



Patrick Grady MP  
House of Commons  
London  
SW1A 0AA

**MoJ ref:** ADR 104089

16 March 2023

Dear Patrick,

## **MUTUAL RECOGNITION OF LASTING POWERS OF ATTORNEY ACROSS THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

Thank you for your email of 8 March asking about the problems recognising a Scottish Power of Attorney in England and Wales, following our exchange at the Power of Attorney Bill Committee on 1 March.

I can confirm that there is already legislation in place which allows for the recognition of Scottish Powers of Attorney in England and Wales. Schedule 3, Paragraph 13 of the Mental Capacity Act provides that where an individual is habitually resident in another country to which England and Wales is a connected country (this would include Scotland) then, the law applicable to the power's existence is the law of the other country (in this case Scotland). This means that if the correct process has been followed for the Power of Attorney to be created in Scotland, it would be legally recognised in England and Wales without the need for further action from either the Court of Protection or Office of the Public Guardian (OPG) for England and Wales.

This approach has advantages. It prevents extra costs for the donor or their attorneys in Court or administration fees, removes additional bureaucracy and delay as there is no need to coordinate an application for recognition and avoids adding new burdens on either the Court or the OPG by providing automatic recognition. However, as you have pointed out, despite this legislation being in place, the experience of those with Scottish Powers of Attorney continues to be that third parties, such as banks, often reject these powers.

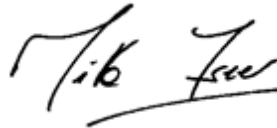
Given that legislative cover already exists, and the benefits this has to both the individual and organisations involved, I am not persuaded that further legislative change to introduce a new, largely administrative, process to recognise Scottish Powers of Attorney is needed. Rather I believe this is a matter of education and awareness. We need to ensure that institutions and organisations are aware of the legal status of Scottish Powers of Attorney in England and Wales.

Additionally, it would be remiss of me not to say that the government's priority is to ensure that the Powers of Attorney Bill passes and achieves Royal Assent. Amending a Private Member's Bill (PMB) is inherently risky at this late stage due to the very limited time available on a sitting Friday to debate such amendments. This is amplified in the Lords when amendments are usually fatal to a PMB as there is no time for amendments to come back to the Commons to be agreed in "ping pong".

So, while the Powers of Attorney Bill is not, in my view, an appropriate vehicle to try to resolve this issue, wider modernisation of our lasting power of attorney (LPA) service does provide an opportunity to reduce these problems. As part of the development and implementation of our modernisation plans, there will need to be extensive engagement with third party organisations. They will need to be aware of the changes that are coming to LPAs in England and Wales in order to make changes to their own systems.

Engagement is likely to also include information about the nature of LPAs and why they are important, to raise general awareness. This would provide an opportunity to engage with them about the importance of recognising Powers of Attorney from across the United Kingdom, including those from Scotland, how these documents can be recognised, and the appropriate authority to contact if further confirmation is needed – in this case the Office of the Public Guardian Scotland.

Please be assured, that whilst I do not think legislative change is the most effective solution for now, my officials will continue to monitor the issue as they engage with partners on wider modernisation of the service.

A handwritten signature in black ink, appearing to read 'Mike Freer', with a horizontal line underneath the name.

**MIKE FREER MP**