



Modernising Lasting Powers of Attorney

October 2021

Introduction

The Older People's Commissioner for Wales has responsibility for protecting and promoting the rights of older people living within Wales. The Commissioner routinely scrutinises those policies and practices, with the potential to impact the lives of older people.

Lasting Powers of Attorney are an important means of safeguarding and upholding the rights of older people; they offer protection to those older people needing help to manage their financial affairs and enable older people to plan for their future care, in ways consistent with their biography and personal preferences. It is clear however, that the Lasting Power of Attorney has not always been used appropriately. This has meant that some older people have been extremely vulnerable to abuse and exploitation.

The Commissioner welcomes the opportunity to respond to the consultation on 'Modernising Lasting Powers of Attorney' (LPA)¹. The following points are made in response to the proposals outlined within the consultation document:

Protecting Older People from Financial Abuse

The increased prevalence rates of illnesses like dementia² (most common amongst older people³), mean that many older people face the often-difficult task of arranging additional help with managing their finances and / or planning for their future care needs.

Assets and finances are critical to the wellbeing of older people because they help to promote independence, provide a sense of security and increase levels of choice over service provision⁴. Whilst a Lasting Power of Attorney is intended to offer donors a level of protection from financial abuse, research shows that the current LPA system has been limited in the extent to which it has achieved this aim⁵.

In discharging her statutory functions, the Commissioner offers direct assistance and support to older people, through her Advice and Assistance Team. The Commissioner's Advice and Assistance team has been contacted by concerned individuals, asking for help in situations where they believe that an attorney is exploiting an older person for financial gain. The recognition of the need to strengthen safeguarding procedures within the consultation is therefore important and welcomed. In particular, the potential to increase the

For further information, please contact:

Andrea Cooper, Safeguarding Lead

03442 640 670 // andrea.cooper@olderpeoplewales.com

investigative role of the Office of the Public Guardian (OPG); the intention to increase the number of potential people notified when a LPA is registered and the plan to revise the system for raising objections.

However, further clarity is needed regarding the potential changes proposed in the consultation to the role of witnesses in executing an LPA. Whilst recognising the current limitations of the witness role in terms of safeguarding, it is concerning that the replacement witness function appears largely dependent upon digital means (a digitalised signature). The document highlights the potential benefits of digitalisation in the LPA process (allowing for automated error checks; increasing efficiency and preventing potential increases in cost) but it is important to appreciate that the numbers of older people in Wales who do not use digital technology are significant. Around 37% of older people (around a quarter of a million people) do not make personal use of the internet; 41% of over 75s do not have internet access and 55% of those older people living alone, are not connected to the internet⁶. It is critical to ensure parity of service for those older people who do not use digital technology and wish to execute LPAs by traditional, paper means. These older people must not be disadvantaged, and equivalent levels of safeguarding must be built into paper application systems.

Improving the Application Process

It can be challenging to manage finances on behalf of another person and research shows that problems sometimes arise not because attorneys engage in intentional financial abuse, but because they may be confused and do not know how best to proceed in making financial decisions on behalf of the donor⁷. A supportive LPA system should help overcome some of these difficulties, through providing attorneys with ongoing advice and support when undertaking their role.

However, the Commissioner's Advice and Assistance team has been contacted by individuals who have found the LPA application process complicated and who are worried that they have not completed the process correctly. It is important that attorneys are not dissuaded from using the LPA system because of its perceived complexity. Good quality information is critical to increasing understanding of the LPA and to ensuring that all of those involved, are fully aware of their roles and responsibilities within the process. As highlighted previously, this information needs to be available in a variety of formats and must not only be available online. In collaboration with the Office of the Public Guardian, the Commissioner has produced an easy guide for older people on applying for a Lasting Power of Attorney⁸.

Decisions around LPA responsibilities must be made carefully, and older people need time to consider their options and to ask relevant questions to inform their decision-making. Making decisions for 'Health and Welfare' LPAs may be especially challenging and might

require in-depth discussions with relevant health and social care professionals. In ensuring that adequate time is made available for the decision-making process, it is important that efforts are made to raise awareness of LPAs (the process, benefits, areas to be considered). The LPA process should be promoted as widely as possible and through a range of channels (radio, newspaper, workshops etc.). As noted within the document, many LPAs are made at a time of crisis, which reduces the time available for the kinds of discussion needed in making robust decisions.

Training for Health and Social Care Professionals

Health and social care professionals have an important role in raising awareness of the LPA process and in identifying situations of financial abuse and exploitation. Whilst the modernisation of the LPA process is intended to ensure that donors are protected from financial abuse, this must be accompanied by relevant training for front-line staff.

This training should have a preventative focus and should therefore consider not only those indicators which suggest that financial abuse has taken place but should also draw attention to the characteristics of situations where the likelihood of financial abuse is increased. Such characteristics include complex family dynamics, lack of communication and planning, and where there is a “sense of entitlement to assets”⁹.

Within this training, participants should be encouraged to reflect upon the potential benefits and importance of the LPA process. When used appropriately, LPAs provide many older people with an important means of retaining choice and control over significant elements of their day-to-day lives. Most older people will have very good reason for their choice of attorney (those with knowledge of their personal history and biography for example, who can then help ensure that care is delivered in personalised and dignified ways). It is concerning therefore, that the Commissioner’s Advice and Assistance team has been contacted by attorneys, who state that their voices as decision-makers have been ignored by professionals within decision-making processes.

It is also important to ensure of course, that the emphasis upon protection within the LPA process does not negate the rights of older people to remain active decision-makers within their own lives for as long as possible. Front-line professionals must encourage attorneys to engage with older people wherever possible, to promote their participation when making decisions about their finances or health and welfare.

Ending the abuse of older people and ensuring that the rights of older people are upheld, are two of the Commissioner’s key priorities. When used appropriately, the Lasting Power of Attorney is fundamental to achieving both objectives. It is hoped that the issues raised within this paper, are helpful in strengthening the safeguarding mechanisms to be included within the future Lasting Power of Attorney process.

¹ UK Government. (2021). Modernising Lasting Powers of Attorney. Available at:

<https://www.gov.uk/government/consultations/modernising-lasting-powers-of-attorney>

² Alzheimer's Society. (2017). Facts and Figures for the Media. Available at: <https://www.alzheimers.org.uk/about-us/news-and-media/facts-media>

³ Welsh Assembly Government. (2011). National Dementia Vision for Wales: Dementia Supportive Communities. Available at: https://socialcare.wales/cms_assets/file-uploads/National-dementia-vision-for-Wales.pdf

⁴ Tilse, C., Wilson, J., Rosenman, L., Morrison, D. and McCawley, A.L. (2011). Managing older people's money: assisted and substitute decision-making in residential aged-care. *Ageing and Society* (31), pp. 93-109.

⁵ Ries, N.M. (2019). Enduring Powers of Attorney and Financial Exploitation of Older People: A Conceptual Analysis and Strategies for Prevention. *Journal of Aging and Social Policy*, pp. 1-18.

⁶ Welsh Government, Office for National Statistics. (2019). National Survey for Wales, 2017- 2018. [data collection]. UK Data Service. SN: 8390, <http://doi.org/10.5255/UKDA-SN-8390-1>

⁷ Langan, J. and Means, R. (1996). Financial management and elderly people with dementia in the UK: As much a question of confusion as abuse? *Ageing and Society* (16), pp. 287-314.

⁸ Older People's Commissioner for Wales. (2020). Lasting Power of Attorney: An Easy Guide for Older People. Available at: https://www.olderpeoplewales.com/Libraries/Uploads/LPA2020_e.sflb.ashx

⁹ Ries, N.M. 2019. Enduring Powers of Attorney and Financial Exploitation of Older People: A Conceptual Analysis and Strategies for Prevention. *Journal of Aging and Social Policy*, pp. 1-18.

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales protects and promotes the rights of older people throughout Wales, scrutinising and influencing a wide range of policy and practice to improve their lives. She provides help and support directly to older people through her Advice and Assistance team and works to empower older people and ensure that their voices are heard and acted upon. The Commissioner's role is underpinned by a set of unique legal powers to support her in reviewing the work of public bodies and holding them to account when necessary.

The Commissioner is taking action to end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner wants Wales to be the best place in the world to grow older.

How to contact the Commissioner:

Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 03442 640 670

Email: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Twitter: [@talkolderpeople](https://twitter.com/talkolderpeople)