



Department
for Work &
Pensions

Working with representatives

Guidance for DWP staff

September 2014

Contents

- DWP Responsibilities 3
- Who is a representative? 3
- Local liaison..... 4
- Local Authorities 4
- Bogus Callers 5
- Steps to take when deciding whether to disclose information 5
 - 1. Is the enquiry of a general nature or about a specific customer? 5
 - 2. Is the representative who they say they are? 6
 - 3. Is the representative acting with the consent of the customer? 6
 - 4. Should you disclose the information requested? 8
- Representatives reporting changes of circumstances 9
- Requests for written/recorded information..... 10
- Keeping Representatives Informed 10
- Where can I obtain further advice and support on disclosure to representatives?10
 - Role of Line Manager 10

DWP Responsibilities

DWP needs to strike a balance between our legal duty to protect customers' personal information and disclosing information where it is appropriate to do so.

Customers have the right to ask a representative to help them conduct their business with DWP and it is important that DWP balances this with our duty to protect the personal information we hold. This is particularly important for customers with any disabilities or conditions that make it difficult for them to express themselves adequately. Representatives can also be helpful to DWP in helping us to obtain the information that we need.

It is important that we have good working relationships with representatives, whether they are from the advice organisations or are simply family members or friends so that we can give our customers the best possible service.

Sometimes judgements will need to be made, based upon whether it is reasonable in the circumstances to disclose information. Provided that you can demonstrate that you have followed this guidance, you will not be held personally liable for alleged unlawful disclosures. Always seek [advice](#) if you are unsure.

Who is a representative?

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

Remember that:

This guidance is not about official appointees (Attorneys, Deputies), who should be dealt with as if they were themselves the customer.

- 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. Please refer to the Agents, Appointees, Attorneys and Receivers Guide for further guidance on this subject.

Local liaison

Where possible, it is good practice to build good working relationships with local organisations that represent customers. This will enable any difficulties to be resolved more easily. For example by:

- exchanging contact names and numbers to facilitate checking that representatives are who they say they are, to enable representatives to make contact with us, and ensuring that these are kept up-to-date
- ensuring that local organisations are consulted and informed about our organisational changes

Local Authorities

Local Authorities cover a very wide range of business. Some of this business includes working as a representative and helping customers with their benefit claim. Welfare rights unit staff and social workers may undertake this type of work on a regular basis, and this guidance should be followed in disclosing information to them.

This guidance does **not** include releasing information which is covered by data sharing legislation (including the Welfare Reform Act 2012). Please refer to the specific guidance for disclosure of information to Local Authorities including advice about the Apollo List and such areas as:

- Blue Badge parking permits
- Discretionary Housing Payments
- Disability Facility Grants
- Supporting People/Housing Support
- Domiciliary/residential care assessments
- Support for people at risk of homelessness
- Troubled families
- Housing Benefit Cap

Bogus Callers

There is an important difference between a legitimate representative wanting to help speed a claim along or resolve a problem for a customer, and a person seeking to unlawfully obtain a customer's personal information without their knowledge.

Sometimes unscrupulous individuals and organisations pose as bogus officials and representatives to try and obtain personal information about our customers, in particular current addresses, names of household members, telephone numbers, and employers.

Never disclose personal information, that the customer would be expected to know, in any circumstances to any caller.

You should also be careful not to disclose information indirectly, for example by confirming or denying statements made about addresses or income, to bogus callers who may be pretending to be an actual customer or representative.

They may say, for example, 'I have recently moved, and I want to check that you have the right address for me. What address do you hold for me?'

If you are suspicious, follow Bogus Callers guidance which is available on the Departmental Security Intranet Site. All frontline staff should be aware of the provisions of this guidance.

Steps to take when deciding whether to disclose information

It is important to remember that each case must be treated individually. You should not automatically disclose information because an organisation is known to you.

You can disclose information where:

- you have current written signed authority from the customer
- the customer is present to confirm their consent (including at the end of a phone), or
- where implicit consent is established

The following steps should also help you decide whether to disclose information:

1. Is the enquiry of a general nature or about a specific customer?

Enquiries that are not specific to an individual customer can be answered, on the basis that this is only general advice, and will depend on customers' individual

circumstances; for example, 'is JSA payable if a person gets sacked?', or 'can a dependent partner claim DLA?'

2. Is the representative who they say they are?

If the enquiry is specific to an individual customer, you must be satisfied that the caller is who they say they are, for example:

- is the representative known to you?
- can you check with the customer, either in person or by phone?
- can you check by calling back on a known telephone number?

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

3. 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.

Implicit consent can be accepted where the caller:

- knows basic information about the customer, for example, NINo, date of birth, address, **and**
- can quote facts and recent details about the claim, or can quote from our recent correspondence with the customer, **and**
- makes enquiries that you would expect the customer to make if they were able, such as:
 - what stage the claim has reached
 - why a particular decision has been made
 - how benefit is made up
 - whether a particular premium is being paid
 - whether a particular circumstance has been taken into account. This list is not exhaustive but should be helpful to staff as a guideline of what to look for.

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.

Security questions

Where implicit consent is being considered, it is not appropriate to ask the representative other security questions in the same way that you would the customer themselves. These questions about implicit consent take their place.

Remember that a representative will not necessarily know the answer to normally used security questions – they are not relevant to their business – and they potentially involve information that we would not disclose or confirm to a third party.

Using the questions you ask to determine implicit consent, instead of asking the usual security questions, may appear to make it easier for a representative to obtain information than a customer. However, the information that we can disclose to representatives is much more limited than what we might potentially discuss with customers themselves.

Example scenarios where consent can be considered implicit:

"I am a friend/relative/representative of Mr X, date of birth 26.12.1952, national insurance number XXXXXXXXX, and:

- he made a claim for DLA four weeks ago and hasn't heard anything. Can you tell me what is happening?'
- he has had a letter saying that his claim for Incapacity Benefit has been disallowed. Can you tell me why?'
- he has a letter saying that he will be paid £xxxx per week. Can you tell me how this has been calculated?'

In these cases the caller has specific information about the customer's claim and is requesting information that is consistent with the role of a representative. It can, therefore, be assumed that implicit consent exists, and information disclosed.

4. Should you disclose the information requested?

Information that should never be disclosed

- addresses
- dates of birth
- National Insurance numbers (NINos)
- bank details
- telephone numbers
- names of household members
- names of employers, or former employers.

Genuine representatives should not ask for this information. If a person claiming to be acting as a representative asks for this information, this should immediately raise suspicion about whether the caller is genuine. Confirmation of household members or NiNos, for example, are not relevant to a benefit enquiry. If the caller is insistent, or you feel under any pressure, refer the call to your line manager. If you feel that a caller is bogus, end the call and follow the existing Bogus Callers procedures.

Information that can be disclosed

Once you have established that the caller is who they say they are, and that they have the written or implicit consent of the customer, consider the following:

Is the information requested consistent with the role of a representative? For example, information about the progress of a claim, or how a decision has been reached.

If the answer is yes, then information about benefit claims can be disclosed. For example:

- information about the progress of the claim
- how benefit or payment has been calculated
- how a particular payment is made up
- rates of specific benefits in payment
- why a particular benefit, premium or allowance has been allowed or disallowed
- what factors have been taken into account in reaching a decision
- what future action is likely to be taken on the claim

Even when consent has been established, it is important to consider each question asked, and to be vigilant about information given. If you are in any doubt, ask the caller why they want to know that information, and do not disclose information if you are not satisfied with the answer and have reasonable doubts. Ensure the information requested is relevant to the enquiry. Exercise caution before disclosing any information about a customer's finances, such as capital or income. Is the information requested something that the customer would be expected to know - and that a bona fide representative could find out from the customer?

Make a written record in all cases of what was disclosed, to whom, and when.

Representatives reporting changes of circumstances

Details of changes of circumstances may only be taken over the phone from representatives where the customer is present to confirm that they wish the representative to speak on their behalf. The customer should have correctly answered appropriate security questions.

Written authorities and implicit consent only cover the disclosure of information to representatives; they do not authorise representatives to report changes of circumstances on behalf of customers.

Requests for written/recorded information

Requests for copies of information should be made in writing. If a representative provides a written customer authority for us to disclose information from our records, how we deal with it depends on the information requested. The principle of consent depends on the customer being sufficiently informed as to what information they are allowing to be disclosed. There are two scenarios:

- if the request is non-specific, for example requesting “all information” held in respect of a customer or a customer’s claim, then the request must be passed to the Data Protection Officer and treated as a Subject Access Request. A request to disclose “all information” cannot be considered informed because a customer cannot reasonably be expected to know everything that we hold on them.
- if the request is specific, for example requesting details of benefit paid, copies of medical evidence, other evidence upon which decisions have been based in connection with a current benefit claim from an individual or previous claims that have direct relevance, then copies may be provided to the representative concerned. If you have any concerns, contact your Data Protection Officer for advice. A request for specific information can be considered informed because it is clear to the customer what will be sent to their representative, and that information is relevant to their current business with DWP.

Keeping Representatives Informed

Where a representative is helping a customer with a particular piece of business, the representative may ask to be kept informed of progress on the claim, and of decisions made. Where written authority is held, all possible steps should be taken to inform the representative at the same time as the customer is informed. This is particularly important where notifications are computer-generated.

Where can I obtain further advice and support on disclosure to representatives?

If you are unsure whether implicit consent can be established, in the first instance consult your line manager. Do not be pressured into giving information.

Role of Line Manager

Line managers have a responsibility to understand implicit consent and its practical application so that they can support their staff. Line managers must ensure that front line staff are aware of and fully understand this guidance. Consent must be carefully considered each time a representative makes contact on behalf of a customer and

the right questions must be asked to establish consent (both implicit and written authority to disclose). Managers must also provide support and guidance to staff when required to take appropriate decisions about consent when contact by customer representatives.

External advisers, intermediaries and representatives who have queries on this guidance should contact the Operational Stakeholder Team.