

THE INSIDER · INVESTIGATIVE · #0020

Losing Capacity, Not Life

What a Lasting Power of Attorney Can and Cannot Do With Bitcoin in England and Wales

28 October 2026

A registered lasting power of attorney can give an attorney legal authority over a donor's bitcoin. It contains none of the information needed to reach self-custodied coins.

Losing Capacity, Not Life

What a Lasting Power of Attorney Can and Cannot Do With Bitcoin in England and Wales

The question

If a bitcoin holder in England or Wales loses mental capacity, what can an attorney appointed under a property and financial affairs lasting power of attorney (LPA) lawfully do with that bitcoin, what limits apply, and what stands between the attorney's authority and the coins themselves?

Incapacity can last for years while the holder is alive, and during that time someone may need to pay care costs, manage holdings or keep coins safe. This investigation looks at that period, before death.

Method and sample window

We read sections 9 and 12 of the Mental Capacity Act 2005 [1][2]; four official guidance documents for donors and attorneys — the Office of the Public Guardian's (OPG) guides LP11 and LP14, the current web version of its guide LP12 (updated 20 April 2026), and gov.uk guidance on managing a bank account for someone else [3][14][4][5]; published commentary from six legal sources on LPAs, investment delegation and digital assets [6]–[11]; the Court of Protection judgment in *Re RG* [2015] EWCOP 66 [13]; and a law firm's report of the Property (Digital Assets etc) Act 2025 [12]. For each official document we recorded whether it mentions cryptoassets, digital assets, passwords or keys. Sources were accessed on 26 and 27 October 2026. The scope is England and Wales only.

How we weigh the sources. Legislation sets the framework and its limits. Court judgments show how courts have applied it in particular cases. OPG guidance explains how LPAs operate in practice. Practitioner commentary shows professional interpretation and where views differ. Where we found no guidance or case law on a point, we report a gap in the record, not proof of a gap in the law.

1. The authority exists only once the LPA is registered, and is bounded by the Act

Under section 9 of the Mental Capacity Act, a lasting power of attorney can give one or more attorneys authority over a donor's property and affairs, including when the donor no longer has capacity. An LPA is not created unless the instrument is made and registered in the prescribed way, and the attorney's authority is subject to the Act — in particular its principles and the best-interests requirement — and to any conditions or restrictions in the instrument itself [1]. LP14 states plainly that an attorney can act under an LPA only if it has been registered [14].

The OPG's guides describe the property and financial affairs LPA as covering the donor's money and property, giving examples that include making and selling investments [3][14]. Neither the statute sections we read nor the OPG guides name bitcoin or cryptoassets [1][2][3][4][14]. An article by Angharad Lynn in the Law Society's Private Client section lists cryptocurrency among digital property rights and states that, where a property and financial affairs LPA is unrestricted, the attorney has authority to make decisions about the donor's digital property rights, provided nothing breaches the Mental Capacity Act [6].

Two points of precision follow. First, the Property (Digital Assets etc) Act 2025 provides that a thing that is digital or electronic in nature is not prevented from being the object of personal property rights [12]. It confirms that bitcoin can be property; it does not settle who controls a particular holding, how it is accessed, or how far an attorney may deal with it. Second, nothing in the Act sections or official guidance we reviewed requires a property and financial affairs LPA to contain a specific clause about bitcoin or digital assets for the attorney's authority to extend to them. Express wording is a professional recommendation, discussed below, not a statutory requirement. Authority is also not an unconditional right to transact: what an attorney may do in a given case depends on the LPA's wording, the donor's circumstances, the attorney's statutory duties and, for platform holdings, the platform's own terms.

2. The attorney's duties are general, not crypto-specific

LP11 tells attorneys that they must act honestly and in the donor's best interests, follow any restrictions or conditions in the LPA, and try to follow guidance in it. It states that an attorney cannot make profits or benefit personally from acting for the donor [3]. LP14 says attorneys should usually keep the donor's finances separate from their own or anyone else's, and must keep an accurate record of all the financial decisions they make on the donor's behalf [14]. None of these duties is framed for an asset held by private key, and three things should be kept apart. The duty itself is general: keep the donor's finances separate and keep accurate records. Its application to bitcoin is our reading: in practice it points to holding the donor's coins in wallets or accounts distinct from the attorney's own and recording each transaction. No official document we reviewed says this about bitcoin, and we do not suggest that separate wallets are a legal requirement in themselves. The practical safeguards later in this article are recommendations built on that reading, not rules.

3. Gifts of bitcoin are narrowly limited

Section 12 prevents a property and affairs attorney from giving away the donor's property except on customary occasions — the occasion or anniversary of a birth, a marriage or a civil partnership, or another occasion on which presents are customarily given within families or among friends — to people related to or connected with the donor (including the attorney), or to a charity to which the donor made or might have been expected to make gifts. Each gift must not be unreasonable having regard to all the circumstances, in particular the size of the donor's estate, and the power

is subject to any conditions or restrictions in the LPA [2]. LP14 summarises the rule as gifts normally only on customary occasions such as birthdays or anniversaries [14], and LP12 states that attorneys must apply to the Court of Protection to make gifts beyond these limits [4]. On the LPA alone, an attorney's power to give a donor's bitcoin to family members is confined to what section 12 permits.

4. Handing the holdings to a manager raises a separate question

LP14 states that attorneys cannot delegate their decision-making, although they may take expert advice and may employ professionals such as accountants, solicitors and regulated financial advisers where the service suits the task and the donor's funds [14]. In *Re RG* [2015] EWCOP 66, a case brought by Northamptonshire County Council, Senior Judge Lush said that attorneys cannot usually delegate their authority and must carry out their duties personally, although they may seek professional or expert advice when appropriate [13][11].

LP12 suggests that a donor who has investments managed by an investment professional on a discretionary basis, or who wants attorneys to be able to use such a scheme, should consider taking legal advice on whether the LPA needs specific provision for it. It explains that at least one major financial institution has taken the position that existing discretionary management contracts come to an end when the donor loses capacity, and that new investments by attorneys in such schemes are permitted only where the LPA contains an express instruction [4]. Irwin Mitchell reports that the OPG's 2015 guidance said specific wording was needed, and that after challenge by STEP, the Law Society and a practitioner, the guidance now treats such wording as recommended rather than strictly required; the firm notes that at least one financial institution had not taken the revised guidance on board [10]. For a donor whose bitcoin is held through a discretionary manager, the LPA's wording on delegation may matter as much as its wording on digital assets.

5. Authority is not access

For money in a bank, the official route is procedural: the LPA is registered with the OPG, then shown to the bank, and the attorney's powers depend on the account's terms and conditions, security procedures and any requirements set by the account holder [5]. That guidance refers to security procedures and to phone or online transactions, but does not mention passwords, log-ins or cryptoassets [5].

For bitcoin, practitioner commentary describes two different situations. Where coins are held on a platform, Harold G Walker states that an LPA establishes legal authority but does not override individual platform policies, and that each provider's terms affect how and whether attorneys are given access [9]. The Law Society article says digital service providers should accept instructions from attorneys in the same way as a bank, on sight of an original or certified copy of the LPA, but

that service terms may not allow attorneys access to a digital asset without express authority [6]. Where coins are self-custodied, there is no institution to present the LPA to. Collyer Bristow states that, if the attorney is not told the location of the wallet and any password, the cryptocurrency is effectively inaccessible [8]; Harold G Walker states that access is impossible without private keys or recovery information and that, without appropriate arrangements, digital assets may be permanently lost [9]; and the Law Society article notes that if a donor's bitcoin is to be sold, the attorney must be able to access the private key [6].

Self-custody is a trade-off, not a weakness. It removes reliance on a platform and its attorney procedures, but it makes the attorney's ability to act depend on recovery arrangements the holder has prepared. It does not remove risk; it changes where the risk sits.

6. Whether an attorney may use the donor's own credentials is unresolved

Four distinctions frame this question. A registered LPA establishes legal authority to act for the donor. It does not, by itself, establish permission to use the donor's own log-in details under a particular service's terms. Whether doing so is lawful in a given case depends on the legal and contractual circumstances. And a self-custodied wallet may raise different questions from a platform account, because there may be no provider, contract or access procedure involved. Put simply, knowing a password is not the same as having permission to use it; equally, a provider's terms do not by themselves settle every question of criminal law.

The practitioner sources we found disagree. The Law Society article states that an attorney with access to a donor's log-in details should not use them unless the user agreement says they may, and that doing so without authority may be a criminal offence under the Computer Misuse Act 1990; it adds that sharing passwords may breach user agreements [6]. A 2015 Solicitors Journal article suggests that an attorney acting under a valid LPA is presumably not going to be prosecuted, because the donor consented to the attorney acting on their behalf [7]. Harold G Walker states that banks and financial institutions will not permit attorneys to use the donor's personal log-in details [9]. We found no case law resolving the point, and no source addressing self-custodied wallets specifically. The absence of a reported case does not show that the conduct is either lawful or unlawful. An attorney facing this question in practice should take specialist legal advice.

7. Timing: the LPA can be used before incapacity if the donor chooses

LP14 states that an attorney may use a registered LPA straight away, including while the donor still has mental capacity, if the donor wants this [14]. LP12 states that, as long as the donor has mental capacity, the donor controls their finances [4]. Collyer Bristow states that it generally

recommends donors permit attorneys to act from registration rather than only after loss of capacity, and that most institutions permit a third party to act on an account-holder's behalf only on sight of the original or certified copies of the LPA [8].

8. The official guidance leaves access to the donor's own preparation

None of the four official documents we reviewed — LP11, LP12, LP14 and the bank-account guidance — mentions cryptoassets, digital assets, passwords or private keys [3][4][5][14]. Their references to online matters concern making and registering an LPA, not the donor's assets [4][14]. The consequence is practical: the guidance that donors and attorneys are directed to explains how to establish and exercise authority, but nothing in it helps an attorney locate or recover a self-custodied holding. That depends entirely on what the donor prepared while able to.

Preparing while capacity remains

The official guidance does not set out steps for digital assets. The following considerations are drawn from the practitioner sources reviewed and from the findings above. They are general information, not advice, and arrangements for any particular holding should be designed with professional help.

- **An inventory the attorney can find.** Practitioners describe a register of digital assets, wallet types and providers, kept under review [8][9].
- **A recovery process kept apart from the keys.** Practitioners advise against recording passwords in the LPA itself [9]. Seed phrases and private keys should not sit in the LPA or in an ordinary, unsecured list. The principle is to record where the recovery process can be found without writing down the recovery secret itself, so that the right person can act without the assets being exposed to theft.
- **An attorney who can follow it.** The chosen attorney should understand the process and know where the instructions are kept.
- **A review when things change.** The arrangement should be revisited when wallets, devices or attorneys change.
- **Specialist help for larger or complex holdings.** Where holdings are substantial or custody involves several keys or providers, the arrangement is best designed with specialist input.
- **Advice on wording.** Express wording on digital assets, and on discretionary management, may avoid later dispute with platforms or managers [4][6][8][9][10]. It is a recommendation, not a requirement.
- **A plan for how transactions will be authorised and recorded,** consistent with the duties to keep the donor's assets separate and keep accurate records [14].

The case for the opposing view

It can fairly be argued that no crypto-specific guidance is needed. The Act is written in general terms; bitcoin held through a platform is an investment like any other, and nothing in the Act sections or the OPG guides suggests that an attorney's duties of honesty, best interests, separation and record-keeping apply to it any differently [1][3][14]. The Law Society article already treats cryptocurrency as within an unrestricted property and financial affairs LPA [6], and the OPG's move to treat delegation wording as recommended rather than required [10] could be read as a preference for flexibility over prescription. On this view the gap described above is not a gap in the law but a practical matter of record-keeping, and platform holdings would follow a procedural route like that of other financial institutions — although, as Harold G Walker notes, an LPA does not override a platform's own policies [9], and we did not survey those policies.

That argument is strongest for platform holdings. It is weakest for self-custody, where the law confers authority but there is no counterparty to honour it, and where reaching the coins depends on information the donor has left in usable form.

Conclusion

On the evidence reviewed, a registered property and financial affairs LPA can give an attorney legal authority that a Law Society Private Client article places over a donor's cryptocurrency, constrained by the Act's best-interests requirement, the LPA's own terms, a narrow statutory power to make gifts, and the rule, stated in LP14 and by the Court of Protection in *Re RC*, that attorneys cannot delegate their decision-making. No special bitcoin clause is required for that authority to exist, though practitioners recommend one.

What the LPA does not provide is a way in. None of the four official guidance documents reviewed mentions cryptoassets, and each of the three practitioner sources that discuss access identifies the same practical constraint: an attorney with full authority but without the keys or recovery information cannot reach self-custodied coins [6][8][9]. Whether an attorney may lawfully use a donor's own credentials remains unresolved in the sources we found.

The evidence supports a measured conclusion rather than a claim that the law fails bitcoin holders. Legal authority, practical access and secure recovery are different problems. An LPA provides the legal framework for the first, within the limits the Act and the instrument set; it does not guarantee that every proposed transaction is permitted. The other two depend on what the holder arranges while they still can.

The View From The Edge

Most succession planning is written for one day: the day someone dies. There is a will, an executor, a grant of probate, and a moment when ownership passes.

Incapacity has no such day. It can arrive gradually or all at once, and it can last for years. The holder is still the owner and nothing passes to anyone. Bills still need paying, care may need funding, and the coins still need keeping safe, by someone who has been given the authority to act but often not the means.

The law has largely done its part. A registered LPA is a well-understood instrument, and nothing we found suggests bitcoin sits outside it. What the law cannot do is hand an attorney a key it never had. That gap will not be closed by legislation. It is closed, or not, at the kitchen table, while the holder can still explain what they hold and how it is reached.

Which makes the LPA the easier half. It comes with a form, a fee and a registration, so it tends to get done. The other half, a recovery arrangement an attorney can follow and a thief cannot, has no form, no deadline and nobody sending a reminder. It is also the half that decides whether the attorney can do anything at all.

For what happens after death, see [A Will Cannot Reach Bitcoin](#). Planning for both is what [Succession](#) is for.

Basis and limits

- England and Wales only. Scotland and Northern Ireland have separate legislation and were not examined.
- The chapter of the Mental Capacity Act Code of Practice dealing with attorneys' duties was not reviewed; duties are taken from the Act, LP11 and LP14.
- Only sections 9 and 12 of the Act were read in full; the section 1 principles and section 4 best-interests test are referred to as section 9 describes them.
- The Powers of Attorney Act 2023, which changes how LPAs are made and registered, was not examined.
- LP12 was read on 26 October 2026.
- Platform policies on accepting attorneys were not surveyed; nothing is claimed about any named platform.
- No case law was found on the Computer Misuse Act and attorneys; the position is reported as unresolved.
- There is no published data on how many LPA donors hold cryptoassets or how often attorneys cannot reach them.
- Practitioner articles are commentary and are cited for the views they express; one is undated and the Law Society article's date is taken from its web address.

Alderlux advises families on Bitcoin custody and succession, so we have a commercial interest in this problem being taken seriously. Everything in the preparation section above can be done without us.

Sources

1. Mental Capacity Act 2005, section 9
2. Mental Capacity Act 2005, section 12
3. OPG, LP11 Getting started as an attorney: property and financial affairs (2025)
4. OPG, LP12 Make and register your lasting power of attorney (updated 20 April 2026)
5. Guidance for people wanting to manage a bank account for someone else (07.25)
6. Angharad Lynn, Asset managers, Law Society Private Client section (May 2020)
7. A new coin of dilemma, Solicitors Journal (30 October 2015)
8. Collyer Bristow, LPAs and digital assets (March 2023)
9. Harold G Walker, Lasting power of attorney and digital assets (23 March 2026)
10. Irwin Mitchell, LPAs and investments: what's changed in the guidance? (28 July 2022)
11. Wright Hassall, Can attorneys delegate investment decisions to a discretionary fund manager? (undated)
12. Mishcon de Reya, The Property (Digital Assets etc) Act 2025 (6 January 2026)
13. Re RG [2015] EWCOP 66, para 43
14. OPG, LP14 How to be a property and finances attorney

Alderlux provides education and information only. We do not provide regulated financial advice, investment recommendations, legal or tax advice. Alderlux is not authorised by the Financial Conduct Authority.