

Appointees, Personal Acting Bodies and Corporate Acting Bodies: Guidance

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Introduction

If a claimant is incapable of managing their own affairs because of mental incapacity or severe physical disability, an appointee may be appropriate.

The Secretary of State may, on receipt of a written application, appoint a person to act on the claimant's behalf for benefit purposes. This form of appointment removes control of the benefit from the claimant.

An appointee can be an individual (such as a friend or relative) or an organisation and these are known as:

- Personal Acting Body (PAB)
- Corporate Acting Body (CAB)

Appointees are authorised by the Secretary of State to act on behalf of the claimant for the purposes of all benefits, but only one person or organisation can act as the appointee for all benefits being received from DWP.

Therefore, if a claimant already has an appointee acting for them with regard to another benefit, this arrangement must be transferred to the Universal Credit claim.

The Secretary of State can also revoke an appointeeship, for example - if the appointee is not acting in the claimant's best interests.

Considering when an appointee may be needed

It may come to light that an appointee may be needed when:

- someone acting on behalf of the claimant asks to be the appointee in writing (letter or journal), by telephone or verbally at the jobcentre
- an appointee exists for another benefit
- an individual declares that they have the power of attorney or they are the deputy for the claimant (in Scotland, guardian or Scottish power of attorney)
- form BF56 is submitted

If an appointee is not required, consider if explicit consent arrangements may be appropriate instead.

Eligibility

When deciding if an appointee is appropriate, the following must be considered:

- the appointee must be over the age of 18
- the claimant must be incapable of managing their benefit affairs because of mental incapacity or severe physical disability
- the claimant must not have another person of equal or higher authority appointed to act for them such as a court appointed deputy or a Power of Attorney
- an appointee is not appropriate if the claimant is simply unable to collect their benefits or no longer wishes to manage their own affairs
- claimants who can manage their own affairs but are unable to go to the bank, building society or post office may be able to arrange for a person they know and trust to collect their benefits on their behalf

Before an appointment is made, the claimant must be visited to confirm eligibility and that an appointee is required. The prospective appointee must then be interviewed to:

- confirm their suitability to act
- explain their role and responsibilities

Personal Acting Body

A Personal Acting Body (PAB) is a person who acts on behalf of a claimant who can't manage their own affairs. Their appointment must be approved by the Secretary of State.

As well as an appointee, a PAB can also be a:

- deputy appointed by the Court of Protection to administer a claimant's affairs
- person with Power of Attorney appointed by the claimant or the Office of the Public Guardian (England and Wales) to act on their behalf

There is a different legal process regarding the appointment of a PAB under Scottish Law and it would be the Sherriff Court in Scotland that would be involved with the process.

There is also an Office of the Public Guardian in Scotland that would be involved during these stages.

Corporate Acting Body

A Corporate Acting Body (CAB) is not a named individual but an organisation which acts on behalf of a claimant.

An appointed CAB can delegate their authority to a named representative within the organisation who has a day-to-day working relationship with the claimant. The representative will act as a third party. The CAB could be any of the following:

- a solicitor
- local authority
- specialist organisation
- a charity (for example, Age UK)

This is not a complete list.

The CAB will be appointed by the Secretary of State but can also be appointed by the:

- Court of Protection – as a deputy (England and Wales) or Guardian (Scotland)
- Office of Public Guardian – Power of Attorney

Deputies and attorneys must have valid authority (which must be verified).

Responsibilities

The PAB or CAB becomes fully responsible for acting on the claimant's behalf in all their dealings with the Department. This includes:

- making a claim to Universal Credit online on behalf of the claimant (unless they are digitally excluded)
- maintaining the digital account on behalf of the claimant
- notifying changes of circumstances for the claimant
- being available to attend appointments to support the claimant (a representative can be nominated on an ad-hoc basis)
- reporting changes in their own circumstances by telephone, for example:
 - change of name or address
 - change of account

Deputy (England and Wales)

A deputy is appointed by the Court of Protection in England or Wales to act on the claimant's behalf if they are incapable of managing their financial affairs or personal welfare. Deputies appointed to act on the claimant's behalf in relation to financial matters can represent them in all their dealings with the Department.

The Court of Protection will issue an order which must include the validation stamp and seal on the front page for it to be valid. They will also inform the deputy that the claimant's benefit must not be paid into the deputy's own personal account.

Guardian (Scotland)

A Guardian with full powers is appointed by a Scottish court to act on the claimant's behalf with all their financial affairs. Once appointed, they may act in all the claimant's with the Department without appointment by the Secretary of State.

A Guardian will have a court document showing the powers they have been granted and a certificate of registration with the Office of Public Guardian as evidence of having the authority to manage the claimant's benefits.

Power of Attorney

A Power of Attorney is a legal document in which a person gives another person (the Attorney), formal authority act on their behalf either generally or in specific circumstances.

England and Wales

Lasting Power of Attorney falls under the Mental Capacity Act 2005 and applies throughout England and Wales. There are two types of Lasting Power of Attorney:

- property and affairs – this allows the Attorney to make decisions about finances and property (including benefits)
- personal Welfare – this allows the Attorney to make decisions about the claimant's health and personal welfare

Only a Lasting Power of Attorney for property and affairs is accepted by the Department. This must be registered with the Office of Public Guardian before it can be used.

A registered Power of Attorney will have the Office of Public Guardian stamp on all the pages and the reference number and date of registration on the front page. A Lasting Power of Attorney (registered after January 2016) may present a code which can be used to verify online on the Office of Public Guardian website.

A claimant may have two or more Attorneys, known as joint Attorneys. Only 1 Attorney can be paid a benefit from the Department on behalf of the claimant. The Attorneys must nominate who will be the lead contact on behalf of the claimant.

Further notes from the agent can be made to record secondary Attorneys.

Scotland

Under the Adults with Incapacity (Scotland) Act 2000, there are three types of Power of Attorneys:

- Continuing Power of Attorney – this allows the Attorney to make decisions about finances and property (including benefits)

- Welfare Power of Attorney – this allows the Attorney to make decisions about the claimant's health and personal welfare
- Combined Power of Attorney – this allows the Attorney to make decisions on finances and property as well as health and personal welfare

Only Continuing and Combined Power of Attorneys are accepted by the Department if the claimant does not have capacity.

A Power of Attorney must be registered with the Office of Public Guardian (Scotland) before it can be used. A registered Power of Attorney will have the Office of Public Guardian stamp on all the pages and the reference number and date of registration on the front page.

Claimant Commitment

PABs and CABs will not be able to accept a Claimant Commitment on behalf of the claimant.

For more information about the claimant's suitability for accepting a Claimant Commitment, see Claimant Commitment overview and Removal of the requirement to accept a Claimant Commitment.

Appointee wishes to relinquish their role

An appointee can resign from being the claimant's appointee at any point during the claim. It is the appointee's decision and they do not need to give any reasons.

If an appointee is still required, and the now ex-appointee identifies another person willing to replace them, that person must be contacted immediately. If they are willing to act, normal appointment action should be taken without delay.

If no other person has been nominated or the person nominated isn't willing to become the appointee, steps must be taken to protect the claimant whilst a new appointee is found. Relevant action may include contacting the Adult Social Services through the local authority.

If the ex-appointee says that the claimant no longer needs an appointee, this must be confirmed because the claimant will be taking on all responsibilities for managing their claim and will need full access to the claim including payments being made into their own bank account. Agents must ensure that this is clearly understood by the claimant.

Notes must be made on the Service recording all relevant information.

Appointee is not acting in the best interests of the claimant

If an appointee does not act in the best interests of the claimant and they are no longer suitable, an officer acting on behalf of the Secretary of State can revoke their authority.

Each case must be considered on its merits. It is likely that the evidence would have come from interested third parties, for example:

- Social Services
- local authority
- Police Adult Protection Team

If there is strong evidence of mismanagement, benefit payments must be suspended immediately whilst the case is further investigated.

The outcome of any investigation must be communicated to the claimant and appointee once a decision has been made.

If the decision is for the appointee to remain, the appointee relationship continues. If the decision is for the appointeeship to be revoked and the claimant still requires an appointee, steps must be taken to protect the claimant and a new appointee put in place. This may require a home visit to resolve any disputes and the Universal Credit claim notes must include the reasons for the appointee no longer acting in the best interests of the claimant.

Appointee no longer required

The claimant may contact the Department and state they no longer require an appointee as they can manage their claim independently. A review of the need for an appointee must be conducted.

If it is accepted that an appointee is no longer required, the claimant takes on all responsibilities for managing their claim and will be given full access to the claim including payment into their own bank account.

The Universal Credit claim notes must include the reasons why the appointee is no longer required.

Payments

Universal Credit is paid by direct credit transfer. If there is a PAB or CAB, it is usually paid into an account in the appointees name but in exceptional circumstances they may nominate another account.

Overpayments

If there is an overpayment on a Universal Credit claim where the claimant has a PAB or CAB, it may be recoverable from the PAB or CAB and/or the claimant.