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Consultation response

OPG Consultation - Fees 2011/12

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This consultation paper seeks views on nine proposed changes to Office of the Public Guardian (OPG) fees. The OPG describes its fee policy as ‘designed to be fair, equitable and proportionate to the services provided but one which also now needs to reflect the economic climate’. It also makes clear that fee income needs to fully cover OPG costs.

Key points and recommendations

- We strongly contest the characterisation of Lasting Powers of Attorney (LPAs) as analogous to a passport or driving licence. LPAs should be accessible to everyone and no one should be prevented from registering an LPA because of cost.
- We broadly support the proposals for a new ‘Resubmission Fee’.
- We support the proposals to (i) remove the Application to search the Register fee; (ii) raise the maximum threshold of capital for those cases qualifying for Type 3 supervision from £16,000 to £21,000 over a period of four years; and (iii) rename a number of OPG fees in order to make it clearer what they mean.
- We are unsure of the intention of the question regarding allowing the Public Guardian to vary the levels of fees payable in the future. While we support the ability to vary fees in the two examples given, we do not support giving the Public Guardian a blanket right to vary fees.
- We are opposed to the proposal to introduce an administration fee of £35 for those in Type 3 supervision, unless exemption and remission provisions apply.
- We are opposed to the proposals to remove the current exemption and remissions policy and replace it with a 50% remission for those whose income is below £12,000 and full payment by all whose income is above £12,000. This will effectively place powers of attorney beyond the means of those on low incomes who still need the protection they offer.

1. Introduction

We understand that the proposals set out in this consultation are suggested with the aim of ensuring that the OPG is self-funding and that in the current financial conditions hard choices must be made. However we strongly disagree with the concept, contained in section (vii) of the consultation that: “Whilst LPAs/EPAs are important, and have a positive societal impact, they are ultimately, like a passport: an exercise of personal choice”. This approach contrasts with the OPG’s previous efforts to encourage everyone to register an LPA. . Although personal choice is involved, it should be strongly encouraged and enabled, because of important . Benefits to society. An individual who loses capacity without having made an LPA is more likely to require significant state support, for example local authority support to identify an appropriate Deputy and provide interim assistance, or even the appointment of a local authority Deputy. This is a question which needs to be seen in the context of the wider landscape of support and protection for people with limited mental capacity.

2. Response to questions

1. Having read the above proposal to raise the LPA/EPA Application to Register fee from £120 to £130, do you consider this appropriate?

We do not object to the rise for LPAs, however we question whether the reasons provided in the consultation document justify the rise for EPAs, which should cost the OPG significantly less to process than LPAs.

2. Having read the above proposal for a new Resubmission Fee of £65 each time an LPA is resubmitted to the OPG within 3 months of the initial invalid Application being returned to the Applicant, do you consider this new fee appropriate?

We welcome the proposal to introduce a new Resubmission Fee, which could benefit applicants by saving them the cost of an entirely new application. It is also consistent with the OPG's policy that fees should be 'fair, equitable and proportionate'. We assume that the exemption and remissions policies will apply equally to Resubmission Fees. We would also welcome confirmation that the current policy allowing perfection of 'imperfect' applications will continue without a charge and that the Resubmission Fee will not apply to this group.

We would welcome more detail on precisely how the Resubmission procedure will operate.

3. Do you think that the OPG is right to stop providing office copies in order to concentrate on the core parts of its business?

We agree that the OPG should generally avoid producing office copies unless no alternative is available and that the OPG should instead highlight alternative means of getting certified copies. We note that the consultation did not consider the position of people objecting to registration of a power. These applications should be encouraged and there is a real risk that a significant fee for the office copy could discourage people from challenging LPA registrations. We suggest that an exception is made for this group (in the same way as they are currently exempted from the fee for application to the Court of Protection).

We question whether the level of fee is proportionate to the costs involved. If an exemption is not given to those who need copies to make objections then this proposed cost should be re-examined.

4. Having read the above proposal to remove the Application to search the Register fee and replace it with a fair usage policy, do you consider this appropriate?

We agree with this proposal.

5. Having read the above proposal do you believe it is right that P should not have to pay the costs of any investigation into whether they are a victim of fraud and abuse? That this cost should be met from all supervision fees? And that, as a result, a flat fee should apply?

We question whether people in this position are an appropriate cost pool for OPG costs. Fraud and abuse are crimes in the same way as burglary and society does not expect people who are burgled to pool together to pay the cost of the police. We recommend that the Ministry of Justice should consider the funding settlement of the OPG and resource available for investigation and enforcement across the wider safeguarding landscape. Financial abuse is the second most common form of abuse of older people¹ and although, as with all forms of abuse, prevalence is difficult to measure anecdotal evidence suggests that it is a significant problem. The OPG has an important role to play in investigating reported abuse, however it must be supported. Given the current situation in which the OPG must be self-funded, we

¹ King's College, 2007

recognise that there is no ideal solution to fee structures. We welcome the intention expressed in the consultation that over the course of three years each case will have received a level of support and/or intervention from the OPG to justify the annual fixed fee. We are of the view that this should usually require a visit to P, and possibly contact with a third party. It is difficult to see how the visitor can be expected to gain a clear picture of how the deputy is discharging his or her duties without a visit to P or input from third parties at the least.

Do you also consider it appropriate that an administration fee of £35 is introduced for Type 3 supervision cases in order that this work is not subsidised from other Supervision fees?

We do not consider it appropriate to introduce an administration fee for Type 3 supervision cases, unless it is possible to apply the remissions and exemption policy. Although the sum proposed may seem small it will not be insignificant to P if they are dependent on means tested benefits. We do not see that avoidance of cross subsidy for Type 3 cases is a sufficient reason for introducing a fee with no exemptions or remissions. If introducing a fee is unavoidable, we think it is essential to apply an exemptions policy and the fee should be set at a sufficient level to allow this.

6. Do you believe that it is right to raise the financial threshold for cases qualifying for Type 3 supervision from £16,000 to £21,000 over a period of 4 years?

We agree with this proposal.

7. Having read the above proposal for the removal of all current partial remissions and the introduction of a 50% remission for those whose have a gross income of up to £12,000, and the removal of all remissions for incomes above this level, do you consider this appropriate in the current financial situation?

Whilst we understand the constraints that the OPG is working within, we do not support this proposal. It would be useful to understand the pattern of claims for current exemptions granted by the OPG and also when the OPG chooses to exercise its discretionary fee waiver. It would also be interesting to understand how many of the 22,000 customers who received a full exemption last year would still have made their application if they were required to pay 50% of the fee. There is also a question of how capital (other than that represented by the primary residence) affects this pattern. In reality many people on low incomes will need to save up or borrow to fund registration of an LPA and for those on an income of £12,000 or less saving even sixty-five pounds can take considerable time and is unlikely to be a top priority. This change would make the OPG's goal of encouraging LPA registration amongst all parts of the population significantly more difficult. It is also likely to mean that individuals on low incomes with little or no savings could end up needing a more expensive and stressful deputy appointment. It is unfair that some people will not be able to protect themselves in a very vulnerable situation because of poverty. [

8. Having read the above proposal and the two examples (though the exercise of the power may not be limited to these examples), do you consider making full use of the power to allow the Public Guardian to vary the levels of fees payable appropriate?

It is unclear whether the consultation question proposes an extension of the OPG's powers or not. The OPG does not currently have the power to vary fees without formal amendment to the Public Guardian (Fees etc.) Regulations 2007. We would not support any extension which would allow the OPG to vary fees without Parliamentary scrutiny and proper consultation and cost benefit analysis.

This remains true even if amendments were to allow the OPG to reduce fees only, as the examples given suggest. We would tend to support the two examples given, however we note that in the context of the current system of a self-funding OPG these changes will effectively raise the cost to other groups. This means that the power to decrease costs to one group should be recognised as the power to increase costs for the other groups.

If the consultation question is not proposing increase to the OPG powers, then we would support the changes to fees for joint submissions and for Armed Service personnel, however we recognise that these must be weighed against the need for a viable remissions policy.

9. Having read the above do you agree that the OPG should rename these fees?

We agree with this proposal.

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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.
