

Misuse of power

Paul Winter, pictured opposite, is one of the 100,000-plus people in England and Wales who currently hold a registered enduring power of attorney (EPA). This document allows Paul to operate a bank account on behalf of his mother, who has dementia. The EPA was registered with the relevant authority with permission of his father, when he was diagnosed with terminal stomach cancer last year.

The fact that the EPA had been registered, and that Paul had been able to prove his own identity, should have been sufficient when he presented it to the bank. Yet Paul met with problems. He explains: 'Yorkshire Bank initially refused to recognise the EPA. Once it was accepted, it said that an attorney couldn't have internet banking, a cash card or a debit card, and demanded I bring my father into the bank to sign a form for a cash card in his name – even though he was on morphine and in a lot of pain. After much complaining, it told me I would be allowed all the things I'd been denied. It then gave my father £150 compensation for its mistakes. Sadly, he didn't live to spend it.'

Scotland and Northern Ireland

How the system differs

Scotland's continuing power of attorney and welfare power of attorney function, respectively, in a similar way to the new finance and property and healthcare and welfare lasting power of attorneys to be introduced in England and Wales in October (see 'Changes on the way', right). Both must be registered with Scotland's Office of the Public Guardian before they can be used. Northern Ireland's system is similar to the current one for England and Wales outlined in this article; new mental capacity legislation is currently being considered but there are no plans at present to replace EPA.

The document

Enduring power of attorney is a document that gives someone else (the attorney) a legal way of managing the finances and property on your behalf if you (the donor) become mentally or physically incapable of doing so yourself. Provided you are mentally capable, the EPA doesn't have to be registered. But as soon as you lose mental capacity, your attorney must register the document with the Public Guardianship Office, the administrative arm of the government's Court of Protection.

Guidelines in place

The British Bankers Association (BBA), of which all major banks and building societies in the UK are members, has drawn up guidelines on EPAs. These should help make it as straightforward as possible for people who hold an EPA to look after someone else's money while preventing financial abuse and complying with rules on money laundering.

The guidelines focus on registered EPAs and say that attorneys will be recognised as having the legal right to act on the customer's behalf if they can:

- provide a completed EPA document that has been registered
- prove the customer's (donor's) name and address – the registered EPA is sufficient
- prove their own name and address

CHANGES ON THE WAY

From 1 October 2007 you will no longer be able to make a new EPA, though existing EPAs, whether registered or not, will remain valid. Instead, you will need to make a lasting power of attorney (LPA). Unlike an EPA, an LPA will have to be registered before it can be used. It will also allow you to choose someone to make decisions about your welfare and healthcare. LPAs will have two parts: one for finance and property, which you can use while you're mentally capable, and one for personal welfare, which takes effect only if you become mentally incapable.



'Yorkshire Bank gave my father £150 for all its mistakes. Sadly, he didn't live to spend it'

The problems faced by people who hold an enduring power of attorney and what you can do if you don't get the service that you need from a bank or building society

with a passport or driving licence and utility bills – the bank will tell you what documents it accepts.

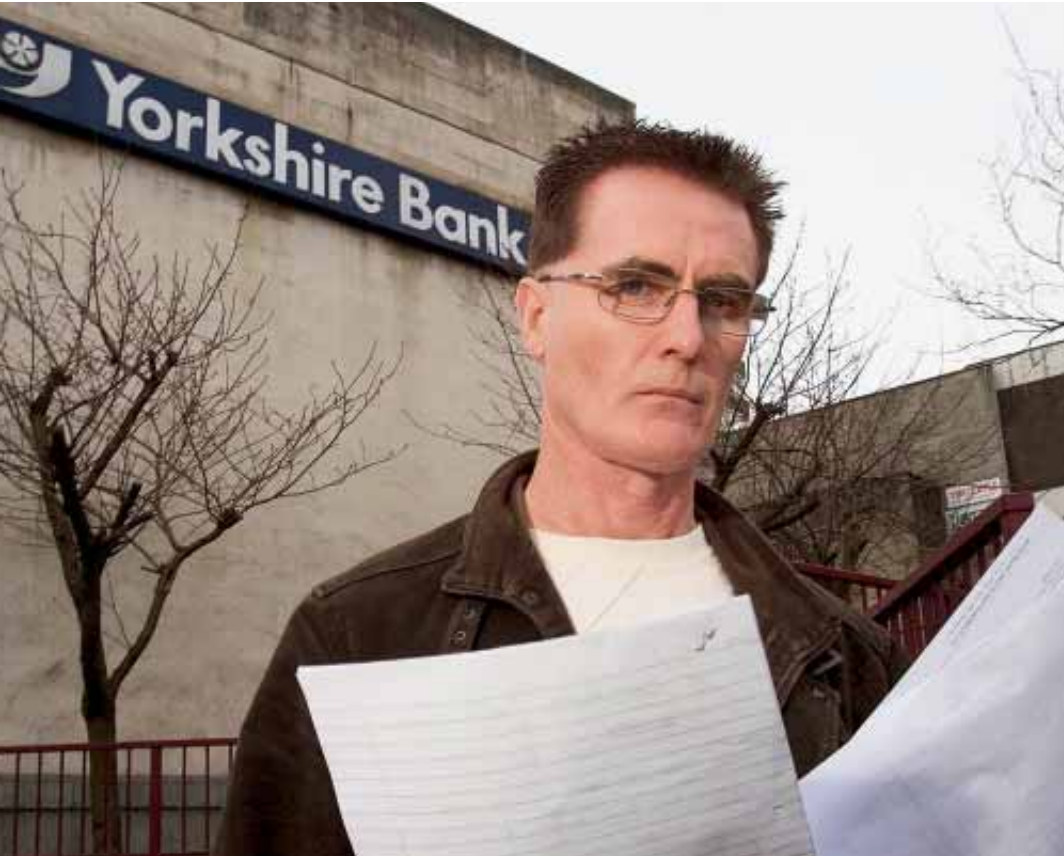
Evidence of mishandling

The guidelines are good in theory. But when we asked for your experiences of using a registered EPA, we received a steady stream of emails and letters highlighting problems – suggesting that banks and building societies don't always make it that easy for attorneys. You told us about:

- banks requesting signatures from a donor whose mental illness renders that very signature meaningless
- customer service staff who simply don't understand what power of attorney is
- inconsistency – not just between different banks, but even among branches of the same bank. For example, Deborah Hesketh from Bolton, who holds a registered EPA for her aunt who has Alzheimer's disease, told us: 'I took the document and proof of my identity to a local bank to open an account in my aunt's name, but the manager refused...Instead, I went to another branch of the same bank, five miles down the road, and was able to open the account with no problems at all.'

Our findings are only a snapshot, but they square with those of the Financial Ombudsman Service. It told us that, although it receives a relatively low number of complaints about banks and their handling of power of attorney, in over half the cases that have reached it, it has found that an administrative error on the part of the bank was responsible for the dispute.

Although the Public Guardianship Office (PGO) has received no official complaints about banks and EPAs, the Scottish equivalent told us that it has helped resolve several disputes. The Alzheimer's Society



Paul Winter had problems with his EPA at the bank, even though all his documents were in order

also receives regular complaints. Neil Hunt, its Chief Executive, told us: 'We are aware of problems where EPAs have not been recognised or understood, adding to stress for carers and blocking of finances.'

Which? says

We expect banks to take precautions to protect their customers. But they should also make it as straightforward as possible for attorneys to act in the best financial interests of those customers if they can no longer do so themselves.

The BBA's Stewart Dickey points out that, for many bank employees, an EPA is not a familiar document: 'Some counter staff may rarely see EPAs and may have to get help from specialist staff'. But he remains satisfied that 'all member banks will have procedures for dealing with EPAs

Contacts

Alzheimer's Society
020 7306 0606
www.alzheimers.org.uk

British Bankers Association
020 7216 8800; www.bba.org.uk

Disability Rights Commission
0845 762 2633; www.drc-gb.org

Financial Ombudsman Service
0845 080 1800
www.financial-ombudsman.org.uk

Office of the Public Guardian
(Scotland) 01324 678300; www.publicguardian-scotland.gov.uk

Office of Care and Protection
(N Ireland) 028 9032 8594
www.courtsni.gov.uk
(click on 'Useful leaflets')

Public Guardianship Office
(England and Wales)
0845 330 2900
www.guardianship.gov.uk
(renamed Office of the Public Guardian from 1 October 2007)

Solicitors for the Elderly
01992 471568
www.solicitorsfortheelderly.com

in place that reflect the guidelines'. Nevertheless, it is clear from what Which? members and other organisations have told us that inconsistencies and problems with the way banks deal with EPAs do exist.

People who hold an EPA are already trying to deal with difficult circumstances, so every time a bank makes a mistake, it is likely to cause more misery and distress than just a normal 'customer service error'.

Neil Hunt is concerned that the problems will become more significant when the new regulations are introduced (see 'Changes on the way', opposite) and stresses that 'it is vital that customer services staff receive adequate training to assist people with dementia and carers, particularly in financial affairs'. If you have problems getting the bank to accept an EPA, see our 'Checklist', right, for what to do.

'I went to another branch of the same bank and was able to open the account with no problems at all'

MAKING A WILL?

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POWER OF ATTORNEY

Checklist

Follow our tips

■ Before drawing up a power of attorney, it's essential to get advice from a solicitor. Solicitors for the Elderly can suggest those who may be suitable.

■ For more advice on power of attorney, contact the Public Guardianship Office in England and Wales, the Office of the Public Guardian in Scotland, and the Office of Care and Protection in Northern Ireland.

■ If you have problems using a registered EPA, refer the bank to *Banking for mentally incapacitated customers* – see the leaflets section of the BBA website.

■ When complaining to a bank, ask for a copy of its complaints procedure to ensure your complaint goes to the correct department. Complain in writing and send copies of relevant documents.

■ Keep copies of correspondence between you and the bank or building society.

■ If you haven't received a satisfactory final response within eight weeks, the Financial Ombudsman Service

can help resolve complaints – the service is free and often informal. You don't have to accept its decision and can go to court instead.

■ Legal rights for physically or mentally disabled people are guaranteed by the Disability Discrimination Act. This includes access to services such as banking. The Disability Rights Commission strongly recommends that attorneys have the same access to banking services as the customers themselves would, were they able to operate the account on their own.

■ See *Which?*, Nov 2006, p76 for more on power of attorney.

