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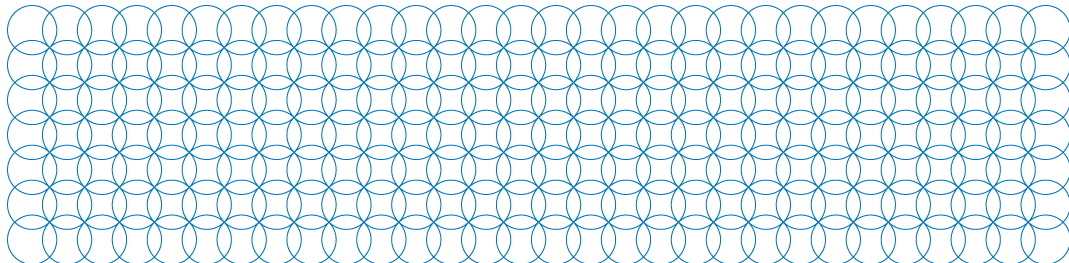
# **Office of the Public Guardian – fees 2011/2012**

**Consultation Paper**

**CP 16/10**

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## **Office of the Public Guardian – Fees 2011/2012**

**A consultation produced by the Office of the Public Guardian, an executive agency of the Ministry of Justice.**

**This information is also available on the Office of the Public Guardian website: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)**

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## Executive summary

The Mental Capacity Act 2005 (“MCA 2005”) provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act created the Public Guardian to ensure that those appointed to take decisions on behalf of those who lack capacity discharge their duties properly, without abuse, and act in the best interests of the person without capacity. The Public Guardian does this through the Office of the Public Guardian (OPG), by registering Lasting Powers of Attorneys (LPA) and Enduring Powers of Attorneys (EPA), supervising Deputies appointed by the Court of Protection (the Court), and investigating the ways Attorneys and Deputies exercise their powers.

The Court of Protection and the Office of the Public Guardian started their new roles on 1 October 2007, bringing into practice the additional safeguards and protection afforded to vulnerable people by the Act.

The OPG fee policy is designed to be fair, equitable and proportionate to the services being provided but one which also now needs to reflect the economic climate in which we find ourselves. This paper contains 9 proposed changes listed below, which will ensure that the fee structure remains both fair and equitable whilst fully covering OPG costs. We intend to implement changes to fees on 1 July 2011 and are now seeking your views.

- Raising the LPA Application to Register fee from £120 to £130
- 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
- Discontinuing the production of LPA office copies by the OPG, except in extreme and limited circumstances, and for a £50 fee.
- Removing the Application to search the Registers fee
- 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
- 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
- Introducing a new Fee Remissions policy of 50% for those who have a gross income of up to £12,000
- 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
- Renaming a number of OPG Fees in order to make it clearer what they cover.

## Introduction

The MCA 2005 came fully into force on 1 October 2007 and marked an important step in reforming the law relating to decision-making for people who may lack capacity. For the first time, it enshrined in legislation the principles that a person must be assumed to have mental capacity unless it is established that he lacks capacity to make the decision(s) in question; that any act done under the MCA 2005, or decision made on behalf of the person, is to be made in his best interests; but, before the act is done, or the decision is made, consideration must be given to doing/making it in a way that is less restrictive of the person's rights and freedoms. Importantly, the MCA 2005 defines decision-making capacity as the capacity to make a particular decision at the time it needs to be made. No longer does the law define people as 'capable' and 'incapable'. Instead there is recognition that many people, who may lack the capacity to make some decisions could well be able to make many other decisions for themselves. Where a decision does need to be taken on a person's behalf the law is clear that the decision must be in their best interests and be as least restrictive of their rights and freedom as possible.

As well as empowering and protecting people who may lack capacity, the MCA 2005 provides a number of options for people who wish to plan ahead for the future. It provides for people to be able to make a LPA to give someone the authority to make decisions relating to either their property and affairs or their personal welfare, were they to lack capacity to make those decisions in the future.

The MCA 2005 created the Public Guardian, supported by the OPG. Its purpose is: registration of LPAs, the supervision of, and maintaining a register of, Deputies appointed by the Court, and the investigation of any concerns raised relating to either an Attorney or Deputy's conduct.

A huge range of people and organisations campaigned for these provisions. Adults who may lack capacity can be extremely vulnerable to abuse, fraud or other mistreatment. They may also be at risk of having their decisions frustrated or overruled or being denied the support necessary for them to participate in decision making processes put in place on their behalf.

In October 2008 the OPG as part of its review of the implementation of the MCA published the consultation paper 'Reviewing the MCA: forms, supervision and fees'. This addressed the redesign of LPA forms, introduced a fourth tier of Supervision and reduced some fees.

In December 2009 the Consultation paper 'Amendments to secondary legislation' was published which addressed the subordinate legislation made under the MCA 2005, policy, forms and guidance and updated it where necessary to maintain and improve the service offered

With these changes now implemented, we need to ensure that OPG continues to remain fair and cost effective for its users, especially now in a challenging financial environment. We are seeking views from as many of our customers and stakeholders as possible on the way forward in relation to fees.

Given the current financial situation and the increasing workload (with estimated application numbers at over 166,000 this year, up on 126,000 last year), we need to look at the funding model for the OPG and the way in which we organise the business. The OPG needs to be in a position where it is truly 100% fee funded and able to cover all aspects of business from its fee revenue. This consultation is the first step in that process and it means some hard decisions have to be made in relation to fees, and it is on these that we are consulting.

We believe that the overall package of measures is the fairest and most equitable set of fees to ensure that the OPG can fund its business moving forward and to continue to offer a timely service to our customers.

## **Consultation process**

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code.

Copies of the consultation paper are being sent to a wide range of groups and individuals with whom we have worked or we know have an interest in these issues. A list of key stakeholders who were sent copies is included at Annex C.

However, this list is not exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the proposals.

An Impact Assessment for the proposals outlined in this consultation has been completed and is included at Annex A.



## **Consultation: OPG Fees**

### **1. Introduction**

This section sets out for consultation the proposed changes to the Public Guardian Fees Regulations 2007 (SI 2007/2051) and any consequent amendments where necessary, to the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, (SI 2007/1253) as amended (“the 2007 Regulations”).

### **2. Current OPG Fee Policy**

The OPG fee policy establishes a fair and equitable regime that is proportionate to the services provided to the customer. Fees are set at a level to recover 100% of OPG costs and currently operate a remission and exemption scheme.

#### **(i) Enduring Power of Attorney**

This is a £120 fee payable on making an application to register the EPA. No refund is available if either the Donor or Attorney die before registration is complete, neither is any refund due on premature registration. This fee is payable by the person seeking to register the EPA and can be claimed back from the Donor’s funds.

#### **(ii) Lasting Power of Attorney**

This is a £120 fee payable on making an application to register an LPA. A separate registration fee is payable for a Property and Affairs LPA and a Personal Welfare LPA when each application for registration is made. No refund is available if either the Donor or Attorney die before registration is complete, nor is any refund available should the application be invalid or imperfect. This fee is payable by the person seeking to register the LPA and can be claimed back from the Donor’s funds.

#### **(iii) EPA/LPA Office Copies**

This is a £25 fee for the production of additional Office Copies of a registered EPA or LPA. Although the OPG does not normally produce copies of registered EPAs or LPAs and certified copies of these can be obtained from solicitors, on occasions where there is no alternative, the Public Guardian will exceptionally make a copy.

#### **(iv) Appointment of Deputy Fee**

This is a one-off fee of £100 for carrying out a risk assessment to determine the appropriate Deputy supervision regime and for placing the Deputy's details on a register. This fee is payable by the person for whom the Deputy was appointed. No refund is given should either the Deputy or the person who lacks capacity dies.

#### **(v) Deputy Supervision Fees**

There are currently four levels of supervision with each attracting a different fee which is payable annually in arrears on 31 March.

- Type 1: £800
- Type 2A: £350
- Type 2: £175
- Type 3: Nil

Each case is reviewed regularly and the type of supervision allocated may change with circumstance.

Supervision fees are to be calculated on a pro-rata basis if:

- There has been more than one type of supervision applied in a one year period; or
- Supervision has been in place for less than one year

Details of pro-rata calculations are shown on the invoice sent to the Deputy.

If the person who lacks capacity dies, fees are payable up to the date of death. If the Deputy dies, supervision fees are payable up to their date of death and new fee arrangements will be made in relation to a replacement Deputy.

#### **(vi) Application to Search the Registers Fee**

This is a fee of £25 payable on application. It covers a search of the three OPG registers: LPAs, EPAs and Court Orders appointing Deputies.

It is payable by the person making the application. No refund is due on death of the person making the application or the person on whom the search is being carried out.

## **(vii) Exemptions and Remissions**

### **Exemptions**

Fee exemptions are granted, on any fee, if the applicant is in receipt of any of the following means tested benefits and has not been awarded damages of more than £16,000 that were disregarded when determining eligibility for the benefit:

Income support

Income based Employment and Support Allowance

Income based Job-Seekers Allowance

A combination of Working Tax Credit and either Child Tax Credit, Disability Element, or severe Disability Element

State Pension Guarantee Credit; or

Housing/Council Tax Benefit (excluding the 25% single person deduction)

### **Remissions**

Eligibility for a remission is based on income as follows;

If the applicant's gross\* income is within the bands shown in Table 1:

Income	Percentage of fee remitted
<b>Up to £12,000</b>	<b>No fee to pay</b>
<b>£12,001 to £13,000</b>	<b>75% remission</b>
<b>£13,001 to £14,500</b>	<b>50% remission</b>
<b>£14,501 to £16,000</b>	<b>25% remission</b>

<b>Over £16,000</b>	<b>Not entitled to fee remission</b>

\*Gross income is the amount received before tax and National Insurance are paid. It includes all state benefits and may come from employment, non means-tested benefits, pensions and/or interest from capital investments.

Any application for a fee remission must be must be raised within 6 months from the date an invoice is raised.

### 3. Consultation proposals

This paper looks at 9 proposals for change. These are:

- Raising the LPA/EPA Application to Register fee from £120 to £130
- 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
- Discontinuing the production of LPA office copies by the OPG, except in extreme and limited circumstances and for a £50 fee
- Removing the Application to search the Registers fee
- 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
- 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
- Introducing a new Fee Remissions policy of 50% for those who have a gross income of £12,000 or less
- 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 reducing the LPA Registration Fee for Armed Service Personnel
- Renaming a number of OPG Fees in order to make it clearer what they cover

## **4. Proposals**

### **(i) Raising the LPA Application to Register fee from £120 to £130**

#### **Current situation**

This is a £120 fee payable on making an application to register an LPA or an EPA. A separate registration fee is payable for a Property and Financial Affairs LPA and a Health and Welfare LPA when each application for registration is made. This fee is payable by the person seeking to register the LPA or EPA and can be claimed back from the Donor's funds where they are not the applicant for registration.

#### **Issue**

The LPA Application to Register fee was reduced from £150 to £120 in April 2009 and has not been raised since then. The EPA Application to Register fee has been at £120 since the MCA came into force in October 2007.

Due to continued high demand (with over 166,000 applications likely in 2010) and the resultant need to upgrade infrastructure, the current fee will not generate enough income to cover the OPG's business costs moving forward.

#### **Solution**

In order that the OPG's business costs are recovered in full, LPA and EPA fees need to be set at a level that is both cost recoverable and will support any upgrades and developments in systems, processes and capacity. As the vast majority of OPG work is LPA or EPA related (with the LPA/EPA dedicated MERIS system accounting for 90% of current IT costs), it is only right that the majority of the future IT costs should be found from LPA/EPA fees, rather than from fees for OPG supervision of deputies.

It is proposed that the LPA and EPA Application to Register fees are raised from £120 to £130. This will ensure that the OPG can meet future LPA demand whilst still maintaining a fee level lower than the original £150 put in place when LPAs were first implemented in October 2007. It also means that this is the first rise in the cost of registering an EPA in 4 years.

#### **Question**

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

**(ii) 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**

**Current Situation**

LPAs are checked for validity prior to registration by the OPG Applications and Processing Team.

If an application is deemed to be 'Imperfect', it can normally be rectified by a resubmission of new documentation by the applicant.

Invalid applications are those which cannot be put right in this way and require the completion of a new instrument to remedy the situation. Examples of such errors are:

- Are the "notifiable persons" details the same as any indicated "attorney" or "replacement attorney"?
- Is the "Donor's" signature witnessed and dated
- Are there "persons notified" of the application, and if not, are there two "certificate providers" instead?

Another factor that would invalidate an LPA is an inoperable clause where the donor has inserted a clause into the application that contradicts itself or the nature of the instrument and is therefore unworkable in practice. This clause may be able to be severed from the instrument as part of the application process but if the person registering does not agree to this then it will be deemed invalid.

If any application is deemed to be invalid, it will be returned to the applicant who will be notified as such. The registration fee cannot be refunded as work will have already taken place in checking and processing of the application. Should the applicant wish to submit a new application, the process would effectively begin again and the whole Registration Fee would be applicable for every fresh application.

**Issue**

The OPG have received user feedback indicating that it is wrong to charge a whole new fee and that fear of having to pay multiple times in order to get an LPA registered is putting people off. The OPG needs to cover the costs of undertaking this work, in relation to the original and any subsequent application, in a way that is fair to all.

## **Solution**

It is proposed to introduce a resubmission fee of £65 each time an LPA is resubmitted to the OPG within 3 months of the invalid Application being sent back to the Applicant. This will involve having to return a replacement instrument with a pro-forma sheet, allowing the OPG to rely on recorded information from the original application and identify the documents as a resubmission.

This will benefit around 7000 customers each year (based on the current number of LPAs being received for registration) and has the potential for encouraging more people to submit an LPA for registration or have the confidence to do so without the need for legal advice.

## **Question**

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?



**(iii) Discontinuing the production of LPA office copies by the OPG except in exceptional and limited circumstances, for a £50 fee**

**Current situation**

At the moment, as part of the LPA application to register process, the applicant can request 2 free office copies of the registered LPA should they be required. Further copies are available for a fee of £25 each.

**Issue**

Under The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 Part 2,11(3)(a), the Donor already has the power to make his own certified copies of the LPA (by copying it himself once it has been registered and certifying on each page that it is a true reflection of the instrument).

If the instrument is registered by the Attorney or the Donor lost capacity without making certified copies of the original, Attorneys can obtain these from a high street solicitor or others as provided for by section 3(1)(b), Powers of Attorney Act 1971.

The production of office copies is not core to the business of the OPG and removes resources disproportionately to the current fee from more important areas such as the processing and registration of LPAs.

**Solution**

As Donors are already able to make their own certified copies for as long as they still have capacity to do so, and Attorneys can obtain certified copies by other means, the OPG intend to discontinue the production of office copies. As part of this, there will be improved information to highlight alternative means of getting certified copies.

In cases where a registered LPA is lost and there would be no other alternative than for the Attorney applying to the CoP to act as a Deputy, we will reserve the right to produce an office copy upon request for a fee of £50. There will be no remission or exemption available on this fee. This has been set at this level to accurately reflect the cost involved in the bespoke production of a certified copy, including the on-cost from the redirection of resource from other areas of the business.

Should the loss of the original LPA be due to the fault of the OPG however, the Public Guardian will of course provide an appropriate office copies without charge.

**Question**

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?

## **(iv) Removing the Application to search the Registers fee**

### **Current situation**

This is a fee of £25 payable on application which covers a search of the three OPG registers: LPAs, EPAs and Court Orders appointing Deputies. It is payable by the person making the application and is non refundable. Public Authorities are currently exempt from payment of this fee.

### **Issue**

The administration and collection of a fee for this activity typically involves more resource than the fee covers (especially when exemptions and remission are taken into account). On top of this, a majority of the searches are currently exempt from the fee as they are from Public Authorities. It is therefore necessary to try and undertake this work in a more cost effective manner.

### **Solution**

It is proposed that the Application to Search the Register fee is removed and a fair usage policy is put in its place. Public Authority needs will be reflected in any fair usage policy as it is a necessary part of the work they undertake to know whether an LPA or EPA or Court Order is in place. We will also be looking to see if there are others whose specific needs will need to be reflected in this policy, such as Health Authorities or Trusts.

As well as providing a benefit to customers, this will also allow resource currently involved in the administration of this fee to be refocused. Furthermore, this approach is consistent with the Government's transparency priorities and marks an early step towards continuing to improve the appropriate accessibility of this important information.

### **Question**

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?

**(v) 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**

**Current situation**

There are currently 4 different supervision levels. Of those, Type 1, 2a, and 2 attract fees (£800, £350 and £175) whilst Type 3 does not.

**Issue**

Type 1 and 2 fees have not changed since their introduction in October 2007, nor has the Type 2A supervision level (and fee) that were implemented in April 2009 and its impact has been assessed over time. Type 3 cases have not incurred any fee at all since being introduced in October 2007.

The current charges no longer cover the cost of the work involved and cannot continue at the current levels. There is the major issue that currently those cases that require extra work or an investigation into the Deputy attract the highest fee. This has led to the situation where if the OPG carries out an investigation into a Deputy it is P, the very person the investigation function is there to protect, who ends up paying for the work. So the situation currently is that the OPG charges P to investigate whether they are being subjected to fraud or abuse. This is not a fair situation or one that should continue. The rationale for the funding of investigations of Attorneys is different, in that each LPA/EPA fee has an element that goes towards the cost of investigations.

All cases do not necessarily stay within a single tier for the whole of the financial year, there is some movement between tiers. In that case, fees have to be charged pro-rata for the time in each tier, causing confusion for the Deputy and increased administration for the OPG.

**Solution**

In order to maintain cost recovery levels and offer a simpler approach where all contribute towards the investigation function, the fee structure requires streamlining and the fees charging.

It is proposed to implement a single supervision fee of £320 which will be payable annually for all cases currently in Types 1, 2A and 2.

This fee does not mean that all cases will be treated in the same way however, as each aspect of supervision will be applied as and when necessary, in line with published key performance indicators, over the course of 3 years each case will have received a level of support and/or intervention from the OPG to justify the fixed annual fee.

This will include the majority, if not all, of the following:

- A visit from a Court of Protection Visitor, usually to the Deputy but sometimes to P or a third party, to discuss the management of the case
- A detailed review of the annual report supplied to the OPG by the Deputy
- A formal telephone interview
- Contact by letter to ensure circumstances have not changed materially
- Access to advice through the OPG contact centre and/or casework teams.

This fee is therefore justified, particularly when it is remembered that part of that fee is paid towards the overall cost of investigations, in order that that individuals are not charged for the cost of an investigation into whether or not they are the victims of abuse. This will be consistent with the approach for LPA and EPA investigations and ensures that any extra cost involved in investigation work is covered by all who have access to and who might need the service now or in the future.

Currently all Personal Welfare Deputies are placed in Type 2 supervision, even though in some cases they require more or less supervision than is currently provided for by the fee for Type 2 cases. The introduction of a flat fee will mean that Personal Welfare Deputies are treated the same as Property and Affairs Deputies.

The immediate benefit of this change will be felt by over 7,500 of customers who currently pay a higher annual fee than the proposed £320 with potential benefits also likely for many more whose case may require a higher level of supervision in the future. We realise that the increased fee will impact Type 2 deputies (over 20,000) where the increase in fee will be most significant but removal of inequity in the system and ensuring the same basic rationale for all fees is important to the OPG. The majority of new Deputies are assigned to Type 2a so for the first year they will be paying a lower fee.

To cover the cost of administering and maintaining those cases in Type 3 in line with responsibilities under the UN Convention on the Rights of Persons with Disabilities, it is proposed to introduce an annual fee of £35 to which there will be no exemption or remission available. The administrative overhead that would need to be put in place to deliver an exemption or remission policy would mean the fee would need to rise to some £50 to recover costs.

The OPG recognises that this will have a negative impact on around 6,700 customers but this is why significant effort has been made in keeping this fee as low as possible in terms of cost recovery.

### **Question**

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?

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?

**(vi) 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**

**Current situation**

There are currently around 6,700 cases currently subject to Type 3 supervision. All cases below a financial threshold of £16,000 normally fall into this supervision category upon the initial assessment of the case (except in exceptional circumstances).

**Issue**

The current Type 3 Supervision is reflective of the low asset levels of £16,000 or below. This asset level has not changed since the implementation of the Mental Capacity Act in October 2007 and taking inflation into account is worth less today in real terms than in 2007.

**Solution**

It is proposed to raise the financial threshold for cases requiring Type 3 level of supervision from £16,000 to £21,000 over a period of 4 years.

As the threshold level rises, it is projected that over the course of this 4 year period, around 20% (5,550) of cases currently in Type 2 will qualify for Type 3 supervision and therefore pay only the proposed £35 administration fee. It will be the responsibility of the Deputy however, to inform the OPG if the proposed changes to the threshold level mean that they need to apply for a change in supervision level.

**Question**

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?

**(vii) Introducing a new Fee Remissions policy of 50% for those whose have a gross income of up to £12,000 and the removal of all other remissions.**

## **Current situation**

Eligibility for a remission is based on income and is outlined on page 9.

Any application for a fee remission must be raised within 6 months from the date an invoice is raised in the case of Supervision fees or should be claimed at the point of application to register for an LPA/EPA.

## **Issue**

In the current financial conditions it is hard to justify continuing with the current remissions policy. Whilst LPAs/EPAs are important, and have a positive societal impact, they are ultimately, like a passport: an exercise of choice. A reduction in remissions given (and the flexibility to consider covering these remissions from fee income, along with exemptions) would mean that taxpayer funds can be directed to remissions and exemptions in respect of fees directly in the public interest – such as access to the Court system.

The OPG is different from many Government providers of services that are an exercise of choice in that there is a remissions or exemptions policy. This is not the case with passports and driving licences where there is a flat fee that is payable with no exemptions or remissions.

In the case of Deputies, it is not the same position, with the fees having to be paid once a Deputy has been appointed and the appointment of a Deputy not being a matter of choice. However, even taking that into account, the current economic climate and the need to start working towards being completely 100% fully fee funded means that the same issues arise. Avoidance of Deputy fees in the majority of cases is possible by planning in advance and making an LPA.

## **Solution**

The OPG fee remission policy has always been discretionary. With the current economic climate that is now unsustainable. If it was to remain the same, and at some point in the future remissions were to be covered by fee income, it means that all the fees would need to be increased still further than those proposed in this document. As a result, it is proposed that the policy be changed to remove partial remissions and offer a 50% remission for those who have a gross income of up to £12,000 and who would previously have received a remission of 100%.

On current figures over the last year, this will impact on 27,000 customers (both for LPA/EPAs and Deputies). Around 5000 of these will lose their entitlement to a partial remission and approximately 22,000 will continue receive a remission albeit reduced from 100% to 50%.

The idea of removing all remissions has been explored as part of the background work for this proposal but a decision was made to keep a remission for those with an income up to £12,000 as being the fairest way of moving forward in the current financial circumstances without overburdening other fee payers or the taxpayer more generally.

The proposed change to the fee remission structure will also remove some delays from the LPA registration process that occur currently whilst the OPG are determining whether a remission application is correct.

### **Question**

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?

### **(viii) Allowing the Public Guardian to vary the levels of fees payable in the future**

The Mental Capacity Act 2005, 58(4)(b), provides the power to make regulations so that the Public Guardian can vary the level of fees payable for OPG services.

Actively making use of this power would enable him to vary the level of fees payable by different groups when registering LPAs. This is not a new power, but rather the exercise of an existing one. Some examples of where this power could be used are given below but these are for illustration only and are not an exhaustive list.

#### **(a) Implementing a new discounted fee for LPA applications that are submitted together**

In Consultation CP(R) 12/09 Amendments to secondary legislation, the OPG asked whether a degree of flexibility around LPA application fees should be introduced so the Public Guardian could offer discounts when more than one LPA Application to Register is received at the same time. Feedback saw 58% of respondents agree that this would be a welcome change and potentially encourage couples and families to make LPAs if there was a cost saving involved in registering them together.

#### **(b) Removing or reducing the LPA Registration Fee for Armed Service Personnel**

In its discussions with the Ministry of Defence (MoD) on how members of the Armed Services could be encouraged to make LPAs, the advice given has been that as there is a charge for LPA applications, their completion cannot be made compulsory and the potential benefits can only be recommended.

If the Public Guardian were to use the power to vary the fee payable in this case, he could remove or reduce the £120 Registration Fee for Armed Service personnel, which would allow LPAs to become part of routine pre-deployment.

### **Question**

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?



## **(ix) Renaming a number of OPG Fees in order to make it clearer what they cover**

### **Current situation**

There is currently a one-off fee of £100 called the Appointment of Deputy Fee for carrying out a risk assessment to determine the appropriate Deputy supervision regime and for placing the Deputy's details on a register. The main LPA/EPA fee is currently called the LPA/EPA Registration Fee.

### **Issue**

The Appointment of Deputy fee is often confused with the Court of Protection fee of the same name (which costs £400) with Deputies and others sending the wrong level of remittance to the wrong organisation. The LPA/EPA Registration fee leads some people to believe that this should only be paid on registration whereas it is, in fact, an Application to Register fee.

### **Solution**

It is proposed to rename the "Appointment of Deputy Fee" as the 'Deputy Assessment Fee' which will avoid any confusion with the Court of Protection and accurately reflects the nature of the work involved. The LPA/EPA Registration Fee will be changed to the "LPA/EPA Application to Register Fee".

### **Question**

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

## Next Steps

This consultation is due to end on 21 May 2011, after which there will be a period of analysis before a formal response is issued and any necessary changes made to our practices and procedures.

Any changes to fees will require changes to secondary legislation that sets out the fees chargeable by the OPG.

It is our intention to lay a new statutory instrument in June 2011 to amend the OPG fees, enabling any changes to the supervisory regime and the OPG fees to be implemented by 1<sup>st</sup> July 2011.

## About you

Please use this section to tell us about yourself

<b>Full name</b>	
<b>Job title</b> or capacity in which you are responding to this consultation exercise (e.g. member of the public).	
<b>Date</b>	
<b>Company name/organisation</b> (if applicable):	
<b>Address</b>	
<b>Postcode</b>	

**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.

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## Contact details / How to respond

Please send your response by 21 May 2011 to:

**David O'Shea**  
**Customers & Policy**  
**Office of the Public Guardian**  
**PO BOX 15118**  
**Birmingham**  
**B16 6GX**

**Tel: 020 7664 7235**  
**Fax: 020 7664 7165**  
**Email: David.Oshea@publicguardian.gsi.gov.uk**

### Extra copies

Further copies of this consultation are available on line

[www.justice.gov.uk/publications/consultations.htm](http://www.justice.gov.uk/publications/consultations.htm)

Alternative format versions of this publication are available on request from the above contact details.

### Publication of response

A paper summarising the responses to this consultation will be published within three months of the close of the consultation. The response will be available on-line at <http://www.justice.gov.uk/index.htm>.

### Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view

of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## **The consultation criteria**

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

## **Consultation Co-ordinator contact details**

If you have any complaints or comments about the consultation process rather than about the topic covered by this paper, you should contact Sheila Morson, Ministry of Justice Consultation Co-ordinator on 020 3334 4498 or email her at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:

**Sheila Morson  
Legal Policy Team  
Ministry of Justice  
6th Floor  
102 Petty France  
London  
SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper.

**ANNEX A – Impact Assessment**

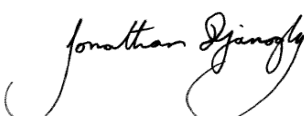
<b>1Title:</b> <b>Increasing Fees</b> <b>Lead department or agency:</b> Office of the Public Guardian <b>Other departments or agencies:</b>	<b>Impact Assessment</b>
	<b>IA No:</b> MoJ50
	<b>Date:</b> 06/12/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> David O'Shea David.Oshea@publicguardian.gsi.gov.uk

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> The Office of the Public Guardian (OPG) operating costs are currently partly subsidised by the taxpayer. Moving forward the OPG needs to ensure that its operational costs are fully fee funded and this is the first step in that process. In addition fee remissions might currently be too generous and fee structures might not be allocating costs fairly. Government intervention is needed to reform the fee framework, including the remissions policy. A number of the fees have not changed since they were introduced in 2007.	
<b>What are the policy objectives and the intended effects?</b> The policy objectives are (i) to increase OPG fees so that they recover future OPG operating costs (including future investment) (ii) to reform the remissions policy and cut back total remissions, and (iii) to establish a simplified and reformed fee structure. The fee structure should minimise the potential for inequities arising in relation to the allocation of the costs of investigative work into the potential abuse of powers. The reforms should ensure that the funding mechanism for such investigative work for Deputies is the same as that currently in operation for Attorneys.	
<b>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</b> Option 0: Do nothing - Leave fees and the remissions policy unchanged.  Option 1: There are three elements to this Option. <ul style="list-style-type: none"> <li>- Increase fees to fully recover OPG costs (minus the current MoJ taxpayer subsidies).</li> <li>- Reduce the total value of remissions by removing partial remissions for those with income above £12,000 and by reducing remissions by 50% for those with income below £12,000.</li> <li>- Reform the supervision fee structure including to change the extent to which those on the receiving end of fraud or abuse pay the costs of an investigation into this matter.</li> </ul>	
<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	04/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible: ...  ..... Date: 6 December 2010.....



## Summary: Analysis and Evidence Policy Option 1

**Description:** Raise the fees, alter the fees structure for supervision and amend the remissions and exemptions policy

Price Base Year 2010	PV Base Year 2010	Time Period Years 4	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	minimal		£11.3m		<b>£11.3m</b>
<p><b>Description and scale of key monetised costs by 'main affected groups'</b></p> <p>OPG customers would pay £5.7m more in fees to the OPG in 2011/12 to 2014/15            OPG Customers would on average receive £3.1m less per year in fee remissions from 2011/12 to 2014/15. This constitutes a reduction in transfer payments received.            The OPG would on average spend £2.5m more per year on increased investment from 2011/12 to 2014/15. This would include the provision of a new computer system which would result in speedier and more efficient processing for those seeking to register an LPA and reduce processing times.</p>					
<p><b>Other key non-monetised costs by 'main affected groups'</b></p> <p>Individual types of OPG customer may incur relatively higher increases in fees as a result of the fee restructuring. There may be distributional effects from the changes to the remissions policy            There may be some small intangible costs related to OPG staff familiarising themselves with the new fees and remissions policy.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	N/A		£8.8m		<b>£8.8m</b>
<p><b>Description and scale of key monetised benefits by 'main affected groups'</b></p> <p>The OPG would on average receive £5.7m more fee income per year from 2011/12 to 2014/15. OPG financial reserves would only increase if this money was not spent on the cost of investment and increased operating costs. If at any time there is a risk of this, the fee regime will be looked at in order to balance costs and expenditure and prevent any build up of surplus.            General taxpayers (via the MoJ) would on average pay £3.1m less in fee remissions per year from 2011/12 to 2014/15. This constitutes a reduction in transfer payments made.</p>					
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>Individual types of OPG customer may incur relatively lower increases in fees as a result of the fee restructuring. There may be equity and fairness effects from reducing the taxpayer subsidy for remissions.            Service quality should avoid deteriorating as a result of increased OPG investment.            Future OPG fees might fall as a result of increased OPG investment.            There may be equity and fairness effects from the revised fee structure, especially in relation to the allocation of investigative costs between different types of OPG customer.            There may be benefits from a simplified fee structure for supervision.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b> 3.5%

For illustrative purposes, if there were a 5% reduction in the number of OPG customers as a result of the fee increases then fee income would be reduced by an average of £1.5m per year over the four year period. We assume that the changes in the remissions policy will not significantly impact on uptake of services, as those who currently receive a 100% remission will receive a 50% remission. There is the risk that the changes in the supervision fees lead more people to register LPAs. There is the risk of OPG fee rises and restructuring leading to OPG customers making use of more informal arrangements Instead.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>	<b>In scope</b>
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: 0	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			01/07/2011		
Which organisation(s) will enforce the policy?			OPG		
What is the annual change in enforcement cost (£m)?			minimal/negligible		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes/No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/Q	Non-traded: N/Q	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/Q	< 20 N/Q	Small N/Q	Medium N/Q	Large N/Q
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes/No	Annex
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes/No	16
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes/No	16
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	Yes/No	16

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	Yes/No	16
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	Yes/No	16
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes/No	16
Justice system <a href="#">Justice Impact Test guidance</a>	Yes/No	16
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	Yes/No	16
<b>Sustainable development</b>		
<a href="#">Sustainable Development Impact Test guidance</a>	Yes/No	16

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
2	Office of the Public Guardian – fees 2011/2012: CP 16/10
3	
4	
5	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section

## Evidence Base (for summary sheets)

### Introduction

1. This Impact Assessment examines the options for increasing the fees charged by the OPG, reforming fee structures, and reducing total fee remissions. These policies aim to ensure that the OPG is progressively and fully fee-funded, and aim to establish a simplified and reformed fee structure. The fee structure within the OPG needs to meet the full costs of the service (minus a taxpayer subsidy towards remissions and exemptions) while minimising the potential for inequities arising from the investigative work involved in determining whether or not powers and authorities are subject to abuse. The reforms should ensure that the funding mechanism for investigative work for Deputies is the same as that currently in operation for Attorneys. The reforms also aim to reduce the total amount of remissions paid.
2. The OPG currently offers three main services: Lasting Powers of Attorney (LPA)/Enduring Powers of Attorney (EPA) registration (LPAs were introduced in October 2007 to replace EPAs); the supervision of Court-appointed Deputies; and the investigation of allegations of abuse by attorneys or Deputies. Fees are charged for LPA/EPA registration, for supervision and for some ancillary functions such as searching the register of EPAs/LPAs/Deputyships and for office copies.
3. **Lasting Powers of Attorney (LPAs)/Enduring Powers of Attorney (EPAs):** In order to use an LPA (or an EPA once the Donor has lost capacity) the instrument needs to be registered with the OPG and for that a fee is charged. This is currently £120, and was last changed in April 2009.
4. **Supervision of Court Appointed Deputies:** The OPG is responsible for the supervision of Court Appointed Deputies for which a fee is payable (from the estate of the person for whom the Deputy is appointed to make decisions – known as P). There is a £100 one-off Deputy Set up fee and then an annual supervision fee where the OPG undertakes a risk based assessment of the case and allocates the Deputy to the appropriate supervision level. The Deputy can appeal against this allocation should they wish to do so. The current fee regime relates to the level of supervision that the OPG feels is appropriate to that case and the fees are collected annually in arrears. If the Deputy moves from supervision category during the year the fee is charged pro-rata for the amount of time spent in each category. The fees were last changed in April 2009. The current fees for the different supervision levels are:
  - **Type 1: £800** (includes: a visit to a Deputy and/or client (P), intensive interaction between OPG and Deputy and in many cases an investigation into the Deputy)

- **Type 2a: £350** (includes: a visit to the Deputy and/or the client in most cases, a detailed review of the Deputy's annual report and dedicated caseworker in some cases)
  - **Type 2: £175** (includes: a visit to the Deputy and/or the client in a random selection of cases (c. 10%), checking of Deputy annual report in a random selection of cases and a telephone Review)
  - **Type 3: £0** (includes: maintaining the register of Deputies (e.g. notification of death etc), access to OPG Contact Centre for advice/support)
5. It should be noted that once a Court appointed Deputy has been put in place there is no option but to pay the supervision fees as it is integral to the Court Order. If they are not paid, the OPG may apply to the Court to have the Deputy removed. The only legal alternative is to ensure that an LPA is put in place by a donor before capacity is lost to ensure that there is someone who can make the relevant decisions without needing to appoint a Deputy.

### **Problem under consideration**

6. The OPG is currently partly funded from its fee income. However, it needs to ensure that moving forward all of its costs are funded from its fee income. HM Treasury (HMT) policy requires all fee-charging services to have an agreed financial objective, generally, that fees are set at levels to recover the full operating cost of the service provided (minus the cost of providing fee remissions and exemptions). The OPG will retain a remissions and exemptions policy to allow access to justice for those less able to pay the fees, though access to remissions will be reduced significantly and only available for those with an income below £12,000. There will be no change to the current exemptions policy. Fees structures are also being reformed as explained below.
7. The current fee structure for Deputy supervision is made up of tiers, dependent on the level of supervision. Higher fees fall to those cases where there is compliance and investigative activity taking place – the majority of the cases in Type 1. The person for whom the Deputy is appointed to make decisions (called P) is the one who has to pay the fees from their estate. As a result, under the current system it is P who has to pay the cost of an investigation into whether or not they are themselves suffering from abuse or fraud. The fee structure for supervision will be changed so that there is a set flat fee (except for type 3 supervision). Under the new fee structure a proportion of each fee will fund the investigative function.
8. The OPG is also facing an increase in business and so needs to adapt both its processes and infrastructure to be able to deal with this. The rise in numbers of LPA and EPA applications is shown in Table 1 below. Demand has grown substantially over the last few years due to an increased awareness of the LPAs, media and press coverage, work with stakeholders and an increasingly ageing population.

9. Increased investment in infrastructure and in new processes is needed in order to maintain current service standards. Higher fees are needed in order to deliver transformation that will then deliver more effective and efficient processing that will, in time, be likely to generate efficiencies that can lead to future fees falling.

**Table 1: LPA/EPA registrations**

Year	LPA and EPA Applications	Monthly Average	% change
<b>2007/2008 (6 months)</b>	20,225	3,371	
<b>2008/2009</b>	79,867	6,655	97%
<b>2009/2010</b>	126,159	10,513	58%
<b>2010/2011 (estimated from Oct 10)</b>	166,468	13,872	32%

10. Forecasting for numbers of cases is undertaken by looking at historical trends and assessing that together with any marketing work to raise awareness that may be taken forward to estimate the likely caseload. This is refined during the year by the use of the short term business model (looking at 3 months ahead) and by each month's actual figures. The 2010/2011 figures are therefore subject to uncertainty.
11. We expect the costs of running the business will increase over the next four years due to greater demand and this needs to be funded. Improvements to infrastructure and business processes should, however, put the OPG in the position where it can actively seek to reduce the fees in the next Spending Review period due to rationalisation of process.

## Rationale

12. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).

13. In this case the Government is intervening to improve efficiency in the OPG and equity. The increase in fees is to cover infrastructure changes which have now become vital to maintaining the business irrespective of whether demand continues to increase or not.
14. There are both efficiency and equity arguments for raising the fees. As fees are currently below cost, for some users, the benefit of using the services of the OPG (their willingness to pay) is less than the cost of OPG providing the service. In effect the service may be over consumed, which may generate an 'economic welfare' loss for society. Increasing fees to a level closer to cost reduces these 'economic welfare' costs. This would apply in cases where there is a choice in whether or not to consume OPG services.
15. In addition existing fee limits present a financial constraint which may not enable investment to be financed, even if this investment generates improved efficiencies in the longer term and the potential to lower fees in the future. Fee changes may therefore lead to enhanced productive efficiency.
16. Furthermore existing fee limits may lead to the OPG providing a suboptimal quality of service. It could be that clients would prefer a higher quality service, and would be willing to pay for this – or that clients would prefer to retain current quality standards rather than seeing them decline. Fee reforms may be justified if they enable the OPG to provide the right quality of service from a client perspective.
17. The equity arguments are three fold. First, setting fees below cost equates to taxpayers providing a subsidy for those services. As the Government considers it fairer for service users to pay for the service they use rather than these services being subsidised by taxpayers, raising fees generates equity gains.
18. Secondly, there is a further issue in relation to the supervision fees in OPG. Currently those in Type 1 are often those undergoing investigations into the conduct of the Deputy and they pay £800 per annum as a result. However, what this means in stark terms is that P (the individual that has lost capacity, and for whom a Deputy has been appointed by the Court of Protection) is being charged in order for the OPG to investigate whether or not they are being abused or subjected to fraud. The Government considers that the set costs should be spread in a fairer way. As a result, the introduction of a flat fee will ensure that everyone who has a Court appointed Deputy pays towards the investigation function which will be available to them at all times should they require it. This is currently the practice with LPAs/EPAs where a small proportion of each fee funds the supervision function. It is assumed that this reform would not generate inefficiencies from generating an over-demand for investigations as a result of investigations in effect being subsidised for some customers.

19. Thirdly, in the current economic climate we feel that the OPG needs to be working towards being truly 100% fee funded rather than continuing to rely on a contribution from taxpayers to cover remissions and exemptions. As part of this, we have looked again at our current remissions policy and have decided that we can not continue to operate such a generous income-based remission policy and have therefore removed partial remissions and replaced the current 100% remission with a 50% remission. We acknowledge that there may be distributional impacts from the changes in the remissions policy, but believe those with the lowest incomes will still be covered by the exemptions and the revised remissions policy.

### **Affected stakeholder groups, organisations and sectors**

20. These changes will primarily affect private individual users of the OPG. There may be an impact on solicitors and legal advisors should the increase in fees and reductions in remissions reduce the number of people taking out LPAs (as they sometimes go to lawyers for legal advice). The reforms will also affect the OPG, which will see an increase in fee income and the reforms will impact the MoJ (and, by implication, taxpayers) due to the changes to the remissions policy.

### **Description of Options**

21. This Impact Assessment identifies both monetised and non-monetised impacts from society's perspective, with the aim of understanding what the new impact to society might be from implementing these options. The costs and benefits of each option are compared to the "do-nothing" option. Impact Assessments place a strong emphasis on the monetisation of costs and benefits. However, there are important aspects that cannot sensibly be monetised. These might be distributional impacts on certain groups of society or changes in equity or fairness, either positive or negative.

22. While a number of different options to increase fees have been considered, this Impact Assessment focuses on two options:

- Option 0: "Do Nothing"/Base Case
- Option 1: [There are three elements to this Option.](#)
  - Increase fees to cover OPG costs (minus taxpayers subsidies from MoJ).
  - Reduce the total value of remissions by removing partial remissions for those with income above £12,000 and by reducing remissions by 50% for those with income below £12,000.
  - Reform the supervision fee structure including to change the extent to which those on the receiving end of fraud or abuse pay the costs of an investigation into this matter.

### **Option 0: "Do Nothing"/Base Case**



23. Under the do nothing case the OPG fees will remain as they are. Costs including transformation which are currently not covered by fee income would need to be subsidised in full by general taxation. This will mean that the OPG will not be able to take forward its much needed transformation programme to improve customer service and increase the speed of delivery or to build up additional capacity required to deal with increasing volumes of business. There is also no guarantee that, in future years, any subsidy will be available in relation to the costs of fees and remissions. Without fee reform, fee income net of subsidy may not be sufficient to enable the OPG to change processes and infrastructure. The current computer system is almost at capacity and needs to be upgraded in order for the OPG to be able to offer a timely turnaround of LPA and EPA registration and to meet the anticipated growing demand on the service (although the computer upgrade is needed irrespective of rising demand). This means that the level of service offered would diminish. In addition it would not be possible to finance investments which might generate longer term efficiency improvements. Under the do nothing option the current fee structure for Deputy supervision will remain the same, with different fees for different supervision levels. There would also be no change in the remissions policy.
24. The do-nothing option is compared against itself and therefore its costs and benefits are necessarily zero.

**Option 1: Alter the OPG fees structure for supervision, update the fees and amend the remissions and exemptions policy**

25. This option initially changes the supervision fee structure of the OPG and then updates fees in order to cover the cost of running the business over the next 4 years. The full list of the current fees against the new fees can be found below. As can be seen, many of these fees have not changed since they were agreed by Parliament in 2007 when the Mental Capacity Act 2005 came into force and LPAs were introduced (the fee for EPAs was £120 at this time). Some of those that have changed are still at a lower level than in 2007 (e.g., LPA registration fee).

Table 2: OPG fees regime

	<b>Fees in 2007 when OPG set up</b>	<b>Current Fee Regime</b>	<b>Proposed Fee Regime</b>
<b>LPA/EPA Registration Fee</b>	£150 LPA £120 EPA	£120	£130

<b>LPA/EPA Resubmission Fee</b>	not available – full £120/150 fee payable on resubmission	not available – full £120 fee payable on resubmission	£65
<b>Office Copies Fee</b>	£0	£25	£50
<b>Search of the Register</b>	£25	£25	£0 (fair usage policy)
<b>Deputy Set up Fee</b>	£125	£100	£100
<b>Type 1 Supervision Fee</b>	£800 pa	£800 pa	£320 pa
<b>Type 2a Supervision Fee</b>	N/A	£350 pa	
<b>Type 2 Supervision Fee</b>	£175 pa	£175 pa	
<b>Type 3 Supervision Fee</b>	£0	£0	£35 pa

26. The key change to the fee structure is the decision to move from an annual supervision fee structure that is made up of tiers to one where there is a set flat fee (except for type 3 supervision). There are a number of justifications for this change in fee charges and these are set out below. Supervision fees are paid annually in arrears and the level of supervision appropriate for each case is determined by the OPG, though the Deputy can appeal against the supervision level. It is also the duty of the Deputy to tell the OPG about any changes in circumstances that might alter the circumstances of the case and hence the supervision level. The numbers currently (October 2010) in each supervision level are given below.

Table 3: Volumes of Deputyships allocated to each supervision level in October 2010

Supervision Level	Type 1	Type 2a	Type 2	Type 3
	639	6,513	28,160	8,998

27. Currently higher fees fall to those cases where there is compliance and investigative activity taking place – the majority of the cases in Type 1. The person for whom the Deputy is appointed to make decisions (called P) is the one who has to pay the fees from their estate. As a result, under the current system it is P who has to pay the cost of an investigation into whether or not they are themselves suffering from abuse or fraud. The supervision fee structure will be changed so that a proportion of all supervision fees will be taken and put towards funding the investigation service which will be available to all should they need it. Since the Act came into force in October 2007, a total of 1,163 investigations have taken place into attorneys and deputies (up to the end of October 2010) at an approximate resource cost of £2,500 each plus any legal advice that OPG may need to take on top of that. Of these, 416 have been investigations into Deputies and 747 investigations into attorneys. However, there have been over 2,550 referrals all which require work but which do not all result in a formal investigation but which may still cost a significant amount of money.
28. Also Deputyship cases do not necessarily stay within a single supervision category during each year that the fee is charged, meaning that pro-rata fees have to be charged for different portions of the year leading to additional administration for the OPG and added confusion for the Deputy. By having a flat fee it means that the fee structure is both simpler for the end user and for the organisation. When supervision is viewed over a 3 year cycle, in line with OPG’s performance framework, the vast majority of cases will have had support and/or interventions from the OPG to justify the £320 annual contribution. This is particularly the case when it is remembered that part of that fee is paid towards the overall cost of investigations.
29. There are also changes to the LPA/EPA fees, beyond the rise in the registration fee. Currently if an LPA is returned to the donor as invalid, they have to fill out new forms and pay the whole of the registration fee again – currently £120. In the future we aim to ensure that whilst they still have to make a new instrument they will pay a reduced rate to register those new LPA forms (providing the re-registration takes place within 3 months of the forms being returned as invalid). This could benefit some 3% of all people who register an LPA and which is returned as invalid (should they decide to resubmit the documentation). The resubmission fee may also lower the cost for others, as they may be more confident of submitting the forms without taking legal advice if they know they will not have to pay the full fee again.

30. There will also be a change to the amount charged for Office copies of LPAs. It is intended to double the fee for this from £25 to £50 and to cease provision of two free copies that Donors can currently claim on registration of their LPA. This is not a core function of the OPG and diverts resources when copies are requested – either the 2 copies that can be claimed on registration or any additional copies requested later. The increased fee more adequately reflects the administrative burden on the OPG of continuing to provide this function. Retaining the ability to make office copies *in extremis* means that people will not be forced to apply to be a Deputy (with all the time and cost that that entails) if they do lose their only copy and the Donor has lost capacity. The OPG will, however, continue to provide Office copies if it is the OPG that has lost the original instrument.
31. The fee for searching the register of LPAs/EPAs will be removed. There are two main reasons for this. The majority of the current searches are undertaken by Public Authorities who are exempt from the fee anyway. The move is also in line with the Government's transparency agenda. There will, however, be a fair usage policy applied to deter abuse.
32. There will also be a change to the remissions policy with a reduction from 100% to a 50% remission and the removal of other categories of partial remission (those who are currently entitled to an exemption will continue to receive those as there will be no change to the exemptions policy). The costs associated with remissions and exemptions since the Act came into force in October 2007 are given in the table below.

Table 4: Costs of remissions and exemptions

	2007/08 (6 months)	2008/2009	2009/2010	2010/2011 (estimated)
Exemptions				
<b>LPAs/EPAs</b>	<b>£34,650</b>	<b>£341,550</b>	<b>£671,220</b>	<b>£1,197,990</b>
<b>Deputies</b>	<b>£66,660</b>	<b>£269,280</b>	<b>£370,920</b>	<b>£534,860</b>
Remissions				
<b>LPAs/EPAs</b>	<b>£70,350</b>	<b>£693,450</b>	<b>£1,362,780</b>	<b>£2,432,280</b>
<b>Deputies</b>	<b>£135,340</b>	<b>£546,720</b>	<b>£753,080</b>	<b>£1,085,290</b>
<b>Total</b>	<b>£307,000</b>	<b>£1,851,000</b>	<b>£3,158,000</b>	<b>£5,250,420</b>

33. The changes to the remissions policy means a reduction in the cost and hence, more taxpayer funds can be directed to remissions and exemptions in respect of fees in the public interest - such as access to the Courts system where someone's immediate liberty could be at stake. Whilst LPA s/EPAs are important, and have a positive societal impact, they are ultimately, like a passport, an exercise of choice.
34. The current and proposed remissions policy is outlined below. The exemptions policy will stay the same.<sup>2</sup> The table below gives the current remissions policy and the following paragraph highlights how many people currently get such a remission.

Table 5: Remissions policy

Income	Percentage of Fee Remitted currently	Percentage of Fee Remitted proposed
Up to £12,000	<b>100%</b>	<b>50%</b>
£12,001 to £13,000	<b>75%</b>	<b>0%</b>
£13,001 to £14,500	<b>50%</b>	
£14,501 to £16,000	<b>25%</b>	

35. This means that approximately 5,000 people (approximately 2% of all OPG users) will lose a partial remission and 22,000 (approximately 9%) will go from a 100% remission to a 50% remission. This will have a significant impact but given the financial climate the current remissions policy is not sustainable. Over 80% of OPG customers currently receive no exemption or remission on their fees.

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<sup>2</sup> Fees exemptions are granted on any fee, if the applicant is in receipt of any of the following means tested benefits and has not been awarded damages of more than £16,000 that were disregarded when determining eligibility for the benefit: Income Support, Income based Employment and Support Allowance, Income based Job-Seekers Allowance, a combination of Working Tax Credit and either Child Tax Credit, Disability Element or Severe Disability Element, State Pension Guarantee Credit or Housing/Council Tax Benefit (excluding the 25% single person deduction).

## Costs of Option 1

### Transitional Costs

36. We expect to incur minimal costs in making the necessary changes to OPG publications. There may be some small intangible costs related to OPG staff and users familiarising themselves with the new fee structure and increased fees and changes to financial schedules.

### Ongoing Costs

37. The total additional fees paid by OPG customers are given for a four year period in the table below.

Table 6: Annual costs to OPG users (2010 prices)

	2011/2012	2012/2013	2013/2014	2014/2015
Number of LPAs/EPAs Applications(including resubmissions)	<b>193,212</b>	<b>223,645</b>	<b>255,614</b>	<b>283,329</b>
Deputyships	<b>44,310</b>	<b>49,506</b>	<b>54,822</b>	<b>60,318</b>
Current Fee Regime	<b>£31.7m</b>	<b>£36.1m</b>	<b>£40.8m</b>	<b>£45.1m</b>
Proposed Fee Regime	<b>£36.6m</b>	<b>£41.6m</b>	<b>£46.7m</b>	<b>£51.5m</b>

Difference	<b>£4.9m</b>	<b>£5.5m</b>	<b>£5.9m</b>	<b>£6.4m</b>
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38. The underlying workload assumptions for Option 0 and Option 1 are the same. For a number of reasons such as the small price change, increased awareness, an ageing population, it is estimated that the LPA/EPA fee increase will have no impact on the number of applications. We have assumed there will be no reduction in the number of Deputyships allocated to each supervision level in option 1 compared to Option 0, as once the Court appoints a Deputy, the supervision fees must be paid. OPG users will face an increase in cost on average of £5.6m per year over the four year period.
39. In addition to paying more fees, OPG customers would also incur costs in the form of receiving less total remissions. Those users who are currently exempt from the fee will continue to be exempt, as the exemptions policy would remain the same. Over the 4 year period the additional costs of the new remissions and exemptions policy will be on average £3m per year over the four year period (£2.5m for 2011/2012, £2.8m for 2012/2013, £3.3m for 2013/2014, and £3.6m for 2014/2015, see Table 7). If there was a reduction in caseload, it is also likely there would be a commensurate lowering of the cost of remissions/exemptions. There will be distributional impacts from the changes to the remissions policy, with approximately 22,000 no longer entitled to a 100% remission (although still entitled to a 50% remission), and around 9,000 no longer entitled to any remission.

Table 7: Exemptions and Remissions (£m)

	2011-12	2012-13	2013-14	2014-15	Total
<b>Current Policy</b>					
Partial remissions	373	424	477	525	1,800
Full Exemptions	2,086	2,362	2,648	2,906	10,002

Full Remissions	3,765	4,285	4,829	5,317	18,195
Total	6,224	7,072	7,954	8,748	29,997
<b>New Policy</b>					
Full Exemptions	2,086	2,362	2,648	2,906	10,002
50% Remissions	1,797	2,037	2,286	2,511	8,631
New total	3,883	4,399	4,934	5,417	18,633
Variances					
Cost to OPG customers (through reduced access to remissions)	2,342	2,673	3,020	3,331	11,364
Gain to general taxpayers (through reduced subsidy to remissions due to reduced access)	2,342	2,673	3,020	3,331	11,364

40. The reforms would involve the OPG increasing its running costs as a result of improving processes and infrastructure.

41. Table 8: OPG Funding proposed for SR10 (£000)

	2011-12	2012-13	2013-14	2014-15	Total



<b>Operating Cost</b>	38,345	40,921	43,616	46,580	169,462
<b>Prev Op cost</b>	32,502	36,585	39,780	42,744	151,610
<i>Op cost Diff</i>	<i>5,843</i>	<i>4,336</i>	<i>3,836</i>	<i>3,836</i>	<i>17,852</i>

42. These fee changes will have very little impact on Legal Aid. There is a provision for the Lord Chancellor to provide Legal Help in relation to making of a Lasting Power of Attorney where the client is a) aged 70 or over; or b) a disabled person within the meaning of section 1 of the Disability Discrimination Act 1995. Figures are not kept by the Legal Services Commission as to how much use is made of this provision but we expect it is minimal and any changes in relation to the increase in fees will also be minimal. Legal Aid is not in scope in respect of supervision fees.
43. Private law firms may see a small decrease in work if the introduction of a re-submission fee makes people more confident about making and registering an LPA without the need for legal advice.
44. The greatest impact of the changes will be on those who are in Type 2 supervision where the fee will rise from £175 to £320, and especially for those in this category who may no longer be eligible for a partial remission - though this should be a very small group as those with capital below £16,000 would be in Type 3 supervision.
45. This fee has not been increased since it was introduced in 2007<sup>3</sup>.
46. For those deputies in Type 3 supervision (with minimal capital - currently below £16,000), they will be impacted by the new £35 fee especially as there is no remission or exemption available. We estimate that approximately 9,000 cases will be affected in the first year. However, in order to provide for remissions and exemptions and recover the full cost the fee would have to have been set at some £50. If that fee was charged, the remissions and exemptions policy would have been the same as for all other OPG fees.

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<sup>3</sup> Under a separate proposal the capital allowance may rise over the 4 year period by £1,250 per year from the current £16,000 to £21,000. If this happened then approximately 20% of those currently in Type 2 should move to Type 3. Under the proposals in this IA they would then only pay a fee of £35, a significant reduction on what they are currently paying. These cases – those that move to Type 3 supervision - will be those in Type 2 with the lowest level of capital available and so will, over time, move to a lower fee regime offsetting some of the impact of the rise in Type 2 fees. This proposed rise in capital allowance is not included in the base case and hence not in Option 0.

## Benefits of Option 1

### Transitional Benefits

47. There are no anticipated transitional benefits from increasing OPG fees.

### Ongoing Benefits

48. Under these proposals, OPG operating costs will move towards being fully fee funded. It is felt that in the current financial climate, taxpayers should not be asked to contribute so much to the costs of running the organisation. We estimate the OPG will receive additional fee income of £4.9m in 2011/12, £5.5m in 2012/2013, £5.9m in 2013/14 and £6.4m in 2014/2015. This mirrors the increased costs to users of the OPG.

49. In addition taxpayers would benefit as a result of remissions payments being reduced. (See Table 7)

50. Compared to the base case the proposals should lead to an improved quality of service. In addition the proposals may enable investment to proceed which leads to improved efficiency in future, and hence possibly to reduced fees in future.

51. The proposals to change the fee structure for supervision of deputies will bring benefits in terms of simplicity of the fee framework, both for the OPG and for deputies.

52. The proposals should also generate the equity and fairness benefits as outlined in the economic rationale section. In particular improved fairness is considered to be associated with the reduced total amount of remissions and with the allocation of investigation costs to all fee payers rather than to those who the investigation relates to.

## Net Impact of Option 1

53. Table 9 shows a summary of the income and costs for the OPG over the Sr10 period.

Table 9: Summary Costs

	SR10 (in £'000)				
OPG Cost Recovery	2011-12	2012-13	2013-14	2014-15	Total
<b>Fees from Applicants</b>	(32,730)	(37,194)	(41,857)	(46,038)	(157,818)
<b>Social Subsidy (Exemptions &amp; Remissions)</b>	(3,882)	(4,399)	(4,934)	(5,417)	(18,633)
<b>Total OPG Income</b>	<b>(36,612)</b>	<b>(41,593)</b>	<b>(46,791)</b>	<b>(51,455)</b>	<b>(176,451)</b>
<b>Operating Cost</b>	34,901	37,442	40,137	43,102	155,582
<b>Investment Resource</b>	1,311	1,311	1,311	1,310	5,243
<b>Investment Depreciation</b>	2,133	2,168	2,168	2,168	8,637
<b>Total Operational Cost</b>	<b>38,345</b>	<b>40,921</b>	<b>43,616</b>	<b>46,580</b>	<b>169,462</b>
<b>Net (Surplus)/Deficit</b>	<b>1,733</b>	<b>(672)</b>	<b>(3,175)</b>	<b>(4,875)</b>	<b>(6,989)</b>
<b>Annual Cost Recovery Rate</b>	95%	102%	107%	110%	
<b>Rolling Cost Recovery Rate</b>	<b>95%</b>	<b>99%</b>	<b>102%</b>	<b>104%</b>	

Note: Cost Recovery is Total OPG Income against Total Operating Cost (bold indicates matching figures)

54. Future estimates of cost and income are uncertain and depend on, amongst other things the reaction of demand to the fee change, so the figures in Table 9 should be read as such. If fees appear to out-strip cost in the SR, we will put out new proposals on which fees to reduce, and by how much to breakeven over the SR period.
55. The summary page table identifies each type of cost and benefit. At a higher level OPG customers in aggregate would be worse off as they would be required to pay more fees (around £5m more in 2011/12) and would also receive less in fee remissions (around £3m in 2011/12). OPG customers may benefit from an improved quality of service and also from improved future service efficiency.
56. On the other hand general taxpayers would be better off (by around £3.1m in 2011/12) compared to the base case as a result of remissions payments being reduced.
57. It is considered that these higher level changes in financial transfers would be associated with equity and fairness benefits. Improved equity and fairness is also considered to arise from the fee restructuring proposed reforms.

## **Enforcement and Implementation**

58. The LPA and EPA fees are paid on application. In the case of supervision fees, these are charged annually in arrears and on a pro-rata basis for part-periods. An ultimate sanction for non-payment of supervision fees is for the Public Guardian to apply to the Court of Protection to have the Deputy removed. However, non-payment of one year's fee is seldom considered as sole justification for an application to Court and there are very very few occasions where non-payment of fees is the only problem, there are often other issues with the Deputy as well. The OPG applies a debt management framework and reviews regularly debts accruing and outstanding.
59. The proposed date for implementation is 1st July 2011.

## **Assumptions**

60. We do not expect the increases in fees to affect materially the baseline volume of cases, given the demography of England & Wales and the projected instance of mental capacity issues in society due to an ageing population.
61. It is assumed that the volume of LPA applications will continue to rise and that there will be no material reduction in demand due to the increased fees as the rise is small and in the case of LPAs, the fee is still less than that when they were first introduced in October 2007. For EPAs it is the first rise since October 2007 and is about the same as the Retail Price Index rate of inflation for that period (which is 7.85%, as measured to September 2010, which is the latest figure available). However, for illustrative purposes, we consider a 5% decrease in LPA/EPA applications to show the impact this would have on the fee income. With a 5% reduction in LPA/EPA applications, the fee income (relative to the 'do nothing' base case), would be an average of £4.1m per year over the four year period (compared with an average of £5.6m per year with no reduction in volumes). That is, a 5% reduction in volumes would reduce fee income by £1.5m on average per year, compared with the assumption of no reduction in volumes. If England and Wales follow the example of Scotland then the demand for LPAs will continue to rise annually and we have no information to suggest that this will not be the case. There would also be other behavioural impacts of doubling the fee for office copies of LPAs/EPAs – users would be more likely to either not request copies or to request less copies. In terms of the removal of the fee for searches of the LPA/EPA register, this may lead to an increase in the number of searches. However, most searches are undertaken by Public Authorities who are exempt.
62. There is also an assumption that the loss of remissions will not significantly impact on uptake of the service as those who would have currently received a 100% remission will continue to receive one at 50%. However, this will be monitored. Currently just over 13,000 LPA applicants would get a full remission and will now receive 50% (this is approximately 8% of all LPA applicants) and just over 3,000 (approximately 2% of all LPA applicants) will lose the entitlement to a partial remission. As outlined above, the belief is that the fee rise will have no impact on the workload of the OPG.
63. It has also been assumed that there will be no downturn in the numbers of Deputies appointed due to the changes in the fee structure as once a Deputy is appointed, the fees have to be paid. If anything, the increase in Deputies fees may mean that more people plan ahead and make an LPA and so move business from one area of OPG to another. It has also been assumed that there will be no impact on the number of investigations into Deputies.

64. It has been assumed that there will be no increase in the demand for investigations following the fee restructuring reforms, in particular from the costs of undertaking investigations being allocated more evenly across all OPG fee payers instead of being allocated completely to the person who the investigation relates to.

## Risks

65. There are three main risks. One is that the increase in fees slows the growth business (below that already assumed in the business model) and hence a reduction in fee income to the point that the OPG cannot cover its fixed operating costs. Given the magnitude of the fee increase, the likelihood of this risk being realised is low. As referred to above, if there were a 5% reduction in the number of LPA applications, the fee income would reduce by on average £1.5m per year over the four year period.

66. There is also the risk that the changes to the supervision fees regime will mean that more people decide to make LPAs so that they have Attorneys in place and avoid the need to have a Deputy appointed. This may lead to an increase in the numbers of LPAs received by the OPG which could be a risk to the business if the necessary infrastructure transformation has not taken place.

67. A third risk, of informal arrangements becoming more prevalent, is recognised. Persons associated with those that lose capacity may seek to avoid legal requirements, even though this is fraudulent. Whether an increase in the fees of supervision would materially affect the incidence, given it cannot be assessed accurately, is questionable. It is possible that this will have a greater effect on those people who would need lower levels of supervision and who face a higher fee increase.

68. In addition there is a possible risk that changes in the fee structure may generate changes in the demand for investigations, especially if the recipient of an investigation does not pay fully for that investigation. The changing fee structure may also generate other demand effects, for example in relation to searching and copying documents.

## Summary of Options

69. Option 1 includes increases in fees within the OPG and this is necessary to ensure that the OPG can fund its operating costs over the next 4 years and move towards being completely fee funded in the future. Option 1 also involves reforming fee remission policy and reducing the extent of remissions. Under Option 1 fee structures would also be reformed so that changes are made to the extent to which a person pays the cost of an investigation into whether or not they are suffering from abuse. This brings the rationale for the funding of investigations into Deputies into line with that of Attorneys where a part of everyone's fees pays for the supervision. For these reasons Option 1 is the preferred Option.
70. Option 1 essentially would involve a change in transfer payments. There would be reduced transfer payments from taxpayers to the recipients of fee remissions as the change in remissions policy means that the cost of remissions will be reduced. There would also be a change of transfer payments amongst OPG fee payers in accordance with the new proposed fee structures from those who are not subject to an investigation to those who are. This brings the mechanism for covering the cost of supervision investigations into line with that for LPAs.
71. It has been assumed that these changes would not generate significant behavioural changes, including in relation to the number of investigations and in relation to the number of OPG customers and the types of service they might receive.

## Impact Tests

### Equality Impact Assessment

72. An Equalities Impact Assessment initial screening has been completed and is attached.

### Competition Assessment

73. We do not envisage any impact on competition. The proposals will not directly or indirectly limit the number or range of suppliers (or providers), they will not limit the ability of suppliers to compete or limit suppliers' incentives to compete vigorously.

### **Small Firms**

- 74. The majority of fees that will be increased are paid by private individuals. There are therefore no anticipated significant adverse impacts on small firms.
- 75. Law firms and legal professionals who advise private individuals on LPAs/EPAs may see a reduction in business, if the increase in fees and changes to the remissions policy reduce the number of people taking out LPAs/EPAs or seeking advice due to the lower resubmission fee. However, the rate of increase is not large and any impact on the legal profession is estimated to be minimal.

### **Carbon Assessment and Environmental Assessment**

- 76. The proposals should not lead to a change in the emission of Greenhouse Gases or to the environment.

### **Health Impact Assessment**

- 77. The proposals will not have a significant impact on health.

### **Human Rights**

- 78. The proposals are compliant with the Human Rights Act.



## **Legal Aid and Justice Impact Test**

79. The impact on the Justice System has been assessed as part of the options analysis. There will be minimal impact on the Legal Aid budget as outlined in the options analysis.

## **Rural Proofing**

80. There are no specific rural impacts from the proposals.

## **Sustainable Development**

81. The proposals ensure that OPG continues to run in a sustainable manner. The fees ensure that the OPG are properly funded, both now and in the future.

## Annexes

Annex A sets out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex A: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

To evaluate the amount of fee income realised as a result of the fee increases and assessment of the impact on the overall OPG workload.

**Review objective:** [Is it intended as a proportionate check that a regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The post implementation review will analyse the impact in terms of income and workload of these fee increases. It will also look at the impact and analyse where there has been any negative impact on certain sectors of the OPG clients.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The review approach will be a monitoring framework. The policy is to increase fees, change the fee structure and reduce total fee remissions. Information on volumes of fees and income levels are currently collected by the OPG and will be monitored in the period

between implementation and the PIR.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

The current baseline is the projected fee income and case volumes predicted for the four year period from 2011/2012 if no changes were made.

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Increase in net fee income in line with the projections in the Impact Assessment.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

OPG user feedback will be monitored through treat officials, ministerial correspondence and parliamentary questions. Fee income levels are also monitored at regular intervals to see if there are any significant changes in workloads.

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]

## **ANNEX B – Equality Impact Assessment Initial Screening**

## Equality Impact Assessment Initial Screening – Relevance to Equality Duties

Before you complete an EIA you must read the guidance notes and unless you have a comprehensive knowledge of the equality legislation and duties, it is strongly recommended that you attend an EIA training course

The EIA should be used to identify likely impacts on:

- Disability
- Gender (including gender identity)
- Race
- Age
- Caring responsibilities (usually only for HR policies and change management processes such as back offices)
- Religion and belief
- Sexual orientation

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed

### **Amendments to OPG Fees**

As the OPG is 100% fee funded (apart from exemptions and remissions currently), there is a need to ensure that those fees in place remain sufficient to cover the running costs of the organisation over the next 4 year period.

2. Individual officer(s) & Unit responsible for completing the Equality Impact Assessment:

David O'Shea, Customers & Policy, Office of the Public Guardian

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

## **Aims/objectives**

The objectives of these changes are to ensure:

- The OPG is 100% fee funded and the fees also cover the full cost of exemptions and remissions
- The OPG can cover its business costs for the next 4 years in order to be able to deal with increasing business

It is aimed to make the following changes around fees which will benefit customers by accurately reflecting the cost of work involved and offering improved, streamlined services.

- Implementing a new 'Resubmission Fee' of £65 for invalid LPAs resubmitted to the OPG within 3 months of the invalid Application being sent back to the Applicant
- Giving the Public Guardian the power to vary the levels of fees payable in the future – such as reduced fees if a number of LPAs are submitted at the same time.

## **Outcomes**

The outcomes of these changes are intended to:

- Ensure the OPG has the funds necessary to improve its IT system to cope with present and future demands over the next 4 year period
- Investment will drive OPG efficiencies throughout the Spending review period,

The changes to the fees structure are intended to:

- Provide a more cost effective service to those wishing to register an LPA by not charging the full £120 if an incorrectly completed LPA is submitted
- Allow the Public Guardian the flexibility to use administrative savings within the OPG to offer cheaper fees for some types of LPA registrations

- Discontinuing the production of LPA Office Copies by the OPG unless in exceptional circumstances as donors and attorneys already have the power to make their own Certified Copies if they wish to do so and it is not core to OPG business
- Removing the partial Remissions aspect from all OPG fees, reducing the current 100% remission to 50% remission. Exemptions will remain unchanged.
- Introduction of a flat fee for all types of supervision other than Type 3
- Introduction of a £35 fee for Type 3 supervision (with no exemption or remission available against this fee)
- Raising the maximum threshold of capital for Type 3 Supervision cases from £16k to £21K over the course of the 4 year period

- OPG resources need to be targeted where they add most value and as certified copies can be obtained elsewhere, we will no longer be offering this service which will also help streamline and reduce delays in the registration process
- Removal and reduction of remissions will lead to a clearer fees structure within the OPG and is necessary in the current economic climate
- This will eliminate the current situation where P (the client for whom the Deputy has been appointed to make decisions) has to pay for the cost of the investigation into whether or not they are suffering abuse or fraud.
- The introduction of a low level fee for Type 3 means that this work stream will be self funding, the only other alternative was to raise the flat fee to around £350.
- Reduce the cost of supervision for a substantial number of cases, The rise in the capital threshold from £16k to £21k will see some Type 2 cases move into Type 3 and see their annual fee reduced.



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4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

*(For example statistics, survey results, complaints analysis, consultation documents, customer feedback, existing briefings submissions or business reports, comparative policies from external sources and other Government Departments)*

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There is limited information available which shows whether these changes will adversely affect one group over another.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people. If so what are the gaps in the information and how and when do you plan to collect additional information?

*Note this information will help you to identify potential equality stakeholders and specific issues that affect them - essential information if you are planning to consult as you can raise specific issues with particular groups as part of the consultation process. EIAs often pause at this stage while additional information is obtained.*

We will undertake a consultation on the proposals and monitor customer feedback and any impact that the increases may have on different groups.

We regularly hold workshops with various stakeholder groups and will also gain feedback from these. In light of the Government Spending restrictions there will be no Customer Survey this year which has historically also been an effective way of collecting such information.

As part of the OPG Equality and Diversity work-stream, it is intended to conduct research into the ethnicity, age and disability range of our Deputies which will help demonstrate if any group is likely to be adversely affected above another.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

If the proposed changes are implemented, they will help deliver a better value service to the broad spectrum of our customers. They will help ensure that the fees payable are fair and reflect the work involved. They will reduce the cost of resubmitting incorrectly completed

The rise in the maximum capital threshold in Type 3 cases will see many cases pay a greatly reduced fee. The flat fee for Supervision will ensure that OPG clients do not have to pay the costs of investigations into whether they, themselves, are being subjected to fraud or abuse.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

There is some anecdotal evidence that take up of our services is lower than we would like amongst various ethnic minorities. As part of our stakeholder engagement work we continue to work with relevant organisations such as the National Black and Minority Ethnic Carers Panel and Afiya Trust to highlight any cultural reasons why this is and how we can make our services more accessible.

As part of the OPG Equality and Diversity work-stream, it is intended to conduct research into the OPG client base to determine if there is more that we can do to ensure that our services are open to all and how the way we currently work impacts on certain groups.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

The changes in fee levels are being kept to a cost recovery minimum and some may benefit from them, paying a lower level of fee under the new regime in comparison to what they would pay currently.

Those Deputies who are adversely affected by the rises will be able to claim the fees back against the Client's estate so will not financially suffer themselves, although any rise in fees will mean that more funds will be taken out of the Client's estate on an annual basis.

These rises are being kept as low as possible however and will ensure that we can continue to develop as an organisation living within its means and continue to carry out our duty to our customers, protecting them from fraud and abuse.

It is accepted that the introduction of the £35 fee for Type 3 supervision (with no exemption or remission) will adversely impact on those with lower levels of capital. However, the amount of the fee is being kept to a minimum and this is to ensure that others do not have to cross-subsidise work in this area, causing them to pay higher fees.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

10. Is a full Equality Impact Assessment Required? /No

(If no, please explain why not)

NOTE - You will need to complete a full EIA if:

- the proposals are likely to have equality impacts and you will need to provide details about how the impacts will be mitigated or justified
- there are likely to be equality impacts plus negative public opinion or media coverage about the proposed changes
- you have missed an opportunity to promote equality of opportunity and need to provide further details of action that can be taken to remedy this

**If your proposed new or changed legislation, policy, strategy, project or service involves an Information and Communication Technology (ICT) system and you have identified equality impacts of that system, a focused full EIA for**

**ICT specific impacts should be completed. The ICT Specific Impacts template is available from MoJ ICT or can be [downloaded from the Intranet](#)**

**and should be referenced here.**

The proposals are currently out for consultation so this is a draft EIA. The EIA will be amended in light of the responses received during the consultation process.

11. If a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

We will continue to monitor customer feedback around fees and will monitor levels of work to ensure that we are not adversely impacting on people's abilities to manage their affairs.

12. Name of Senior Manager and date approved

(Note - sign off at this point should **only** be obtained if:

- there are no equality impacts
- the changes have promoted equality of opportunity

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA relates to, how you assessed it, a summary of the results of consultation a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the EIA**, including the review mechanism. The summary will be published on the external MoJ website.



Name (must be grade 5 or above): Martin John
Department: Office of the Public Guardian
Date: 18 <sup>th</sup> November 2010
Note: If a full EIA is required hold on to the initial screening and when the full EIA is completed send the initial and full screening together. <b>If a full EIA is not required send the initial screening by email to the Corporate Equality Division (CED), for publication.</b>
<b>Where an EIA has also been completed in relation to ICT specific aspects, email this to CED and copy to MoJ ICT</b>

**Annex C – People this Consultation paper has been sent to**

Action for Advocacy  
Action on Elder Abuse  
Advice UK  
Age UK  
Alzheimer's Society  
Association for Real Change (ARC)  
Ambulance Service Association  
Association of property and fixed charge receivers  
Association of Black Social Workers and Allied Professions (ABSWAP)  
Association of Contentious Trust & Probate Specialists (ACTAPS)  
Association of Directors of Social Services  
Association of Healthcare Communicators  
Association of Public Authorities Deputies  
BILD (British Institute for Learning Disabilities)  
British Association of Social Workers  
British Bankers Association  
British Medical Association  
British Psychological Society  
British Society of Rehabilitation Medicine  
Care Services Improvement Partnership (CSIP)  
Ceretas  
CARE UK  
Care Quality Commission  
Carers UK  
Carers Wales  
Change  
Citizen Advocacy Information and Training (CAIT)

Counsel and Care  
Court Funds Office  
Court of Protection Visitors  
Court of Protection judiciary  
Dementia Care Trust  
Department of Health  
Department for Work and Pensions  
Disability Awareness in Action (DAA)  
Disability Law Service  
Down's Syndrome Association  
English Community Care Association  
Equality and Human Rights Commission  
Family Action  
Foundation for People with Learning Disabilities  
General Medical Council  
General Social Care Council  
Hafal  
Help the Hospices  
Home Farm Trust  
Independent Healthcare Association  
Independent Healthcare Forum  
Institute of Chartered Accountants  
Institute of Mental Health Law  
Intensive Care Society  
Law Centres Federation  
Law Society  
Learning Disabilities Action Group (LDAG)

Leonard Cheshire  
Local Government Association  
Medical Research Council  
MENCAP  
Mental Health Alliance  
Mental Health Foundation  
Mental Health Lawyers Association  
MIND  
Motor Neurone Disease Association  
National Association of Citizens Advice Bureaux  
National Association of Financial Assessment Officers  
National Autistic Society  
National Care Association  
National Coalition of Citizens Advocacy Schemes  
National Council for Independent Living  
National Council for Palliative Care  
National Forum for People with Learning Disabilities  
National Institute for Mental Health in England (NIMHE)  
Neurological Alliance  
NHS Confederation  
NHS Litigation Authority  
Norah Fry Research Centre  
Oaklea Trust  
Official Solicitor and Public Trustee  
Patient Concern  
People First  
POPAN

Practitioner Alliance Against Abuse of Vulnerable Adults (PAVA)

Relatives and Residents Association

Rescare

Respond

Rethink

Centre for Mental Health

SCOPE

Sense

Social Care Association

Social Care Institute for Excellence (SCIE)

Solicitors for the Elderly

Society of Trusts and Estate Practitioners

Stroke Association

Turning Point

UK Advocacy Network

United Kingdom Home Care Association

United Response

Values into Action

Welsh Assembly Government

Members of the Office of the Public Guardian Stakeholder Group

Members of the Court of Protection User Group