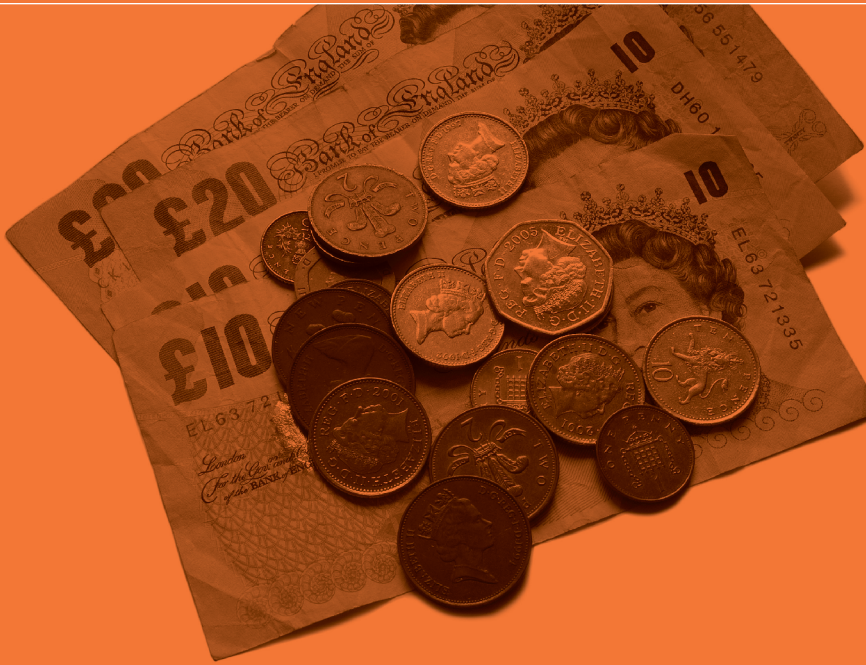


# Banking on good decisions

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



**The Mental Health Foundation is grateful to everyone who contributed to this booklet. To see the full list of those who gave their comment, advice and expertise please refer to the full guidance at [www.mentalhealth.org.uk/publications](http://www.mentalhealth.org.uk/publications)**

# Banking on good decisions

## Introduction

This booklet 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 produced a more detailed version of this booklet which is available on our website [www.mentalhealth.org.uk/publications](http://www.mentalhealth.org.uk/publications) and a version of this booklet is also available in Easier Read.

# Banking on good decisions

## Note on language

### **Mental health problems**

The booklet 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 booklet applies if you are customer of a bank, building society or post office. Sometimes the booklet 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 booklet for?

This booklet 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 booklet important?

A new law started in 2007 called the Mental Capacity Act.

**Mental capacity** means the ability to make a decision for oneself.

This law supports people to make their own decisions. It also gives legal protection if someone else has to make a decision for a person who lacks capacity to make the decision for themselves.

The Mental Capacity Act could cover decisions when someone wants to take out money from an account or open an account at a bank, building society or post office. The Mental Capacity Act applies to staff working in a bank, building society or post office.

# Banking on good decisions

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

Everybody needs to keep their money safe. To do this many people use banks, building societies or a Post Office Card Account.

A lot of banking can be done over the telephone, internet or using cash points. However to open an account or to do other things people may sometimes have to go into a bank, building society or post office.

# Banking on good decisions

## Mental health and making decisions about your money

Sometimes people who experience mental health problems have found it difficult to open accounts and to carry out transactions on their accounts. Staff may think the person is unable to manage their account when they are able to. Difficulties such as these may arise because of genuine misunderstandings, confusion or because of communication difficulties.

People with mental health problems should not be discriminated against as customers of banks, building societies or post offices. It is against the Disability Discrimination Act.

Staff working in a bank, building society or post office will usually assume that a customer who comes into the bank is able to make decisions about their money. Where necessary, bank staff should give clear and appropriate information to help a customer make decisions about their money. The Mental Capacity Act can help in these situations. Mental capacity means the ability to make a decision for oneself.

# Banking on good decisions

## Mental health and making decisions about your money

*continued*

However on occasions staff may believe that a customer does not have the mental capacity to make a decision about managing their money if the customer seems very confused or unwell, and staff may be reluctant to serve them. In these situations the Mental Capacity Act (MCA) will apply and should be helpful to both staff and customers. The MCA can help in other situations where a customer might need someone to help deal with their money because they may lack mental capacity to make a decision themselves.

# Banking on good decisions

## What is the Mental Capacity Act?

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

The MCA supports people to make their own decisions and gives legal protection if someone has to make a decision for them, 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 people 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 healthcare or money, for example.

# Banking on good decisions

## What is the Mental Capacity Act?

*continued*

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](http://www.publicguardian.gov.uk)

## Banking on good decisions

# When might the Mental Capacity Act apply in a bank, building society, or post offices?

The Mental Capacity Act could apply in any of the following situations if you are a customer in face to face dealings with bank staff:

- 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

# Banking on good decisions

## How does the MCA support people to make their 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 below.

### **Mental Capacity Act principles**

- **Assume 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**
- **People should be supported as much as possible to make their own decisions before anyone concludes they cannot make a decision**
- **A person has the right to make a decision that may seem to other people as unwise or strange, and that person should not be treated as lacking capacity for that reason.**
- **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.**

# Banking on good decisions

## How does the MCA support people to make their own financial decisions?

*continued*

If you are a customer making decisions about your money in a bank, building society or post office these principles mean things like:

- Bank staff assuming you have capacity to make your own decisions
- Making sure you have all the relevant information needed to make a decision – bank staff can help with this
- Making sure the information is explained or given to you in a way you can understand. For example, bank staff should take into account any reading or hearing difficulties you may have, or speech difficulties if you need to talk to the staff
- Having someone you trust to help you understand information or make a decision. For example, a relative, friend or advocate.

The Act also helps in a number of other areas if you are a customer in a bank. These include finding out if you have mental capacity to make a particular decision.

- If you have mental health problems these may affect your ability to make decisions when you are in crisis and very unwell, distressed or confused. Mental capacity may also be affected by medication because this may make you feel drowsy or confused. If you are going into a bank, building society or post office to deal with your money it's important that you do this when you are feeling well.

# Banking on good decisions

## How does the MCA support people to make their own financial decisions?

*continued*

- When making financial decisions it is also important that you can understand and remember the information relevant to the decision, weigh up the information and communicate your decision. If problems with your mental health are still preventing you from doing this you may not have capacity to make the decision. It may be worth getting support from a friend, relative or advocate for example, or delaying the decision.
- Staff in a bank, building society or post office will normally assume you have capacity to make decisions. However if they have genuine concerns that you cannot make a decision because you seem too unwell, distressed or confused they may be reluctant to carry out the transaction you are asking for, or suggest that you delay it. They may ask you for more information. However they 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). Staff may have to explain their reasons for not carrying out the transaction or delaying it. If staff do carry out a transaction when you were not well and lacked capacity to make decisions but the bank staff did not realise it, they may have to explain their reasons for doing this.

The Code of Practice gives more information about how to find out if someone has mental capacity to make a particular decision.

## **Banking on good decisions**

### **What happens if I believe I have capacity to make financial decisions but the bank staff don't agree?**

If the bank staff are reluctant to carry out the transaction you have asked them to do because they think you may lack capacity and you believe that you have capacity it is important to stay calm because you cannot force them to carry out the transaction. Ask to speak to the manager. If you are familiar with Mental Capacity Act you can tell the manager and the staff why you believe you have capacity. If they are still reluctant to serve you then you can ask to make an official complaint. If this does not work you can take your case to the Financial Services Ombudsman (details are at the end of the booklet).

## Banking on good decisions

# What happens about decisions that need to be made involving money if I lack the capacity to make the decision myself?

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. It may be possible to delay making the decision until you feel better and are able to make it yourself.

Two of the five principles of the Mental Capacity Act 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.**

# Banking on good decisions

## What are best interests?

The Act does not define best interests. Instead it explains what must normally be considered when deciding what is in the best interests of a person who lacks capacity. This includes:

- 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 in as far as they are able to communicate them (even if they can't actually make the decision).

The Act 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 in the person's best interests unless they have particular legal powers to do so.

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

## Banking on good decisions

# 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 you to appoint someone (called an attorney) such as a close relative to make certain decisions (which could include financial ones) on your behalf – you can choose whether you want the attorney to make decisions when you still have capacity or only when you don't have capacity
- 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 on your behalf if you lack capacity.

These legal powers are quite complex, to ensure that if you lack capacity to make a decision there are the proper legal safeguards to protect you. Attorneys or deputies may have the legal powers to deal with your bank, building society or post office account on your behalf if they are authorised to do so either by yourself or the court. Any decision they are authorised to make must be made in your best interests.

More detailed information about all of these can be found on the website of the Office of the Public Guardian [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

# Banking on good decisions

## Appointeeship

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Someone could also be an appointee of the Department of Works and Pensions (DWP) who has the power to manage a person's welfare benefit payments, when the person does not have the capacity to do so themselves. Appointees are covered by different laws but must follow the MCA principles.

## **Banking on good decisions**

### **What happens if bank staff are reluctant to serve me when I have an LPA but I still have capacity, or are reluctant to serve my attorney?**

Banks may find it confusing if you have an LPA which can be used by yourself or your attorney depending upon whether or not you have mental capacity. You may want to discuss with your bank what arrangements could be made to prevent any confusion.

If the bank staff are reluctant to serve you it is important to stay calm because you or your attorney cannot force them to carry out the transaction. Ask to speak to the manager. If you and your attorney are familiar with the MCA you can tell the manager and the staff why you believe you or your attorney should have been served. If they are still reluctant to serve you then you can ask to make an official complaint. If this does not work you can take your case to the Financial Services Ombudsman (details are at the end of the booklet). You may also wish to contact the Office of the Public Guardian as it has particular responsibilities in relation to LPAs.

## Banking on good decisions

# Are there other 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. This may be because it is convenient, or because you are housebound, or going away. This can be done with direct debits and joint accounts.

There are also more complex ways of letting other people have access to your account or to handle your financial affairs.

You can instruct your bank or building society to allow someone else access to your account with a *third party mandate*.

There is also something called an *ordinary power of attorney*, which is a legal document authorising one or more people to handle your financial affairs.

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

# Banking on good decisions

## Other laws about opening accounts

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 other 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 address. These could be in the form of a passport and a utility bill. There is also general guidance produced by the Financial Services Authority and the British Bankers' Association about what forms of identification are acceptable (their contact details are at the end of this booklet).

## **Banking on good decisions**

### **If you have concerns or want to make a complaint**

If you have concerns or want to make a complaint about the service you have received from a bank, building society or post office you can ask the staff how you can go about doing this. If you have concerns or just want more information about the Mental Capacity Act you should contact the Office of the Public Guardian. The Public Guardian is an official who has particular responsibilities under the Act. Contact details for the OPG are in the next section.

# Banking on good decisions

## Useful Contacts

### Age Concern

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

[www.ageconcern.org.uk](http://www.ageconcern.org.uk)

Free helpline – 0800 00 99 66

### British Bankers' Association

The association for the UK banking and financial services sector

[www.bba.org.uk](http://www.bba.org.uk)

### Building Societies Association

The association for all the UK building societies

[www.bsa.org.uk](http://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](http://www.citizensadvice.org.uk)

### Department for Work & Pensions

The government department responsible for appointeeships

[www.dwp.gov.uk](http://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](http://www.employers-forum.co.uk)

### 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](http://www.equalityhumanrights.com)

Helpline – 0845 604 6610

# Banking on good decisions

## Useful Contacts

*continued*

### **Financial Ombudsman Service**

The independent service for settling disputes between customers and businesses providing financial services  
[www.financial-ombudsman.org.uk](http://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  
[www.fsa.gov.uk](http://www.fsa.gov.uk)  
Consumer helpline  
– 0845 606 1234

### **Mental Health Foundation**

A mental health research and development charity  
[www.mentalhealth.org.uk](http://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](http://www.mind.org.uk)  
Mind Info Line – 0845 766 0163

### **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](http://www.publicguardian.gov.uk)  
Customer services – 0845 330 2900

### **Rethink**

A mental health charity. Has useful financial information on its website  
[www.rethink.org](http://www.rethink.org)  
National advice service  
– 0208 974 68 14

### **The Post Office**

Provides a wide range of services including financial services  
[www.postoffice.co.uk](http://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](mailto:mhf@mhf.org.uk)

To find out more visit [www.mentalhealth.org.uk](http://www.mentalhealth.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

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