

## Powers of Attorney – update relating to the delegation of investment decisions to discretionary fund managers

---



A key role for attorneys acting under Enduring Powers of Attorney or financial Lasting Power of Attorney is to manage investments in the best interests of the person who has appointed them (known as the ‘donor’). Many attorneys do not feel that they have the required expertise to make investment decisions, without professional assistance.

One solution is for attorneys to appoint or retain a discretionary investment manager (such as a bank or independent financial advisor) to act on their behalf, allowing skilled professionals to make effective and efficient investment management decisions.

### 2015 guidance

In 2015, the Office of the Public Guardian (‘OPG’) published guidance suggesting that it was not possible for attorneys to delegate investment decisions to a professional investment manager without specific wording in the power of attorney document authorising it.

This guidance represented a potential issue for the many donors who had set up their powers of attorney without the wording included. Investment managers were unsure whether they could continue to act on a discretionary basis and legal advisers had to update their clients to advise that the wording should be included. In some cases this involved the need to set up a new power of attorney and incur further costs and registration fees. If the donor had already lost mental capacity then the attorneys faced the question as to whether they needed to obtain retrospective authority from the Court of Protection to the appointment of a discretionary investment manager.



Concerns were raised by Society of Trust & Estate Practitioners ('STEP') and other professional bodies as to the impact of this guidance. Stephen Horscroft, a partner at Cripps, was involved in lobbying for a change to the guidance during his time on the steering committee of the STEP Special Interest Group on Mental Capacity.

## New guidance

Seven years after the original change to the guidance, it appears that a further change is on the cards.

On 17 March 2022, STEP announced that the OPG have confirmed that attorneys have the legal ability to delegate investment decisions to discretionary managers, meaning that powers of attorney now no longer need to include the express provision.

The OPG is yet to formalise this updated guidance but it is understood that an attorney may instruct a discretionary investment manager without express wording in the power of attorney based the OPG's verbal confirmation, for the time being.

## How we can help

If you would like to set up a Lasting Power of Attorney or would like guidance on acting under an existing power of attorney then please contact Stephen Horscroft on [stephen.horscroft@cripps.co.uk](mailto:stephen.horscroft@cripps.co.uk) or +44(0)1892 506 341.



[Stephen Horscroft](#)

Partner