

## ACTING AS AN ATTORNEY OR DEPUTY

If you have been appointed as an attorney or deputy, you may not be clear about your obligations and responsibilities.

You may have been made an attorney by the donor (the person who made the Power of Attorney) or appointed as a Deputy (by the Court of Protection) on behalf of someone who is incapable of managing their own affairs, often known as “P” (for Patient).

It is common for people to over-estimate or simply misunderstand what the Power of Attorney or Deputyship order allows them to do, and many may unwittingly overstep their powers. The following are some key points that attorneys and deputies need to be aware of:

### Task-specific capacity

A fundamental principle of the Mental Capacity Act 2005 (MCA) is that a person must be assumed to have capacity unless it is established that they lack capacity. There is no such thing as blanket incapacity, which means that just because someone cannot make complex decisions about how to invest their money for example, does not mean that they are incapable of making decisions about some other, simpler matters. As an attorney or deputy, you should always consider whether you can help the donor/P to make the decision themselves before moving on to making the decision for them.

### “Best interests” principle

Under the MCA any act you do or decision you make on behalf of the donor/P must be in their best interests. This may seem straightforward enough, but there will of course be times when it is not completely clear what is in the donor/P’s best interests.

### Next steps

- Claim state benefits and allowances as appropriate
- The Power of Attorney/court order will need to be registered with any financial institutions, utility companies and creditors that the Donor/P has an interest in so they may record the details of the Power of Attorney or court order.

When considering the scope of your power it is important to bear in mind that your overriding duty is to act in the best interests of the Donor/P, considering their needs and wishes as far as possible.

### Further Assistance

It is important that as attorney you are aware of the limits of your authority to benefit others both under the Power of Attorney and the MCA without the authority of the Court of Protection.

Please see the table below for examples of things you cannot do with or without the consent of the Court of Protection (this table is for illustration purposes and is not comprehensive).

Action	Consent from the Court of Protection required
Provide for the financial needs of those people the donor/P might be expected to provide for	No
Make birthday, wedding and Christmas gifts (small gifts known as 'customary gifts')	No
Execute a will for the donor/P	Yes
Make gifts other than small, customary ones	Yes
Execute a Deed of Variation on behalf of the donor/P	Yes
Transfer a property to a family member	Yes

The Office of the Public Guardian (OPG) supervises the actions of attorneys and deputies and you have obligations to produce accounts and to reports to the OPG when requested.

Although you cannot delegate your decision-making powers to anybody else unless expressly authorised in the document you can choose to employ agents to deal with some or all of the administrative work arising from your appointment as attorney.

### **How can GL Law help you?**

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

**For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email [hello@gl.law](mailto:hello@gl.law)**

*The content of this guide is intended for general information purposes only and shall not be deemed to be or constitute legal advice.*