to enable the SoS 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 involved in making a claim for benefit and thereafter managing any benefit awarded.

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 at a time that 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

Assessing the customer's capabilities

(Appendix 23 lists some of the questions you may wish to ask.)

5180 When assessing the customer's capabilities:

- assume they are capable until they demonstrate otherwise
- focus on the customer's abilities to understand and function in making particular decisions, e.g.:

- can they pay bills?
- do they know what income they have?
- do they have a general understanding of their benefits and what is involved in managing them – claiming, reporting changes, methods of payment?
- do they have a general understanding of the consequences of not claiming, reporting a change, not having a bank account?
- do they have an ability to understand and weigh up the information relevant to managing their decisions
- it may be helpful to have an independent person who is familiar with the customer present at the interview, eg a family member or social worker
- if the customer lives in a RCH or NH, do not assume they are incapable
- if the customer has lost the ability to communicate, eg because of a stroke, do not assume they are incapable. Make every effort to find out their views and wishes by all possible means

Make a comprehensive record of the visit and the assessment of the customer's ability to act in their own right.

Doubt over the customer's capabilities

5181 If the visiting officer does not feel certain about the customer's capabilities to handle their own affairs, ask the prospective appointee to provide evidence to support the application to act as the customer's appointee. This could be supporting evidence from a suitably qualified professional person who has a personal knowledge of the customer, e.g. a social worker, community psychiatric nurse, general practitioner.

If you are uncertain about the medical evidence you can ask the department's Health Services Directorate for advice.

5182 If for some reason the prospective appointee cannot help, then you will have to take the initiative and write to the person who you think is best placed to help. But, whilst you can request medical evidence or information from any medical or other professional involved with the customer eg the customer's doctor, the person approached is under no obligation to provide the information. If you cannot obtain any supporting evidence you will have to make a decision on the balance of probability.

Physical Disability - special circumstance

5183 If the customer is mentally capable but is severely disabled making an appointment is not precluded. This is likely to be a rare event but cannot be ruled out. In particular, if the disablement prevents the customer from signing or making a mark then an appointment will be needed to enable claims etc to be made.

For example: advanced motor neurone diseases where the customer experiences extreme physical difficulties in making and managing written or teleclaims to benefit; Parkinson's disease where the customer still has mental capacity but is not longer physically able to write or telephone; customer who has suffered a severe stroke which impairs their ability to write, including using a computer, or telephone.

Customer in hospital

5184 If you receive a request from an appointee for someone in hospital, do not assume that the customer is incapable of managing their own affairs simply because they are in hospital.

5185 If the prospective appointee has provided medical evidence this should be considered and a decision made as to whether it supports making an appointment without any further evidence being needed. If no evidence is provided or it is inconclusive, you should either arrange to visit the customer or, if this is deemed inappropriate (bearing in mind that the customer is in hospital), ask the prospective appointee to obtain the evidence or try and obtain the evidence yourself.

5186 You can request medical evidence or information as to the customer's capabilities direct from the hospital or any medical or other professional involved with the customer eg their doctor. However, the person approached is under no obligation to provide that information. If writing, apart from explaining why you are writing, the key question to be asked is:

"Do you think the customer is mentally capable of managing their benefit affairs? That is, in your opinion do they have a general understanding of their benefits and what is involved in managing them eg claiming and reporting changes.

If the information provided is inconclusive or no reply is received, then you should ask the prospective appointee to obtain further information.

Initiating appointee action when customer is in hospital

Step	Action
1	Where appropriate arrange to visit the prospective appointee and the customer and assess the customer's capabilities.
2	If a visit to the customer is inappropriate (because they are in hospital) arrange to interview the prospective appointee. If the request is to change the appointee, an interview may not be appropriate. See 'Changing an appointee in this Part'.
3	Establish the nature of the customer's incapacity at interview
4	Assess the prospective appointee's suitability to act at interview and complete sections 1-6 of the BF56.
5	Where appropriate make that person the appointee. You should also consider whether you need to review any benefit in payment as a result of this change.
6	Arrange that the appointee inform the Department when the customer comes out of hospital. Try to get a discharge date.
7	Make a note on the file to follow up the case should the appointee fail to inform the Department.
8	When the customer comes out of hospital make arrangements to check whether they still require an appointee. This could be a visit and/or discussion with the appointee. You should also consider whether you need to review any benefit in payment as result of this change.
9	If an appointee is no longer required, revoke the arrangement. See Revoking an appointment in this part of the guide.

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 unless they are a relative/friend of the customer. If you decide to authorise a member of staff who is also a relative or friend as the customer's appointee, you must inform the CH/NH manager

If there is no relative or friend nor any organisation willing to act then, as a last resort, you can appoint the warden, care home manger or proprietor of the home.

5201 Where the Organisation becomes the appointee, the proprietor, warden or care home manager may still collect benefits on their behalf, provided they are authorised to do so by the Organisation. The Organisation 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 a DWP 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.

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 they then have responsibility for letting us know of changes in circumstances and so needs to be aware of the claimant's current circumstances.

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

Step

1

Action

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. *We need to try and prevent family disputes arising later.* We must be able to confirm

later that we covered the following two points from the BF56:

“To the best of my knowledge no other person or organisation has been legally appointed to administer the affairs of the person named in Part 1.

I declare that I have discussed my appointment with other family members or next of kin and that they do not object to my application. **This applies to corporate appointees as well.”**

You should ask the prospective appointee if they know of any next-of-kin, family member, executor

- if they do not then unless you have reason to doubt him the interview should proceed

- if they do or you doubt the 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.

Step 2. 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.

You should start this part of the interview by asking about the current day to day 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?

3

You should now take the person through the BF56. When you get to the section on the method of payment, you should explain the following.

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

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 necessary 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.

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 Simple Payment system until such time that he gives us an alternative account.

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

- 4 tell the prospective appointee the Secretary of State can revoke appointeeships if they do not act in the customer's best interest
- 5 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.
- 6 give part 8 of form BF56 to the prospective appointee; also give them the Aide-Memoire (see appendix 5)
- 7 if you decide to agree the appointeeship at the visit explain what will happen next 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. IT IS ESSENTIAL THAT WE GIVE OR SEND THIS FORM TO THE APPOINTEE.**
- 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.**
- 8 if you conclude at the visit that the person is not suitable then it would probably be better to make the formal decision back at the office. You will, of course, need to think about finding a replacement - **see** Appointment to act not approved in this part of the guide

If an Organisation is the prospective appointee

5220 If an Organisation is the prospective appointee, eg a LA, Age Concern or private company, action depends on whether the Organisation is:

- already acting as an appointee for other customers
- not already acting as an appointee for other customers and
- whether they have submitted medical evidence with their application – this aspect is important..

To Note: Where an individual appointee is in place and you receive a BF56 from a corporate appointee looking to replace that individual, then unless it is already on record that the individual is willing to step aside, you must be satisfied that the transfer is appropriate.

The process

If they have not provided any reason for making their application, you should contact the prospective corporate appointee and ask them to explain in writing the reason for their application.

If an explanation has been provided (and where one is subsequently provided) and it is robust and credible eg several months of outstanding care home fees, appointee moved away, appointee not paying personal allowance, then you should suspend the appointeeship and payment of benefit and check the situation with the appointee as per AAADG para 5400 et seq. This must be done without delay.

Organisation already acts as appointee for other customers

5221 If the Organisation already acts as appointee for other customers, the appointeeship can be authorised immediately after:

- your visit (if this has been appropriate – see para 5225) to the customer confirms their incapacity to manage their own affairs and
- an authorised representative of the organisation has:

– completed form BF56 to show the Organisation's (not the representative's) details and

– stamped form BF56 with the Organisation's official stamp.

– (Occasionally the corporate appointee may not have an organisation stamp. This does not invalidate the application. You should check our system to confirm that the applicant does indeed act as an appointee. If that is confirmed, and there is nothing to suggest that the latest application is other than genuine, then it can be accepted.)

Note: You must send a BF57 to confirm the appointeeship for the new customer.

Organisation does not already act as appointee for other customers

5222 If an Organisation 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 Organisation is responsible for making sure that any of their representative(s) authorised to collect the customer's payments are acting in the customer's best interest.

5223 **Note:** When an Organisation is applying to become an appointee they must authorize an employee to complete form BF56 on their behalf.

5224 On being appointed the Secretary of State, must send form BF57, to confirm the appointment.

Organisation 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, social worker, psychiatrist – often it will be a mental health assessment report. Whatever the source if the evidence is credible and trustworthy then there will be no need to visit. If there is any doubt about the diagnosis itself then you should 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. (We must not not visit because it is convenient for the parties involved.)

5226 If the application is from an individual or organisation who are not already acting as an appointee, then we must still do the standard check to ensure that they are suitable to so act.

Someone other than authorised 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 – and this is more likely to be the case than not - you should apply the 'implicit consent' rules – see the Working with Representatives Guide.

5228 - 5249

Prospective appointee lives outside your office area

5250 If the prospective appointee lives outside your office area:

Step	Action
1	find out which benefit office deals with the prospective appointee's address
2	Make a referral that includes: <ul style="list-style-type: none"> • details of your customer and prospective appointee and • a request that they arrange for the prospective appointee to be interviewed and, if the prospective appointee is approved, that a claim form is completed on behalf of the customer where appropriate.

5251 - 5299

Appointee needed but no one nominated

5300 If a visiting officer decides a customer needs an appointee but no one has been nominated or we alerted to the possibility by a third party but they do not wish to act, make attempts to identify a suitable person, e.g.:

- a spouse
- a relative or close friend
- an Organisation, e.g. a LA, Age Concern or
- the proprietor of a CH/NH, but only if no other suitable person is found.

5301 If a suitable person is not available, inform the customer's local social services – they may know of Organisations willing to help.

5302 If social services cannot help then as a last resort we will have to contact the OPG - 0300 456 0300. 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 Organisation to replace them, take the following action:

- suspend payment of benefit, unless benefit is being paid into the customer's own account, and 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 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 form BF56 anyway
- 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

5307 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:

1. 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
2. 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,
3. Ask the appointee if he has his BF57.

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

5308 - 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 authorise 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 approves an application:

Step	Action
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- 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.

Handling a phone call from a customer who has an appointee

5361 If a customer who has an appointee contacts the department you should think carefully before engaging with him. The appointee is supposed to act on their behalf. The customer should have mental health problems which means he cannot manage his benefit award and in general should have little or no understanding of the benefit system and his own benefits.

However, the Mental Capacity Act says that those with third party help should still be involved in decision making where that is appropriate eg they have a good day. Of course, it is likely to be difficult to decide whether the contact is being made on a good day. All you can do is listen to what is being said and make a judgement.

5362 If the questions being asked are neutral as to their impact on the benefit and you judge that no harm can be done by answering them, then you should engage with the customer. You should note that the discussion took place. There is no need to inform the appointee.

However, and regardless of whether you think this is a good day, if the customer has contacted us to report a change then, whilst you can note it, you must not act on it. You must confirm it with the appointee; of course, this should be done immediately.

All that said, before starting any conversation you must still ask the security questions. If there are no problems with these and then the subsequent discussion is equally untroubled, you may want to consider whether the customer needs an appointee.

5363 - 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 – see also 5402 below.
- where the appointee himself becomes incapable. The Secretary of State 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. If you are revoking because the appointee now says that he holds a power of attorney authority you must make sure that you see a valid power before you revoke the appointeeship. On the basis that, save for UC, PIP, ESA(c) and JSA(c), a PoA is not a higher authority than an appointeeship, it will be up to the appointee whether he wants to switch.

Note 2: If an appointee fails to claim a benefit when he would normally be expected to, eg fails to make a renewal claim for DLA or PIP, this needs to be investigated before any decision is made in relation to the benefit entitlement. We must not simply terminate entitlement.

Note 3: 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:

[Note: If the SoS decides to revoke an appointment then he does not need a letter of agreement from the existing appointee. The decision on this is final.]

Step

Action

1

1	If the evidence of mismanagement is overwhelming and unequivocal, 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 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 a police adult protection team.
2	if 1 does not apply, then ideally we would seek to discuss the situation directly with the appointee. This could be done by interview (in the office or at home) or by phone.
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 18.
4	Allow the appointee one week 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, apart from discussing the concerns raised, remind the appointee of their responsibilities they agreed to when signing the BF56; show the appointee the notes printed on the back of form BF57; give them the Aide-Memoire. An example of form BF57 and the Aide Memoire are at Appendix 5.
7	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 appendix 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

	<p>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. If you are not satisfied then revoke the appointment and stop payment – go to step 8</p>
8	record your reason(s) for both allowing the appointment to continue or 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	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 notify HMRC by phoning the helpline, or by sending a letter to the Tax Credit Office Preston PR1 4AT, or by sending a copy of the BF58 – you should make a note that this has been done.
12	send 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 Appointee needed but none nominated in this part of the guide
15	<p>Finally, you should consider whether you need to alert others to the abuse (see also 16 below). 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 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. DMA Policy, Lyndon Walters, would also be happy to advise.</p>
16	We are often asked to revoke an appointment because care home fees have not been paid. Once you are satisfied that this is the case then you should take normal revoking action. The replacement appointee is likely to be the LA. There will be no need to visit the customer. We can accept a BF56 through the post. You may be asked at the same time to take action in relation to the unpaid fees. There is nothing for you to do – this is not benefit fraud. If the LA wish to pursue the matter they will need to take action directly against the appointee. If the matter escalates we can cooperate in the investigation but we would

not instigate the process.

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:

- 1 Refer the case for a visit to the customer as a matter of priority;
- 2 At the same time send the letter below to the appointee (or ask the benefit section to issue the letter urgently).
- 3 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 (We may need a new bank account.)
4. 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.
5. 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 their benefit 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. We should be ready to attend. However at the same time we need to be cautious in our actual involvement. The reason for this is that you are likely to be asked for personal information about a customer. Providing information at a safeguarding conference can usually be justified where the aim is to protect a vulnerable adult. So any attendance could involve a data protection risk. You just need to be aware of

who is attending and be careful in what you disclose. But the default is that we would attend when asked.

Revoking a corporate appointee

5404 If you become aware of mismanagement by or allegations are made against a corporate appointee, you should contact:

DMA Policy
Grnd Floor
Caxton House
London
SW1H 9NA
Tel: 0207 449 7347

5405 If you have evidence that the Care Home in Scotland has been mismanaging the affairs of the customer, refer the case to:

Information Management
Devolution and Governance
Devolution Team
Silvan House
2nd Floor
231 Carstorphine Road
Edinburgh
EH12 7AT
Fax: 0131 301 1161

E-mail: The address is listed in the GAL as DWP Devolution Policy Team

Courier: Edinburgh Information and Devolution Policy

Obtaining consent for the release of medical information when a customer has an appointee

5406 i Customer has mental impairment

Appointee can give consent (under normal consent rules).

ii Customer has physical impairment

KEY POINT: In this circumstance the appointee can never give consent on behalf of the customer.

Options available:

1. The customer can sign or make a mark on a paper consent declaration.

2. If the customer is unable to sign or make a mark he can give verbal consent. This can be given face to face or by telephone. If by phone, there are strict protocols which must be observed. These are:

- it must be established beyond doubt that it is the customer who is speaking

- there must be a full, written record of the conversation. This will detail the steps taken to confirm identification; and it will confirm that the customer understood that he was giving consent to the disclosure of information

- under no circumstances must the customer be put under pressure to give consent if he is unwilling to do so for whatever reason (consent given under duress is not valid consent). If the customer declines to give consent this must be recorded.

3. Finally, whatever form is being used to make the request it *must* state that the customer has given *verbal* consent.

Jobseeker's Allowance customer has an appointee

5407 You must always deal with the appointee in the first instance when arranging interviews. The onus is on the appointee to ensure that the customer is aware of interview times etc.

You can discuss conditionality matters with the appointee but you must not make a determination or decision eg making a referral to a decision maker related to conditionality, without involving the customer. The latter must be at formal conditionality interviews.

The appointee cannot satisfy conditionality on behalf of the customer.

The customer and appointee must attend for signing. However, where the customer's appointee is unable to attend – this is likely to apply more to corporate appointees - a person other than the person who signed the BF56 can attend as the representative of the known appointee. But they will need to provide signed authorisation from the current appointee to so act. They will also need to provide proof of their identity. (If it is an individual appointee and their attendance becomes erratic then you should review their role as appointee.)

Given the nature of these benefits the capacity of the customer should always be under review. You must not allow the appointeeship to continue because it is convenient for the customer.

Appointee and Medical Assessments

5408. Where a claimant for ESA or PIP, is invited by a Provider to attend for assessment, the invite letter will be sent to the named appointee. Where that person is unable to attend then they can authorise another person to attend the assessment on their behalf. The assessment cannot go ahead if the customer attends alone. (If the appointee is acting in an individual capacity then delegation should be the exception and not the norm. If it appears to becoming the norm, then you will need to review the role of the appointee – attending in this circumstance is a key responsibility.)

Death of the customer

5450 At the point of death the appointeeship lapses. You may then need to appoint someone else to proceed with any outstanding action. If the person who was the appointee is unwilling to act further.

5451 For more information, see your existing procedures.

Overseas appointees

5452 The rationale behind making someone an appointee is that they will have daily or regular contact with the customer. That within reason their expenditure of the customer's benefit is done in response to their knowledge and observation of ongoing needs. Clearly this becomes problematical when the appointee and/or the customer live overseas. In none of the following scenarios are we

prevented in law from making an appointment or continuing to pay an appointee, but we should be wary of doing so in each case.

Customer with an existing appointee moves overseas but the appointee is staying in GB and wants to retain the role

5453 You should discuss the position with the appointee. Find out how he intends to fulfil his role. Is there someone near to where the customer is moving who could take on the role? If not then we must continue paying the appointee. If yes, and the existing appointee is willing to step aside, then contact IPC to set up new appointment.

Appointee is moving abroad, customer remaining in GB

5455 If appointee wishes to continue discuss how he intends to fulfil his role. Is there someone who will have daily/regular contact with the customer who can/is willing to take on the role. Would it be better to involve social services? Failing someone else taking on the role, the latter option is better than paying an appointee who lives abroad. But if there is no one else continue with the existing appointeeship.

Application from would-be appointee who lives abroad, customer in GB

5456 We should be very cautious of making an appointment in this circumstance. We should find out if there is a friend/relative who could so act; failing that social services should be approached.

Overseas customer becomes incapable and prospective appointee lives near the customer

5457 As best we can we still need to follow the normal process. IPC will need to be involved. You must not take any short cuts, that is, not involve IPC, because it will speed up the payment process.

5458 - 5999

