

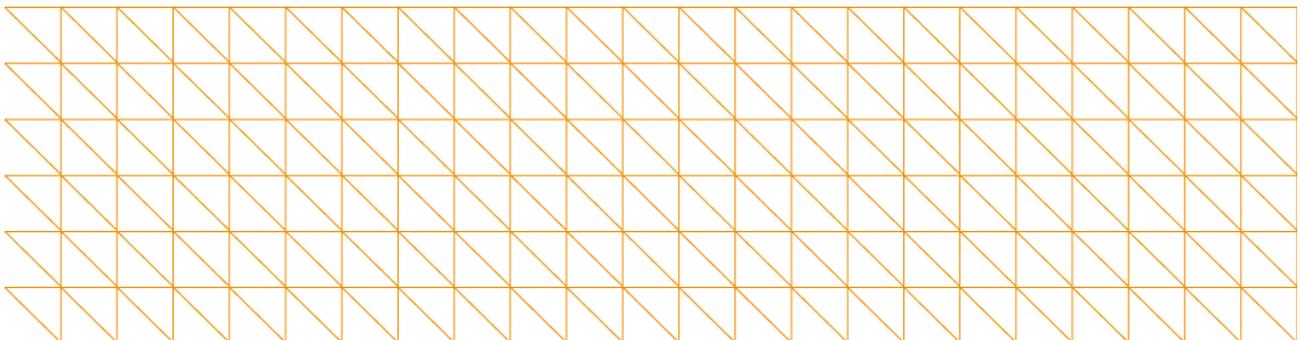


Ministry
of Justice

Transforming the Services of the Office of the Public Guardian

Enabling Digital by Default

Response to Consultation CP(R) 26/11/2013
This response is published on 21 August 2014





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of Justice

Transforming the Services of the Office of the Public Guardian

Enabling Digital by Default

Response to consultation carried out by the Ministry of Justice

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Introduction

This document is the post-consultation report for the consultation paper *'Transforming the services of the Office of the Public Guardian - enabling digital by default.'*

It covers:

- the background to the consultation paper;
- a summary of the responses to the consultation paper;
- a detailed response to the specific questions raised; and
- the next steps following this consultation.

Further copies of this response and the consultation paper can be obtained by contacting **Kathy Malvo** at the address below:

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Alternative format versions of this publication can be requested from:

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- telephone number: 0203 334 3124

Executive Summary

The Office of the Public Guardian (OPG) continues to undertake a programme of reform that is designed to meet two key challenges. Firstly, to reform its systems and processes in order to deal effectively and consistently with the ever increasing demand to register Lasting Powers of Attorneys (LPA) – a trend that is set to continue with the country's ageing demographic. Secondly, to transform the way its services are delivered to the public in order to reduce bureaucracy, making its services to customers simpler, more efficient and more accessible. This will be achieved by making the majority of its services accessible online.

The consultation paper *'Transforming the services of the Office of the Public Guardian - enabling digital by default'* was published on 15th October 2013 and ended 26th November. It followed a previous consultation *'Transforming the Services of the Office of the Public Guardian'* which was published on 27th July 2012 and ended on 19th October 2012.

The consultation was split into two parts, the first which focuses on those changes the OPG wished to make by April 2014 and the second considering the bigger picture, in line with the Ministry of Justice's "Transforming Justice" agenda and the Government's commitment for more public services to be "Digital by Default".

It invited comments on a range of issues including the OPG aspiration to make the process of applying for an LPA easier and delivering its services digitally. Many of these proposals could be achieved through amendments to secondary legislation. We also sought initial views in a few areas about possible changes to primary legislation in the future; these included a fully digital LPA application channel. Other proposals could be achieved with minimal legislative change, although they would require changes to the OPG's current IT infrastructure and associated business processes.

We would like to thank all those who took the time to respond to the consultation. We received over four hundred responses, providing very useful feedback on the whole range of issues on which we consulted. Several of the proposals received a broadly positive response. Suggestions were also made as to how those proposals could be improved or amended.

1) Changes by April 2015

We intend to implement those proposals that enjoy broad support, and which can be implemented within the current legislative framework. Since publishing the consultation we have revised the implementation date from April 2014 to April 2015.

Therefore, by April 2015 the OPG will:

- Launch redesigned, separate Health & Welfare and Property & Finance LPA forms which will:
 - Encourage donors to state when they wish their LPA to come into effect.

- Include new language aimed at making the LPA easier to complete for lay donors.
- Remove the requirement for a second certificate provider.
- Amalgamate the revised 'application to register' form (LPA002) with the main LPA form.
- Expand the range of cases for which a reduced application fee is applicable to include those cases where the LPA can only be made capable of registration by an application being made to the Court of Protection.

During 2014/15 the OPG will start to take forward work to:

- Launch a digital tool for second tier searches of the OPG's register.
- Provide intermediate access to the register for accredited parties.

2) Areas requiring further development

The OPG will undertake more user testing on a combined form to make sure that the OPG deals with the concerns raised about the confusing nature of the forms. If the OPG then feels that the issues have been resolved we will look to bring in a combined form in the future.

The first stage of the supervision review has led to improvements in supervision. We will use the comments from the consultation to inform the final design of a segmented supervision model.

We are confident that a fully digital LPA will provide benefits for donors. However, as the consultation has identified, there are a number of points which need to be resolved before a fully digital LPA can be implemented. We will build on the feedback received and work with key stakeholders to refine our proposal for a fully digital LPA and consult with the public when we have a fuller picture of how the digital tool will operate.

Background

The Mental Capacity Act (MCA 2005) came fully into force on 1 October 2007 and marked an important step in reforming the law relating to decision-making for people who may lack capacity. For the first time, it enshrined in legislation certain key principles: that a person must be assumed to have mental capacity unless it is established that he or she lacks capacity to make the decision(s) in question; that any act done in relation to, or decision made on behalf of the person, is to be made in his or her best interests; and that, before the act is done or the decision is made, consideration must be given to doing/making it in a way that is less restrictive of the person's rights and freedoms. Importantly, the MCA 2005 defines decision-making capacity as the capacity to make a particular decision at the time it needs to be made. No longer does the law define people as 'capable' and 'incapable'. Instead, there is recognition that many people, who may lack the capacity to make some decisions, could well be able to make many other decisions for themselves. Where a decision does need to be taken on a person's behalf, the law is clear that the decision must be in their best interests and be as least restrictive of their rights and freedom as possible.

As well as empowering and protecting people who may lack capacity, the MCA 2005 provides a number of options for those people who wish to plan ahead for the future. Most importantly, it enables individuals to make a Lasting Power of Attorney (LPA) to give someone the authority to make decisions relating either to their property and affairs, or their personal welfare, were they to lack capacity to make those decisions in the future.

The MCA 2005 created the role of Public Guardian, supported by the Office of the Public Guardian, which is an executive agency of the Ministry of Justice. The purpose of the OPG is: the registration of LPAs (and older Enduring Powers of Attorney); the supervision of deputies appointed by the Court of Protection; the maintenance of the registers of attorneys and deputies; and the investigation of any concerns raised about the conduct of either an attorney or deputy.

In October 2008, as part of the review of the implementation of the MCA, the OPG published the consultation paper '*Reviewing the MCA: forms supervision and fees*', which addressed the redesign of the LPA forms. In December 2009, the consultation paper '*Amendments to secondary legislation*' was published, which led to the updating of forms and guidance in an effort to improve the services offered by the OPG.

In July 2012 the OPG published a third consultation paper '*Transforming the Services of the Office of the Public Guardian*'. This was intended to make sure that the OPG continued to meet the needs of its customers through the development of digital tools to make the process of making an LPA simpler and quicker, as well as to support deputies in fulfilling their duties and responsibilities.

In July 2013, the OPG launched a digital tool which provided its customers with a partial digital process to help individuals to complete an LPA application. The current consultation '*Transforming the services of the Office of the Public Guardian - Enabling Digital by Default*' built on the concept introduced by the digital tool, by consulting on the public's opinion of a fully digital LPA tool and other ways of using digital such as an online register. It also focused on how we can make easier

applications for LPAs and offered other proposals which had emerged from the ongoing supervision review

Summary of responses

A total of 424 responses to the consultation paper were received from a range of MoJ and OPG stakeholders, professional bodies, interested parties and members of the public. The majority of responses came from legal professionals, in the main solicitors, or organisations representing them.

Respondent types can be broken down as follows:

- 337 were from solicitors;
- 31 were from other groups/organisations;
- 23 were from the legal profession (excluding solicitors);
- 2 were from charity organisations;
- 1 was from a member of the judiciary;
- 23 were from members of the public.
- The origin of 7 are unspecified;

Responses were analysed to determine if respondents were in favour of a specific proposal, where this was the question asked. Where we were seeking further opinion or information, responses were analysed to make clear the frequency of the opinion or the information received across all responses. Where respondents gave additional responses or comments, this has been reflected in this document either by including an extract from these comments or by summarising them.

In order to provide a balanced view we have attempted to reflect the opinions of the full range of respondents. The summaries indicate responses which were not in agreement with the proposals, because we think it is important to highlight areas of disagreement as well as agreement. The content of the responses received are described in more depth in the detailed analysis of each question.

This response is divided into two sections. The first section focuses on changes to be made by April 2015 and covers Lasting Powers of Attorney, Accessing the Registers and the Supervision of Deputies. The second section focuses on changes proposed for after April, specifically to do with fully digital Lasting Powers of Attorney.

A list of respondents is at **Annex A**.

Section 1 – Transforming OPG Services by April 2015

Lasting Powers of Attorney (LPA)

Since April 2011, the OPG has been working to develop a new and more robust IT solution that will enable it to consistently meet demands for its services. It is anticipated that this will radically improve the quality of those services. In the process of developing the new IT solution, the OPG is taking the opportunity to develop a digital approach to delivering its services, which will enable it to achieve its strategic ambition to deliver a 'digital by default' service, whilst still retaining a paper-based service for those customers who require it

Since their introduction in 2007, the LPA forms have been the subject of much discussion, ranging from the content to the length and language used in the forms. During a House of Lords oral question concerning LPAs on the 11th November 2013 Baroness Turner of Camden. *"It is important that it (the LPA form) be really simplified so that people can take this job on."* Following the introduction of revised forms in 2009, the OPG has continued to monitor customer feedback on the forms. This, together, with the development of the online tool has enabled the OPG and the Government Digital Service (GDS) to redesign the existing forms as well as developing a combined form.

We intend to implement in April 2015 those changes that received broad support.

Summary: Types of Form

We proposed redesigned and separate Health & Welfare and Property & Financial LPA forms, which were shorter, less complicated and which we believed would be easier to complete.

In addition, as the evidence suggested that individuals who make both property and financial affairs and health and welfare LPAs tend to appoint the same person(s) in the majority of applications, we sought your views on whether to introduce a 'combined' application form, in addition to the separate forms.

Following the responses to the consultation we are not minded to take the combined form forward at this point. Although we believe that a combined form would have benefits for the donor, many respondents commented that having a combined form in addition to two single forms could cause confusion. We will undertake more user testing on a combined form to make sure the concerns of confusion which were raised in the responses are dealt with. If the OPG then feels that the issues have been resolved we will plan to bring in a combined form in the future.

We received a positive response to the proposed changes to the single forms. Respondents agreed that the language was more suitable for donors who had little familiarity with the LPA form. After considering comments made by respondents and following further revision and user testing we have decided to introduce the redesigned single forms.

Response to specific questions

1. What are your views about the proposed new combined form? Is there anything else that should be added to the form (and why)?

The majority of respondents answered this question. Many were not in favour of a combined form. The idea of a combined form was seen as a positive step but it was felt that having a combined form as well as the existing two forms would be confusing and could lead to fraud/error. Others commented that the two types of LPA were viewed as covering two separate issues and should be kept separate.

Those in favour of a combined form considered it to be beneficial for those who would already be making both types of LPA. There was an expectation that a combined form would be cheaper and would allow the donor to retain both LPAs with one document. There was an acknowledgement from many of those in favour of the form that separate forms should be retained. One respondent, a major utility company, commented that they are 'only interested in seeing property and financial affairs forms that relate to decisions around paying your bills'. A combined form would mean organisations would see personal details about a person's health and welfare wishes.'

'Clients -particularly elderly clients - would find it too confusing.'

'LPAs are intended to cover two completely different issues, and there should be two different documents to deal with them.'

'For some people it will be very useful. For others they may feel pressured into dealing with both.'

'Inappropriate for health care to see financial info and vice versa.'

2. If a combined form was introduced and it could be used to make an LPA only for Health and Welfare or only for Property and Financial Affairs, do you think there is a need to retain separate forms for each of the types of LPA alongside a combined form?

The majority of respondents answered this question and agreed that separate forms needed to be retained. Answers tended to reiterate comments from the previous question, though there were a number of issues raised by a small minority.

Donors may not wish to appoint the same attorney for the two separate types.

'Guidance for your PFA & H&W attorneys – will require two documents.'

'In the majority of cases it is only a Property and Financial Affairs LPA that is required.'

Those who did not think there should be separate forms believed that the combined form would render them obsolete. There were a few caveats stating that the combined form should be signposted to show what would and would not need to be completed when a donor applied for just one LPA.

3. Do you think a combined form will result in some people applying for both forms of LPA, without having fully considered the specific responsibilities involved with health and welfare decisions?

A large majority suggested that a combined form would lead to more people applying for the Health & Welfare LPA without fully considering the situation.

There was a widespread view amongst legal professionals that using legal assistance would overcome this problem.

'It is only when discussing with clients the full scope of the health and welfare decision that they seriously consider the implications.'

More positively others suggested that clearly signposting the differences between the two forms in the guidance would emphasise the importance of treating each LPA as a separate decision.

'Possibly, but if the information pages on the form and in the notes to the combined form are clear it should not be an issue.'

A small minority viewed an increased subsequent uptake of the Health & Welfare LPA as positive. This view was disagreed with by a majority who stated that the two types of LPA were very different and required distinct, proper consideration.

'Combining both powers into one form may well encourage people to grant both powers, rather than one, however we believe that this is a positive development. Section 2 (Page 2) clearly differentiates between each power, and encouraging donors to consider granting the HW power may go some way to addressing the discrepancy between numbers of HW LPAs registered and PF LPAs registered.'

'No more than for individual forms. I believe that health & welfare LPAs are a very good idea and it may encourage people to make both.'

4. Should any other changes be made to the redesigned single forms?

Under two thirds of the respondents answered this question. Responses were varied, with few common themes. Some concerns were raised around the fully digital LPA and the requirement for wet signatures. Other suggestions have been included below.

'To make it clearer what the Attorney is signing and the responsibilities of the deputy so there can be no doubt what either party is signing.'

'The parts about people to be notified and people to provide certificates are still confusing.'

'It would be better if they were shorter / simpler.'

'Include as standard space for two replacement attorneys.'

'To include a suggestion that it may be a good idea to obtain independent legal advice.'

'Pages should look different - all look the same and so difficult to draw out info.'

'The importance of the decisions needs highlighting more - like the current 'information sheet' does. Ideally more emphasis needs to be placed upon this so that people are aware of the advantages but also the major risks they face in entering into the LPA and the fact that an attorney could abuse their authority.'

'Space for more than 2 Attorneys without the need for a continuation sheet at the back. Perhaps a separate sheet for Attorneys and as many as necessary can be inserted as required.'

5. What more can be done to make sure that individuals making LPAs or who become attorneys understand how to make decisions under the Mental Capacity Act? How should the dual message about empowerment and protection be conveyed?

Roughly two thirds of respondents answered this question. Key themes identified were the use of guidance and video or television appearances to raise awareness.

'Some form of literature sent to attorneys on registration of the LPA, which outlines their responsibilities under the MCA'

'Consulting solicitors who could explain the responsibilities of the role in depth'

'Providing information at some point during the LPA making process, operating on the assumption that the attorney will be involved in the process.'

Other suggestions included:

'Appearing on high profile tv programmes such as breakfast TV or the One Show.'

'Online videos are good. Elderly people often have relatives who can access these and pass on information if they can't access themselves and public libraries provide free internet access.'

Summary: Effect of forms

During user testing of the proposed forms, it became apparent that some individuals were not aware that it is possible to create a Property and Financial Affairs LPA which comes into effect immediately (i.e. while an individual still has capacity). We suggested adding a question to the form to provide clarity on when the LPA should come into effect. Some respondents stated that it was too simplistic to simply say "only when I don't have mental capacity" and that wording should be changed along the lines of "when my lack of capacity has been established in accordance with the guidelines set out by the British Medical Association". Others suggested that by specifying a particular event, such as loss of mental capacity, it would not allow the LPA to be used if, for example, the donor lost physical capacity.

Taking all views into consideration, we intend to make an amendment to the revised forms and guidance, which will encourage donors to specify when they wish the LPA to come into effect.

Response to specific question

6. Do you agree that donors should be encouraged, by way of an option on the LPA form, to specify *when* the LPA comes into effect in the Property and Financial Affairs LPA?

The majority of respondents answered this question and agreed that donors should be encouraged to specify when the LPA should come into effect, as this would allow the donor more control over the process and could act as a safeguard against misuse.

'Yes, the current version is not flexible enough and discourages people from making Property and Finance LPAs.'

'Yes. This is something I always discuss fully with clients so if more people are going to complete LPAs without legal assistance I feel it is imperative to bring this to their attention.'

'Yes, this would be a helpful addition and will provide further safeguard to the donor if required.'

Summary: Life Sustaining Treatment

On the current forms, the Life Sustaining Treatment section includes a separate signature and witnessing requirement in addition to the general one at the end of the donor's section. When the forms were first introduced, it was considered that this signature and witnessing requirement provided a necessary safeguard to make sure that the person making the decision was fully aware of the implications of making this choice.

In instances where the donor has chosen to tick the Life Sustaining Treatment (LST) authorisation but has not signed/witnessed this authorisation, the OPG is required to apply the default option - that is, that the donor has *not* granted the attorney authority to consent to life sustaining treatment. In these cases, the OPG will write to the donor to notify them that the default position has been applied and to confirm that the LPA is otherwise valid.

Many responses stated that the additional signature and witness role highlights the importance of the decision or provides a safeguarding role, removal of which may lay the donor open to fraud. Others found acceptable the proposal to remove the signature and witnessing requirements of the LST section.

User-testing continues to show that individuals do give serious thought to this specific section of the form and are not trivialising or skipping over it. When the testers questioned users in depth on the life sustaining treatment section of the form, there was a clear preference for there to be no need for a separate signature and witnessing requirement.

Taking all views into consideration, we have however decided not to remove the additional signature and witnessing requirements from the Life Sustaining Treatment section.

Response to specific question

7. What is your view about the removal of the signature and witness requirement from the life sustaining treatment authorisation?

The majority of respondents answered this question. Nearly all thought that this was not a good idea.

'This should not be a box ticking exercise. It is so important, the client should be signing separately to confirm their wishes in this respect to show they have considered it properly, as at present.'

A minority found the removal acceptable with caveats.

'As long as the document is to be signed by the donor elsewhere this should not be a problem.'

'Provided the form makes the importance of the decision clear, and provides information on what 'life sustaining treatment' is (i.e.: it does not just cover refusals of treatment in end of life situations)'

'Alzheimer's Society agrees with the removal of the signature and witness requirement from the life sustaining treatment authorisation. However, this change must be accompanied by the provision of detailed, clear information about the implications of life sustaining treatment authorisation and appropriate safeguarding measures.'

Summary: Language

Customer insight research conducted by the OPG has shown that many people struggle to understand what is meant by some of the technical language used on the forms. In response to the November 2013 oral question on LPAs Baroness Boothroyd stated. *"It is the most verbose document that I have had to deal with either for myself or for those I have represented in over 30 years in public life."*

As a result, the OPG redesigned the forms to contain language which attempts to balance legal terminology stemming from the Act, such as 'jointly and severally', with terms which provide a clearer explanation of what is required.

In particular, we proposed that the term 'certificate provider' should be replaced with the term 'people to certify' and 'named person(s)' should be replaced with 'people to be notified' Other amendments include: making the forms easy to read and easy to fill in; reverting to black and white print for all sections of the forms, as user testing has informed us that the colour coding used on the current forms is not picked up by most users and reducing duplication so that basic information is entered only once.

Following responses to the consultation, we will rename 'named persons' to 'people to notify' to simplify the language. However, the consultation has shown that 'certificate providers' is appropriate and this phrase will be retained.

We are pleased that the majority of respondents agreed that the balance of the new forms is appropriate. Whilst the new forms are longer, the overall process for completion is shorter and clearer and we will be taking this proposal forward. The responses to the consultation will be taken on board when making further changes to the forms, which will then undergo further user testing prior to their introduction in April 2015.

Response to specific questions

8. Do you consider that the new language in the forms is more user friendly?

The majority of respondents answered this question and agreed that there was an improvement and that the language was understandable for professionals and lay people.

A common theme amongst those who disagreed was that the language was too simple, verging on patronising for some. Respondents believed that the LPA was a significant legal document with major implications and that simplifying the language too far would detract from its importance.

'These are important, powerful legal documents - they should not be simplified too much - there is a balance to be struck.'

'It is almost too simple. The power of an LPA is not to be underestimated.'

9. Do you agree that the renaming of 'certificate providers' and 'named persons' helps to clarify their roles?

The majority of respondents answered 'yes' to this question. Where opinion was divided, respondents were more positive about the renaming of named persons than certificate providers, which some thought was already suitable.

'Yes for "named persons", but no for "certificate providers. Person to certify" can be misunderstood as meaning "person to be certified". I can't think of anything better than "certificate provider" for this. At least it avoids this ambiguity.'

Again, there were concerns about oversimplifying an important document and fixing things which weren't broken.

'This is a legal document which should not be watered down too far and if the donor or family are unable to understand these points then perhaps that should guide them to take appropriate advice.'

'Most people have now got used to the existing terms and to keep changing them just confuses the public.'

'It is already clear.'

10. Overall, do the forms offer the right balance between length and the inclusion of essential information?

Over two thirds of respondents answered this question. The majority thought that the forms did offer the right balance but also said:

'The "instructions" section does not set out clearly enough how serious an instruction would be and how difficult to word appropriately.'

'The newer forms are more user friendly - however in comparison to the EPA they are time consuming and not always helpful.'

'Yes, there is less unnecessary repetition and each section of the form is clearly explained in layman's terms.'

A common criticism from those who disagreed that the new forms offered the right balance was that the forms were still too long.

'No, they are simply too long..... People hate long forms, especially legal ones.'

Summary: Application to register

In our consultation *'Transforming the Services of the Office of the Public Guardian'* in 2012 we outlined our proposals to amalgamate the LPA002 - Application to Register - with the LPA form. The vast majority of respondents were in favour of this proposal. However, at that time it was decided the LPA002 would remain separate, as any changes were dependent on the OPG IT replacement system being in place.

We are pleased that respondents viewed the redesigned LPA002 as more user friendly. We intend to amalgamate it with the new LPA form for launch in April 2015. The separate redesigned 'application to register' form will also be retained for old instruments.

Response to specific question

11. Is the revised LPA002 more user friendly? Is there anything in the form that would create difficulties for donors or attorneys applying to register?

Roughly two thirds of respondents answered this question. The majority thought that there was an improvement and that it was user friendly. The following comments were made:

'Complexity creates the problem.'

'In some ways it is more confusing as it is for submission and re-submission. However, it is shorter and more concise so in the long term it will be better.'

'Would like to see the 'How To' guides to ensure it provides a full and clear explanation on remission/exemption of fees.'

For those who disagreed comments were:

'The fact that either the donor or the attorneys sign the box on page 5 is confusing. It is unclear that this is the person applying to register.'

'Needs something more to show the difference between an attorney applying and a donor apply.'

Summary: Certificate Providers

The Mental Capacity Act provides that a person is required to certify that no undue pressure or fraud was involved in the making of the LPA and that Regulations may provide that in cases where the potential donor does not name any persons to be notified, a second certificate provider is required.

In last year's Government response to '*Transforming the Services of the Office of the Public Guardian*', we said we would consider further how much additional protection a second certificate provider gives in practice and the difficulties that individuals encountered trying to find a second certificate provider. We were clear that we did not accept that a certificate provider needed to be from specified professions.

Once again, we sought your views on our proposals that the requirement for a second certificate provider is no longer essential and could be dispensed with. Many of you did not agree that the requirement should be removed. Some who agreed with the removal added the caveat that this should only be in instances where the first certificate provider was a professional.

Evidence supplied in response to this consultation and the Consultation in 2012 confirmed that use of the second certificate provider is rare. OPG's own examination of data informs us that of 993,500 live LPAs on their register only 12% have two certificate providers. Other respondents confirm the difficulties in trying to find a second certificate provider, particularly if the proposed donor is elderly and isolated, and the fact that this sometimes leads to additional costs for the donor if the second certificate provider is another professional.

Having considered all of the above we will remove the requirement for the second certificate provider with effect from April 2015.

Response to specific question

12. Do you agree with the proposal that the requirement for a second certificate provider should be dispensed with?

Nearly all respondents answered this question. The majority did not agree with the proposal.

Key themes were concerned with properly safeguarding the donor and the use of the digital tool:

'No, it is there to provide added protection. It is important not to forget the reasons these changes were made.'

.'No. If forms are to be completed online it is even more important that checks are in place to limit the likelihood of fraud or undue pressure.'

We note the concerns regarding safeguarding however of greater concern is the perverse behaviours that can be created such as the use of falsely named persons in

order to circumvent the need for a second certificate provider. This does not add to the protection of the donor.

For those who agreed with the removal of the need for the second certificate provider the comments were:

'It is illogical to have two people especially if they are experts confirming the same thing.'

'Forms will be easier to complete.'

'Yes especially if we can change it so that Certificate Providers have to have the relevant skills and not just a friend.'

A minority caveated that the 2nd certificate provider should only be removed if the first CP was a professional.

'I think there should be different rules for applications submitted by solicitors - no second certificate provider needed - and for others - 2nd certificate provider needed.'

We do not consider that the certificate provider should be a professional. In his judgement in the case of *Boar* (19 February 2010), the Senior Judge of the Court of Protection noted how impressed he had been by the certificate providers in this case who were lay persons. Respondents to the 2012 consultation '*Transforming the Services of the Office of the Public Guardian*' also noted that lay certificate providers carried out this role effectively.

We are also mindful that constraining the role of the certificate provider to a professional would lead to additional costs

Summary: Reduced fees

We sought your views on the proposal to offer a separate fee in those instances where the combined form had been used. As respondents were against the idea of the combined form we will not be taking this forward.

Currently, when an application to register an LPA is rejected by the OPG as invalid, the applicant may make a fresh application at the reduced rate of half the full application fee, known as the resubmission fee. We sought your views on other instances where applications are not invalid but require the removal of unlawful clauses by the Court of Protection. In many cases, rather than go to the Court, the applicant withdraws the application and chooses instead to make a new LPA or having gone to the court still wishes to make a new LPA. In these circumstances the full registration fee of £110 would be due.

The response to our proposal that the range of cases where a reduced fee should be charged should be extended was positive and we will now look at how a reduced resubmission fee might be implemented.

Response to specific questions

13. Do you agree that it is appropriate to offer a separate fee for an application to register a combined Lasting Power of Attorney, commensurate with the costs to the OPG of processing that application?

The majority agreed that it was appropriate to offer a separate fee as long as the fee was less than the combined price of the current separate LPA fees and in line with OPG's costs.

Of those who disagreed there was an opinion that creating a combined price might unduly influence donors into making both LPAs.

'Cost should not be an issue that persuades individuals to make two LPAs as opposed to one, by making use of economies of scale will add bias to an individual's decision as to whether a health and welfare LPA is necessary.'

'People would make a combined application just because it is cheaper without proper consideration. The fees for registration should be an average of the total cost to the OPG'

14. Do you agree the range of cases for which a reduced application fee is applicable should be expanded to include those cases where the LPA can only be made capable of registration by an application being made to the Court of Protection?

The majority of respondents answered yes to this question.

For those who said 'No' the following comments were made:

'With appropriate advice, it is reasonable to expect people to observe instructions or accept the consequences. Perhaps a clear warning, signed as having been read, could be considered.'

'The repeat application as it stands is a fair and effective model to make sure that people do not feel too penalised for mistakes but also are reminded of the importance of the power they are making.'

15. Do you agree that those applying to register LPAs via digital channels should pay a fee set at a level commensurate with the lower cost of processing such applications?

The majority of respondents answered 'No' to this question. A large minority raised their concerns around the use of digital channels for making and registering an LPA. There was a view that this would disadvantage or discriminate against those who couldn't access digital channels, specifically the elderly.

'This appears to penalise the elderly/disabled who have more limited access to online services. Could the cost of all applications not relate to the average cost of all applications?'

'The price should reflect how much it costs the OPG to process and check one online application form.'

‘Dependant on how many payments are made via digital channels, and how much resource is spent in less efficient payment methods, perhaps as a refund so as to not overcomplicate documentation stating how much the application fee is.’

Lasting Powers of Attorney – Next Steps

By April 2015 we will:

- Launch a redesigned single LPA form, which will:
 - Encourage donors to state when they wish their LPA to come into effect.
 - Include new language aimed at making the LPA easier to complete for lay donors.
 - Rename the term ‘named persons’ , but retain ‘certificate providers’.
 - Remove the requirement for a second certificate provider.
 - Amalgamate the redesigned LPA002 form with the LPA form.

Accessing the Registers

The OPG holds registers of Enduring Powers of Attorney (EPA), Lasting Powers of Attorney (LPA) and Court of Protection appointed deputies. Any member of the public can request a ‘first tier’ search of the register and receive basic limited information about whether a deputy or attorney exists for a given person and what type of power is in place.

If a ‘match’ is found at this first tier search, a ‘second tier’ search can then be requested, asking for further information. The OPG may provide this on a discretionary basis, taking into account the reasons given for the need to access the information and the role of the individual or organisation seeking it.

Summary: Changes to the register

Following the 2012 consultation *‘Transforming the Services of the Office of the Public Guardian’*, where respondents agreed with the suggestion that access to the registers should be expanded, the OPG agreed that once its replacement IT system was in place it would take forward proposals to develop a secure digital tool to allow tier one search requests to be lodged and responded to automatically online.

In the current consultation we proposed a number of ways in which the registers could be further improved and included a list of the current information provided for tier one searches. This information ranges from basic details such as the names of the donor and the attorney, whether a Power of Attorney or a deputyship order is held, to the names of any replacement attorney or deputy.

In particular, we asked if this amount of information was appropriate, if it should be reduced and if so what information should continue to be provided. We recognised the need to maintain the right balance between transparency and visibility in releasing information from the registers to members of the public, whilst ensuring the necessary protections are in place for the individual involved (in particular relating to privacy and the risk of abuse by third parties). We will use the consultation responses to inform the minimum level of information to be provided at tier one.

Applications for second tier searches are usually made in order to obtain additional information to that given after a first tier search. Only information relating to the donor or 'P' can be obtained through a tier two search and the Public Guardian must consider that there is good reason to disclose it. We proposed that searchers should also be able to request and receive second tier information online instead of making an application to the OPG. We are pleased that respondents were in favour of using a secure digital tool to supply second tier searches.

Finally, we also proposed an 'intermediate tier' of searches, via the digital tool, for certain 'accredited third parties', such as medical/ healthcare workers limited to use within the workplace. This search would provide structured information beyond that provided by tier one searches, but less than the full range of information that could be released on a discretionary basis under a tier two request. Many agreed with this proposal. We will now undertake further work to determine the appropriate 'accredited third parties'. We will make sure that an online register and all search tiers will be as secure, if not more secure, than the current paper based search process.

During 2014/15 the OPG will, using the consultation responses, take forward work to develop the on-line registers

Response to specific questions

16. Is the range of information currently revealed as a result of a tier one search sufficient or should it be reduced?

Two thirds of respondents answered this question. The majority thought it was sufficient. A small minority thought that it should be reduced.

For those who thought it should be reduced there was a common concern that the information currently provided diminishes donor's privacy and puts them at risk of fraud.

'There is too much potential for third party abuse of the process. It should be reduced.'

17. If the type of information should be reduced, what should be the minimum amount provided?

Only a small number of respondents provided an answer to this question.

Suggestions included

'Whether an application has been made.'

'Donor's (Client's) name, Attorney's (Deputies) names, Date of power made by donor and registered by OPG, date court order issued by COP, type of power, how multiple attorneys are appointed.'

'Case reference

Known other names of the donor

Date of birth of the donor

Name(s) of any attorney(s) Whether the LPA relates to PFA or HW. The date the EPA or LPA was made/registered

The date the EPA or LPA was revoked (if applicable)

Appointment type'

'Information initially available in Tier 1 should perhaps be limited to:

a) Confirmation of whether an LPA/Deputyship is in place.

b) The name/names of attorneys/deputies. Any further disclosure should be subject to PG approval as second tier.'

'Whether the Attorneys are appointed jointly or jointly and severally.'

18. Do you agree that second tier searches should be conducted through a secure digital tool?

Under two thirds of respondents answered this question. The majority agreed that second tier searches should be conducted through a secure digital tool.

Again, the minority who disagreed raised concerns around the appropriateness of a digital interface as a gateway to the information.

'Only if the security of the digital tool can be sufficiently guaranteed.'

19. Are there any other additional factors that you feel should be taken into account with regards to electronic access of the Registers?

Under half of respondents answered this question. The majority used this question to disagree with an online register, preferring the existing paper based system. Some did not explicitly disapprove of the online avenue but stated that security of access must be paramount.

20. Do you agree with the proposal that 'accredited third parties' should have intermediate access to the Registers?

Over two thirds of respondents answered this question. The majority agreed.

Concerns were raised about how information would be used and by whom, particularly concentrating on financial institutions which some respondents thought might use the data for their own purposes.

'there must be clear recognition of when/why it should be used. Furthermore, requesters should be thoroughly checked.'

Respondents agreed the register should be limited to particular groups i.e. solicitors, health care professionals, etc and that those groups who are given access should be monitored appropriately.

21. What information should they have access to?

Over half of respondents replied, with the majority agreeing that only a limited amount of information should be included.

Commonly suggested information:

- That the LPA exists.
- The date of registration.
- The identity of the donor and attorneys/deputies.
- Any restrictions.

Changes to the Register – Next Steps

During 2014/15 we will start to take forward work to :

- Launch a digital tool for second tier searches of the OPG's register.
- Provide intermediate access to the register for accredited parties.

Supervision of Deputies

In June 2012, the OPG commenced a fundamental review of the way the Public Guardian fulfils his statutory duty to supervise court-appointed deputies. The supervision review sought to deliver a more responsive, case-sensitive approach to supervision, with effective and proportionate oversight. It also considered how digital channels may be used to improve delivery of deputyship services.

Summary: Changes to Supervision

The consultation focused on the next phase of the supervision review and specifically sought views on how the current model might be restructured to meet the needs of customers and provide greater and more tailored support to deputies. ,

The consultation announced our intention to move from the current risk-based model to a segmented delivery model that provides supervision proportionately according to deputy type and offers tailored guidance, support and monitoring. Under the proposals lay deputies would receive early engagement and support to assist them in understanding their role. Professional deputies and local authorities would benefit

from an oversight monitoring approach, assessing the deputy's capability against an agreed set of standards. In support of the consultation, the OPG held workshops with the various categories of deputy to obtain first hand views on the proposals

It sought opinions on -

- The support deputies would require,
- The level of contact deputies should have with the OPG, and
- Whether the OPG should review the fees charged by deputies as part of the supervision process.

We would like to thank respondents for their comments. We will take their responses into consideration and feed their views into the new model.

Response to specific questions

22. What kinds of different support and monitoring do you think professional, local authority and lay deputies might require?

Roughly half of respondents commented on this question.

Common themes included requests that the level of support should be tied to the needs of the deputy rather than value of P's assets; support and guidance on gifting; and provision of an OPG telephone service where deputies would be able to receive advice and support in their duties.

. 'I think a tiered approach, reflecting that there are different levels of risk but also (and this is a related aspect) that there are different levels of expertise'

We are now addressing these comments actively. We intend to distinguish between what we provide to lay deputies, who tend to be new to the role, and professional and local authority deputies, who tend to understand the responsibilities well. We will provide support to lay deputies as the default, helping them understand their powers and obligations and the role of OPG; and we will take more of an assurance stance with professionals and local authorities. Where a professional is new to the deputy role, we will offer guidance.

We intend to move away from basing our support on the level of assets. We will weigh the circumstances of individual cases in judging how much we need to engage with the deputy, and, given the constraints of finite resource, will aim to take a proportionate approach.

We are reviewing and revising our guidance on the gifting principles and we will seek to make sure that discussions which deputies may have with us on gifts are acknowledged in a consistent way when the time comes for formal reporting.

OPG already has a contact centre function where deputies may obtain procedural advice on discharging their duties. We intend that the move towards greater support for lay deputies in particular will see this advice enhanced so that deputies are clear

throughout the case on what their responsibilities are, both to the person with diminished mental capacity as well as to OPG.

23. What risk assessment criteria do you think would be appropriate (for each type of deputy)?

Under half of respondents answered this question. Responses were varied although the level of P's assets was recognised by some as an appropriate base for risk assessment. Many noted that lay deputies, particularly inexperienced ones, required more support than other groups.

'High in first year for lay deputies then reduced to medium level. I believe only professional deputies should ever have low risk level.'

'Account should be taken of the size of the donor's estate and the extent of the management required.'

'For professional deputies - risk might be at least partially assessed on such factors as length of qualification and membership of specialist groups such as Solicitors for the Elderly and STEP, together with details of what other deputyships they have had or still have.'

'If someone who has not been a deputy before applies, ensure they have undertaking training, or have had relevant experience supporting other deputies.'

The responses are helpful in allowing us to design an improved risk assessment regime. We wish to move away from the different case types (termed 1, 2, 2a and 3), which suggest that the risk in a case is fairly fixed, to a more dynamic approach which requires us to make an assessment of the risk every time we touch the case. This should allow us to determine what the next appropriate action is.

We will continue to take account of the size of the estate as it can dictate the extent of management required, as the response states, and also the risk. However, that should only be one element among several in terms of indicating what we should be doing, and other factors such as the care arrangements in place, family history, etc are also important to understand.

Responses suggesting risk is higher in the first year indicate that we should front-load the support we provide, so that we engage with deputies as early in the case lifecycle as possible. This should encourage understanding and compliance, then activity in subsequent years could typically be reduced what, in the main, is a lower risk.

Risk assessment in professional deputy cases will take account of things like their experience, membership of relevant specialist bodies, the caseload history, their training, any network support they have, and so on. We will pursue the proposal to establish and agree standards against which to assess the capability of professional and local authority deputies.

24. What type of support and monitoring do you feel is needed early on in a deputyship?

Under half of respondents answered this question. Again respondents noted that lay deputies required more support than other groups. Many respondents agreed with the first year weighted approach proposed in the consultation, highlighting the lack of familiarity which a new lay deputy may have with their assumed responsibilities.

Other suggestions included –

‘Would be helpful if seminars could be held locally on a quarterly or six monthly basis so deputies could attend and get support and or advice where necessary or just to introduce them to people who have done the job and can give them assistance help etc.’

‘Advice about how the report form will need to be completed as the report is sent after a year of management and the deputy may find it difficult to collate all the relevant information.’

‘Spot checks and visits.’

As stated under Question 24, it is clear that support and monitoring should happen as early as possible. This will make sure deputies are put on the right footing from the beginning, increasing the likelihood that they will remain compliant. The types of support envisaged include written guidance, telephone contact, visits and social media contacts. Deputy day seminars have been run in the past with mixed success; they will be considered again, perhaps exploiting our new technology when in place to offer several options which will be effective and efficient for all.

Advice on reporting will be provided both at the beginning of the deputyship and when the time comes to file a formal report. We envisage that a digital tool will allow deputies to record transactions as they occur, with the information collated at the year-end for review and certification by the deputy.

We intend to adjust our approach to visits so that we provide support to individual lay deputies and an assurance approach to professional and local authority deputies, looking at the management of the caseload as a whole. The assurance visits would largely be dictated by our assessment of risk and could happen whenever a need is identified or our random sampling regime dictates.

25. What kind of online support or information do you think would most benefit deputies in fulfilling their role?

Under half of respondents answered this question. Common suggestions fell into:

‘Email support and online FAQs and guidance.’

‘Live webchat.’

‘An online tool which allows them (deputies) to keep track of a donors financial circumstances and record payments made etc.’

'A case management system that allows for them to have access to download a structure to assist with management P affairs, and keep a record.'

Several respondents highlighted the need for human support, either through prompt emails or through a telephone service.

We will make guidance available both online and in printed form. We will aim to tailor it to the different stages in a deputyship. We will explore whether web chats and other social media can help guide deputies. We provide email contacts. The online tool should allow deputies to keep track of the financial transactions and create a record which can be formally submitted.

26. In what circumstances would minimal intervention in a case be most appropriate?

Under half of respondents answered this question.

Two opinions emerged:

'Where there is a professional deputy.'

'Where the assets are below a certain threshold.'

A small minority said there should be minimal intervention where the deputy was family member i.e. a spouse or child. A minority also acknowledged that there should not be a 'one size fits all' approach.

We will take a proportionate approach to supervising deputies. This will reflect the circumstances of the case, including the asset level, and our assessment of the risk. Professional and local authority deputies will see an assurance approach, looking at their management of the caseload as a whole. Where the deputy is a family member, we will seek to support them as early as possible in the expectation that we will not then need to supervise them closely. We will establish a new two-tiered reporting approach so that accounting is appropriate to our assessment of risk.

27. What do you feel would be a reasonable frequency of contact with the deputy in such cases to protect the person without capacity?

A small number of respondents answered this question.

Suggestions were varied and ranged from annually and twice yearly to once a month.

Several respondents reiterated that there should be no 'one size fits all' approach and every case must be treated uniquely.

'There are so many variables; it is not possible to be prescriptive. It will depend on where the person resides, who else visits, the value of the person's estate and the degree decisions need to be made, whether the person is able to give input into decision making, whether they are considered to be vulnerable to abuse etc.'

Others proposed that visits for lay deputies should be more frequent in the first year of deputyship and then gradually decreased.

We will not apply a 'one size fits all' approach but will tailor frequency of contact to the circumstances of the particular case. We intend that visits will happen on lay deputy cases fairly early in the first year. Thereafter, visits would be as deemed necessary. We intend to ask all deputies to report at least annually in future, in a format commensurate with the risk in the case.

28. Should the OPG take fuller account of the fees charged by professional deputies as part of the supervisory process?

Over half of respondents answered this question and the majority agreed that the OPG should take fuller account of the fees charged by professional deputies.

'Appropriate to monitor the fees of professional deputies and establish why they are unusually high if they are.'

'Although there can be a very great deal of work in the first year of a new deputyship, it would be useful for the OPG to take more of an interest in the fees charged and intervene if these are seen as excessive - particularly in the second and subsequent years to protect the interests of the person who lacks capacity.'

A minority questioned why the OPG would need to take a role in fees as it would duplicate the role played by the CoP.

'Fees are checked by the SCCO in any event -why double the process.'

OPG intends to do several things on this front.

Annual Plan & Asset Inventory

The OPG wish to introduce a requirement that professional deputies should submit annual plans to us. These would include updated asset inventories and would outline the measures the deputy intends to take in the coming year, such as investments, property sales, and so on, along with an idea of the professional charges which would be attendant on those actions. This would provide OPG with an opportunity to understand, or question, any intention which appeared unusual; and would allow OPG to have a good view of the likely charges in a given case. It is acknowledged that effort and cost in the first year of a deputyship will inevitably be higher than in subsequent years because there is often the need to establish the size of assets; OPG would seek to apply the proportionality test, so that costed activity did not consume the bulk of the assets. However, responsibility for acting proportionately must remain with the deputy and would be subject to scrutiny of the submitted bill of costs.

At the end of the year, the annual report would be compared with the annual plan to see if there has been broad consistency in actions and costs.

This proposal has been discussed with stakeholders from the legal sector. Representatives told us that they are already under a professional obligation to prepare a plan for the coming year, which may be requested by family members, so

the requirement to lodge that plan with OPG is not a significant burden, and it will increase OPG's oversight and control.

Standards.

In addition to the Mental Capacity Act, 2005, and the Code of Practice which derives from it, and the order of the Court of Protection, those professional deputies which are solicitors (the high majority) are subject to the regulations of their governing bodies. Other professionals such as accountants will also be governed by their relevant organisations. However, OPG feels that it would be helpful for standards to be established and agreed with representatives of the professional deputy community, so that professional deputies are clear about what they need to do to protect their clients with diminished mental capacity and to make sure their needs are met, both in terms of what OPG regards as the minimum and as best practice. OPG would then monitor performance against the standards and initiate the appropriate activities. For instance, the frequency of OPG's visits would be informed by the assessment of performance against the standards. In turn, the visit would contribute to the continuing assessment of risk in a given case, or in a given deputy's caseload.

Senior Court Costs Office (SCCO)

The MoJ will open discussions with the SCCO to explore options for future assessment of costs.

Section 2 - Fully Digital Lasting Powers of Attorney (e-LPAs)

The digital LPA tool, launched on 1 July 2013, enables the OPG to provide a partial digital process and is intended to have a positive impact in assisting individuals to complete an LPA application. However, users of the digital tool are still required to print the forms and have them signed, witnessed and dated before sending to the OPG for registration.

It is the OPG's ambition to deliver a fully digital process for making and registering an LPA, where the whole process is completed online, removing the need for paper forms. A fully online process would encourage greater numbers of the population to plan ahead for a time in the future when they may lack capacity to make decisions for themselves by making an LPA.

It is predicted that the volumes of LPAs will rise in the future regardless of whether a fully digital LPA is introduced or not. The last few years have shown dramatic growth, beyond what was predicted. A fully digital LPA will allow the OPG to process LPAs more efficiently, alleviating the burden caused by increasing LPA volumes and placing the OPG in a strong position to anticipate future growth.

Not implementing a fully digital LPA in the future will undermine the OPG's ability to effectively process an ever growing number of LPAs.

Summary: Proposed fully digital LPA model

The consultation sought views about how the OPG might make the LPA process fully digital. Proposals included:

- The removal of the requirement to prove the identity of a named individual by witnessing a 'wet' signature. Verification of identity would be fulfilled in a different way in a digital process.
- Replacing physical signatures with a digital 'signature' made up of two components:
 - The donor's identity, verified by means of a trusted third party online.
 - Confirmation that the donor, attorney(s) and certificate provider fully understand the nature of their role and agree to act in that capacity.
- Aligning with the emerging cross-Government approach to online Identity Assurance (IDA). This approach provides a framework for people to interact with Government services securely online via accredited third-party service providers.

The OPG is committed to the Government's intention that everyone should have access to the internet and that government services should be fully digital.

By putting the LPA application process online, we would make the process of completing the forms more straightforward, cheaper, and faster. We would not remove the paper option, which would still be available to those who want it. We

We are grateful for the views and comments received on the proposals for a fully digital LPA. We will use this information as we develop further proposals on the future development of digital services. The OPG will be liaising with stakeholders when drafting these proposals. We will work closely with the legal sector to establish a digital tool that will be as safe as the paper based system or more so.

Response to specific questions

29. Are you in favour of the proposal to introduce legislation to create a fully digital LPA without physical signatures?

This question was answered by the majority of respondents, who replied that they were not in favour of the proposals. The major concerns were the potential for fraud and discrimination against the elderly.

55 respondents provided the following statement:

'The donor's wet signature is the best and probably only conclusive way of establishing his identity and intention, and is evidence of such. Although fraud can occur within the current system, the requirement for a wet signature enables a challenge to be made where there are concerns, through handwriting experts and contemporaneously, witnessed and signed by the certificate provider who has seen the donor execute the deed. This would not be possible within a digitally created power. Furthermore it would dilute the safeguarding function of the certificate provider who by seeing the donor is able to make a better judgment to complete the certificate. Safeguarding should never be a tick box exercise.'

The minority who were in favour highlighted the need for safeguarding and suggested that the paper route still be made available.

'Yes, however the option of a physical signature should still be made available to those who want it. Non-digital options must be accessible for people who do not use the internet.'

30. Are you in favour of the proposal to dispense with the role of witness in a fully digital process and for this function to be fulfilled by the digital process combined with secure online ID assurance?

This question was answered by the majority of respondents, who again were not in favour.

The main concern was the possibility of fraud and abuse arising from the removal of the wet signature

'An invitation to fraudsters (including unscrupulous family members) to prey on the elderly. It would actively discourage those who would most benefit from creating LPA's namely, the elderly, from creating the documents, and could lead to an increase in the number of people applying to be appointed as deputies.'

A very small minority agreed with the proposal but reiterated the need for safeguarding.

'Providing there is a way in which a donor without access to online facilities can ask someone to prepare the applications on their behalf online, but still process a paper version.'

31. Are you in favour of the proposal to use online identity assurance to verify the identities of those involved in making an LPA?

The majority of respondents answered this question. A large majority were not in favour.

Again, there were concerns around the potential for fraud and abuse.

'These would only check the details as inputted, they do not verify that the person making the document / giving instructions actually matches the details provided.'

'Online identity checks only evidence that a person exists, not that it is the person applying. Those closest to people (who are responsible for most abuse) are also those who know enough about them to impersonate them for their own gain.'

32. Are you in favour of the proposal that 'signing' the document would be completed in a digital context by each individual logging on securely with an assured ID and formally agreeing that they understand the nature of their role and agree to act in that capacity?

The majority of respondents answered this question. A large majority were not in favour. The same issues around fraud and abuse were raised again.

'This is clearly open to abuse even at the simplest level by those seeking control over another's financial affairs.'

'The elderly give log-in details for family/friends to use, (eg for insurance, banking etc) and where abuse is a motive, they would be placed under pressure to do this.'

Those who agreed with the proposal also suggested that work needed to be done to support the most vulnerable in the process.

'...in agreement with this in principle. However, more thought needs to be given to digital assistance for those who are unable to complete this process on their own.'

33. If you foresee any potential issues with implementing a fully digital approach, do you have any suggestions about how they might be addressed?

The majority said that they did foresee problems and did not agree with a digital system. Comments made were:

- Greater scope for fraud and financial abuse
- Signing the form and having it witnessed is a very important safeguard
- Not suitable for elderly clients
- Donor cannot revoke online

Many of the suggestions focused on printing off the LPA for a wet signature once the information had been completed online. The digital LPA tool currently fulfils this function.

'Introduce a passport application where the information can be entered online and the pre-printed form then sent out for physical signatures. This allows the OPG to capture the information digitally, but preserves the safeguards that were introduced with LPAs.'

The OPG will continue to explore ways in which the development of a fully digital LPA can be made as safe and as secure as possible and will consult on this once we have further proposals.

Conclusion and next steps

1. We are grateful for all comments received. They will help us to make sure that the OPG's transformation programme continues to improve its services to make sure that the needs of its customers are met. We have analysed each response and taken the views into account when making decisions for next steps.
2. In April 2015 we will implement a revised single form. The form will be shorter, use simpler language and will be more easily accessible to individuals when making an LPA.
3. During 2014/15 , the OPG will take forward work to develop on line access to the registers . We will work with stakeholders to establish which accredited parties should have access to the proposed intermediate tier.
4. Through its ongoing review and the comments from respondents, the OPG now has a clearer picture of what a segmented supervision model would look like and work is underway to create a comprehensive proposal.
5. We will continue to work on proposals for a fully digital LPA. We have taken on board the particular concerns around preventing fraud and safeguarding vulnerable adults when using a fully digital tool. We will work with stakeholders to ensure that any proposal we put forward will be safe and secure, balancing the desire to make an LPA easier with the need for security.

GLOSSARY

Applicants	The people applying to register the Lasting Power of Attorney (LPA)
Attorney	Someone appointed under either a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA), who has the legal right to make decisions within the scope of their authority on behalf of the person who made the Power of Attorney.
Assisted Digital	The methods by which individuals who cannot access the internet directly are assisted in accessing a digital service via a trusted and supported intermediary.
Certificate Provider	An independent person who is able to confirm that the person making the LPA understands its significance.
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decisions.
Deputy	Someone appointed by the Court of Protection with ongoing legal authority to make decisions on behalf of a person who lacks capacity to make particular decisions.
Digital By Default	The delivery of Government services online or by other digital means.
Donor	The person making the Lasting Power of Attorney (LPA).
Jointly	Attorneys must always make all decisions together. If one of the attorneys does not agree with something, that decision cannot be made.
Jointly and severally	Attorneys can act together or independently for all decisions.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act 2005 appointing an attorney (or attorneys) to make decisions about the donor's personal welfare (including healthcare) and/or deal with the donor's property and affairs.
Mental Capacity Act 2005 (MCA)	The Mental Capacity Act (2005) sets out the law affecting people who may not be able to make some decisions for themselves
Named persons	The persons specified in the LPA, who should be notified that the LPA is about to be registered.

If you have any comments about the way this consultation was conducted you should contact Sheila Morson on 020 3334 4498, or email her at: sheila.morson@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to and clearly targeted at those people whom the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if 'buy-in' to the process is to be obtained from consultees.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

Annex A - Weighted Organisations

337 of the 424 responses represented the views of individual solicitors or small firms of solicitors. The large number of individual responses has skewed the results against group responses. In order to maintain a fair and balanced consultation the views of organisations which represent large numbers of members have been set out below.

Society of Trust and Estate Practitioners (STEP)

- Agrees there is merit in having a combined form but also many difficulties.
- States that the LST signature is superfluous if the certificate provider is undertaking his or her role properly.
- Agree the register should be digital providing second tier searches are made with the intellectual approval of OPG staff.
- 55 solicitors replied with STEP's statement about the fully digital LPA.

'The donor's wet signature is the best and probably only conclusive way of establishing his identity and intention, and is evidence of such. Although fraud can occur within the current system, the requirement for a wet signature enables a challenge to be made where there are concerns, through handwriting experts and contemporaneously, witnessed and signed by the certificate provider who has seen the donor execute the deed. This would not be possible within a digitally created power. Furthermore it would dilute the safeguarding function of the certificate provider who by seeing the donor is able to make a better judgment to complete the certificate. Safeguarding should never be a tick box exercise.'

Alzheimer's Society

- Supports the combined LPA form. There would be no need for the retention of separate forms for each type of LPA.
- Agrees with the removal of the signature and witness requirement from the life sustaining treatment authorisation. However, this change must be accompanied by the provision of detailed, clear information.
- Considers the new language to be more user friendly.
- Agrees that the requirement for a second certificate provider should be dispensed with.
- Is in agreement with a digital register.
- Agrees with the proposal for fully digital, but the option of a physical signature should still be made available to those who want it. Non-digital options must be accessible for people who do not use the internet.

Mind

- Agrees the new form is clearly laid out. However, Mind would also like to review the 'how to' guide. It is important to retain separate forms so that separate attorneys may be appointed.
- LST - Given the serious implications it is necessary to retain the witnessed signature requirement.
- Overall, the language is more user friendly. However, there is a concern that it is oversimplified and detracts from the legal standing.
- The second certificate provider should be retained. It is important that a level of safeguarding be maintained.
- While Mind acknowledges that it is useful to have the option of a digital approach, it opposes a fully digitised process where there is no physical signature.

Association of Public Authority Deputies

- Feedback which the APAD have been given suggests the new language in the forms is more user friendly.
- APAD are in favour of the proposal to introduce legislation to create a fully digital LPA without physical signatures.

Solicitors for the Elderly

- Support a combined form with the caveat that both types of LPA could be made separately through the combined form.
- The new form is acceptable.
- The removal of the LST box is acceptable providing appropriate safeguards are in place.
- The second certificate provider is unnecessary.
- Are happy with the register as a digital tool and intermediate access for accredited parties.
- Are strongly against of the digital approach.

Institute of Professional Willwriters

- Believe that a combined document will be a significant step towards increasing the number of people who make provision for the management of their healthcare in the event that they are unable to make decisions for themselves. One form would be adequate.

- See the removal of the LST witnessed signature as a backwards step. They believe every page of the LPA document should be signed by the donor.
- Agree that the role of second certificate provider should be removed.
- Agree that the register should be conducted through a secure digital tool.
- The digital service should run alongside a paper option, not replace it. Their members have expressed concern around fraud. However, they suggest that the scope for fraud with a digital system is actually less than using a wet signature.

Compassion in Dying

- In favour of the proposal to introduce legislation to create a fully digital LPA without physical signatures.

Law Society

- Is in favour of a combined form but strongly supports the need to retain separate forms.
- Believe LST witnessed signature should be retained.
- Do not believe that the proposed one certificate provider should be a lay person.
- Have concerns that an online register could be used for data mining for marketing purposes.
- Strongly against a fully digital LPA without physical signatures.

Age UK

- Is undecided on the combined form. It is cheaper and more convenient but complex to understand and complete.
- Does not support the removal of the LST witnessed signature.
- Strongly oppose the proposal to create a fully digital LPA without physical signatures.

Annex B - Comments from the House of Lords

On 11th November 2013 Baroness Trumpington put forward an oral question in the House of Lords 'To ask Her Majesty's Government what steps they will take to make it easier to nominate a power of attorney.' Lord McNally responded on behalf of the government with the following answer.

"The OPG is committed to making it easier to complete an LPA. It has released a test version of a digital tool which allows donors to make an LPA online with support from integrated guidance. It has redesigned its paper forms to make them easier to follow. It is consulting on proposals to combine the application process for the two types of LPA forms and introduce a 'digital signature'. The fee for registering an LPA was reduced to £110 on 1st October 2014."

Baronesses Trumpington, Boothroyd, and Baroness Turner of Camden and Lord Phillips of Sudbury all commented on the government's response. Lord McNally agreed to include their comments in this consultation.

"This whole business seems to me unnecessarily expensive and time-consuming."

"It is the most verbose document that I have had to deal with either for myself or for those I have represented in over 30 years in public life."

"Why then do I have to name from two to five people to be told that I am registering power of attorney so that they can object to it?"

"It is not easy. It is not only complicated and expensive but the person whom you nominate, and who has been nominated by me via our lawyers to handle the power of attorney, has his own job to get on with. It is also very time-consuming for the person who assumes it."

"It is not only the expense; it is also the time involved in doing it. It is important that it be really simplified so that people can take this job on."

Steps have been taken to design a new form which is shorter than the previous form yet retains the necessary information. The language of the new form has been simplified.

The consultation has proposed that the number of certificate providers required be reduced to just one.

The price of the LPA has been reduced to £110. The OPG will review this fee annually. The OPG is currently calculating the cost of processing the redesigned forms which may result in a further reduced fee..

Annex C – List of respondents

Name	Organisation
Henry Frydenson	ACTAPS
Simon Mitchell	Adams & Remers LLP - Solicitors
Sally Danby	Advanced Business Solutions
Jane Vass	Age UK
Alan P. Squires	Alan P. Squires
Judith Anne Rodgers	Alderson Law LLP, solicitors
Stephen Pett	Allied Professional Will Writers Ltd
Deborah Clarke	Allied Services Trust
Claire McGinnity	Alsters Kelley LLP
Anna Dowrick/ Sam Cox	Alzheimer's Society
Helen Newson	Andrew & Co LLP
Alex Elphinston	Anthony Collins Solicitors
Clare Appleby	Appleby's Wills & Probate Solicitors
Derek Hellawell	Armitage Sykes LLP Solicitors
Trevor Price	Arnison Heelis Solicitors
Maurice Alton Honeywell	Arnold Thomson Solicitors
Adrian Mundell	Ashton KCJ Solicitors
Martyn Harris	Association of Public Authority Deputies (APAD)
Bruce Laird	Astwood Law Solicitors
Sarah Fuller	Austin Ray Solicitors
Bryan Dean	AWB Partnership
Nicola Hibbert	Awdry Bailey & Douglas
Graham Fuller	Awdry Bailey & Douglas solicitors
Sharon Heselton	B P Collins LLP
Bernadette Emmett	B. Emmett Solicitor
Juliet Stevens	Bailhache Solicitors
Gareth Horner	Barker Son & Isherwood LLP
Karen Bayley	Barlow Robbins LLP
J Miles	Barnes Marsland
Alexander Ruck Keene	Barrister 39 Essex Street
Belinda Hornsby Cox	Belmont & Lowe
Gareth Marland	Berwins Solicitors
Paul Watkins	Beviss & Beckingsale Solicitors
K A Jordan	Blacks Solicitors
Jonathan Randall	Blake Laphorn Solicitors
Catherine Diamond	Blandy & Blandy LLP
Jonathan Gater	Blandy & Blandy LLP
Penelope Carne	Bonnetts Solicitors Ltd
Jenny Watson	Boyes Turner
Jacqui Johnson	Bridge McFarland solicitors
Elizabeth Brown	Brown & Company
David Pincott	BT
Karen Grimm	C PLaw Solicitors
Alex Mackenzie Smith	Calvert Smith & Sutcliffe
Catherine Vallejo Veiga	Capstone Solicitors
Lorraine Kennedy	Carematters
Caroline Bielanska	Caroline Bielanska Consultancy
Caroline Coats	Caroline Coats & Co
Fiona Heald	Caroline Coats & Co
Frances Hemus	Carter Bells LLP

Marie Wilson	Charity
Charlotte Montague	Charlotte Montague Solicitor
Maria Goodacre	Chartered Legal Executive
Irene Chenery	Chenery Maher
Christine Ashby	Christine Ashby Solicitor
Christopher Matthews	Churchers Bolitho Way
Claire Flood	Claire Flood Solicitors
Sue Alexander	clarkwillis lawfirm
Ian Martin	Clifton Ingram LLP
S Rose	Clifton Ingram LLP
AJG Cottrell	Cockshott Pett Lewis
Anthony Weber	Coles Miller Solicitors LLP
Compassion in Dying	Compassion in Dying
Lucy Butterfint	Cooper Wilkin Chapman
Denzil Lush	Court of Protection
Richard Tweed	CP Law Solicitors
Eileen Ismay	Crane & Staples
Trish Wilson OBE	Criminal Injuries Compensation Authority
John White	Crosse Wyatt Solicitors
Naomi Bowie	Darwin Bowie LTD
Guy Birtwistle	dbsAndersons
Georgina Johnston	Dean Wilson LLP
Nicholas Osborn	Derrick Bridges & Co solicitors
Samantha Downs	Dodds Solicitors LLP
Dominc Mills	Dominic Mills & Co
Sara Jane Chorkley	Donald Race and Newton Solicitors Ltd
Kate Scott	Downs solicitors
Jennifer Clare Walker	Driver Belcher Solicitors
Alistair MacFarlane	Dutton Gregory LLP
Lee Hibell	Edwards Duthie Solicitors
Rhys Thomas	Emeritus Legal
Margaret Broom	Everyys
Dympna Ewings	Ewings and co-solicitors
Stephen Gray	Fiona Bruce LLP Solicitors
Ella M Lewis	Firm of Solicitors (member of SFE)
Veronica Barran	First Tier Tribunal Property Chamber
Victoria Motley	Forbes Solicitors
Alexa Merchant	Forrester Sylvester Mackett
Heather Wannell	Forrester Sylvester Mackett
Rachel Butler	Foskett Marr Gadsby & Head LLP solicitors
Judith Burke	Francis and Co
Elizabeth Morris	Fraser Dawbarns LLP solicitors
Shaun Freeman	Freemans solicitors
Fiona Fraser	Frisby & Small solicitors
Antony S Caulfield	Gaby Hardwicke
Richard J Ostle	Gaby hardwicke Solicitors
Carolyn Snellgrove	Gamlins Solicitors
Sharon Brown	Garden House Solicitors
Sarah Murphy	Gedye & Sons Solicitors
Deborah Beal	George Green LLP
Louise Rose Taylor	George Green LLP
Richard Walford	Gilbert Stephens LLP Solicitors
Pamela Haines	Glamorgan Law LLP
Emily Flanders	Glanvilles

Melissa Reeds	Glanvilles LLP
Hannah Lisseter	Glanvilles LLP Solicitors
Martin Hasyn	Gordons LLP
Helen MacDiarmid	Gordons Solicitors
Christine Thornley	Gorvins Solicitors
Tim Addinell	Greenwoods solicitors LLP
Samir Hussain	Gregsons Solicitors
Richard O'Dowd	Guillaumes LLP
Anne-Marie Howard	Gurney-Champion & Co
Mandy Susan Tourle	GWCA
Susan Gardner	Hague & Dixon solicitors
Stephen Morgan	Harland & Co Solicitors
Caroline Fletcher	Harris & Harris
Joshua Eva	Harris and Harris
Phillipa Bruce-Kerr	Harrison Clark Rickerbys - Solicitors
Amelia Breakwell	Harrison Clark Rickerbys Ltd
Julia Bilton	Harrison Clark Rickerbys Ltd
Mark Hartley	Harrison Clark Rickerbys Ltd
John Benson	Hart Reade
Meg Andrews	Hartley and Worstenholme
Judith Mason	Harvey Copping & Harrison Solicitors
David Harding	Heringtons Solicitors
Nigel Thonger	Heringtons Solicitors
Anthony Tahourdin	Herrington & Carmichael LLP Solicitors
Carole Hewett	Hewett Legal Services Limited
Carole Hewett FCILEx TEP	Hewett Legal Services Ltd
Robin Gambles	Hewetts Solicitors Reading
Kelly Hardcastle	Hewitsons LLP (solicitors)
Philip Martin-Summers	Higgs & Sons
William Richards	Hine Downing
Louise Hobbs	Hobbs Law LLP
Alison Playle	Hopkins Solicitors LLP
Mrs Suzanne Mynors	Hubbard Pegman & Whitney LLP Solicitors
Chris Keenan	Humphries Kirk LLP
Henry Anstey	Hunt & Coombs
Lara Barton	Hunters
Tom Sorby	Ilett and Clark Solicitors Limited
Simon West	Institute of Legacy Management
Paul Sharpe	Institute of Professional Willwriters
Martyn Brown	Integrum Law
Jennifer Margrave	Jennifer Margrave Solicitors LLP
Fiona Ward	JWK Solicitors
Karen Shakespeare	Kazbard Ltd
Paul Chapman	Keith Flower & Co Solicitors
Amanda Firth	Kirby Sheppard
Joelle Allen	Kirby Sheppard LLP
Tracy Scammell	Kitson & Trotman Solicitors
Lynn Smith	Kitsons LLP
Rachel Main	Knocker & Foskett
Sheila Campbell	Knocker and Foskett
Kate Mansfield	laceys llp
Jennifer Gaze	Lamb Brooks LLP
Helen Robinson	Last Cawthra Feather LLP
Caroline Bates	Law Firm

Elisa Prince	Law Firm
Emma Harris	Law Firm
Joan Smith	Law Firm
Jonathan Korff	Law firm
Michael McGarry	Law Firm
Natalie Payne	Law firm
Jennifer George	Lawyer
Michael Fletcher	Lee Bolton Monier-Williams
Kerry Bates	Legal Practice
Sofia Tayton	Legal Practice
Lesley Ward	Legal Practice (Legal Executives)
Alison French	Leicestershire County Council
Lisa Davies	Leo Abse & Cohen solicitors
Andrew Milbur	Levi solicitors
Nichole Giddings	Longmores Solicitors
Paul Midgley	Longstaff & Midgley
James McMullan	Lucas McMullan Jacobs
Lynn Emery	Lynn Emery
Michael Parr	Mackarness & Lunt Solicitors
Kerry Brundall	Macks Solicitors
Jennifer Hurrell	MAffey & Brentnall Solicitors
Jill Bowler	Mander Hadley
Alex Bryant-Roggero	Marston Group
Rebecca Haywood	Mayo Wynne Baxter LLP Solicitors
Jo McGill	McGill Brown
Victoria McKenzie	Mckenzie Law Solicitors
Mark Stubberfield	Mcmillan Williams
Alvin David	Meadows Ryan
Alvin David	Meadows Ryan LLP
Katherine Melkerts	Melkerts solicitors
Bella Travis	Mencap and Challenging Behaviour Foundation
Shella Sharma	Mercers
Angela Kennedy	Milford & Dormor
D T Fazio	Milford & Dormor
Helen McHugh	Mills & Reeve LLP and Solicitors for the Elderly
Adrian Foulkes	Milwyn Jenkins & Jenkins
Angela Truell	Mind
Helen Robins	Morecrofts
Tom Morrish	Morrish Solicitors
Monika Volsing	Morrish Solicitors LLP
David Kingham	Morrisons Solicitors LLP
Holly Chantler	Morrisons Solicitors LLP
Fiona Aitken	Mortons Solicitors
Samantha Hamilton	Mullis & Peake LLP
Ashley Easterbrook	Myer Wolff
Victoria Taylor	Napthens
Bridget Holness	Nash & Co Solicitors
Joanna Wilson	Nelsons Solicitors
Sarah Jenkins	Nockolds Solicitors
Alison Cross	Not given
Edward Popham	Not given
Jackie Ashton	Not given
Jane Wanless	Not given
Jim Boff	Not given

Ken Hawkins	Not given
Lauren Smith	Not given
Lesley Austen	Not given
Marcus Phillips	Not given
Sharon Piper	Not given
Simon Leney	Not given
Susan Gaynor-Smith	Not given
Susan Midha	Not given
Gregory White	Notary Public
Karen Smith	Nottingham City Council
John Oates	Oates Hanson
David O'Shea	Office of the Accountant General
Andrew	Office of the Public Guardian
Ian Mallowan	Office of the Public Guardian
Matthew Murphy	Office of the Public Guardian
Patrick Lowe	Office of the Public Guardian
Fiona Gregory	Oglethorpe Sturton & Gillibrand
Andrew Morris	Okells with FrancisLaw LLP
Julie Rowe	Palmers Solicitors
Andrew Penfold	Parfitt Cresswell
Jennifer Beaujeux	Parrott and Coales SOLicitors
Jenny McQuire	Parry Law
Charles Gilmour	PCB LAawyers LLP
Pauline Davies	PCB Solicitors LLP
Helen Law	Pearson Solicitors and Financial Advisers LLP
Emma Elwess	Pearsons & Ward
Rebecca Head	Pickerings Solicitors LLP
Kathryn Sykes	Pickupandscott.co.uk
Liz Redmond	Poole Townsend
Martin Oates	Poole Townsend
Robert Beatson	Private Individual
Nicola Steadman	Private Solicitors firm
Henry Grant Shaw	Probate and Wills Executive
Peter Cox	Prospero
L A Caisley	Quality Solicitors
Sally-Ann Joseph	Quality Solicitors Rose & Rose
Ian Kershaw	QualitySolicitors Clarke & Son
Tristan Lewis	QualitySolicitors Gordon Lutton
Naomi Pinder	QualitySolicitors Jackson & Canter
Leah Hanson	QualitySolicitors Lockings
Katie Wigham	Qualitysolicitors Punch Robson
Philippa Pipe	QualitySolicitors Thomson & Bancks LLP
Barry Matthews	QualitySolicitors Wilson Browne
Vicki Pearce	QualitySolicitors Wilson Browne
Paul Holland	Qualitysolicitorslockings
Rachel Stafford	Rachel Stafford Legal Services
Heather Nuttall	Ramsdens Solicitors
Jackie Randall	Randall & Phillips LLP
Melissa Gilman	Randall & Phillips LLP
Angela P M Hickey	Rees Wood Terry Solicitors
Kelly Rogers	Richard Griffiths & Co
Susan Cash	Ridley & Hall
Ian Pratt	RJR Solicitors
Joyce Bennell	RLK Solicitors

Donna Taylor	Robinsons Solicitors
Nikki Spencer	Robinsons Solicitors
Ronald Cufley	Ronald G Cufley BEM
Karen Hayward	Rothera Dowson, Solicitors
Roger Norrington	Sackvilles
Lorna Pinto	Salehs LLP
Helen M Wingfield	Scott Fowler, Solicitors
Kenneth Seakens	Seakens Solicitors
John Tomalin	Seldons Solicitors
Lisa Warriner	Shentons
Melanie Armstrong	Shentons
Sarah Walker	Shoosmiths
Elisabeth Whybrow	Silks Solicitors
David Kitcat	SME Solicitors, Worcester
Sean Smith	Society of Trust and Estate Practitioners (STEP)
Richard Wood	Society of Will Writers
Geoffrey Rees	Solicitors - Beor Wilson Lloyd
Simon Dudley Armstrong	Sole notary
David Satchell	Solicitor
Frances White	Solicitor
Judy Lewis	Solicitor
Laura Wishart	Solicitor
Lucy Watson	Solicitor
Mark Turner LLB TEP	Solicitor
Nia Wharry	Solicitor
Greg Baker	Solicitor firm
Alastair Liddiard	Solicitors
Alexandra Gordon	Solicitors
Alison Christine Short	Solicitors
Amanda Hayman	Solicitors
Caroline Hunt	Solicitors
Catherine Mathias-Williams	Solicitors
Charles Neal	Solicitors
Dawn Joughin	Solicitors
Dawn Lamb	Solicitors
Dawn Oliver	Solicitors
Debbie Duggan	Solicitors
E A Davies	Solicitors
Frances Davy	Solicitors
Garry Warman	Solicitors
Gordon John Lee	Solicitors
Harvey Barrett	Solicitors
Helen Gott	Solicitors
Hilary Tarran	Solicitors
James Shingleton	Solicitors
Jane Hunter	Solicitors
Jenny Brading	Solicitors
Jenny Rimmer	Solicitors
Katherine Carroll	Solicitors
Linda Keegan	Solicitors
Louisa Mawbey	Solicitors
Margaret Taylor	Solicitors
Mrs Val Prosser	Solicitors
Nicholas Johnson	Solicitors

Nicola Briggs	Solicitors
Nicola McIntyre	Solicitors
Penny Smith	Solicitors
Rhiannon Cory	Solicitors
Richard Dollimore	Solicitors
Ruth Drew-Edwards	Solicitors
Ruth Drew-Edwards	Solicitors
Ruth Weaver	solicitors
Sally Runnacles	Solicitors
Shirley Rabbetts	Solicitors
Sue Bedwell	Solicitors
Susan Atkinson	Solicitors
Alistair Keeble	Solicitors
A Weare	Solicitors firm
Emma	Solicitors firm
Grenville Young	Solicitors Firm
Nicola Pearce	Solicitors Firm
Paddy Appleton	Solicitors Firm
Sue Carraturo	Solicitors for the Elderly
Robert Craig	Solicitors in private practice
Lesley Archer	Solicitors LLP
Ian David Shipton	Solicitors Practice
Susanne Grimwade	Solicitors practice
Christopher Sleigh	Solicitors practise
Jane Forbat	Solicitors practise
Julie Jewers	Solicitors practise
Lindsay Duckworth	Solicitors practise
Lorna Pound	Solicitors practise
Michael Knowles	Solicitors practise
Nicola Davies	Solicitors practise
Ruth Drew-Edwards	Solicitors practise
Damian Fisher	Spire Solicitors
Tamasine Whitbread	Spurlings Solicitors
Miriam Spero	Stafford Young Jones Solicitors
M J Packham T.E.P.	Standley & Co solicitors
Nicholas Manning	Stephen Rimmer LLP
Charlotte Holfert	Streeter Marshall
Sarah Noton	Swayne Johnson
Lisa Marie Jones	Swayne Johnson Solicitors
sharon woodward	Switalskis solicitors
Nicolas Bennett	Sydney Mitchell solicitors
Emma Gray	Symes Robinsin & Lee
Lesley Walker	Talbot Walker
Louise Morgan	Talbot Walker LLP
Sonia Adlem	Talbot Walker LLP

Anna Pallesen	The Law Society
Vicky Day	Thomas Eggar
Alanna White	Thomas Eggar LLP
John Bunker	Thomas Eggar LLP
Amy Comins	Thomas Eggar LLP (Solicitors)
Jill Hill	Thompson and Jackson solicitors
Simon Theobald	Thomson Hayton Winkley Solicitors
Annaliese Barber	Tilly Bailey & Irvine LLP
Carolyn Tilly	Tilly Baily and Irvine
Karon Walton	Tollers Solicitors
Trusha Velji	Touch Solicitors
Malcolm Ian Kesterton	Trust & Estate Practitioner and Professional will writer
Tim Farmer	TSF Consultants
Myron Handzij	Turner & Wall LLP
Adrian O'Loughlin	TWM Solicitors
Charles Duncan Mitchell-Innes	TWM Solicitors LLP
Robert Twyford	Twyfords Property Law Firm
Steve Evans	University of Leicester
Annette Campbell	Veale Wasbrough Vizards LLP
Mary McCrorie	Veale Wasbrough Vizards LLP
Vincent Oakley	Vincent Oakley, Solicitor
Graeme Black	W Davies Solicitors
Maggie Hughes	W H Matthews & Co
Liz Holdsworth	Wace Morgan Solicitors
Rae Evans	Wace Morgan Solicitors
Peter Hart and Kathryn Brooker	Waller and Hart
Sarah Stockdale	Ward Hadaway
Georgina Hughes	Wards Solicitors
Jenny Pierce	Wards Solicitors
Susan Fairless	Wards Solicitors
William Ware	Warner Goodman LLP solicitors
Jenny Kitzinger	Welfare Deputy
Hannah Durston	Whitehead Monckton
Bob Zwolinsky	Wickham Wills
Richard Smithies	Wilkinson Woodward Bearders Solicitors
Rob Abell	Will Planning Solutions Ltd.
James Cook	William Sturges LLP
Chloe Eason	Willing Legal Services
Helen Eynon	Wills-etc Ltd
Edward Vidnes	Withy King
Judy Baggott	Withy King LLP
Katrina Vollentine	Wollen Michelmore

Annex D – Equality Statement

Policy Proposals

1) Launch a redesigned single LPA form which will:

- Encourage donors to state when they wish their LPA to come into effect.
- Remove the signature and witnessing requirements for the Life Sustaining Treatment section.
- Include new language aimed at making the LPA easier to complete for lay donors.
- Rename the term ‘named persons’.
- Remove the requirement for a second certificate provider.
- Amalgamate the application to register (LPA002) with the LPA form.

2) Launch a revised LPA002 form.

3) Expand the range of cases for which a reduced application fee is applicable to include those cases where the LPA can only be made capable of registration by an application being made to the Court of Protection.

4) Launch a digital tool for second tier searches of the OPG’s register.

5) Provide intermediate access to the register for accredited parties.

These proposals are in line with the Ministry of Justice’s “Transforming Justice” agenda and Digital and the government’s commitment to “Digital by Default”.

Equality duties

Section 149 of the Equality Act 2010 (“the EA Act”) requires Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the EA Act;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the EA Act – namely race, sex, disability, sexual orientation,

religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Summary

Equality issues have been examined before in consultations including “Transforming the Services of the Office of the Public Guardian” July – October 2012. An Equality Impact Assessment, dated May 2012 was amended in January 2013. The 2012 consultation laid the foundation for the current proposals, including the digital beta tool and the digitisation of the first search tier. There have been no challenges to these proposals being adopted. The current consultation built on these proposals.

It is anticipated that the proposals will have a positive effect on donors filling out an LPA form. The proposals may have direct or indirect impact on other groups including legal professionals and certificate providers.

The digital tier two and intermediate searches will benefit individuals within the healthcare profession and finance sector. The impact will be smaller than the other proposals, last year only 25 tier two searches were requested. It is not expected to have a wider impact on donors.

The consultation requested opinions on a new supervision model. Supervised clients could be considered to have a disability under the 2010 equalities act. However, as a fully detailed proposal was not included, the impact on supervision clients will not be discussed in this equality statement.

Direct discrimination

Our assessment is that the proposed reforms are not directly discriminatory within the meaning of the EA Act as they apply equally to all, irrespective of whether or not they have a protected characteristic. We do not consider that the proposals would result in people being treated less favourably because of the protected characteristic.

Indirect discrimination

Respondents were critical of the proposal to create a fully digital LPA as the elderly population, the main creators of LPAs, may not have access to a computer or have the skills to create an LPA online. We will not go ahead with this proposal at this point in time and will engage with stakeholders before any future decision is made.

A digital beta test tool is already available and we have retained paper forms in parallel. As a result the elderly population who may not be able to access a computer as easily as younger generations have not been disadvantaged and we would expect this to remain true if a fully digital LPA was instituted.

Discrimination arising from disability and duty to make reasonable adjustments

We do not consider there to be a risk of discrimination arising from disability.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to advance equality of opportunity. that indicates it is unlikely to be of particular relevance to the proposals.

Fostering good relations

Consideration has been given to this objective that indicates it is unlikely to be of particular relevance to the proposals.

Affected Parties

Impact on Donors

Donors will benefit from improved LPA forms. The forms will contain simpler language, the forms will be shorter in total, and the completion process will be streamlined e.g. witness and signature requirement will be removed from the life sustaining treatment section. The changes may lead to a time saving when completing the forms. The LPA002 (application to register) will also be revised and amalgamated with the LPA form. The reforms will have a wide impact, approx. Based on OPG estimates, 380,000 LPAs are expected to be made in 2014/15.

Expanding the resubmissions criteria will allow donors who have had their LPA amended by the Court of Protection to pay a resubmission fee instead of the full LPA fee.

Justification

There are minimal risks associated with the proposals. A majority of respondents believed that removing the witnessing and signature requirements for the life sustaining treatment section would lead to donors underestimating the importance of the decision. However, user testing has shown this is not the case and donors do give due consideration to the decision.

By law a donor must have mental capacity to make an LPA. All donors are expected to be impacted equally by the proposals. There is no group, which will be advantaged or disadvantaged disproportionately in respect of their peers.

Impact on legal professionals

Solicitors will also benefit from the revised forms in terms of ease of completion and time saved. Based on operational experience it is estimated that four fifths of LPAs that are received by the OPG have been completed by a solicitor. The IA identifies the risk that simpler LPA forms will result in a loss of business for solicitors; however, it will also free solicitor time to work on other issues.

Justification

There is no evidence from which the protected characteristics of solicitors working on LPAs can be identified. We are therefore unable to make a comprehensive assessment of the likely equality impacts on this group. However, on the basis of limited evidence, we do not consider that the proposals will have significant differential impacts on legal professionals according to their protected characteristics.

Impact on certificate providers

There will be a small number of cases where a second certificate provider is no longer needed (estimated using operational experience to be a twentieth of LPA applications) and a sub section of these (assumed to be at least a fiftieth) would have involved the second certificate provider charging a fee, assumed to be £180.

As a result certificate providers are expected to be engaged in less certification. They would undertake less work as a result. This would free up their resources to be allocated to other profitable activities

Justification

The primary justification for this reform was to make the process more efficient and streamlined and less bureaucratic rather than as a cost cutting measure

Again, there is no evidence from which the protected characteristics of solicitors working on LPAs can be identified. We are therefore unable to make a comprehensive assessment of the likely equality impacts on this group. It is not anticipated that the proposals will have a significant adverse differential impact on certificate providers according to their protected characteristics.