

# Consultation Response

## Modernising Lasting Powers of Attorney

Ministry of Justice

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## **About this consultation**

The Ministry of Justice (MoJ) and the Office of the Public Guardian (OPG) are consulting on proposals to modernise the process of creating and registering a Lasting Power of Attorney (LPA). The development of a digital service aims to lower the administrative and economic burden of the current paper system as well as meet public expectation that services are available online. A paper system will be made available alongside the digital service. As well as the proposed digitalisation of the service, the consultation includes proposals to expand the role of the OPG to carry out identity checks and prevent some individuals from becoming an attorney; the introduction of digital checks on an LPA as soon as it is made; and consideration of whether the role of witness could be replaced by other safeguards.

## **About Age UK**

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances. In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

## Key points and recommendations

- We welcome proposals to simplify and speed-up the process of making and registering an LPA.
- We are concerned that a digital system will exclude a high number of older people – 25% of over-65s do not use the internet.
- Any ‘multichannel’ system must include an updated paper option that is as straightforward, efficient, secure and sustainable as a digital process so that older people who wish to use paper are not disadvantaged by a ‘two-tier’ system.
- We know that older people may be at risk of financial abuse at the point of the creation of an LPA and once an LPA has been registered. Therefore, it is essential that any new process contains appropriate safeguards to protect the donor.
- We welcome proposals to expand the OPG’s powers to carry out identity checks and to prevent people with certain convictions from becoming an attorney.
- More focus should be given to safeguarding issues throughout – in particular:
  - the role of the certificate provider should be strengthened;
  - a mechanism for ongoing monitoring of an LPA should be put in place;
  - complaints and concerns should be dealt with quickly;
  - work should be carried out to ensure that both the donor and attorney fully understand what they are signing up to and their respective rights and responsibilities once an LPA is in place; and
  - an annual report of OPG safeguarding activity should be published.

## **Older people and the introduction of a digital system to create and register an LPA**

While we welcome proposals to speed-up the current process of making and registering an LPA, we are concerned that any move to a digital system may exclude a significant proportion of older people who wish to create an LPA.

Firstly, **a digital system would be inaccessible to a high proportion of older people.** 25% of over 65s - equivalent to 3.1 million people - do not use or have access to the internet – a figure which rises to 40%, or 2.2 million people over 75.<sup>1</sup> Among older people who do use the internet, a large proportion may use it solely for basic tasks, such as writing emails (87% of internet users aged 65-74 and 84% aged 75+) or internet shopping (74% of internet users aged 65-74 and 59% aged over 75).

Secondly, **some older people may not trust that sensitive information will be handled securely online.**

It therefore should not be assumed that all older internet users would be able, or would wish, to use a digital channel to create or register an LPA.

These figures are particularly important as older people are significantly more likely to be donors than younger people. The consultation document states that the average age of donors is approximately 74.5 years and that the majority of donors are aged over 65.

While we welcome the proposal to introduce a paper application alongside a digital process, the consultation does not specify how this would work. The OPG must ensure that any paper system is as straightforward, efficient, secure and sustainable as a digital process so that older people are not in any way disadvantaged (for example, longer processing times for registration or complaints) because they have not used the digital form.

### **Modernising LPAs and safeguarding**

The consultation sets out how a digital system for creating and registering an LPA might work but it says less about potential safeguarding issues and how the planned changes would address these. It is important that safeguarding issues remain central to the process of modernisation of LPAs and that any new process attempts to offer solutions to these issues.

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<sup>1</sup> *Digital Inclusion: The Statistics*, Age UK, September 2021

## Older people, LPAs and financial abuse

We know that older people are at risk of abuse when an LPA is being created and/or when an LPA is in place. This risk is particularly heightened when an older person is particularly unwell or may be about to lose capacity. From our experience as a charity working with older people, we know that an older person may be at risk of being coerced into making an LPA or, where an LPA is already in place, financial abuse may occur.

Financial abuse may result from the attorney misunderstanding their role and how to manage the donor's money effectively (misuse), or it may be deliberate, where an attorney uses the money for their own purposes and not as the donor intended.<sup>2</sup> Both of these situations may leave the donor without access to their funds when they are needed.

Because LPAs are relatively straightforward to set-up, they are open to misuse. We therefore call on the MoJ and OPG to consider how the any new process can best protect the donor.

We support the proposal to expand the OPG's powers to enable it to carry out identity checks and prevent individuals with some prior convictions from becoming attorneys. However, further safeguards should be put in place, including:

### **1. Setting-up an LPA:**

This process should be strengthened so that the donor and attorney are clear about what they are agreeing to. This is particularly important in relation to any proposed digital system where older people might rely on the support of those around them to help them create an LPA.

#### Donors

Donors should be made aware of exactly what they are agreeing to. This means that clear, accessible information must be given to the donor – this could be a list of frequently asked questions or a simple outline of the process.

#### Certificate providers

The role of the certificate provider may need to be strengthened to ensure that they are able to check the donor's understanding of the situation – for example by asking a series of questions or by ensuring that the certificate provider is trained to make a capacity assessment.

Consideration should also be given to how the certificate provider can be supported. For example, non-professional certificate providers may particularly benefit from a tailored information resource. This could include a guide to the

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<sup>2</sup> This is supported by relevant research. See, for example, Stelma-Roorda (2021), 'The Misue or Abuse of Continuing Powers of Attorney: What are Appropriate Safeguards?' in *International Journal of Law Policy and the Family* 2021, 00, 1-25. DOI: 10.1093/lawfam/ebab022.

conversation with the prospective donor, focusing on best practice in respect of issues that may be difficult to broach, such as the donor's finances and the risk of abuse. An information resource could also include insight from OPG safeguarding activity, to help ensure that the certificate provider has an informed awareness of when and how LPA abuse can occur.

There should also be a clear channel for certificate providers to advise the OPG if they have refused to act as certificate provider because of any concerns relating to coercion, in case the donor makes another application at a later date.

### Attorneys

More information should be made available for attorneys to ensure that they understand their role, what their responsibilities are and when these would come into effect. This could help to avoid situations of misuse or mismanagement of an LPA or cases where the attorney doesn't have the financial competence to carry out the role.

Attorneys could also be signposted to resources to support them to manage money effectively, e.g., MoneyHelper (MAPS).

### Third sector

It would be worth considering how third sector providers could best support donors and attorneys in this process. Not-for-profit organisations could support older people to make LPAs and provide a useful safeguard in any new process by providing an impartial low-cost third-party service. This is of particular interest to Age UK, as some of our local Age UK partners already operate LPA services which help people apply.

## **2. Ongoing monitoring of an LPA**

The OPG should consider a mechanism to increase the number of checks made on existing LPAs so that small issues can be picked up and resolved quickly before they become larger problems. Although this proposal would have an administrative cost, it may prevent significant issues from emerging and the costs associated with resolving these. The savings from the move to digital could also be reinvested to increase monitoring of LPAs.

## **3. Timely response to raising concerns**

From our experience as a charity, we are aware of cases where there has been a long time-lag between a donor or other party making a complaint and the case being resolved. Where possible, we would like to see a shorter process, in order to ensure that the donor's finances are protected.

#### **4. Learning from safeguarding**

We welcome the transparent approach the OPG has taken to its safeguarding role, with the publication of its safeguarding [strategy](#), [policy](#), and [blog post](#) on safeguarding investigations.

To build on this, the OPG should consider publishing an annual report of its safeguarding activity, for example detailing the number of concerns raised, investigations completed, actions taken and analysis of the nature of the abuse situations that involve an LPA.

This would enable third sector organisations, such as Age UK, to better understand who may be at particular risk when supporting those who wish to make an LPA.

Publication of safeguarding reports may also increase public awareness of LPA abuse, increasing the likelihood that more abuse situations are identified and raised with the OPG.

#### **Equalities**

Overall, further consideration needs to be given to how these proposals will affect older people. Also, little consideration has been given to the risks and benefits of a digital system for those with disabilities – particularly those who may be at risk of losing capacity, and more detail is needed on how the proposals will affect these groups.