



Ministry
of Justice

Mike Freer MP
Minister for Courts and
Legal Services

Fabian Hamilton MP
House of Commons
London
SW1A 0AA

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11 April 2024

Dear Fabian,

LASTING POWER OF ATTORNEY: MEDICAL ASSESSMENT AND DIGITISATION

I am writing further to your oral question 902199 on Tuesday 26 March about steps we are taking to prevent the potential abuse of Lasting Power of Attorney (LPA) agreements. You asked about a proper medical assessment being carried out before an LPA is activated, and also that the digitisation of LPAs should not lead to families losing their loved one's estate to unscrupulous abusers.

The Mental Capacity Act (MCA) governs how individuals can plan for their future care and welfare through an LPA. It assumes that every adult has capacity to make their own decision unless it is established otherwise. To require a donor to complete a medical assessment before activating their LPA would be contrary to this principle. It would also create financial barriers and hinder access to the service, particularly for vulnerable or marginalised individuals in our society. It is important to strike the right balance between ease of access and the need for suitable safeguards.

An LPA is not created unless the donor has the mental capacity to make it and may not be used prior to registration. For a property and affairs LPA, the donor decides whether their attorney can act immediately upon registration or only once they have lost mental capacity.

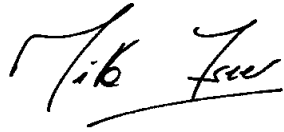
In terms of safeguards, the role of the certificate provider (CP) is to confirm that, at the time the donor signs the LPA, they understand its purpose and the scope of authority it confers, and that no fraud or undue pressure is being used to induce the donor to create it. Further there is a four-week statutory waiting period for objections to be raised and investigated prior to the LPA being registered. Individuals can also raise a concern about an attorney acting under a registered LPA with the Office of the Public Guardian (OPG). OPG will, if appropriate, investigate and determine whether to apply to the Court of Protection to revoke the LPA. While a full capacity assessment is not required to make and register an LPA, protections are provided by other safeguards within the process.

I can assure you that digitisation will not weaken these safeguards – indeed under the modernised LPA the addition of identity checks on the donor and CP and changes to how LPAs are registered and used will further enhance protections. In the future, all LPAs will be registered as electronic documents, and this will create a single record that can be accessed in real time by third parties such as banks. Importantly, this record can be updated to reflect any changes to the power, such as where an attorney is removed from the LPA by the Court of Protection.

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I recognise electronic systems are not accessible for everyone, and for this reason, forms of physical evidence will also be available and the OPG will continue to offer its existing register search service.

I will place a copy of this letter in the Library of the House.

A handwritten signature in black ink, appearing to read "Mike Freer". The signature is written in a cursive style with a horizontal line underneath the name.

MIKE FREER MP

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