

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Agents, Appointees, Attorneys and Deputies Guide (AAADG)

August 2010 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 2, 4 and 5 and also omits Appendix 14 .
3. This amendment package is issued in PDF format only,

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4. Copies of this amendment package can be purchased from Corporate Document Services (0113 399 4040). For DWP customers this will be chargeable to your own cost centre. You can also access the AAADG and individual amendment packages via the DWP website at www.dwp.gov.uk/advisers/index.asp.
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Verifying the Order of Appointment

2005 | All such orders should carry the validation stamp of the CP on top of the front page. It must also have the seal of the CP at the bottom of the page. If either is missing it must not be accepted. In which case you should contact the OPG to clarify the situation.

2006 | If the stamps are present the next step is to check the powers of the Order. Does it cover finances - sometimes described as property and affairs?

- if yes, then it can be accepted and benefit paid to the deputy

- if no, then it is not acceptable for benefit purposes. The deputy should be referred to the CP. But you should also discuss the possibility of appointeeship. This may not be the best option because it applies only to benefits and the deputy may want authority over all the claimant's finances. He should be told that he cannot be a deputy for non-benefit finances and an appointee for benefit purposes as this is not allowed in law.

2007 | Finally, and where the Order has been accepted, you should remind the deputy of their benefit management responsibilities:

- reporting changes in both the claimant's and their own circumstances which may affect entitlement

- claiming benefits and

- receiving benefit payments.

They are fully responsible for the management of the claimant's benefit affairs.

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Attorney – England and Wales

- 4050 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.
- 4051 A PoA can be granted under:
- The Power of Attorney Act 1971 (This is a general PoA)
 - The Enduring Power of Attorney Act 1985 (The power to make an EPoA was revoked 1.10.07 – see para 4111)
 - The Mental Capacity Act 2005. (A LPA is made under this Act)
- 4052 Whichever Act a PoA is granted under, the attorney can be given:
- **general** powers to handle all the customer's affairs, that is, both in relation to financial matters and personal welfare - see *Responsibilities of an attorney* in this part of the guide
 - **specific** powers to handle some of the customer's affairs - see *Power of attorney granted with specific powers* in this part of the guide and/or
 - powers for a **limited period**, eg while the customer is ill or abroad - see *Power of attorney granted for a limited period*
- 4053 The Secretary of State can accept a PoA as a valid authority to manage the social security benefit affairs of the customer under certain circumstances.
- 4054 A PoA can be granted to:
- an individual
 - two or more individuals, i.e. joint attorneys, see *Two or more attorneys*
- or**
- an organization, see *Professional attorneys*.

Verifying the attorney is empowered

- 4055 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s) and that they wish to act for the customer, ask to see the PoA document.

Part four

Attorney

- 4056 To be acceptable, a PoA document must:
- a) be signed by:
 - the customer, whose signature must be countersigned by a witness **or**
 - someone acting under the customer's direction and in the customer's presence, whose signature must be countersigned by two witnesses **and**
 - b) give the attorney's:
 - name
 - address **and**
 - c) include the words:
 - 'signed and sealed' if the PoA was completed before 31 July 1990 **or**
 - 'signed as a deed' if the PoA was completed on or after 31 July 1990
 - d) in the case of PoA under the 1971 Act, it *must* make reference to that Act.
 - e) in the case of a LPA, and a registered EPoA, the CP stamp should be on the front page. You should also be able to see a perforation stamp in the centre of the front page. (This may be missing if the LPA is an early 25 page version.)
- 4057 There is a template, provided by both the 1971 Act and the 1985 Act, which the vast majority use, see Appendices 9 - 11 in this part of the guide.

Photocopies

- 4058 You can accept a photocopy of any PoA document provided it includes a declaration that it is a true and complete copy of the original signed by:
- the customer **or**
 - a solicitor **or**
 - a stockbroker.

Scanned PoAs

- 4059 Where the PoA is received as a scanned document there is no need to print out and save as a hard copy. Instead, the person verifying the validity should note its acceptance in Notepad. The person should provide their name and the date.

4060 - 4068

Power of Attorney and Enduring Power of Attorney

Power of Attorney Act 1971

- 4100 A PoA granted under the above Act is an authority for the attorney to manage the financial affairs of the donor or customer. **It is only valid if the customer is mentally capable. It therefore expires when the customer becomes mentally incapable.** If the customer has mental capacity it can be a valid authority to act as long as it grants general authority and conforms to certain formalities.

Powers granted to the attorney under the Power of Attorney Act 1971

- 4101 If the PoA document states that the customer grants their attorney general powers under section 10 of the Power of Attorney Act 1971, the attorney is given full power to handle the financial affairs of the customer. The Secretary of State can accept this authority as sufficient to handle the benefit affairs of the donor, see *Responsibilities of the attorney* later in this section. An example of a general PoA issued under Section 10 of the Power of Attorney Act 1971 is shown at Appendix 11.
- 4102 However, when a PoA is made under the 1971 Act use of the template is not mandatory. A PoA can be created on a piece of paper as long as reference is made to the 1971 Act. For example it should state that it has been made “in accordance with the PoA Act 1971”.
- 4103 If you receive a general PoA document which does not include the wording shown in the example shown at Appendix 11 take a photocopy and refer it to:

Legal Group DMA Policy
2nd Floor Adelphi
London
Fax 020 7962 8541.

- 4104 If DMA Leeds reply stating that the PoA is:
- acceptable, see Attorney empowered to act **or**
 - not acceptable, see Attorney not empowered to act.
- 4105 If the customer grants their attorney specific powers, the powers may or may not include the power to deal with Social Security benefit, see *Power of attorney granted with specific powers*.
- 4106 Because the customer still must have mental capacity to handle their own affairs for the PoA to be valid, the customer can still choose to handle their own affairs, see Customer has mental capacity in this part of the guide.

4107 - 4110

Enduring Power of Attorney Act 1985

- 4111 Unlike a PoA made under the Power of Attorney Act 1971, a PoA made under the Enduring Power of Attorney Act 1985 is intended to **continue when the customer loses mental capacity**. For the validity of an EPoA in Scotland, see para 4205 in this guide.

NB: *The EPoA Act 1985 was repealed by the Mental Capacity Act 2005. However, existing EPoAs will continue to operate under Schedule 4 of the Mental Capacity Act. The paras below are retained because if we are presented with an EPoA registered before 1 October 2007 then the 1985 verification rules will still apply.*

Powers granted under the Enduring Power of Attorney Act 1985

- 4112 If the customer grants their attorney general powers under the Enduring Power of Attorney Act 1985, the attorney has full power to act for the customer over all their financial affairs including social security benefits, see *Responsibilities of an attorney* in this part of the guide. The wording on the power will usually indicate whether the powers granted are general or specific, see *Power of attorney granted with specific powers*.

Checking the validity of a Power of Attorney made under the Enduring Power of Attorney Act 1985

- 4113 The Enduring Powers of Attorney Act 1985 came into force on 10 March 1986. The format and wording of an EPoA document can differ, depending on the date of issue. If the EPoA is signed before 31 July 1990 the document must comply with the regulations at that time. See Appendices 9 and 9a for further information.

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 their attorney, they retain responsibility for telling us of any change in their circumstances.
- 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.

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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 **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

Revoking an appointment

5400 There are three 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.

NB. *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 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.

Part five

Appointee

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.
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	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. You can do this by phone, e-mail or by sending a copy of the BF58 – you should make a note that this has been done

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- 12** send for form BF58 to the ex-appointee - An example of form BF58 is shown at Appendix 3
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- 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
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- 14** if no one else has been nominated, see *Appointee needed but none nominated* in this part of the guide
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- 15** 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.
- 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.
- If you already have arrangements/partnership agreements in place for making referrals then these should, of course, continue.
- 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.
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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 at Appendix x 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.

Mismanagement by Care Home

5404 If you have evidence that the Care Home in England or Wales has been mismanaging the benefit affairs of the customer, refer the case to:

Legal Group DMA Policy
Second Floor
The Adelphi
London
WC2N 6HT
Fax: 020 7962 8541

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

Adjudication and Constitutional Issue Scotland (ACIS)
Room D311
Argyle House
Edinburgh
Fax: 0131 222 5364

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.

Jobseekers Allowance/ESA customer with appointee

5407

You must always deal with the appointee in the first instance when considering conditionality operational matters eg 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 imposing a sanction, 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;

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.

5408 - 5449

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