



**November 2006**

**Key Points:**

- Replaces previous version dated August 2005
- *Mental Capacity Act* comes into force in April 2007

## **Legal arrangements for managing your finances**

This factsheet is aimed at people aged 60 and over and deals with arrangements for others to make decisions about your finances. It includes information about arrangements you can make while you have capacity to make decisions about your own finances both now and in case you later lose capacity, and what arrangements can be made if you are unable to make these decisions yourself.

It does not cover other types of decisions, for example about health or care. Fees levels quoted are correct for 2006-2007 but may change in the future.

It may be advisable to seek legal advice before signing any of the documents mentioned in this factsheet. (*Age Concern England is unable to give legal or financial advice*).

Readers living in Scotland can obtain a similar Factsheet 22s, *Legal arrangements for managing financial affairs*, available by phoning 0800 00 99 66 (free call), from the website: [www.ageconcernscotland.org.uk](http://www.ageconcernscotland.org.uk), or by writing to Age Concern FREEPOST (SWB 30375), ASHBURTON, Devon TQ13 7ZZ.

**Contact details for Age Concern Scotland are:**

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**Age Concern Cymru**, Ty John  
Pathy, Units 13/14 Neptune  
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CF24 5PJ, tel: 029 2043 1555  
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[www.accymru.org.uk](http://www.accymru.org.uk);

**Age Concern Northern Ireland**,  
3 Lower Crescent, Belfast BT7  
1NR, tel: 028 9032 5055 (national  
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9.30am to 1pm, website:  
[www.ageconcernni.org](http://www.ageconcernni.org).

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## **Introduction**

Individuals can want other people to look after their financial affairs for all sorts of reasons. For example, you may only need an arrangement for someone to withdraw money for you if you cannot get to the post office or bank yourself for a short period. This might be because you are in hospital or are going abroad for a few months.

While you are able to make decisions about your finances, it is worth thinking about how you would want your finances to be dealt with if you lost mental capacity, either in the short term or longer term. Looking further ahead you may wish to make legal arrangements so that a person of your choice can attend to your financial affairs if, at some point in the future, you are unable to do this for yourself. Otherwise there are legal arrangements that can be made on your behalf if you can no longer manage your own financial affairs.

This factsheet covers the different types of arrangements that can be made both while you have capacity or if you lose the capacity to manage your own finances.

## **Changes from April 2007**

The *Mental Capacity Act 2005* is due to be implemented in April 2007. As a result there will be major changes in the way that people who lack capacity to make their own decisions are helped.

The aim of the *Act* is to 'maximise the capacity of those who lack capacity or who may lack the capacity to take certain decisions for themselves; protect vulnerable adults with mental capacity issues from abuse and neglect; and provide clarity to families, informal carers and professionals as to when they may act or take decisions on behalf of those incapable of making such decisions themselves'.

An important change that the new mental capacity legislation will bring in is that as well as being able to choose someone to take financial decisions on your behalf, you will also be able to choose someone to take welfare and healthcare decisions, and a Lasting Power of Attorney will replace the current Enduring Power of Attorney (EPA). Existing Enduring Powers of Attorney will still be valid under new legislation.

If you already have an EPA and want to replace it with an LPA once the Act comes into force, you will be able to do this as long as you have the ability to make that decision yourself.

A new version of this fact sheet will be issued in 2007 explaining how the new system will be implemented.

## **1. Decision making and mental capacity**

The law presumes that every adult has the right to make his or her own decisions and is assumed to have the capacity to do so unless it is proved otherwise. Mental capacity means that a person is able to understand and retain information and make a choice based on that information. A person's capacity may vary depending on the nature of the decision. Or the nature of their illness might mean that their capacity to make decisions may change from day to day.

Taking time to understand or communicate may be mistaken for a lack of mental capacity, and having dementia does not necessarily mean a lack of mental capacity. Where someone may have difficulty in communicating a decision, an attempt should always be made to overcome those difficulties before concluding that the person does not have capacity.

### **What is mental capacity?**

Incapacity means that someone is either unable to make a decision because of his or her mental state, because s/he cannot communicate that decision or for both reasons. Under the current law different tests of capacity apply depending on which decision is being taken. The *Mental Capacity Act*, which comes into effect in April 2007, establishes the following principles about mental capacity:

- **a presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- **the right to be supported to make their own decisions** – people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- that individuals must retain the **right to make what might be seen as eccentric or unwise decisions**;

- **best interests** – anything done for or on behalf of people without capacity must be one in their best interest; *and*
- **least restrictive intervention** – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.

People who are helping older people with their financial affairs, and managing their finances and property if they are unable to do so themselves, may find it helpful to bear these principles in mind pending the implementation of the *Mental Capacity Act*.

### **Who decides whether I have mental capacity or not?**

For most day to day decisions there is no formal process. For more important decisions such as medical treatment your doctor must decide whether you have the capacity to consent. For legal matters such as a will, a solicitor needs to make a judgement about whether you are capable of understanding the meaning of the will. If in doubt they would get an opinion from a doctor or other appropriate professional. Solicitors are also often involved in setting up an Enduring Power of Attorney and so would need to decide whether you understood what it is and that no undue influence is being placed on you to set one up.

## **2. Arrangements for withdrawing money/cashing benefits whilst you can still manage your finances**

### **2.1 Bank and building society accounts**

Many banks and building societies are now offering an easy to use basic bank account or introductory account. Your pension or benefits can be paid into these accounts and you can also deposit other money in them (eg, if someone gives you a cheque). You will not get a cheque book, but you can set up direct debits (eg, to pay regular bills). If you do not have enough in your account to pay the direct debit it will not be paid so you can't go overdrawn, but the bank may charge you for non-payment of a direct debit. Most basic or introductory accounts will allow you to get cash out at the Post Office. This could be important if you have less than £10 in your account and the bank's cash dispenser only gives £10 notes – you could get the exact money from the Post Office so you would not go overdrawn.

A basic or introductory account does not offer you credit or allow you to go overdrawn, because of this the bank or building society will not ask for as much information when you open an account as it does for other sorts of account.

### **Standing order**

This is an instruction to your bank or building society to transfer a fixed amount into someone else's account on a regular basis. You still have control of your finances, and the third party cannot access any funds except the transfer amount. The third party must already have an account to transfer into, and it can take up to 4 working days to access the money, so may not be suitable if you always need to the money urgently. Some basic bank accounts (see Section 2.2) do not allow this facility.

### **Joint Accounts**

This will give you and the joint account holder the authority to withdraw all money. An advantage is that you don't need to set up any specific instructions, but you need to be sure you can trust the other account holder, as there is no restriction on their access to the funds, and you may be liable for their debts. You will both have a card and Personal Identification Number (PIN) to allow easy access to the account.

### **Third party mandate**

This is an instruction to your bank or building society to provide access to your account for another person. The mandate gives details of exactly what authority you are giving the person, so you can specify how much access you give them. Usually this will not mean that they are given a card and PIN to allow access to cash machines. This option may suit you if it is a long-term arrangement and you can trust the person who will be the mandate. Mental incapacity terminates the mandate.

### **Power of attorney**

This is set up for someone such as a trusted friend or relative to access your account as your agent. They have no entitlement to the funds, but have access to them. If you are thinking of choosing this option you need to be able to trust the agent. Some basic bank accounts do not allow this facility. See Section 3 for more about Power of Attorney.

## **Emergencies (Letters of authority)**

If you are temporarily unable to withdraw money from your account, for example if you are temporarily housebound after an operation, banks and building societies may accept a letter of authority, which requests a third party to withdraw money on your behalf on a one-off basis. There is a high risk of fraud, so many banks and building societies do not offer this option.

## **2.2 Payment of pensions and benefits**

Most benefit payments are now made directly into bank and post office accounts. This is known as Direct Payment. In addition to normal bank and building society accounts, three main payment options are available:

- a basic bank account, which offers less variety of options than normal bank accounts;
- a Post Office Card Account;
- cheque payment.

### **Basic Bank Account**

Many banks and building societies are now offering an easy to use basic bank account or introductory account (see Section 2.1).

### **Post Office Card Account for benefit payments**

You can apply for another person to have permanent access to your account – they are then called the Permanent Agent. They will be issued with their own card and PIN number. You must be able to trust the person in this role, as they could draw up to £600 a day.

### **Cheque payment of benefits**

The DWP will make payment by cheques in circumstances where you cannot get out to the post office to access your account by your payment card. These can be cashed at a post office or paid into a bank or building society account. You can authorise someone to cash your cheque for you. You will have to sign the back of each cheque, and the person cashing it must also sign to declare they are cashing it on your behalf. The person you have authorised will need to take proof of their identity, as well as proof of your identity.

These can be items like a passport; Council rent book, credit card, full driving licence, birth or marriage certificate. Check with the organisation what they need as proof.

### **3. Arrangements whilst you can still manage your finances – Power of Attorney**

A Power of Attorney is a legal document. It authorises one or more people to handle your financial affairs (including property, shares, money etc). To help you to decide which document is appropriate for your circumstances you should consider the following:

- do you need someone to act for you for a temporary period, for example while you are on holiday?
- do you wish someone to act for you only while you are able to supervise their actions?

Then an **ordinary Power of Attorney** is the appropriate document.

**NOTE:** only the donor (the person who wants someone else to take over their financial affairs) can make the decision to create a Power of Attorney or an Enduring Power of Attorney and cannot legally be forced to do so. Only in you are incapable through mental disorder of managing your financial affairs can a Court of Protection Receivership Order be obtained – see Section 6.

You may need, at some time during your life, to appoint someone to act for you. A Power of Attorney provides the attorney – the person appointed – with a legal document which proves their powers. You can buy the document from a law stationer (some high street stationers also stock them), or arrange for your solicitor to prepare one. Its use may be to permit someone to act on your behalf while you are physically incapable of managing your affairs, for example because of illness or because you are going abroad for a lengthy period.

It is for you as the donor to decide what the Power of Attorney covers, and whether it is a general power, without restrictions, or whether it gives limited powers only to do a specific act, for example to sell a house. In either case, you can still also act for yourself.

## **How long does a Power of Attorney last?**

Whether the ordinary Power of Attorney is a general one or is limited, it is only valid while you are capable of giving instructions. It will end if:

- you become mentally incapacitated and are no longer able personally to supervise or direct the attorney;
- you revoke the Power;
- the Power is limited to a specific task which has been completed;
- the Attorney(s) themselves die or become incapacitated.

## **4. Making arrangements whilst you have mental capacity – Enduring Power of Attorney**

If you wish someone to act for you now and if you should become mentally incapable some time in the future, or if you wish someone to act for you only if you should become mentally incapable, then you should consider an Enduring Power of Attorney.

An Enduring Power of Attorney (EPA) is a legal document which appoints one or more people to act for you, if in the future you become incapable of managing for yourself. The document can be used immediately after all parties have signed it unless the EPA states that it may not be used until you have lost mental capacity and the document has been registered. It must be signed while you are capable or understanding the nature and effect of creating an Enduring Power.

In April 2007 a new Lasting Power of Attorney (LPA) will be introduced. This will be wider ranging than the current powers, covering areas such as healthcare decisions. If you create an EPA in the meantime it can still be used after LPAs come into effect, as there are 'transitional provisions' in the *Mental Capacity Act* to allow for this. The rules set out below will still apply and the EPA will still only cover financial decisions. If you want to, and still have sufficient mental capacity at that point, you will be able to revoke any existing EPA and set up an LPA under the new system once it comes into effect.

The document for creating an EPA has three parts, part A gives notes for you and for the attorney, part B is where you appoint the attorney, and part C is for the attorney to complete, accepting the appointment.

## **4.1 Preventing problems with an EPA**

- to ensure greater security it is advisable to restrict the use of the EPA until after it has been registered. Alternatively you may wish to create an ordinary power of attorney giving the attorney limited powers to act if you should suffer a problem affecting your physical health;
- when considering an EPA you should bear in mind the risks as well as benefits in giving an enduring power of attorney to someone. For example, no security (insurance) is given by the attorney for his/her actions;
- an EPA is a valuable document – store it in a safe place. If you leave it with your solicitor you may wish to instruct him/her to release the document to the attorney(s) if they wish to register it;
- some banks and building societies are reluctant to accept an EPA created several years earlier, if it is not registered. It may be advisable to inform these institutions that you have created the document, and on what basis you have stipulated its use.

## **4.2 Choosing an attorney/attorneys**

This is a vital decision, and you need to think carefully about who you give the power to. Some questions to ask are:

- are the people you wish to appoint willing to be appointed?
- do they handle their own money well?
- can you trust them to act in your best interests and to use your money to provide for your needs?
- are there likely to be any disagreements or problems between friends and/or family?
- would it be a good idea to talk it over with your family and tell them what you plan and why?
- do you want to consider more than one attorney? Any number of attorneys may be appointed in the same EPA but you will need to decide and to say in the EPA whether the attorneys are to act jointly (this is altogether on all matters) or jointly and severally (where they may act together or separately, as they choose). If attorneys were appointed to act jointly the EPA expires if one of them dies.

If attorneys are appointed jointly and severally the survivor(s) can continue to operate the power.

The appointment of a sole attorney may offer less security for your assets than a jointly and severally attorneyship.

- do you want different attorneys to be appointed for different things? You can have a multiple EPA to cover this;
- do you wish to limit the attorney's authority? You can give the attorney a general authority to carry out transactions, or specific authority limiting the power to act as attorney only when you become mentally incapacitated. The document may also set limits on the type of transactions for which authority is given;
- do you wish to include in the EPA a request that the attorney(s) should regularly provide you with details of expenditure and income? If the EPA is registered then the accounts could be sent to your solicitor or another member of your family, which would provide an extra level of security.

You can permit the attorney to act for you while you are still mentally able to act for yourself and if you wish the attorney to do so, the attorney should show the EPA to banks, building societies or wherever you have assets to prove his/her authority to act on your behalf.

An attorney may sign on your behalf for bank and building society interest to be paid without deduction of income tax if you are a non tax-payer. The attorney may not sign a tax return or a declaration for an Individual Savings Account (ISA) on your behalf until the EPA has been registered. An exception may be made if you are disabled.

If you and the (sole) attorney are co-owners of property (eg, husband and wife jointly owning their home) and the attorney has registered the EPA, a second person would need to be involved if the property is sold, because of the rules requiring two people to give a receipt for the money in these cases. Further legal advice will be needed if and when the property needs to be sold.

Where the estate is substantial or where there is a likelihood of a conflict of interest, for example where the attorney is also the main beneficiary of the estate, then you and/or the attorney(s) should seek legal advice.

### **4.3 The test of capacity for executing the EPA**

The following matters should be explained to you. Be aware that:

- the attorney will be able to assume complete authority over your affairs;
- the attorney will, in general, be able to do anything with your property which you could have done personally;
- the attorney's authority will continue if you are or are becoming mentally incapable;
- if you are or are becoming mentally incapable, the EPA cannot be revoked, without confirmation by the Court of Protection.

Because tests of capacity vary it is possible that you may be able to execute an Enduring Power because you understand what it means, but may, **at the same time**, be 'incapable by reason of mental disorder of managing and administering (your) property and affairs'. In these circumstances the validity of the EPA is not affected. However, it means that the EPA should be registered with the Public Guardianship Office (PGO) as soon as it has been signed by you and the attorney(s).

### **4.4 How to apply for EPA**

An EPA must be in the form prescribed by the Enduring Powers of Attorney (Prescribed Form) Regulations 1990. To obtain a form, you can download one from the website: [www.guardianship.gov.uk](http://www.guardianship.gov.uk), tel: 0845 330 2900 (lo-call rate). Alternatively you can buy one from a law stationer (some high street stationers also stock them), or pay your solicitor to prepare one.

If you are a trustee of any property for which you wish to create an EPA and not just an owner or co-owner you will need to use another form and take specialist advice.

### **4.5 Making an EPA valid**

The attorney(s) should sign the EPA at any time after you have signed but before you become incapable of understanding the nature and effect of creating an Enduring Power – otherwise the power will not be valid. It is advisable for the attorney(s) to sign as soon as possible.

When you sign the form, you will need a witness, who must be independent. The witness cannot be the attorney. If you cannot sign or mark the form, for example because of illness or physical disability, you can choose someone else to sign for you. The person who signs on your behalf must be independent (not an attorney or witness) and the signing must be witnessed by two independent witnesses (not the attorney(s)).

If the attorney holds the original document, or it is lodged with a bank or solicitor, keep a signed copy with your records.

#### **4.6 Who can grant an EPA?**

Anyone can be a donor providing they are 18 or over and are mentally capable. An attorney must be over 18 and not bankrupt at the time the attorney signs the EPA. A trust corporation such as a bank can be an attorney and professional attorneys can charge for their services.

#### **When a solicitor is asked to prepare an EPA**

The Law Society guidelines to solicitors state:

- the donor (rather than the attorney) is the client;
- a solicitor should always consider whether written instructions alone are sufficient, or whether the client should be seen;
- if the instructions come from a third party the solicitor should get written instructions from the client and in any case of doubt see the client or otherwise confirm the instructions.

#### **4.7 Cancelling (revoking) the power**

You may cancel or revoke an EPA at any time provided you have mental capacity. However, an EPA cannot be cancelled or revoked without the Court's consent once it has been registered (see next section). If you wish to revoke an EPA and create a new document you should:

- write to the attorney(s) advising them that the document has been revoked;
- inform all banks, building societies and other institutions where you have invested money, that the document has been revoked.

You will need to add a clause to the new EPA stating either:

- 'I REVOKE the Enduring Power of Attorney made by me on (date)';  
**or**
- 'I REVOKE all Enduring Powers of Attorney previously made by me'.

#### **4.8 Giving notice of intention to register**

**If you become or are becoming mentally confused, the attorney may not use (or continue to use) the EPA until an application to register has been made.**

As soon as the attorney(s) has reason to believe that you are or are becoming mentally confused and so unable to manage your own financial affairs, the attorney(s) must apply to the Public Guardianship Office (PGO) to have the EPA registered. The PGO has administrative functions for the financial affairs of people who lack the capacity to manage their own finances.

#### **Authority to act when you lose mental capacity**

At the onset of mental incapacity the attorney(s) has no authority to act until an application for registration of the EPA is made. After the application is made the attorney(s) have limited powers to:

- maintain you or prevent loss to his/her estate;
- maintain you or others as permitted by the legislation.

Before making this application to the Public Guardianship Office, the attorney must give notice of the intention to register, to you and to your nearest relatives. At least three of the nearest relatives must be notified. The relatives who must be notified are taken in order of priority, class by class, in the way set out in the *Enduring Power of Attorney Act 1985*.

The order of priority is:

1. Your spouse;
2. Your children;
3. Your parents;

4. Your brothers and sisters whether of the whole or of half blood (sharing one parent);
5. The widow or widower of a child of yours;
6. Your grandchildren;
7. The children of your brothers and sisters of the whole blood;
8. The children of your brothers and sisters of the half blood;
9. Your uncles and aunts of the whole blood;
10. The children of your uncles and aunts of the whole blood.

If there is more than one person in a particular class of relatives entitled to receive notice then all persons in that class must be given notice.

### **Dispensing with notice to relatives**

Notice need not be given to people otherwise entitled to receive notice if their names and addresses are not known to the attorney(s) and cannot be reasonably ascertained by them, or the attorney(s) have reason to believe that they have not attained the age of 18 years or are mentally incapable.

### **Dispensing with notice to donor (you)**

If the attorney believes that you may be distressed by the receipt of the notice (EP1) the Public Guardianship Office (PGO) may agree to dispense with the notice to you and/or relatives. In this case an EP3 (General form of application) should be sent to the PGO prior to the application for registration together with a letter from your doctor, setting out the reasons why you should not be given notice.

### **No relatives to notify**

If you do not have three living relatives who come within those listed, the attorney(s) should say so on the form when applying for registration.

### **Form of the notices**

The notices to you and the relatives must be given on Form EP1 which is available from the Public Guardianship Office (PGO) or a law stationer.

When all the EP1s have been served, the attorney must then send the application for registration to the PGO not later than 10 days after the date on which:

- notice has been given to you and every relative entitled to receive notice and every co-attorney; *or*
- leave has been given to dispense with notice;

whichever is the later. The application is sent with the original EPA and payment for the registration fee of £120 made payable to The Public Guardianship Office – this money may be taken from your estate. This fee is not refundable. But see below when it can be reduced or waived.

#### **4.9 Objection to registration or to the attorney**

You and your relatives are entitled to object either to the registration or to the attorney. If there are any objections to the attorney, neither the Court of Protection nor the Public Guardianship Office (PGO) can appoint another person in his or her place, so a receiver would need to be appointed (see Section 6).

The PGO will check that everything is in order and will hold the papers for 35 days from the date of the last EP1.

If no objections have been received and there are no other matters requiring attention the registration will then take place. If money is not available to the attorney a request for the fee to be waived until funds are available should be made to the PGO.

#### **Application for registration contested**

If an application for registration is contested by either you or your relatives the PGO may refer the case to the Court of Protection to be considered.

If an application for registration has failed the attorney is under a duty to consider whether an application for the appointment of a Receiver should be made. If the attorney continues to deal with an incapacitated person's affairs, the attorney does not have the legal authority for continuing to act.

## **After registration**

The EPA will be returned, having been stamped as being registered and carrying a Court Seal. Once this is received the attorney can make binding decisions about your financial affairs. However, the attorney must act reasonably and have regard to the limits imposed by the *Enduring Power of Attorney Act 1985*. You use this stamped form when setting up accounts in banks etc.

The British Bankers Association has produced guidance for bank staff called 'Banking for mentally incapacitated customers'. There is also a short leaflet for customers available from their website: [www.bba.org.uk](http://www.bba.org.uk).

### **4.10 Fees and the fee remission scheme**

The normal fee for registering an EPA is £120. Very rarely there may be a transaction fee – this only applies when the court approves or authorises a payment that is normally outside the power of the EPA.

In some cases the fees can be waived. If the donor's assets amount in total to less than £12,750, the PGO will normally waive the registration fee.

Savings include bank accounts, shares and any property that you own but don't live in. If you don't live in a property, for example you are in a care home, but the property has been disregarded by the local authority (because someone connected with you lives in it) this will not be counted.

Further information about the remission scheme is available from the PGO or from the website: [www.guardianship.gov.uk](http://www.guardianship.gov.uk). As the fees and remission criteria change from time to time you may wish to ask whether these might apply to your application.

### **4.11 The role and responsibilities of an attorney with EPA**

If you are the attorney with an EPA, this section deals with some of your main duties.

Once the EPA is registered, you (the attorney) may have to answer to the Court of Protection if anyone challenges your decisions. The attorney and the donor can only end the agreement after applying to the Court of Protection or PGO.

You must act in the best interests of the donor, bearing in mind their wishes and needs, and you must not take any advantage to gain benefit for yourself.

- **Accounts** – you should keep full, accurate and up-to-date accounts of all the donor's assets and income, including bank and building society accounts, investments, and property. Tax returns will need to be completed. The Court of Protection may ask to see these at any time, including after the death of the donor. You should keep all the donor's assets in the donor's name, and keep their accounts separately. You will need to keep all estimates, invoices, receipts and vouchers. An attorney or receiver may be held liable if the donor's money is not handled in a responsible manner.
- **Gifts** – you may make seasonal gifts, for example to relatives of the donor, and charitable donations in accordance with the donor's expected wishes, but these must be reasonable in proportion to the donor's estate. If you want to make larger gifts of money or property, you need to complete an EP3 form and send it to the Court of Protection together with a medical certificate confirming the donor's mental incapacity and evidence including sworn statements. If you make a gift greater than the limits set, you may have to pay it back.
- **Expenses** – professional attorneys (for example solicitors or accountants) may charge. Other attorneys can be paid expenses such as the cost of stationery, postage and phone calls, but not for their time.
- **Property** – if you are thinking of selling or letting the donor's property because it is in their best interests, you need to be sure that they would not be likely to ever return to live there. You do not need approval from the Court of Protection unless the sale is below market value, or you want to buy the property yourself, or give it to someone else. But it may help to get advice from the Court of Protection to explore the issues.
- **Wills** – you cannot make a will on behalf of the donor. In a very few cases, the donor may be allowed to draw up a will or make an addition to the existing will (a codicil) but this would require legal and medical advice first, because it is unlikely the donor has sufficient mental capacity to do this if an EPA has been registered. If the donor has a will already, you can apply to the Court if you believe it would help you to carry out your duties and the person who holds the will is refusing to show it to you.

An example might be if you need to know whether the property was intended to be left to someone, and you are considering the sale of the property.

#### **4.12 Duration of an EPA**

The EPA remains valid until one of the following events occur:

- the death of either the donor or the sole attorney;
- The bankruptcy of the attorney;
- where there is more than one attorney, if one attorney wishes to give up the EPA;
- revocation (cancellation) before registration by you or by the PGO after registration;
- disclaimer by the attorney;
- mental incapacity of the attorney.

Further information about the procedure can be obtained from the PGO.

### **5. The Public Guardianship Office (PGO)**

This is a government agency responsible for registering Enduring Powers of Attorney and appointing Receivers to help look after the finances of people who lack the capacity to do so themselves. As the administrative arm of the Court of Protection, the PGO provides regulatory, help and support services to those who look after the finances of people who lack capacity.

The Customer Service Unit of the PGO is able to assist members of the public in making applications to the Court of Protection to become a receiver. Enquiries about appointment of receivers or applying to become a receiver can be made to the Customer Services Unit on tel: 0845 330 2900 (lo-call rate), or 080 7664 7300 (national call rate), or in writing to the Customer Service Unit, Public Guardianship Office, Archway Tower, 2 Junction Road, London N19 5SZ.

The Enduring Power of Attorney (EPA) team deals with issues concerning the registration of EPAs.

Any queries should be addressed to the EPA team at the address above, or be telephoning the EPA helpline on: 0845 330 2963 (lo-call rate).

Any complaints should be addressed to the Complaints Team at the above address. Anyone wishing to make a complaint about the way the PGO has dealt with an EPA should use the PGO complaints procedure before approaching the Independent Complaints Examiner, Adjudicator's Office, Haymarket House, 28 Haymarket, London SW1Y 4SP, tel: 020 7930 2292, website: [www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk).

The PGO produces explanatory leaflets and booklets, including:

- Receivers handbook – Making an application to become a receiver
- Making an Enduring Power of Attorney
- EP1 Notice of intention to register
- EP2 Application for registration
- EP3 General form of application
- EP4 Application for search

All are available to download from the PGO website: [www.guardianship.gov.uk](http://www.guardianship.gov.uk).

A leaflet on fees is also available, or contact the Customer Service Unit on tel: 0845 330 2900 (lo-call rate), or write to the address above.

In many cases it may not be necessary to instruct solicitors to deal with the Court or the PGO except where legal work such as selling a house needs to be done, as this will add to the cost. Legal help under the Legal Help scheme is not available for proceedings in the Court of Protection.

## **Records**

Anyone can apply to the PGO (on form EP4) for a search to be made of the records to see if an EPA has been registered and to obtain a copy of the EPA. The certificate of results of a search will be given on form EP5. A fee of £20 is payable on each request for a search to be made.

## **5.1 The Court of Protection**

If you can no longer manage your financial affairs and have not granted an Enduring Power of Attorney then an application for receivership may need to be made to the Court of Protection. The Court of Protection is an Office of the Supreme Court. It exists to protect the property and financial affairs of people who are mentally incapable of dealing with their own affairs. The Court's jurisdiction extends to England and Wales. Separate arrangements exist for Scotland and Northern Ireland.

Proceedings in the Court are conducted in private to protect the privacy of the persons concerned. It is not normally necessary to appear before the Court as its business is usually conducted by post. If an appearance is necessary the Court keeps its procedures as informal as possible.

### **The Powers of the Court and/or Public Guardianship Office**

The Court may appoint a Receiver. If assets are below £16,000 it may make a Short Order regarding the client's affairs, in place of a Receivership Order. However, these are discretionary and will only be considered after the Court has received the application.

### **Jurisdiction of the Court or Public Guardianship Office**

The Court or the Public Guardianship Office (PGO) must be satisfied after considering the medical evidence that the person is not only suffering from a mental disorder but is also incapable, for that reason, of managing their financial affairs. Only in these circumstances will they have jurisdiction.

### **When will the Court of Protection or Public Guardianship Office become involved?**

The Court of Protection and the Public Guardianship Office (PGO) would only become involved if something needed to be done either to protect someone's assets or to enable them to be used for their benefit. For example, if the client owns their home but are unlikely to return to it, then it may be necessary to sell the property so that the proceeds may be used for their benefit. Other examples are if capital and savings have accumulated or if use of the appointee's powers is no longer appropriate.

## **6. Arrangements made if you no longer have mental capacity – Receivership**

### **Applying for receivership**

If it is necessary to apply to the Court, the application is normally made by the nearest relative or a friend, but an application may be made by others such as a solicitor, accountant, bank manager or local authority. The person making an application should write to or telephone the Protection Division explaining the situation. The Public Guardianship Office will then send the forms.

### **Urgent cases**

In case of extreme urgency, the Court can give directions or appoint an interim receiver before the necessary medical evidence is available. It is advisable to telephone the Public Guardianship Office (PGO) first for advice to check whether an emergency application is appropriate.

**Note: The powers granted by the Court of Protection and the Public Guardianship Office to a Receiver cease on the death of the client.**

### **6.1 Completing the forms for Receivership**

If the application is for Receivership, the forms to be completed are:

- the receiver's Declaration (CP1);
- a Statement of Client's Assets and Income (CP5) – this covers all financial matters relating to the client;
- medical certificate (CP3) which must be completed by the client's doctor. The doctor must give a diagnosis of the client's condition and an explanation of why they cannot manage their own affairs – the doctor may charge a fee for completing the certificate;
- Court of Protection Notification letter – this is given to the client and to relatives and other relevant people. The client may write or telephone the Court if they object to any of the proposals. The Notification letter has to be given personally to the client. Notification must be given at least 10 days before a decision is made.

The complete papers must be returned to the PGO with the commencement fee of £250. There is a fee remission scheme in place for applications for receivership and where Short Orders are granted.

## **6.2 Fees and fee remission for receivership**

In addition to the commencement fee paid when you apply to be a receiver there is a Receivership Appointment Fee of £330 which is payable when the Court appoints the Receiver for the first time. However, in certain cases this fee can be waived or remitted. As the fees and remission criteria change from time to time you may wish to ask whether it applies to your application.

There is an annual administration fee payable to the PGO of £250. If individuals experience difficulty paying the commencement fee of £250 or the annual fee because of a low income or capital they should ask the Public Guardianship Office to waive the fees. Usually if the client's savings assets are above £12,750 this will not be granted, although consideration will be given on a case by case basis. If the client has fluctuating mental capacity they will only be required to pay the commencement fee the first time an application is made to appoint a receiver.

If the client's funds cannot be accessed until the court order is received, a letter can be sent with the application requesting that the fees are postponed, and giving the reasons for the request. Further information on fees is available from the PGO or from the website:  
[www.guardianship.gov.uk](http://www.guardianship.gov.uk).

### **Short Orders**

Usually 'short orders' are made when the person has less than £16,000 in capital and their financial requirements are fairly simple.

In a small number of cases, the Court decides to make a short order, but believes it would be helpful if the Court continued to supervise and monitor the case. In these cases there is an additional administration fee of £200, payable on the anniversary of the start of the Short Order. It is possible to have any fees in relation to short orders waived or remitted in the same way as for receivership described above.

### **6.3 Procedures required for Receivership**

- **References** – The Court will need the name and address of someone who has known the proposed receiver for at least two years and who is willing to provide a reference about the applicant's fitness to act as a receiver;
- **Requirements for security** – To safeguard the client's assets, the Court requires a security bond – this is like an insurance policy with an annual premium payable out of the client's money. The amount of any security is set by the Court in proportion to the client's annual income.

### **6.4 Court Decision**

The Public Guardianship Office will assess the client's needs before the Court of Protection appoints a receiver. This is intended to ensure that the right degree of help, as well as supervision, is arranged.

If the Court is satisfied with the information provided it will appoint the applicant or as a last resort the Public Guardianship Office as the receiver. After being appointed, the receiver takes control of the client's affairs and property and acts on the client's behalf in accordance with the Court's instructions.

### **6.5 The role and responsibilities of a receiver**

A receiver:

- is responsible for collecting the client's income and paying bills, and for dealing with any tax matters;
- should administer the client's affairs in the best interests of the client, including keeping property secure and in good repair;
- should try to be aware of the client's needs and wishes;
- should use the client's money for the client's benefit (in the widest sense) during the client's lifetime;
- should consult with the client, as far as is reasonable and practicable, about how they would like their money spent;
- should ensure that the client is given every opportunity to manage small sums of money on a day-to-day basis for small purchases;

- should take out insurance to cover the client's income and expenditure while they act as a receiver;
- should inform relevant people (PGO, relatives etc) about any changes in the client's circumstances (for example client's change of address, care home fees, marriage, recovery or death);
- must produce annual accounts relating to all financial dealings with the client's money – this is sometimes done with an annual questionnaire.

The client may make a Will if the Court considers that the client has 'testamentary capacity'. If the Court is satisfied that the client is incapable of making a Will, then the Court has the power to make a statutory Will for the client, making any provision which the Court considers the client would have wanted.

The receiver does not have power over the 'person' of the client and cannot authorise an operation or medical treatment, or where the client should live. Nor can the receiver stop a client getting married or making a Will, although the receiver should notify the PGO about the last two happenings.

### **Cases of urgency**

If you need access to some of the client's money urgently, for example to pay fees in a care home you should ask for an 'interim order' when you submit the papers to the Court.

## **6.6 Role of the Public Guardianship Office in relation to receivership orders**

In the majority of cases the Court of Protection is only involved on the appointment of the receiver, and all subsequent directions regarding the administration of the client's estate are given by the PGO as an administrative rather than a judicial act.

Transactions involving capital assets, legal proceedings, making loans or gifts etc, need to have the PGO's prior approval, and this may be obtained by writing to the PGO with full details of the proposals.

## **Lord Chancellor's Visitors**

If the Public Guardianship Office is appointed as the receiver, the client should be visited once a year by visitors from the Public Guardianship Office. There are three different types of visitor; general visitors, who visit clients who live alone or in care homes; qualified legal advisers; and medical advisers (consultant psychiatrists). The visitors will make a report from their visit, and send it to the Court of Protection, not to the receiver. Other clients **may** be visited if the Court of Protection feels it would be of great benefit to the client.

## **7. Arrangements made if you no longer have capacity – Appointeeship for benefits**

If your income is purely made up of benefit income and you have not created an EPA, then rather than needing a receiver to be appointed you can just have an 'appointee' to deal with your benefit claims and the payments made. This method should normally only be used if the person is mentally incapacitated. Only in very rare circumstances is it appropriate if the customer is physically disabled, for example they have suffered a severe stroke. Officials are told in guidance not to assume a person is incapable of managing their financial affairs just because they have lost the ability to communicate.

If you are entitled to a benefit or allowance but are unable to act for yourself, for example because of dementia or because of a temporary mental incapacity following an illness or accident, a representative of the Department for Work and Pensions may, on receiving an application, appoint someone else to exercise your right to make claims for and to receive benefits, and to spend them on your behalf. It is accepted policy that a close relative who lives with or frequently visits the claimant is the most suitable person to act. Sometimes an organisation or representative of an organisation can be a corporate appointee, for example the local authority or healthcare trust. The appointee must be over 18 years old.

If you wish to continue to collect your own benefits, and providing that you are able to understand the implications of claiming and receiving social security benefits, then the social security office should not give approval for an appointee, or for bulk payments to an organisation which acts as an appointee for a large number of people.

The Social Security office must satisfy itself that you are unable to manage your affairs, for example by visiting you and if necessary getting medical evidence. It must also check on the suitability of the person who has applied to act. If a Receiver (see Section 6) is appointed by the Court of Protection or there is an attorney under an Enduring Power of Attorney (see section 4) which has been registered with the Public Guardianship Office (PGO), previously, that person will automatically take over from the appointee in dealing with any benefits.

## **7.1 People in care homes**

In most cases the appointee will be someone who you know, either family or friends. But in some case as a 'last resort' the person appointed is the care home owner or manager.

If the home is part of an organisation it must first be established that the organisation is willing to act as appointee. Where the organisation becomes the appointee, the proprietor or managers may still collect the benefit provided they are authorised to do so by the organisation. The benefit can be put into a corporate account, but not into the care home's business account, unless all the benefit is being used to pay the home's fees. If the care home is collecting the benefit on behalf of a local authority funded resident, the resident's personal expenses allowance should not be used to meet the cost of personal care.

Before an appointee is authorised to act, a visiting officer must make sure that the customer is capable of managing their affairs, that an appointee is require and that the prospective appointee is suitable and willing to act. The prospective appointee is interviewed. Guidance states that where a customer lives in a care home, it should not be assumed that they are incapable of managing their affairs. Neither should a manager be appointed merely for the convenience of the home.

The appointee should not be a member of staff (unless they are a relative or friend of the customer), but only the owner or manager.

There are standards that should be followed (Standard 35 of Care Homes for older people; National Minimum Standards):

The registered manager may be appointed as an agent for a service user only where no other individual is available.

In this case, the manager ensures that:

- the registration authority is notified on inspection;
- records are kept of all incoming and outgoing payments for each individual.

The Commission for Social Care Inspection (CSCI) inspects homes and should make sure that these standards are being met.

## **7.2 The role and responsibilities of an appointee**

Appointees 'stand in the shoes' of the claimant under the benefit regulations and can sign forms, make appeals and generally deal with the benefits claim as if it was their own. Even though the claimant may not be able to deal with the claims process it is important that they are involved as much as possible with decisions about how to spend their money.

All money collected by the appointee must be used for the sole benefit of the claimant for whom they are acting. Unless instances of misuse are brought to its notice the social security office is unable to monitor that the arrangement is working to the claimant's benefit, or ensure that the claimant is receiving the full allowance.

The appointee is responsible for:

- finding out about your entitlements and benefits;
- letting people know about any change in your circumstances;
- arranging for any overpayments to be paid back.

Being an appointee lasts until the person is well enough to take back control of their finances. Any party (you, the appointee, or the office dealing with the payments) can end the arrangement.

### **Dealing with capital**

An appointee does not have the authority to deal with the capital or other income belonging to the incapacitated person. Unspent pension and benefits **may** constitute capital, even if held in the name of the appointee.

The appointee may not have full legal authority to deal with it and other options may have to be considered.

It is unlikely that an appointee would need to apply to the Court of Protection or the Public Guardianship Office (PGO) if they held a 'reasonable sum' of accrued savings. The Court has indicated that it would regard a reasonable sum as being equivalent to one month's accommodation costs, and around £500 cash float to meet unforeseen emergencies.

Leaflet GL21, available from your local social security office, contains information for an appointee or an agent. For details of your local office check in the telephone book under Jobcentre Plus, local social security office, or ask at your local library or advice centre.

## **8. Financial abuse**

Financial abuse refers to a range of activities. Examples include taking money or property, forging an older person's signature, getting them to sign a document using deception or undue influence, or using the older person's property or possessions without permission. People who lack the mental capacity to manage their own finances are often most at risk of financial abuse.

If you are concerned that people are misusing your or another person's finances, and/or are not acting in your or the person's best interests, **and** the Enduring Power of Attorney has been registered or it is clear that it needs to be registered, you may want to contact the PGO. The PGO can search their records to check if an EPA is registered, and can investigate complaints of financial abuse. Write to the Public Guardianship Office, Archway Tower, 2 Junction Road, London N19 5SZ. There is also a helpline tel: 0845 330 2963 (lo-call rate), website: [www.guardianship.gov.uk](http://www.guardianship.gov.uk)

**Action on Elder Abuse** helpline tel: 0808 808 8141 (free call) is confidential and provides information and emotional support in English and Welsh. It is available to people who are being abused, those who are concerned about possible abuse, carers and workers who may have similar concerns, and those who are interested in finding out more about elder abuse, website: [www.elderabuse.org.uk](http://www.elderabuse.org.uk).

The organisation Solicitors for the Elderly produces a booklet for solicitors which gives details about financial abuse and actions solicitors can take if they have concerns. Called 'A Strategy for recognising, preventing and dealing with the abuse of older and vulnerable people', it is available on their website: [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com).

## 9. Further information and assistance

**Action on Elder Abuse**, Astral House, 1268 London Road, London SW16 4ER, tel: 020 8765 7000, helpline tel: 0808 808 8141 (free call).

**Alzheimer's Society**, Gordon House, 10 Greencoat Place, London SW1 1PH, helpline tel: 0845 300 0336 (lo-call rate), website: [www.alzheimers.org.uk](http://www.alzheimers.org.uk). Supports people with all types of dementia, their families and carers, and provides information about all forms of dementia.

**MIND**, Granta House, 15-19 Broadway, London E15 4BQ, Infoline tel: 0845 766 0163 (lo-call rate), website: [www.mind.org.uk](http://www.mind.org.uk). Legal advice also available – contact main number for more information. Information Unit offers support for people in mental distress and their families. Referral to local associations which provide services such as counselling projects, self-help support groups, drop in centres and other services.

**Official Solicitor and Public Trustee Office**, 81 Chancery Lane, London WC2A 1DD, tel: 020 7911 7127, website: [www.officialsolicitor.gov.uk](http://www.officialsolicitor.gov.uk). Represents minors and adults under legal disability in County Court, High Court or Court of Protection in England and Wales.

**Public Guardianship Office**, Archway Tower, 2 Junction Road, London N19 5SZ. There is also a helpline tel: 0845 330 2963 (lo-call rate), website: [www.guardianship.gov.uk](http://www.guardianship.gov.uk)

## 10. Further information from Age Concern

The following factsheet/information sheet may be of interest:

Factsheet 7      *Making your will*  
Info Sheet IS/16      *Changes to the payment of benefits and pensions*

If you would like:

- to find your nearest Age Concern
- any additional factsheets mentioned (up to a maximum of 5 will be sent free of charge)
- a full list of factsheets and/or a book catalogue
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern's series of over 40 factsheets is available as a subscription service to those whose work involves older people. For details please call 020 8765 7200 (national call rate) and ask for our factsheet subscription leaflet.

Age Concern provides factsheets free to older people, their families and people who work with them. If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE, Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at:  
[www.ageconcern.org.uk](http://www.ageconcern.org.uk).

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No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. (*Age Concern England is unable to give financial or legal advice*).

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