

Power of Attorney

What is it and why do I need one?

What is a power of attorney?

A power of attorney is a legal document under which you give a trusted person or persons the authority manage your affairs.

Why do I need one?

If you become unable, through illness, accident or old age, to look after your affairs then, unless you have signed a power of attorney, your family will have no authority to access your money nor deal with your welfare. The state will make decisions for you.

By signing a power of attorney, you are ensuring that if anything ever does happen to you in the future those you love and trust will have the power to look after you in the way that you would want.

What types of power of attorney are there?

There are several different types of power of attorney:

- **A continuing power of attorney:** You give your attorney authority to manage your finances, including your property, when you are no longer able to do so yourself. This power of attorney can also be used where you do still have capacity but due to illness or infirmity, you need help with looking after your affairs.
- **A welfare power of attorney:** You give your attorney authority to make decisions about your personal welfare. This power of attorney will only come into effect when you are no longer capable of making your own welfare decisions. A doctor will usually be the judge of this.
- **A combined power of attorney:** You give your attorney authority to manage your finances and make decisions about your personal welfare in one document rather than the separate documents mentioned above. This is the most common type of power of attorney.
- **A short-term power of attorney:** You wish to give your attorney powers but only for a restricted period of time and usually for a specific purpose only. For example, in your absence abroad, for the sale of a house or to carry out a particular transaction on your behalf. This type of power of attorney is only intended to be in place for a short period of time and can be revoked in writing after the specific purpose has been achieved.

What sort of powers will I be giving my attorney?

Your financial attorney will have wide powers to deal with all aspect of your financial affairs, including opening and closing bank accounts, dealing with investments, making tax returns, claiming and dealing with benefits, settling any liabilities and will, therefore, have access to your confidential papers relating to your finances. If appropriate, your financial attorney may also have power to run, sell or wind up any business interests you may have and to make gifts on your behalf.

Your welfare attorney will have power to decide, for example, what type of care or accommodation may be appropriate for you, and to consent or withhold consent to medical treatment.

When is the best time to think about granting a power of attorney?

The earlier, the better. Powers of attorney can only be granted by people who are judged to be of sound mind. By the time a power of attorney is needed, it may be too late for you appoint an attorney. The document is a safety net – it may never be needed but it's there just in case.

What safeguards are there to make sure that my attorney acts in my best interests?

Your attorney must act in good faith with your best interests at heart. The Office of Public Guardian is a government body that monitors what attorneys do. If your attorney is found to be abusing his powers he could face civil or criminal proceedings.

Who should I appoint as my attorney?

You should appoint a trusted family member, friend or professional adviser. We recommend that you appoint no more than three attorneys. You can choose to appoint the same individual(s) or a combination of individuals as your financial or welfare attorneys. If you decide to appoint a professional adviser, they can normally act only as a financial attorney, not a welfare attorney.

Will my attorney be reimbursed for costs incurred in acting as an attorney?

Your attorney may claim reasonable out of pocket expenses for acting as your attorney but only if your power of attorney allows them to do so.

What if I leave it too late to put a power of attorney in place?

Your family will not be able to get access to, or deal with, your assets. For example, unless your bank accounts are in joint names with your spouse, the bank will freeze your accounts and will not let anyone, including your spouse, access them until an alternative form of authority is provided in the form of a guardianship order.

A guardianship order involves a family member or other trusted individual petitioning the court to be appointed as your guardian. The process is expensive, time consuming and can be a burden on your family until matters have been resolved. You can avoid the cost and delay of a guardianship order by putting in place a power of attorney.

Can I revoke my power of attorney once I've signed it?

You can cancel your power of attorney provided you have the mental capacity to do so. However, once you lose your capacity you are no longer able to cancel or change your power of attorney.

It's all too much for me – can you help?

Facing up to the fact that we might need someone to manage our affairs is daunting. We can provide guidance for you to ensure that your wishes are clearly expressed in your power of attorney.

This Information Sheet is based on Scottish law. If you live in England or Wales, our English law team can help you ensure your power of attorney meets your needs.

For further information on these or any other personal law issues, please contact:

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