

## Changes

Any changes to Power of Attorney (as notified by the donor or attorney), donor or attorney details or mental capacity should be reviewed and recorded appropriately on customer records. This may result in a change in who is able to act on the account or where information is to be sent.

Changes may not be formally notified, conversations or correspondence could provide indicators of change, for example a change in mental capacity indicated by a reference to the donor now being in residential care or having dementia. Where any changes are suspected they should be verified with the attorney in an appropriate and sensitive manner.

Additional care should be taken regarding changes around death, divorce or bankruptcy which may affect the validity of the Power of Attorney.

## Bankruptcy

If an attorney for a Lasting Power of Attorney for Property and Affairs becomes bankrupt at any point, they will no longer be allowed to act as an attorney for property and affairs. People who are bankrupt can still act as an attorney for personal welfare. Where there are no other attorneys left to act, or only one attorney left to act jointly (with no exceptions), the Power of Attorney will end.

## Death

On the death of a donor, the Power of Attorney automatically ends.

On the death of an attorney, where there are no other attorneys left to act, or only one attorney left to act jointly (with no exceptions), the Power of Attorney will end.

## Divorce

If an attorney is married to or in a civil partnership with the donor and there is a divorce or an annulment they will no longer be allowed to act as an attorney (unless the Power of Attorney says they can). Where there are no other attorneys left to act, or only one attorney left to act jointly (with no exceptions), the Power of Attorney will end.

## More Information

Information on making, registering and ending a Lasting Power of Attorney <https://www.gov.uk/power-of-attorney>

Office of the Public Guardian  
<https://www.gov.uk/government/organisations/office-of-the-public-guardian>

Mental Capacity Act 2005 Code of Practice  
<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Citizens Advice Bureau <https://www.citizensadvice.org.uk/>

## Administration Checklist

The following list is intended to provide a general checklist for administration staff on receipt of a Power of Attorney. Firms may wish to tailor this to reflect their own administration, process and systems requirements.

- Is the document original or certified?
- Lasting Power of Attorney – is it registered?
- Enduring Power of Attorney – does the donor have mental capacity? If not, is it registered?
- Photocopy or scan all pages
- Return the Power of Attorney to the sender
- Does the donor have mental capacity?
- Are there any restrictions (if yes have they been recorded)?
- Are there multiple attorneys (can they act jointly, jointly and severally or a combination and has that been recorded)?
- Should statement and correspondence details be changed?
- Do payment details need to be changed?
- Have all anti money laundering / customer due diligence checks been completed for all people with authority to act on the account?
- Have all relevant customer records to indicate the Power of Attorney has been received and who has authority to act on the account?

## Financial Abuse

Where any financial abuse is suspected from an attorney or court appointed deputy, firms should raise this with their own legal department and raise, where relevant, with the whistleblowing line at the Office of the Public Guardian. Further information for this can be found at:

<https://www.gov.uk/report-concern-about-attorney-deputy>

## About TISA

TISA is a unique industry-wide membership organisation. Our mission is to bring the UK financial services savings industry together to promote collective engagement, to deliver solutions and to champion innovation for the benefit of citizens, our industry and the nation. [www.tisa.uk.com](http://www.tisa.uk.com)

## Disclaimer

*The information is provided free and is current at August 2018. It is intended to provide a summary of Powers of Attorney in England & Wales and aid their administration in the financial services industry, based on TISA's understanding of current law and guidance.*

*While every care has been taken to ensure the accuracy of this information, TISA cannot accept any responsibility for any inconvenience, loss, damage, or liability nor for any legal fees and costs incurred or caused as a result of any information provided.*



# Powers of Attorney

## England & Wales

## A guide for administration in financial services

## What is a Power of Attorney?

A Power of Attorney is a legal document where one person can give another person(s) the power to act on their behalf.

The administration of Powers of Attorney in financial services firms is often a sensitive area for customers, requiring care and understanding when dealing with their administration.

## What are the different types of Power of Attorney?

*Ordinary Power of Attorney*, set up for practical reasons and is only valid while the donor has mental capacity.

*Lasting Power of Attorney for Property and Financial Affairs*, set up for practical and safeguarding reasons and is valid both while the donor has mental capacity (with their permission) and after the donor has lost mental capacity. Must be registered with the Office of the Public Guardian before it can be used.

*Lasting Power of Attorney for Health and Welfare (not valid for financial services)*, set up for practical and safeguarding reasons and is valid after the donor has lost mental capacity. Must be registered with the Office of the Public Guardian before it can be used.

*Enduring Power of Attorney (made before 1 October 2007)*, for Property and Financial Affairs, set up for practical and safeguarding reasons and is valid both while the donor has mental capacity and after the donor has lost mental capacity. Must be registered with the Office of the Public Guardian to allow it to be used after the donor has lost mental capacity but can be used unregistered while the donor has mental capacity.

*General Trustee Power of Attorney*, for delegation to one attorney of the execution or exercise of all or any of the trusts, powers and discretions vested in the trustee either alone or jointly. Lasts for 12 months or less and is only valid while the donor has mental capacity.

*Deputy Order*, an order granted by the Court of Protection to represent someone who has lost mental capacity. This has broad similarities to a Lasting Power of Attorney.

## Registered Power of Attorney

When a Power of Attorney is registered with the Office of the Public Guardian, every page with donor and attorney information will be stamped, watermarked or marked to indicate electronic registration.

## Certified Copy

Powers of Attorney have different certification rules than other documents. Every page must contain specific text and be signed and dated only by a solicitor or a public notary (a person authorised to carry out notarial activities), or by the donor if they have capacity.

## Restrictions

Within a Power of Attorney is the ability to make restrictions on when it can be used (e.g. that it can only be used once the donor has lost their mental capacity). Preferences and instructions may also be specified to inform the actions of the attorney(s), for example the authority to operate discretionary or managed accounts as without express consent, a Power of Attorney does not provide that authority to enter into new or to continue existing arrangements.

## What is Mental Capacity / Incapacity?

Mental capacity is the ability to make a decision.

In relation to Powers of Attorney, whenever the term 'a person who lacks capacity' is used, it means a person who lacks capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken. If a person cannot communicate their decision, the Mental Capacity Act 2005 says they should be treated as unable to make that decision.

It is generally the person acting on behalf of the person lacking capacity to provide the final judgement on whether they have or lack the capacity to make a particular decision.

Where a firm finds it necessary to request proof of capacity, this should be explained to the attorney with verbal confirmation or documentation as required by the firm obtained and recorded appropriately.

## Who is involved in a Power of Attorney?

*Donor*, person who donates the power (the beneficial owner).

*Attorney*, person(s) given the authority to act on behalf of the donor. Donors can choose one or more people to be their attorney. Where there are multiple attorneys it will be specified in the Power of Attorney if they are to act jointly (all must agree to each decision) or jointly and severally (may act together or individually). It is also possible to appoint attorneys to act jointly in some matters but jointly and severally in others. For a Lasting Power of Attorney, if it is not specified how multiple attorneys should act, they must always act jointly. For an Enduring Power of Attorney, if it is not specified how multiple attorneys should act, the document is invalid.

## What should I do on receipt of a Power of Attorney?

- Check the document is an original or a certified copy.
- Photocopy or scan all documents and return to the sender immediately, this allows a copy to remain on file while ensuring the customer has their copy returned in good time. Duplicate and certified copies can be costly and often the document will need to be submitted to many firms.
- Check the donor has the mental capacity to support the use of the Power of Attorney, for example is an

unregistered Enduring Power of Attorney being used for a person that has lost mental capacity?

- Check and record any restrictions detailed within the Power of Attorney.
- Check and record whether joint attorneys can act jointly, jointly and severally or a combination.
- Check whether any changes need to be made to the account, such as where statements should be sent or payments should be made.
- Complete any additional anti money laundering / customer due diligence checks required for any people with authority to act on the account.
- Update all relevant customer records to indicate the Power of Attorney has been received and who has authority to act on the account.

## Can a customer open an ISA with a Power of Attorney?

Yes, ISA applications (to make a subscription) can be made under a Lasting Power of Attorney for Property and Financial Affairs, Deputy Order, or a registered Enduring Power of Attorney, subject to any restrictions in the document.

Where the investor is physically incapable of signing or a member of the armed forces on active service in a war zone, ISA applications can also be made under an Ordinary Power of Attorney or Enduring Power of Attorney.

Once an ISA has been opened there are no rules about who can operate the account. Instructions received, including transfer, withdrawal and closure requests should be treated in the same way as any non-ISA account. Only applications to open an ISA with a subscription are subject to additional HMRC requirements.

## Gifts

Attorneys and deputies can sometimes give gifts on behalf of the person they have been appointed to help make decisions for. Only deputies and attorneys making financial decisions can give gifts. Unless the Power of Attorney or deputy order says otherwise, gifts can be made only if it's either: to a family member, friend or acquaintance of the person on a customary occasion or to a charity. In both cases, the gift must be of a reasonable value given the size of the estate.

If the donor previously made donations to any charity or could have been expected to make such payments, the attorney can make donations from the person's funds.

## Withdrawals

Withdrawal requests made by the attorney should be processed per firms' usual processes and procedures.

Where an attorney requests a payment to be made to someone other than the donor and a firm does not allow third party payments, they are not required to do so.