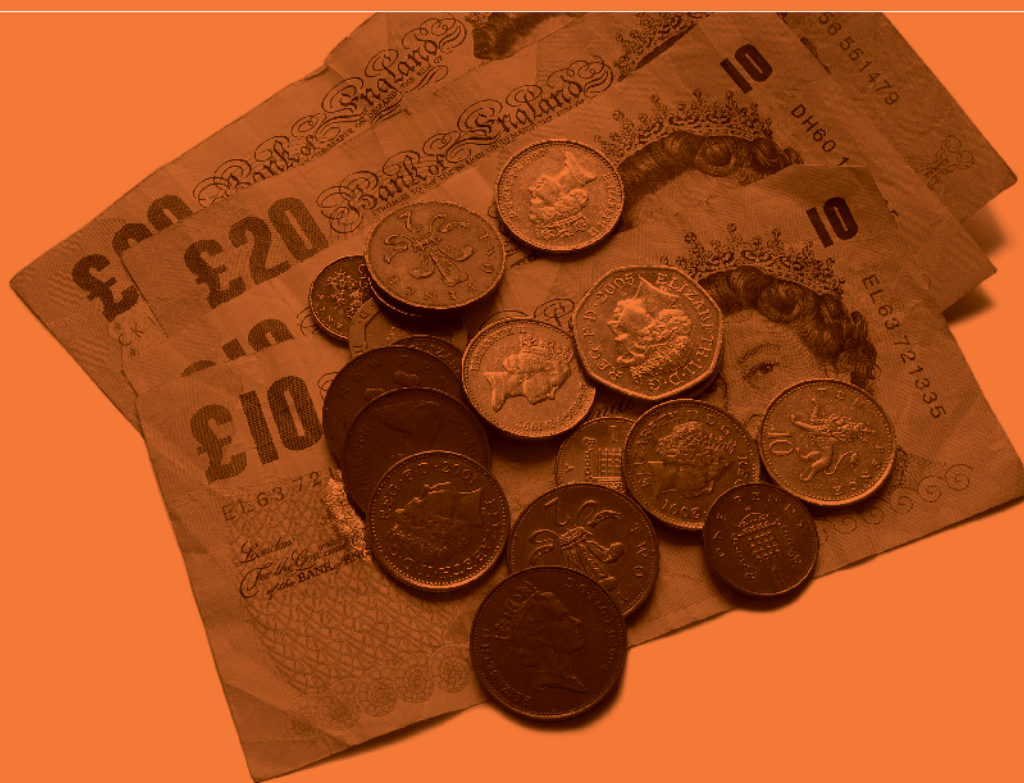


Banking on good decisions

**How can the Mental Capacity Act
help you with your bank, building
society or post office account?**



Banking on good decisions

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Banking on good decisions

Introduction

This guidance explains how a new law called the Mental Capacity Act 2005 can help people with mental health problems deal with their money when they go into banks, building societies and post offices.

The Mental Health Foundation has also produced a short summary of this guidance and a version of the summary is available in Easier Read.

Copies of the Summary and Easier Read version can be downloaded at www.mentalhealth.org.uk/publications

Banking on good decisions

Note on language

Banking on good decisions

Note on language

Mental health problems

This guidance uses the term 'people with mental health problems'. This is used because the term 'mental health problems' is commonly understood to include all forms of mental distress. We believe that this is the most inclusive term to explain the relationship with mental capacity which can be affected by mental health problems. 'Mental capacity' means the ability to make a decision for oneself. However we recognise that some people may prefer other terms and we would stress that we do not wish to cause any offence by using the term 'mental health problems'.

Banks, building societies and post offices

The information in this guidance applies if you are customer of a bank, building society or post office. Sometimes the guidance refers only to situations in banks. This is to keep the information simple – in all these situations the same would apply if you are a customer of a building society or post office.

Banking on good decisions

Who is this guidance for?

Banking on good decisions

Who is this guidance for?

This guidance is for people with mental health problems who have a bank, building society or post office account, or wish to open one.

Other people who may find it helpful include:

- = Family carers and friends
- = Other unpaid carers
- = Advocates and other supporters
- = Mental health professionals and other staff
- = People who have been appointed to help someone with mental health problems to manage their money

Banking on good decisions

Why is this information important?

Banking on good decisions

Why is this information important?

The Mental Capacity Act came into force in 2007. Mental capacity means the ability to make a decision for oneself. This law supports people to make their own decisions. It also has safeguards if someone has to make a decision on behalf of a person who lacks capacity (if for example, they have an illness or disability that affects their ability to make a decision for themselves). People might lack capacity at times because of a mental health problem which results in a crisis and becoming unwell. Banks, building societies and post offices will have to follow what the law says about helping and protecting their customers who may lack mental capacity when customers want to deal with their money in person, or if someone does it on their behalf. This guidance explains how the Mental Capacity Act applies in these situations.

1.1

**Having an account with
a bank, building society,
or at the post office**

Anybody who has money, or receives money in the form of wages, salary, welfare benefits, or from other sources, needs to be able to keep the money safe but also have access to it. People can do this by putting the money in a bank or building society and there are lots of different types of accounts to choose from including a basic bank account. Some people prefer to have a Post Office Card Account which is specially for people who only receive welfare benefits or state pensions.

Many people do their banking using cash points, over the internet, or by telephone. But for lots of reasons many people also prefer to open an account, put money into their account (or take money out), by going in person into a bank, building society or post office.

1.2

Mental health and making decisions about your money

If you have mental health problems you should not be discriminated against as a customer of a bank, building society, or post office. Discrimination means getting a worse service or being treated less favourably because of your disability, illness or problem. Staff working in banks, building societies and post offices are trained in good customer service.

If you believe that you are discriminated against because of your mental health problems it may count as discrimination under the Disability Discrimination Act, which means that the bank, building society or post office may be breaking the law. To find out more about the Disability Discrimination Act contact the Equality & Human Rights Commission at www.equalityhumanrights.com

However some people who have mental health problems have had difficulties when they go into banks. These include having difficulties getting information about how to open an account. People have also experienced difficulties in carrying out transactions on their accounts when they go into a bank, building society or post office because:

- = Bank staff sometimes think that the person is unable to manage their account when they can
- = Sometimes bank staff may think the person is able to manage their account when in actual fact this may not be the case because the person is unwell but not showing it
- = The person may have given their permission for someone else to manage their account on their behalf and bank staff are not sure from who they should be taking instructions from.

1.2

Mental health and making decisions about your money

continued

People may experience similar difficulties when asking for other services from a bank or building society, such as getting a loan. Difficulties such as these may arise because of genuine misunderstandings, confusion or because of communication difficulties.

Staff working in banks will usually assume if you are a customer who comes into the bank you are able to make decisions about your money. Where necessary they should give you clear and appropriate information to make decisions about your money.

But on occasions staff may have reasons for believing that a customer is not able to make a decision about their money because the customer seems very unwell or confused, even after being given all the necessary information. The Mental Capacity Act (MCA) can help both customers and bank staff deal with these situations. Mental capacity means the ability to make a decision for oneself. The MCA can also help in situations where customers need someone one to help deal with their money because they may lack mental capacity to make certain decisions.

If a bank (or building society or post office) believes for certain that as a customer you do not have mental capacity to make a decision about your money they may be reluctant to serve you. The bank could have to explain why they did this. If they do let you make a decision, or let someone on your behalf to make that decision, the bank could also have to explain why they did this.

2.1

What is the Mental Capacity Act?

The Mental Capacity Act (MCA) is a new law that came into force in 2007 in England and Wales. Mental capacity means the ability to make a decision for oneself.

The MCA supports people to make their own decisions and gives legal protection if someone has to make a decision on their behalf because the person lacks the mental capacity to do so themselves because of an illness, injury or disability. These could include mental health problems, because if someone is in crisis and very unwell or very distressed they may not be able to make certain decisions.

The MCA applies to anyone over the age of 16 and covers nearly all decisions whether they are small day to day ones or more major ones involving decisions about someone's healthcare or money (including benefits and savings), for example. The Act emphasises that mental capacity means being able to make a particular decision at a particular time. Nobody should assume that because a person lacks capacity to make one decision they lack the capacity to make other decisions.

The MCA is accompanied by a Code of Practice. The Code provides very important guidance explaining how the MCA operates at a practical, day to day level. You can find the Code and more information about the MCA at www.publicguardian.gov.uk

2.2

When might the Mental Capacity Act apply when you go into a bank, building society, or post office?

- = When you want to open an account for the first time
- = When you want to pay money into your account or someone else's account over the counter
- = When you want to withdraw money over the counter
- = When you want to talk about, or apply for, other services e.g. getting a loan
- = When you want to talk about or make arrangements for someone else to have access to your account
- = When someone else you have given permission wants to carry out transactions on your account because you do not have the mental capacity to do so yourself.

2.3

How does the MCA support you to make your own financial decisions?

The MCA has five principles. The principles must be applied in any situation involving mental capacity that is covered by the Act. These include situations involving financial decision-making. The principles are shown in the box below.

Mental Capacity Act principles

1. Assume mental capacity – every adult has the right to make his or her own decisions unless it can be shown they are unable to make a particular decision.
2. People should be supported as much as possible to make their own decisions before anyone concludes they cannot make a decision.
3. People have the right to make a decision that may seem unwise or strange to other people, and should not be treated as lacking capacity for that reason.
4. Anything done for, or decided on behalf of a person who lacks capacity must be done in their best interests.
5. Anything done for, or on behalf of a person without capacity should be the option that least restricts that person's basic rights and freedoms – but it must still be in their best interests.

2.3

How does the MCA support you to make your own financial decisions?

continued

The first three principles are particularly important in supporting you to make a decision about your money in a bank, building society or post office. These principles mean:

- = Staff working in banks, building societies and post offices always start off by assuming you have the capacity to make a decision about your money
- = Making sure you have all the relevant information needed to make the decision – you can ask bank staff to help you with this
- = Making sure the information is explained or given to you in a way that you can understand – you can ask bank staff to help you with this. They should take into account any reading or hearing difficulties you may have, or speech difficulties if you need to talk to the staff.

You may also want to get someone you trust to help you to understand information or make a decision. For example, a relative, friend or advocate.

2.4

What happens if I have difficulty making a decision?

Sometimes you may have difficulties making a decision about your money because of your mental health even if you have received information, help and support. This might be because you are in crisis and your mental health problems are making you feel unwell, distressed or confused. It might be because medication you are taking is making you feel unwell, confused or drowsy.

If you are in this situation then try and delay making the decision. Perhaps the decision can wait until you are feeling better. If you take medication and it makes you feel drowsy or confused soon after taking it then this may not be a good time to make a decision about your money. If you are in a bank for example and you start feeling unwell you might decide it is better to go home and come back later.

2.4

What happens if I have difficulty making a decision?

continued

Example:

Betty is 59 and lives alone though she is well known in her local area. She writes poetry and is a sculptor and sometimes has local exhibitions. Sometimes she gets very depressed and withdrawn and takes medication for this, but at other times likes to be out and about, dressing quite flamboyantly and singing loudly in the street. Betty has a strong accent which often makes it difficult to understand what she says.

She is reliant upon welfare benefits which she is very careful with and keeps in a post office card account. Over the years she has managed to save up some money. Betty has decided to buy a laptop to help with her poetry even though she has never used one before. She goes into her local post office and asks to withdraw enough money to buy a laptop though she is not sure how much this will be. At first the person working on the counter does not understand what she says but she gets a colleague who knows Betty well. Although staff know this will involve withdrawing a lot more money than Betty normally does, the staff know her and assume she has capacity, because she is always careful with her money. They help her make the decision by talking to her about roughly how much the laptop is likely to cost. Although one of the staff thinks that it is an eccentric decision they know that she has capacity to make the decision and Betty withdraws enough money to buy the laptop.

2.4

What happens if I have difficulty making a decision?

continued

If you have to make a decision but for the reasons described you are not feeling well, and even with help or support you are still having difficulties, then you may lack the mental capacity to make the decision. However bank staff or anyone you are with must not assume you lack the capacity to make the decision unless they have clear, genuine doubts. These should only occur if they have concerns that you are not well and unable to make decisions.

The MCA explains how you and other people can find out if you have mental capacity to make a decision. This can be referred to as assessing mental capacity.

2.5

How is mental capacity assessed?

The Mental Capacity Act contains a simple procedure that must be used to find out about a person's capacity to make a decision. It does not require any forms to be filled in, or a professional to do it. Usually the person who finds out about your capacity is the person who needs the decision to be made. If it is a medical decision, this is likely to be a doctor. If it is a financial decision in a bank, building society or post office it is likely to be the member of staff serving you.

The Code of Practice gives more information about what the Act says about assessing mental capacity.

Bank staff will not normally assess your mental capacity because they will assume you can make decisions for yourself. However if they have concerns that you are having difficulty making decisions because you seem unwell, distressed or confused they may be reluctant to carry out the transaction you are asking them to do. This is because they want to be sure that you understand the decision and that it represents your wishes. They may ask for more information from you or if there is anyone else who can help you.

If the bank staff don't carry out the transaction or want to delay it because they are concerned that you may not have the mental capacity to make the decision then they should base this on an assessment of your capacity according to the MCA.

2.5

How is mental capacity assessed?

continued

If you are worried that staff in a bank, building society or post office may not serve you because they think you lack capacity you could try doing the assessment on yourself, or ask a relative or friend to go through it with you.

The procedure for finding out about mental capacity involves two stages.

Firstly, having mental capacity to make a decision depends upon whether you have an illness, injury or disability that affects your ability to make the particular decision. This could be due to:

- = A mental health problem
- = A learning disability
- = Dementia
- = A stroke or brain injury
- = Confusion, drowsiness or unconsciousness because of an illness or the treatment for it
- = The effects of alcohol or substance misuse.

Just because you may have one of these difficulties does not mean that you lack mental capacity.

Secondly, having mental capacity to make a decision depends upon whether you can:

- = Understand the information relevant to the decision, and the consequences of making (or not making) the decision – however it's very important that the information is given to you in an appropriate way to help you understand it
- = Retain the information to make the decision
- = Use or weigh up that information as part of the decision
- = Communicate your decision.

2.5

How is mental capacity assessed?

continued

According to the Act, if you cannot do one of these things because of having an illness, injury or disability, you will almost certainly lack capacity to make the particular decision. This is likely to occur when you are in crisis because of your mental health problems and you are very unwell, distressed or confused.

The MCA also says that a person must not decide that you lack capacity solely because of your age (as long as you are 16 or over), your appearance, your behaviour, or your condition (meaning disability or illness).

If someone is trying to find out about your mental capacity it may be very helpful to have a friend, relative, advocate or someone else you trust to support you. You may find it easier to make the decision by talking with someone else.

It is important to remember that just because you might be unwell and lack the capacity to make some decisions, for example about medical treatment, it does not necessarily mean you lack the capacity to make other decisions, such as about money. Your capacity to make a financial decision would have to be assessed separately.

How bank staff find out this information about you may vary. If you are very confused or unwell they may be fairly sure that you lack capacity but they should still check this out with you. Staff might ask you questions. If you are standing at the counter and there are other people around you might want to ask to go somewhere more private. However bank staff may be reluctant to assess mental capacity and may ask you for information from someone who they see as more qualified to do this, such as a doctor.

2.5

How is mental capacity assessed?

continued

If bank staff do not carry out or want to delay the transaction you have asked for they will need to be able to show how they have come to a reasonable belief about your mental capacity according to the assessment process just described. Similarly, if you are very unwell and lack the capacity to make a decision but bank staff do not realise this and carry out a transaction they may also have to show why they did this. This could provide important protection for someone who is unwell and withdraws a lot of money from their account when they do not have capacity to make that kind of decision.

Example:

Nimesh is 22 years old and over the last three years has had a series of breakdowns resulting in hospital admissions. Before this he worked in a manual job where he was paid in cash. He hears voices in his head which can sometimes upset him. The support he receives from mental health services helps him deal with this. He now receives welfare benefits and has just got a large back payment of benefits. He wants to open a building society account. He decides to go into a branch of the building society with a support worker to do this. When Nimesh goes to the counter he tells the counter staff that he wants to open the account and provides the correct proof of identification. He is also quietly talking to himself because this helps deal with the voices. The counter staff is concerned that Nimesh's behaviour is a sign that he lacks capacity to make financial decisions and is reluctant to let him open an account. Nimesh and the support worker ask to speak to a manager. The manager knows about the principles of the Act and that you should not judge someone to lack capacity based on the person's behaviour alone. He talks to Nimesh and quickly establishes that Nimesh has understood, retained, and weighed up the information involved in making the decision to open an account. The manager explains this to the counter staff who apologises for the misunderstanding and allows Nimesh to open an account and pay the money in.

2.6

What happens about financial decisions if I lack capacity?

In some situations, for example if you are very unwell or in a crisis, you may be so distressed or confused that you lack the capacity to make some decisions yourself. This could include important financial decisions, such as paying bills. It may be possible to delay making a decision until you feel better and are able to make it yourself.

Two of the five principles of the MCA are about people who lack the capacity to make a decision. These are shown in the box below:

Mental Capacity Act principles

- = Anything done for, or decided on behalf of, a person who lacks capacity must be done in their best interests
- = Anything done for, or on behalf of, a person without capacity should be the option that least restricts that person's basic rights and freedoms – but it must still be in their best interests.

2.7

What are best interests?

The MCA contains a checklist of how to work out what a person's best interests are when they lack capacity to make a decision. This involves taking into account things like:

- = The person's past and present wishes and feelings, beliefs and values
- = Any written statements made by the person
- = Anyone who has been named by the person lacking capacity as someone who should be consulted – this might include a friend, relative or advocate for example
- = The views of others who have an interest in the person's welfare, such as close relatives, friends, or staff providing support to the person
- = The views of the person themselves as far as they are able to communicate them (even if they can't actually make the decision).

However, the MCA contains very strict safeguards to ensure that a person's money is protected if they lack mental capacity. The Act does not allow anyone to make decisions involving money (or a person's property) in the person's best interests unless they have particular legal powers to do so. This means that money will be safe if it is in a bank, building society or post office account. But it also means that certain legal safeguards have to be followed for someone to make financial decisions on another person's behalf.

The Code of Practice gives more information about what the Act says about best interests.

2.8

What are the legal powers that allow people to make decisions about my money on my behalf if I lack capacity?

Under the MCA these legal powers must be one of the following:

- = A Lasting Power of Attorney (LPA) – this enables a person to appoint someone (called an ‘attorney’) such as a close relative to make certain decisions (which could include financial ones) on their behalf
- = An Enduring Power of Attorney (EPA) – these are similar to LPAs but the EPA must have been made before October 2007
- = The Court of Protection, or a court-appointed deputy who has been given the power by the court to make financial decisions.

These are explained in more detail in the next sections.

Appointeeship

If your only income are welfare benefits someone, like a close relative might also apply to be an appointee of the Department for Works and Pensions (DWP). An appointee has the power to manage a person’s welfare benefits, when the person does not have the capacity to do so themselves. Appointees are covered by different legislation from the MCA but they should follow the principles of the MCA. For example, decisions on how the person’s money is spent should be made according to the best interests principle. The appointeeship could be revoked if the appointee does not follow the principles.

However if you have other income or capital in addition to your welfare benefits and you lack capacity then you may need either an attorney under the Lasting Power of Attorney, or a deputy to manage your finances.

To get more information about appointeeship contact the Jobcentre Plus or Pension Service office that deals with your welfare benefit claim.

2.9

What is a Lasting Power of Attorney?

A Lasting Power of Attorney (LPA) is a way in which the MCA enables you to appoint someone (or a number of people) to make decisions on your behalf if you lose capacity in the future. They need to be someone you can really trust, such as a close family member or friend.

There are two types of LPA, one for decisions about property and financial affairs, and another about personal welfare and healthcare decisions. You can make either one LPA, or both types. To make an LPA involves completing a form where you choose a person (or people), who is called an attorney, to make decisions on your behalf. With a financial LPA an attorney could go into a bank, building society or post office to make decisions and carry out transactions on your behalf, but they may be asked to provide proof of their identity and the authority to do this.

You must be 18 or over to make an LPA and you must have mental capacity when you make it. Before an attorney can make decisions on your behalf using an LPA it must be registered with the Office of the Public Guardian (OPG). The Public Guardian is a special public official. One of their responsibilities is to keep a register of LPAs. You have to pay a fee to register an LPA but if you are on a low income or welfare benefits you may not have to pay this.

A financial LPA can be used even when you still have capacity providing it is registered. This is like an ordinary power of attorney (see section 3.1). An LPA can grant very wide powers to an attorney so it is very important to think carefully and perhaps take advice about what you might want to authorise your attorney to be able to do. You can include restrictions or guidance in an LPA to direct how an attorney should manage your money. For example, you may well want the LPA to allow you to continue to make certain decisions while you have capacity, but authorise the attorney to make other decisions (or to make certain decisions at specific times).

2.9

What is a Lasting Power of Attorney?

continued

An LPA does not prevent you from making decisions about your money so it could be very useful if you want it restricted for times only when you are in crisis and so unwell or confused that you lack the capacity to make a financial decision yourself. The attorney would only be able to make a decision on your behalf at those times. However if you are thinking of putting restrictions on an LPA like this it is important that you don't make it more difficult for yourself, your attorney, or the bank to operate the account. It may be confusing for bank staff to know who they should be dealing with when you have capacity. If you have been very unwell and lacked capacity to make decisions so your attorney had been doing this instead, the bank may want to see a letter from your doctor confirming you are able to make these decisions yourself, once you are feeling better. You may wish to consider discussing any restrictions with your bank before completing the LPA.

An attorney must make financial decisions on your behalf when you lack capacity according to the best interests principle and checklist. They must also make sure that it is done in a way that is least restrictive of your rights and freedoms. For example, if they had to pay for something essential for you, such as a washing machine, they should not buy the most expensive model unless they could clearly show that it was in your best interests.

If you have made an LPA and registered it but decide that you no longer want someone to be your attorney you will need to contact the Office of the Public Guardian (OPG).

To make an LPA a specific form has to be completed. You can do this yourself though you may prefer to ask someone for assistance. Solicitors can help you complete the form but they may charge you for doing this.

For more information on LPAs and to obtain an LPA form contact the OPG at customerservices@publicguardian.gsi.gov.uk (Tel: 0845 330 2900).

2.9

What is a Lasting Power of Attorney?

continued

Example:

Angela is 45 years old and used to be a teacher but no longer works. She was diagnosed with bi-polar disorder when she was 30. When she has been unwell in the past she has sometimes given away or spent very large amounts of money on things she doesn't need. She decides to make a Lasting Power of Attorney (LPA) for her property and financial affairs, and chooses her sister Jane, to be her attorney. She trusts Jane to use the LPA and look after her bank cards if she is in crisis and lacks capacity to make financial decisions. Angela and her sister decide to register the LPA with the Office of the Public Guardian (OPG) as soon as it has been made even though Angela still has capacity. This means that there should be no delay if the LPA needs to be used by Jane. Angela also gets on well with her doctor who agrees that if Angela becomes unwell again and lacks capacity to make financial decisions he will write a letter to confirm this. Once the LPA has been registered Jane and Angela go to Angela's bank and tells them that it has been registered and explains what it involves. The bank asks Jane for proof of identification and to see the registered LPA. Angela and Jane ask the bank to make a note of the LPA and to contact Jane if Angela comes into the bank asking to withdraw large sums of money. The bank agrees that Jane can deal with Angela's account and use it to pay Angela's bills, as authorised by the LPA, but that Angela can continue to deal with her own account as long as she has capacity. The next time that Angela is unwell and is unable to make decisions Jane goes to the bank and the bank agrees that Jane should deal with Angela's account, as authorised by the LPA. Jane continues to do this until Angela gets better and is able to make her own financial decisions again. If the bank requires a letter confirming a change in Angela's mental capacity, the doctor is able to provide this.

2.10

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) is similar to a property and financial affairs LPA but since October 2007 LPAs have replaced EPAs. If you made an EPA before October 2007 it can still be used but must be registered with the Office of the Public Guardian (OPG) if you lose capacity.

An attorney acting under an EPA must do so according to the best interest principle and in a way which is least restrictive of the person's rights and freedoms. In the past it was often assumed that once an EPA was registered the person had permanently lost capacity and bank staff would only deal with the attorney. For more information on EPAs contact the OPG at www.publicguardian.gov.uk

2.11

What is the Court of Protection?

The Court of Protection is a court that deals with disagreements or difficult situations involving mental capacity. The court can decide whether or not someone has capacity, or make a decision on behalf of someone who lacks capacity. These decisions could include what to do with someone's money if they lack capacity, or their account with a bank, building society or post office. The bank, building society, or post office would have to follow the orders of the court. The court can also appoint someone called a deputy to make decisions on behalf of a person who lacks capacity (see below).

If you have not made an LPA or EPA, or don't have an appointee, and you lack capacity to make financial decisions the only way your bank account can be accessed where necessary is via the Court of Protection.

In most situations it is best to try and sort out disagreements or difficulties without going to court. Only certain people can automatically apply to have a court hearing and the court procedure is quite complicated. There are also court fees that have to be paid (as well as legal fees) although some people on benefits or low incomes may not have to pay these.

You can get more information about the Court of Protection from the OPG at www.publicguardian.gov.uk

2.12

What is a court-appointed deputy?

A deputy is someone appointed by the Court of Protection who has been given authority to make decisions on behalf of someone who lacks capacity. This would often be in situations where a number of issues needed dealing with and the person clearly lacked the capacity to make all the decisions, for example, if they had severe dementia. It is unlikely that deputies would be appointed where someone only lacked capacity temporarily.

The deputy must be aged 18 or over and could be, for example, a relative, friend, professional, or even a Director of Social Services. A deputy must make financial decisions on behalf of the person who lacks capacity according to the powers the court has given them and in the person's best interests. They must also make sure that it is done in a way that is least restrictive of the person's rights and freedoms.

This means that a deputy could make decisions on opening or closing an account, or carrying out transactions in a bank, building society, or post office involving money owned by the person who lacks capacity. However they would need to show the bank proof of their identity and authority as a deputy. In some situations the court might decide that someone has capacity to make decisions about small, day to day amounts of money but not about much larger amounts. In these situations the person could keep using their own bank account for small amounts of money but the deputy might be responsible for the main account. The court could make the deputy responsible for ensuring that the person always had enough money in their account.

Deputies are supervised by the OPG to make sure they are doing their job properly and are accountable to the Court of Protection. Deputies have replaced the system of receivers who did a similar job before the MCA came into force.

You can get more information about court-appointed deputies from the OPG at www.publicguardian.gov.uk

2.13

**LPAs and deputies – electronic
and telephone banking**

If an attorney or a deputy has been authorised to make financial decisions this is also likely to include dealing with an account via cashpoints, internet and telephone banking.

2.14

**LPAs and deputies – concerns
and complaints**

If anyone has concerns about what an attorney or deputy is doing, then they should contact the Office of the Public Guardian (OPG) straight away. If you want to make a complaint you can also do this via the OPG.

3.1

Are there ways I can give permission to someone else to have access to my money when I have mental capacity?

Sometimes you may want to give permission to someone else to have access to your money or account when you still have capacity to make your own decisions. This may be for convenience or because you are housebound or away, for example. There are several ways that you can do this, providing you continue to have mental capacity. Apart from Lasting Powers of Attorney, these are not part of the Mental Capacity Act.

The most common ways are through *direct debits* and *joint accounts*. You can also set up *third party mandates*, which instruct your bank or building society to provide access to your account to someone else. Direct debits are also frequently used to ensure that your bills are paid.

Another option is an *ordinary power of attorney*, a legal document authorising one or more people to handle your financial affairs. If you make an ordinary power of attorney you decide what it covers and what powers the person(s) have. It can only be made, and used by the person you have appointed, providing you have mental capacity. You can buy an ordinary power of attorney document from a law stationer (some high street stationers also stock them), or arrange for a solicitor to prepare one (but they will charge for this).

You can make a Lasting Power of Attorney to cover decisions about your finances which can be used when you still have capacity, providing it is registered. More information can be found on page 22.

If you receive welfare benefits and have a Post Office Card Account you can apply for someone you trust to have access to your account. This person is called a *Permanent Agent*.

To find out more about these you could ask your bank or contact one of the organisations listed at the end of this booklet.

If you cannot go to the post office yourself, you can receive your benefit payments by cheque and authorise someone to cash them for you.

3.2

Other important laws that apply to personal banking

It is very important to remember that if you go into a bank, building society or post office to open an account, or deal with your account in person, or someone goes in on your behalf, there are laws that may apply which are nothing to do with mental capacity. These are about proving that you are the person you say you are and are aimed at stopping fraud and money laundering. Different banks may ask for different types of identification. In most cases banks require two forms of ID, one photographic and the other stating proof of your address. These could be in the form of a passport and a utility bill.

Guidance on identification and other issues is produced by the Financial Services Authority. The Financial Services Authority (FSA) regulates financial services and protects your rights.

There is also a Banking Code produced by the British Bankers' Association (BBA) which represents the banks. This Code sets standards of good banking practice for all banks to follow when they are dealing with customers.

Contact details for the FSA and BBA are in the Useful Contacts section on page 35

3.3

What do I do if I am not happy with the service received?

All banks, building societies, and post offices have complaints procedures that you can use if you are not happy with the service you have received. You can get information about this from whichever bank, building society or post office you use.

If your complaint is not resolved you can take it to the Financial Ombudsman Service. This is an independent office that investigates complaints from individuals and small businesses about banking services. This service is free of charge.

Contact details for the Financial Ombudsman Service are in the Useful Contacts section on page 35.

Glossary

What words mean

- = **Appointee** – someone appointed to claim and collect social security benefits or pensions on behalf of a person who lacks capacity to manage their own benefits. An appointee is permitted to use the money claimed to meet the person's needs.
- = **Attorney** – someone who has been chosen by a person to make choices and decisions for them. Under the MCA the person does this by making a Lasting Power of Attorney
- = **Best interests** – anything done for a person who cannot make decisions for themselves must be in their best interest. This means thinking about what is best for the person and not about what anyone else wants. The Mental Capacity Act has a checklist of things that people must think about and do when deciding on someone's best interests.
- = **Code of Practice** – guidance and information that explains how the Mental Capacity Act works. It tells people how to make sure they are following the new law. Some people – like doctors, nurses, social workers, attorneys and deputies must pay attention to the Code of Practice.
- = **Court of Protection** – the specialist Court which deals with everything to do with the Mental Capacity Act. The court can decide what is best for people who cannot decide for themselves.
- = **Deputy** – a person chosen by the Court of Protection to make certain decisions for a person who cannot make those decisions for themselves.
- = **Direct debit** – a way of letting businesses take money out of your account on a set date. These are often used for things like paying bills.

Glossary

What words mean

- = **Enduring Power of Attorney (EPA)** – a power similar to a Lasting Power of Attorney (LPA) but they have now been replaced by LPAs unless you made an EPA before October 2007.
- = **Joint account** – a bank account that you share with someone. Both people have the same powers over the account.
- = **Lasting Power of Attorney (LPA)** – a power a person can give to another person (the attorney) to make decisions for them about certain things in the future. A person can only do this if they understand what it means. They can also put limits on the power they give to their attorney.
- = **Mental capacity** – is when a person is able to make their own decision about something at a particular time.
- = **Office of the Public Guardian (OPG)** – supports the Public Guardian by doing the paperwork, keeping a register of Lasting Powers of Attorney and deputies, and keeping an eye on attorneys and deputies to make sure they are doing their job properly.
- = **Ordinary Power of Attorney** – similar to a Lasting Power of Attorney except that it can only be used as long as the person who made it has mental capacity.
- = **Public Guardian** – an official with special responsibilities under the Mental Capacity Act.
- = **Receiver** – a person similar to a deputy but they have now been replaced by deputies
- = **Third party mandate** – is when you choose someone to have access to your bank account. They can only do the things that you give them permission to do.

Banking on good decisions

Useful Contacts

Useful contacts

Other organisations who can offer advice

Age Concern England

The UK's largest charity working with and for older people. Has useful financial advice on their website

www.ageconcern.org.uk

Free helpline – 0800 00 99 66

British Bankers' Association

The association for the UK banking and financial services sector – they have produced a useful leaflet about LPAs, EPAs and court-appointed deputies called *Banking for people who lack capacity to make decisions*

www.bba.org.uk

Building Societies Association

The association for all the UK building societies

www.bsa.org.uk

Consumer information – 020 7520 5900

Citizens Advice

Provides free information and advice to help people resolve their legal, money and other problems

www.citizensadvice.org.uk

Department for Work & Pensions

The Government department responsible for appointeeships

www.dwp.gov.uk

Employers Forum on Disability

An employer's organisation that focuses on disability as it affects business. Has published useful reports on the Mental Capacity Act

www.employers-forum.co.uk

Useful contacts

Other organisations who can offer advice

Equality & Human Rights Commission

This is an independent organisation that, among other things, is responsible for tackling discrimination under the Disability Discrimination Act

www.equalityhumanrights.com

Helpline – 0845 604 6610

Financial Ombudsman Service

The independent service for settling disputes between customers and businesses providing financial services

www.financial-ombudsman.org.uk

Consumer helpline – 0845 080 1800 or 020 7964 0500

Financial Services Authority

Regulator of all providers of financial services in the UK. They have produced a booklet called *Basic bank accounts – your questions answered*.

www.fsa.gov.uk

Consumer helpline – 0845 606 1234

Mental Health Foundation

A mental health research and development charity

www.mentalhealth.org.uk

Main switchboard – 020 7803 1100

Mind

A mental health charity. Has useful general financial information on its website

www.mind.org.uk

MindinfoLine – 0845 766 0163

Banking on good decisions

Useful Contacts

Useful contacts

Other organisations who can offer advice

Office of the Public Guardian

Set up in 2007 to deal with certain specific aspects of the Mental Capacity Act as well as providing general information and links to the Court of Protection

www.publicguardian.gov.uk

Customer services – 0845 330 2900

Rethink

A mental health charity. Has useful financial information on its website

www.rethink.org

National advice service – 020 8974 68 14

Social Care Institute for Excellence (SCIE)

Provides useful information and training materials about the Mental Capacity Act.

www.scie.org.uk

General enquiries – 020 7089 6840

The Post Office

Provides a wide range of services including financial services

www.postoffice.co.uk

Helpline – 08457 22 33 44

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To order additional copies of this booklet, call our publications order line on 020 7803 1101 or email mhf@mhf.org.uk

To find out more visit www.mentalhealth.org.uk
www.learningdisabilities.org.uk

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About the Mental Health Foundation

Founded in 1949, the Mental Health Foundation is the leading UK charity working in mental health and learning disabilities.

We are unique in the way we work. We bring together teams that undertake research, develop services, design training, influence policy and raise public awareness within one organisation. We are keen to tackle difficult issues and try different approaches, many of them led by service users themselves.

We use our findings to promote survival, recovery and prevention. We do this by working with statutory and voluntary organisations, from GP practices to primary schools. We enable them to provide better help for people with mental health problems or learning disabilities, and promote mental well-being.

Mental Health Foundation

**Foundation for People
with Learning Disabilities**

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