

DWP Central Freedom of Information Team

e-mail: [freedom-of-information-request@dwpgsi.gov.uk](mailto:freedom-of-information-request@dwpgsi.gov.uk)

Our Ref: VTR955

6 March 2014

Dear Mr. Powell,

Thank you for your Freedom of Information (Fol) request received on 28 February 2014. You asked:

*"Please could you provide any copies of documents showing that a claimant has the right to be accompanied at a jobcentre appointment.*

*I feel such documentation would be handy for the claimant or their representative to have in their possession to avoid any future misunderstandings.*

*Background (for helpful reference only):*

*A rep from the Edinburgh Coalition Against Poverty-affiliated group was accompanying a jobseeker to an appointment to review his Job Seekers Agreement on 3rd February. A manager unexpectedly joined the interview, started aggressively questioning the rep, and then ordered him to leave. The rep refused, pointing out that all claimants have the right to be accompanied.*

*The manager then ordered the security guards to call the police to evict the rep. By the time the police arrived however, the interview had already concluded. The police ordered the rep to leave and took his name, but did not charge him.*

*The DWP later apologised in writing for the offending jobcentre manager and re-affirmed that jobseekers with appointments indeed have a right to be accompanied during appointments with jobcentre staff."*

Claimants accessing Department for Work and Pensions (DWP) benefits and services can have someone to accompany them to act on their behalf.

DWP will treat the person acting on behalf of the claimant with the same customer standards as the claimant. The person acting on behalf of the claimant is expected to maintain the same behaviour standards as the claimant and treat our staff with courtesy.

Claimants can have a variety of people accompany them such as Representatives, Appointees, Corporate acting bodies or Personal acting bodies.

Guidance for staff includes the information provided below:

### **Representatives.**

A customer representative is any person or organisation acting on behalf of or making enquiries for the customer. The representative could be helping a customer in several ways, including progress chasing, helping them make a claim, seeking an explanation of entitlement and how it has been decided, representing them with a reconsideration or appeal, or helping them manage their finances. This can be at any stage of the customer's business with DWP. Representatives may include:

- advice or welfare rights organisations
- professionals such as social workers, community nurses or doctors
- family members or friends

A representative is not an official appointee (Attorneys, Deputies), who should be dealt with as if they were themselves the customer. Please note

- MPs - note that customers' own MPs are assumed to have consent to act and information can be disclosed in response to their enquiries. Please refer to the Personal Information Policy Guide for more information
- Appointees, deputies and Powers of Attorney – these are legally empowered to act on behalf of the customer, will be expected to answer security questions, and consent to disclose information is not required
- There are also Corporate Appointees, usually Local Authority (LA) staff, who look after the affairs of people in homes. They will not have sufficient detail about customers to enable them to answer security questions, and therefore the principles outlined in Implicit Consent, below, should be used in deciding whether to provide information

### **Is the representative acting with the consent of the customer?**

If the call is from a representative, ensure that they are acting on behalf of the customer:

- can you check consent with the customer, either in person or by phone?
- can you accept that there is 'implicit consent'?
- is there written, signed authority from the customer? Note that you should not automatically insist on seeing a written or faxed authority before disclosing information.

If you can answer 'yes' to any one of the above, then you can proceed

### **Written authorities to disclose information**

Written authority is necessary where implicit consent cannot be established, or where a request for information is received in writing from a representative. Written, signed authority should be requested only when consent cannot be established by other means.

In these cases, ask the representative to complete the 'Authority to Disclose' template, which the customer must sign. The representative should then post or fax the signed form to the relevant DWP office; you should provide the correct address and/or fax number. Faxed authorities and authorities containing electronic signatures are both acceptable. Local Authority representatives should follow the agreed Security procedures for emailing forms to approved secure email addresses.

Written authority does not last indefinitely in these cases, but covers a particular piece of business. The authority to act should be treated as current for the whole process of a new claim or change of circumstances, including any follow-up reconsideration process. A separate authority is required for an appeal, unless the existing authority specifically covers the appeals process.

If written authority is received, it should be recorded in notepad, if possible. It should be removed after the particular piece of business, including reconsideration, is completed.

### **Implicit Consent**

Where there is no valid written authority, or the customer is not present to confirm consent verbally, staff should use their experience and judgement to decide whether the call has **implicit consent** to act on behalf of the customer.

Staff must ask questions and use judgement based on the answers in order to determine whether or not the caller is a genuine representative, and implicit consent can be assumed.

In most cases it will be quite clear from the information already held by the caller, and the questions they ask, that they are helping the customer with benefit claim, and that information can be provided.

Where implicit consent **cannot** be established, then written consent is necessary. Do not disclose any customer information and explain that on this occasion it will be necessary for the caller to provide written consent as an authority to act on behalf of the customer and signpost them to the 'Authority to Disclose' template or A42 form. Consult your line manager for support where required.

**Do not assume consent is for an indefinite period - authority to represent the customer is considered to be for a particular item of business**

### **Corporate Acting Body (CAB).**

A Corporate Acting Body is not a named individual, but an organisation appointed to act for a customer, this could be a:

- Local Authority
- Nursing Home
- Area Health Authority
- firm of solicitors.

This list is not exhaustive.

Each customer is allowed only one CAB at a time and the following can be CABs:

- Deputy - appointed by the Court of Protection in England and Wales
- Controller - appointed by the Office of Care and Protection in Northern Ireland
- Attorney - appointed by the customer and legally supported
- Appointee - appointed by an officer acting on behalf of the Secretary of State.

A court appointed CAB normally takes precedence over **any** appointment made by an officer acting on behalf of the Secretary of State. For example, if the customer has a Personal Acting Body (PAB) whose status appears above appointee in the above list, an officer (acting on behalf of the Secretary of State) cannot usually authorise an appointee to administer the customer's affairs relating to benefits, pensions and allowances.

The only exception is when the existing CAB no longer has authority to act, or the Department has received written confirmation that the CAB no longer wants to act on the customer's behalf.

The customer's CAB is responsible for reporting all changes in:

- the customer's circumstances
- their own circumstances that the Department may require.

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

### **Personal Acting Body**

A Personal Acting Body is a named person appointed to look after all or some aspects of a customer's affairs.

This is called an appointment to act. The person or organisation appointed to act is called an appointee. At any one time, there must be only one appointee acting on the customer's behalf for all benefits.

If the claimant is incapable of managing their own benefit because of mental health issues and the Secretary of State has appointed someone to act on their behalf, known as *an appointee* (regulation 33 of the Social Security Claims and Payments Regulations 1987 refers), then that person stands in the shoes of the claimant and we would actually expect that person to attend appointments, interviews etc. There should be no action taken by DWP staff to prevent an appointee so acting.

An appointee can be an:

- individual, for example a friend or relative
- organisation or representative of an organisation for example Local Authority
- a limited company.

This list is not exhaustive.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

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**Your right to complain under the Freedom of Information Act**

If you are not happy with this response you may request an internal review by e-mailing [freedom-of-information-request@dwpgsi.gov.uk](mailto:freedom-of-information-request@dwpgsi.gov.uk) or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF [www.ico.org.uk/Global/contact\\_us](http://www.ico.org.uk/Global/contact_us) or telephone 0303 123 1113 or 01625 545745