



## Ministry of **JUSTICE**

### **Proposals on changes to Office of the Public Guardian Fees in 2011/2012**

#### **Questionnaire**

We would welcome responses to the following questions set out the consultation paper. Please return the completed form by email to:

**David.Oshea@publicguardian.gsi.gov.uk.**

#### **Proposal:**

Raising the LPA Application to Register from £120 to £130

#### **Comments:**

Compassion in Dying strongly opposes any attempt to increase the already-high application fees.

The starting point for our response is that citizens should not be required to incur anything other than minimal costs in order to exercise their legal rights. We are absolutely clear that LPAs are not merely about the exercise of choice but concern the exercise of rights – the right to refuse medical treatment.

It is worth noting that in the USA, citizens may enter into a "Durable Power of Attorney" for no fee on admission to hospital using a two-page application form. The 1991 Patient Self-Determination Act made it mandatory for federal hospitals to offer this option on admission. This is in stark contrast to the lengthy, costly process in the UK.

We already have evidence to show that the present level of fees acts as a deterrent. Our partner organisation Dignity in Dying asked its members about their experience of making an LPA in January 2009. It found that some people look into the possibility of making an LPA but stop as soon as they hear about the costs involved. One member said:

"I've not done a LPA yet, though I'd like to, because of the high cost . . . such costs are a burden and hard to understand."

Increasing the fees will only make the situation worse.

The consultation document justifies the fee increase on the grounds that the OPG has to meet its own costs. However, the document provides no information about the OPG's costs, the ways in which these have changed in recent years, or the scope for cost reductions. Neither, does it take economies of scale into account.

Companies House is a good point of comparison in this regard. Companies

House registers all limited companies in the UK and, to our understanding, effectively funds its work through the fees it charges. The charge from 1 April 2011 to incorporate a new company, even when all documentation is submitted in paper form, is £40 (with lower fees for the simplest cases which can be submitted electronically).

In 2009/10 Companies House incorporated 362,000 new companies - this is only around twice the estimated 166,000 LPA applications expected by the OPG, so the economies of scale should be similar. The OPG should be looking to streamline its operations - for example by promoting LPAs and keeping the cost of applications down in order to increase applications and ultimately reduce costs.

Compassion in Dying believes that it is unjustifiable to charge over three times more to register an LPA than to register a company. We urge the OPG to reassess its costs and bring its registration fees in-line with that of other government agencies, not to increase them.

In addition, we strongly recommend that more is done to raise awareness of the exemption policy to ensure people are not deterred from making an LPA on the grounds of cost. It is vital that the availability of exemption from fees for LPAs is made more prominent on the OPG's publications and the DirectGov website, and that awareness of this possibility is raised.

**Proposal:**

Implementing a new 'Resubmission Fee' of £65 each time an LPA is resubmitted to the OPG within 3 months of it being returned to the Applicant as invalid

**Comments:**

Compassion in Dying takes numerous phone calls each year from people seeking advice on completing LPA forms.

Feedback from these calls supports OPG findings: multiple fees act as a deterrent and often push people needlessly into taking legal advice (at a cost of up to £1000).

Our strong preference is for the abolition of the resubmission fee. Companies House (a comparable organisation – see our first answer) does not charge a resubmission fee at all, and their initial registration fee is a third of the OPG's. However, in the absence of this option, we support a reduction in the resubmission fee, but we believe this should be coupled with other measures, including:

- Simplification of the LPA form.
- Awareness-raising of the available free advice and support to help people understand their legal rights around medical treatment and mental capacity, such as the Compassion in Dying End-of-Life Rights Information Line. The Compassion in Dying information line number should be clearly displayed on the DirectGov website.

**Proposal:**

Discontinuing the production of LPA office copies by the OPG, except in extreme and limited circumstances, and for a £50 fee

**Comments:****Proposal:**

Removing the Application to search the Registers fee

**Comments:****Proposal:**

Replacing Type 1, 2A and 2 supervision fees with a flat fee of £320 and introducing an administration fee of £35 for those in Type 3 requiring the de minimis level of supervision

**Comments:****Proposal:**

Raising the maximum threshold of capital for those cases qualifying for Type 3 supervision from £16,000 to £21,000 over a period of 4 years

**Comments:****Proposal:**

Introducing a new Fee Remissions policy of 50% for those who have a gross income of up to £12,000

**Comments:**

Compassion in Dying is very concerned by these proposals and strongly disputes the Consultation document's assessment of the current situation and the status of LPAs.

The Consultation document states that the OPG will likely receive 166,000 LPA applications in 2010/11. It also states that proposals to change the remissions policy would impact on 27,000 people. Given these figures it seems that people on low incomes are already underrepresented in terms of making LPAs. We are concerned the proposed remissions policy will make the situation worse.

The Consultation document compares an LPA to a passport in arguing for the proposals to reduce remissions, claiming that, like a passport, they are "an exercise of choice". Compassion in Dying disputes this evaluation. An LPA is not like a passport: an LPA enables citizens to exercise their legal rights – the right to refuse unwanted medical interventions. A passport has no comparable function.

Everyone should be able to access this right – finances shouldn't be a barrier to people who want to nominate a trusted person to make health decisions on their behalf. We are very concerned that this may be the effect of the proposals.

**Proposal:**

Allowing the Public Guardian to vary the levels of fees payable in the future, examples of which could be

- a. Implementing a new discounted fee for any LPA applications that are submitted together
- b. Removing or discounting the LPA Registration Fee for Armed Service Personnel

**Comments:**

With regard to point a), Compassion in Dying agrees that the OPG should be able to reduce (but not raise) fees for certain groups in certain circumstances. Furthermore, we agree with the Consultation document's assessment that discounting fees for applications made at the same time might encourage couples and families to make LPAs. As such, we support proposals to offer this as an incentive.

**Proposal:**

Renaming a number of OPG Fees in order to make it clearer what they cover

**Comments:** Compassion in Dying believes that clarification of the application process is to be welcomed and so supports these proposals.

**Thank you for participating in this consultation exercise.**

## About you

Please use this section to tell us about yourself

<b>Full name</b>	<b>Davina Hehir/Anna Boehm</b>
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	<b>Head of Policy and Legal Strategy/Policy Support Officer</b>
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	<b>Compassion in Dying</b>
<b>Address</b>	<b>181 Oxford Street</b>
	<b>London</b>
<b>Postcode</b>	<b>W1D 2JT</b>
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

**If you are a representative of a group**, please tell us the name of the group and give a summary of the people or organisations that you represent.

Compassion in Dying is a national charity that supports people at the end of life to have what they consider to be a good death by providing advice and information around their rights and choices. We are the leading provider of free Advance Decisions in the UK and also conduct and review research around rights and choices in end-of-life care. On 19<sup>th</sup> May we are launching an End-of-Life Rights Information Line. The End-of-Life Rights Information Line will be open from 11am to 3pm, Monday to Friday. The Information Line contact number is 0800 999 2434, and contact email is [info@compassionindying.org.uk](mailto:info@compassionindying.org.uk).