

# A framework for authorising people wanting to operate a bank account for someone else



## Guidance for Banks and Building Societies



## **Introduction**

This document has been written in partnership by BBA, BSA, The Law Society of England and Wales, Solicitors for the Elderly, and the Office of the Public Guardian of England and Wales with contributions from Age UK and the Alzheimer's Society, to assist financial institutions in providing fair, appropriate and consistent standards of practice to customers who have other people acting on their behalf.

There are many different reasons why an account holder might need help from a 3<sup>rd</sup> party to manage his/ her financial affairs, including physical disabilities, learning disabilities, dementia and other loss of mental capacity. The need for help may be permanent or temporary. While such reasons are most prevalent among older people they can affect individuals of any age and gender.

Carers and other 3<sup>rd</sup> parties who support account holders are bank and building society customers too. The service they receive when helping to manage an account will influence their own choice of financial services provider and who they recommend to family and friends.

This is not a legal document and it does not constitute regulatory guidance or a code of practice. At all times, firms should have due regard to relevant statutory and legal obligations.

The term 'firm' is used throughout the document to refer to banks and building societies who are regulated by the Financial Services Authority.

This framework is applicable in England and Wales.

## 1. Mental Capacity & the Mental Capacity Act 2005

This section outlines the core principles of mental capacity.

The Mental Capacity Act 2005 sets out core principles that should be followed by people assisting those who may lack mental capacity to make a decision.

- A person must be assumed to have capacity unless it is established that he/ she lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him/ her to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he/ she makes an unwise decision.
- An act done or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his/ her best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Where the account holder has sufficient mental capacity and wishes to continue to manage his/ her finances, or some appropriate part of them, he/ she should not be prevented from doing so.

It is normally not necessary to require the attorney to obtain evidence or to notify the financial institution of the donor's lack of capacity unless the Enduring or registered Lasting Power of Attorney requires evidence of lack of capacity to be shown before it can be used (though the attorney should inform the firm if there is any likelihood that the donor might continue to operate the account when he/she has lost the capacity to do so).

Examples of situations where it may be necessary for the bank to obtain evidence of lack of mental capacity include:

- Disputes between attorneys and other authorised / interested parties as to whether or not the bank's customer is mentally capable.
- Compliance with 3<sup>rd</sup> party regulations e.g. HMRC regulations for setting up an ISA on behalf of someone else.

It is not normally appropriate to require a donor to attend a local branch so that the bank can verify the authority given to an attorney. Enduring or registered Lasting Powers of Attorney should be accepted as proof of authority. In any unusual case where there is doubt, the firm can also check the details with the Office of the Public Guardian.

One example of where it may be appropriate to ask a donor to attend a local branch is where the donor may have previously indicated to a firm that they have revoked a Power which is later presented for registration.

However it is inappropriate to require a donor to attend a local branch where the donor is incapable of making the journey because of medical problems and / or does not have the mental capacity to understand the reason for their visit.

The Mental Capacity Act 2005 establishes 'best interests' as the criterion for decisions made on behalf of someone lacking capacity.

### **Practice points to note**

*If a firm has reasonable suspicions that an account holder lacks the capacity to make relevant decisions, it should satisfy itself that the account holder understands the nature of his/ her transaction.*

*Mental capacity is considered in relation to a specific decision at a specific time. A customer may therefore have capacity to make some decisions e.g. making usual day to day withdrawals and not others e.g. taking out credit.*

### **Indicators that a borrower may have a mental capacity limitation**

*There is no exhaustive list of indicators that may lead you to suspect that an account holder might have some form of capacity limitation. Below are some examples from guidance published by the Office of Fair Trading – this was published in the context of borrowers of unsecured credit but can be applied to any type of account.*

- *They make a decision that is unexpected or out of character.*
- *They have a relative, close friend, carer or clinician who raises concerns with you.*
- *They clearly do not understand what the transaction / enquiry / application that they are making is for.*
- *They are clearly unable to understand the information and explanations you provide.*
- *They appear confused about the personal or financial information you are seeking.*

*Further information and case studies can be found in “Mental capacity – OFT Guidance for creditors” published in September 2011. A link is provided in “Reference” below.*

### **Verification of suspicions of lack of mental capacity**

*It is not the role of firms to assess an account holders’ mental capacity – this can only be done by a suitably qualified professional.*

*Where a customer’s behaviour, or information provided about a customer, makes you have concerns about the customer’s capacity to make a relevant decision you should look for internal guidance on what to do next.*

*Where a registered Enduring or registered Lasting Power of Attorney requires evidence of lack of mental capacity to be provided before the Power can be used by the attorney but does not stipulate the nature of that evidence, evidence from a suitably qualified professional is needed. A non-qualified attorneys’ own opinion or that of a non-qualified friend or family member is not sufficient.*

### **Reference**

Link to full OFT mental capacity guidance

[http://www.offt.gov.uk/shared\\_offt/consultations/oft1373.pdf](http://www.offt.gov.uk/shared_offt/consultations/oft1373.pdf)

## 2. Different types of 3<sup>rd</sup> party authorisation

### 2.1 3<sup>rd</sup> party mandates

#### General

A customer who has mental capacity can consent to a 3<sup>rd</sup> party (one or more individuals) having access to his/ her account(s), for example for administrative convenience or because of the account holder's extended travelling or physical disabilities.

#### 3<sup>rd</sup> party withdrawal mandate

Account holders may choose to allow a 3<sup>rd</sup> party to access his/ her account for withdrawals. Some firms will permit conditions to be added such as a cap on the amount of a 3<sup>rd</sup> party withdrawal or restriction to branch counter withdrawals only.

#### 3<sup>rd</sup> party disclosure mandate

Some firms also offer 3<sup>rd</sup> party disclosure mandates which allow the account holder to give a 3<sup>rd</sup> party access to account information so that the 3<sup>rd</sup> party can assist the account holder with managing the account holder's finances but do not allow the 3<sup>rd</sup> party to make withdrawals from the account.

#### Capacity of account holder

Both types of 3<sup>rd</sup> party mandate are inappropriate where a firm is aware the account holder lacks the capacity to make relevant decisions. You should assume the account holder has mental capacity unless he/ she or a 3<sup>rd</sup> party provide you with credible evidence that creates reasonable doubt, or you or other employees of your firm have grounds for reasonable doubt about the capacity of the account holder, in which case you may wish to reconsider the validity of the 3<sup>rd</sup> party mandate<sup>1</sup>.

#### *Practice points to note*

#### *Circumstances of use*

*Typical situations where a 3<sup>rd</sup> party withdrawal mandate might be used for an account holder with full mental capacity include:*

- *Where the account holder is housebound or has limited mobility.*
- *Where the account holder is living, working or travelling abroad but still wants to run a UK account.*

#### *Who can be given a 3<sup>rd</sup> party mandate*

*The donor account holder can nominate anyone to hold a 3<sup>rd</sup> party mandate on their account with the exception of persons who have lost mental capacity. The donor can name more than one individual in a 3<sup>rd</sup> party mandate though appointment of one individual only is usual.*

*The donor can appoint a minor as their agent under a 3<sup>rd</sup> party mandate provided that the minor “has sufficient understanding to consent to the agency and to do the act required”. In practice, appointment of minors to be mandate holders is rare.*

*Consideration has to be given to the practicalities of operating the mandate – e.g. where an account is operated via visiting a branch it would be sensible to choose a mandate holder who has reasonable access to branches.*

**Advice to account holders**

*Where an account holder is making enquiries about setting up a 3<sup>rd</sup> party mandate it is recommended that they should be pointed to advice on the full range of options for 3<sup>rd</sup> party involvement with the account – for example the BBA /BSA advice leaflet “Guidance for people wanting to operate a bank account for someone else”*

**Loss of Mental Capacity**

*If you have reasonable grounds for believing the account holder does not have the capacity to make relevant decisions the 3<sup>rd</sup> party mandate arrangements should be discontinued.*

*See section 1 for guidance on indicators of loss of mental capacity.*

Foot notes

<sup>1</sup> See Mental Capacity – OFT Guidance for Creditors, Chapter 3.6

## 2.2 Ordinary Power of Attorney

### General

An ordinary Power of Attorney made under the Powers of Attorney Act 1971, allows the attorney to make financial decisions on behalf of the donor.

### Form and validity

There is no set format, but it must include certain wording prescribed under s10 of the Act (as set out below).

It is possible to create an ordinary Power of Attorney to deal with specific matters (not always related to financial affairs) and when it is presented you should check the Power to ensure that it does extend to financial matters.

### Effect of loss of mental capacity

An ordinary Power of Attorney cannot be made and an existing one will cease to be a valid authority once the donor has lost mental capacity.

### *Practice points to note*

#### *Circumstances of use*

*Ordinary Powers of Attorney may be used in a variety of circumstances, some the same as 3<sup>rd</sup> party mandate arrangements, for example:*

- Where the account holder is housebound or has limited mobility.*
- Where the account holder is living, working or travelling abroad but still wants to run a UK account.*
- Where the account holder has made a Lasting Power of Attorney and is waiting for the Office of the Public Guardian to register the Power but wants assistance in handling his/ her financial matters in the meantime.*

#### *Who can be an attorney*

*Anyone is eligible to be appointed as an attorney except for minors and persons who no longer have mental capacity. The account holder can appoint more than one individual as his/ her attorney.*

#### *Validity*

*You should check that the ordinary Power of Attorney presented is valid. It must include the information set out in the standard wording below or be to the like effect and, in particular must state that it is made under the Powers of Attorney Act 1971. An individual presenting a document that does not state this or which deviates in a substantial way from the standard wording set out below should not be allowed access to the account(s). Seek internal advice if you have any doubts.*

*You should check if the Power of Attorney is a general Power or limited in scope to specific matters. Where the Power of Attorney deals only with specific matters you should also check that it covers dealing with financial matters in its scope.*

*A general power of Attorney will not specifically mention financial matters as it covers all areas.*

**Account designation**

*The account remains in the name of the person granting the ordinary Power of Attorney and is not re-designated.*

**Reference**

Standard wording for an ordinary Power of Attorney:

*This General Power of Attorney is made this day of [year] by [donor] of [address] I appoint X of [address] [or X of (address) and Y of (address) jointly or jointly and severally] to be my attorney(s) in accordance with section 10 of the Powers of Attorney Act 1971*

*In witness etc (executed as a deed)*

The words “*In witness etc.*” is not commonly used anymore and you are more likely to see the wording “*Signed as a Deed and Delivered etc.*”

It is acceptable for an ordinary Power of Attorney to be in a different form to the above wording as long as it has the same effect and states that the Power was made in accordance with the Powers of Attorney Act 1971.

## 2.3 Enduring Power of Attorney

### General

New Enduring Powers of Attorney cannot be made on or after 1<sup>st</sup> October 2007. An Enduring Power must have been signed by all parties on or before the 30<sup>th</sup> September 2007, under the Enduring Powers of Attorney Act 1985. If these requirements are met the Enduring Power remains valid after that date.

An Enduring Power of Attorney can be used **without registration** where the donor has mental capacity, subject to any restrictions within the Power.

### Effect of loss of mental capacity

A donor may begin to lose capacity to manage his/ her property and financial affairs gradually, for example because of living with dementia or may lose capacity completely as a result of a sudden event such as an accident or stroke.

It is the **duty** of the attorney to register the Enduring Power with the Office of the Public Guardian when he/ she believes the donor of the Power is beginning to lose or has lost mental capacity to manage his/ her property and financial affairs (note that if the registration occurred before 1<sup>st</sup> October 2007, it would have been registered with the Court of Protection).

In both cases the attorney can continue to use the Enduring Power of Attorney for the limited purposes set out below but must apply for registration at that stage. The attorney can also continue to use the Enduring Power while registration is taking place but during the registration process the attorney's powers are restricted on the same basis to:

- maintaining the donor or preventing loss to the donor's estate; or
- Maintaining himself/ herself (the attorney) or other persons to the extent that the donor might be expected to provide for the needs of the attorney or other person.

### Form and validity

The format and contents of the Enduring Power of Attorney are prescribed by statutory regulations and should be carefully checked (see the 'Reference' section below for more information).

### *Practice points to note*

#### *Circumstances of use*

*Typical situations where an Enduring Power of Attorney might have been set up include:*

- *Where the account holder was planning to make provision for any future loss of capacity.*
- *Where the account holder had mental capacity but was living with physical disabilities which meant he/ she chose to have help with his/ her banking.*
- *Where the account holder was beginning to lose mental capacity.*
- *Where the account holder was seriously ill.*

- *Where the account holder was living, working or travelling abroad but still wanted to run a UK account.*

*Presentation of an Enduring Power of Attorney to a firm for recognition does not automatically mean that the account holder has lost mental capacity – often families prefer to go through the firm’s recognition process in advance for the donor’s and attorney’s peace of mind.*

*There may be occasions where an attorney needs to start using his/ her powers to manage the donor’s finances urgently e.g. when the donor becomes ill unexpectedly. Where possible, you should fast-track the internal administration process to help the attorney deal with the donor account holder’s situation.*

### **Who can be an attorney**

*Anyone is eligible to be appointed as an attorney except for minors, persons who no longer have mental capacity and persons who are undischarged bankrupts. The account holder can appoint more than one individual as his/ her attorney*

### **Validity**

*In all cases you should check that the documents presented are valid. The Enduring Power of Attorney form is set by Regulations so any document that does not conform to this is not a valid Enduring Power of Attorney (unless the differences are immaterial) and an individual presenting the incorrect / invalid form should not be allowed access to the account(s).*

*A document check should cover whether:*

- *The Enduring Power of Attorney is in the right form.*
- *The details on the document correctly match the details of the donor and the attorney.*
- *The document has the same number of pages as shown on the front (if indicated).*
- *There is evidence of tampering.*
- *The authority is general or is limited in any way.*

*Employees should make a note of and act on anything the Enduring Power of Attorney says about who should operate the account(s) while the donor has mental capacity. Allowing an unauthorised person to operate the account(s) is in breach of the law and creates opportunities for fraud.*

### **Account designation**

*Once a person lacks the capacity to make relevant decisions and an attorney acting under a registered Enduring Power of Attorney is granted access to operate the account, it should be re-designated for example as “Mr X as Attorney for Mr Y”. See section 7 below.*

### **Reference**

*Example of an Enduring Power of Attorney standard format:*

<http://www.legislation.gov.uk/uksi/1990/1376/schedule/made>

<http://www.legislation.gov.uk/uksi/2000/289/schedule/made> - Welsh prescribed form

Link to "[Valid versions of registered Enduring and Lasting Power of Attorney forms](#)"

## 2.4 Property and Financial Affairs Lasting Power of Attorney

### General

Lasting Powers of Attorney, which were introduced under the Mental Capacity Act 2005 on 1<sup>st</sup> October 2007, must be registered with the Office of Public Guardian before they can validly be used.

Registration of a Lasting Power of Attorney does **not** indicate that the donor of the Power lacks the capacity to make relevant decisions. Once registration has taken place:

- The donor can still operate the account for so long as they retain mental capacity to make relevant decisions, notwithstanding that an attorney has been appointed.
- The attorney can also operate the account while the donor retains mental capacity to make relevant decisions, should the donor wish the attorney to do so, so long as there are no restrictions in the Lasting Power of Attorney preventing the attorney from acting before the donor loses capacity.

### Effect of loss of mental capacity

Once the donor does not have the capacity to make relevant decisions, only the attorney will be able to operate the account<sup>2</sup>.

### Form and validity

The format and contents of the Lasting Power of Attorney form are prescribed by statutory regulations and should be carefully checked (see the 'Reference' section below for more information).

### *Practice points to note*

#### *Circumstances of use*

*Typical situations where a Lasting Power of Attorney might be set up include:*

- *Where the account holder is planning to make provision for any future loss of capacity.*
- *Where the account holder has mental capacity but is living with physical disabilities which meant he/ she chose to have help with his/ her banking.*
- *Where the account holder is beginning to lose mental capacity.*
- *Where the account holder is seriously ill.*
- *Where the account holder is living, working or travelling abroad but still wants to run a UK account.*

*There are two types of Lasting Powers of Attorney:*

- *Property and Financial Affairs Lasting Power of Attorney; and*
- *Health & Welfare Lasting Power of Attorney.*

*Only a Property and Financial Affairs Lasting Power of Attorney gives the attorney the power to run the donor's financial affairs.*

*Health and Welfare Lasting Powers of Attorney do not and, therefore, cannot be accepted as authority for the attorney to access the donor's bank or building society accounts.*

*Presentation of a Lasting Power of Attorney to a firm for recognition does not automatically mean that the account holder lacks the capacity to make relevant decisions— often families prefer to go through the recognition process in advance for the donor's and attorneys' peace of mind.*

*There may be occasions where an attorney needs to start using his/ her powers to manage the donor's finances urgently e.g. when the donor becomes ill unexpectedly. Where possible, you should fast-track your firm's internal administration process to help the attorney deal with the donor account holder's situation.*

### **Who can be an attorney**

*Anyone is eligible to be appointed as an attorney except for minors, persons who no longer have mental capacity, persons who are undischarged bankrupts or persons subject to a debt relief order (for LPAs made on or after October 2012). The account holder can appoint more than one individual as his/ her attorney.*

### **Validity**

*In all cases you should check that the documents presented are correct and properly registered. The Property and Financial Affairs Lasting Power of Attorney form is set by Regulations so any document that does not conform to this is not a valid Power (unless the differences are immaterial) and an individual presenting the incorrect / invalid/ unregistered form should not be allowed access to the account(s).*

*A document check should cover whether:*

- *The Lasting Power of Attorney is for property & financial affairs (acceptable) or for health & welfare (not valid to cover financial affairs).*
- *The details on the document correctly match the details of the donor and the attorney.*
- *The document has the same number of pages as shown on the front (if indicated).*
- *There is evidence of tampering.*
- *The Office of the Public Guardian's authorisation is in evidence in all the required places.*
- *There are any restrictions on what the attorney can do.*

*Employees should make a note of and act on anything the Lasting Power of Attorney says about who should operate the account(s) while the donor has mental capacity. Allowing an unauthorised person to operate the account(s) is illegal and creates opportunities for fraud.*

### **Account designation**

*Once a person lacks the capacity to make relevant decisions and an attorney acting under a registered Lasting Power of Attorney is granted access to operate the account, it should be re-designated for example as “Mr X as attorney for Mr Y”. See [section 7](#) below.*

### **Reference**

Example of a Property & Financial Affairs Lasting Power of Attorney:

<http://www.legislation.gov.uk/ukxi/2007/1253/contents/made> is the 2007 version

<http://www.legislation.gov.uk/ukxi/2009/1884/schedule/made> is the 2009 amendment

Link to “[Valid versions of registered Enduring and Lasting Power of Attorney forms](#)”

### Footnotes

2. In certain limited cases an attorney may not be suitable to act even if an Lasting Power of Attorney has been registered (for example if they become bankrupt or subject to a debt relief order following the registration).

## 2.5 Court of Protection Orders / Deputyships

### General

In the event that a person has not made or been unable to make an Enduring or Lasting Power of Attorney, and lacks the capacity to manage his/ her own financial affairs, but has assets (other than state benefits) which need to be managed, a deputy must be appointed by the Court of Protection.

### Orders made before 1<sup>st</sup> October 2007

Orders from the Court made before the 1<sup>st</sup> October 2007 were for the appointment of a Receiver.<sup>3</sup> People who were acting as Receivers on the 30<sup>th</sup> September 2007 were renamed 'deputy'.

### *Practice points to note*

#### **Circumstances of use**

*Typical situations where a deputyship might be used include:*

- *Where the account holder never had mental capacity because, for example, of a brain injury at birth.*
- *Where the account holder has lost mental capacity before any other form of 3<sup>rd</sup> party authorisation could be made.*
- *Where the account holder did not have anyone that they trusted to appoint to run his/ her affairs.*
- *Where loss of capacity was unexpectedly sudden e.g. as a result of a severe accident or medical condition.*

#### **Who can be a deputy**

*More than one deputy can be appointed by the Court of Protection to act. Minors are not eligible and persons who no longer have mental capacity and persons who are undischarged bankrupts are unlikely to be appointed.*

*The appointed deputy is often a friend or family member but can also be a professional appointed by the Court, for example, where there is no suitable candidate close to the account holder or there is disagreement between two potential candidates which could work against the account holder's best interests.*

#### **Validity**

*The Court of Protection Order is an Order from the Court and documents presented should be checked for validity, including the Court's seal.*

*A document check should cover:*

- *Whether the Court's seal is present.*
- *Whether there are any restrictions on what the deputy can do.*

- *How decisions by the deputy are to be made.*
- *Whether more than one deputy has been appointed.*

**Account designation**

*Once a person lacks the capacity to make relevant decisions and a properly appointed deputy is granted access to operate an account, it should be re-designated for example as "Mr X as deputy for Mr Y". See section 7 below.*

FOOTNOTES

<sup>3</sup> Prior to 1<sup>st</sup> October 2007, where a person who lacked mental capacity had limited assets, such as accumulated welfare benefits, the Court of Protection would make a short order or direction to authorise another person to deal with those assets, without becoming a Receiver.

## **2.6 Department for Work and Pensions appointee**

### **General**

The Department for Work and Pensions (DWP) can appoint a person or a company or local authority (the 'appointee') to claim and manage state pensions, allowances and benefits on behalf of a claimant who is incapable of acting himself / herself - this will usually be because the claimant lacks the capacity to make relevant decisions but, exceptionally, may also be appropriate when the customer is physically disabled, e.g. if they have suffered a severe stroke.

It is important to note that an appointee can only manage state benefits and must not manage other funds.

### **Deputy already appointed**

If the claimant already has a Court of Protection appointed deputy, only the deputy can deal with state benefits. Where it is known that a deputy has been appointed and a request is received from someone other than the deputy to set up an appointee account, you should seek advice within your firm.

If someone has an appointee and a deputy is later appointed then the benefit must be paid to the deputy (the DWP will revoke the appointeeship).

### **Attorney already appointed**

The position of attorneys is different. It is possible for a person who is not the attorney to be appointed by the DWP to be the appointee with the appointee receiving the state benefits and the attorney any other income.

### ***Practice points to note***

*Evidence of an appointee is provided by Form BF57, given to the appointee by the DWP, which confirms the appointment.*

*The appointee, not the firm, is responsible to the claimant and to the DWP for ensuring that he/ she manages only the pension / allowance / benefit monies that he/ she has authority over and not the rest of the claimant's finances.*

*While it is not compulsory, one option to separate benefits and other monies is to open a separate account to receive benefits payments in addition to an existing account.*

### ***Account designation***

*The account should be in the name of the account holder on whose behalf the appointee is claiming benefits not the appointee.*

### **Reference**

Example of DWP form BF57

<http://www.dwp.gov.uk/docs/app-02.pdf>

## **2.7 Local Authority 'suitable person' managing a direct payment**

### **General**

A local authority may allow a 'suitable person' to manage a direct payment on behalf of another person (the account holder) to fund the account holder's long term care, usually because the account holder lacks the mental capacity to do so himself / herself.

The local authority has discretion as to whom it selects as the suitable person. This could be an attorney, deputy or other person, such as a carer. The suitable person will be authorised by letter from the local authority, and will need to make arrangements to receive the payment through a specified account.

### **Access to payment**

The payment is used to purchase care services for the disabled person, and so the suitable person is the only person who can access and manage this money. If an attorney, deputy or Department for Work and Pensions appointee is not selected as the suitable person, they are not authorised to access and manage the direct payment money.

### ***Practice points to note***

*Where a local authority nominates a professional carer to have access to an account for appropriate transactions, local authorities tend to nominate managerial level employees who then delegate the running of the account to junior employees reporting to that person. This will cause problems for both them and for the firm when an unknown, un-verified person turns up expecting to be able to operate the account.*

*It is good practice to write back to a local authority on receipt of a "suitable person" letter reminding them of how transactions on the account need to work and ask them to clarify how they will run the account to meet those requirements.*

### ***Account designation***

*The account should be held in the suitable person's name and should clearly indicate that it is an account held on behalf of the disabled person, for example, 'Joan Smith on behalf of Edward Smith'.*

### 3. Dealing with a joint account

#### 3.1 Joint accounts where no Lasting Power of Attorney or Enduring Power of Attorney or deputyship has been produced to the firm

##### General

A joint account may allow joint account holders to operate the account either separately or together ('either-to-sign' account), or it may require both account holders to sign ('both-to-sign' account).

Subject to the applicable terms and conditions, a third party may be given access by an account holder to a joint account on behalf of one of the account holders.

You should assume the account holder has mental capacity unless he / she or a third party provide you with credible evidence that creates reasonable doubt, or you or other employees of your firm have grounds for reasonable doubt about the capacity of the account holder, in which case you may wish to reconsider the suitability of the arrangement.

See [section 1](#) for guidance on understanding mental capacity/ indicators of loss of mental capacity.

##### Both-to-sign accounts

Where the account requires both account holders to authorise transactions and one account holder loses the capacity to make relevant decisions, the joint mandate can no longer operate and the firm may temporarily stop the account pending the appointment of a deputy or production of a registered Enduring or registered Lasting Power of Attorney.

##### Either-to-sign accounts

Where the account allows either account holder to operate the account and one account holder loses the capacity to make relevant decisions, you will need to confirm your firm's policy & procedure for joint accounts for guidance on what action you take (see practice point below).

##### ***Practice points to note***

##### ***Internal policies and procedures***

*Firms have differing internal policies as to how they approach the legal and practical issues that arise where one joint account holder of an either-to-sign account lacks the capacity to make relevant decisions. It is important that all customer-facing employees know and understand their firm's internal policy and know where to go for help if challenged as to why a particular policy has been adopted. Firms must be prepared to communicate their policy choice and the possible consequences to customers, regulatory authorities and the media.*

##### ***Essential transactions***

*If a temporary stop is placed on an account pending appointment of a deputy or production to the firm of a registered Enduring or Lasting Power of Attorney it may be appropriate to allow the account holder with capacity to continue to carry out*

essential transactions such as existing standing orders & direct debits or withdrawals for medical care and normal living expenses for himself / herself and for the account holder who lacks the capacity to make relevant decisions.

### **Enduring Powers of Attorney & Joint Accounts**

The fact that an account is a joint account does not change the **duty** of an attorney appointed under an Enduring Power of Attorney to register that Power when he or she believes the donor of the Power is beginning to lose or has lost mental capacity to manage his / her property and financial affairs – see section 2.3 for full details.

### **Disputes about an account holder's mental capacity**

Disputes can arise between the attorney and the joint account holder about whether the donor has the mental capacity to manage their account(s). In this situation, best practice is for the bank to ask for an assessment of the donor's mental capacity by a suitably qualified professional – see section 1.

Once an Enduring or Lasting Power of Attorney has been registered by the Office of the Public Guardian or a deputy appointed, individuals wanting to pursue a continuing dispute over the donor's mental capacity should be directed to the Court of Protection.

### **Reference**

Court of Protection contact options

Telephone helpline - **0300 456 4600**

<https://www.gov.uk/apply-to-the-court-of-protection>

## **3.2 Attorneys acting on behalf of a joint account holder**

### **Both-to-sign accounts**

In relation to both-to-sign accounts where one account holder lacks the capacity to operate his/ her account and where a registered Enduring or registered Lasting Power of Attorney is in place the firm will allow the attorney and the account holder (with capacity) to operate the account on the both-to-sign basis.

### **Either-to-sign accounts**

In relation to either-to-sign accounts, where one account holder lacks the capacity to operate the account and where a registered Enduring or registered Lasting Power of Attorney is in place, the firm will normally allow the attorney and the account holder (with capacity) to operate the account independently of each other, unless the account holder (with capacity) or the attorney objects.

### ***Practice points to note***

#### ***Internal policies and procedures***

*It is important that all customer-facing employees know and understand their firm's internal policies and know where to go for help if challenged as to why a particular policy has been adopted.*

#### ***Notification to account holder with capacity***

*Whenever a registered Enduring or registered Lasting Power of Attorney or other 3<sup>d</sup> party mandate is presented in relation to a joint account by anyone other than the only other joint account holder, it is best practice to notify the joint account holder(s) with capacity at the point when the Power of Attorney is presented to the firm even though the account holder(s) may be aware of the existence of the Power.*

#### ***Disputes between the attorney and the account holder with capacity***

*Disputes between the two parties should be handled on a case by case basis depending on the nature of the objection. You may need to consider how best to approach the operation of the account – up to and including putting a temporary stop on the account - while the dispute is being resolved.*

## 4. More than one attorney appointed under an Enduring Power of Attorney or Lasting Power of Attorney

### 4.1 Joint Attorneys

#### General

More than one attorney can be appointed under an Enduring or Lasting Power of Attorney to act on the donor's behalf.

Where there is more than one attorney it is important to identify from the wording of the Power whether the appointment was made:

- jointly, or
- jointly and severally, or
- jointly in respect of some matters and jointly and severally in respect of others (only possible for Lasting Powers of Attorney).

In most cases this will be specified in the Power. If it is not stated, then:

- in the case of a Lasting Power of Attorney, the attorneys must be treated as jointly appointed;
- in the case of an Enduring Power of Attorney, failure to specify will normally invalidate the Power.

#### Where the appointment is joint

Joint attorneys must all act together and not separately. This means that each attorney should oversee the actions of the other(s).

A Lasting Power of Attorney will terminate entirely if any one of the joint attorneys disclaims (voluntarily resigns from their attorney role), dies, becomes bankrupt or subject to a debt relief order (if made on / after 1 October 2012), or lacks the capacity to make relevant decisions.

Where the attorney and donor are married or in a civil partnership, unless the Power specifically states otherwise it will also terminate with the dissolution or annulment of the marriage or civil partnership between the donor and the attorney.

#### Where the appointment is joint and several

If the attorneys are appointed jointly and severally, they can act independently of each other. This means that either attorney can operate the account without the other attorney's knowledge or approval. However, if the attorneys wish they are also able to act together.

A Lasting Power of Attorney will not be automatically terminated by the disclaimer, death, bankruptcy, making of a debt relief order, dissolution or annulment of marriage or civil partnership, or incapacity of one joint and several attorney. In these circumstances the Power will continue and the remaining attorney(s) can continue to act.

**Where the appointment is joint in respect of some matters, and joint and several in respect of others**

If the attorneys are appointed under a Lasting Power of Attorney to act jointly in respect of some matters and jointly and severally in respect of others it is important to read the Power of Attorney carefully to identify whether the appointment in relation to the handling of banking matters is to act jointly or jointly and severally.

***Practice points to note***

***Enduring Powers of Attorney & Joint Attorneys***

*Joint attorneys appointed under an Enduring Power of Attorney have a collective duty to register that Power when they believe the donor of the Power is beginning to lose or has lost the mental capacity to manage his / her property and financial affairs. Restrictions on managing the donor's affairs while registration is taking place apply to all attorneys– see [section 2.3](#) for full details.*

***Disputes between joint attorneys***

*Where joint attorneys disagree about the donor's mental capacity leading to disagreement as to the management of their financial affairs best practice is for the bank to ask for an assessment of the donor's mental capacity by a suitably qualified professional – see [section 1](#). Once an Enduring or Lasting Power of Attorney has been registered by the Office of the Public Guardian or a deputy appointed, individuals wanting to pursue a continuing dispute over mental capacity should be directed to the Court of Protection – see [section 3.2](#) for how to contact the Court of Protection.*

*Cases of disputes between attorneys about the operation of an account, and between those named as replacements (see [section 4.2](#) for more information on replacements) should be handled on a case by case basis depending on the nature of the objection. In difficult cases you may need to consider how best to approach the operation of the account while the dispute is being resolved.*

*In cases of doubt, particularly in relation to the operation of a Lasting Power of Attorney where the attorneys have been appointed jointly in respect of some matters or jointly and severally in respect of others, you should seek internal advice.*

## 4.2 Replacement Attorneys

A donor of an Enduring or Lasting Power of Attorney can appoint a replacement attorney to act if an attorney cannot continue to act. The donor can only appoint a replacement attorney for the original attorneys.

In an Enduring Power of Attorney the donor should have set out the circumstances which cause the replacement to succeed an original attorney. You should check that the circumstance has arisen.

In a Lasting Power of Attorney the replacement will succeed an original attorney who disclaims their appointment (voluntarily resigning as an attorney), dies, becomes bankrupt / subject to a debt relief order, loses mental capacity to act or a marriage or civil partnership between the attorney and the donor is dissolved or annulled (known as 'terminating events'). The replacement should have notified and produced evidence of the terminating event to the Office of the Public Guardian, so that the original power reflects the original attorney ceasing to act. For a Lasting Power of Attorney there will normally be no need for the bank to seek evidence of the terminating event unless an urgent release of funds for an essential transaction is required while the Power is being re-registered.

You should read the Power of Attorney carefully to identify how replacements are to be appointed and how they are to act and seek internal advice if the instructions are unclear. If the donor has more than one attorney appointed to act jointly and severally he / she can specify who the replacement attorney replaces. Where attorneys are appointed to act jointly, the authority in all their favour ceases if a terminating event or specified circumstance has subsequently arisen, which then allows the replacement to act.

Before 1 October 2007 some Enduring Powers may have had a "Qualified" stamp on the document which limited registration to a particular attorney. This could arise where the registration application was submitted by one of a number of attorneys appointed to act jointly and severally. Qualified registrations are no longer considered necessary in this situation unless the non-applicant attorney was ineligible to act when the application was made.

If an inactive attorney subsequently wishes to act, they may apply to the Office of the Public Guardian to have the qualified stamp removed.

### ***Practice points to note***

#### ***Terminating events***

*Examples of terminating events that would create a need for a replacement attorney are where an existing attorney has:*

- *Voluntarily resigned their appointment as an attorney.*
- *Died.*
- *Lost mental capacity.*
- *Become bankrupt or subject to a debt relief order.*
- *Dissolved or annulled their marriage to / civil partnership with the donor.*

***Checking the replacement attorney's entitlement to manage the donor's accounts***

*You need to check that there is suitable authority for the replacement to be made before setting the replacement attorney up with access to the donor's account(s).*

*Enduring Power of Attorney – Use the original EPA document or a certified copy to check the circumstances in which an attorney can be replaced and ask the replacement attorney for evidence that the relevant circumstance has taken place – e.g. a death certificate on the death of an existing attorney.*

*Lasting Powers of Attorney – Request to see the original LPA document or a certified copy and check that it has an additional OPG stamp identifying that the original attorney has been replaced and which replacement (if more than one) is now able to act.*

*In both cases, you will also need to verify the replacement attorney's identity and address using the forms of identity acceptable under JMLSG guidance – see [section 5.1](#).*

## 5. Documents required to open & operate an account

### 5.1 Identification of 3<sup>rd</sup> party

#### General

The usual forms of identity as set out in The Joint Money Laundering Steering Group (JMLSG) Guidance should be obtained in respect of the 3<sup>rd</sup> party to comply with money laundering legislation.

Ideally, all ID verification should be done face to face as comparison of photo ID against the holder and physical inspection of paperwork is industry best practice for verification of ID. But it should be possible for evidence of identity to be provided via the post or electronically where it is difficult for the 3<sup>rd</sup> party to personally attend the firm. However, firms have a duty to require an enhanced level of ID verification, including personal attendance, where there appears to be higher risk of potential criminal activity.

#### Professional 3<sup>rd</sup> party

Where a 3<sup>rd</sup> party is working in a professional capacity, such as an accountant or solicitor, identification should relate to his/ her professional practice and not his/ her personal finances or home address – except where that address is also their registered business address.

#### **Practice points to note**

*ID verification for 3<sup>rd</sup> parties being given access to an account is no different from any other situation.*

*All 3<sup>rd</sup> parties being given access to the account must be taken through the customer due diligence process in the normal way and his/ her ID verified using JMLSG-approved evidence unless they have already had ID verified for other accounts that they hold with you.*

*If the attorney/ deputy etc. is opening an account on the donor's behalf with your firm for the first time the donor also needs to go through the verification process – though be mindful that not all donors will be in a position to make a personal visit to a branch and may not be in possession of the most common forms of ID so an alternative approach may be needed – your Money Laundering Reporting Officer (MLRO) can advise on the full range of acceptable options within the JMLSG guidance. Remember that where the donor has lost capacity the attorney/ deputy/ 3<sup>rd</sup> party mandate holder is responsible for arranging ID verification for the donor.*

*If you have suspicions about a particular individual or the documentation that they are using for ID verification as you go through the process you should report them to the financial crime team via normal internal procedures.*

## **5.2 Evidence of 3<sup>rd</sup> party's authority**

### **The original Power**

The original Power is the source of the attorney's authority. As it is important, it is unlikely that the original will be given to the financial organisation in case it is lost, mislaid, damaged or destroyed. Instead, it is usual for financial organisations to be sent a certified or office copy of the Power. If an original is received, it is not reasonable to keep it and it should be returned - it is good practice to take a copy before doing so.

Where an Enduring or Lasting Power of Attorney has been registered the Office of the Public Guardian will punch the word 'validated' through the document and stamp it. If the Enduring Power was registered before the 1<sup>st</sup> October 2007, it will bear the Court of Protection seal instead.

Some Enduring or Lasting Powers of Attorney registered in 2007 (after 1st October) and 2008 bear a hologram seal as a mark of registration rather than a stamp.

### **Certified copies**

A certified copy of an ordinary and Enduring Power of Attorney is a photocopy which bears a certificate at the end to the effect that the copy is a true and complete copy of the original and, if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original. The certificate must be signed by either the donor of the Power, an individual solicitor, a stockbroker or notary at the end (of each page) and must be accepted as proof of the contents of the original (See section 3 of the Powers of Attorney Act 1971).

Lasting Powers of Attorney can also be certified under Regulation 11 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 by either the donor of the Power, a solicitor or notary as an accurate copy of the original.

It would not be reasonable to demand to see the original where a valid certified copy has been provided, as a certified copy is legally sufficient proof of the original.

If a certified copy is received it is not reasonable to keep it and it should be returned – it is good practice to take a copy before doing so.

### **Office Copies**

An office copy of a registered Enduring or Lasting Power of Attorney is produced by the Office of Public Guardian, and marked as a copy of the original document. It is not possible to certify an office copy so you must not accept a purported certification of an office copy.

### **Court of Protection Orders**

Court of Protection deputyship Orders will bear the Court Seal. Firms should be provided with a sealed Order which should be copied for future reference.

### **Department for Work and Pensions appointee**

Evidence of an appointee is provided by Form BF57, given to the appointee by the Department for Work and Pensions, which confirms the appointment. Firms should be provided with the Form which should be copied for future reference.

**Suitable persons authority under direct payment**

There is no standard form of authority, as local authorities will confirm an appointment of a suitable person to manage a direct payment by letter. Firms should be provided with the letter which should be copied for future reference.

***Practice points to note******Certified copies***

*Certified copies of documents must contain the signature of the individual person certifying the document. While the stamp of a solicitors' firm will often accompany the signature, it is not a requirement.*

**Reference**

See section 2 for example documents

## 6. Identifying the limits on a third party authority

### 6.1 General limits

You should assume the account holder has mental capacity unless he/ she or a 3rd party provides you with credible evidence which creates reasonable doubt, or you or other employees of your firm have grounds for reasonable doubt about the capacity of the account holder.

#### 3rd party mandates

These should not continue to operate once the account holder lacks the capacity to oversee the operation of the account.

#### Ordinary Power of Attorney

The authority will end if the donor of the Power subsequently loses the capacity to make relevant decisions.

#### Enduring Power of Attorney

Many Enduring Powers allow the attorney to make decisions while the donor has mental capacity as well as when they lose mental capacity.

However, the Power may contain restrictions as to how and when the Power is to operate. Sometimes the Power contains a condition which prevents the attorney from acting unless the donor lacks mental capacity. The Power may set out the evidence required to establish when the attorney can act. If the Power does not specify what evidence of capacity should be obtained to establish that the attorney can act and the attorney wants to use the power in the period awaiting registration, reasonable evidence such as a letter from the donor's medical practitioner should be obtained.

If the attorney believes that the donor of the Enduring Power has lost or is losing mental capacity, the Power must be registered with the Office of the Public Guardian. During the registration period the attorney can continue to use the Power to maintain the donor, himself/ herself (the attorney) or other persons to the extent that the donor might be expected to provide for the needs of the attorney or other person, or make such decisions as are necessary to prevent a loss occurring to the donor's estate, but not otherwise.

#### Lasting Power of Attorney

A Property and Financial Affairs Power cannot be used unless it is registered with the Office of the Public Guardian.

The Power may contain restrictions as to how and when the Power is to operate. Unless it states otherwise, the Power can be used by the attorney while the donor still has full mental capacity.

#### Deputyship Order

Deputyship Orders are usually unrestricted, other than a limitation on the Power to make gifts ([see section 6.2 on 'Gifts'](#) for more information). The court may sometimes include restrictions as to the amount of funds that can be accessed - such restrictions will be set out in the Order.

### **Department for Work and Pensions appointee**

The appointee does not have the authority to access any funds other than state benefits but can open an account specifically to manage those benefits.

The appointee must keep the claimant's money separate from his own. The account should reflect the true ownership of the money. See section 7.

The appointee is only authorised to manage the DWP benefits and allowances. If other funds need to be managed, then (in the absence of a valid Power of Attorney) the appointee would need an Order from the Court of Protection appointing him/ her as the claimant's deputy.

### **Suitable person authority under a direct payment**

The direct payment is for the benefit of the person for whom the suitable person has been appointed to manage the funds paid by the local authority. The letter appointing the suitable person will include any terms or conditions (if any) that apply.

It is important that the account name should reflect the fact that it is a direct payments account. See section 7.

### **Practice points to note**

See section 1 for guidance in respect of indicators of loss of mental capacity.

### **Fraud, financial abuse & theft**

*Firms have a duty of care to their account holders, especially once on notice that an account holder lacks the mental capacity to make his/ her own decisions and is therefore potentially vulnerable to financial abuse, fraud or theft. They should exercise appropriate caution where it appears that a 3<sup>rd</sup> party with access to the account holder's funds may not be acting in the account holder's best interests and report the concerns to the relevant authority as soon as practicable via the firm's internal procedures for reporting suspicions of fraud.*

*These relevant authorities are:*

- *3<sup>rd</sup> party withdrawal mandates – The account holder(s).*
- *Ordinary Power of Attorney – The account holder(s).*
- *Registered Enduring and Lasting Powers of Attorney & Deputyship Orders – OPG Investigations Unit (see below in the 'Reference' section for further details).*
- *Department for Work and Pensions Appointees – DWP national benefit fraud helpline (see below in the 'Reference' section for further details).*
- *Local authority 'suitable person' - The relevant local authority Adult Care team.*

*Abuse - If there is any suspicion of physical or financial abuse or neglect the firm should consider referring the situation, using appropriate internal procedures, to their Local Authority's Adult Care team for further investigation. This applies in all types of 3<sup>rd</sup> party arrangement or even when the account holder still appears to be operating their account.*

*Money laundering - Any suspicions that a 3<sup>rd</sup> party mandate holder of any type is using the account for money laundering should be reported to SOCA via a suspicious activity report (SAR) in the normal way.*

**Voting – Building Societies only**

*Where a building society member lacks the capacity to make relevant decisions and a registered Enduring or Lasting Power of Attorney or Deputyship Order is in place the attorney or deputy has the power to exercise that member's vote at a building society AGM or SGM. AGM mailings etc need to be directed to the attorney / deputy rather than the account holder.*

*Department for Work and Pensions appointees and local authority "suitable persons" have no right to exercise the account holder's voting rights.*

**Reference:**

**OPG Investigations Unit**

Telephone: **0115 934 2777 / 0203 334 4665.**

Email: [OPG.Investigations@publicguardian.gsi.gov.uk](mailto:OPG.Investigations@publicguardian.gsi.gov.uk)

Post: Practice and Compliance

OFFICE OF THE PUBLIC GUARDIAN

PO BOX 16185

BIRMINGHAM

B2 2WH

**Department for Work and Pensions – National Benefit Fraud Helpline**

Telephone: **0800 854440**

Online reporting: <http://campaigns.dwp.gov.uk/campaigns/benefit-thieves/>

## **6.2 Gifts**

Attorneys appointed via an Enduring or Lasting Power of Attorney and deputies all have limited powers to make gifts using funds from the donor's account.

### **Enduring Power of Attorney**

Subject to any conditions or restrictions in the Power, the attorney can make gifts to the following extent:

- Gifts of a seasonal nature (Christmas or other religious festivals), or on birthdays, marriage, civil partnerships or anniversaries of such, to persons (including the donor) who are related or connected with the donor,
- Gifts to any charity to whom the donor made or might have been expected to make gifts,

As long as the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the donor's estate. Larger gifts and gifts for other reasons cannot be made using the Power unless authorised by Order of the Court of Protection.

### **Lasting Power of Attorney**

Subject to any conditions or restrictions in the Power the attorney can make gifts to the following extent:

- On customary occasions (birthdays, marriages, formation of civil partnerships or anniversaries of such or any other occasion on which presents are usually given within families or among friends) to persons (including themselves) who are related or connected to the donor,
- To any charity to whom the donor made or might have been expected to make gifts,

As long as the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the donor's estate. Larger gifts and gifts for other reasons cannot be made using this Power unless authorised by Order of the Court of Protection.

### **Deputies**

Most Court of Protection Orders give deputies quite limited powers to make gifts to themselves or to others – usually on customary occasions (Christmas or other religious festivals, birthdays, anniversaries) to relatives or persons connected to the vulnerable person provided that the value of the gift is not unreasonable having regard to all the circumstances and, in particular, the size of the estate. Orders usually also permit reasonable charitable gifts.

### **Needs**

Most Court of Protection Orders usually permit the deputy to provide for the "needs" of anyone who is related or connected to the person they are acting for if he/ she has provided for their needs in the past or might have been expected to provide for them now. "Needs" is not defined although it seems mainly intended to cover situations where there is evidence that the person they are acting for has made financial provision for others for particular reasons in the past and that they would be likely to do so again in the future.

This is because the Mental Capacity Act requires all decisions to be made in the “best interests” of the person who has lost capacity. When deciding what the best interests are a Court will take into account various factors including the person's past and present wishes and feelings.

The same applies to Enduring Powers of Attorney.

The Court of Protection has also confirmed that attorneys under a Lasting Power of Attorney may provide for the “needs” of anyone the donor was legally obliged to maintain, for example the donor’s spouse, civil partner or minor child.

***Practice points to note***

*Deciding what constitutes a “reasonable gift” is the deputy’s / attorney’s responsibility – there is no single legal definition. However, if you have concerns that the deputy / attorney is abusing this power for his/ her own or others’ financial advantage you should treat this as suspected financial abuse .*

*In particular, if the Enduring Power of Attorney, Lasting Power of Attorney or Court of Protection Order appointing a deputy either restricts or prohibits the making of gifts, then suspicions that funds are being used for those purposes should be dealt with under your firm’s internal procedures for reporting suspicions of fraud or financial abuse – see the practice points in section 6.1.*

*Similarly, if it is not clear that the Power or Order allows an attorney/ deputy to provide for the “needs” of someone other than the account holder (because, for example, the account holder was not known to provide for that person in the past), you should refer to your firm’s internal fraud and financial abuse procedures – see the practice points in section 6.1.*

## 7. Identifying the customer

### **Who is the customer ?**

The customer is the person in whose name the account was opened or is held and to whom the money held in the account belongs even though the account may be operated by a 3<sup>rd</sup> party.

If the account is an existing account, the 3<sup>rd</sup> party is not the customer; instead, they act as agent for the customer and this should be reflected in the account title and records. If an existing customer lacks the capacity to make relevant decisions and the firm has granted his/ her attorney access to his/ her account under a registered Lasting Power of Attorney (or an Enduring Power of Attorney, once it has been registered), the account should be re-designated for example as "Mr X as Attorney for Mr Y". The same is true for a deputy.

Even if the account is opened in the name of the 3<sup>rd</sup> party, the account should be designated in this way to make clear that the funds belong to the donor. This helps to minimise fraud and complications with tax and succession.

For example, where an appointee opens an account to manage State benefits, the account name should reflect the true ownership of the money, for example 'Joe Bloggs as appointee for Jess Bloggs'. Similarly where a suitable person opens an account to manage the funds paid by the local authority, the account should clearly indicate that it is an account held on behalf of the person in receipt of benefits, for example, 'Joan Smith on behalf of Edward Smith'.

### **Identification of the account**

Identification of the account should relate to the customer and the 3<sup>rd</sup> party acting on behalf of the customer and not to other accounts that are held and managed by the 3<sup>rd</sup> party in respect of others. For example, if Mr Ahmed is a professional deputy for Mr Simons, but also for Mrs Davis, identification for access to the account held for Mr Simons, should relate to Mr Ahmed and Mr Simons, but not to Mrs Davis. This is to avoid breach of confidentiality and the risk of mixing funds of different customers.

## 8. Communicating appropriately and to the correct correspondent

This section outlines to whom correspondence should be sent.

### **Where to send communications**

Communications should be addressed to the correct correspondent.

- The starting position for an ordinary Power of Attorney, where the donor still has capacity, is to send correspondence in accordance with the donor's instructions - i.e. just to the donor, just to the attorney or to both the donor and the attorney. There may also be some restrictions set out in the Power of Attorney document itself.
- In the case of a registered Enduring Power of Attorney, the firm can reasonably assume the donor now lacks capacity and correspondence should be sent to the attorney (although see practice point below).
- This differs from the case of a registered Lasting Power of Attorney: here no assumptions should be made that the donor lacks the capacity to make relevant decisions and correspondence should be sent in accordance with the donor's instructions (i.e. just to the donor or to the donor and the attorney or to the attorney only). But as soon as the bank knows the donor has lost the capacity to make relevant decisions correspondence should be directed to the attorney.
- Where a deputy has been appointed, correspondence should be sent only to the deputy.
- Where an appointee is acting, correspondence should be sent only to the appointee.
- Where a suitable person is acting, correspondence should be sent only to the suitable person.

### **Professional 3<sup>rd</sup> parties**

Where a 3<sup>rd</sup> party is acting in a professional capacity correspondence should be sent to his/ her business address, unless specifically instructed otherwise, to avoid breaches of customer confidentiality.

### ***Practice points to note***

*Ordinary Power of Attorney – Where no specific instruction is provided account statements etc. could be sent to both the donor and attorney.*

*Enduring and Lasting Powers of Attorney -There may be instances where the donor, while no longer having full capacity, still has the mental capacity to understand his/ her financial affairs. In these circumstances there is no legal reason why account statements etc. should not be supplied to the donor as well as the attorney.*

## 9. Operational best practice

It is best practice for firms to have clear internal processes for registration of 3<sup>rd</sup> party authorisation as they would for any other customer service process. This includes responsibility for accuracy of information on account records.

Individual firms will have differences in their internal registration processes so that the process is aligned to their size, range of customer channels and operating model. However, there are best practice principles that would apply to all:

- Customer-facing employees should have a working knowledge of the different types of authorisation and the internal process for registering operating them and / or have access to specialist advice and know where to go for help if registration is complex or they are unsure of the situation they are facing.
- 3<sup>rd</sup> parties should also have clear contact points for updates/ queries during and beyond the registration process. In particular, customers presenting a Power of Attorney or deputyship Order for the first time should be provided with all the account information and contact details that they will need to manage the donor's account(s).
- All employees should always bear in mind that registration of a Power of Attorney or deputyship can represent a highly stressful and emotional event in the life of the donor's family and so it is particularly important that the attorney/ deputy is helped through this process by good service.
- An attorney/ deputy able to act alone should be able to access online or telephone banking products to administer the donor's account where the financial institution can provide these facilities. An attorney/ deputy should not be disadvantaged by the nature of the account that they are required to use in connection with his/ her authorised attorney/ deputy role.
- Customer facing staff should be encouraged to question irregular patterns of activity and to report suspicions of fraud or financial abuse by authorised 3<sup>rd</sup> parties for appropriate investigation.
- Financial institutions should have regard to the needs/ duties of authorised 3<sup>rd</sup> parties when designing future products and services.

### ***Practice points to note***

*The following self-assessment questions can assist in assessing how closely a firm is delivering operational best practice in this area:*

- *Who in your organisation has executive responsibility for services to 3<sup>rd</sup> parties operating accounts on behalf of others?*
- *What information do you provide to the customer to guide them through your 3<sup>rd</sup> party mandate holder processes?*
- *Do front line employees know where to get advice on queries in relation to 3<sup>rd</sup> parties operating accounts for others – do they regularly use this facility?*
- *Is the topic of 3<sup>rd</sup> parties operating accounts for others included in induction training for new employees?*

- *Does your product / service channel design consider the needs of 3<sup>rd</sup> parties operating accounts for others when producing new products that will be attractive to older customers or others who are / will be represented by an attorney or deputy?*
- *Do you get customer feedback on how you deliver services to 3<sup>rd</sup> parties operating accounts for others – how do you use this feedback?*
- *Do your front line employees know how to recognise signs and report suspicions of financial abuse?*

### **Information for consumers**

*The BBA & BSA have produced a consumer leaflet “Guidance for people wanting to operate a bank account for someone else” which is available to give to customers or prospective attorneys / Deputies.*

*(Link to “Guidance for people wanting to operate a bank account for someone else” leaflet )*

### **Employee training**

*Training on processes for 3<sup>rd</sup> parties operating accounts for others needs to balance compliance with the law and protection of the account holder with providing a service to the 3<sup>rd</sup> party. Training should help employees understand the anxiety and stress that 3<sup>rd</sup> parties applying to operate accounts may be under.*

*Best practice is to utilise the experiences of employees who are / have been attorneys / deputies / carers for his/ her own family members to show the human impact and to help employees understand why these processes are particularly sensitive for the customer’s family.*