

## **Things to consider when you're considering accepting the role of power of Attorney**

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### **What is a power of attorney?**

A power of attorney is a legal document which would authorise you, if you accept the role, to act for the person who has nominated you should they lose the mental capacity to act for themselves.

### **Granting of power of attorney**

One sometimes hears a person saying, for example, "I've got to get power of attorney for Mum". It is not a case of you 'getting' power of attorney but rather being given it. A person, whilst still mentally able, grants a power of attorney, to a person or persons of their choosing.

### **How would I know if I was being nominated as an attorney?**

You have to agree to be appointed. In most cases the person nominating you is likely to have had a conversation with you ahead but if not you will get a copy with a request for you to declare your willingness to act.

### **What is involved in acting as power of attorney?**

That will very much depend on what powers are being granted to you. There is a list at the back of this paper with the sort of powers that could be granted to you. You can be given a range of financial and/or health and welfare powers. This might involve you therefore in selling the person's house, or making decisions about care provision.

### **Would I be the only attorney?**

Again, this will depend on what the power of attorney document says. It may nominate you plus someone else, or multiple other people, or you may be the only (sole) attorney.

Even if you are the sole attorney the law requires you nonetheless need to take account of the views of relevant others into account; the law obliges you to into account.

To fulfil the role of attorney successfully requires a cordial relationship with other family members. You may wish to think carefully about accepting the role if you sense that other family members may have dispute over how things are administered.

If there are multiple attorneys you should check whether the power of attorney permits each of you to act independently of the other(s), or whether you have to act jointly. Being able to act independently offers you more flexibility, but also means you are liable for the actions of another when you may not have had anything to do with the actions.

### **What if I don't want to accept the responsibilities of attorney?**

You should not feel pressured into agreeing to act as attorney. The declaration you will be asked to sign asks that you are both willing and are under no pressure to agree. If you would rather not accept the role or not as it is currently set out you must say so.

### **What if I accept it then change my mind?**

You can resign the role. If the granter is still mentally capable they can nominate a replacement, if they wish, if however they have lost capacity and you are a sole attorney this would leave them needing an appointment from the courts to replace you.

### **Can I talk to the granter's solicitor to help me make up my mind?**

Generally the solicitor will decline this; the granter of the power of attorney is his/her client and most would see it as a potential conflict of interest to also advise you, effectively as a separate client. Most will tell you to obtain your own independent advice. Some sources of advice are listed at the foot of this leaflet.

### **Would anyone be able to help me if/when acting as attorney?**

Yes, you can seek support from the sources below, or obtain a legal opinion for yourself – generally or on a given issue, the cost of which can be taken from the granter's finances, as it was information you needed to support them.

### **Do I get paid?**

You can claim actual outlays, out of pocket expenses, but beyond this it will very much depend what the power of attorney permits.

Even if the power of attorney allows for payment you can only claim this when you are acting as attorney. For example, you are the daughter of the granter and the power of attorney permits you to take petrol costs for visiting the granter – but this is when you are visiting specifically for power of attorney responsibilities /as their attorney; it does not permit you to take petrol costs each and every time you visit, when you are simply visiting as their daughter.

### **How do I know when to activate the power of attorney?**

You can start assisting the granter with financial and property affairs immediately, under their instruction, but you cannot make any decisions about welfare matters unless or until the person lacks capacity in relation to that decision.

### **How will I know if the person lacks capacity?**

The power of attorney may allow you to make this decision yourself but it may require you to get a medical or legal view. Even if you are permitted to make this decision yourself there is nothing to stop you seeking the views of a professional in any event. If you are required to seek the views of professional as soon as you have this the power of attorney is effectively activated, assuming this is already registered with the Office of the Public Guardian, you do not need to do anything specifically to activate it.

If it is not already registered you will need to do this to activate it. The granter's solicitor can sort this for you.

### **Assume I go ahead, is there advice on operating the power of attorney properly?**

Yes, any of the sources of advice listed below will assist, but there is an equivalent leaflet to this one for post appointment – 'Making a power of attorney powerful'.

## **Sources of Advice**

### **Office of the Public Guardian**

The Office of the Public Guardian (often referred to as the OPG) are legally obliged to offer support to financial attorneys. You can contact them in office hours on 01324 678300. The power of attorney section of the OPG website [www.publicguardian-](http://www.publicguardian-)

[scotland.gov.uk](http://scotland.gov.uk) contains a lot of useful information, as well as links to the Code of Practice.

### **My PoA**

You may have seen television or social media adverts run by the 'My PoA' campaign. The campaign encourages people to think seriously about whether they need, or need to give someone, the legal powers that a power of attorney provides. The campaign has an informative website [www.mypowerofattorney.org.uk](http://www.mypowerofattorney.org.uk) which makes the process of finding out about and arranging Power of Attorney as straightforward as possible.

You can phone them on 0141 287 0470 for more information and advice:

### **Mental Welfare Commission for Scotland**

The MWC offer advice particularly to welfare attorneys in the fulfilment of their role.

There website address is [www.mwcscot.org.uk/](http://www.mwcscot.org.uk/)

You can email you query to: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

Or you can call them on: 0800 389 6809

The MWC use a callback system where they take brief details of your query and a contact number. This allows their staff to look into some background on your query before calling you back.

### **Local Authority**

Your local authority social work or adult protection department may be able to offer some guidance, or signpost you to other sources of advice.

### **Citizens Advice Bureau**

Your local CAB may be able to offer you advice, or signpost you to other sources of advice.

### **Various charities and support groups**

There may be a charity or support group whose purpose is to support people with your condition or their carers; many of these offer a wide range of extremely valuable information and guidance.