

Guidance for people wanting to manage a bank account for someone else



Guidance for consumers in England and Wales



How can this leaflet help?

This guidance explains how a person can manage a bank or building society account on another person's behalf. It describes the circumstances in which this is possible and how it can be done. It also sets out the documents you will need to show the bank or building society to be able to manage the account.

This guidance applies to England and Wales. A separate leaflet for Scotland is available on our website at www.bba.org.uk/publications/entry/banking-for-people-who-lack-capacity-to-make-decisions-scotland/leaflets/

Introduction

Banks and building societies understand that it is sometimes necessary for a customer's account to be handled by another person. The ways this can be done are set out in this guidance.

If you are given the authority to handle another person's account you normally have the same power to manage the account as the account holder, depending on the account's terms and conditions, security procedures and any requirements specified by the account holder (called the donor in the case of a power of attorney) when the arrangement was drawn up.

It is important for the account holder to think about how any specific requirements or arrangements may affect the running of their account. For example, an account holder specifying that both of their children should authorise withdrawals from their account would work well for a simple savings account but would not work if transactions needed to be carried out by phone or online.

Banks and building societies will always need to check specific documents before they can let you manage another person's account. They will need:

- proof of your name and address;
- evidence of your authority to act for the account holder; and
- proof of the account holder's name and address (if the bank or building society has not already had this).

The documents you need to provide to prove your name and address include the following.

- Proof of your name – your passport or driving licence.
- Proof of your address – a recent gas, electricity, water, landline phone or council tax bill, a letter from the DWP or HM Revenue & Customs, or a letter from an appropriate person (for example, the matron of a care home).

The bank or building society can give you full details of the documents they accept.

Managing someone else's account when they have mental capacity

A person has mental capacity if they have the ability to understand, remember and act upon appropriate information and so can reliably make decisions for themselves.

An account holder who has mental capacity can authorise someone else to have access to their account. This may be for convenience or because of the account holder's long periods of travel or physical disabilities.

If you have the right to handle the account of someone who has mental capacity, you have a 'third-party mandate'. A third-party mandate is not appropriate if the account holder is losing the ability to make relevant decisions themselves.

For more information about getting a third-party mandate to manage the account of someone who has mental capacity, you and the account holder should speak to the bank or building society.

Another way of banking on behalf of someone who has mental capacity is by having what is called an ordinary power of attorney. This enables you to make financial decisions on behalf of the account holder (known as the donor). However, an ordinary power of attorney stops being legal authority if the donor loses mental capacity.

There is a standard form of words to grant an ordinary power of attorney. For more information, contact a solicitor or an experienced adviser (for example, a Citizens Advice Bureau).

Some Enduring and Lasting Powers of Attorney (see the following page) can also be used when the account holder has mental capacity.

Operating someone else's bank account when they do not have mental capacity

A person does not have mental capacity if they cannot understand, remember and act upon appropriate information and so cannot reliably make decisions for themselves.

Power of attorney

Property and financial affairs lasting power of attorney

A property and financial affairs lasting power of attorney (LPA) enables a person (called the donor) to appoint another person (the attorney) or people to make decisions about their finances and property if they become unable to make these decisions and, in some cases, while the donor still has mental capacity.

An LPA must be made by the donor. They can choose to give you, the attorney, authority immediately or only when the donor loses the ability to make decisions. The donor can place restrictions on how you can manage the account, and can also include guidance for you in the LPA. You will need to make sure that any restrictions, conditions or guidance do not prevent you from being able to manage the account.

Before you can use your authority, the LPA must be registered with the Office of the Public Guardian (OPG). Having the LPA registered does not mean that the donor has lost their mental capacity.

Once the LPA has been registered with the OPG, the bank or building society will need to see the following things before you can start managing the donor's financial affairs:

- The filled-in and signed LPA form, registered with the OPG.
- Proof of your and the donor's names and addresses (if the bank or building society does not already have them).

The LPA form you give to the bank or building society must be:

- the original document or a copy which the OPG has stamped every page of; or
- signed on every page by the donor, a solicitor or a notary to confirm that it is a true copy of the original LPA.

You may also need to fill in a registration form.

For more information about making an LPA, contact a solicitor or an experienced adviser (for example, a Citizens Advice Bureau) or see the websites at www.adviceguide.org.uk/england.htm and www.gov.uk/.

Enduring power of attorney

An enduring power of attorney (EPA) is when a person makes a decision, before they become incapacitated, to appoint somebody they trust (the attorney), to look after their finances or property. EPAs can no longer be made as they were replaced by property and financial affairs lasting powers of attorney (LPAs) under the Mental Capacity Act 2005. However, if there was an EPA in place before 1 October 2007, it can still apply.

If the donor has mental capacity, you can use the EPA without it having to be registered. However, if you believe the donor has lost or is losing their mental capacity, you can only

operate the EPA once it has been registered with the OPG, or if it was registered with the Court of Protection before 1st October 2007.

Your powers will be restricted while your registration is being processed.

Once the EPA is registered you will need to contact the donor's bank or building society so that they can set up appropriate arrangements to let you manage the account. If you wish you can do this while the donor still has mental capacity. The bank or building society will need to see the following things before you can start managing the donor's account.

- The filled-in and signed EPA. This can be unregistered if the donor still has mental capacity. If the donor has lost mental capacity, it must be registered.
- Proof of your and the donor's names and addresses (if the bank or building society does not already have them).

The EPA you give to the bank or building society must be:

- the original document or a copy which the OPG has stamped every page of; or
- signed on every page by the donor, a solicitor or a notary to confirm that it is a true copy of the original LPA.

You may also need to fill in a registration form.

Court of Protection – court order or deputyship appointment

The Court of Protection (in England and Wales) protects the rights of people who do not have mental capacity. When a person who does not have mental capacity has not made, or is not capable of making, a power of attorney, the Court of Protection can decide who can handle that person's affairs.

Usually a close friend, family member or someone else who can be trusted applies to the Court of Protection for a court order to appoint a 'deputy appointment'. The court order will set out what decisions the deputy can make on behalf of the person who does not have mental capacity (for example, it might say that decisions can only be made about that person's pension or mortgage).

If you are appointed as a deputy for a person who does not have mental capacity, you will need to contact their bank or building society so that they can set up appropriate arrangements. The bank or building society will need to see the following things before they will give you access to the account.

- The court order or a copy of it.
- Proof of your name and address and the name and address of the account holder (if the bank or building society does not already have them).

You may also need to fill in a registration form.

For more information about the Court of Protection, see the websites at www.adviceguide.org.uk/england.htm and www.gov.uk/.

Department for Work and Pensions appointee

The Department for Work and Pensions (DWP) can appoint someone (an appointee) to act on behalf of a person receiving state benefits who cannot manage their benefit-related affairs because they have a physical disability or do not have mental capacity.

If you want to be an appointee for someone else you should contact that person's local DWP office and explain that the person wants you to manage their benefits because they cannot do so themselves.

The DWP will visit or interview you and will fill in an appointee form (form BF56). They will also visit the person you would act for. If you are accepted as the appointee, you will be given form BF57 to confirm their appointment.

Becoming an appointee only allows you to manage the other person's benefit payments. If you want to manage other finances you will need to apply to the Court of Protection to become a deputy.

When a person's benefit payments are being managed by someone else, some banks set limits on the amount of money that person can have in their account. When you become an appointee, the bank should let you know if there is a limit and how much it is.

You will need to contact the bank or building society which holds the account the benefits are being paid into. The bank or building society will need to see the following things before they will give you access to the account.

- The BF57 form you got from the DWP.

- Proof of your name and address and the name and address of the person the benefit payments are for (if the bank or building society does not already have them).

You may also need to fill in a registration form.

For more information about the Court of Protection, see the websites at www.adviceguide.org.uk/england.htm and www.gov.uk/.

Local authority 'suitable person' for managing direct payments

Local authorities can pay direct payments so people who need health or social care can arrange and pay for that care themselves.

A local authority may allow a 'suitable person' to manage a direct payment paid for another person's care. This usually happens if the person the direct payment is for cannot manage their care because they lack mental capacity.

The local authority can decide who should be the suitable person. This could be an attorney, deputy, DWP appointee or other person, such as a carer. The suitable person will be the only person who can have access to and manage the direct payment. If an attorney, deputy or DWP appointee is not appointed as the suitable person, they cannot get access to and manage the direct payment.

If the local authority authorises you to be the suitable person, you will need to make arrangements for the direct payment to be paid into a bank or building society account. The account should be held in your name but identified that you are holding it on behalf of the person the payments are for (for example, 'Joan Smith on behalf of Edward Smith').

For more information about becoming a 'suitable person', speak to your local authority or see the websites at www.adviceguide.org.uk/england.htm and www.gov.uk/.

Dealing with a joint bank account

A joint account allows two people to use an account either separately or together. Depending on the terms and conditions of the joint account, another person may be given access to a joint account on behalf of one of the account holders.

If one joint account holder loses mental capacity, banks and building societies can decide whether or not to temporarily restrict the use of the account to essential transactions only (for example, living expenses and medical or residential-care bills) until a deputy has been appointed or a power of attorney registered.

If a person has a joint account with someone who is losing mental capacity, they should talk to their bank or building society.

Attorneys acting on behalf of a joint account holder

If one joint account holder loses capacity to operate their account and a registered enduring or lasting power of attorney is in place, then the bank will allow the attorney and the account holder (with capacity) to operate the account independently of each other, unless the account holder (with capacity) objects. In such cases the bank will then usually only allow the account to continue to operate on a 'both-to-sign' basis.

Although the joint account holder with capacity will have been notified when the power of attorney was first registered with the bank, it is best practice for the bank to re-notify the customer at the point when the power of attorney is activated.

This is not a legal document or code of practice. It is for guidance only. The guidance applies in England and Wales.

Useful contacts

Office of the Public Guardian (England and Wales)

Website: <http://www.justice.gov.uk/about/opg>

Telephone: 0300 456 0300

Department for Work and Pensions

Website: <http://www.dwp.gov.uk/>

Telephone: 0800 88 22 00

Her Majesty's Courts Service

Website: www.hmcourts-service.gov.uk

Telephone: 0845 4568770

The Law Society (England and Wales)

Website: www.lawsociety.org.uk/findasolicitor

Telephone: 0207 242 1222

Solicitors for the Elderly

Website: <http://www.solicitorsfortheelderly.com/>

Telephone: 0844 567 6173

Age UK

Website: <http://www.ageuk.org.uk/>

Telephone: 0800 169 6565

Alzheimer's Society

Website: <http://www.alzheimers.org.uk/>

Telephone: 020 7423 3500