

Interpreting a Scottish Power of Attorney

Your client / resident / patient (G [for granter]) is an incapable person, you are approached by A [for attorney], a person who says they are power of attorney for G and they have the power to act / make decisions on Gs behalf. You have never met A before and wish to check the situation.

The checklist below will guide you through this process.

1. Ask A for a copy of the power of attorney.
 - An attorney who wishes to rely on their power as attorney will have a copy, or will have access to a copy, of the PoA. Be wary of anyone who says they don't have a copy, can't find it, will bring it tomorrow but doesn't etc.
 - It is not uncommon for a person acting as DWP appointee – (someone appointed by the DWP to manage the person's DWP benefits) - to refer to themselves as the attorney. This is, most frequently, a misunderstanding on their part about the differing roles, rather than any deliberate attempt to pass themselves off as the attorney.
2. Check that there is a Certificate of Registration on the front of the PoA, which shows the PoA is registered with the OPG?
 - If yes, move to point 3.
 - If no, the PoA is not registered, so is not effective, so you cannot go any further with A.
 - If you're not sure you can telephone the Office of the Public Guardian (OPG) on 01324 678300 and ask for a public register search. The public register will tell you if there is a PoA registered and if the person you are dealing with is indeed appointed as attorney, it does not however offer you any detail on the powers that are granted to the attorney.
3. Check the person you are dealing with, and who is claiming to be the attorney, is named on the Certificate and in the PoA itself, in the first paragraph.
 - If no, they are not the attorney and you can proceed no further with them.

4. If yes, check how the attorney is appointed.

- Are they a sole [the only] attorney? In which case you can continue.
- If someone else is also appointed as well as A is either attorney permitted to make and action decisions? You will see this from the wording in the opening of the PoA. If the attorneys are permitted to act independently (technically called jointly and severally) you can continue with A alone.
- If someone else is appointed as well as A and both/all attorneys are required to act jointly then you will need the other attorney present before you can progress matters with A.

5. Assuming the PoA allows A to work on his own, you need to check A has the necessary power to progress whatever the matter is.

- The PoA will list the powers – the list of powers sits behind the Certificate of Registration. There is also, in most cases, a 'catch all' power (called a plenary power), which tends to come before all the listed powers, and which says something along the lines of 'everything I would otherwise have been able to do myself'.
- So, to check if the attorney is authorised to conduct the element of business in question, check within the listed powers to see if the attorney has an express power which would cover the matter and if not check to see if they have a plenary power that they, and you, can rely on.
- If you can see no relevant power you may wish to check with your legal dept/advisors. Until you are satisfied that the attorney has due authority you cannot progress matters with them.
- Assuming A does have the relevant authority you are 'good to go' but before you do you must check

6. Is G incapable in respect of the decision to be made?

- If no i.e. if they have capacity, then the person themselves should be your contact not the attorney. See separate sheet on Determining Capacity

7. If yes, i.e. if they are incapable, in respect of the decision to be made, has every support been given before you reach this conclusion (see separate sheet on Supported Decision Making)

8. Is the attorney acting in compliance with the Code of Practice? See separate link this.
9. Does the decision respect the AWI principles? See sperate information leaflet
10. Does the decision respect the rights, will and preferences of the person (G) ? See information leaflet in rights, will and preferences.
11. If you feel the answer to these latter questions (7,8,9,10) is “no” then you should not proceed without challenge,

If you feel the answer to these latter questions is “yes” then you may progress matters with A.
12. You should maintain clear records on any/all decisions, irrespective of the outcome.

Once you have satisfied yourself that the PoA is all in order ask the attorney for permission to take a copy of it for G's file. This will save colleagues having to do this check every time.

You are not obliged to do what the attorney says simply because it is the behest of the attorney.

See separate information leaflet on what do I you disagree with a decision an attorney is making.