

Banking for people who lack capacity to make decisions



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British Bankers' Association

Introduction

This document will help if a person is managing the financial and property affairs of someone who may lack capacity to look after some or all aspects of their own financial affairs. It gives guidance on how a bank account can be opened and money managed on their behalf. It applies to England and Wales

There are a number of ways in which someone 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 or where they want someone to make such decisions even when they have the capacity. Depending on how it is done, the person acting on someone else's behalf could be:

- an attorney appointed under an Enduring Power of Attorney or Lasting Power of Attorney
- a deputy appointed by the Court of Protection
- someone acting under a court order
- an appointee of the Department of Work and Pensions (DWP).

The information provided in this document explains the differences between managing a bank account as an attorney, a receiver, a deputy or an appointee.

The Mental Capacity Act 2005

Most of the Act became effective from 1st October 2007 in England and Wales. It affects people over the age of 16 (and in

some cases, people under 16) who lack the capacity to make decisions in some, or all aspects of their life, including managing their money.

Code of Practice

In addition to the Act there is a Code of Practice which is a legal document providing guidance and information for those who owe a duty of care to someone who lacks capacity. The Code incorporates examples of good practice and attorneys and deputies must apply the principles described in the Code.

http://www.opsi.gov.uk/acts/en2005/ukpga_en_20050009_en_cop.pdf

Lasting Powers of Attorney

The Act replaces the current form of Enduring Powers of Attorney (EPA) and introduces two new forms of Lasting Powers of Attorney (LPA). An LPA can be used to appoint someone or a number of people to make decisions about personal welfare and healthcare (Personal Welfare LPA) as well as their financial affairs (property and affairs LPA), should the person making the LPA lose capacity. Property and Affairs LPAs are similar to EPAs but there are some important differences. EPAs made before 1st October 2007 will continue to be valid (see below). This document is only concerned with property and affairs LPAs.

Court Appointed Deputies

The Act also creates a new Court of Protection which will be able to appoint

'deputies' to make decisions on behalf of someone who lacks capacity. Deputies will replace receivers although existing receivers retain their powers after 1st October 2007 and will be treated as deputies. A new Public Guardian has been appointed and the Public Guardianship Office has been replaced by the Office of the Public Guardian (OPG).

What does a bank or building society require?

Before a bank or building society can let someone manage the account of another person, the bank must have proof of the name and address of the account holder (if not already known to the bank or building society) and of the person who will have legal responsibility for managing the account and must see evidence of that person's authority to control the account holder's money. The section entitled "Documentation" helps explain the documents required to prove identity.

Attorney appointed under a Property and Affairs Lasting Power of Attorney (LPA)

What is it?

Under the Mental Capacity Act a Property and Affairs LPA enables a person (called the donor) to appoint someone (called the attorney) or a number of people to make decisions about their finances and property should the donor ever lack the capacity to make these decisions themselves. An LPA can be used before the donor loses

capacity unless the document specifies otherwise. Before an LPA can be used in any circumstances it must be registered with the Office of the Public Guardian (OPG).

How will the Mental Capacity Act affect it?

LPAs can only be made from 1st October 2007 onwards.

How does it work?

The donor would have completed an LPA form whilst they had capacity to appoint someone to make decisions on their behalf.

If the attorney(s) named on the LPA has agreed to act, they or the donor must register it with the Office of the Public Guardian before the attorney(s) can act. The Bank/Building Society will not accept the LPA unless it is marked as registered on every page of the document.

Following registration the attorney can then manage the donor's financial affairs in line with the powers given in the LPA

Are there restrictions on the way someone will be allowed to manage another person's account?

It is possible to place restrictions or make conditions on the way someone can manage a donor's account as attorney, it is also possible to insert some guidance for the attorney. For example two attorneys may be needed to sell property but either 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.

Attorney appointed under an Enduring Power of Attorney (EPA) before October 2007

What is it?

An EPA created prior to October 2007 – whether it has been registered or not – enables a person (called the donor) to hand over to someone else, the power to decide what is done with their financial and property affairs. The person appointed to act on their behalf is known as the ‘attorney’.

The attorney could use the power while the donor has capacity or the donor could make it clear that the EPA can only be used if they do not have the capacity to manage their affairs in the future. When the attorney considers the donor lacks or is losing capacity the EPA must be registered with the Office of the Public Guardian

How will the Mental Capacity Act affect it?

An EPA will still be valid after October 2007, even if it is not registered, unless the donor decides to cancel it and/or replace it with an LPA instead. An EPA can be registered after 1st October 2007 but no new EPAs will be able to be created after this date.

How does it work?

The donor would have completed an EPA form when they still had the mental capacity to do so. The EPA says who can manage the donor’s banking and other affairs; it may say that the attorney can only act if the donor has lost the capacity to manage their own affairs.

The attorneys named on the EPA must register it with the Office of the Public Guardian when they believe the donor has lost or is losing mental capacity.

Are there restrictions on the way someone will be allowed to manage another person’s account? The EPA will say on it whether there are restrictions on the way the attorney can manage someone else’s account. For example two attorneys may be needed to sell property but either could manage a bank account.

Court Order/Deputy appointed by Court of Protection

What is it?

Under the Mental Capacity Act the Court of Protection will be able to make an order concerning a single decision in cases where a one-off decision is required regarding someone who lacks capacity. The Court can also appoint a deputy or deputies where it is satisfied a series of decisions need to be made for a person who lacks capacity.

How will the Mental Capacity Act affect it when the Act comes into force in April 2007?

The Court of Protection will make orders and appoint deputies from October 2007 onwards.

How does it work?

This process applies when someone does not have the capacity to make a specific decision or requires someone to make on-going decisions on their behalf but has not made an EPA or LPA with the necessary powers.

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

Once the court gives a direction an order will be issued authorising that either a single specific decision can be made or authorising the appointment of a deputy to make decisions on an on-going basis.

Are there restrictions on the way someone will be allowed to manage another person's account?

The court order will detail the decisions that can be made on behalf of the other person. For example, it might say that the person acting on behalf of someone can only make decisions about the person's pension or mortgage.

A deputyship order is intended to enable decision-making on an ongoing basis but may be limited in scope and duration.

Receiver (appointed prior to October 2007)

What is it?

If a person had lost capacity and had not made an EPA then an application would have been made to the Court of Protection on their behalf to appoint somebody to manage their financial affairs. This person was known as a receiver and they manage and administer the finances of the person lacking capacity.

Receivers can continue to act under the same powers given in the original Court order after 1st October 2007.

How will the Mental Capacity Act affect it?

If someone is a receiver for a person who lacks capacity the receiver will retain their powers after 1st October 2007 but will be treated as a deputy appointed by the Court of Protection. The OPG will contact all current receivers so that the necessary administration arrangements can be made.

How does it work?

This is for when someone was mentally incapacitated but had no valid EPA .

A close friend or family member (or someone else who can be trusted) would have applied to the Court of Protection to act as a receiver for a person who lacked capacity to manage their bank account and money.

When the Court of Protection agreed that the person could be a receiver, they gave the person a 'receivership order' and the receiver is able to manage the banking of the person named in the order.

Are there restrictions on the way someone will be allowed to manage another person's account?

The receivership order will say on it what authority someone has as the receiver. For example, it might say that the receiver can only manage the pension or mortgage.

A receivership order does not have a time limit. There is another type of order that lets a person manage someone else's account – a 'short order'. It does not appoint a receiver but authorises a named person to do specific things.

Appointee

What is it?

An appointee is the person who is appointed by the Secretary of State of the DWP to act on behalf of a benefit customer who is unable to manage their benefit affairs because of mental incapacity (or severe physical disability). It is a legal appointment under regulation 33 of the Social Security Claims and Payments Regulations.

How will the Mental Capacity Act affect it?

The Act will not affect the powers of appointees to manage benefits nor does it

require the DWP to change its current appointment process – see below

How does it work?

The prospective appointee should contact the benefit customer's local DWP office and tell them that they want to manage the benefits of the DWP customer because they are incapable or no longer capable of doing so themselves.

The DWP will visit or interview the person wishing to be the appointee and complete the appointee form – BF56. They will also visit the person the appointee wants to act for. The appointee will be asked about the 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.

Are there restrictions on the way someone will be allowed to manage another person's account?

An appointee can only manage the DWP customer's benefits money. If the appointee wants to manage other money and banking 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.

Documentation

What documents can the person use to prove to the bank/building society that they are allowed to manage another person's account?

- The registered EPA or LPA or a certified copy
- The appropriate court order
- For appointees; form BF57.

An unregistered EPA may be used to manage another person's account where the customer still has capacity to make decisions and has authorised its use, but the bank may also require written approval from the customer in this situation.

What documentation is needed to prove the identity and address of an attorney, deputy or appointee and of the person they are acting for?

Unless already previously identified to the bank or building society. The usual documents such as a passport or driving licence for someone's name, and utility bills for their address. All banks can provide full details of the documents they accept.

An entitlement letter from the DWP confirming that the person is in receipt of a pension, could provide evidence of identity. If this is not available, or is inappropriate, a letter from an appropriate person, for example, the matron of a care home, may provide the necessary evidence.

Carrying out transactions in bank or building society branches

A bank or building society may require a person who is making decisions on behalf of someone else to provide identification to prove who they are and to show that they have the authority to manage that person's account

What additional information will someone need to tell the bank after lodging the documents?

The attorney should advise the bank of any change in the mental capacity of the person they are acting for which 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.

More information

Office of the Public Guardian (England and Wales)

For information and forms to apply to the Court of Protection to be a Deputy or to get the forms to make or register a Lasting Power of Attorney visit their website at:

www.publicguardian.gov.uk.

They can also be contacted at:

Customer Services
Office of the Public Guardian
Archway Tower
2 Junction Road
London N19 5SZ

Telephone: 0845 330 2900

Textphone: 020 7664 7755

Fax number: 020 7664 7705

DX: 141150 Archway 2

Email: customerservices@publicguardian.gsi.gov.uk

Office of the Public Guardian (Scotland)

The information in this leaflet does not apply to Scotland. If you live in Scotland and you have questions about managing banking on behalf of someone who lacks mental capacity, you should contact the Office of the Public Guardian at:

Hadrian House
Callendar Business Park
Callendar Road
Falkirk FK1 1XR

Telephone: 01324 678 300

Fax number: 01324 678 301

www.publicguardian-scotland.gov.uk

Benefit Enquiry Line

For advice about benefits for people with disabilities and their helpers. They can tell you how to apply to be an appointee to manage banking for someone who lacks mental capacity.

Telephone: 0800 88 22 00

Textphone: 0800 24 33 551

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