

Powers of Attorney

Anderson Strathern is a leading Scottish law firm with offices in Edinburgh, Glasgow, East Lothian and Shetland.

We provide a complete range of specialist legal services and deliver the advice our clients need to take them to where they want to be. The firm has been providing pioneering and innovative legal services to commercial clients and public bodies, as well as private individuals for over 250 years.

What is a power of attorney?

A power of attorney is a document that allows you to appoint people you trust to look after your affairs.

Why should I put a power of attorney in place?

It is a common misconception that if you lose your capacity for any reason, including through illness, accident or age, your family will still be able to look after your finances and make decisions about your welfare. Unfortunately this is not the case.

Even if you are married or in a civil partnership, unless your bank accounts are in your joint names, your accounts will be frozen and your spouse will need to seek an alternative form of authority which often involves applying to court.

By granting a power of attorney now, you are ensuring that, should you lose your capacity in future, your family will have all the powers they need to make sure your finances are looked after and your welfare is taken care of.

When should I put a power of attorney in place?

The sooner the better! An individual can only grant a power of attorney when they are of sound mind. Once you have lost your capacity you have also lost the opportunity to put a power

of attorney in place. The document acts like a safety net – it may never be needed but it's reassuring to know it's there.

What happens if I don't put a power of attorney in place?

If you lose capacity and haven't already granted a power of attorney your family will need to apply for alternative authority known as a guardianship order. A guardianship order involves a family member applying to court for authority to look after your finances and welfare.

The procedure involves an application being made to court accompanied by several medical reports. An appearance before a sheriff is also required where he will ask the proposed guardian any questions he may have.

Once the order is through, the guardian will have ongoing duties and responsibilities such as submitting an inventory and management plan to the Office of the Public Guardian (OPG), keeping an accurate record of their involvement with your money and preparing and submitting an annual account to the OPG.

If, for any reason, family are unable to be appointed, the local authority will very often step in and take over responsibility for your finances and personal welfare. For some, this is an uncomfortable thought so by putting a power of attorney in place now you control who looks after your affairs if you ever lose your capacity. Guardianship orders are time consuming and can potentially cost thousands of pounds to put in place, not to mention the stress that it can place on your family at an already difficult time. All this can be easily avoided by setting up a power of attorney at a fraction of the cost.

Who should I appoint to act as my attorney?

Deciding who should have the power to look after your affairs if you lose your capacity is an important decision. The person you select must be someone you trust to manage your affairs in the way you would want. You can also choose to appoint a solicitor to look after your finances. We would recommend that you appoint at least two attorneys either to act jointly or in a 'whom failing' capacity. It is a good idea to ask your chosen attorney whether they are happy to take on this role and you should make known to them any particular preferences you have in your affairs being administered e.g. consenting or withholding consent to medical treatment, your preference towards ethical investments etc.

Are there different types of power of attorney?

Yes, there are several different types of power of attorney but the most common is a combined power of attorney. This document gives your attorney powers to deal with both your finances and welfare.

What powers will my attorney have?

Your financial attorney will have a broad range of powers to deal with every aspect of your finances including opening and closing bank accounts, making tax returns and dealing with your investments and property interests. Your financial attorney will also be able to look after your business interests and can make gifts on your behalf.

Your welfare attorney will have the power to make decisions relating to your care and accommodation needs and the medical treatment you receive. They will also be able to access your confidential medical records.

What does my attorney need to do?

Appointment as attorney carries responsibilities. They owe a duty of care to you to act with skill and compassion. They must be proactive in

looking after your affairs. They should not just wait for things to happen. Their actions can be scrutinised by the public guardian if a complaint is made. While you are able, you should discuss with your attorney how you would want them to act in specific situations. On being aware of your incapacity, it is good practice for your attorney to meet with you and your nearest relative and primary carer to discuss your needs and wishes.

They should review your finances and check your income and expenditure, and identify any benefits or allowances to which you might be entitled.

They must then decide the most appropriate action to take to achieve the desired outcome. They will also need to check that the power of attorney document gives them that power. A further meeting should then be arranged so that they can explain their findings and proposals.

Are the actions of my attorney monitored?

Yes, the Public Guardian has authority to receive and investigate complaints regarding the exercise of powers of attorney or where it appears that the property or financial affairs of the granter seem to be at risk.

Can my attorney be reimbursed for costs incurred in acting as my attorney?

Your attorney is allowed to claim reasonable out of pocket expenses and these are paid from your own funds. If you decide to appoint a solicitor, they will be entitled to charge their own usual professional fees.

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

Yes, so long as you still have capacity you can recall your power of attorney at any time.

Further Information

If you would like any advice in connection with points raised in this guide please get in touch with us.

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