

ESSON & ABERDEIN

ESSON &  
ABERDEIN  
& **YOU**

Private Client

The **'Esson & Aberdeen Way'** is our unique approach to providing legal advice. It's not just about money, deals and legal transactions. It's about people's lives and the stages they encounter along life's journey. So it's not a house, it's a home. It's not an estate, it's someone's future. It's not about contracts, it's about individuals. So we put you at the heart of everything we do. We listen and tailor everything to suit you and we're right there with you offering quality, proactive advice at every stage until the ink is dry. We aim to reduce the stress of talking to a solicitor by delivering on promises and using simple language. Our team has everything and everyone you might need, from start to finish under one expert roof.

We are a team of like-minded people who **care** about you.

**Esson & Aberdeen & You.**

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*Esson & Aberdein believe profoundly in long-term meaningful relationships, we work with clients in order to help them protect their families and provide for them in the future.*

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**Joni Esson**  
Managing Director  
Esson & Aberdein

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# Introduction

We believe that Aberdeen and the North East of Scotland deserves more.

Esson & Aberdein is more than just another law firm. It represents a commitment by North East loon and quine, Rob Aberdein and Joni Esson, and their team, to the people of Aberdeen City and Shire to deliver a better-quality and distinctly different legal service.

We hold ourselves to the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit with purpose.

Esson & Aberdein recognises a global culture shift to redefine success in business and build a more inclusive and sustainable economy. We also believe that we have the power to use profits and growth as a means to a greater end:

positive impact for our employees, our communities, and the environment.

When it comes to private client work, we recognise the value to our clients of a long-term and meaningful relationship with their professional adviser and will invest time in getting to know you. Understanding your needs will ensure that you receive the right advice, not just for today, but for tomorrow too.

Our advice will always be clearly communicated, concise and tailored, and this will help you to make better decisions and achieve better outcomes for yourself, your business and your family.





# Living Wills

In Scotland, every adult with mental capacity has the right to consent to or refuse medical treatment and intervention. When you are ill or require medical treatment, you can usually discuss treatment options with your doctor and then jointly reach a decision about your future care.

If you lack capacity, the Adults with Incapacity (Scotland) Act 2000 states how you will be treated. This Act says that when making a decision about a medical treatment, the healthcare professionals providing care must take into account the past and present wishes of the person concerned. Sadly, your wishes may not be taken into account or followed unless you have made them clear, in writing. To ensure your wishes are known in advance, you can use a Living Will.

## What is a Living Will?

A Living Will (often referred to as an Advanced Directive) is a formal written document setting out the wishes of the granter in respect of how he or she desires to receive medical treatment in the unfortunate situation that capacity has been lost or there is an inability to communicate.

A Living Will requires to be created whilst the Granter has full capacity and will detail fully their wishes should he or she suffer from any of the serious irreversible conditions stated. Examples would include brain injury/ degenerative brain diseases, cancers and treatments may include resuscitation, artificial feeding and other life prolonging interventions.

## Why should I have a Living Will?

If you have strong views on what treatments/ interventions, you would wish to receive or not as the case may be, then it is important to have these put down in writing. It can help medical professionals and family members know clearly what your wishes are and give you comfort that your family is not having to make very difficult decisions without knowing what your wishes would be.

## Legal Status of a Living Will

Whilst a Living Will is not legally binding upon doctors it is persuasive and will be taken into serious consideration by them when decisions are being made on your behalf.

A Living Will only comes into force if capacity is lost and/or you are unable to communicate your wishes. It is for this reason it is important that anyone putting a Living Will in place considers fully the implications and understand that once capacity or the ability to communicate is lost there is no opportunity to change the wishes stated or indeed revoke the Living Will.

## Who should you advise of the existence & terms of your Living Will?

The signing of the document itself is not enough to ensure that your wishes are considered. In addition to discussing your express wishes with your next of kin and loved ones it is important that you ensure your doctor is informed of your wishes and is passed a copy of the signed Living Will document to place with your medical records.

If you have a Welfare Power of Attorney (further information can be found in our guide named "Powers of Attorney") your Attorney should be advised of the terms of your Living Will and be provided with a copy.



# Power of Attorney

A Power of Attorney is a means to give legal power to someone you trust to make decisions on your behalf in relation to various matters.

## What is a Power of Attorney?

A Power of Attorney is a means to give legal power to someone you trust to make decisions on your behalf in relation to various matters.

When granting the Power of Attorney, you are known as the Granter and the person to whom you are granting the power to make decisions is called the Attorney.

Broadly, there are 3 different types of Power of Attorney: -

1. Continuing Power of Attorney
2. Welfare Power of Attorney
3. Non-continuing (basic) Power of Attorney

It is common for the Continuing and Welfare Powers of Attorney to be incorporated in to one document.

## Why should I have a Power of Attorney?

A Continuing and/or Welfare Power of Attorney is something that every adult in Scotland should have. A Power of Attorney enables the appointment of a trusted person(s) of your choosing to deal with your personal affairs in the event you are unable or become incapable of doing so personally.

If you do not have a suitable Power of Attorney and you lose capacity the only option open is Guardianship and Intervention Order procedures through application to the Scottish Court Service. As with many court processes these can be costly and time consuming.

## Who should I appoint?

You can appoint any person over the age of 16 to be your Attorney. Due to the potential wide powers that may be available to your Attorney it is vital that you appoint a trusted person who knows and understands your needs and wishes.

You can appoint one or several substitute Attorneys to take over if your original Attorney cannot continue to act. Furthermore, joint Attorneys can be appointed but consideration should be made as to whether they must jointly agree on all decisions made or they can agree on decisions that are made together but they can also act alone (joint and several). Appointing multiple Attorneys may create conflict if they must agree on all decisions to be made.

Due to the safeguarding duty placed on the Attorney and the fact he/she must observe certain principles as set out in the Adults with Incapacity (Scotland) Act 2000 including following a Code of Conduct, before granting a Power of Attorney you should discuss your intentions with the proposed Attorney to ensure he/she is happy to accept the role. An Attorney is obliged, as part of the registration process, to state that he/she is prepared to take on the role of Attorney and accepts the incumbent duties.

## Continuing Power of Attorney

The general powers in a Continuing Power of Attorney provide that your Attorney can do anything in relation to your financial, property and legal affairs that you could do personally. These powers can include:

- The purchase and sale of property
- Opening, operating, and closing bank accounts
- Dealing with investments

Should you wish, continuing financial powers can be used by your nominated attorney immediately after the Power of Attorney has been registered with the Office of the Public Guardian. This does not prevent you from continuing to deal with your own financial affairs, and you can do so until such time as a loss of capacity has occurred.

However, if you wish your Attorney to act only in the event of your incapacity, it must be clearly stated that the powers are not to be used until incapacity has been confirmed. You may wish to state who should make any decision about your incapacity. Sensibly many people nominate their GP or other suitably qualified medical professional.

## Welfare Power of Attorney

A Welfare Power of Attorney covers decisions about health and personal welfare. This Power of Attorney enables your Attorney to make decisions about your health and welfare after you become incapable of making those decisions for yourself. Your Attorney can not intervene whilst you still have capacity to make the decision.

These powers can include: -

- deciding where you should reside
- deciding what type/level of care you are to receive
- refuse/consent to medical treatment on your behalf
- make decisions about your daily routine, health, wellbeing, diet, dress and personal appearance
- make decisions on which activities, social, community and cultural activities you partake in

## The role of the Office of the Public Guardian

All Continuing and Welfare Powers of Attorney once prepared, whether stand alone or combined, require to be registered with The Office of the Public Guardian. The applicant requires to submit a completed registration form and a certificate of capacity. The certificate of capacity must be signed by a solicitor or doctor practicing in Scotland confirming that:

- He/she has interviewed the Granter immediately before the Power of Attorney was signed
- He/she is satisfied that the Granter fully understands the purpose, nature and extent of the Power of Attorney and the decision-making power that any Attorney would have as a result
- He/she has no reason to believe that the Granter is acting under undue influence

In addition to administering the process of Power of Attorney registration, the Office of the Public guardian has a supervisory duty and has the power to investigate and act accordingly in instances where concerns are raised that an Attorney may not be acting in a Granter's best interests or is abusing his/her position as Attorney.

## Non-continuing (basic) Power of Attorney

This is the most straightforward form of Power of Attorney and is generally used for specific purposes, with very limited powers, for example people working abroad or on holiday and they require someone to deal with specified personal affairs in their absence. The most common of these is a Power of Attorney to sign documents in relation to a sale of a property.

This type of Power of Attorney is basic, limited in its use, and it cannot be used if you later suffer from mental incapacity.

A non-continuing Power of Attorney does not require to be Registered with the Office of the Public Guardian.

# Residential Property Services

If you are buying your first home, looking to move up the housing ladder or are veterans of the property market looking to downsize, our specialist residential property team's vast experience can help you navigate the way to your dream home.

We have a highly qualified team of Directors, Solicitors and Paralegals who are dedicated to providing a first-class, client-focused service. Experienced in all aspects of residential property, we work across Scotland and are skilled in advising on all property related matters. Our property experts are here to help you.

Our pragmatic, straight-talking approach will guide you through the legal processes easing the stress and avoiding familiar pitfalls to keep things running smoothly. Whether you have paid off your current mortgage, are looking to remortgage or are considering a home move we are here to help.

## Discharge of Standard Security (mortgage paid off)

If you have paid off or are looking to clear your mortgage, you will need to arrange the discharge of the Standard Security registered against your title deeds by the mortgage lender at the start of your mortgage. This is a very straightforward process, and we can deal with the required legal work for you on a fixed-fee basis.

## Remortgage

If your existing mortgage product is coming to an end for example the fixed rate period is ending, it is important that you review your current mortgage and consider switching to another product to secure a better deal. This is now more important than ever when we see mortgage deals and rates changing on an almost daily basis.

We work closely with selected independent financial advisers who can provide advice and help secure the best whole of market deal available for your circumstances.

We can offer our services to carry out the remortgage legal work required on a fixed-fee basis.

## Estate Agency, Sale and Purchase Conveyancing

We can provide a complete estate agency and conveyancing service from marketing right through to the handover of keys to the new owners of your property. This means that you don't need a separate marketing agent and solicitor. Your solicitor is fully involved in your sales campaign from the outset so that any legal issues can be dealt with early on meaning no last-minute complications and delays. If you have an onward purchase, we can deal with that too, providing first class knowledge and a seamless service all under one roof.

## Estate Agency

We understand that it can be difficult selecting a solicitor or estate agent to sell your property, after all your home is likely to be your biggest asset. You need to be able to trust that the firm you choose will market your property comprehensively and achieve the best price for you, whilst feeling that you are getting a value-for-money service. We pride ourselves in providing a dedicated service tailored to the individual needs of each client, always assuring our best attention, and providing straight-forward, jargon-free communication in a professional manner.

We are committed to helping you achieve the best possible price for your property.

We have a highly qualified team of Directors, Solicitors and Paralegals who are dedicated to providing a first-class, client-focused service. Experienced in all aspects of residential property, we work across Scotland and are skilled in advising on all property related matters. Our property experts are here to help you.

We offer free, no obligation property valuation appraisals and should you decide to proceed, we can arrange everything for you including a home report, photographs, brochures, and viewings, keeping the whole process as hassle free for you as possible.

## Sale Conveyancing

We offer a full conveyancing service on sale irrespective of whether you use our estate agency service not.

When you sell or dispose of property in Scotland you require to engage the services of a Solicitor. The process involves contractual negotiations to achieve the conclusion of missives as well as the examination of title deeds, reports and searches in respect of the property.

Our team is highly experienced in the contractual and conveyancing formalities working proactively to secure a legally binding deal as soon as possible.

## Purchase conveyancing

Making the decision to buy a new home is just your first step. Whether you have bought before or are a first-time buyer, our experience will successfully guide you through the property buying maze.

Buying a new home is an emotional investment as well as a financial one. We understand this and will make sure you are always kept up to date with how things are progressing.

We provide clear and easy to understand advice on putting in an offer on a property, and you will benefit from our vast legal experience and market knowledge when it comes to negotiating the deal and thereafter concluding missives.

Thereafter we will ensure that all legal matters are reviewed and dealt with thoroughly ensuring that you have a good, valid, and marketable title.

When considering buying any new home or indeed considering buy-to-let, it is vitally important to know that you have the finances available as early as possible in the process and most certainly prior to the conclusion of missives.

We work closely with selected independent financial advisers who can provide advice and help secure a suitable mortgage quickly which assists in the prompt conclusion of missives.

## General Conveyancing

In addition to the general services detailed above we can also deal with the following:

- Transfers of Title
- Executory sales and conveyancing
- Gifts
- Liferent interests
- Loan agreements and security for family members
- Remedial conveyancing & Voluntary Registration



# Wills

Wills are not just for the wealthy. It does not matter what you have or how much, a will allows you to chose who will be responsible for administering your estate and details how you want them to gather and distribute the same.

## What is a will?

A will is a written legal document which expresses how you wish your assets (known as your estate) to be dealt with and distributed on your death.

## Why is it important to make a will?

The law does not require you to have a will. It is our view that everyone in Scotland who can have one, should. By making even a basic will it ensures that your estate is left to the people you want to have it. Wills are not just for the wealthy. It does not matter what you have or how much, a will allows you to chose who will be responsible for administering your estate and details how you want them to gather and distribute the same.

If you do not have a will at the time of your death the law of intestacy dictates how your estate will be dealt with, which can lead to an undesired outcome.

The lack of a will almost always leads to greater legal costs as there can be substantially more work involved in the administration and distribution of an intestate estate.

## What to consider

### Who do you want to appoint as Executor?

The Executor is responsible for administering your estate and ensuring the terms of the will are implemented. There can be more than one Executor acting. We would advise that you pick at least one Executor with a substitute as cover in the event the first is unable to take up the role.

### Spouse and children's legal rights

Despite the terms of your will, your surviving children and spouse are entitled to claim a share of your moveable estate. Your moveable estate includes things such as cash in the bank, investments, cars, and jewellery. This is a complex area and detailed advice can be provided if this affects you.

### Do you want to leave any specific or cash legacies?

You can bequest specific items or sums of money to a named individual or Charity. Some common examples would be special pieces of jewellery, collections, cars, and antiques,

### Beneficiaries

After the payment of any debts, administration costs and specific legacies who would you wish to leave the remainder of your estate (known as the residue) to? What if a beneficiary dies before you? Who would you want to inherit in that situation?

### Trust Provisions for Beneficiaries under 16/18/21

If any of your beneficiaries are young it may be worth considering the age at which you would want them to receive their inheritance. We can put trust provisions in your will so you can be confident that any beneficiary will only receive his or her inheritance when they are older and perhaps better placed to manage the same.

### Funeral Instructions/plans

Many people like to restate their funeral instruction in a will.

A hand is holding a red business card in a cafe setting. The card has the text 'ESSON & ABERDEIN' printed on it. In the background, there is a white cup of coffee with a latte art design on a wooden table. A person's face is partially visible in the background, out of focus.

ESSON &  
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# Our Team

With significant years of collective professional experience, you will always get expert legal advice from our team, but we also pride ourselves on our customer care, so you can expect close personal understanding and clear, easy-to-understand communication throughout your journey.



**Joni Esson**  
Managing Director  
Email: [joni.esson@essonaberdein.com](mailto:joni.esson@essonaberdein.com)



**Rob Aberdein**  
Director  
Email: [rob.aberdein@essonaberdein.com](mailto:rob.aberdein@essonaberdein.com)



**Julie Hamill**  
Senior Associate  
Email: [julie.hamill@essonaberdein.com](mailto:julie.hamill@essonaberdein.com)



**Shari O'Hare**  
Residential Conveyancing  
Paralegal  
Email: [shari.ohare@essonaberdein.com](mailto:shari.ohare@essonaberdein.com)



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66 Queen's Road | Aberdeen | AB15 4YE



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