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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 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.

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.

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

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**Part five**

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## 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

## **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 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.

**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	if you find that there is: <ul style="list-style-type: none"><li>• no OP acting for the customer, see Considering the need for an appointee in this part of the guide</li><li>• an OP of an equal or higher authority already acting for the customer, tell the enquirer:<ul style="list-style-type: none"><li>– they cannot be the appointee (if the enquiry is from someone asking about being the customer's appointee) <b>or</b></li><li>– an appointee is not required (if the request is from a person acting on behalf of the customer).</li></ul></li></ul>

## 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 **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

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## 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

## Assessing the customer's capabilities

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 – they may be quite capable of managing their affairs
- 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
- record the details 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 or general practitioner will be acceptable.

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## Appointee

If you are uncertain about the medical evidence you can ask the department's Health and Welfare Division 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 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 - see next para.

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, reporting changes, payments?"

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**

<b>Step</b>	<b>Action</b>
1	Where appropriate arrange to visit the prospective appointee and the customer and assess the customer's capabilities. See Visiting the customer and Assessing the customer's capabilities in this part of the guide.
2	If a visit to the customer is inappropriate 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. See <i>If an individual is the prospective appointee</i> in this part of the guide.
5	Where appropriate make that person the appointee. You should also consider whether you need to review any benefit in payment as 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 <i>Revoking an appointment</i> in this part of the guide.

5187 - 5199

## 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:

<b>Step</b>	<b>Action</b>
<b>1</b>	<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>
<b>2</b>	<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><b>Note:</b> 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</p>

letting us know of changes in circumstances.

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.

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**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

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**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.

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

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- |   |   |
|---|---|
| 5 | <b>tell the prospective appointee the Secretary of State can revoke appointeeships if an appointee does not act in the customer's best interest</b>   |
| 6 | <b>make sure the prospective appointee reads the form and reads and signs the declaration</b>   |
| 7 | <b>give part 8 of form BF56 to the prospective appointee; also give them the Aide-Memoire (see appendix 7)</b>  |
| 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 | <b>if the decision is made:</b> <ul style="list-style-type: none"><li>• <b>not to appoint the prospective appointee, see Appointment to act not approved in this part of the guide or</b></li><li>• <b>to appoint the prospective appointee, see Appointment to act approved in this part of the guide</b></li></ul>  |
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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.

## 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) 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:
- 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.

## Authorized person within corporate body changes

- 5225 When the authorized signatory for a corporate body changes it may not be necessary to carry out a separate interview with the new person. A form BF56 should be completed by the new authorized signatory. You should satisfy yourself that the new person understands their role and responsibilities. If there is any doubt then you should take whatever steps necessary to explain their role eg face to face interview or phone discussion.
- 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

## Prospective appointee lives outside your office area

5250 If the prospective appointee lives outside your office area:

<b>Step</b>	<b>Action</b>
<b>1</b>	find out which benefit office deals with the prospective appointee's address
<b>2</b>	Make a referral that includes: <ul style="list-style-type: none"><li>• details of your customer and prospective appointee <b>and</b></li><li>• 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.</li></ul>

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, 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
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 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:

<b>Step</b>	<b>Action</b>
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.

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**Part five**

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## Appointee

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<b>2</b>	If <b>1A</b> does not apply, if the nominated/appropriate officer agrees, interview the appointee (and the customer if needed), to explain the situation
<b>3</b>	if you cannot contact the appointee for interview write to the appointee explaining that we are considering revoking the appointment.
<b>4</b>	Allow the appointee two weeks to respond
<b>5</b>	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 <b>step 8</b>
<b>6</b>	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
<b>7</b>	<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 <b>step 8</b>.</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 <b>step 8</b></p>
<b>8</b>	record your reason(s) for revoking the appointee's authority and keep it with the customer's clerical papers
<b>9</b>	recall the IOP, if appropriate
<b>10</b>	end the OP/COP relationship(s) in CIS.
<b>11</b>	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

## **Death of the customer**

5450 You may need to appoint someone to proceed with the claim if the customer dies before action on their claim is decided and the:

- person acting on their behalf is unwilling to proceed with the claim **or**
- prospective appointee's application is not authorized.

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 remain the appointee 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.

### **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