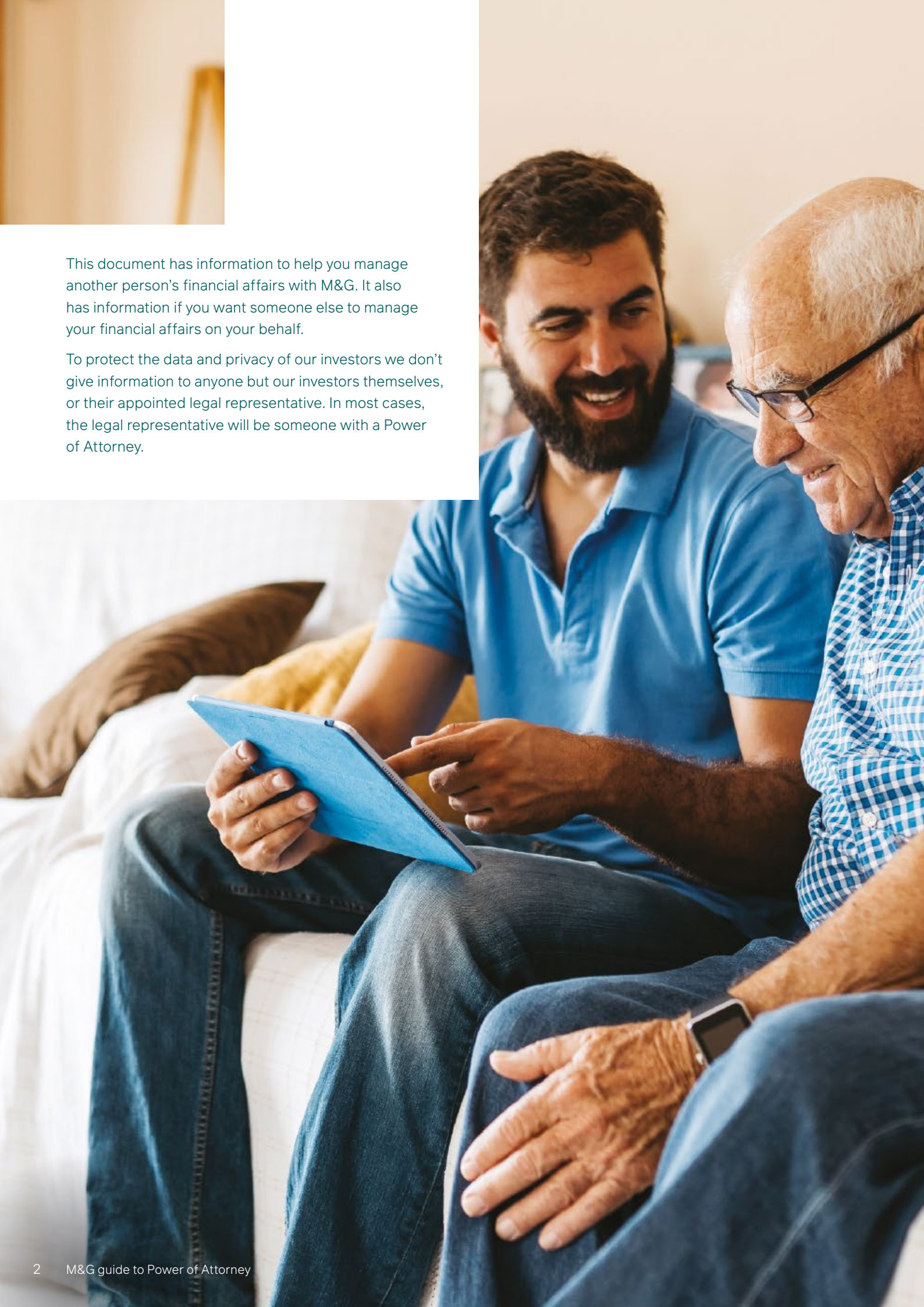


# The M&G guide to Power of Attorney







This document has information to help you manage another person's financial affairs with M&G. It also has information if you want someone else to manage your financial affairs on your behalf.

To protect the data and privacy of our investors we don't give information to anyone but our investors themselves, or their appointed legal representative. In most cases, the legal representative will be someone with a Power of Attorney.



# What is a Power of Attorney?

A Power of Attorney is a legal document that allows a person or persons (attorney/attorneys) the power to act on the behalf of another person, the donor (known as the granter in Scotland), in relation to their personal welfare and/or property and financial affairs.

There are several types of Power Attorney available in the United Kingdom depending on where the donor/granter is resident. These have different names in different parts of the UK. We recommend that you seek independent advice on which type of Power of Attorney is most suitable for you.

## Power of Attorney in England and Wales

- **Lasting Power of Attorney (LPA)** – There are two different Lasting Powers of Attorney, one which relates to health and welfare and one for property and financial affairs. Unlike an Enduring Power of Attorney (see below), an LPA has to be registered at the Office of the Public Guardian (OPG) to be effective, and not just when the donor loses capacity. It will last until the donor, while still having capacity to do so, revokes the attorney's/attorneys' authority or when the donor dies. Lasting Power of Attorney replaced Enduring Power of Attorney in October 2007.
- **General or Ordinary Power of Attorney** – They are often used to give rights for a specific event, for example if you need someone to be able to make decisions for you temporarily when you go on holiday. These do not need to be registered at the OPG, however if the donor loses mental capacity they will no longer be valid.
- **Enduring Power of Attorney (EPA)** – Enduring Powers of Attorney are only valid if they were signed and written before 1 October 2007. If the donor still has mental capacity an existing EPA can be used without being registered with the OPG. If the donor lacks capacity, for example, as the result of dementia or a stroke, the EPA can no longer be used until it has been registered. Failure to register the EPA after the donor loses mental capacity will result in any decision the attorney makes being treated as invalid. Although no new EPAs can be created, those already completed remain valid and can still be registered.



## Power of Attorney in Scotland

- **Continuing Power of Attorney (CPA):** Where the granter lacks capacity, a CPA is required to control their property and financial affairs. To be valid a CPA must be registered with the Scottish Office of the Public Guardian (Scottish OPG). The document must specify the exact powers given to the attorney, and the powers may be valid from registration or the granter can specify that the attorney can act only after a certain event or time.
- **Welfare Power of Attorney (WPA):** For decisions about a granter's health and welfare, a WPA is required. A WPA covers matters such as medical treatment, where you live, what you eat and wear and decisions about the care you receive. A WPA also needs to be registered with the Scottish OPG and can only be used by the attorney after the granter loses mental capacity.
- **Combined Continuing and Welfare Power of Attorney:** This gives the attorney(s) the right to look after both the grantor's financial affairs and health and welfare decisions.
- **Simple Power of Attorney:** This is similar to the above mentioned General or Ordinary Power of Attorney, and can be set up for a specific event or specified period of time, to be able to make decisions temporarily. It does not need to be registered with the Scottish OPG before use.

## Power of Attorney in Northern Ireland

- **Enduring Power of Attorney (EPA):** An EPA allows the donor to choose Attorney(s) to deal with their property and affairs. If the donor loses mental capacity to deal with their affairs, the Attorney(s) must register the EPA with the court at the Office of Care and Protection. An EPA will not cover health and welfare matters.
- **General or Ordinary Power of Attorney:** Like in the rest of the UK a donor can set up an ordinary power of attorney to give someone the power to temporarily manage their property or finances. This is only valid for as long as the donor has mental capacity.





## 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.

## Court orders after a loss of mental capacity

If there is not a Power of Attorney in place and you need to manage someone else's finances, but the individual can no longer make their own decisions following a loss of capacity, then the relevant Court will need to decide who will look after their financial affairs:

- **England & Wales** – Where an individual has lost mental capacity without having completed an EPA or LPA, the Court of Protection will appoint a deputy to look after the individual's financial affairs. The Court will be specific in what powers are granted to the deputy - a Deputy's Order (for someone to handle the individual's affairs on an ongoing basis) or an Interim Order (for urgent one-off decisions or actions). These powers are often more limited than would typically be available had the individual created a power of attorney.
- **Scotland** – Where an individual has lost mental capacity without completing a power of attorney, the Sheriff Court can appoint a guardian. The guardianship order will give the guardian specific powers to look after the individual's financial or welfare decisions. The order can be created to last indefinitely or for a specific period of time. Where a one-off decision needs to be made, an application can be made to the Court for an intervention order. This would allow the intervener to act for the purpose of this sole decision. An intervention order can also be applied for where the guardian wishes to act outside the powers specified in the guardianship order.

- **Northern Ireland** – Where an individual has lost mental capacity without completing an EPA, it will be necessary to apply for a controllership order (or make a short procedure order) through the Office of Care and Protection. Both these arrangements give the person selected the legal authority to manage financial affairs on behalf of the patient, in accordance with the Office of Care and Protection's instructions.

In these circumstances you should talk to a solicitor for advice about court orders.

## Power of Attorney set up outside the UK

If you have a Power of Attorney that has been created in a country outside the UK, you need to legalise it in the country where it was created before you can use it in the UK.

The process for legalising the Power of Attorney will differ. It depends on the country where it was created. We recommend that you seek independent advice on such processes.

## Joint Attorneys

If there's more than one Attorney, you will need to check whether decisions can be made jointly or jointly and severally:

- **Jointly** means that all the Attorneys must work together to agree on a decision and sign all documents together.
- **Jointly and severally** means that any one of the Attorneys can make decisions and sign documents on their own or with other Attorneys.



# Registering a Power of Attorney on an existing M&G account

Before the Attorney is added to an existing account, we'll need the following information:

- The Power of Attorney document (either the original or a certified copy)
- Alternatively for Lasting Power of Attorney (England and Wales) registered on or after 1 September 2019 you can provide us with an access code (by phone or in writing) which will enable us to view the document online. Further details on how you can utilise this service can be found on the government website: [gov.uk/use-lasting-power-of-attorney](https://gov.uk/use-lasting-power-of-attorney)
- A covering letter containing any M&G client references and as much useful information that you have. This includes your details (such as name and address), details of the customer (such as name, current address and old address, if the person has recently moved), and the address where all communications are to be sent going forward under the Power of Attorney
- Proof of your identity – We ask you to provide two pieces of identity documentation:
  - One government-issued document to evidence your personal identity – such as a driving licence or passport; and
  - One to evidence your address – such as a utility bill or bank statement.

Please be aware that we may require additional verification for the donor.

## Can I open a new account with M&G with a Power of Attorney?

You can open a new account with M&G under a Power of Attorney. ISA investments are subject to additional HMRC requirements.

## Certified copies

We accept copies of your documents that have been certified by a Solicitor or a Notary Public\*. A Stockbroker can also certify The Power of Attorney document, with the exception of a lasting power. The donor can also certify providing they do not lack mental capacity.

We're unable to accept documents which have been certified by a family member or a named attorney.

The person certifying the documents may charge a fee; please check with them first.

The following information must be provided on all pages of all documents if it is a certified copy:

- The words 'I, name of certifier, certify that this is an authentic copy of full name of investor's full description of document as witnessed by me on date of certification.'
- Full name, date and signature by the person who is certifying them
- Profession
- Business name, address and telephone number
- FCA number (financial advisers only).

Documents must be certified on every page and be dated within the past six months.

If any of these details are missing, we may be unable to accept the document.

\*A Notary Public is typically a solicitor that has taken another qualification to become a notary public. There are a few notaries that are not also solicitors, but this is less common. The primary function of a notary public is the certification or authentication of documents and signatures.



## What happens next?

Upon receipt of a Power of Attorney we will:

- update our client records to acknowledge the investor has a Power of Attorney registered on their account. For sole holdings, this includes removing any financial adviser details. This takes five working days to set up
- return any original Power of Attorney document to the address provided. We'll send this by recorded delivery and by close of business the following working day.

The Power of Attorney can instruct M&G in the same way as any donor would normally do, including investing more money, transferring investments, and switching or withdrawing funds.

You'll receive the following regular updates:

- ISA, Junior ISA, OEIC and Savings Plan statements are prepared semi-annually as at 5 April and 5 October. Statements will include any transactions that have taken place on the account over the previous six-month period
- For OEIC and Savings Plan investments, we'll send you Consolidated Tax Vouchers on an annual basis with your 5 April statement. For more information on this, or to find out the value of the investment at any given time, call our [Customer Relations](#) team on 0800 390 390.

Prices of all M&G's funds are available on our website at [www.mandg.co.uk/prices](http://www.mandg.co.uk/prices)



# How to set up a Power of Attorney: step-by-step guide

The information below is provided as a guide based on our understanding and is not advice.

1. Consider whether you want or need to consult a solicitor for advice. Your local Citizens Advice can also help.
2. Decide what type of Power of Attorney you want.
3. Choose who you want to be your attorney.
4. Consider having a solicitor draft your Power of Attorney for you, instead of drafting it yourself, to make sure it's done properly. Most solicitors should be able to help draft one, as well as provide legal advice.
5. Fill out the right forms (if you are drafting it yourself). For a Lasting Power of Attorney (England and Wales), you'll need to use a form which you can get from the Office of the Public Guardian or make a Lasting Power of Attorney online. For a Continuing Power of Attorney (Scotland), there isn't a standard form, but you can buy Power of Attorney packs from some stationery shops. Alternatively, most solicitors should be able to assist in drafting one and providing legal advice. For an Enduring Power of Attorney (Northern Ireland), you should use an official form, which you can get from the Office of Care and Protection website.
6. Depending on the type of Power, you might need a doctor (GP) or solicitor to provide confirmation of your ability to make decisions. For example, they may need to sign a statement or certificate of capacity. You don't need this for a General or Ordinary Power of Attorney.
7. Sign it and get a witness to sign it too.
8. Decide whether you need to register it, and when to register it. Some types of Power of Attorney only give the attorney the power when they are registered.
9. You can register it with the right government body if you're still mentally capable. If you can't make your decisions, your attorney can register it. These are the bodies you register it with:
  - If you live in England or Wales, register it with the Office of the Public Guardian.
  - If you live in Scotland, register it with the Office of the Public Guardian (Scotland).
  - If you live in Northern Ireland, you will only need to register it with the Office of Care and Protection if the donor loses capacity.





## How can a Donor/Granter revoke a Power of Attorney

- **England and Wales** - If a donor would like to end a Power of Attorney that has been registered with the Office of the Public Guardian, and they still have mental capacity to make decisions, then they will need to complete a Deed of Revocation.
- **Scotland** – If a granter would like to end a Power of Attorney, and they still have mental capacity to make decisions, then they need to sign a revocation notice, which must include a supporting certificate from an appropriately qualified legal or medical professional, and then be sent to the Office of Public Guardian (Scotland) for registration.
- **Northern Ireland** – If a donor would like to end an Enduring Power of Attorney that has been registered at the Office of Care and Protection, and they still have mental capacity to make decisions, an application must be made to the Court for its revocation, accompanied by the original EPA and the Deed of Revocation.

If the Attorney(s) no longer wants to act, then a Deed of Disclaimer is required.

## Ending a Power of Attorney

Generally across the United Kingdom, a Power of Attorney will end if the attorney:

- resigns/retires from the role, subject to complying with the relevant legal requirements (eg, filing a Deed of Disclaimer to the Office of the Public Guardian in England and Wales)
- loses the ability to make decisions – ‘loses mental capacity’
- divorces or ends the civil partnership with the donor if they were married or a partner
- becomes bankrupt or they’re subject to a Debt Relief Order (DRO) – if they’re a property and financial affairs attorney
- is removed by the relevant Court
- dies, and there are no replacement attorneys
- is a joint attorney and the other attorney stops acting, unless the Power of Attorney says the remaining attorney can carry on making decisions.







# Useful contacts

## Office of the Public Guardian (England or Wales)

Email: [customerservices@publicguardian.gov.uk](mailto:customerservices@publicguardian.gov.uk)  
Website: [gov.uk/government/organisations/office-of-the-public-guardian](http://gov.uk/government/organisations/office-of-the-public-guardian)  
Telephone: 0300 456 0300

## Office of the Public Guardian (Scotland)

Email: [OPG@scotcourts.gov.uk](mailto:OPG@scotcourts.gov.uk)  
Website: [publicguardian-scotland.gov.uk](http://publicguardian-scotland.gov.uk)  
Telephone: 01324 678300

## Office of Care and Protection (Northern Ireland)

Website: [justice-ni.gov.uk](http://justice-ni.gov.uk)  
Telephone: 0300 200 7812

## Your local Citizens Advice

If you live in England and Wales

Website: [citizensadvice.org.uk](http://citizensadvice.org.uk)  
Telephone: In England call 0800 144 8848  
In Wales call 0800 702 2020  
TextRelay users should call 18001 then the relevant number above

If you live in Scotland:

Website: [cas.org.uk](http://cas.org.uk)  
Telephone: 0800 028 1456

If you live in Northern Ireland:

Website: [citizensadvice.org.uk/nireland](http://citizensadvice.org.uk/nireland)  
Telephone: 0800 028 1881

## Money Matters

E-mail: [advice@moneymattersweb.co.uk](mailto:advice@moneymattersweb.co.uk)  
Website: [moneymattersweb.co.uk](http://moneymattersweb.co.uk)  
Telephone: 0141 445 5221

## Age UK

Email: [contact@ageuk.org.uk](mailto:contact@ageuk.org.uk)  
Website: [ageuk.org.uk](http://ageuk.org.uk)  
Telephone: 0800 678 1602

If you live in Wales:

Email: [advice@agecymru.org.uk](mailto:advice@agecymru.org.uk)  
Website: [ageuk.org.uk/cymru](http://ageuk.org.uk/cymru)

If you live in Scotland:

Email: [helpline@agescotland.org.uk](mailto:helpline@agescotland.org.uk)  
Website: [ageuk.org.uk/scotland](http://ageuk.org.uk/scotland)

If you live in Northern Ireland:

Email: [advice@ageni.org](mailto:advice@ageni.org)  
Website: [ageuk.org.uk/northern-ireland](http://ageuk.org.uk/northern-ireland)

## Alzheimer's Society

Website: [alzheimers.org.uk](http://alzheimers.org.uk)  
Telephone: 0330 333 0804

## RNIB

Telephone: 0303 123 9999

If you live in England:

Email: [helpline@rnib.org.uk](mailto:helpline@rnib.org.uk)  
Website: [rnib.org.uk/england](http://rnib.org.uk/england)

If you live in Wales:

Website: [rnib.org.uk/wales-cymru-1](http://rnib.org.uk/wales-cymru-1)

If you live in Scotland:

Email: [rnibscotland@rnib.org.uk](mailto:rnibscotland@rnib.org.uk)  
Website: [rnib.org.uk/scotland](http://rnib.org.uk/scotland)

If you live in Northern Ireland:

Email: [rnibni@rnib.org.uk](mailto:rnibni@rnib.org.uk)  
Website: [rnib.org.uk/northern-ireland](http://rnib.org.uk/northern-ireland)

## British Deaf Association

Email: [bda@bda.org.uk](mailto:bda@bda.org.uk)  
Website: [bda.org.uk](http://bda.org.uk)



## Contact

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If you have a financial adviser, please contact them for further information on M&G's funds and products, and also for information on how to invest with M&G.

If you invest directly with M&G and don't have a financial adviser, you can contact us using the details below.



### Customer Relations

**0800 390 390**

If you have a query regarding Powers of Attorney or your M&G investment, Customer Relations can be contacted from 08:00 to 18:00, Monday to Friday, and from 09:00 to 13:00 on Saturday.



### Investment Helpline

**0800 389 8600**

If you'd like to make an investment, request further information on a new or additional investment, or want to read more about our products and services, call us from 08:00 to 18:00, Monday to Friday, and from 09:00 to 13:00 on Saturday.

For security purposes and to improve the quality of our service, we may record and monitor telephone calls.



**info@mandg.co.uk**

For information.

Please note that information contained within an email cannot be guaranteed as secure. We advise that you don't include any sensitive information when corresponding with M&G in this way.



**www.mandg.co.uk/info**

Visit our website for the latest performance information, fund prices and literature.



### M&G Customer Relations

**PO Box 9039**

**Chelmsford**

**CM99 2XG**

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We're unable to give you financial advice. If you're unsure about the suitability of your investment, please speak to your financial adviser.

If you need audio, braille or large print, please call our team and we'll send these to you.