WEALTH OF ADVICE

FINANCIAL AFFAIRS

POWER OF ATTORNEY

Having a Power of Attorney in place can provide peace of mind, ensuring important decisions can be made if illness, injury, or reduced mental capacity affects your ability to manage your own affairs.

Kevin, John & partners celebrating John's 60th in Morocco

IMPORTANT INFORMATION

We have written this guide to help you understand more about Powers of Attorney and it is not personal advice.

The information in this guide is correct as of April 2026. UK tax rules can change at any time and its impact depends on your circumstances.

We are Wealth of Advice, authorised and regulated by the Financial Conduct Authority, reference number 563909.

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CONTENTS

- WEALTH OF -
ADVICE GUARANTEE
NO NONSENSE
RECOMMENDABLE FINANCIAL ADVICE
SINCE 2011

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney allows someone to make decisions for you or act on your behalf, if you are no longer able to or if you no longer want to make your own decisions.

There are a number of reasons why you might need someone to make decisions for you or act on your behalf.

This could be a temporary situation: for example, if you are in hospital and need help with everyday tasks such as paying bills or if you are travelling abroad for long periods and need someone to manage your affairs while you are unable to.

You may need to make longer-term plans if, for example, you have been diagnosed with dementia and you may lose the mental capacity to make your own decisions in the future.

WHAT IS MENTAL CAPACITY?

Mental capacity means the ability to make or communicate specific decisions at the time they need to be made.

To have mental capacity, you must understand the decision you need to make, why you need to make it, and what the outcome of your decision is likely to be.

You may be able to make some decisions but not others. For example, you may be able to understand or arrange your life insurance. Alternatively, you may experience a change in your decision making ability day by day.

Needing more time to understand or communicate doesn't mean you lack mental capacity. For example, having dementia doesn't always mean that someone is unable to make any decisions for themselves. It is important to try and overcome any difficulties in decision making, so the individual can make decisions for themselves wherever possible.

THE DIFFERENT TYPES OF POWER OF ATTORNEY

If you lose mental capacity to make or communicate your own decisions before setting up a Power of Attorney, an organisation called the Court of Protection may become involved.

LASTING POWER OF ATTORNEY

A Lasting Power of Attorney covers decisions about your financial affairs, or your health and care. You would set up a Lasting Power of Attorney if you want to make sure you're covered in future.

ORDINARY POWER OF ATTORNEY

This covers decisions about your financial affairs and is valid while you have mental capacity. It is suitable if you only need to be covered for a temporary period or if you find it hard to get out and about, or you would like someone to act for you.

ENDURING POWER OF ATTORNEY

Enduring Power of Attorneys were replaced by Lasting Power of Attorneys in October 2007. If you have made and signed an Enduring Power of Attorney before 1 October 2007, then it should still be valid. An Enduring Power of Attorney covers decisions about your financial affairs and property, should you lose mental capacity.

For the purposes of this guide, the content will focus primarily on a Lasting Power of Attorney.

Ian & Penny's holiday to Tokyo

POWER OF ATTORNEY FOR FINANCIAL DECISIONS

A Power of Attorny for financial decisions can be used while you still have mental capacity or you can state that you only want it to come into force if you lose capacity.

A Power of Attorney for financial decisions can cover things such as:

- Buying and selling property
- Paying the mortgage
- Investing money
- Paying bills
- Arranging repairs to property

If it is your preference, you can restrict decisions your attorney can make.

If you're setting up a financial Power of Attorney, your attorney must keep accounts and make sure their money is kept separate from yours.

You can always ask for regular details of how much is spent and how much money you still have. These details can be sent to your solicitor or family member if you lose mental capacity.

This gives you an extra layer of protection.

POWER OF ATTORNEY FOR
HEALTH & CARE DECISIONS

This kind of Power of Attorney covers health and care decisions, and can only be used once you have lost mental capacity.

An attorney can generally make decisions about:

- Where you should live
- Your medical care
- What you should eat
- Who you should have contact with
- What kind of social activities you should take part in

You can also give special permissions for your attorney to make decisions about life-saving treatment.

Don't just assume because you're married that you'll be fine.

If you're married or in a civil partnership, you may have assumed that your spouse will automatically be able to deal with your bank account and pensions, and make decisions about your healthcare, if you lose the ability to do so.

This is not the case. Without a Power of Attorney, they won't have the authority.

CHOOSING AN ATTORNEY

There's a lot to think about when it comes to picking the right attorney. We've gone over some questions you should ask yourself when making your decision.

WHO SHOULD I CHOOSE AS MY ATTORNEY?

The role of an attorney involves a great deal of power and responsibility so it's important you trust the person or people you choose.

It's a good idea to give the person you ask time to think about the role, to make sure they feel comfortable doing it.

Your attorney could be a family member, a friend, your spouse, civil partner or parter. Alternatively they could be a professional, such as a solicitor.

CAN I CHOOSE MORE THAN ONE ATTORNEY?

It can be a good idea to appoint more than one attorney but you must decide if they are to make decisions:

Jointly – meaning they work together on all matters.

Jointly and severally – where they may act together or separately, as they choose.

You may want to specify that attorneys must act jointly for specific decisions, such as selling a house, but they can act jointly and severally for all other decisions.

You might also consider appointing replacement attorneys, in case something happens to one of your attorneys and they are unable to continue acting on your behalf.

– WEALTH OF –
ADVICE GUARANTEE

NO NONSENSE
RECOMMENDABLE FINANCIAL ADVICE

SINCE 2011
–

DO I NEED TO PAY ANYTHING TO AN ATTORNEY?

Your attorney can claim back any expenses that occur due to their role – such as postage, travel costs or photocopying. They can claim these from your money, so long as they keep an account of all expenses and relevant receipts.

Unless they are a professional attorney, such as a solicitor who will charge fees, they cannot claim for time spent carrying out their attorney duties.

WHAT WILL MY ATTORNEY HAVE TO DO?

Your attorney must follow certain principles to ensure you still make your own decisions as much as possible, and they make the right decisions on your behalf if you can't.

YOUR ATTORNEY SHOULD:

ASSUME THAT YOU HAVE MENTAL CAPACITY

Your attorney should always assume that you can make the decision for yourself, before making that decision for you.

ACT IN YOUR BEST INTEREST

Any decision made or action taken on your behalf must be made in your best interests.

ALLOW YOU TO MAKE 'UNWISE DECISIONS'

Just because people might not agree with your decisions, doesn't mean you're unable to make it.

CHOOSE THE LEAST RESTRICTIVE DECISIONS

Anyone making a decision for you should consider all the alternatives and choose the one that is the least restrictive of your rights and freedoms.

HELP TO MAKE A DECISION

It's important that you are given as much help as possible to make your own decision before it is decided that you are unable to do so.

Penny in Alaska

WHAT IF I DON'T HAVE A POWER OF ATTORNEY

If you're married or in a civil partnership, you may have assumed that your spouse would automatically deal with your financial and health care decisions. This is not the case.

LOSING CAPACITY WITHOUT A POWER OF ATTORNEY

If you lose capacity to make your own decisions and you don't have a valid Power of Attorney, you will need to apply to the Court of Protection.

The Court of Protection can:

- Decide whether you have the mental capacity to make a decision.
- Make an order relating to the health and care decisions or property and financial decisions of someone who lacks mental capacity.
- Appoint a deputy to make decisions on behalf of someone who lacks mental capacity.

WHAT DOES A DEPUTY DO?

A deputy is a similar role to that of an attorney. They must follow the same principles as an attorney to make sure decisions are made in your best interests.

There are two types of deputy: property and financial affairs deputy and personal wellfare deputy.

Personal welfare deputies are usually only appointed in rare circumstances, for example where those providing care or treatment disagree on what to do in the person's best interests.

The court will set out the extend of the deputy's authority to act in good faith and not take advantage of their position for their own benefit.

You can't choose your own deputy and the process of appointing one can be lengthy and costly. It is much better to put a Lasting Power of Attorney in place while you still can.

CAN SOMEONE APPLY TO BE A DEPUTY?

Someone who want to make decisions on your behalf can apply to the Court of Protection to be appointed as deputy.

The court will consider whether it is necessary for ongoing decisions to be made on your behalf, and whether that person is suitable to be appointed to that role. Usually, everything will be done by post, rather than holding a hearing at the Court.

WHAT IF NO ONE CAN SPEAK FOR ME?

If, in the future, you're unable to make certain important decisions and there's no one who is able to speak on your behalf, such as a family member or friend, an independent mental capacity advocate must be instructed to protect your rights.

In this situation, an IMCA must be involved in decisions about changes in accomodation or any serious medical treatment.

They may also be involved in decisions relating to adult protection procedures or care reviews.

The staff in the NHS or your local council are responsible for instructing an IMCA.

KEY NOTES &
FREQUENTLY ASKED QUESTIONS

DO I NEED A SOLICITOR FOR A POWER OF ATTORNEY?

You don't have to use a solicitor to create a Power of Attorney. The application forms from the Office of the Public Guardian contain guidance to help you fill them out.

We also offer this service to our clients for a lower price than most solicitors, giving you that peace of mind.

HOW DO I MAKE CHANGES TO MY POWER OF ATTORNEY?

Generally, you can't make any changes to a Power of Attorney after it has been registered.

If you are unsure, contact the Office of the Public Guardian for advice.

WHAT IF I HAVE PROBLEMS WITH MY ATTORNEY?

There are a number of ways you can make a complaint if you are unhappy about any of the decisions that are being made for you.

If you think you're in immediate danger, call your local police force or 999 in an emergency.

Raise your concerns with the Office of the Public Guardian which has responsibility for monitoring attorneys and deputies and can investigate allegations of mistreatment or fraud.

To speak to someone confidentially about your concerns of financial misuse or abuse, call the Action on Elder Abuse helpline on 090 9909 9141.

HOW DO I SET UP A POWER OF ATTORNEY?

If you would like to set up a Power of Attorney, please get in touch with us:

0191 384 1008

enquiries@wealthofadvice.co.uk

wealthofadvice.co.uk

OFFICE OF THE PUBLIC GUARDIAN

Telephone: 0300 456 0300

Mon to Fri, 9am to 5pm

Except Wed, 10am to 5pm

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