

Banking for people who lack capacity to make decisions



England and Wales

bba

The voice of banking
& financial services

How can this leaflet help me?

This leaflet will help if you need to take on the financial and property affairs of someone who lacks the capacity to look after some – or all – of their own financial affairs. It gives guidance on how a bank or building society account can be operated on another person's behalf; and details the various ways in which another person's finances can be managed (for example using an Enduring Power of Attorney or Lasting Power of Attorney).

There is a glossary at the back of this leaflet which will help you to understand some of the terms used in the guide. *Words set in italics can be found in the glossary.*

This guide applies to England and Wales. There is a separate leaflet for Scotland.

Frequently asked questions about managing another person's finances

Who can manage another person's finances?

- **An attorney appointed under a *Lasting Power of Attorney for property and financial affairs (LPA)*** – this applies when a person makes the decision, before they become incapacitated, to appoint somebody they trust (the *attorney*) to look after their finances or property (see p.6).
- **An attorney appointed under an *Enduring Power of Attorney (EPA) (granted before 1 October 2007)*** – this applies in the same circumstances as an LPA; but LPAs replaced EPAs on 1 October 2007, when the Mental Capacity Act 2005 was implemented. However, if you drew up an EPA with a *donor* before this date it can still be used (see p.8).
- **A deputy appointed by the *Court of Protection*** – this applies when someone who lacks capacity has not granted anyone an LPA or EPA with the necessary powers and a decision is required regarding their affairs (see p.10).
- **Someone acting under a court order** – this applies in the same circumstances as a deputy appointment, but relates to a one-off decision about someone's financial affairs. If a series of

decisions are required, the Court may appoint a deputy (see p.10).

- **An appointee of the Department of Work and Pensions (DWP)** – an appointee is appointed by the DWP to act on behalf of a customer who receives state benefits but cannot manage their benefit-related affairs because of mental incapacity or severe physical disability (see p.12).

The above list shows the various ways in which people can be given the authority to make decisions about money matters on behalf of an individual who may lack the capacity to make certain decisions for themselves.

Remember that it is possible to make some of these arrangements when the person in question still has the capacity to make decisions about their financial affairs.

What does a bank or building society require?

A bank or building society needs to check specific documents before they can let someone manage the account of another person. They will require:

- evidence of that person's authority to act in the manner they are seeking to;
- proof of the name and address of the account holder (if not already known to the bank or building society); and
- proof of the name and address of the person who will have legal responsibility for managing the account.

Documents to prove identity include a passport or driving licence for someone's name, and utility bills for their address. Alternatively, an entitlement letter from the DWP confirming that the person is in receipt of a pension, or a letter from an appropriate person (for example, the matron of a care home), may provide the necessary evidence.

All banks and building societies can provide full details of the documents they accept.

What powers does an attorney or deputy have over bank or building society accounts?

Once a Power of Attorney or deputyship has been obtained the appointed person – or people – has the same power to manage the incapacitated person's bank or building society account(s) as the incapacitated person had when they were managing the account themselves.

This is subject to the account's terms and conditions, security procedures and any requirements specified by the *donor* when the arrangement was drawn up. It is important to think about how any specific requirements or management arrangements may affect the running of the account. For example, a donor's specification that both of her children should authorise withdrawals from her accounts would work well for a simple savings product but would not work if telephone or internet transactions needed to be made as they do not allow for dual authorisation.

What to do if you are acting for a person and their mental capacity changes

If you will be acting on someone's behalf through any of the below means you should **tell the bank** if the person's mental capacity changes in a way that may impact upon their ability to manage their own financial affairs.

The bank may require confirmation from a doctor or suitably qualified professional regarding the change of capacity.

Information for joint account holders

If you are the joint account holder and the other joint account holder becomes mentally incapable, you do not automatically have the right to access the account unless you have a Lasting Power of Attorney, Enduring Power of Attorney or an order from the Court of Protection.

Please see the sections below for further information.

Information on Lasting Power of Attorneys (LPA) for Property and Financial Affairs

A *Property and Financial Affairs LPA* enables a person (called the donor) to appoint another person or group of people (called the attorney/s) to make decisions about their finances and property should the donor ever lack the capacity to make these decisions.

An LPA can be used before the donor loses capacity if that is what the donor wants, or the donor can specify that the LPA can only be used at a time in the future when they lack the capacity to make decisions for themselves. Before an LPA can be used in any circumstances it must be registered with the *Office of the Public Guardian (OPG)*.

It is possible to place restrictions on the way an attorney can manage a donor's account and it is also possible to insert some guidance for the attorney. For example, two attorneys may be needed to sell property, but either one could manage a bank account.

It is important that any restrictions, conditions or guidance do not have the effect of making it impossible to operate a bank account. The attorney should be satisfied that the specified conditions are workable and sufficient to allow the account to be operated in the manner intended.

Documents your bank or building society needs to see

Once the LPA has been registered with the Office of the Public Guardian the bank or building society will need to see the following things before the attorney can start managing the donor's financial affairs:

- the signed and completed LPA form, registered with the OPG; and
- proof of the donor's and attorney's names and addresses (if not already known to the bank or building society).

The bank/building society will not accept the LPA unless it:

- is laminated and bears the impressed seal of the OPG on every page; or
- is a paper copy bearing the impressed seal of the OPG on every page; or
- has been certified on every page by a solicitor/notary as being a true copy of the original.

In addition to these documents a bank or building society may need the attorney to complete a registration form with their own personal details.

Information for attorneys appointed under an Enduring Power of Attorney (EPA) before 1 October 2007

The Mental Capacity Act 2005 was implemented on 1 October 2007.

An EPA created before this date – whether it has been registered with the Office of the Public Guardian (OPG) or not – enables a person (called the donor) to hand over to someone they trust (called the attorney) the power to make decisions about their financial and property affairs.

LPAs (see p.6) replaced EPAs when they were introduced on 1 October 2007 but EPAs drawn up before this date can still be used. The donor does not have to create an LPA if they have already created an EPA. The attorney must register the EPA with the OPG when they believe the donor has lost or is losing mental capacity.

EPAs can contain restrictions in just the same way as LPAs (see p.6).

An EPA can be used before the donor loses capacity if that is what the donor wants, or the donor can specify that the EPA can only be used at a time in the future when they lack the capacity to make decisions for themselves.

Documents your bank or building society needs to see

Your bank or building society will need to see the following things before the attorney can start managing the donor's account(s):

- the signed and completed EPA. This may be unregistered (because the donor is still mentally capable) or registered (because the donor has lost mental capacity); and
- proof of the names and addresses of the donor and attorney (if not already known to the bank or building society).

The bank/building society will not accept the registered EPA unless it:

- is laminated and bears the impressed seal of the OPG on every page; or
- is a paper copy bearing the impressed seal of the OPG on every page; or
- has been certified on every page by a solicitor/notary as being a true copy of original.

In addition to these documents the bank or building society may need the attorney to complete a registration form with their own personal details.

Information on court orders and deputy appointments

Court orders and deputy appointments are made (by the Court of Protection) when someone who lacks capacity has not granted anyone an LPA or EPA with the necessary powers and a decision is required regarding their affairs.

Usually a close friend, family member or someone else who can be trusted applies to the Court of Protection for a decision (or decisions) to be made concerning the finances or personal welfare of a person who lacks capacity.

Court orders: cover one-off decisions.

Deputy appointments: the Court of Protection may appoint a deputy (or deputies) to make decisions on behalf of a person who lacks capacity when there are a series of decisions that need/will need to be made.

The court order or deputy appointment will detail what decisions can be made on behalf of the person who lacks capacity. For example, it might say decisions can only be made about that person's pension or mortgage.

It is important that any restrictions or conditions do not have the effect of making it impossible to operate a bank account. It is also imperative that the deputy is completely satisfied that the specified conditions are workable and sufficient to allow the account to be operated in the manner intended.

Documents your bank or building society needs to see

Your bank or building society will need to see:

- an original or certified court order; and
- proof of the names and addresses of the incapacitated person and the deputy appointed by the court (if not already known to the bank or building society).

In addition to these documents the bank or building society may need the deputy to complete a registration form with their own personal details.

Information for Receivers (appointed prior to 1 October 2007)

Prior to 1 October 2007, when the Mental Capacity Act 2005 was implemented, a person appointed to act on behalf of another was called a 'receiver'. After this date, the term became 'deputy' (see above).

A receiver who was appointed by the Court of Protection prior to 1 October 2007 can continue to act under the powers outlined in the original court order, although they will be known officially as deputies not receivers.

Documents your bank or building society needs to see

Your bank or building society will need to see:

- the original or certified copy of the relevant court order; and
- proof of the names and addresses of the incapacitated person and the deputy appointed by the court (if not already known by the bank/building society).

In addition to these documents the bank or building society may need the receiver to complete a registration form with their own personal details.

Information for Appointees

An appointee is a person who is appointed by the Department for Work and Pensions (DWP) to act on behalf of a customer receiving state benefits but unable to manage their benefit-related affairs because of mental incapacity or severe physical disability.

A person who wishes to be an appointee should contact the benefit customer's local DWP office and explain that they want to manage the benefits of the DWP customer because they are no longer capable of doing so themselves.

The DWP will visit or interview the person wishing to be the appointee and will complete the appointee form – BF56. They will also visit the person the appointee wants to act for. The appointee will be asked what bank account they wish the benefits to be paid into. If the person is accepted as the appointee they will be given form BF57 to confirm their appointment.

An appointee can only manage the DWP customer's benefits money. If the appointee wants to manage other funds for the customer, they will need to apply to the Court of Protection to become a deputy.

Some banks set limits on the amount of money a DWP customer can have in their account when their benefits payments are being managed by someone else. The bank should let the appointee know if there is a limit and how much it is when the person becomes an appointee.

Documents your bank or building society needs to see

Your bank or building society will need to see:

- a valid DWP BF57 form; and
- proof of the names and addresses of the incapacitated person and the appointee (if not already known to the bank or building society).

In addition to these documents a bank or building society may need the appointee to complete a registration form with their own personal details.

Useful contacts

Office of the Public Guardian (England and Wales)

For information and forms to make or register a Lasting Power of Attorney or to register an Enduring Power of Attorney visit www.direct.gov.uk or contact:

Customer Services
Office of the Public Guardian
PO Box 15118
Birmingham B16 6GX

Telephone: 0300 4560300
Textphone: 020 7664 7755
Fax number: 0870 739 5780
DX: 744240 Birmingham 79

Email: customerservices@publicguardian.gsi.gov.uk

Department for Work and Pensions

This service gives information and advice for people with disabilities – and their helpers – about benefits. They can tell you how to apply to be an appointee to manage banking for someone who lacks mental capacity. There is a free benefit enquiry line for people with disabilities.

Telephone: 0800 88 22 00
Textphone: 0800 24 33 551 2889

You will also find useful information and guidance on the Department for Work and Pensions website – www.dwp.gov.uk

Her Majesty's Courts Service

For information on applying for a Court of Protection order please contact:

Her Majesty's Court Service
Customer Service Unit
Post point 1.40
1st Floor, 102 Petty France
London SW1H 9AJ

www.hmcourts-service.gov.uk

Telephone: 0845 4568770

Glossary

This glossary will help you to understand some of the terms used in this guide.

Donor: an individual who wishes to give another person – or group of people – the authority to act or make decisions on their behalf.

Attorney: a person – or group of people – appointed to look after the finances or property of another person.

Lasting Power of Attorney (LPA): a legal document that allows a person (the donor) to choose someone that they trust (known as the attorney) to make decisions on their behalf at a time in the future when they either lack the mental capacity or no longer wish to make those decisions themselves. It can only be used after it is registered with the Office of the Public Guardian. There are two different types of LPAs: a Property and Financial Affairs LPA and a Health and Welfare LPA. You can read more here: <http://www.publicguardian.gov.uk/decisions/being-attorney-lpa.htm>

Property and Financial Affairs LPA: A Property and Financial Affairs LPA allows the donor to appoint an attorney to manage their finances and property while they still have capacity to make decisions for themselves.

Enduring Power of Attorney (EPA): a legal process in which a person (the donor) hands over to someone else (the attorney) the power to decide what is done with their financial affairs and property. EPAs were replaced in October 2007 by LPAs but if you made an EPA before this date don't worry because it can still be registered (with the Office of the Public Guardian).

Office of the Public Guardian (OPG): The Office of the Public Guardian (OPG) supports the Public Guardian in registering EPAs and LPAs and supervising Court of Protection appointed deputies. Read more at www.publicguardian.gov.uk

Deputy: a person – or group of people – appointed by the Court of Protection to manage the affairs of a person who has lost capacity to make decisions for themselves. Deputies are appointed when the individual in question has not granted anyone an LPA or EPA with the necessary powers.

Court of Protection: The Court of Protection makes decisions and appoints deputies to make decisions in the best interests of those who lack capacity. The Court has powers to, for example, decide whether a person has capacity to make a particular decision for themselves; and appoint deputies to make decisions for people who need help.

Appointee: a person appointed by the DWP to act on behalf of a customer receiving state benefits but unable to manage their benefit-related affairs due to mental incapacity or severe physical disability.

Department of Work and Pensions (DWP): The DWP is responsible for welfare and pension policy. It is the biggest public service delivery department in the UK and serves over 20 million customers. Read more at www.dwp.gov.uk.

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www.bba.org.uk