

KINGSLEY NAPLEY
WHEN IT MATTERS MOST



Investing as a Deputy or an Attorney



**For investment
professionals only**



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Stellar Asset Management

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Kingsley Napley

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An Introduction to Investing as a Deputy or an Attorney

When a person loses mental capacity to manage their financial affairs, whether through accident or illness, family members or professionals are required to step in and deal with their finances on their behalf. They are supervised by the Office of the Public Guardian (OPG) as either Attorneys, appointed by the person themselves, through a Lasting Power of Attorney or Enduring Power of Attorney or a Deputy for Property and Financial Affairs, appointed by the Court of Protection. Last year, the OPG advised that there are 4.7 million registered power of attorneys and 60,000 Court of Protection appointed Deputies.

The OPG has published guidance and standards which must be complied with when managing the financial affairs of another person. One of the obligations imposed on an Attorney or Deputy is to act in their best interests. Where that person is in possession of significant sums of money their Attorney or Deputy must take appropriate steps to manage those funds, including consideration of investments and tax mitigation.

In the coming pages, you can find out more about how Kingsley Napley and Stellar Asset Management will work together to assist you in your role as an Attorney or Deputy. This can be a complex area, so if you have any questions, or would like to know more about how we can support you, please feel free to get in touch.



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Considerations when investing as a Deputy or an Attorney



Who can invest?

- ★ Attorneys appointed under a Lasting Power of Attorney (LPA) for property and affairs; and
- ★ Deputies appointed by the Court of Protection to manage the property and affairs of someone who lacks mental capacity to make decision.

What must they be aware of?

- ★ The Attorney or Deputy cannot do whatever they like with the person's money;
- ★ They must support the person to make decisions themselves where possible;
- ★ Any investment decision must be made on what is now in the person's best interests, whilst balancing their wishes; and
- ★ Decisions should be based on the person's preferences and beliefs.

When should a financial adviser be appointed?

- ★ When the Attorney or Deputy does not feel they have the relevant experience or knowledge;
- ★ It is necessary to show that advice has been taken (this may be a requirement of the Court of Protection or OPG);
- ★ Diversification or review of investments is required; and
- ★ Specialist advice is required.



What should the Attorney or Deputy ensure?

- ★ That the person has been involved in the decision as far as possible;
- ★ That the adviser is aware that the Attorney or Deputy is acting on behalf of another;
- ★ The risk is assessed with the adviser based on the person's circumstances;
- ★ The cost of the advice is an appropriate use of the funds;
- ★ They fully understand the products that have been recommended;
- ★ The current and future circumstances of the person have been taken into account;
- ★ Decisions must not be delegated to an investment fund manager without permission within the LPA or Court Order;
- ★ They must not benefit from their position;
- ★ Decisions are made based on the person's best interests, not the Attorney's or Deputy's own.

Other Considerations



Tax – it is necessary to consider the tax implications of making investments. If this includes the making of gifts then permission may be required from the Court of Protection.



Care – the implications of making investments on future care fees, must be taken into account. Some local authorities will still charge a person for their care if they consider that decisions have been made in order to avoid making contributions towards care fees.



Wills and beneficiaries – an Attorney or Deputy should consider the contents of a will. However, the priority must be the current and future circumstances of the person.



Keeping records – it is important to keep account of all transactions carried out on behalf of another, as the OPG may ask you to send financial reports.



Fraud – abuse of a position is a criminal offence. This applies to anyone looking after another person's finances.



About the Services

Attorney Service

Kingsley Napley will:

- ★ provide a review service for the Attorney to understand the requirements of the individual
- ★ advise on OPG obligations and assist with any necessary Court applications for authority to act as required, this may include confirming appropriate investment powers in place
- ★ introduce Attorney to Stellar to consider investment instruction by requesting investment proposal, directly or via a financial adviser

If selected, Stellar will:

- ★ provide on-going investment management services
- ★ formally report to the Attorney on a quarterly basis

Deputy Service - Professional

Kingsley Napley will:

- ★ act as Professional Deputy, Order of authority includes permission to an investment fund manager on a discretionary basis
- ★ consider requesting investment proposal from Stellar or via financial adviser

If selected, Stellar will:

- ★ provide on-going investment management services
- ★ formally report to the Deputy on a quarterly basis



Deputy Service - Lay

Kingsley Napley will:

- ★ provide a review service for the Deputy to understand the requirements of the individual
- ★ advise on Court of Protection obligations and assist with any necessary Court applications for authority to act as appropriate
- ★ introduce Deputy to Stellar to consider investment instruction, directly or via a financial adviser

If selected, Stellar will:

- ★ provide on-going investment management services
- ★ formally report to the Deputy on a quarterly basis

Trusts

- ★ Kingsley Napley can assist clients in setting up Personal Injury Trusts following receipt of any compensation award in order to ring-fence funds from benefits and care funding means tests. Kingsley Napley may also act as Professional Trustees for such clients
- ★ Kingsley Napley can provide advice in respect of the Trustees fiduciary duties. Proper management of funds will be essential to ensure funds can meet lifetime care costs
- ★ If acting as a Professional Trustee, Kingsley Napley may request an investment proposal from Stellar
- ★ Lay Trustees may also seek advice from Kingsley Napley in order to comply with their duties as Trustees
- ★ Kingsley Napley may introduce Stellar to Trustees so that they can consider their proposals
- ★ If instructed, Stellar formally report to any Trustee on a quarterly basis



About Us



Stellar Asset Management

Stellar is an award-winning provider of Inheritance Tax services.

Its directors have been at the forefront of tax-efficient UK investment since the early 1990s, when they established the tax and property division of a major independent merchant bank.

Stellar was formed in 2007 with the aim of providing advisers with the tools to help their clients mitigate inheritance tax. It is an independent firm, which is wholly owned by its directors and staff.

Stellar's IHT services are underpinned by Business Relief, longstanding government legislation which seeks to provide 100% relief from inheritance tax after two years. This is ideal for Deputies and Attorneys as investors retain control of their capital throughout their lifetime.

Stellar's services access certain property or land backed business activities which qualify for Business Relief as well as offering risk mitigating characteristics. These business activities currently include Forestry, Hotels, Bridging Finance, Care Homes, Leisure Assets and Commercial and Residential Property Development.

Stellar also offers AiM portfolio services, which are also available via an Individual Savings Account (ISA). The combination of services available creates choice and flexibility for potential investors and allows their advisers to tailor their advice to suit different objectives.

Stellar is focused solely on services for inheritance tax mitigation, and our clients include individuals, trustees, business owners and those with capacity issues. Our inheritance tax services are designed to create the right balance of flexibility and control - providing investors with confidence and reassurance, today and in the future.



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