

Making a Power of Attorney Powerful

Hints & Tips

You have been appointed as power of attorney for a family member or friend, how do you make sure you fulfil the role lawfully as well as effectively. Some hints and tips follow.

It is confusing that the document and the person appointed are both called power of attorney, to avoid confusion I shall refer to the document (legally referred to as a deed or instrument) as the power of attorney and the person appointed simply as Attorney. Although I use the singular here i.e. person and Attorney this could equally apply where there are multiple attorneys.



Tip 1: Get some endorsed copies of the power of attorney

There is a separate information leaflet specifically about this.

Immediately, ask the granter to take some photocopies, or scanned images, of the original power of attorney and have them authorise these as true copies of the original – see the separate information sheet for detail of how to do this. To decide how many endorsed copies you need have a think how many different organisations you may have to have contact with; typically about five copies is sufficient.

Later, when you come to act on the power of attorney, the various organisations you will need to communicate with will all wish to see the original power of attorney, or have an endorsed/validated copy – you do not want to be sending the original as this risks a critical document being lost. A supply of endorsed copies will allow you to deal with all organisation simultaneously i.e. you will not need to wait for one organisation to return the paperwork before you can approach the next organisation. (note the copies all need to contain the original [endorsement] signature of the granter, having them endorse/sign one copy and photocopying this doesn't count)



Tip 2: Be familiar with the power of attorney

Know what is where within the document, what it means, who can do what etc – keep it in an easy to reach place and take it with you when you are going to relevant appointments.



Tip 3: Know what powers you have

Make sure you know what powers you have. These are listed in the power of attorney. You should ensure that you do not exceed your powers but equally make sure you do not fall short i.e. overlook something you should be doing.

Power of attorney is not an all encompassing authority, you can only request things which the person themselves would have had a right to.



Tip 4: Act in accordance with the principles

The Adults with Incapacity (Scotland) Act 2000, which is the law governing power of attorney, has, right at the outset, a set of principles which everyone acting as, or with, an attorney is obliged to respect. These are reported at the bottom of this paper, make sure you are familiar with these and practice in accordance with them.

If you are in doubt as to whether, or not, to do something 'playing this' decision against the principles can often provide the answer.



Tip 5: Act in accordance with the Code of Practice

There is a Code of Practice for attorneys, available on line from a simple google search. You should become familiar with this and practice in accordance with it. Unlike the principles, it is not a statutory requirement but does offer best practice guidance. If you run into difficulties you need to be able to say you were aware of the Code of Practice and have respected its guidance.



Tip 6: Know that capacity is not all or nothing

Mental capacity is not all or nothing; a person is not capable one day and incapable the next. There will often be some capacity, even fleetingly, at some points over some things. The key is recognising when, and for what, the person has capacity and allowing them to make their own decision at this point / in respect of this matter.



Support Decision Making

Your responsibility as attorney is to, as far as is possible, support the granter of the power of attorney to make their own decisions; this may require you to think creatively as to how you achieve this, as previous methods of decision making may no longer be possible. It will usually take more time than you feel you have, but do not fall into the trap of just making the decisions yourself for ease /speed. This is called substituted decision making and is contrary to various legal requirements.

If there are occasions when you have to make a given decision, because the person simply does not have any capacity to do so, no matter how much support you were to give them, then remember you are doing so as *their* proxy. You should make the decision the person themselves would, or would likely, have made, which can sometimes conflict with the decision which you yourself wish to make. You are advocating for the now incapable person, standing in their shoes, acting as their voice.

To assist you in achieving this successfully you should have open discussions with the person, before they lose capacity, about the sort of decisions you could face so you are clear of their views. Maybe they have drafted an advance directive which would assist you.



Tip 8: Communication

Even though you are appointed as attorney when other siblings, for instance, may not have been you are still obliged to take account of the views of relevant others before making decisions and to generally keep those others updated with where things are at.

A way of deciding how much, or little, discussion to have with others is to consider how much the granter themselves would have had with the person. If the person is a

long term close friend and trusted confidante of the granter that person may be valuable in assisting you with the likely views of the granter on a given matter. The opposite is a family member, maybe even a child of the granter, but one they have had little contact with over the years. The level of detail to be shared with this person would be much more limited. Bearing in mind though that feelings can change with circumstances – so although the granter may not have had any contact with a family member for years does not mean that they would not wish contact with that person in the event of a life limiting diagnosis or terminal decline.



Tip 9: Record Keeping

Keep a record of key actions, visits, decisions, expenditure, this may seem unnecessary but demonstrates your diligence as attorney, should this ever be challenged.



Tip 10: Advice

Do not be afraid to ask for advice; it does not mean you are failing in some way, no-one will judge you. Better to ask than get it wrong. Sources of advice are given below.

And Finally : Respect Yourself

Last but not least, remember to take time for yourself, as hard as that may be, being an attorney is demanding, especially if you are also the primary, or a key, carer. You cannot hope to offer all you need/wish to the granter if you have not recharged your own batteries. As they say on aircraft, for good reason, fit your own oxygen mask before assisting others.