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Part two – Deputy (England and Wales)

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Part two – Deputy (England and Wales)

Introduction

- 2000 | From October 1, 2007 receivers have been replaced by Deputies. Existing receivers became Deputies on that date. They retained the powers and responsibilities they were granted in the receivership order as it was created before the 1 October.
- 2001 | The OPG has been reviewing existing receiverships in the light of the new powers given to Deputies. However, there is no need to check existing orders. We can continue to pay benefit on the existing order.

| **The role of a Deputy**

- 2002 | When a customer is incapable of managing their affairs and requires another person to act on their behalf, an application can be made to the CP to appoint a Deputy. Any person over 18 or an organisation can apply to the CP.
- 2003 | The only issue for this department is whether the deputy's Order gives the Deputy authority over the claimant's finances, that is, their benefit, and whether there are any restrictions which could affect the payment of benefit.
- 2004 | It should be noted that the Order could also relate to personal welfare matters. What it must not do for our purposes is relate only to such matters. If it does then the deputy does not have the authority to act in respect of the customer's benefits.

Verifying the Order of Appointment

- 2005 | All such orders *should* carry the stamp of the CP on every page – see Appendix 14 for the acceptable validation stickers you can expect to see. *However, in reality there is likely only to be a stamp on top of the front page. Provided this is the case it can be accepted. If there is no stamp at all it must not be accepted and* the person presenting the Order should be told to contact the CP.
- 2006 | If the CP stamp is 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.

Paying benefit to a Deputy

2008 | Benefit must not be paid into the Deputy's personal account. The CP will have made this clear to the Deputy when authorising his appointment. A new account should have been opened making it clear that he is acting as a Deputy on behalf of the customer.

After you verify the Order of Appointment

- 2009 After you verify that the CP has appointed the deputy to act on behalf of the customer, see *Action following verification of a PAB/COP* in Part 6 of this guide.

Doubts about Deputy's actions

2010

Where doubts arise as to whether the deputy is using benefit in the best interests of the customer, you should contact OPG immediately. As there is a Court Order in place they will need to advise. Use the discussion with OPG to decide whether to stop payment of benefit immediately. If you are still uncertain as to what action to take then contact Legal Group, DMA Policy.

Receivers and Deputies under Scottish Law

2011 | The Scottish Courts do not appoint Deputies under the Mental Capacity Act 2005 as such appointments are made by the Court of Protection in England and Wales, normally for customers who are habitually resident in England or Wales. However, if a customer already has a Deputy (whether appointed directly under the Mental Capacity Act 2005 or one who was, prior to 1 October 2007, a receiver appointed under Part 7 of the Mental Health Act 1983) and the customer moves to Scotland then the Deputy can continue to act in relation to any property or financial affairs of the customer in Scotland. DWP can refuse to recognise the Deputy's power to act in Scotland on certain grounds (see paragraph 7(3) of the Adults with Incapacity Act 2000). This would include where there is a later appointment of a Guardian under the 2000 Act and allowing the Deputy to continue would be incompatible with the Guardian's appointment.

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