



Ministry
of Justice

Modernising Lasting Powers of Attorney

Government Response

May 2022

CP 677



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of Justice

Modernising Lasting Powers of Attorney

Government Response

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

May 2022



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Introduction and contact details

This document is the post-consultation report for the consultation paper, Modernising Lasting Powers of Attorney.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Mental Capacity Policy team** at the address below:

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This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from mlpaconsultation@justice.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Background

The consultation paper ‘Modernising Lasting Powers of Attorney’ was published on 20 July 2021. It invited comments on proposals to modernise the lasting power of attorney (LPA) service that is overseen by the Office of the Public Guardian (OPG).

1. Role of the witness. We examined how we can achieve this using technology to support remote witnessing or to replace the witness. If there’s no value, we considered removing the need for a witness.
2. Role of application. We looked at how to reduce the chance of an LPA being rejected by OPG and the benefits of reducing or keeping the delay between execution and registration.
3. OPG’s remit. We examined how to widen OPG’s remit so it could verify people’s identity and stop or delay an LPA’s registration if it has concerns about it.
4. How to object. We looked at how to simplify the current process so people can more easily understand where to send objections and how to do so.
5. When to object. We examined at what point and for how long objections can be made before an LPA is registered and if this remains a safeguard for the donor.
6. Speed of service. We looked at whether an urgent service would provide added benefits over a service faster for everyone and considered whether a dedicated service could work without making the process more complex for users and OPG.
7. Solicitor’s access. We looked at whether this can be achieved through integrating our service with solicitor’s case management systems or whether mandating part or all of the service would be necessary.

The consultation period closed on 13 October 2021 and this report summarises the responses, including how the consultation process influenced the final shape/further development of the policy/proposal consulted upon.

The Impact Assessment accompanying the consultation was updated to take account of evidence provided by stakeholders during the consultation period. The updated Impact Assessment is attached.

A Welsh language response paper will be provided to accompany this English language response paper.

A list of respondents is at Annex A.

Ministerial foreword



While many of us do not like to think or talk about it, some of us will find ourselves in circumstances where we are no longer able to make our own decisions due to a loss of mental capacity. This could be due to disease or illness such as dementia, or via an accident. It is important that in these cases, people's rights and freedoms are protected and they can take early action to appoint people they trust to act on their behalf.

Lasting power of attorney (LPA) exists for this purpose. It was introduced by the Mental Capacity Act in 2007 with the aim to make improvements over the previous system of enduring power of attorney. It is an important document that allows people to communicate their wishes and preferences for how decisions should be made in their future, if they become unable to make them.

We often take the ability to make our own decisions for granted, but this can be taken away from us in a second. It is therefore vitally important that everyone considers making an LPA to ensure their finances, health and welfare can be maintained in the way they would want. I believe that everyone in society should benefit from the protections provided by the LPA.

Modernisation provides the opportunity to update this protection to align with the new world and the ever-increasing move towards the use of digital technology. There are new opportunities to improve safeguards against fraud, abuse and undue pressure. At the same time we can make the Office of the Public Guardian (OPG) more sustainable through increased efficiency, and make LPAs more widely accessible through multiple channels of creation.

It was for these reasons that the Ministry of Justice launched a consultation on modernising lasting powers of attorney in July last year. The proposals aimed to increase safeguards, improve access and achieve sustainability for the OPG. These remain my aims, particularly the focus on improving safeguards during the creation and registration process, and the need to modernise the OPG's operations to achieve this.

I would like to thank all of the people and organisations that took the time to respond to the consultation and provide their insights at the engagement workshops. I am particularly pleased to see that many more members of the public responded to this consultation than to those carried out previously on this issue. The many and varied views provided are set

out in more detail in the document that follows but I am encouraged to see that, overall, the response to a number of the proposals outlined was positive.

I am keen that this response does not mark the end of our engagement with the public, professionals and organisations in developing this system. My officials are continuing to carry out research and testing through both 1-2-1 sessions and workshops. I would therefore encourage anyone reading this response who feels they have knowledge, experience or evidence that could be useful, to get in touch using the contact information provided.

Finally, it remains for me to emphasise again the importance of us modernising LPAs in a way that is right for donors. They are the ones who choose their attorneys, they are the ones that should set the scope of the powers they wish to confer under an LPA, and they are the ones whose rights and freedoms must be protected and facilitated through this service. It therefore remains the case that their needs are paramount and must come before those of any other party as we seek to make changes.

A handwritten signature in blue ink, appearing to read 'Tom Pursglove', is positioned above the printed name.

Tom Pursglove MP

Minister for Justice and Tackling Illegal Migration

Introduction

1. A lasting power of attorney (LPA) is a legal agreement governed by the law on deeds and the Mental Capacity Act 2005 (MCA). The MCA is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care, treatment and financial affairs and LPAs have an important role within this framework. An LPA allows a person (the donor) to appoint someone they trust (an attorney) to make decisions for them about their property and affairs and/or health and welfare should they lose mental capacity to make such decisions themselves.
2. A property and affairs LPA cover decisions such as buying and selling property or managing a bank account or investments. Whereas a health and welfare LPA may cover decisions about medical treatment or care arrangements. In order to ensure that the donor understands the purpose and scope of authority given by the LPA, an independent person known as the certificate provider must confirm that the donor understands their LPA and that there was no fraud or undue pressure being used to influence the donor into making it.
3. The MCA also created the Office of the Public Guardian (OPG), an executive agency of the Ministry of Justice. OPG is a fee funded organisation and is responsible for:
 - Registering LPAs (an LPA must be registered by OPG before it can be used).
 - Taking action where there are concerns about an attorney.

How an LPA is made and registered?

4. Because an LPA is a deed, it must be signed, witnessed, attested and delivered to be valid under the MCA. Currently this requires a paper-based process.
5. Donors and attorneys must follow a particular process to complete the LPA:
 1. The details of the LPA are completed either on paper, or online.
 2. If this is done online, it must be printed out.
 3. It must be signed in a specific order by the donor and their witness, the certificate provider, and all attorneys and their witnesses.
 4. The LPA is then posted to OPG and the £82 fee is paid. The applicant (the person applying to register) also sends notification letters to the people specified in the LPA to be notified of registration.
 5. OPG processes the LPA and completes manual checks on it.
 6. There is then a 4-week statutory waiting period to give the donor, attorneys and any notified people time to object to the registration.

7. If no objections are received, OPG adds the details of the LPA to its register
8. The paper LPA is returned to the applicant by post with a mark to confirm it has been registered.

The case for change

6. The existing protections within the LPA system are losing their effectiveness as technology improves and society's attitudes change. People are becoming more accustomed to obtaining government services efficiently online. The coronavirus (COVID-19) pandemic has further accelerated this expectation but has also seen many people previously unfamiliar with digital technology, embracing new ways of interacting with organisations and public services. This is reflected in users' feedback that the paper-based process is cumbersome, bureaucratic and complex. In particular the requirement to sign the LPA in a particular order presents many logistical difficulties. A digital channel is therefore needed in order to match demand and improve access for users.
7. However, improved access must be balanced against safeguards. OPG can now utilise technological advancements developed over the last 14 years to increase safeguards for the donor against fraud, abuse and undue pressure. This includes digital tools to quickly and safely verify identity. This is especially important due to the concerns people have about security and safeguards to prevent abuse of digital systems. We must also ensure that there are appropriate alternatives with safeguards in place for people who cannot use, or choose not to use, digital routes.
8. The most secure way to ensure that someone is who they say they are is to check them against valid and genuine photographic identification in real-time. However, the OPG has no face-to-face contact with any party involved in an LPA so it cannot compare the person presenting the identification with the likeness of the photo it contains in the same way as a face-to-face service would do. OPG must therefore take advantage of technology to digitally verify the identity of individuals.

Purpose of the consultation

9. The issues outlined above are the reason that the Modernising LPA project has been undertaken and are reflected in the aims of the project, which are to:
 1. Increase safeguards, especially for the donor.
 2. Improve the process of making and registering an LPA for donors, attorneys and third parties.
 3. Achieve sustainability for OPG whilst keeping LPAs as affordable as possible for all people in society.

10. As part of this work, we sought to get a greater understanding of the needs of our users (public, professional and other third parties) and the evidence available to determine the right reforms for the system. This included user research, prototype testing and setting up a stakeholder working group. The resulting proposals, focused on the high-level changes needed to primary legislation, were set out in the consultation launched on 20 July 2021. The purpose of this consultation was to help us gather evidence on how best to progress development of a modernised service.
11. The 7 proposals within the consultation were:
 1. **Role of Witness** - whether there is value to the role of the witness and if there is, how to retain this value within a future service.
 2. **Role of Application** - what purpose application serves within the process of creating and registering an LPA and who can apply to register one.
 3. **OPG Remit** - considers ways to widen the power of OPG in legislation to provide clarity on the checks it can carry out and the actions it can take as a result of those checks
 4. **How to Object** - how to clarify and streamline the current processes for objecting to the registration of an LPA.
 5. **When to Object** - currently, the legislation sets out different processes for different types of objections. The aim is to make it easier for those wanting to raise an objection to do so.
 6. **Speed of Service** - if there is need for an even quicker service and if so, how to balance this against the safeguards needed and ease of access for those same users.
 7. **Solicitor Access to the Service** - considers ways to support solicitors to use a new modernised service through the use of integrated digital systems and legislative requirements.
12. The consultation closed on the 13 October 2021 and received 313 responses. This document summarises the responses received and sets out the government's proposed next steps. The consultation has influenced and enabled us to identify some of the key changes that will need to be made to improve access, increase safeguards and achieve sustainability for OPG. However, it has also identified areas where we need to further consider the right way to progress. As a result, we are confident that we can build a modernised LPA service that includes both a digital and paper channel whilst retaining trust, improving safeguards, increasing user access and is sustainable for OPG in this new modern era.

A note on terminology

13. An LPA is only legally created under the MCA when it is registered by OPG. Until then the donor is only completing an ‘instrument that is intended to create’ an LPA. For the sake of simplicity, throughout this consultation we refer to:
 - ‘LPA’ in both circumstances, except when contrasting the ‘LPA instrument’ with the ‘application to register’ within the LPA forms; and
 - ‘creation’ to mean the process the donor goes through to make decisions and draft their LPA as compared to registration which is the process by which OPG checks and adds the LPA to the register for use.
14. A list of respondents is at Annex A.
15. A Welsh language impact test is at Annex B.
16. The equalities statement is set out at Annex C.
17. A glossary of terms is included at Annex D.
18. An impact assessment is also available to support this consultation response.

Overview of respondents

19. We received a total of 313 responses to the consultation which have been analysed. We also received 4 responses that were not counted. All of these were responses received through the consultation hub, 2 were blank and contained no information, 1 was a question about a case currently with OPG and the fourth was information from the Welsh Government which we cover in more detail in the Welsh Impact Test at Annex B.
20. All responses were checked to ensure they were not duplicates. Where this was the case only one of the responses received was factored into our analysis. One organisation provided a response which they followed with additional supplementary answers, both responses have been included and have been collated as one response for analysis purposes.

Types of respondent:

21. We asked respondents to state the capacity in which they were responding to the consultation. Of the responses received, 123 were from members of the public, 132 were from individuals with a professional interest in LPAs and 53 were responses on behalf of an organisation. 5 responses provided no information. A full list of those who responded is included at Annex A.
22. It is worth highlighting the 123 members of the public that responded to the consultation as this demonstrates a much higher level of engagement than previous LPA consultations in 2012 and 2013, which received fewer than 30 responses each from members of the public.
23. Each type of respondent was also asked to specify the reason for their interest in LPAs. Some respondents filled in more than one of these additional information boxes – for example they said they were a professional then provided information on a personal interest, professional interest and/or an organisation interest. For the purposes of the statistics set out below, only the “reason for interest” that aligned with the “capacity in which a person was responding” was counted.

24. Amongst members of the public the breakdown of primary reasons for interest was:

Fig A: Reason for Interest	Responses
I am or have been an attorney on an LPA	35
I have an LPA	27
I am considering making an LPA	19
I am going to be an attorney	16
I know someone who has an LPA or is an attorney	7
I was a witness	3
I was a certificate provider	2
None of the above	10
Did not provide an answer	4
Total	123

25. The vast majority of these responses were therefore received from individuals who were either donors or attorneys, or were about to become donors or attorney.

26. Amongst individuals with a professional interest, the breakdown of primary reasons was:

Fig B: Reason for Interest	Responses
Solicitor	81
Will writer or estates practitioner	17
Other legal professional	16
Health care	5
Social care	5
Charity or third sector	2
Local government	1
Research or academic	1
Other	4
Total	132

27. Solicitors were by far the largest respondent group within the professional interest category. This was followed by will writers, estate practitioners and other legal professionals (of which the majority were chartered legal executives). This is not unexpected given the focus of the consultation was on making LPAs, rather than on using them.
28. Finally, amongst organisations the breakdown of primary reasons was:

Fig C: Reason for Interest	Responses
Solicitors	14
Charity or third sector	9
Other legal professionals	9
Will writer and estate practitioners	6
Banking	2
Social care	2
Health care	1
Insurance	1
Local government	1
Other	8
Total	53

29. Again, solicitors' organisations made up the majority of respondents in this group, but this was followed by charities and third sector organisations, other legal professionals and will writers and estate practitioners. Again, this reflects the scope of the consultation which focused on making rather than using an LPA. The 'other' group was also sizable and included a number of digital service providers, the Welsh Language Commissioner and the Older People's Commissioner for Wales. Questions relating to Welsh specific issues are addressed in the Welsh Impact Test at Annex B.

Location:

30. 244 of our responses were from people or organisations who said they were based in England, 17 were from people or organisations in Wales. 48 respondents provided no location information. We also received 4 responses from individuals based in Scotland and 1 from an individual who now lives in the Republic of Ireland. These 5 responses have been included in the analysis because the answers given related to how the LPA works in England and Wales.

Campaign response:

31. We received one set of campaign responses. A campaign response is where multiple individuals or organisations send in responses that are either identical or significantly similar to each other. This particular campaign response was organised by professionals, mostly solicitors, with an interest in LPAs. We were able to link 37 of the 313 responses to this campaign. 33 individual professionals provided a campaign response and 4 organisations also did.
32. We must note that while every effort has been made to identify all of the responses received as part of the campaign, some may have been missed. This is because while these responses were almost identical in their answers and content, they did occasionally vary the phrasing of the reasons and some respondents changed the wording of their answers or provided additional reasons and information to reflect their personal views. These changes could have resulted in them not being identified as a campaign response.
33. Whilst we counted the campaign responses as individual responses for the purposes of analysis, we have still highlighted them within our summary for each question below so it is clear where this has impacted the consultation.

Summary of proposal 1 – role of the witness

Background

34. Under this proposal we considered whether there was value to the role of the witness (aside from the role of the certificate provider). We also looked at how, if the witness did add value, to retain this within a future service where digital methods of creating and executing an LPA would be possible, while strengthening safeguards.
35. It is currently taken on trust that the witness is a real person who was present to attest the signatures of the parties and we know that the parties find the signing requirement complex and burdensome. We therefore considered changes which could create robust evidence that an agreement had been made without compromising the security of the document itself or other parts of the process and simplify the system. This was assessed under three approaches.
36. **Approach 1a - remove witnessing.** This would mean removing the need for signatures to be witnessed and not replacing it with any alternative. This approach was underpinned by the idea that witnessing fails to provide any extra safeguards that are not already embedded in other sections of the creation and registration process. Thus, removing witnessing would not impact safeguards but could make it easier to create an LPA by removing complexity in the signing process, and registration by reducing the number of LPAs that cannot be actioned because of signing and witnessing errors.
37. **Approach 1b - remote witnessing.** This would involve using video conferencing to allow a person to witness the signing of a document while being in a different location to the donor or attorney. This would streamline the creation process as users would no longer face the barrier of trying to get everyone involved in the same room whilst retaining the safeguards provided by a witness. However, this approach assumed that users would be comfortable with, and prefer to use, technology to witness signing.
38. **Approach 1c - replace witnessing with a similar function.** This would involve using technology to replicate witnessing. The need for signatures to be witnessed by a human would be removed and other methods used to provide evidence that the donor and attorney had executed the LPA. This approach assumed that the safeguard of witnessing could be replicated digitally, and that users would be able to confidentially utilise a system in which technology takes over this function.

39. The government’s preferred approach was to **replace witnessing with a similar function**. This was due to evidence indicating that witnessing provides a safeguard when it operates in tandem with the certificate provider and identification requirements. While simplification would be welcomed by users, removing the witness could compromise safeguards as witnessing can be manipulated e.g. where the motives are coercion or fraud. Evidence indicated that remote witnessing would not solve this issue. Replacing the witness was therefore seen as the best way to obtain robust evidence that an agreement had been legitimately made.
40. Respondents were asked to examine each of the approaches outlined and give reasons for their answers:
- Q1: What are your views on the proposals outlined? Please give your reasons for your responses:
- Remove witnessing (approach 1a)
 - Remote witnessing (approach 1b)
 - Replace witnessing with a similar function (approach 1c)

Responses to specific questions

Q1: What are your views on the proposals outlined? Please give your reasons for your responses: Remove witnessing (approach 1a)

41. The answers to this question that could be provided were; positive, mostly positive, neutral, mostly negative, negative and don’t know. Respondents also had the opportunity to leave free text responses.
42. The answers to this question are set out at Fig 1. Overall, the responses were largely negative with 198 respondents providing a negative or mostly negative view (69% of 289 responses). Only 57 respondents gave an overall positive answer (19%). The figures include 37 responses that were part of the campaign response, all of which were negative.

Capacity in which responding	Total responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don’t Know
All	289	30 (10%)	27 (9%)	27 (9%)	36 (13%)	162 (56%)	7 (2%)
Public	110	17 (16%)	19 (17%)	14 (13%)	16 (15%)	38 (35%)	6 (6%)
Professionals	129	6 (5%)	4 (3%)	11 (9%)	14 (11%)	93 (72%)	1 (1%)

Capacity in which responding	Total responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
Organisations	46	5 (10%)	4 (9%)	2 (4%)	6 (13%)	29 (63%)	0

Fig 1. Responses to Question 1-1a.

43. Members of the public were the least negative of all respondent types but still remained negative in their views overall, with 49% of responses providing a negative view (54 of 110 responses). This compares to 82% of professionals, who were the most negative, (107 of 129 responses) and 76% of organisations (35 of 46 responses). The public were also more likely to answer 'neutral' (13%) or 'don't know' (6%) compared to both professionals and organisations.

Themes:

44. Of the 289 responses, 215 provided reasons for their answers. The main reasons were negative concerns, which aligns with the high number of quantitative responses. These included that removing the witness would cause or increase fraud, would lead to an increase in abuse and coercion and create uncertainties about how execution would be evidenced. Of this latter group, some mentioned that the witness can be called to confirm the donor signed the document. There were also some responses that focused on either improving the witness's understanding of the MCA or that the witness should help improve the donor's understanding of the LPA. Finally, a number of responses made reference to witnessing being a safeguard, though not all of them expanded on why.
45. Counter to this, the main point raised by responses was that witnessing, as it stands, is not a robust safeguard. They cited reasons including that it can be circumvented and that it is just a formality creating a "placebo effect". Most notably, the Court of Protection Bar Association noted that their "working group members have rarely encountered instances of LPA witnesses being asked to provide evidence as to the execution of an LPA in disputes about validity which come before the Court of Protection", they stated this is more commonly the certificate provider. Respondents also noted that the difficulties with witnessing can lead to errors.
46. A number of responses also spoke about the certificate provider, the implications of changes to the witness for the certificate provider and vice versa. There were also comments about the LPA's status as a deed. These responses are considered together with similar responses to question 1-1b and question 1-1c at the end of this section.

Q1: What are your views on the proposals outlined? Please give your reasons for your responses: Remote witnessing (approach 1b)

47. The answers to this question that could be provided were; positive, mostly positive, neutral, mostly negative, negative and don't know. Respondents also had the opportunity to leave free text responses.
48. The answers to this question are set out at Fig 2. Overall, the responses were largely negative with 167 respondents providing a negative or mostly negative view (58% of 286 responses). While negative, this is less negative overall than responses to approach 1a. 'Neutral' and 'don't know' views were also lower, resulting in a corresponding increase in overall positive responses with 25% expressing such a view (70 of 286). The figures include 37 responses that were part of the campaign response, all of which were negative.

Capacity in which responding	Total responses	Positive	Mostly Positives	Neutral	Mostly Negative	Negative	Don't Know
All	286	28 (10%)	42 (15%)	38 (13%)	120 (42%)	120 (42%)	11 (4%)
Public	107	18 (17%)	24 (22%)	15 (14%)	23 (22%)	23 (22%)	9 (8%)
Professional	129	4 (3%)	12 (9%)	16 (12%)	74 (57%)	74 (57%)	2 (2%)
Organisations	46	6 (13%)	6 (13%)	7 (15%)	21 (46%)	21 (46%)	0

Fig 2. Responses to Question 1-1b

49. The public were the most split on this approach with equal numbers expressing an overall positive or overall negative view; 39% of the responses in both cases – 42 positive and 41 negatives. 'Neutral' and 'don't know' responses remained at around the same level as for approach 1a.
50. Professionals remained mostly negative towards this approach at 73% (95 responses), though they were less negative than approach 1a. For this group, this resulted in a higher neutral response for this approach increasing from 9% for approach 1a to 12% (16 responses) here.
51. Finally, like the professionals, organisations remained negative overall but were less negative than for approach 1a with 58% of responses indicating an overall negative view (27 response). Unlike professionals however, this resulted in an increase in positive responses to 26% (12 responses) rather than an increase in neutral responses.

Themes:

52. Of the 286 responses that answered this question, 173 provided reasons. The biggest issues raised were concerns about this approach being open to abuse and undue pressure or coercion. Specifically, the feeling was that this approach reduced safeguards or was an unnecessary change. Others were concerned that a change to remote witnessing would increase complexity and be more difficult to implement than the current system. Connected to this, a number of responses referred to concerns about people’s ability to access the technology necessary to use this process. Mostly this related to video conferencing technology but there were also concerns about access to private secure technology and access to the internet.
53. On the positive side, respondents believed this approach could make the system simpler and more straight forward and could make logistical arrangements simpler when organising the parties.
54. As at question 1-1a, a number of responses mentioned the certificate provider, the implications of changes to the witness and deeds. These responses are considered together with similar responses to Q1-1a and Q1-1c in the analysis section below.

Q1: What are your views on the proposals outlined? Please give your reasons for your responses: Replace witnessing with a similar function (approach 1c)

55. The answers to this question that could be provided were positive, mostly positive, neutral, mostly negative, negative and don’t know. Respondents also had the opportunity to leave free text responses.
56. The answers to this question are set out at Fig 3. Overall, the responses remained largely negative with 127 respondents providing a negative or mostly negative view (45% of 282 responses). This continues the downward trend in negative responses seen from approaches 1a to 1b. However, this time, positive views remain consistent with approach 1b and instead ‘neutral’ and ‘don’t know’ views increased to 17% (48 responses) and 11% (32 responses) respectively. The figures include 37 responses that were part of the campaign response, all of which were negative.

Capacity in which responding	Total responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don’t Know
All	282	40 (14%)	35 (12%)	48 (17%)	27 (10%)	100 (36%)	32 (11%)
Public	106	20 (19%)	20 (19%)	25 (24%)	8 (8%)	16 (15%)	17 (16%)

Capacity in which responding	Total responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
Professional	127	7 (6%)	11 (9%)	19 (15%)	15 (12%)	64 (50%)	11 (9%)
Organisations	46	13 (28%)	3 (7%)	3 (7%)	4 (9%)	20 (44%)	3 (7%)

Fig 3. Responses to Question 1-1c.

57. In this question different patterns and preferences appear when the data is looked at by the group responding; public, professional or organisation.
58. Unlike the answers overall, members of the public were positive towards this approach, though they were still more likely to answer 'neutral' or 'don't know' compared to other respondents. 38% of responses from the public indicated a positive view (40 responses) while only 23% were negative overall (24 responses). 24% (25 responses) said they were neutral while 17 (16%) answered 'don't know'.
59. Professionals continued to demonstrate a negative view with 62% overall negative responses (79 of 127). This is lower than the negative response to approaches 1a and 1b and resulted in small increases to all other areas. Overall positive responses rose to 14% (18 out of 127 responses), neutral responses to 15 % (19 of 127) and 'don't know' responses to 9% (11 of 127).
60. Organisations were the most diametrically opposed group, with the majority of responses falling in either 'negative' (20 responses, 44%) or 'positive' (13 responses 28%). 'Mostly positive', 'neutral' and 'don't know' each received 3 responses (7%) while 'mostly negative' received 4 (9%)

Themes:

61. Of these responses, 177 provided reasons for the answers they had given. Notably many stated that they needed additional information on how this approach would work in order to be able to comment, this reflects the higher number of neutral and don't know answers received for this approach.
62. Other themes, as with previous approaches, focused on concerns about the approach being open to abuse and coercion and general concerns about the removal or watering down of safeguards. There was also a concern about how this approach would evidence execution. (This particular concern was highly represented amongst responses because it was included in the legal sector campaign response that we received. Only a small number of respondents not in the campaign raised this). A number of responses thought that the physical witness should be retained as

technology could not or should not replace it. As with approach 1b there were also concerns about digital access and digital literacy.

63. However, we saw a number of more positive themes arising with some expressing the view that replacing witnessing would be a positive. Benefits they highlighted included future proofing the system and simplifying the process. Others thought this was an improvement that wouldn't compromise safeguards and could provide extra safeguards through technology. Finally, a small number of respondents reiterated the point that witnessing itself does not provide a robust safeguard.

The government's response

64. Given the negative responses to all three of the approaches presented, the government has given particular consideration to the role of witnessing in a future service.
65. As set out in the consultation, we believe that witnessing does provide a level of limited safeguard and therefore we are against complete removal of the witness from the LPA process. In theory the witness provides evidence that the donor executed the LPA and it is important that we retain this purpose – evidence of execution by the donor – within the legislation even if we do this in a different way in the future which provides this evidence in practice, as well as in theory.
66. The responses have provided additional evidence of the importance and weight that many people take from the witnessing process, both public and professional. This supports the idea that some form of evidence of execution by the donor is necessary to the security of an LPA, alongside identification checks (which we will come to at theme 3) and the certificate provider (covered below).
67. The responses on 1b, remote witnessing, were also largely negative and reflected concerns about safeguards and tech access. Although this has been used successfully in relation to emergency wills under COVID-19, we recognise that its use on LPAs, which have at least 2 more actors who need to sign, may add to the complexities of the process rather than simplifying them.
68. Responses to both 1a and 1b spoke about the potential for increased abuse. However, the protection against these, even in the current process, comes not from the witness but from the certificate provider (even if they are the same person, it is a different role). While some witnesses do take on these duties, not every witness does and so to ensure this protection has the maximum effect we should focus our efforts on strengthening the certificate provider's role which is covered below.

69. The position in relation to e 1c, replace witnessing with a similar function, is more complex. While negative overall, we have to recognise that the public responses were positive towards the possibility of this approach. Additionally, organisations were split and while still mostly negative, where people were positive, they were strongly positive. This approach also contained the highest number of neutral or 'don't know' responses wanting more information on how this approach could work. Further work will be required to develop and test the possibilities in this area, particularly around whether there is a technical solution that could provide robust evidence to satisfy both OPG and the Court of Protection.

For these reasons, the government will continue to investigate the possibility of using technology to replace the witness with a similar (digital) function within the digital channel.

70. Additionally, we had a number of responses that made the point that the requirement to witness the attorney's signature is unique to the LPA process and does not exist for other forms of deed. Some of these responses questioned whether the witnessing of the attorney's signature provided any value or protection and suggested this witness could be removed in order to make the process more straightforward.
71. It is difficult to know what the general reaction to this approach would be as we did not suggest removing the witness just for the attorney in the consultation. However, given the number of responses that highlighted the role, responsibilities and duties that an attorney is agreeing to take on in the event they act under an LPA, there could be opposition to this proposal. We therefore need to give this further consideration before accepting this suggestion.

The government will consider whether retaining a mechanism to evidence the attorney's execution of the document provides a safeguard to an LPA.

Other issues raised:

The witness and the certificate provider

72. As mentioned, a number of responses across all three of these approaches made reference to the importance of the role of the certificate provider. Specifically, their role in determining the donor's understanding of the document and as a protection against fraud and abuse. Many felt this was one of the most important roles in creating an LPA and a key safeguard.
73. Some responses also demonstrated the same misunderstandings highlighted in the consultation document itself, for example that the witness tests the donor's

understanding or capacity, and that they are a protection against fraud. This is a conflation of the role of the witness and the role of the certificate provider. The role of the witness currently is only to confirm that a person signed the document, either the donor or the attorney. The role of the certificate provider is to give their view on whether the donor understood the LPA at the point of execution, whether there was fraud or undue pressure and whether there is any other reason an LPA cannot validly be made.

74. A number of responses across all three questions made the suggestion that instead of any of the approaches suggested, the government should instead look at combining the role of the certificate provider and the witness. This would simplify the process by requiring one less person, is already carried out this way by many professionals who act in both roles and would retain what is seen by many respondents to be the best way to provide evidence of execution.
75. The government agrees with many of the points made by these responses. Additionally, the government believes that requiring the certificate provider to be present to witness the execution will strengthen the role. Currently it is an oddity of the system in England and Wales that while the certificate provider is meant to form their view on the donor's understanding at the time of execution of the LPA, they are not required to be present at the execution. Requiring the certificate provider to be present, and for the conversation to happen alongside execution would strengthen the protection provided.

The government will therefore investigate whether to combine the role of the certificate provider and the witness in relation to execution of the LPA by the donor.

76. It must be noted however that the role of the certificate provider is to be an independent person chosen by the donor, they do not need to have a connection to the attorneys. As one of the main protections of both the donor's choice and control over the process and against fraud and abuse, we believe it is important that the certificate provider's role remain connected to the donor only and so do not propose that the certificate provider witnesses the attorney's execution.

For this reason, the government will review the requirements for witnessing the donor's execution and attorneys' execution, accepting these may be different in a future service.

77. Turning back to the responses that said that the role of the certificate provider is to assess the donor's mental capacity; this is incorrect as mental capacity should be assumed under the MCA unless there is evidence to indicate otherwise.
78. A number of responses made reference to this with the response from the Law Society, in particular, stating this position "is wrong and should be corrected". Their view was that the role of the certificate provider should be clarified to say that it is an assessment of capacity, with a requirement for the certificate provider to declare that they understand their role and that they may be called before the Court of Protection.
79. The role of the certificate provider under the MCA is to confirm three things at the time of execution that mean the LPA can be created:
 1. That the donor understands the LPA
 2. That there is no fraud or undue pressure on them to make the LPA
 3. That there is no other reason the LPA cannot be executed
80. Importantly, the first requirement is not that the donor has mental capacity to execute the LPA but that the donor understands the LPA. It is correct that a donor cannot execute an LPA if they do not have mental capacity. It is also the case that mental capacity should be assumed without evidence to the contrary and that the ability to understand information forms part of the capacity assessment.
81. This means the certificate provider should have a conversation with the donor about their LPA to determine the donor's understanding of the document they are creating at, or as close to, the time of execution as possible. If the certificate provider believes the donor does not understand the document, they should not sign the certificate. While a lack of understanding could indicate a lack of mental capacity, the belief that the donor does not understand the document is enough on its own that the certificate provider should not sign the certificate to confirm the LPA can proceed. A capacity assessment is not needed for a certificate provider to refuse to sign the LPA.
82. In their response, the Law Society suggested determining a position on the donor's understanding "requires some positive step to be taken, such as asking relevant questions. It is not possible to comply with this requirement by simply relying on the presumption of mental capacity, without asking questions which might rebut that presumption". The government agrees with this. It is for this reason we are considering the use of example or set questions for the certificate provider, as well as the ability for the certificate provider to record and provide their assessment to OPG,

particularly where they have concerns. This idea has featured in both our ongoing workshops with our stakeholder working group and the workshops that accompanied the consultation.

83. Providing additional support and guidance to certificate providers on their role to both protect the donor and facilitate their rights is an important part of the reforms we want to take forward. However, it does not require changes to legislation to make this happen and so was not featured heavily in the consultation.

The government will provide greater clarity around the role of the certificate provider in assessing the donor's understanding of the LPA and protecting against fraud, abuse and undue pressure. It intends to do this by giving additional guidance and support to those carrying out this role and providing a way to raise concerns directly with OPG.

84. Finally, some respondents raised the idea that the certificate provider should be required to be a professional. Some suggested a solicitor, others referred to the Scottish system where the certificate provider can be either a solicitor or a medical professional. Others made reference to reintroducing the requirement that a certificate provider be a professional that was changed in 2015.
85. It is worth clarifying that it has never been a requirement in England and Wales that a certificate provider be a professional. The changes made in 2015 were form changes that removed the need to state on the LPA whether the certificate provider's relationship to the donor was as a professional or as a member of the public who had known them for two years. They did not change who could be a certificate provider which is based on who has the knowledge or skills to carry out the role. When the MCA was introduced, it was thought that both a professional with the necessary skills and someone who has known the donor for two years, and therefore would be able to spot changes in attitude or behaviour, were both competent and well placed to act as a certificate provider.
86. The government position on this has not changed. We have been clear throughout the work on modernising LPAs, including through the consultation and supporting engagement, that we believe LPAs should be attainable, accessible and affordable for all and access to a solicitor should not be a requirement or a barrier. The government is also aware that GPs can charge fees for acting as certificate provider. This may also prove to be a cost barrier for some donors.
87. The original arguments for allowing non-professional certificate providers were that a close friend or neighbour may know the donor better than their GP or solicitor and therefore be in a better position to spot where abuse or pressure were being applied.

Additionally, user research indicates that non-professional certificate providers take their role seriously when they agree to it and this could be strengthened with more support and guidance as outlined above.

For these reasons, we will not introduce a requirement that the certificate provider be a professional.

The LPA's status as a deed

88. A number of responses made reference to the fact that the LPA is a deed. Many of these responses were keen that the LPA remain a deed in the future. The reasons given for this focused on the requirements of the document as a deed and the protections that a deed provides.
89. Specifically, respondents felt that the process of witnessing the execution of a deed adds legal weight, gravitas and understanding to the process and that the LPA as one of the most important legal documents should continue to be witnessed. Others mentioned that as a deed, it is a requirement that the LPA have a witness and so this must be retained.
90. On the particular benefits of the LPA being a deed, some spoke about the fact there is a 12-year period within which to bring any litigation claims against the actions of an attorney (as opposed to six for regular contracts). Another response mentioned that the hierarchy of legal documents means that in order for an attorney to execute a deed on behalf of the donor (e.g. if an attorney was dealing with the donor's property), then the document conferring the power to do so (i.e. the LPA) must also have been a deed.
91. The government acknowledges these concerns as well as the points made about the nature of the power an LPA confers and how it interacts with powers under other forms of agreement, including other types of deed. We therefore agree that it is important that LPAs continue to be, or be treated as, deeds even if they are modernised.
92. This however doesn't mean we won't also consider changes to the witnessing requirements. As stated in the consultation, the proposals outlined would require changes to the Mental Capacity Act 2005 (and any consequential changes to related legislation) in order to implement a modernised lasting power of attorney.

The government will ensure that the LPA continues to be, or be treated as, a deed even if changes are made to the requirements for witnessing an LPA.

Conclusion

93. In conclusion, the government is committed to continuing to investigate the specific changes that might be needed to witnessing, to allow a digital channel for LPA creation. In particular:

- **The government will continue to investigate the possibility of using technology to replace the witness with a similar (digital) function within the digital channel.**
- **The government will investigate how to combine the role of the certificate provider and the witness in relation to execution of the LPA by the donor.**
- **Review the requirements for witnessing the donor's execution and attorneys' execution, accepting these may be different in a future service.**
- **The government will consider whether retaining a mechanism to evidence the attorney's execution of the document provides a safeguard to an LPA.**
- **The government will provide greater clarity around the role of the certificate provider in assessing the donor's understanding of the LPA and protecting against fraud, abuse and undue pressure. It intends to do this by giving additional guidance and support to those carrying out this role and providing a way to raise concerns directly with OPG.**
- **The government will not introduce a requirement that the certificate provider be a professional.**
- **The government will ensure that the LPA continues to be, or be treated as, a deed even if changes are made to the requirements for witnessing an LPA.**

Summary of proposal 2 – role of the application

Background

94. Under this proposal, we considered what purpose application serves within the process of creating and registering an LPA and who can apply to register one. We also examined changes that would require an LPA to be submitted for registration as soon as it is completed by the donor or have an LPA digitally stored before being sent for registration.
95. Currently after users make and execute an LPA, they can choose when to send it to OPG for registration. If an LPA is sent for registration after the donor has lost capacity and that LPA is found to be imperfect or invalid, it cannot be registered, and a new LPA cannot be made. Therefore, it is important to increase the speed and simplicity of registrations for users and identify errors in an LPA upfront. This would remove the risk that errors are found after the donor loses capacity. The consultation identified two different approaches:
96. **Approach 2a – execution starts registration.** This would involve simplifying the process by having an LPA sent for registration as soon as it is executed. It would be facilitated by automated checks that would help identify and fix errors sooner. Sending the LPA for registration immediately would also be of benefit to OPG since it is easier to gather evidence for objections closer to the point of execution.
97. **Approach 2b – Execution allows delayed registration.** This involves retaining the ability for people to delay registering their LPA and would require OPG to store LPAs created digitally until they were submitted for registration. Donors would be required to register the LPA within a clearly defined and published time frame. After this point the LPA would be deleted as it would be financially unsustainable for OPG to continue to store an increasing number of LPAs without receiving the fee to do so.
98. **The government's preferred approach was 2a – execution starts registration.** Given the number of LPAs that are found to be either imperfect or invalid, early checks and immediate submission for registration would allow OPG to vastly reduce the number of LPAs that have to be returned, reduce the burden on donors and attorneys and minimise the risk that the donor cannot make a replacement due to loss of capacity. Additionally, this approach avoids the need for OPG to pay to store unregistered LPAs and avoids the need to delete executed LPAs.

99. Respondents were asked what the benefits and impacts of delaying registration were and to give reasons for their answers:

Q2. Would you, or the people you support, delay the registration of an LPA? Please give the reason for your answers.

Q3. What impact would removing the ability to delay registration have? Please give reasons for your answer.

Responses to specific questions

Question 2: Would you, or the people you support, delay the registration of an LPA? Please give reasons for your answers.

100. The answers that could be provided to this question were; no, yes and don't know. Respondents were then asked to select the reason for their answer from a set of pre-set responses depending on whether they said 'yes' or 'no'. Respondents had the opportunity to leave additional information and set out other reasons in the free text box.

101. For analysis purposes, answers to the follow up question "if your answer is no" have been counted where the original answer was 'no' or 'don't know'. Answers to the follow up question "if your answer is yes" have been counted where the original answer was 'yes' or 'don't know'.

102. Free text reasons, both positive and negative, have been themed irrespective of the original answer to understand the themes arising across all responses, both positive and negative.

103. 279 respondents answered this question, and Fig 4 sets out the overall responses. 67% (188 responses) of the 279 respondents said 'no', while, 28%, 79 respondents, answered 'yes'. 37 campaign responses answered this question, but they provided differing answers, 35 said 'yes', while 2 said 'no'.

Capacity in which responding	Total responses	No	Yes	Don't Know
All	279	188 (67%)	79 (28%)	12 (4%)
Public	110	89 (81%)	15 (14%)	6 (5%)
Professional	123	74 (60%)	45 (37%)	4 (3%)
Organisation	43	23 (54%)	18 (42%)	2 (5%)

Fig 4. Responses to Question 2.

104. Professionals (37% of 123 responses) and organisations (42% of 43 responses) were more inclined to answer 'yes' compared to the public (14% of 110 responses). The public strongly answered 'no' (81% of 110 responses). Overall, 4% of 279 respondents said they don't know, and this is reflected in similar levels across all three groups.

Q2 - If your answer is No:

105. The reasons for not delaying are outlined in Fig 5 below. 188 respondents answered this question and people could provide multiple answers

Reasons	Responses	Percentage
Do not see a benefit to delaying registration	155	82%
Was advised not to delay registration	17	9%
Need an LPA as soon as possible due to medical diagnosis	33	18%
Need an LPA as soon as possible due to a financial decision that needed to be made	23	12%
Other reason	26	14%
Total reasons for no or don't know	188	

Fig 5. Reasons for "no" or "don't know" responses to Question 2.

106. The majority of respondents, 155 out of 188 (82%), did not see a benefit to delaying registration. This was by far the largest response. The next highest consisted of those who had a need for an LPA as soon as possible either due to a medical diagnosis (33 respondents, 18%) or a financial decision that was needed (23 respondents, 12%). 17 respondents (9%) said they were advised not to delay registration. Where someone answered 'other', they were asked to provide those reasons in free text and this is included in the themes below.

Q2 - If your answer is Yes:

107. The reasons given for a delay are outlined in Fig 6 below. 89 respondents answered this question and people could give multiple answers.

Reasons	Responses	Percentage
Don't want to pay the fee yet	14	16%
Can't pay the fee immediately	5	6%
Don't want to transfer power of attorney immediately	16	18%
May want to change my LPA	64	72%

Reasons	Responses	Percentage
Created an LPA after a medical diagnosis and I'm waiting until nearer the time.	2	2%
Other reason	20	22%
Total reasons for yes or don't know	89	

Fig 6. Reasons for “yes” or “don't know” responses to Question 2.

108. The main reason given in support of delayed registration was that it allows the donor to amend their LPA before registration (64 out of 89 respondents, 72%). This was the most popular view with the second highest being that a donor does not want to transfer power of attorney immediately (16 out of 89 responses or 18%). The third most popular reason was in relation to the fee structure of an LPA: 14 people (16%) said their reason for delay was that they do not want to pay the fee yet. 20 people (22%) stated other reasons for keeping the option for delay which are covered in the **themes** below. Of the campaign responses, all bar 1 of the responses that said ‘yes’, gave the reason “may want to change my response”. 3 responses included additional reasons as well as this one. 1 response gave no reasons.

Themes:

109. Of the 279 responses, 74 provided further reasons for their response, or clarification of other issues they thought were relevant. There were a mix of both positive and negative thoughts given although they were predominantly positive.
110. The main point put forward by the largest number of respondents was that removing the option to delay would be more straight forward and quicker for most donors. A slightly smaller group of people also suggested that this would mean errors could be detected and fixed sooner. A similar number of respondents said they were against the principle of delaying the registration of an LPA and so supported the removal of this aspect.
111. Behind these responses were some more negative reasons. A smaller number of responses said they were against the removal of delay because it would remove donor choice and control over the process. A similar number felt that the ability to delaying registration was itself a safeguard against abuse although this was matched by the number of responses that thought the fact the LPA would be immediately ready for use was a positive.

Question 3: What impact would removing the ability to delay registration have? Please give reasons for your answer:

112. The answers that could be provided to this question were; positive, negative and don't know.

113. As set out at Fig 7, the majority of respondents thought the implications of removing delay would be positive (54% of 282 responses) while the remaining responses were split between negative (24%) and don't know (22%). 37 of the campaign responses answered this question. 33 said there would be a positive impact, while 4 said there would be a negative one.

Capacity in which responding	Total Responses	Positive	Negative	Don't Know
All	282	151 (54%)	69 (24%)	62 (22%)
Public	107	52 (49%)	22 (21%)	33 (31%)
Professionals	127	75 (59%)	32 (25%)	20 (16%)
Organisation	45	23 (51%)	14 (13%)	8 (18%)

Fig 7. Responses to Question 3.

114. When split by type of respondent, professionals were the most positive with 59% of 127 responses indicating a positive response. Organisations were also positive with 51% of 45 responses indicating a positive response. The public were also mostly positive with 52 responses (49% out of 107) indicating a positive response, although they were also much more likely to say they didn't know (33 response, 31% of 107) compared to professionals (20 responses or 16% of 127) and organisations (8 responses or 18% of 45).

Themes:

115. For this question, 157 responses provided reasons out of the 282 answers received. Many of these echoed the reasons provided at question 2, though the same themes arose more strongly on this question.

116. Responses to this question were mainly positive reasons for making this change. Four themes stood out from the others. Having the LPA in place when needed was seen as the main benefit with many more responses suggesting this for this question than for question 2. Furthermore this, respondents echoed the feeling that this would be a more straightforward process that allowed early correction of errors. However, a similar number of people, and again more than at question 2, also raised the issue that this would remove donor choice and control over the process. Finally, responses also raised again the fact that an LPA would be ready quicker with this approach, and specifically mentioned that the current registration process can take a long time.

117. Behind these themes were a few smaller ones which received a similar level of response. These were against the removal of delay and focused on the possibility that it could deter people from making an LPA, that it risked paying a fee for something that might never be used or could need changing and finally, reiterating the point that delay itself can be a safeguard against abuse.

The government's response

118. While responses to these questions were mainly positive to the idea of removing the ability to delay registration, a not insignificant number of people were either negative towards the idea or gave compelling reasons to retain the ability to choose whether or not to delay.
119. We are pleased to hear that many people think there is no reason to delay registration, that this would speed up the process and ensure that LPAs are in place and able to be used in case they are needed. This is the role of an LPA, to be an insurance policy for the donor should the worst happen, and they lose capacity to make certain decisions. Connected to this, it is positive to hear that many third-party support providers, both legal and non-legal, advise not to delay registering the LPA.
120. Similarly, we are pleased that people believe a move to immediate submission could aid in the detection of errors and resolving them early before this becomes an issue for the donor. All of this supports the government's preferred approach; to move to a system where an LPA is submitted for registration as soon as it is executed.
121. However, we cannot ignore the 28% of respondents who said they would choose to delay registration, or the 25% of respondents who said there would be a negative impact if this approach is removed. The points about not paying for an LPA that might never be used are interesting given the LPA's role as a protective mechanism, as we've said, an insurance policy in case of accident or illness. However, it is the nature of an insurance policy that you pay for it and hope you don't need it and it seems clear the majority of people do not have concerns about paying for an LPA that might not be needed. For this reason, we don't believe this is enough to change the government's preferred approach.
122. Other concerns raised do need further consideration. In particular, the argument that removal of the option to delay would remove donor control and choice is a compelling one given the role the MCA plays in protecting a person's ability to make their own decisions and retaining control over their life. This does need to be given further consideration, especially in light of the government's position on background checks which we consider under proposal 3 – OPG's – remit below.

123. However, allowing delayed registration could also have an impact on our ability to both realise efficiencies in the process and, more importantly, to improve safeguards. In the first case, as outlined in the consultation, this would create a pressure on OPG to store LPAs without receiving funding to do so. We would need to determine whether there is a way for OPG to fund the storage of executed but unregistered LPAs. This could require that the fee is paid earlier in the process before registration.
124. In the second case, we need to consider how delayed registration would interact with other safeguards in the process, particularly any new safeguards around identification and verifying that the parties involved are who they claim to be. The longer the process is, and the more delay there is built into it, the higher the possibility we would need to reidentify people at various stages in the process.

For these reasons the government will continue to investigate the feasibility of both approach 2a: Execution starts registration and approach 2b: Delayed registration before finalising a way forward.

Conclusion

125. In conclusion, given the range of views expressed on the both the benefits of immediate registration and the restrictions that could arise from removing the ability to delay:

The government will continue to investigate the feasibility of both approach 2a: Execution starts registration and approach 2b: Delayed registration before finalising a way forward.

Summary of proposal 3 – OPG remit

Background

126. Under this proposal we assessed how to widen OPG's remit to increase safeguards during the process of creating and registering an LPA. This was because OPG has limited powers to halt or stop a registration at present, and where an LPA does not comply with the legislation (section 10 and schedule 1 of the MCA). Increasing these powers would provide additional safeguards in relation to fraudulent applications. Widening OPG's legislative powers and methods of investigation would increase user confidence in OPG and aid the prevention of fraud, abuse and coercion by requiring parties to the LPA to go through identity verification. This was explored under two approaches.
127. Approach 3a - **conditional registration**. In order to increase safeguards while streamlining the new service and increasing efficiency and data accuracy, automated checks for all users would be introduced, including identity checks. OPG would require parties to provide one of a number of identification options e.g. – passport or driving licence before creating an LPA. Once passed, the LPA would be registered immediately. However, if users failed these checks, an LPA would be rejected, and parties would be prompted to go through the Court of Protection to verify the validity of the LPA. The intention was to provide additional protection for donors by verifying that they were the ones who had made the LPA.
128. Approach 3b - **discretionary registration**. The scope of OPG's remit would be expanded through legislation to allow a threshold to be established for checks like identity verification. Once all parties had completed their identification checks, if they met the acceptable threshold the LPA would be registered. Where they did not meet the threshold, OPG would have discretion to consider additional evidence. If they scored below the threshold, the LPA would be rejected. This approach would allow OPG to take into account each donor's specific circumstances and register LPAs that may not meet the threshold for automatic registration but could still be demonstrated as valid.
129. The government's preferred approach was 3a – **conditional registration**. This was because a conditional system that allowed for a wide range of checks would reduce the chance of a fraudulent LPA being registered and increase confidence in the safeguards for the donor. It would also ensure all donors and LPAs were treated consistently. Having these automated checks done by a sole organisation like OPG would not only streamline the registration process for an LPA and make it more

transparent for all parties involved, but would also ensure that costs remained affordable for those creating an LPA.

130. Respondents were asked to examine each of the approaches outlined and give reasons for their answers:

Q4. Which actors in an LPA do you think should have their identity checked? Please give reason for your answers.

Q5. What are your views on the proposals outlined? Please give your reasons for your responses:

- Conditional Checks (Approach 3a)
- Discretionary checks (approach 3b)

Responses to specific questions

Question 4: Which actors do you think should have their identity checked? Please give reasons for your answers.

131. The answers that could be provided to this question were: donor, attorney, certificate provider, don't know or other. Respondents also had the opportunity to give free text responses.

132. 283 respondents expressed a view on which actors should have their identity checked, with the majority in favour of checks taking place. Their answers are set out at Fig 8. Over 80% thought that the donor or attorney should have their identity checked. The majority, 65%, also selected the certificate provider in their answer. Amongst 'other' responses, the witness was a common suggestion, where this role was not being carried out by the certificate provider. 37 campaign responses answered this question; all 37 selected the donor, 36 the attorney, 35 the certificate provider and 21 'other' – these all named the witness.

Actor	Number of Responses
Donor	250 (88%)
Attorney	231 (82%)
Certificate Provider	185 (65%)
Don't Know	9 (3%)
Other (specified): Witness	38 (13%)
Other (not specified)	9 (3%)

Fig 8. Responses to Q4. Percentages are out of 283 total responses

Themes:

133. 143 respondents provided reasons for their answers. Many of the responses considered identity checks to be a good safeguard because they could prevent fraud, provide an audit trail and close loopholes in the current system. Another common theme amongst the responses noted that given the general expectations of a legal process, and the significance of the powers conferred by an LPA, it was appropriate to check the identity of the people involved. Some respondents also suggested that the checks should go beyond identity verification and should include additional background checks on criminal records or bankruptcy.
134. In contrast, a small selection of responses stated that identity checks were not a good safeguard against fraud or undue pressure, and that the mechanisms currently in place sufficiently protect the donor. Others highlighted that legal professionals already check donor identification as part of their standard process, and so this would be a duplication of effort.
135. Concerns were also raised about the difficulties accessing the types of identification documents that might be required. A small set of responses raised that some people would not have access to identification documents, and that there needs to be a wide range of options to address this. They also stated that there would need to be a non-digital route for checks, for those who do not have identification that is verifiable online. A couple of responses suggested using the post office to verify identification where people were unable to do this digitally.
136. Other comments raised included concerns about privacy and general discomfort with government handling and storing personal data. Some respondents also felt that it was likely the fees for making an LPA would increase due to this additional requirement. A small number of responses also stated that identity checks would increase the complexity of the process, noting the difficulties some users have using existing Government Gateway identity procedures.

Question 5: What are your views on the proposals outlined? Please give your reasons for your responses: Conditional checks (approach 3a)

137. The answers that could be provided to this question were: positive, mostly positive, neutral, mostly negative, negative and don't know. Respondents also had the opportunity to give free text responses.
138. 289 respondents answered this question, and fig. 9 sets out the responses. Overall, the responses were largely positive with 209 respondents (72%) providing a 'positive' or 'mostly positive' answer. Only 39 respondents gave an overall negative answer (14%). 37 campaign responses answered this question and 36 were 'mostly positive' while 1 was 'positive'.

Capacity in which responding	Total number of responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
All	289	90 (31%)	119 (41%)	29 (10%)	15 (5%)	24 (8%)	12 (4%)
Public	110	46 (42%)	34 (31%)	11 (10%)	2 (2%)	8 (7%)	9 (8%)
Professionals	129	24 (19%)	66 (51%)	16 (12%)	10 (8%)	11 (9%)	2 (2%)
Organisation	46	19 (41%)	18 (39%)	2 (4%)	2 (4%)	5 (11%)	0

Fig 9. Responses to Question 5-3a

139. Whilst all groups of respondents were positive about conditional checks, support was strongest amongst members of the public and professional organisations, with over 40% in each group expressing strong 'positive' support. Professionals and organisations were also most likely to view this proposal negatively overall (16% of 129 responses and 15% of 46 responses respectively) when compared to members of the public (8% of 110 responses).

Themes:

140. 118 respondents provided further reasons for their answers. Many of the reasons given were centred on identity verification, rather than the specifics of the proposal. Similar to question four, identity checks were considered to be a good safeguard because they prevent fraud and provide added protection to the donor by verifying that it was the donor making the LPA. Once again, some stated that additional checks (e.g. ID verification) were beneficial and necessary given the important nature of the process.

141. Views provided on additional background checks were mixed. Some were in favour of conducting additional background checks in order to detect criminal convictions or test the suitability of the attorney. However, it is worth noting that a similar number of respondents stated that OPG should not restrict the donor's choice of attorney regardless of the outcomes of any checks. This reflects the principle of the right to make 'unwise decisions' which underpins the Mental Capacity Act.

142. Of those who commented specifically on how conditional checks would be conducted, respondents generally thought this process would be the quickest, most proportionate and most straightforward approach. Some also viewed conditional checks as a robust approach that would treat all LPAs consistently and increase confidence in the validity of LPAs. Other answers added that individuals should be

able to appeal to the Court of Protection where they did not agree with a decision reached by OPG.

143. Some individuals raised concerns about the complex and rigid nature of conditional checks and the additional bureaucracy this could add. A small number of respondents were also concerned about the impact this additional administrative task would have on the service that OPG provides.

Question 5: What are your views on the proposals outlined? Please give your reasons for your responses: Discretionary checks (approach 3b)

144. The answers that could be provided to this question were: positive, mostly positive, neutral, mostly negative, negative and don't know. Respondents also had the opportunity to leave free text responses.

145. 282 respondents answered this question, and Fig 10 sets out the responses. Overall, this approach received a more negative response when compared to approach 3a. Only 27% of respondents viewed this approach positively, with the majority (51%) selecting 'mostly negative' or 'negative' when asked about discretionary checks. 37 campaign responses also answered this question though this time 33 were negative and 4 were mostly negative.

Capacity in which responding	Total number of responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
All	282	35 (12%)	41 (15%)	50 (18%)	42 (15%)	102 (36%)	12 (4%)
Public	107	17 (16%)	20 (19%)	22 (21%)	17 (16%)	25 (23%)	6 (6%)
Professionals	128	13 (10%)	14 (11%)	20 (16%)	21 (16%)	55 (43%)	5 (4%)
Organisation	43	4 (9%)	7 (16%)	6 (14%)	4 (9%)	22 (51%)	0

Fig 10. Responses to question 5-3b

146. Professionals and organisations were the most strongly opposed to this approach with over 40% of their responses indicating a strongly 'negative' response, compared to only 23% of members of the public. However, this did not necessarily translate to the public being overwhelmingly positive. Overall, they were still negative, with 39% selecting either 'negative' or 'mostly negative', compared to the 25% who gave one of the two positive responses. They were also more likely to be neutral with 21% of the

public responses providing this answer compared to only 16% of professionals and 14% of organisations.

Themes:

147. 113 respondents provided further reasons for their answers. The main argument against approach 3b was in relation to the discretionary nature of checks. Many respondents were concerned that a discretionary approach was not stringent enough and thought that all LPAs should be treated consistently to reduce the risk of missing fraudulent LPAs or to detect other issues. Some also stated that discretionary checks were overly complex, confusing and would be difficult to administer. A small number of respondents thought this was likely to cause additional delays to the application process. Others raised concerns about OPG's ability to manage the additional burden of this check.
148. Despite concerns about approach 3b, similar to responses in question 4 and question 5-3a, respondents generally expressed support for additional identity checks to be made given the importance of the power being conferred by the LPA. In contrast, a small minority of responses raised concerns about individuals having access to the necessary ID. On approach 3b specifically, some responses thought the flexible nature of the approach would be helpful for donors where they are not able to meet a set list of identification requirements.
149. As with previous questions on this subject, a small number of answers expressed support for additional background checks on the attorney. A similar number argued that the donor's choice should not be restricted by the outcome of any background check, emphasising that the donor has the right to make 'unwise decisions'.

The government's response

150. We have carefully considered the views submitted by respondents in relation to OPG's remit to conduct additional checks during the creation and registration of an LPA. As set out in the consultation, we wanted to explore how to widen OPG's powers in legislation through either conditional or discretionary checks. Both approaches included the introduction of identity verification.

Identity checks on the different actors

151. Overall, the responses received evidenced support for identity checks to be included as part of the LPA creation process, especially for the donor and attorney. Identity checks were widely regarded as a safeguard against fraud and abuse, and appropriate given the nature of the LPA as a legal document and the powers it confers. There is already precedent for this in the legal sector as currently many legal professionals are required to verify the identity of their clients, and so donors creating

an LPA through this route are already having to provide documents to verify their identity. Therefore, expanding OPG's remit to include identity checks on the donor will provide a more consistent and wider level of safeguard.

152. Many of the consultation responses favoured identity checks on the attorney. As stated in the consultation, a survey conducted with solicitors suggest that only 11% checked the attorneys' ID¹. Whilst there may be benefit in conducting checks on the attorney in terms of verifying that the attorney is who they say they are, there are other factors to consider. As some respondents pointed out, third parties already verify the identity of the attorney at the point of using the LPA, for example banks or Land Registry checks by conveyancing solicitors. Introducing identity checks on the attorney might therefore be an unnecessary duplication of effort.
153. Furthermore, many of the respondents to the consultation stated the importance of respecting the donor's right to make decisions (even where these might be unwise) and appoint an attorney of their choice. This, along with other safeguards such as witnessing, the role of the certificate provider, identity checks on the donor and third party checks on the attorney at the time of LPA use, might negate the need for verifying the attorney's identity at the point of registering the document.

Considering the responses, we will consider whether checks on the attorney are necessary and appropriate when considered alongside other safeguarding mechanisms that exist across the LPA process, including when used.

154. Many respondents also supported identity checks on the certificate provider, or the witness where this role was not carried out by the certificate provider. With regards to the witness specifically, as explained in the summary of proposal 1 (from page 25), the government will consider two ways forward: replacing witnessing with an objective digital function and combining the role of the witness and the certificate provider.
155. The consultation responses recognised the important role that both the witness and certificate provider play in the creation of an LPA (see proposal 1). The certificate provider in particular verifies that the donor understands and freely consents to the creation of the LPA, which is an important safeguard. Some respondents also suggested that the certificate provider is most likely to be called on to provide evidence to the Court of Protection if there is a dispute or objection in the future. There is therefore value in verifying the identity of the certificate provider to make the process more robust and enhance protections for the donor.

¹ OPG (2020) Customer Satisfaction Surveys: Power of Attorney. Unpublished

For this reason, the government will seek to verify the identity of the donor and certificate provider in the modernised service

156. Despite the strong support for identity checks, views were expressed about access to digitally verifiable identification for certain groups of individuals. This is addressed in more detail within the equalities statement published alongside the response which can be read at Annex C. We recognise the views raised that not everybody has ready access to documentation that can be suitably verified online. Therefore, in developing the service we will consider alternative routes for verifying the identity of these individuals. Our intention is to develop a service that offers flexibility while still building confidence in the LPA. As suggested in the consultation, this could include conducting a physical interview with a third party who vouches for the donor's identity, similar to the services offered by the Post Office for passports.
157. In summary, the government agrees with the views raised by the majority of respondents on the positive role identity checks can play in providing additional protections for the donor.

The government will also consider including a range of identification options to ensure access for everyone.

Conditional checks vs discretionary checks

158. The consultation stated that the government's preferred approach was to widen OPG's remit so that an LPA could be registered or rejected depending on the outcome of a new set of prescribed checks which would include identity verification. The alternative approach put forward was discretionary checks, where OPG would judge whether an LPA was within a safe risk threshold to register. Under this approach, the LPA would be given a 'risk score' factoring in all checks conducted (including identity verification), and an OPG caseworker would approve or reject the LPA at their discretion.
159. The responses to the consultation strongly supported conditional checks over discretionary checks. Many respondents pointed out the importance of treating all LPAs consistently and viewed conditional checks as the most robust and straightforward approach. Those concerned about a discretionary approach stated that this could result in some cases being missed, leading to the registration of LPAs that should have been rejected.
160. Taking a discretionary approach to registration would mean that OPG could consider the unique circumstances of each donor, allowing maximum flexibility. Some

respondents viewed this as a positive, particularly for donors who don't have ready access to digitally verifiable forms of identification. However, as explained in the consultation there are risks in any discretionary system that could lead to biases or inconsistencies, which could lead to issues in the long term.

161. Having carefully considered the views submitted, we believe that conditional checks will provide the most consistent level of protections for the donor and will provide greatest clarity for all involved on the specific checks that OPG will conduct. This will also ensure that all individuals are required to pass the same checks to register their LPA – a common point raised amongst the responses received.

Taking this into account, we will proceed with developing a system of conditional checks (approach 3a), and not discretionary checks.

Background checks

162. The consultation broached the idea of conducting checks to determine the suitability of an attorney. As there was no specific question on the issue, responses were limited and mixed. Some respondents were in favour of background checks on the attorney (e.g. criminal record checks) in order to improve the safety of the donor. This could be useful to prevent an individual who has previously been convicted of an offence involving abuse of a vulnerable individual from being appointed as an attorney.
163. In contrast, many others argued that background checks should not inhibit the donor's right to appoint a person they trust as the attorney. People are entitled to make unwise decisions – something the MCA highlights in principle 3, which says that a person should not be treated as lacking capacity just because they make an unwise decision. There may be some donors who choose to appoint an attorney who may not appear to other people to be an appropriate choice, but it remains their choice to do so. This argument to uphold the freedom and rights of an individual to make their own choices is a strong one. Expanding OPG's remit to make judgements on the suitability of attorneys would seemingly contradict the principle and essence of the MCA to protect people's ability to make their own choices. OPG is intended to act as a registrar of privately made agreements (the LPA), it is not the arbiter of who can have one.

Having considered the views submitted, the government will not be introducing additional suitability checks on attorneys (such as criminal background checks).

Conclusion

164. Considering both the positive views towards the introduction of identity checks generally, but also the concerns raised about how this should be done:

- **The government will consider whether checks on the attorney are necessary and appropriate when considered alongside other safeguarding mechanisms that exist across the LPA process, including when an LPA is used.**
- **The government will seek to verify the identity of the donor and certificate provider in the modernised service.**
- **The government will consider including a range of identification options to ensure access for everyone.**
- **The government will proceed with developing a system of conditional checks (approach 3a), and not discretionary checks.**
- **The government will not be introducing additional suitability checks on attorneys (such as criminal background checks).**

Summary of proposal 4 – how to object

Background

165. Under this proposal we considered how to clarify and streamline the current processes for objecting to the registration of an LPA. This process allows people to raise an objection to an LPA being registered if they have concerns about what is contained within it or how it was created. Currently, under the MCA, objections can either be on the basis that:
- The LPA was never legally executed in the first place, for example, because the donor did not have capacity to create it, or undue pressure was applied to them. This is called a prescribed objection; or
 - While the LPA was legally executed, it has ceased to confer power, for example due to the death of the donor. This is called a factual objection.
166. The MCA also only covers OPG's ability to deal with objections from donors, attorneys and other persons named in the LPA. While factual objections should go to OPG and prescribed ones to the Court of Protection, in practice OPG receives more prescribed objections than the Court of Protection and then refers these on where necessary. This can be confusing and therefore the consultation aimed to understand how to make it easier for those wanting to raise an objection.
167. **Approach 4a – OPG receives all objections.** OPG would receive and be able to investigate all objections from all parties. Changing the primary legislation so that OPG is the sole organisation for anyone to raise an objection with makes it easier for those with a concern to know where to go and what to do next. Likewise, this would mean that the process of investigating the complaint could be dealt with earlier in the process of objecting and be ready when the court needs to make a decision, if one is necessary. This would align legislation with current practice.
168. **Approach 4b – OPG receives only factual objections.** Anyone with a concern would be able to raise an objection, but would need to refer their objection directly to OPG or the Court of Protection, depending upon the nature of their objection. Factual objections would go to OPG and prescribed objections would go to Court of Protection. This would align current practice with the legislation.
169. The government's preferred approach was to change legislation to allow **OPG to receive all objections** to provide clarity, streamline the current process, and allow a wider group of people to raise objections. This is important because objections are designed to enhance safeguards in relation to alleged fraudulent action or undue

pressure on the donor. It is therefore vital that the process is easy to understand to not discourage genuine objections from being raised.

170. Respondents were asked to examine each of the approaches outlined and consider the power of OPG to refer cases to the Court of Protection. They were asked to give reason for their answers:

Q6. What are our views on the proposals outlined? Please give your reasons for your responses:

- OPG receives all objections (approach 4a)
- OPG receives only factual objections (approach 4b)

Q7. Should the OPG be referring cases directly to the Court of Protection?

Responses to specific questions

Question 6: What are your views on the proposals outlined? Please give your reasons for your responses: OPG receives all objections (approach 4a)

171. The answers that could be provided to this question were: positive, mostly positive, neutral, mostly negative, negative and don't know. Respondents also had the opportunity to provide free text responses.

172. 281 respondents answered this question, and Fig 11 sets out the responses. Overall there was strong support for approach 4a, with 80% of 281 respondents answering either 'positive' or 'mostly positive'. Only 6% of respondents to this question gave a negative response. 36 campaign responses answered this question and they all provided a positive response.

Capacity in which responding	Total number of responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
All	281	172 (61%)	53 (19%)	28 (10%)	7 (2%)	12 (4%)	9 (3%)
Public	105	48 (46%)	21 (20%)	18 (17%)	4 (4%)	8 (8%)	6 (6%)
Professionals	128	85 (66%)	26 (20%)	9 (7%)	2 (2%)	4 (3%)	2 (2%)
Organisation	45	37 (82%)	5 (11%)	1 (2%)	1 (2%)	0	1 (2%)

Fig 11. Responses to question 6-4a

173. Support for OPG receiving all objections was strongest amongst organisations (82% of 45 responses), followed by professionals (66% of 128 responses). Whilst showing support overall with 48 responses (46% of 105 responses), members of the public were slightly more likely to be neutral or negative towards this approach when compared to other groups. They were also slightly more likely to answer 'don't know'.

Themes:

174. 131 respondents provided a reason for their answer. The most common reason provided was related to the simplicity of this approach. The majority said that it was simple, efficient and effective for all objections to go to one place, and that this would be easier for members of the public to understand. A small number also thought this would lead to a quicker process for resolving objections which would be particularly useful given the time-sensitive nature of some objections. Many responses stated that OPG was best placed to deal with objections. However, a small set of answers suggested that there should be a role for the Court or Protection where the case was complex, or in relation to an appeals process.

175. In addition, some respondents were in favour of widening the group of people that could object to the registration of an LPA. They suggested that anybody should be allowed to object, particularly as it is not mandatory to list a 'person to notify' and in many cases that means nobody will be notified.

176. The most prevalent negative answer related to the impact this approach would have on OPG. Some respondents felt that OPG would struggle to manage the additional workload and would require extra funding and resources to service this approach. A small number were also concerned that approach 4a would lead to OPG time being spent on vexatious objections, creating further delay in the system. However, some respondents suggested that setting out in guidance the permissible grounds for objections could prevent vexatious claims.

Question 6: What are your views on the proposals outlined? Please give your reasons for your responses: OPG receives only factual objections (approach 4b)

177. The answers that could be provided to this question were: positive, mostly positive, neutral, mostly negative, negative and don't know. Respondents also had the opportunity to give free text responses.

178. 252 respondents answered this question, and Fig 12 sets out their responses. Overall responses to this approach were negative, with 45% of the 252 respondents either selecting 'negative' or 'mostly negative'. Almost a quarter of respondents (24%) were neutral towards this approach, and 27% were 'positive' or 'mostly positive'. Campaign responses to this question were very mixed. Only 23 provided an

answer and this was split between 8 negative, 3 mostly negative, 11 positive and 1 mostly positive.

Capacity in which responding	Total number of responses	Positive	Mostly Positive	Neutral	Mostly Negative	Negative	Don't Know
All	252	38 (15%)	29 (12%)	61 (24%)	26 (10%)	87 (35%)	11 (4%)
Public	102	15 (15%)	14 (14%)	29 (28%)	6 (6%)	32 (31%)	6 (6%)
Professionals	112	21 (18%)	13 (12%)	25 (22%)	13 (12%)	36 (32%)	4 (4%)
Organisation	35	2 (6%)	2 (6%)	5 (14%)	6 (17%)	19 (54%)	1 (3%)

Fig 12. Responses to question 6-4b

179. Organisations were the most strongly opposed to this approach, with 71% of 35 responses providing a negative answer. Whilst the public and individual professionals were mainly negative towards this approach, over 20% (of 102 responses and 112 responses respectively) in each group provided a neutral response.

Themes:

180. 87 respondents provided a reason for their answer. The main concern raised was in relation to the complexity of approach 4b. The most common reason provided was that this approach was complicated, confusing, and could discourage individuals from making an objection as they would be unsure of where to direct their claim. It was therefore simpler for all objections to go to one place.

181. Generally, responses supported OPG receiving all objections, instead of introducing a restrictive system. Some responses also pointed out that some people would not know the difference between a prescribed or factual objection, and therefore people should be able to object about anything. Similarly, a small number of respondents also expressed concerns about the risk of delay if an objection was misrouted, and the impact this could have.

182. A small minority of respondents stated that the nature of objections should be restricted to those based on facts and justifiable objections. A small number thought that approach 4b would reduce vexatious objections.

Question 7: Should the OPG be referring cases directly to the Court of Protection?

183. The answers to this question that could be provided were: yes, no and don't know. Respondents also had the opportunity to provide free text responses.
184. Where a respondent marked 'No' but provided a free text response that indicated support for referrals to the Court of Protection in certain conditions (a caveat), then the answer has been coded as 'No with a caveat'.
185. For the purposes of analysis, a 'No with caveat' response is considered to be in favour of OPG referring cases to the Court of Protection.
186. 265 respondents answered this question, and Fig 13 sets out their response. The majority of responses were supportive of OPG referring cases directly to the Court of Protection, with 55% of the 265 responses answering 'Yes' or 'No with a caveat'. 19% responded 'No', and 26% selected 'Don't know'. All 37 campaign responses answered this question and all said yes.

Capacity in which responding	Total number of responses	Yes	No with caveat	No	Don't know
All	265	135 (51%)	10 (4%)	50 (19%)	70 (26%)
Public	102	32 (31%)	4 (4%)	24 (24%)	42 (41%)
Professionals	120	78 (65%)	4 (3%)	21 (18%)	17 (14%)
Organisation	40	25 (63%)	2 (5%)	4 (10%)	9 (23%)

Fig 13. Responses to question 7.

187. Professionals and Organisations were the most in favour of this approach, with 68% (of 120 and 40 responses respectively) either answering 'Yes' or 'No with caveat', in contrast to members of the public where 34% of 102 responses were supportive overall. Most members of the public answered 'don't know' (41%) and they were also more likely to give this answer compared to other groups.

Themes:

188. 161 respondents provided reasons for their answer. The most common reason provided, aligning with the majority positive responses, was that OPG should be approached in the first instance and decide what is necessary to refer to the Court of

Protection. For example, where there is evidence of fraud and abuse or where it is necessary to safeguard the donor. Respondents thought this would be the simplest and easiest route for managing objections and seeking a resolution, as it reduced the number of parties and the steps involved. Additionally, some respondents noted that court processes could appear intimidating, so thought this approach would make it less likely that objectors would be deterred from submitting an objection because of the burden or complexity of the process.

189. There was however support for the court having some involvement depending on the nature of the dispute. Some respondents thought that OPG should refer a matter to the Court of Protection where the case is complex or serious, or where OPG was unable to reach a decision. Other answers recognised the authority and expertise within the court and felt its involvement was appropriate and would give the process more power and enforceability. There was however concern amongst some respondents about the impact court involvement would have on the speed of resolving objections. They stated that the Court of Protection should not be involved as it would be burdensome for the court, would cause delays and result in a slow turnaround time.

The government's response

190. Reflecting the consultation proposals, the responses to the consultation broadly covered two main areas: i) where to object and ii) who can object. Answers were supportive of OPG receiving all objections to the registration of an LPA. There was also support for widening the group that could raise an objection to allow anyone to submit a concern.

Where to object

191. As outlined in the consultation, currently an objector directs their objections to either OPG or the Court of Protection depending on the nature of their concern. Factual objections that cover instances where the LPA no longer has any power (e.g. the donor has since died) should be raised with OPG. Prescribed objections which are associated with whether the LPA is valid (e.g. the donor did not have capacity at the time of making the LPA) should be sent to the Court of Protection. Respondents to the consultation indicated that this distinction is confusing, and that most people do not understand the difference between a factual and prescribed objection. Therefore, responses were strongly supportive of all objections going to one place.
192. The majority of respondents believed that OPG was best placed to receive objections in the first instance, and thought this would be the most straightforward approach. This aligns with the governments preferred approach set out in the consultation. In

general, responses suggested that only appeals, or complex cases should be considered by the Court of Protection.

193. It is important that the process for raising objections is considered accessible and straightforward given the safeguard it can provide. Many of the respondents viewed approach 4a as the simplest and most effective way to manage objections and highlighted that it would be easier to explain to clients and general members of the public. Some respondents noted that this does however increase the risk of vexatious complaints, and could increase the burden on OPG, leading to potential delays in the system. Some respondents suggested that OPG should set out clearly the grounds for making objections to mitigate against this risk.
194. We do not think that the potential burden on OPG outweighs the benefits that a straightforward and efficient route for raising objections provides. OPG already receives the majority of objections despite the existing distinction in the legislation. Additionally, one of the benefits of streamlining and building efficiencies in throughout the modernised process is that OPG resources can be better utilised in other service areas. Most important of these are the teams dealing with investigations and LPA safeguards where OPG would want to increase its resources to provide more value to donors. We therefore expect the volume of objections to be manageable even if there are increases in objections and concerns raised as a result of these changes.

Taking the views received into account, the government will pursue approach 4a – so that OPG receives all objections.

Who can object?

195. As explained in the consultation, the current legislative framework covers objections raised by the donor, attorney or any named individuals listed as a 'person to notify'. The objector would then direct their objection to either OPG or the Court of Protection depending on the nature of their concern. In practice however, OPG also receives objections to registration from third parties, most frequently family members who were not notified of the LPA and local authorities. The absence of legislation in this space can lead to confusion and a lack of clarity for both OPG and potential objectors.
196. The inclusion of people to notify and the objection process is meant to provide protection by ensuring a wide range of people are aware that the LPA is being registered and so give those most likely to be aware of any issues the chance to raise them with OPG or the court.
197. Many of the consultation responses highlighted the limitations of the existing legal framework because it is no longer mandatory to list people to notify and the majority

of people choose not to list anyone. The reasons for this can vary, but for some their social network is limited and they struggle to identify people to notify. Respondents supported widening the group of people who can object to include anyone, given the limited use of the 'persons to notify' function in the existing process.

198. This is in line with the government's preference outlined in the consultation, as it best reflects existing practices of objectors, and will enhance protections for the donor. The objections process is designed to detect abuse or undue pressure (including coercion) on the donor, so it is important that the process is sufficiently easy to understand and does not discourage genuine objections. Under the current legislative framework, some potential objectors may be unclear on whether they can intervene and donors at risk of abuse might not be detected.
199. Here, it is worth briefly giving consideration to the points raised about vexatious objections. Some respondents suggested that there should be restrictions on who can raise an objection in order to combat this. However, it is worth noting the nature of these objections and the people who make them. Often such objections arise because of family disputes and a lack of communication about the donor's decision to make the LPA, the scope of the power they wish to give and who they wish to give it to. They can often take the form of concerns about capacity or abuse and often come from family members.
200. These are exactly the types of concerns OPG needs to hear about for LPA safeguards to function. This makes it difficult to distinguish between valid objections, well-intentioned but incorrect objections and vexatious objections, without some form of triaging and investigation. Similarly, given that these concerns often come from family members, these are the people we would expect to be best placed to spot concerns, and so one of the first on any potential list of "recognised objectors".
201. For these reasons we do not believe that putting restrictions on who can raise an objection would impact the level of vexatious objections OPG might receive or the level of work required to identify them.

Therefore, the government will amend legislation to permit objections to the registration of an LPA from anyone.

OPG referrals to the Court of Protection

202. The majority of consultation respondents thought OPG should have the power to refer cases directly to the Court of Protection. Whilst this reflects current operational practice, OPG's power to do this is currently unclear within the MCA. Responses suggested that whilst OPG should receive and consider the objection in the first instance, where the case is deemed particularly complex or there is a safeguarding

concern, the case should be referred to the Court of Protection. Responses recognised the expertise and authority the Court of Protection has and thought it appropriate to involve it in such cases.

203. This is in line with the government's preferred approach, and despite some respondents raising concerns about delays that Court of Protection might introduce when resolving objections, we do not think this will be a significant issue. We think this would be proportionate where there is complexity or a safeguarding issue that requires judicial resolution. Having a clear and consistent legislative framework will make it easier and more straightforward for all parties involved to know where to direct their objections, and make clear the route and conditions for referral to the Court of Protection where considered by OPG to be appropriate or necessary. This should make the process more seamless, and easy for all to navigate.

Taking this into account, the government will amend legislation so that OPG will have the power to refer cases directly to the Court of Protection where necessary.

Conclusion

204. In conclusion, the government is committed to making the process of objecting to an LPA's registration more consistent for everyone. In particular:

- **The government will pursue approach 4a – so that OPG receives all objections.**
- **The government will amend legislation to permit objections to the registration of an LPA from anyone.**
- **The government will amend legislation so that OPG will have the power to refer cases directly to the Court of Protection where necessary.**

Summary of proposal 5 – when to object

Background

205. Under this proposal, we considered at what point and for how long objections to the registration of an LPA should be permitted, and if a distinct pre-registration objection process is still a relevant safeguard for the donor. Currently, for a concern about the creation of an LPA to be investigated by OPG before it is registered, an objection must be raised during the 4-week statutory waiting period. This period is to allow all parties to receive notification that an LPA is being registered and to respond to OPG.
206. Approach 5a – **Objection during creation.** Objections could be raised from the point the donor starts creating their LPA until it is sent for registration. Front-loading objections means that concerns can be investigated, upheld or resolved sooner and in turn would streamline the process and make an LPA available for use more rapidly.
207. Approach 5b – **Reduce the statutory waiting period.** Once the donor submitted their LPA for registration, notified people would be alerted to the LPA and the objection period would start but it would be reduced in length from the original 4-weeks. Since objections can only be made once formally submitted, this would help reduce the burden upon OPG's resources as it would reduce the chance of misguided or uninformed objections. Likewise, the waiting period acts as a safeguard for donors and prevents registration of LPAs that have not been created in line with legislation.
208. Approach 5c – **Remove the statutory waiting period.** If other new safeguards were introduced earlier on in this new streamlined process we could remove the statutory waiting period. This would only be possible if those other checks were robust enough to protect the donor against abuse. Instead there could be a set timeframe for donors to easily withdraw their LPA after it has been sent for registration should they change their mind about any decisions made in the LPA. This would speed up the time taken to register an LPA.
209. The government's preferred approach was a **combination of the above approaches.** Shortening the objection period from 4 weeks after submission for registration, while extending it in parallel with creation provides a longer objection period overall. It therefore strengthens safeguards for the donor by allowing objections to be investigated, upheld or resolved at the earliest convenience. Keeping a period after the LPA is submitted for the donor to change their mind, allows them to retain control of the process.

210. Respondents were asked to examine each of the approaches outlined and give reasons for their answers:

Q8. Which aspects of the proposals for when to object do you prefer? Please give reasons for your answers.

- Object during creation (approach 5a)
- Reduce statutory waiting period (approach 5b)
- Remove statutory waiting period (approach 5c)

Responses to specific questions

Q8. Which aspects of the proposals for when to object do you prefer? Please give reasons for your answers: Object during creation (approach 5a)

211. Respondents to this question were asked to select which aspects of this approach they preferred from a list of options. Respondents were able to select multiple options and could submit a free text response to provide other reasons not listed, explain their answer or provide additional views.

212. 261 respondents answered question 8-5a, and Fig 14 sets out their response. The element that respondents preferred most about the ability to object during creation was that 'objections could be found and resolved earlier' (72% of 261 responses).

Capacity in which responding	Total Responses	Quicker Process	More certainty	Objections found and resolved earlier	Concerns easier to raise	Prevent registration of invalid LPAs	Don't know	Other
All	261	104 (40%)	68 (26%)	189 (72%)	143 (55%)	148 (57%)	18 (7%)	21 (8%)
Public	94	45 (57%)	32 (34%)	67 (71%)	49 (52%)	47 (50%)	10 (11%)	3 (3%)
Professionals	123	33 (27%)	26 (21%)	95 (77%)	77 (63%)	81 (66%)	7 (6%)	6 (5%)
Organisation	41	15 (37%)	9 (22%)	24 (59%)	16 (39%)	18 (44%)	1 (2%)	12 (29%)

Fig 14. Responses to Question 8-5a

213. This was consistent across all categories of respondents, but members of the public and individual professionals showed the strongest preference for this. 57% of the 261 respondents also liked that this approach would prevent the registration of invalid LPAs, and 55% liked that this approach would make it easier to raise concerns, although support was lower amongst organisations at only 39% of 41 responses. 57% of the public (54 out of 94 responses) selected 'quicker process' as an aspect they preferred about objections during creation, however this was not favoured as strongly across other groups of respondents.
214. 37 campaign responses answered this question, all selected 'objections are found and resolved earlier', 33 also selected 'concerns are easier to raise' and 'prevents registration of invalid LPAs'.

Themes:

215. 63 respondents provided additional reasons. Some respondents commented more broadly on the objections process overall and stated that anyone should be able to object at any time. (Who can object is covered in proposal 4 of this document).
216. On approach 5a specifically, many respondents thought the ability to object during creation was helpful as it provided more time to raise objections. They also thought this would mean that objections could be raised and investigated sooner, which might reduce delays in registering valid LPAs. Others noted that the additional benefit of raising objections during creation is that the donor is more likely to still have capacity at this point and can therefore be involved in the resolution of any dispute. Some others felt this approach would provide greater protection and safeguards for the donor as it would prevent the registration of an LPA where there is sufficient evidence to do so.
217. A small set of responses did not think permitting objections during creation would add significant value to the process and would be difficult to administer. This was because they thought it would be unlikely that other people would be aware an LPA was being made at this point, so objections would not be raised during the creation stage. Similarly, others highlighted that the majority of people do not notify anyone about their LPA, so a potential objector is unlikely to know the LPA is being created. A small number also thought this approach would increase OPG's workload and could waste time if the LPA does not end up being sent for registration.
218. A small number made a noteworthy suggestion that we introduce a 'pre-creation' objection process, whereby a third party could raise a concern with OPG before the donor even starts creating, or perhaps even considers making an LPA. This would flag LPAs of concern to OPG early on to enhance protections.

**Q8. Which aspects of the proposals for when to object do you prefer?
Please give reasons for your answers: Reduce statutory waiting period
(approach 5b)**

219. Respondents to this question were asked to select which aspects of this approach they preferred from a list of options. Respondents were able to select multiple options and could submit a free text response to provide other reasons not listed, explain their answer or provide additional views.
220. 252 respondents answered this question, and Fig 15 sets out their responses. The strength of support for the different aspects in this approach (reduce statutory waiting period), was markedly lower than in approach 5a. None of the aspects were preferred by at least 50% of all respondents, although this does change when looking at sub-sets of respondents.

Capacity in which responding	Total responses	Quicker process	Keeps waiting period as safeguard	Longer to decide whether to make an objection	Prevents registration of invalid LPAs	Don't know	Other
All	252	115 (46%)	114 (45%)	21 (8%)	43 (17%)	24 (10%)	53 (21%)
Public	91	50 (55%)	46 (51%)	12 (13%)	22 (24%)	13 (14%)	2 (2%)
Professionals	120	44 (37%)	48 (40%)	7 (6%)	15 (13%)	10 (8%)	38 (32%)
Organisation	38	19 (50%)	17 (45%)	2 (5%)	4 (11%)	1 (3%)	13 (34%)

Fig 15. Responses to Question 8-5b

221. Overall, 'a quicker process' and 'keeps waiting period as a safeguard' were the most preferred aspects in relation to approach 5b across all groups of respondents with over 40% of respondents picking these approaches. As with approach 5a, over 50% of the public (50 of 91 responses) selected a 'quicker process'. Whilst 24% of the public (22 of 91 responses) thought this approach could also prevent registration of invalid LPAs, only 13% (15 of 120 responses) of professionals and 11% (4 of 38 responses) and organisations thought this.
222. The highest responses from individual professionals and organisations aligned with the overall views that a quicker process and keeping a safeguard were preferable. The response on quicker process was higher in both cases than for approach 8a. However, each group overall favoured a different option to the other. For professionals, the highest answer was that it would keep the waiting period as a safeguard with 48 responses (40% of 120). However, organisations came out higher on the benefit of it being a quicker process at 19 responses (50% of 38). Importantly, professionals had the lowest score of all three groups on a quicker process being a benefit (only 37% of 120 responses).
223. Notably, over 30% of professionals (38 of 120 responses) and organisations (13 of 38 responses) selected 'other' and their responses will be discussed in the themes below.
224. Amongst the campaign responses, 8 said it keeps a safeguard and 29 selected "Other" and gave further information in the free text box.

Themes:

225. 104 respondents provided additional responses. The majority of those who provided additional views thought that the length of the statutory waiting period should be kept the same and that a shorter two-week period was not appropriate. Some highlighted that the impact of the waiting period on registration timescales is minimal and suggested that OPG processing times generated the most significant delay in the process.
226. The majority also considered the waiting period as an important safeguard as it protects against fraud, abuse and coercion and allows objections to be raised. A small number raised that this waiting period gives the donor time to reconsider their decision. Many respondents raised that adequate time must be provided to raise objections, and some were concerned that reducing the length of the statutory waiting period would not provide enough time for this. Some were particularly concerned about the time needed to gather evidence or submit a concern via a paper channel.
227. A small number of responses did however question the effectiveness of the waiting period as a safeguard as it is no longer mandatory to list 'persons to notify' on an

LPA, and many people choose not to inform anyone. Therefore, there was a concern that the people who may have objections may not know an LPA has been sent to OPG for registration in this period.

228. A smaller set of respondents considered the current 4-week waiting period as unnecessary, lengthy, and thought this led to delays in registration. They were in favour of a shorter two-week waiting period to improve turnaround times.

**Q8. Which aspects of the proposals for when to object do you prefer?
Please give reasons for your answers: Remove statutory waiting period
(approach 5c)**

229. Respondents to this question were asked to select which aspects of this approach they preferred from a list of options. Respondents were able to select multiple options and could submit a free text response to provide other reasons not listed, explain their answer or provide additional views.

230. 162 respondents answered this question, and Fig 16 sets out their responses. This approach received a lower number of responses compared to approach 5a and 5b (over 35% fewer responses). This might indicate that a portion of respondents did not prefer any aspect of removing the statutory waiting period.

Capacity in which responding	Total responses	Quicker process	Simpler process	Immediate registration is possible	More evidence of abuse may be available	Don't know	Other
All	162	83 (51%)	56 (35%)	56 (35%)	38 (23%)	27 (18%)	75 (46%)
Public	79	41 (52%)	32 (41%)	23 (29%)	19 (24%)	15 (19%)	7 (9%)
Professionals	61	27 (44%)	14 (23%)	27 (44%)	17 (28%)	10 (16%)	54 (89%)
Organisation	20	14 (70%)	9 (45%)	5 (25%)	2 (10%)	1 (5%)	2 (10%)

Fig 16. Responses to question 8-5c

231. 51% of all respondents (83 of 162 responses) selected quicker process as an aspect they favoured in approach 5c. This preference was strongest amongst organisations (70%), unlike approach 5a and 5b where preference for a quicker process was strongest amongst members of the public. 35% of all respondents (56 of 162 responses) preferred a 'simpler process' and 'immediate registration is possible'.

Preference for a 'simpler process' was strongest amongst organisations and members of the public (45% and 41% respectively). On immediate registration, preference for this was strongest amongst professionals (44%) when compared to other groups. Finally, on evidence of abuse that might be available at this point, both public and professional respondents were more likely to select this than organisations with response rates both in the 20% range as compared to organisations at only 10% (2 responses out of 20).

232. Notably 46% of all 162 respondents selected 'other', including 89% of all professionals (54 of 61 responses) who responded to this question. Other reasons provided are considered in the themes below. All 37 campaign responses selected "other" and gave more information in the free text box.

Themes:

233. 114 respondents provided additional views. The majority were against the removal of the statutory waiting period and considered the four-week waiting period acceptable. Similar to views provided in question 8-5b, many thought the waiting period provides time for objections to be raised and therefore it should not be removed. Others thought that removing the statutory waiting period would reduce safeguards in the process and could lead to increased fraud and abuse, with some noting that a process that is 'too quick' could also be a problem. A few also thought the waiting period provided the donor with a cooling-off period.
234. A small number of respondents provided views in favour of approach 5c because it would speed up the process so that an LPA could be registered faster. Similar to views provided in question 8-5b, some thought the waiting period was only effective where people have been notified about the LPA and should therefore only apply where someone has listed 'persons to notify'.
235. A small number of responses suggested that this approach could be useful in exceptional circumstances where an LPA is needed immediately and should therefore be considered as part of a fast-track service.

Looking across the approaches:

236. One of the reasons we asked this particular question was to help establish what users, public and professional, would want from an objection process. It is therefore helpful to look at the aspects that were preferred across the approaches as well as within them. This was done by taking the individual counts for each question, removing duplicate answers (for example, removing the second and third answers where someone had selected quicker process for all three questions) and totalling the remaining answers.

237. When looked at this way, the top five preferred aspects were:

1. Objections found and resolved earlier (189 responses)
2. Quicker process (156 responses)
3. Prevents registration of invalid LPAs (153 responses)
4. Concerns are easier (143 responses)
5. Keeps a waiting period as a safeguard (114 responses)

238. 289 responses were received across these three questions (removing duplicates) and these five aspects were the most selected by some margin (the next highest answer was “more certainty” with only 68 selections).

239. For the themes overall, it is worth pointing out that a small number of responses across these questions, and others in the consultation, raised the possibility of reintroducing the requirement to notify particular people of the registration of the LPA. This is also covered below.

The government’s response

Objection during creation

240. The elements that respondents preferred most about this approach were that objections could be found and resolved earlier, it would prevent registration of an invalid LPA and concerns would be easier to raise. This was further validated by the additional views provided, where many stated that the ability to object during creation would be helpful as it would allow objections to be raised and investigated sooner. As stated in the consultation document, front-loading objections so they are raised from the point the donor starts creating their LPA until it is sent for registration, means that a legitimate LPA could be made available quicker as investigations will begin sooner. This would of course be subject to all other registration processes and checks being carried out successfully.

241. The government agrees that allowing objections during creation could be helpful in resolving objections sooner and could provide additional safeguards for the donor. However, taking forward this approach is dependent on us developing a system where OPG can either reliably access information contained with the LPA during its creation (but before submission for registration), or match information of an objection to the details of an LPA when it is received for registration.

242. Provided such a system is feasible, we think allowing objections during the creation of an LPA will enhance safeguards and allow objections to be resolved sooner.

Therefore, the government will investigate a method for people to raise objections during the creation of an LPA.

‘Pre-creation’ objections

243. A few respondents suggested that we introduce a pre-creation objection process, which could operate similarly to the caveat system in probate. In such a system, people could raise a concern with OPG before the donor starts creating an LPA, by providing details such as donor name and address. If in the future an LPA with those details is submitted to OPG, the system could flag this LPA automatically for triaging and potential investigation. A system like this could enhance safeguards by enabling OPG to identify and investigate LPAs at risk of fraud or abuse sooner.
244. Whilst there are merits to a system like this, there are also dependencies and challenges. Firstly, a pre-creation objections process would be dependent on a system that could accurately match the details submitted to OPG with the details submitted on the LPA. This would need to work on both the digital and paper channel.
245. Secondly, we would have to consider how OPG would manage this process to avoid being overburdened with objections which may never have LPAs started or which may inadvertently delay registration of perfectly valid LPAs. One way of mitigating against this could be to restrict the group of people who can submit objections pre-creation to those most likely to have legitimate concerns about a donor and most easily able to feed into the OPG database. This could include agencies with statutory safeguarding duties such as Local Authorities and the Police who are most likely to have information or concerns about individuals vulnerable to abuse or exploitation. These issues merit further consideration given the safeguarding benefits.

Therefore, government will consider introducing a system that permits objections to be registered by a third party before the LPA process is started. Government will test the feasibility of such a system and will consider which third parties should be permitted to object in these circumstances.

Statutory waiting period

246. Approaches 5b and 5c were concerned with the four-week statutory waiting period which forms part of the registration process. Under the current process, any concern about the LPA must be raised with OPG during this period in order for them to investigate, and halt registration if necessary. The four-week period includes time to allow for postage of documents and the notification of relevant parties.

247. The consultation tested which aspects of reducing the length of the waiting period (5b) and removing the waiting period all together (5c) respondents preferred.
248. Consultation responses strongly supported keeping a statutory waiting period. Whilst respondents preferred a process that was quicker and could lead to the immediate registration of an LPA, many of the responses emphasised that the statutory waiting period was an important safeguard for the donor as it provided time for objections to be raised. Therefore, respondents felt it was vital to provide an appropriate length of time to raise objections, allowing for concerns submitted via both digital and paper channels. Some respondents also agreed with the idea that a cooling off period for the donor is a valuable aspect of the current waiting period.
249. As outlined in the Consultation, the government does see the benefit of a statutory waiting period, both as a cooling off period for the donor but also as a safeguard. OPG has little direct interaction with donors and it is therefore right that people who do have concerns, can bring them to OPG's attention. We also recognise the need to balance the benefits that come from a quicker and simpler process against the safeguarding benefits that a waiting period delivers.

For these reasons the government will commit to keeping a statutory waiting period as part of the objections process for registering an LPA and as a cooling off period for the donor.

250. The government also recognises that some people saw a benefit to a two-week statutory waiting period as part of a quicker registration process. Acknowledging the concerns from some that this may be too short, it is also worth considering how this would interact with the other changes being considered.
251. Should objection during creation be implemented, individuals will be able to raise objections earlier in the LPA creation process. This would provide a period for objecting that is at minimum two weeks but at maximum as long as the LPA takes to create (as stated in the consultation this is on average 6 months). This could effectively provide an objection period that is as much as six months in length which would provide plenty of time for both electronic and paper communication of concerns. If feasible, the ability to raise a concern flag before an LPA is started would add further security to this approach.
252. We also need to consider those donors who are vulnerable or do not have social networks to raise objections for them. In these cases, as outlined at section 4, the ability for bodies with statutory safeguarding duties to raise an objection, could strengthen protections.

253. If a future system permits objections during the creation of the LPA, and encourages more individuals to discuss their LPAs with family and friends, a four-week period may not be necessary after submitting the LPA to OPG.

Therefore, the government will continue to investigate what the appropriate length of the statutory waiting period should be in a future service, accounting for other changes to the objections process across both digital and paper channels. We will not remove the statutory waiting period.

254. We must also inject a note of realism at this point. In an ideal world OPG would be able to prevent any fraudulent, abusive or coercive LPA from ever being registered. However, as respondents have pointed out in both their responses to the consultation and in our engagement sessions, often the evidence of this behaviour does not become available until after the LPA is registered. It is therefore important to recognise that no matter how good the objection process is, some LPAs will slip through the net.
255. In these cases, OPG's ability to investigate after registration becomes vital. We do not propose to make any changes to this important service and many of the efficiencies outlined in the consultation and this response are intended to release resources so that OPG can reinvest these in its value-add services, which includes investigations.

Mandatory people to notify

256. A small set of respondents noted that it is unlikely that a potential objector would be aware of an LPA at an early stage. The consultation document had already identified that for this approach to be worthwhile, a simpler, streamlined process would be needed to ensure that interested parties were aware that an LPA had been started. A small number of responses also called for the reintroduction of mandatory persons to notify.
257. The requirement to notify specific family members was set out in regulations prior to 2015. If a donor did not have family to notify, they had to provide a second certificate provider. This was removed due to the difficulties this caused for some individuals. LPAs are meant to be a safeguard available to all adults who have the mental capacity to make them. This requirement was preventing some people from creating their LPA because they did not have the required family members, did not have a social circle large enough to provide a second certificate provider and could not afford to pay for a professional to act in this role. Given that the social isolation of elderly people has increased since this change, it is unlikely the problem has reduced.

On this basis, the government will not reintroduce a requirement to provide people to notify on an LPA.

258. However, we will continue to look at what can be done to encourage donors to make better use of the persons to notify feature and, more generally, highlight the importance of discussing their decision to make an LPA, who to appoint and the powers to confer, with their family and close friends. By encouraging use of notified persons, we can widen the circle of individuals who may have a legitimate concern about an LPA during the creation stage and might therefore submit an objection. This does not require primary legislation and so we will turn again to this at the right point in development and continue to seek the input of our users and stakeholders – public and professional – to develop this.

Conclusion

259. In conclusion, we have considered the various benefits that respondents would like to see from the objection period. We are keen to see improvements in the use of this process without reintroducing elements that we know prevented access to LPAs in the past. On this basis:

- **The government will investigate a method for people to raise objections during the creation of an LPA.**
- **The government will consider introducing a system that permits objections to be registered by a third party before the LPA process is started. Government will test the feasibility of such a system and will consider which third parties should be permitted to object.**
- **The government will commit to keeping a statutory waiting period as part of the objections process for registering an LPA.**
- **The government will continue to investigate what the appropriate length of the statutory waiting period should be in a future service, accounting for other changes to the objections process across both digital and paper channels.**
- **The government will not reintroduce a requirement to provide people to notify on an LPA.**

Summary of proposal 6 – speed of service

Background

260. Under this proposal we looked at whether there was a group of people for whom an even quicker service would be necessary to meet an urgent need for an LPA. If there was, we considered how to balance this against the safeguards needed and ease of access for the same users. Currently, OPG offers a single service to all donors and does not prioritise its processing of LPAs based upon the donor's circumstances. We, therefore, looked at ways to ensure donors and attorneys are able to access an LPA at the time they need one, without significant delay while maintaining safeguards.
261. **Approach 6 – dedicated urgent service.** To provide an urgent LPA service, deliberate delays in the registration process, like the statutory waiting period, would need to be removed for urgent LPAs. It would also need OPG to prioritise LPA processing where checks could not be automated and must be performed manually. In comparison to the regular service, this would allow the donor's nominated attorneys to register the LPA faster, allowing the donor's nominated attorneys to make any critical decisions needed to support, care for, and protect the donor.
262. In order to prioritise need and protect against abuse, there would have to be eligibility requirements for the urgent service. Clear guidance on those criteria would be needed to help people assess whether they qualify for such service. This would likely be in the form of medical evidence information on the nature of the urgent decision that was needed and why this was in the donor's best interests.
263. The government's preferred approach was **not to proceed with an urgent service**. This is because the required safeguards are likely to be so burdensome that people who need the urgent service wouldn't be able to access it or it would take longer than the standard service. Moreover, having the added layer of submitting evidence for OPG to urgently process would take longer and cost more than the standard service as it would have to be manually processed. As a result, we believed the best way to proceed was to provide an optimal speed of service to all donors.
264. Respondents were asked to provide evidence on the benefits and impacts of an urgent service and give reasons for their answers:
- Q9. If we are able to reduce the time to register an LPA to two weeks for most donors (without objections), would an urgent service provide additional benefit for you or the people you support? Please give reasons for your answer.

Q10. If you are a professional who would be asked to provide evidence of eligibility for an urgent service, what would the impact of this be for you? Please provide evidence, including on the impacts in time (days/hours) or in monetary terms where relevant.

Response to specific questions

Q9. If we are able to reduce the time to register an LPA to two weeks for most donors (without objections), would an urgent service provide additional benefit for you or the people you support? Please give reasons for your answer.

265. The answers that could be provided to this question were: ‘Yes, I need an LPA registered within two weeks’, ‘No, there is no benefit over a two-week service for everyone’ and ‘don’t know’.

266. 283 respondents answered this question, and Fig 17 presents their response. Over half of all respondents (52% of 283 responses) said no, they did not think an urgent service would provide additional benefits. This was broadly consistent across all categories of respondents. Conversely, 38% (108 of 283 responses) said yes, they would need an LPA registered within a two-week timeframe. This was very consistent across all categories of respondents. 10% of all respondents answered, ‘don’t know’ (27 of 283 responses), and organisations were the least likely to provide this response (4% of 47 responses). All 37 campaign responses provided an answer to this question, 36 said no, and 1 said don’t know.

Capacity in which responding	Total number of responses	Yes	No	Don't know
All	283	108 (38%)	148 (52%)	27 (10%)
Public	105	40 (38%)	52 (50%)	13 (12%)
Professionals	128	46 (36%)	69 (54%)	13 (10%)
Organisation	47	19 (40%)	26 (55%)	2 (4%)

Fig 17. Responses to Question 9.

Themes:

267. 169 respondents provided additional views. Many respondents felt there was greater benefit in making the service faster for everyone and thought that the focus should be on providing a quicker and consistent service for all. A few were concerned that servicing an urgent route would create delays which could impact and slow down the processing of standard LPA registration. A few others felt this would increase the administrative burden on OPG, as they would spend more time deciding whether something qualifies as urgent or not, as opposed to processing the LPAs.
268. Some also argued that there were only a few occasions where there is a genuinely urgent need for an LPA, so an urgent service is not required. Where an urgent need does arise, a couple of respondents suggested that the Court of Protection is a suitable fast-tracked alternative. A small set of respondents suggested that an urgent service might encourage last minute registration, when actually we should be encouraging people to make an LPA earlier instead.
269. Many respondents were concerned about safeguarding provisions within an urgent service and thought that additional protections will be needed. Some thought that a faster service was more open to abuse and that people were more likely to falsify capacity. There were also concerns about the limited time available to raise objections before an LPA is registered within an urgent service.
270. The main arguments in favour of an urgent service highlighted that the urgent need for an LPA can often be triggered by unexpected medical emergencies, and so an urgent service could be useful where a donor's condition may deteriorate quickly due to ill health. Many others also argued that the existing system is too slow and so a quicker alternative is required. Some suggested this could apply to a well-defined specific set of exceptional cases only, and subject to appropriate evidence being provided.

Q10. If you are a professional who would be asked to provide evidence of eligibility for an urgent service, what would the impact of this be for you? Please provide evidence, including on the impacts in time (days/hours) or in monetary terms where relevant.

271. Respondents to this question were asked to select which impacts this proposal could lead to from a set of options. Respondents were able to select multiple options and could submit a free text response to provide other impacts not listed, explain their answer or provide additional views. They were also asked to provide specific evidence on the impact they selected to aid development of reforms.
272. Given the aim of this question was to obtain evidence from professionals who may find themselves in this circumstance, only responses from those with a professional interest were counted in the data analysis. This includes individuals who self-

identified as members of the public but also indicated that they had a professional interest. Responses from 16 members of the public without an indicated professional interest and 2 anonymous responses have not been included in the figures.

273. 166 respondents with a professional interest answered this question, and Fig 18 sets out their responses. Over 40% of 166 respondents thought that being asked to provide evidence of eligibility to use an urgent service would require additional resources and would increase costs (73 and 47 responses respectively). Here again campaign responses covered a number of options, 33 cited increases in resources, 24 increases in costs, 7 time to provide evidence and 22 selected “other” and gave more detailed comments. 1 also said do not know even though other answers were also selected.

Capacity in which responding	Total number of responses	No impact	Increase in resources	Increase in costs	Time to provide evidence	Don't know	Other
All with a professional interest	166	19 (11%)	74 (45%)	73 (44%)	47 (28%)	35 (21%)	33 (20%)
Public with a professional interest	10	3 (30%)	0	2 (20%)	0	4 (40%)	1 (10%)
Professionals	119	11 (9%)	59 (50%)	56 (47%)	36 (30%)	23 (19%)	26 (22%)
Organisation	37	5 (14%)	15 (41%)	15 (41%)	11 (30%)	8 (22%)	6 (16%)

Fig 18. Responses to question 10.

274. Members of the public were more likely to select ‘no impact’ (4 responses of 10, 40%) or ‘do not know’ (3 responses of 10, 30%). 30% of professionals (36 of 119 responses) and organisations (11 of 37 responses) thought the length of time to provide evidence of eligibility would have an impact.

275. The consultation asked respondents to provide specific details on impact, such as monetary value or hours. Only a handful of respondents provided additional evidence for their answers and the majority did not provide further information for us to consider. Many respondents commented that there was insufficient information provided to give specific details on the scale of the impact by way of monetary or time related values. Despite this, a number of key areas of concern were clear from the further answers provided, covered below.

Themes:

276. 93 respondents with a professional interested provided additional information. In line with the quantitative responses, many were concerned about increased costs associated with an urgent service. Some specifically mentioned the additional cost of obtaining evidence of an urgent need, for example private medical reports, as an issue. The majority thought these additional costs would be passed on to the donor and would increase the fees that their clients incurred during the LPA process.
277. Some made further comments on the process of gathering evidence of an urgent need by suggesting that this may well take longer than the time it would take to process a standard LPA registration.
278. There were concerns that relying on third parties to provide evidence, for example medical professionals, could cause delays rendering the urgent service impractical. As well as time spent waiting to receive evidence, some professionals also noted they would have to spend time chasing individuals for this information therefore adding to their workload. Overall, many respondents thought a quicker urgent service was undeliverable and were concerned that clients would have an unrealistic expectation of timescales.
279. Others were concerned that an urgent service would lead to an increased workload for professionals. They commented on the increased admin that would be required, and the staff time required to assess and make judgements on whether an application to register an LPA met the criteria for an urgent process. Related to this, a small number were also concerned that this could put professionals in a difficult situation as they would have to make subjective judgements on whether a case is urgent and should be submitted through the urgent route.
280. The consultation had asked respondents to provide specific details on impact, such as monetary value or hours. Some respondents did elaborate, and this is considered in the impact assessment. However, the majority did not provide further information for us to consider. Many respondents commented that there was insufficient information provided to give specific details on the scale of the impact by way of monetary or time related values.

The government's response

281. We have carefully considered the views submitted by respondents. As outlined in the consultation, whilst modernisation is intended to significantly reduce the time it takes to create and register an LPA for everyone, we also wanted to consider whether there was a group of people for whom an even quicker service was necessary to meet urgent needs. We believe a quicker process for everyone is a realistic intention, and our evidence and development so far indicate that it could be possible to reduce

the registration time for an LPA down to as little as two weeks for most LPAs for most donors, (within a default service for which an LPA had to meet specified conditions, for example pass identification checks).

282. Generally, respondents to the consultation did not support having a separate urgent service and expressed concern that it could add delays to the standard route. Instead, many respondents suggested that a single service that provides a consistent and quicker output for all would be better.
283. Respondents were also concerned that servicing an urgent route for LPA registration would have a detrimental impact on the standard route and would cause delays. The impact of servicing an urgent route on a standard track does warrant further consideration. As outlined in our consultation, evidence suggested that approximately 25% of donors had an urgent need to register their LPA immediately². The responses to question 9 suggest that this figure might be higher and that up to 38% of individuals might need to register their LPAs immediately.
284. This is not an insignificant volume of LPAs, and arguably undermines the purpose of an urgent service which should only be used in exceptional cases. As we outlined in the consultation, any urgent service would have to involve providing evidence of eligibility for the service as a safeguard against abuse. The need for these additional safeguards was supported by the number of responses which raised concerns that a quicker service would necessitate the removal of safeguards used in the standard service and so open it up to potential abuse.
285. This evidence would be unique to each donor's circumstances and therefore require manual checking by OPG staff to determine if it met the criteria for eligibility. While manual checks can be done quickly for a small number of urgent cases, the indication is volumes would not be low enough for these checks to be carried out more quickly than the standard track without a significant amount of additional OPG resources. This in turn could lead to increases in the fee which we are trying to avoid.
286. Many respondents were also concerned about the impact that gathering and providing this evidence would have on the service they could provide to their clients. Responses raised the issue that obtaining medical evidence can be costly and time consuming. Some thought that it would take longer to obtain the evidence required than to just go through the standard registration process – especially if this is reduced to two-weeks in the future. They also suggested that the additional costs that professionals incurred would be passed on to the donor.

² Ministry of Justice Digital & Technology (2020) Modernising Lasting Power of Attorney Solicitor Survey. Unpublished.

287. Additionally, as some respondents suggested, individuals should be encouraged to plan ahead and make an LPA well in advance of it ever needing to be used, wherever possible. There is a risk that the existence of an urgent service could make some people complacent about creating and registering their LPA until they are faced with a crisis.
288. Therefore, it would seem more valuable to focus resources on ensuring that the standard service is quicker for all those that need it.
289. Based on the responses to the consultation, we do not think there is sufficient benefit to having a separate urgent service. Given the complexities in gathering evidence and the detrimental impact that demand for an urgent service might have on the standard registration route, we continue to think it is better to speed up the registration process of LPAs for everyone.

Therefore, the government will not be proceeding with an urgent service.

Conclusion

290. In conclusion, given that much of the evidence obtained through the consultation supports the evidence we already had at the consultation stage, we believe that it remains unviable to develop a functioning urgent registration process. For this reason:

The government will not be proceeding with an urgent service.

Summary of proposal 7 – solicitors’ access to the service

Background

291. Under this proposal we investigated ways to assist solicitors through the use of integrated digital systems and legislative requirements. Given the potentially large volume of LPAs that solicitors help create and register, we need to guarantee that solicitors submit LPAs to OPG using the most efficient, largely digital, channels in order to achieve the aims of MLPA. This will ensure that OPG can:
- Provide ease of access for both solicitors and their clients through reduced reliance on the postal system (and its associated cost), reduced need for error correction and reduced OPG processing time.
 - Achieve sustainability for OPG through a reduction in paper handling and storage as well as reduced error rates due to front loaded checks within the service.
292. It is important to note that it is not a requirement to have a solicitor in order to create an LPA and these approaches do not propose to make it that way.
293. This proposal is about how solicitors use the digital channel to help OPG achieve sustainability while ensuring that they can still access an efficient service, so their clients are not penalised. This aligns with the MOJ wider objectives that LPAs should be attainable, accessible and affordable for all.
294. **Approach 7a – integration only.** This involves building a digital channel that would be accessible from solicitors’ existing document management systems. Essentially, solicitors who currently access paper forms through their document management system would use that same system to complete and submit the LPA online. The system would appear seamless to them, provide added value for their clients and support OPG’s sustainability.
295. **Approach 7b – mandate solicitors to use part of the service.** If solicitors fail to make use of the new digital channel, then we would need to consider more stringent requirements. In this case legislation could mandate solicitors to use part of the digital channel for key elements of the registration process. The most likely requirement would be for the digital submission of the LPA as this holds the most importance to achieving our overall aims.

296. **Approach 7c – mandate solicitors to use the whole service.** Legislation would require solicitors to use all elements of the digital channel for all LPA registrations after a certain date.
297. **The government’s preferred approach was 7a – integration only.** We would aim to collaborate with the legal sector to develop a service that meets their needs and is accessible through their current legal stationers. We would also work to provide direct access for those smaller solicitors’ firms, charities and other organisations that support the creation of LPAs. This would include will writers and estate practitioners.
298. Respondents were asked to give their view on the impacts of using a gov.uk service for LPAs.
- Q11. If you were required to use a gov.uk service to create and register your clients’ LPAs, what would the impact be on the service you are able to offer your clients? Please provide evidence, including on the impacts in time (days/hours) or in monetary terms where relevant.

Response to specific questions

Q11. If you were required to use a gov.uk service to create and register your clients’ LPAs, what would the impact be on the service you are able to offer your clients? Please provide evidence, including on the impacts in time (days/hours) or in monetary terms where relevant.

299. Respondents were asked to select impacts from a set of options. Respondents were able to select multiple options and could submit a free text response to provide other impacts not listed, explain their answer or provide additional views. They were also asked to provide specific evidence on the impact they selected to aid development of reforms.
300. Given the aim of this question was to obtain evidence from those third parties and organisations who might be *required* to support clients through a service, only responses from those with a “professional interest” were counted in the data analysis. This group is made up of individual professionals, organisations (including charities and the third sector) and individuals who self-identified as members of the public but also indicated that they had a professional interest.
301. Responses from 22 members of the public without an indicated professional interest and 2 anonymous responses have not been included in the figures.
302. Fig. 19 provides a breakdown of the 157 respondents with a professional interest who answered this question. The majority of these were from individual professionals (74% of 157 responses), followed by organisations (22% of 157 responses).

Capacity in which Responding	Total Professionals Who Answered
Public	7 (4%)
Professional	116 (74%)
Organisations	34 (22%)
Professional Totals	157

Fig 19. Breakdown of capacity in which responding to question 11

303. Fig 20 sets out the negative impacts selected by the 157 respondents. The most prevalent impact (across all the possible options provided) was the concern about government services meeting solicitors and donors' needs (63 responses, 40% of 157). 46% of individual professionals (53 of 116 respondents) selected this as an impact, followed by 29% of organisations (10 of 34 responses).

304. 18% of all respondents (29 of 157 responses) thought that time delays while getting used to the new service would have an impact, and 15% of all respondents (24 of 157 responses) thought the process would slow down. For both options, individual professionals were more likely to select these as impacts when compared to other groups of respondents.

Themes	Public	Professional	Organisations	Total
Concern about Gov Service meeting solicitors & donors needs	0	53	10	63
Time Delays getting used to government service	0	22	7	29
Slows Down Process	0	19	5	24

Fig 20 – Negative impacts selected in response to question 11.

305. Many professionals also selected positive impacts, and these are presented in Fig 21. The most common positive impacts selected by respondents were associated with reduced use of paper in a gov.uk service. 29% of all respondents (46 of 157 response) thought that less reliance on a postal service would have an impact, followed by 24% of respondents (38 of 157 responses) who selected 'less paper used' as an impact.

306. It is worth noting that whilst 15% of respondents (24 responses) thought the process would slow down if they were required to use a gov.uk service to create an LPA (see fig. 21), an almost equivalent proportion selected the opposite impact; 14% of

respondents (22 of 157 responses) thought using a gov.uk service would speed up the process for creating and registering an LPA.

Themes	Public	Professional	Organisations	Totals
Less Reliance on Postal Service	0	37	9	46
Less Paper Used	0	32	6	38
Speeds Up Process	0	17	5	22
Fewer Errors	0	14	5	19
Easier to Use Gov Service than Current Process	2	13	0	15
Cheaper to Use Gov Service than Current Process	0	11	1	12

Fig 21. Positive impacts selected in response to Question 11

307. As at Fig 22, 60 professionals stated that there would be other impacts to using the gov.uk service (both positive and negative) – these were expanded on in the themes considered below while 28 respondents stated that they don't know what the impacts would be.

Themes	Public	Professional	Organisations	Total
Don't Know	4	15	9	28
Other Impacts	1	47	12	60

Fig 22. Other options selected in response to Question 11

308. For this question, 30 campaign responses selected "Other" and gave additional comments. 9 other responses provided a mix of answers across the selectable options with no clear stand out response.

Themes:

309. 127 respondents with a professional interest provided additional reasons. Many of these respondents were expressly against mandating solicitors to use any new service and suggested that doing so would be at odds with having the option of completing the process via a paper route. It is worth noting that over 80% of professionals who made this comment were part of the coordinated campaign response.

310. Many respondents also suggested that professionals and their clients prefer to work on paper. This includes providing written advice, checking drafts with clients on

paper, and keeping paper-based records. They were therefore unsure how the modernised service would work alongside their own existing paper systems and wanted the paper route to remain. A few also thought that a paper-based option would remain necessary to service clients who live in care homes or require home visits, where tech may not be accessible.

311. Some respondents were more supportive of modernisation and thought it would improve the overall experience for both professionals and clients. They suggested that a new reliable system that could check errors in real time would increase efficiencies and make the end-to-end process quicker for all involved. A small number noted the challenges associated with postal delays, and the risk of important documents being lost in the post, and therefore saw the benefits of digital submission. A few also suggested that this would be particularly beneficial when trying to engage with attorneys who are dispersed geographically. It would be easier for professionals to obtain signatures (e.g. if the attorney is abroad) and would avoid the need to send original paper documentation to the attorney.
312. On the subject of integrated systems, respondents were keen for government to co-design and test any new system with professionals. Some thought their own electronic copies were easier to manage and were concerned about how effective an integrated system would be. Others cited lack of confidence in the government's ability to deliver a system that would work for them and provided examples of difficulties they've had using other government services. Difficulties with the probate system were highlighted by a number of respondents, though we would note a small number also said this was a positive example we should follow.
313. Overall, they wanted to ensure that any new system integrates with their own existing case management system and avoids duplication of effort so that professionals do not have to fill in the same forms twice (once on their own system, and then on the government's). Others said they need more information on how the new service would work before they could understand the impacts.
314. Some respondents thought that the consultation approaches were overly focused on solicitors alone and raised that other legal professionals and third sector organisations have a large role to play in the promotion and creation of LPAs. They were therefore keen to ensure that any new service integrates with non-solicitor professionals such as will-writers, estate practitioners and charities.
315. A small set of respondents were concerned that a digital service could make the role of a professional redundant and could lead to loss of income. They also thought that the increased lack of professional involvement reduces safeguards for the donor. In contrast, a small number of professionals thought that modernisation would force

more individuals to seek professional support when making an LPA and were concerned about the additional costs donors would incur in doing so.

The government's response

316. The consultation approaches under this proposal considered how best to support professionals to make use of the modernised system.
317. It is important to start by clarifying one aspect that arose across a number of responses and in our engagement workshops. Some respondents were concerned that our approaches were solely focused on solicitors and wanted to ensure that they could have access to any future system. We recognise the important role that third-party support can play in helping donors make their LPAs. This includes other legal professionals such as will writers and estate planners, as well as third sector organisations like charities.
318. Our proposal was never to provide integrated access *only* to solicitors as this would be to provide an unfair advantage to one group of LPA service providers. As we stated at the time and during engagement, we are also considering how to provide access to the unregulated legal sector and non-legal support providers. This would be the case irrelevant of which approach under proposal 7 is taken forward.
319. However, for a modernised LPA service to allow OPG to become sustainable, we need to ensure take up of the digital channel is as high as possible. Proposal 7 of the consultation therefore examined what options were available should take up of the service not be high enough to realise the aims of improved safeguards, access and sustainability. Given that other government services have had to mandate use due to lack of take up, both integration and mandating had to be considered. However, mandating is only an option with the regulated legal sector, including solicitors, and this was why they formed the main focus of proposal 7.
320. A number of benefits were raised by respondents about a potential requirement to use a digital channel. These included: reductions in errors, improved experience and efficiency, removal of postal delays and risk of loss, and the ability to better discuss the document with geographically dispersed people.
321. We also need to acknowledge though, that many of our respondents were against using legislation to introduce a requirement for solicitors to use the digital channel and were particularly concerned about the service meeting the needs of professionals and clients who still prefer to work on paper. They wanted to retain the flexibility of using a paper route where this best meets their clients' needs or expectations. There were also those who said that requiring solicitors to use the digital service was at odds with stating that a paper route would still be available.

322. The government is committed to introducing a digital channel to allow the creation of LPAs. However, we have been clear that this will not be “digital only” and does not even mean a “fully digital” channel (if that means never allowing anyone to work on a paper document). Of key importance for OPG in relation to sustainability, is that the LPA is received digitally. This means there can be flexibility in the system to still allow the ability to print off and discuss drafts, make amendments on paper and keep paper records while providing the final LPA to OPG by digital means.
323. These are features that can be built into a future digital channel. Some responses to the consultation made mention of a “hybrid” approach, that would allow use of paper within a digital process. We are examining at what points draft paper copies could be useful to donors, attorneys and their supporters and how best to make these available without creating confusion or risk that a copy is thought to be a valid LPA e.g. with water marks.
324. The best way to ensure that we can resolve these issues and meet professionals’ needs is through co-creation and co-design of a future service. A number of responses mentioned this approach and its importance in delivering a proficient system. This is exactly how we wish to develop the future service and the team have already been working in this way, first through user testing and with our stakeholder working group in the lead up to consultation, then with continued testing and wider stakeholder engagement during the consultation. We intend to continue this approach throughout development of both the digital and paper channels.
325. While we will look at services inside and outside government, including the probate service, in order to learn from and develop best practice, we also believe that developing a new system in tandem with the relevant sectors is the best way to understand and resolve some of the apprehension professionals have towards a new modernised service. This would ensure the new service meets their needs and helps keep their costs down, while still allowing OPG to process the final LPA digitally. This is the most positive and collaborative way forwards for us to deliver a modernised LPA service.

Taking these responses into account, the government will proceed with working to integrate a digital LPA channel with document and case management systems.

326. However, it goes without saying that we won’t know the take up of the digital service until it goes live. While we believe integration is the best way to ensure the highest level of take up because support providers will have immediate access to the benefits to the system, there is still a risk that some will continue to be reluctant to make the switch.

327. For this reason, we need to ensure there is provision in the legislation to introduce mandatory use of the digital system by the regulated legal sector in the future if this proves necessary. This would be the case if the take up seen in a live service is not sufficient to allow OPG to reprioritise its resources into the safeguard and support services that provide the most benefit to users, namely investigations, the contact centre and the triage team.

Therefore, we will ensure sufficient powers within the legislation for us to mandate regulated legal professionals to use the digital service in the future should it be required.

Conclusion

328. In conclusion, the government would like to implement a modernised lasting power of attorney by integrating the system with third party service providers wherever possible. However, we will need to monitor take up and reassess the situation if necessary. Therefore:

- **The government will proceed with working to integrate a digital LPA channel with document and case management systems.**
- **We will ensure sufficient powers within the legislation for us to mandate regulated legal professionals to use the digital service in the future should it be required.**

Summary of additional questions

Introduction

329. In addition to asking specific questions on each of the seven proposals, questions 12, 13 and 14, outlined below, gave respondents the opportunity to raise any additional concerns, benefits or thoughts they had on modernising lasting powers of attorney which they were unable to include through the other questions. Many respondents took this opportunity and this section provides an overview of the additional information provided.

330. The questions that respondents were asked to consider here were:

Q12. Are there any other costs (in hours/days or in monetary terms) that you could see as a result of modernising LPAs for yourself or other people involved? Please provide evidence for your answer.

Q13. Are there any other benefits (monetised or non-monetised) that you could see as a result of modernising LPAs? Please give evidence for your answer.

Q14. Do you have any further comments on modernising lasting power of attorney?

Responses to the consultation

Q12. Are there any other costs (in hours/days or in monetary terms) that you could see as a result of modernising LPAs for yourself or other people involved? Please provide evidence for your answer.

331. This question was a free text question that asked respondents to provide further information on any other costs that could result from the modernising proposals. Given the free text responses provided, answers have been categorised as follows:

- There would be further costs (yes),
- There would not be further costs (no),
- There would not be additional costs as long as the system is set up correctly (no with a caveat) or
- Don't know or further information is needed.

332. This question was asked in order to get additional evidence for the Impact Assessment. However, very few respondents felt able to provide time or resource evidence. Where this was provided it has been taken into consideration.

333. As set out at Fig 23, 119 respondents provided an answer to this question. The majority of responses, 55 (46% of 119), indicated there would be additional costs though as outlined above, only a very small number provided estimates. 14 respondents (12%) said there would be no impacts, while 8 said there would be no impacts as long as the system was implemented appropriately. There were a large number, 42 (35%), who needed more information on the specifics of the system in order to answer this question. 31 campaign responses answered this question; 30 of them answered indicating that they 'did not know' and needed more information while 1 gave as answer indicating 'yes, there were'. These responses have been factored into the theme analysis.

Answers	Total Responses	Percentage of total responses
Yes	55	46%
No	14	12%
No with a caveat	8	7%
Don't know or need more information	42	35%
Total	119	

Fig 23. Responses to Q12

334. The main theme that came out of these responses was the concern about increasing costs for donors and professionals. This reflects many of the responses that we saw to questions 10 and 11, focusing on the increased cost of an urgent service or the potential for solicitors to pass on costs to their clients. As these issues have already been covered at proposal 6 and proposal 7, we do not cover them again here.

Q 13: Are there any other benefits (monetised or non-monetised) that you could see as a result of modernising LPAs?

335. This question was a free text question that asked respondents to provide further information on any other benefits that could result from the modernising proposals. Given the free text responses provided, answers have been categorised as follows:

- There would be additional benefits (yes)
- There could be additional benefits but need more information (yes with a caveat)
- There would not be additional benefits (no)
- Don't know or further information is needed.

336. This question was asked in order to get additional evidence for the Impact Assessment. However, very few respondents felt able to provide time or resource evidence. Where this was provided it has been taken into consideration.

337. As set out at Fig 24, 128 respondents provided an answer to this question. 91 responses indicated that there were additional benefits from the modernising proposals (71% of 128 responses). A small number, 3 (2%), said there were benefits but they needed more information to determine what they were. Only 20 respondents felt there were no benefits at all (16%). The number of people who said they did not know, or needed more information was much lower for this question at 14 responses (11%). 14 campaign responses provided an answer to this question. 3 gave answers indicating there were benefits, and 13 (including 2 who indicated yes) said more information was needed.

Answers	Total responses	Percentage of total responses
Yes	91	71
Yes with caveat	3	2
No	20	16
Don't know or need more information	14	11
Total	128	

Fig 24. Responses to Q13

338. Unlike Q12 where there was only one clear theme, here responses covered a number of potential benefits. The largest theme related to the process being quicker and more straightforward for everyone involved. This was closely followed by the potential for a reduction in both time and costs across the system, and how much more streamlined the process could be. The final key themes were that the LPA being ready to use when needed would be beneficial, as would the improvement in safeguards realised by the reforms. Again, as many of these have been covered across other questions, no further comment is made on these answers.

Q 14: Do you have any further comments on modernising lasting power of attorney?

339. The consultation did not address every possible change that could be made either to create a digital channel or modernise the paper one. It set out seven proposals that will necessitate amendments to primary legislation in order to support our modernised service. This will allow for a digital channel for creating and registering an LPA while improving safeguards and access, and helping OPG to become financially sustainable. Additionally, we will retain access to a paper channel for those who need or want to use paper.

340. This question provided the opportunity for respondents to raise any issues that they had not been able to raise at any other point of the consultation. There were no set answers with just a free text box for responses.
341. 188 respondents answered this question, including 37 of the campaign responses. Where the answers to these questions related to a specific proposal, they have been included in the analysis for that specific question or section in this document. We did however receive other views, covering a range of different issues, that do not relate to the proposals but to modernising lasting powers of attorney, OPG or mental capacity policy more generally. Whilst it is not possible for us to list these all out, we have identified the most prevalent themes arising and discuss them further below.
342. These answers include a range of thoughts; some are out of scope, such as amendable LPAs, some are improvements that were not covered in the consultation because they will not need changes to primary legislation, such as updates to guidelines on selecting attorneys or their duties. As the creation of a modernised service progresses, we will continue to engage with stakeholders and members of the public on reforms and other concerns that do not require primary legislation.
343. We also cover some issues in this section that, while not raised under question 14, were raised across other questions. They are dealt with here because they were general issues that sit across the modernising project or are out of scope for the project.

The Government's Response

OPG's current performance

344. Respondents consistently raised concerns across a number of questions, but especially in relation to objections, about OPG's current performance and level of service. Many thought that OPG processes need to be more efficient, consistent and cost effective. Others felt that current processes were quite burdensome and should be streamlined. They provided examples of barriers that current paper-based operational practices present – for example difficulties meeting 'respond by date' deadlines in letters sent by post. Many complained about the current speed of service and felt that a quicker service was vital in meeting donor needs.
345. Generally, many respondents suggested that modernisation of the service could resolve some of these concerns. Some suggested that MLPA would reduce time for all involved in creating and registering the LPA and would eliminate the burdens associated with paper. Others commented on the efficiencies that could be realised in the longer term via a digitised service as more checks would be automated and so the end-to-end process will be quicker.

Our response

346. The impact of the pandemic has meant OPG are currently unable to meet their usual targets. They have had to operate with fewer staff in the office due to social distancing requirements, coupled with increased absence. Sometimes this has been as a result of COVID-19 related sickness and sometimes because staff are required to self-isolate in line with government requirements. As government restrictions for England and Wales have gradually eased, OPG have seen an increase in applications to register LPAs which has added to pre-existing backlogs.
347. These issues combined have generated the delays to LPA registrations, which can currently take up to 20 weeks to process. OPG are working hard to reduce the delays and clear the backlog, including having as many staff as possible in the office whilst still working in a safe environment, a recruitment drive for new staff and using overtime. There are, however, significant issues with both the recruitment and retention of the numbers of staff necessary to clear the backlog. OPG run both a day shift and a twilight shift and have just had permission from the landlord in Birmingham to run a night shift from 10pm to 2am.
348. To help manage their customers' expectations, OPG regularly update their website with current service delivery timescales.
349. A modernised LPA should significantly increase the efficiency of how OPG is able to register lasting powers of attorney. As importantly though, it would also allow the organisation to adapt and scale its services much more easily and quickly which means it should be much better placed to deal with future extraordinary events similar to those that led to its current position.

OPG will continue to work towards COVID-19 recovery and return to normal service.

Paper process

350. The importance of maintaining a paper route for creating an LPA was also raised to ensure the service remained accessible for all. Respondents suggested a paper alternative should run alongside the digital service, with similar enhancements made to safeguards to ensure parity with the digital channel. This was to maintain equal access for all whilst still realising the safeguarding benefits the modernisation could bring.

Our response

351. The government has highlighted throughout development of modernising lasting power of attorney, the importance of focusing on the donor who should remain at the heart of the LPA process. We know not everybody is able or willing to use digital

technology to access services. For this reason, any future LPA service will allow for multi-channel access; we will retain a paper channel while introducing a digital channel. This will necessitate changes to the paper service to ensure that those using it have access to the same safeguards as those using the digital channel e.g. identification checks. We will continue to consider how to ensure parity of service as development progresses.

352. Some respondents were concerned that not every proposal stated how it might work differently for paper. This is because in some cases, the introduction of a digital channel does not necessitate a change in the paper process. For instance, using technology to evidence execution in a digital channel does not mean we can't use witnesses to evidence execution in a paper channel – the purpose is the same, to provide evidence to OPG and the Court of Protection that execution by the donor took place. In other cases, for example objections, we were still determining how this process would work for digital and paper and the consultation was intended to provide evidence to help us determine the answer.
353. The issue of digital access and the retention of a paper channel was also brought up in relation to the equalities' questions at Q15 and 16. A summary of these is provided below with the full equalities statement at Annex C.

The government is committed to ensuring that a paper channel remains available for those who need it.

Use of the LPA

354. Several responses commented on the difficulties faced when trying to use an LPA with third parties, with banks and healthcare professionals most commonly identified in the responses. They suggested that there needs to be a uniform approach to third parties accepting LPAs and that the arrangements for sharing it with others should be modernised. This would make the LPA easier for attorneys to use – for example if the third party could see the full content of the LPA (including preferences and instructions) digitally.

Our response

355. We recognise that some people have had difficulties with using LPAs with third parties. In addition to the above, we are also aware that people have concerns about having to post the original document to third parties for internal registration and the risk this poses of loss or damage. While it is for those third parties to determine their own internal practices to assure themselves that OPG has registered an LPA, OPG is already undertaking work to make this process more consistent, straight forward and easier for users.

356. The Use an LPA service was launched in June 2020 and allows attorneys and donors to share the details of their LPAs with third parties online. OPG worked closely with its stakeholders to establish the key data that was required to be able to grant access to the attorney. The limitation of the current LPA process means that in a small number of cases the physical LPA (or certified copy of it) still needs to be shared. The majority of users however report the online process of using an LPA to be substantially easier than using the paper LPA. OPG is continuing to provide improvements to the service and reduce the instances where the paper LPA needs to be shared.
357. While modernising LPA is a separate project which is being run jointly across the Ministry of Justice and OPG, it is linked to OPG's Use an LPA service development. Use an LPA was undertaken by OPG first as it does not require changes to legislation to allow third parties to access LPA information. The next stage of reform of OPG's LPA services is modernising the creation and registration process. This is being undertaken by the Modernising LPA project. The modernised LPA will allow for the complete LPA to be shared via the Use an LPA service. Importantly, we can provide clarity that a modernised LPA shared via the Use an LPA service will be able to be treated as legal copy of the LPA, which should increase the confidence, speed and number of third parties using the service. In this way, OPG is already working to aid users in their use of the LPA with third parties.

OPG will continue to develop and roll out its Use an LPA service.

Amendable LPAs

358. Some respondents felt that LPAs are too difficult to change once they have been registered and that it should be easier to amend these in the future. For example, some suggested it should be simpler to add an attorney to an existing LPA or add supplemental provisions. Others argued that making LPAs amendable would encourage younger people to make them, as they would have the ability to make changes in the future without having to pay additional fees and revoke existing LPAs.

Our response

359. We recognise the very positive views that respondents expressed on the benefits of amendable LPAs. Indeed, these align with policy intentions that everyone should have an LPA where they want one and the importance of having one in place in case the unexpected happens. The development of an amendable LPA is something government would like to take forward in the future.
360. However, we also have to be realistic about what can be achieved and how quickly. The primary aim of modernising LPA is to increase safeguards within the current process, especially for the donor. Amendable LPAs do not help achieve this aim, and

in fact would require the development of new safeguards to verify that it was the donor making the amendments and not another actor.

361. As we set out in the consultation, we need to ensure that the benefits we are looking to realise through increased safeguards, improved access and sustainability can be achieved more quickly. This requires us to develop a digital channel of creation and registration first. However, we are considering how to lay the foundations to make amendable LPAs possible in the future as a digital channel is an important first step on that journey.

Therefore, amendable LPAs remain out of scope for modernising lasting power of attorney.

Guidance and Education

362. Many respondents suggested that improvements should be made to the guidance around LPAs and the MCA more broadly. Some thought the existing guidance was difficult to understand which means that some donors struggle to complete the process independently. Respondents suggested that the layout of the forms should be improved, and that the language should be simplified and made more user-friendly.

363. Whilst not in scope of the project, some respondents commented on mental capacity guidance and raised that many people do not understand the difference between an LPA and Deputyship. They suggested better training for financial institutions, local governments and healthcare professionals on mental capacity law, in particular emphasising that capacity is time and decision specific.

364. On LPAs specifically, some commented that the current guidance is not reflective of current practice and should be updated, possibly via the code of practice. The need to train financial institutions and local governments on the use of an LPA was echoed here.

365. Some respondents suggested that more should be done to help people understand the LPA itself, in particular the scope of attorney power and the need to support the donor to make their own decisions where possible, particularly as capacity can fluctuate. Suggestions included raising awareness on the powers that are conferred on the attorney and the circumstances in which the attorney can act. This included making sure that parties were aware that the LPA should only be used where the donor lacks mental capacity, and even then, the attorney should actively involve the donor in decision making. Some thought this would enhance safeguards and ensures that all parties fully understand the implication of registering an LPA. Some also wanted improved guidance on what happens in instances of abuse of the LPA.

Our response

366. The government agrees with the views of respondents that improvements can be made to the information and advice that is provided to donors, attorneys, certificate providers and others involved in the process of creating an LPA.
367. Changing the process of creating an LPA, to provide for both digital and paper channels, offers the ideal opportunity to examine the guidance and information that is provided. Digital also provides new opportunities to ensure information is provided in the right way, at the right time, to the right people. This can help people to better understand the decisions they need to make or the roles and responsibilities they have to carry out.
368. Similarly, we need to ensure that we do not lose the benefits of paper within the digital channel, for instance the time to sit back and think about the decisions being made. This is especially important with a document like an LPA, as was pointed out by some of our respondents, given the scope of the powers that are being conferred under the document. We will continue to think about how a digital channel can help create breathing space for donors so they can take the time they need to think through these decisions.
369. Finally, we recognise that some individuals will continue to need the support of third parties to make their LPAs – whether via a paper or a digital channel. These third parties could be professionals or friends and family and it is important that both continue to be an option. This is why in developing our digital system we are considering how to implement mechanisms for third parties to support LPA creation both through integration, as set out under proposal 7, and for friends and family members. This must be done in a way that facilitates the donor’s choice and control over the process and that protects against abuse. We will continue to investigate how this can best be achieved.
370. These ideas did not feature in the consultation proposals because it does not require primary legislation to make changes to guidance, information and provide thinking space. Similarly, developing a third-party support mechanism is a necessity of building a working LPA service independent of what the legislation around an LPA states. However, they are all an absolutely vital part of modernising the process and ensuring people understand the process, and will be looked at when development reaches that stage of work. Most importantly, we intend to do this through collaboration and testing with our stakeholders and members of the public to ensure the information given meets their needs.
371. On the points raised about wider mental capacity guidance, the Ministry of Justice and the Department of Health and Social Care have launched a joint consultation on revisions to the Mental Capacity Act code of practice. The closing date is 7 July 2022

and we would encourage any respondents to our consultation who had specific views on this issue to review and respond so their thoughts can be considered along with other responses.

At the appropriate point in development we will work with stakeholders and the public to develop the guidance and information they need to use and understand the modernised LPA registration service.

Merge Forms

372. Some respondents suggested that the LPAs for health and welfare and property and affairs should be merged. Some suggested this could make the process quicker as checks will not need to be duplicated across both sets of documents.

Our response

373. Health and welfare and property and affairs LPAs were created as distinct powers in order for there to be clarity about the scope of decisions being made under each power. They also mean the donor has the ability to appoint different people for different decisions without the complexity of having to set this out freehand in their LPA. It therefore remains important for these to continue to be different powers.

374. However, modernisation does provide the opportunity to look at how we can remove the duplication of effort for people seeking to appoint the same person/s to both powers. Currently this involves filling in the same details with some minor additions, on two separate LPAs. OPG's current Make an LPA service already provides the ability to use existing details in a second LPA. We will consider how best to make this functionality available in the digital channel of a modernised LPA.

375. Given that changes will also be required to the paper channel to allow people to create their LPA on paper while providing digital submission to OPG, we can also consider what ability there is to remove this duplication in the paper process.

While the government will not merge the different types of LPA, we will consider how we can remove the duplication of data entry where information is repeated across both types.

Require a Solicitor to make an LPA

376. Some respondents suggested that it should be mandatory for donors to use a solicitor when making an LPA because it makes the process faster, resolves family conflicts and enhances safeguards for the donor. As mentioned in the analysis in proposal 7, some had argued that launching a simpler, more user-friendly service

could negate the need for donors to seek professional support when making an LPA. They were concerned that this could open the donor up to abuse and reduce protections in the process. Therefore a few respondents thought government should do more to promote legal services in the creation of LPAs.

377. Other respondents argued against mandating the involvement of professional solicitors, with some suggesting that solicitors should be obliged to inform their clients it is not a legal requirement to make an LPA with legal support. Their primary concern was the additional costs that donors incur when using a legal professional to make an LPA.

Our response

378. As we stated in the response under proposal 1 on the role of the witness, we will not introduce a requirement for the certificate provider to be a solicitor or a medical professional. The reason we gave for this is that we believe LPAs should be attainable, accessible and affordable for all and access to a solicitor should not be a requirement or a barrier for this.

379. Requiring a solicitor to be involved at any part of the LPA process would be a significant barrier for those who can't afford the fees, and either can't or won't access solicitors' services. OPG does currently provide guidance to donors on when legal advice should be considered e.g. because of complexity in their financial affairs but is clear this is not a requirement.

380. As the service is developed, OPG will need to review and change its guidance to align with the new service. This will provide opportunities to better tailor the advice provided at appropriate times but the intention will remain the same, that a solicitor is not a requirement to make an LPA, but that some individuals may want or need to see legal advice depending on their circumstances.

We will not introduce a requirement to use a solicitor. However, OPG will continue to look at the most appropriate opportunities to provide information on seeking legal advice in the LPA process as development continues.

Security Bonds

381. Security bonds are a protection that exists within the deputyship process. They are required when a financial deputyship is made by the Court of Protection to protect the individual's assets in the event their deputy misappropriates them. This is important with a deputyship because P (the person who lacks capacity) is not the one making the decision to appoint the deputy. There were some suggestions that government should make security bonds a mandatory requirement for LPAs as well, to protect the individual's assets in the event that an attorney misuses the donor's funds.

Our response

382. The government agrees that security bonds could provide extra security for a donor, as they do in deputyships. However, the key difference between a deputyship and an LPA is that a donor making an LPA must have the mental capacity to make their own decisions about that LPA. When making their LPA, they therefore have the free choice to determine who they trust to appoint as their attorney and the scope of the power they want to give them. We have already spoken about the need to respect this freedom of choice when we discussed the potential to introduce background checks on attorneys and we rejected that proposal for this reason.
383. Additionally, LPA bonds are still a relatively new product. Currently, there are limited providers for these products. It would not be appropriate for the government to create legislation that drives approximately 485,000 donors annually into services provided by a handful of companies. Additionally, due to this lack of competition, depending on a particular donor's circumstances, the cost could be prohibitive for some of them. Wider market provision and competition is needed to ensure donors have adequate choice to meet their needs at a price point they can afford before we can consider making this compulsory.
384. For these reasons we believe that currently, it should remain the donor's choice whether to take out a security bond. To facilitate this, more information on the existence of, and protection provided by, security bonds is needed to increase awareness and consideration of these options. Therefore;

OPG will provide more information for donors on the option of security bonds and the protection they can provide for donors as part of a modernised process.

Certified copies of LPAs

385. As part of the consultation, a small number of respondents suggested that the process for obtaining certified copies of an LPA should also be modernised. Respondents said that the relevant legislation should be amended to allow Chartered Legal Executives to certify copies of LPAs.

Our response

386. Under Section 3 of the Powers of Attorney Act 1971 (POA Act), a copy of a power of attorney can currently only be signed by either the donor of the power; a solicitor; a person authorised to carry on notarial activities under the Legal Services Act 2007; or a stockbroker. The legal services market has changed substantially since the POA Act was passed in 1971. There are currently around 20,000 CILEX members (The Chartered Institute of Legal Executives) in the UK - some performing the same functions as solicitors.

387. While these changes are out of scope for modernising lasting powers of attorney, we are keen to support the broadening of opportunities for CILEX professionals and will take the necessary steps to address this issue as an independent piece of work.

Conclusion

388. In conclusion, the government has taken on board the additional thoughts and proposals suggested by respondents and address these as follows:

- **OPG will continue to work towards COVID-19 recovery and return to normal service.**
- **The government is committed to ensuring that a paper channel remains available for those who need it.**
- **OPG will continue to develop and roll out its Use an LPA service.**
- **Amendable LPAs will remain out of scope for modernising lasting powers of attorney.**
- **At the appropriate point in development we will work with stakeholders and the public to develop the guidance and information they need to use and understand the modernised LPA registration service.**
- **While the government will not merge the different types of LPA, we will consider how we can remove the duplication of data entry where information is repeated across both types.**
- **We will not introduce a requirement to use a solicitor. However, we will continue to look at the most appropriate opportunities to provide information on seeking legal advice in the LPA process as development continues.**
- **OPG will provide more information for donors on the option of security bonds and the protection they can provide for donors as part of a modernised process.**

Summary of equalities questions

389. The Equalities Statement accompanying this consultation document considers the impacts of proposals alongside the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
390. Under the Equality Act, the protected characteristics are race, sex, age, disability, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment, marriage/civil partnership.
391. Throughout our work, and the consultation, we have carefully considered how our proposals to modernise LPAs may impact those with protected characteristics, we included two questions in the consultation to help assess the impact of our proposals on those with protected characteristics.

Consultation questions

392. In the consultation, we asked two questions to help assess the impact of our proposals on those with protected characteristics.
393. Question 15: Have we correctly identified the protected characteristics that could be impacted by the proposed reforms set out in this consultation paper?

Response	Number of responses	Percentage
Yes	93	85%
No	15	14%
Don't know	2	2%

ES fig 1 responses to Q15

394. Of the above responses, 18 also commented on non-protected characteristics. A further 6 responses commented on non-protected characteristics only.
395. The main non-protected characteristics identified were digital capability and digital access.

396. Question 16: What do you consider to be the equalities impacts of the proposed options for reform on individuals with a protected characteristic?

Characteristic	Number of responses
Age	94*
Disability	21
Race	5
Sex	1
Religion	1
Gender reassignment	1
Sexual orientation, pregnancy or maternity, marriage or civil partnership	No responses on any of these characteristics
Non-protected characteristic	
Digital skills or digital literacy	49*
Social class	10
Other	15
No impact	6

ES fig 2 responses to Q16

* These answers were inflated by campaign responses

397. All respondents gave their thoughts on the possible impacts, rather than providing evidence on specific impacts.

398. Most responses focused on age, where the largest concern was that older people may be more vulnerable to abuse if their LPA was made digitally. This concern was inflated by campaign responses.

399. For both age and disability, respondents mentioned that lack of access to technology could block their access to an LPA.

Impact on those with protected characteristics

400. The more detailed views given on each protected characteristic are as follows:

Age

401. Many respondents commented that older individuals would be impacted by the proposals but did not specify what this would be. The majority of current donors are over 65. Our assessment is that many of the impacts of a modernised service will be positive for this group. For example, a more straightforward application process and improved safeguards.
402. While we recognise that some older people may not have traditional identification documents (such as a passport or driving licence), or access to technology, we believe we have identified ways to mitigate this. For example, by providing a wide range of identification options and keeping a paper channel in place for those that need it. For this reason, we do not think this group will be disproportionately impacted by our proposals.

Disability

403. Some respondents highlighted potential positive impacts of the proposals. For example, a digital service used with assistive technology, could give more independence and control for people who would otherwise have to rely on the support of others to make a paper LPA.
404. For those without access to the necessary technology, the option of paper channels will remain. People will also be able to choose from a variety of accessible options to verify their identity.
405. Our current view is that the proposals will not have a disproportionate impact on people with disabilities.

Race

406. OPG are aware that people from ethnic minority backgrounds are less likely to have an LPA. Work is ongoing to address this.
407. Some respondents commented that digital skills may be lower amongst people from ethnic minority backgrounds. However, data from the Office for National Statistics suggests this is not the case.
408. Our current view is that the proposals will not have a disproportionate impact on people with this protected characteristic. A modernised LPA could offer opportunities to widen access for ethnic minority groups.

Sex

409. As women are more likely than men to be donors on an LPA, and are less likely than men to have digital access, our proposals could have a greater impact on women. We believe we have identified ways to mitigate this, so the impact is judged to be proportionate to the overall aims of modernising LPAs.

Other protected characteristics: religion and belief, gender reassignment, marriage and civil partnership, sexual orientation, and pregnancy and maternity

410. Our current understanding is that our proposal will not have a disproportionate impact on people with these protected characteristics.

Mitigations and ongoing work

411. We propose to proceed with the modernising LPA project, as there is currently no evidence of disproportionate negative impacts on people with a protected characteristic or else appropriate mitigations are being considered and developed.

412. A modernised LPA may also have a positive impact for some of these groups.

413. Where there are negative impacts on those with protected characteristics, these are mainly related to:

- digital access and skills
- access to the documents needed to verify identity
- and, to a lesser extent, abuse of vulnerable people

414. To mitigate these:

- a paper channel for creating LPAs will remain available
- we are working with organisations who support people to make LPAs
- we will ensure any new service makes best use of assistive technology
- we are working to make the process of verifying identity as accessible as possible
- we are proposing to improve safeguards to protect against abuse and coercion

415. Through research, data and collaboration, we will continue to build our understanding of the impact a modernised LPA may have on those with protected characteristics.

416. You can read our full equalities statement at Annex C below.

Impact Assessment

Impact Assessment

417. Our Impact Assessment indicates that members of the public who make LPAs, others involved in the creation and registration of LPAs, those who provide legal assistance in relation to LPAs, charity groups who support people making LPAs and third parties who interact with LPAs, or have concerns about them, are likely to be particularly affected. OPG, Ministry of Justice, Court of Protection, Department for Health and Social Care, NHS and Welsh Government will also be impacted.

418. An Impact Assessment has been produced.

Conclusion and next steps

419. The government is very grateful for the many responses submitted to the consultation, the quality of which was generally high. Lasting powers of attorney are a vital tool in preparing individuals for the future, and modernisation of the process for creating and registering an LPA is likely to have a significant impact on many people.
420. As set out at the start of this document, the Modernising LPA project aims to:
1. Increase safeguards, especially for the donor.
 2. Improve the process of making and registering an LPA for donors, attorneys and third parties.
 3. Achieve sustainability for OPG whilst keeping LPAs as affordable as possible for all people in society.
421. The consultation allowed us to test a set of proposals to inform our way forward, which we have set out in this document. The proposals we will take forwards and our next steps are summarised below.

Proposals the Government will take forward:

1. Role of witness:

422. This considered whether there is value to the role of the witness and if there is, how to retain this value within a future service.
423. The public were largely positive to the idea of using technology to evidence execution. However, professionals were sceptical and preferred to increase the role of the certificate provider. Considering both approaches means there could be differences between how donors and attorneys execute the LPA in the future. Professionals also wanted confirmation on what the status of the LPA will be in the future.
424. In response, the government will ensure that there remains a way to **evidence the execution of the LPA** by the donor. It will consider the best way to achieve this. Under proposal 1, the government will therefore:

- Continue to investigate the possibility of using technology to replace the witness with a similar (digital) function within the digital channel.

- Investigate whether to combine the role of the certificate provider and the witness in relation to execution of the LPA by the donor.
- Consider whether retaining a mechanism to evidence the attorney's execution of the document provides a safeguard to an LPA.

425. Proceeding with investigation of both the certificate provider as a witness, and technology as a witness, may mean that witnessing requirements for donors and attorneys will be different in a future service. Despite these potential changes, we will ensure that the LPA continues to be treated as a deed even if changes are made to the requirements for witnessing an LPA.

426. Separately, we will clarify the role of the certificate provider in assessing the donor's understanding of the LPA and protecting against fraud, abuse and undue pressure. This will be done through additional guidance and support for those carrying out this role.

427. The government will **not** introduce a requirement that the certificate provider be a professional.

2. Role of application:

428. This looked at what purpose application serves within the process of creating and registering an LPA and who can apply to register one.

429. Most respondents were in favour of removing the ability to delay registration, however a significant number raised concerns about the impact this could have on the donor's choice and control over the process.

430. In response, the government will continue to investigate the feasibility of both approaches, before finalising a way forward:

2a Execution starts registration

2b Delayed registration.

3. OPG remit:

431. This considered ways to widen the power of OPG in legislation to provide clarity on the checks it can carry out and the actions it can take as a result of those checks

432. Respondents were in favour of identity checks and with proceeding with the approach of conditional checks that would require individuals to provide one or a

combination of identity information. The information that would be accepted would be clearly set out for all parties.

433. In response, the government will:

Proceed with developing a system of conditional checks (approach 3a), and not discretionary checks.

434. This will include:

- Considering whether checks on the attorney are necessary and appropriate when considered alongside other safeguarding mechanisms that exist across the LPA process, including at the point the LPA is used.
- Seeking to verify the identity of the donor and certificate provider in the modernised service.
- Considering how to include a range of identification options to ensure access for everyone.

435. The government will not introduce additional suitability checks on attorneys (such as criminal background checks).

4. How to object:

436. Currently, the legislation sets out different processes for different types of objections. This examined how to clarify and streamline the current processes for objecting to the registration of an LPA.

437. Respondents were in favour of simplifying the process by requiring that all objections go to OPG first, and that OPG should have the power to refer a case directly to the Court of Protection where this was necessary, for instance to safeguard the donor. Respondents were also open to the benefits of allowing a wider range of people to raise objections.

438. In response, the government will:

- Pursue approach 4a – **OPG receives all objections.**

439. This will include amending legislation to:

- permit objections to the registration of an LPA from anyone, and
- give OPG the power to refer cases directly to the Court of Protection where necessary.

5. When to object:

440. The aim of this proposal was to make it easier for those wanting to raise an objection to do so, by looking at where in the process objections could be raised.

441. Respondents wanted a mix of benefits from across the three approaches but were clear that the objection period should remain as a safeguard.

442. In response, the government will look at a system that allows **objection from before creation up to the point of registration**:

- Investigate a method for people to raise objections during the creation of an LPA.
- Consider introducing a system that permits objections to be registered by a third party before the LPA process is started. Government will test the feasibility of such a system and will consider which third parties should be permitted to object.
- Commit to keeping a statutory waiting period as part of the objections process for registering an LPA and as a cooling off period for the donor.

443. Under this approach, we will investigate what the appropriate length of the statutory waiting period should be in a future service, accounting for other changes to the objections process across both the digital and paper channels.

444. The government will **not** reintroduce a requirement to provide people to notify on an LPA.

6. Solicitor access to the service:

445. This considered ways to support solicitors to use a new modernised service through the use of integrated digital systems and legislative requirements.

446. Respondents were largely against requiring solicitors to use a digital service. Other types of respondent were keen to understand if the integrated service would also be made available for their use.

447. In response, the government will:

- proceed with working to **integrate** a digital LPA channel with document and case management systems. However, it will also ensure there are sufficient powers within the legislation for us to mandate regulated legal professionals to use the digital service in the future should it be required.

448. Further information on the estimated impacts of the above proposals is set out in the impact assessment published alongside this response.

Proposals the Government will not take forward:

Speed of service

449. This looked at whether there was a need for an even quicker service and if so, how to balance this against the safeguards needed and ease of access.

450. While a significant minority of respondents thought an urgent service would be beneficial, there was clear concern about the logistical and operational complexities of operating such a service. This would potentially be compounded by the high level of interest and need for such a service.

In response, the government will **not** proceed with an urgent service.

Other commitments:

451. Some respondents submitted other views that were not directly related to proposals but merited further consideration. These were discussed in section 8 of this document, and can be summarised as follows:

452. **OPG's current performance:** Concerns were raised about OPG's current performance, processes and level of service. OPG has been heavily impacted by the pandemic and continues to work on returning service levels to meet their targets.

453. **Paper process:** Respondents suggested that a paper alternative should run alongside the digital service, with similar enhancements made to safeguards to ensure parity with the digital channel. The government is committed to ensuring that a paper channel remains available for those who need it.

454. **Use of the LPA:** Several respondents commented on the difficulties faced when trying to use an LPA with third parties such as banks and healthcare professionals. To make use of the LPA easier, OPG will continue to develop and roll out its Use an LPA service.

455. **Amendable LPAs:** Some respondents felt that LPAs are too difficult to change once they have been registered and thought it should be easier to amend these in future. Amendable LPAs remain out of scope for modernising lasting power of attorney due to the need to ensure that the benefits we are looking to realise through increased safeguards, improved access and sustainability can be achieved more quickly.

456. **Guidance and education:** Many respondents suggested improvements that could be made to LPA and Mental Capacity guidance more broadly. At the appropriate time in development, we will work with stakeholders and the public to develop the guidance and information they need to use and understand the modernised LPA registration service.
457. **Merged forms:** Some respondents felt that duplication of effort could be removed by merging both types of LPA. While we will not merge the different types of LPA, we will consider how we can remove duplication of data entry where information is repeated across both types.
458. **Require a solicitor to make an LPA:** Some suggested it should be mandatory for donors to use a solicitor when making an LPA, or that more should be done to promote involvement of legal services. We will not make the use of solicitors mandatory, but OPG will continue to look at the most appropriate opportunities to provide information on seeking legal advice in the LPA process as development continues.
459. **Security bonds:** Some suggested that government should make security bonds a mandatory requirement for LPAs. While we accept that this could provide additional protection, it should be for the donor to take this into account in determining who they trust to act on their behalf. We will therefore provide more information for donors on the option of security bonds and the protection they can provide for donors as part of a modernised process.
460. **Certified copies of LPAs:** Several respondents to the consultation wanted the relevant legislation to be amended to allow Chartered Legal Executives to certify copies of LPAs. We will take the necessary steps to address this issue as an independent piece of work.

Next steps:

461. Effecting the changes described will require amendments to the Mental Capacity Act 2005 through primary legislation. We intend to bring forward legislation when parliamentary time allows.
462. Finally, if you would like to keep up to date on the progress of this project you can review progress by visiting the team's website:
<https://sites.google.com/digital.justice.gov.uk/opgmlpa/home>

463. If you would like to help us develop this service, either through co-design work, user testing or other forms of research, you can express your interest in one of two ways below:
1. I am a member of the public: <https://eu.surveymonkey.com/r/GGJ9NMQ>
 2. I have a professional interest in LPAs: <https://eu.surveymonkey.com/r/BL2CRVX>
464. While we cannot promise to respond immediately, your information will be kept so that we can get in touch when we are developing areas relevant to your expressed interests and methods of contact.

Consultation principles

465. The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A: List of Respondents

Organisations that responded to the consultation

1. Adobe
2. Age Partnership
3. Age UK
4. Alzheimer's Society
5. Anthony Gold Solicitors LLP
6. Association of British Insurers
7. Bar Council
8. British Association of Social Workers CYMRU, The
9. Canterbury Oast Trust
10. Carers Northumberland
11. Charles Russell Speechley LLP
12. Chartered Institute of Legal Executives, The
13. Citizens Advice Cardiff & Vale
14. Corner Stone Wills
15. Countrywide Tax & Trust Corporation Ltd
16. Court of Protection Bar Association
17. EightFourTwo
18. Enable Law
19. EPOQ
20. Equity Release Experts, The
21. Financial Vulnerability Task Force
22. Franklins Solicitors
23. Gentle Dusk
24. Institute of Professional Will Writers
25. J M Allen Solicitors Ltd
26. Knowsley Council
27. Law Society
28. Legal & General Group PLC
29. Legal Services Consumer Panel
30. M2M Community Solicitors LLP
31. MenCap
32. Meridian Private Client LLP
33. Mills-Reeve LLP
34. My Wishes
35. Mydex CiC
36. Older People's Commissioner for Wales
37. Parkinson's UK
38. Penningtons Manches Cooper LLP
39. Public Health Wales
40. Rose & Rose Solicitors LLP
41. Royal Trinity Hospice
42. Society of Licensed Conveyancers, The
43. Society of Trust and Estate Practitioners
44. Society of Will Writers, The
45. Sole Practitioners Group
46. Solicitor for the Elderly
47. Transparency Task Force
48. UK Finance
49. Wedlake Bell LLP
50. Welsh Language Commissioner
51. Wrigleys LLP
52. Yoti & The Post Office
53. Zen Legal

Annex B: Welsh Language Test

1. Of the 313 responses to the consultation, 17 of these were from people or organisations who said they live or are based in Wales. Most of these responses raised similar points to those seen from respondents in England, with very few specific comments on impacts on Welsh service users, the provision of a Welsh service or Welsh language provision. There were two responses, however, that did raise points specific to Welsh concerns that need a more direct, detailed response. The first was the response from the Welsh Language Commissioner on the provision of a Welsh language service. The second was a response from the Older People's Commissioner for Wales raising concerns about digital access within Wales.
2. The Welsh Government also provided a link to their bilingual design toolkit. As no responses to the consultation questions were provided, this has not been treated as a response to the consultation. However, we thank them for providing this information and it has been shared across the team working on the development of the modernised service. We will continue to engage with our contacts at Welsh Government as the modernising work continues.
3. Turning to the two responses, the Welsh Language Commissioner understandably focused on the importance of any future service being provided in the Welsh language. Specifically, he sought further information on how the government intends to develop a Welsh language service. He highlighted the need for a bilingual system to be developed, rather than to retrofit a Welsh language service into an English one. He also sought reassurance that a Welsh service would be available at the same time as an English one.
4. First, we have been clear from the start of this project that any modernised service will be made available in both English and Welsh. Not only because this is a requirement of releasing any central government service but also because it ensures we can provide an equal service to all across England and Wales.
5. On the issue of developing a Welsh language service, we recognise that any future service needs to meet Welsh needs as well as English ones, and are keen to ensure that Welsh language provision and content is developed in tandem with the English service. It is for this reason that through our early development we have included Welsh representatives in our stakeholder working group and met with Welsh Government officials. We were keen to continue this through the consultation and so, to accompany the Welsh language version of the document, OPG publicised the process with Welsh language social media and we worked with our contacts in Welsh Government to circulate further information to Welsh stakeholders. This included

information on our accompanying stakeholder engagement events, which were well attended by Welsh stakeholders, and allowed us to have Welsh break out groups to delve into the issues specific to Welsh attendees.

6. To continue this aim, as we move from our digital alpha stage (where we test ideas and concepts) into beta (where we develop and build the service), we will work closely with Welsh users and stakeholders to understand their needs, and develop Welsh language screens for early testing. This will allow us to test and iterate Welsh content. It will also mean we can spend more time refining terminology and legal language so that the service can meet the needs of Welsh speakers and aid understanding of LPAs.
7. Another OPG service has successfully conducted user research with Welsh speakers. This has allowed the team to refine terminology to meet Welsh needs. We are hopeful that while we have so far been unsuccessful in securing Welsh participants in our user testing, we will be able to resolve this issue so we can ensure the Welsh public are able to feed in directly to development.
8. Finally, on the timing of a Welsh language service being made available, we can confirm that when the service goes live, both a Welsh and English language service will be available at the same time. We hope this will reassure the Commissioner that full consideration is being given to the provision of a Welsh language service.
9. Turning to the response from the Older People's Commissioner for Wales. This response contained a number of issues of concern to the Commissioner, such as protecting older people from financial abuse, improving the process of applying to register an LPA, and training for health and social care professionals. The second and third of these aligned with issues raised by other respondents to the consultation and have therefore been addressed within the analysis within the main body of the response.
10. With regards to protecting the elderly from financial abuse, the Commissioner was concerned about the use of technology, and specifically the use of electronic signatures to evidence execution of an LPA. This included evidence and data on the numbers of older people in Wales who do not use technology or do not have access to the internet. This was also a concern that was raised specifically by Welsh stakeholders at our engagement workshops. The government would first like to thank the Commissioner for the inclusion of this evidence. This is invaluable to our development of a service which best meets the needs of all users, including those in Wales, and will help to bolster our evidence base, as was the intention of this consultation.
11. On this issue, the government confirms that paper channels for the creation of LPAs will continue to be available for those who need them, including in Welsh. As outlined

elsewhere in the response document, we are also considering alternatives to this approach. We have committed to looking at whether the certificate provider should act as an in-person witness, even where an LPA is being created using the digital channel. While we will also continue to look at how technology can be used to evidence execution within a digital channel, it's important to note that the example of electronic signatures given in the consultation is only one way this could potentially be taken forwards.

12. The issue of digital exclusion is discussed in more detail in our equalities statement at Annex C.
13. In summary, we can confirm that a future modernised service will be made available in the Welsh language when the service goes live, alongside the English language version. We will seek to continue to develop the service by involving both Welsh stakeholders and members of the public where we can. Finally, we are committed to retaining a paper channel for those who lack digital access or capability and will pay particular attention to these issues as they affect Wales as we continue development.

Annex C: Equality Statement

A. Public sector equality duty

1. This equality statement records the Ministry of Justice's analysis to fulfil the requirements of the Public Sector Equality Duty as set out in Section 149 of the Equality Act 2010. This places a duty on Ministers and the Department, when exercising their functions, to have due regard to the need to:
 - Eliminate unlawful discrimination - direct discrimination, indirect discrimination, discrimination arising from disability, and harassment, victimisation and any other conduct prohibited by the Act.
 - Advance equality of opportunity - between people who share a relevant protected characteristic and people who do not share it.
 - Foster good relations - between people who share a relevant protected characteristic and those who do not share it.
2. In line with our responsibilities under the Equality Act, while developing our proposals, we have considered the nine protected characteristics:
 - race
 - sex
 - age
 - disability
 - sexual orientation
 - religion or belief
 - pregnancy and maternity
 - gender reassignment
 - marriage/civil partnership

B. Modernising lasting power of attorney policy

Policy proposals

3. The LPA was introduced in 2007 with the implementation of the Mental Capacity Act 2005. It was designed to provide more flexibility and greater protections than its predecessor, the EPA. The current service offers a paper-based route for individuals to register their LPAs with OPG.
4. The world is changing, with people increasingly wanting to access services digitally. Our aims with modernising the LPA are to increase safeguards, improve access and achieve sustainability for OPG. The addition of a digital channel provides

opportunities to improve access and speed of service, while providing increased protection for individuals against fraudulent or abusive use of the system. However, a paper-based channel will remain available where people need this option to ensure that they are not excluded.

5. Modernising the LPA service will require changes to the Mental Capacity Act 2005 and supporting secondary legislation. We held a public consultation on our proposals from 20 July 2021 to 13 October 2021, and our proposed changes are discussed in detail in the main response, above.
6. As part of this work it has been vital to consider the equalities impacts of the changes we are seeking to make to ensure that a modernised service is accessible for anyone wishing to use it.

Themes for equality analysis

7. There are seven areas of the LPA creation and registration process that we are considering changing as part of modernising the LPA. We have collated these areas into three themes in terms of assessing their equalities impacts, including considering the responses to the consultation:
 - Changes to the LPA itself (for instance regarding the role of a witness)
 - Access to documents that can be used to digitally verify identity attributes like full name, date of birth and address
 - Access to, and understanding of, technology to create and register an LPA

C. Evidence

Our approach

8. The team working on modernising LPAs is a cross-functional team working across policy, service design and front-line operations. This gives us access to a wide range of sources of evidence, such as user research and digital sociology specialisms. This complements the existing approaches already used in policy development including ongoing engagement with key stakeholder and representation groups.
9. Throughout the development of our proposals, and across our different research disciplines, we have attempted to consider the compounding impacts of both digital service provision and identity verification requirements when making an LPA. We are aware of the need to avoid and mitigate unintended consequences when making changes related to each of these areas..

10. As part of the consultation, to meet our statutory obligations we considered the impact of the proposals on the nine protected characteristics, asking the following questions:
 - Question 15: Have we correctly identified the protected characteristics that could be impacted by the proposed reforms set out in this consultation paper?
 - Question 16: What do you consider to be the equalities impacts of the proposed options for reform on individuals with a protected characteristic?
11. We encouraged respondents to the consultation to highlight any equality issues and point to any available data and evidence that quantifies the impact. These responses have been considered and are summarised at paragraph 15 - 19 below.

Parameters of the evidence base

12. OPG's registration process for LPAs collects the following limited information on the demographic characteristics of donors and their attorneys:
 - The age of the donor and their attorney(s), based on their dates of birth
 - The sex of the donor and their attorney(s). This is, however, based on their given titles – for example, Mrs or Mr, but is ambiguous in some cases – for example, Doctor or Reverend. The number of instances where titles are ambiguous or missing is relatively small (typically 3-4%) and most likely to be randomly distributed across sex and gender so is unlikely to impact on estimates of LPA take-up across these characteristics.
13. OPG does not collect information on:
 - race
 - disability
 - sexual orientation
 - religion / belief
 - pregnancy / maternity
 - gender reassignment
 - marriage / civil partnership

Evidence-gathering activities

14. In order to obtain more data to help us assess the equalities impacts of the proposals, we have carried out a range of activities. Given that this work has coincided with the COVID-19 pandemic, we have carried out user research and maintained ongoing stakeholder engagement using remote technology, including online surveys, video conferencing and online collaboration tools, such as Miro. This has allowed workshops, research and engagement to continue while adhering to social distancing guidance.
15. We have attempted to reach out to those individuals and groups who can provide specific evidence on how to ensure a modernised LPA will work for those who are

digitally excluded and digitally unengaged, and who have protected characteristics. However, we are also aware that our need to make use of digital tools to do this may have built a specific bias into our current evidence base. The consultation also drew attention to this issue and highlighted that we especially needed evidence on those who may need analogue services such as in person document checking.

16. We received 123 responses from the public, which is more than previous consultations on this matter, however, our ability to reach the public generally under COVID-19 has been limited, and our research has largely been with people who either already have, or are already familiar with, LPAs. This has limited our ability to understand the needs of groups with protected characteristics who may need an LPA in the future but are not currently engaged in the process e.g. people in younger age groups or those from certain ethnic minority groups.
17. Prior to the consultation, we had evidence from a wide body of research conducted by others across government, non-profit and academic sectors. This demonstrated that we should particularly consider the impacts on those with the protected characteristics of age, disability, race and sex, to ensure a future service is accessible to all. We sought to further test and strengthen this evidence through the questions in the consultation and analysis of other data (see paragraphs 15 to 22).
18. Finally, in this equalities statement we use OPG case data from 2019/2020. This is the last full year of data we have prior to the COVID-19 pandemic impacting OPG operations, and is therefore more representative of what we would expect to see in a normal OPG service.

Consultation responses

Question 15

19. Out of the 313 total responses we had to our consultation, 116 provided an answer to Question 15: Have we correctly identified the protected characteristics that could be impacted by the proposed reforms set out in this consultation paper?
20. As set out at Fig 25, of the 116 responses, 110 made comments on protected characteristics. 93 responses said yes, we had correctly identified the protected characteristics of race, sex, age and disability that could be impacted by the proposed reforms. 15 responses disagreed and said that no, we had not correctly identified the characteristics. 12 of these were on the basis that there were fewer characteristics than we had identified. Only one identified an additional characteristic: religion and belief. There were 2 instances where respondents didn't know or were unsure.

Answer to Q15 on protected characteristics	Total	Percentage
Yes	93	85%
No	15	14%
Don't know	2	2%
Total	110	

ES Fig 3: Answers to question 15 which related to protected characteristics.

21. Within the 116 responses, we received 6 responses that did not comment on protected characteristics but did raise issues related to non-protected characteristics, for example social class and digital capability. Additionally, 18 responses that said yes raised concerns about non-protected groups and 6 who said no did. This means there were a total of 30 responses out of the 116 that raised non-protected characteristics as an area of concern (see fig 26).

Answer to Q15 on non-protected characteristics	Total	Percentage
Agreed with the identified protected characteristics and identified non-protected ones	18	60%
Disagreed with the identified protected characteristics and identified non-protected ones	6	20%
Identified non-protected characteristics only	6	20%
Total	30	

ES Fig 4: Answers to question 15 which related to non-protected characteristics.

22. The main non-protected characteristic that was highlighted was digital capability, followed by digital access. Additionally, a very small number of responses cited characteristics including social class, literacy, lack of social network, lack of financial access, vulnerability, being easily influenced and fluctuating capacity.

Question 16

23. We received 122 responses to questions 16: What do you consider to be the equalities impacts of the proposed options for reform on individuals with a protected characteristic? Of these, 104 responses gave views on the impacts on groups with protected characteristics and 69 responses set out implications for groups with non-protected characteristics. Fig 27 sets out the how many of the identified impacts related to each characteristic.

Characteristic	Number of responses that identified an impact
Age	94*
Disability	21
Race	5
Sex	1
Religion	1
Gender reassignment	1
Non-protected Characteristics	
Digital skills or digital literacy	49*
Social Class	10
Other	15
No impacts	6

ES Fig 5: Answers to question 16

* This answer was inflated by campaign responses.

24. Respondents who answered the equalities questions (see paragraph 7) used them in the main to articulate their thoughts about the possible impacts of the proposals, rather than providing evidence on specific impacts. Analysis of the responses, relating to protected characteristics, uncovered the following themes:
- **Age:** The majority of responses, 94, focused on the impact on this group. By far the largest impact raised was the concern that older people may be more vulnerable to abuse with a digital process. While this was inflated by the campaign responses (35 gave this response), a significant number of other respondents still raised this concern. About half as many respondents cited concerns that older people may not have access to the required technology, with a smaller number stating older people don't like technology. A similar number said that older people still rely on and want to work on paper. Related to this, a small number of respondents also spoke about digital creating a barrier to access. Finally, a small number raised views about identification.
 - **Disability:** The second highest group identified as being impacted were those with a disability at 21 responses. The biggest concern raised for this characteristic was that those who have a disability would lack access to technology and digital. A similar number noted that the service must work with assistive technologies. Some respondents suggested that people with disabilities related to vision or

hearing may be impacted by changes to the witnessing process. The importance of simpler language for those with learning disabilities was also mentioned.

- **Race:** A small number of respondents, 5, raised views regarding digital access and access to identification documents.. While not relating specifically to the proposals but rather to more general issues around making an LPA, limited access to professional support, literacy and cultural differences in decision-making were also cited as possible impacts.
- **Sex:** A single response from an organisation stated that men are underrepresented within the LPA process and so further consideration is needed not to impact them.
- **Religion or belief:** A single response by a member of the public identified religious customs and cultural norms among minority religions as being possibly impacted.
- **Gender reassignment:** A single response by a member of the public also mentioned the issues that transgender people may encounter from inaccurate data sets when trying to verify their identity.

25. Notably, although gender reassignment was mentioned as an answer to question 16, it was not provided as an answer to question 15 by any of our respondents.
26. No respondents mentioned impacts regarding sexual orientation, pregnancy / maternity, or marriage / civil partnership.

D. Evidence base

27. The equality impacts which we have identified are not specific to different approaches. Rather, as set out in paragraph 3, the impacts reach across the modernising LPA proposals, interacting with the following:
 - Changes to the LPA itself (for instance regarding the role of a witness)
 - Access to documents that can be used to verify identity attributes like full name, date of birth and address.
 - Access to and understanding of technology to create and register an LPA

Analysis

Characteristics identified in the consultation:

28. Within the consultation we identified four protected characteristics that we believed could be impacted by the proposals. Respondents largely agreed that we had identified the correct protected characteristics and we now consider each of these in more detail against the three themes identified.

Age:

29. **Changes to the LPA:** OPG caseload data for 2019/20 shows the average age of a donor at registration is 74.5, and the majority of donors are over 65. This means that older people are more likely to be impacted by changes to the LPA process than younger people. Age was also the protected characteristic most identified by respondents, who noted the introduction of identity checks and the use of digital technology.
30. **Access to identification documents:** Data from the 2011 Census shows that 27.5% of those over the age of 65 stated that they have no passport from any country.
31. In relation to driving licences, according to the DVLA, between 1995/1997 and 2020 the proportion of people aged 70+ holding a licence increased from 39% to 77%. However, this still means 23% of those in this age group do not have a driving licence.
32. Older people are less likely to have a driving license or passport due to lower mobility so it is not unreasonable to expect a significant overlap between these groups. This means that a future service must accept a wider range of documents in order to verify identity information in order to not exclude up to a quarter of this age group from making LPAs. Pensioners would be more likely to have state pension accounts which will be able to digitally verifiable their identify.
33. Passports and driving licences are also not the only ways to verify identity, and with the introduction of a digital channel, we can ensure there are other options to identify donors and other actors in the process. For instance, in 2021, 12.5 million people of state pension age claimed some combination of DWP benefits, and this could provide another route of identification where alternatives are not available.
34. Although the majority of people affected by the proposals will be over 65, people between 18 and 25 can also struggle to pass digital identity verification checks. This is due to their lack of a 'digital footprint', the personal information that exists as a result of financial activity or interaction with state services. While younger people are much less likely to make LPAs, we need to make sure we don't discourage them from doing so given the role of the LPA as a protection against unforeseen circumstances which could arise at any age.
35. While we believe our proposals provide appropriate mitigation against these impacts, we will continue to investigate a range of identity checks to meet the needs of both age groups.

36. **Digital Access:** A large number of respondents raised concerns about digital access and understanding amongst older age groups. We also highlighted this in the consultation and it is a view supported by wider data.
37. According to data from Gov.Wales (2019 - 2020), proficiency across a variety of digital skills is likely to decrease with age, and this picture is similar across both Wales and England. The Older Peoples' Commissioner for Wales provided evidence specifically on this issue within Wales, citing Welsh Government, Office for National Statistics (ONS). (2019). National Survey for Wales, 2017- 2018 data that indicates:
Around 37% of older people (around a quarter of a million people) [in Wales] do not make personal use of the internet; 41% of over 75s do not have internet access and 55% of those older people living alone, are not connected to the internet.
38. However, we need to be wary of assuming that all older people cannot or do not use technology. The ONS reports that the number of people aged 75+ who are recent internet users nearly doubled between 2013 and 2020, from 29%, to 54%. It is likely this will have increased under COVID-19, and will continue to do so as the population ages.
39. Additionally, most of our user research participants have been over 55, and although many described their skills as "low digital ability", their participation in online video calls, sharing screens, working through prototype services and completing online surveys, shows that their actual digital skills are more developed than they self-declared.
40. Many 60 to 70-year olds spent their working lives dealing with advancing technology as it was made more available in workplaces and continue to use it now. We must also acknowledge that those who previously were not familiar with technology are starting to use it. To provide for the older people of the future, a digital channel for the creation of LPAs is needed.
41. Turning back to those older people who may be inhibited by a digital channel, there are two scenarios that are common:
 - a. those donors who are completing their LPAs themselves who may not be able to or want to use a digital channel, and
 - b. those donors who may not wish to use a digital channel, that are being supported by another individual.
42. We will mitigate the first issue by continuing to provide a paper channel for the creation of LPAs. We are also considering ways that an LPA can be created on paper but submitted to OPG digitally through services similar to the Post Office passport service.

43. The second instance is more complicated, and a large number of respondents raised concerns about abuse in this scenario. While the existence of a paper channel is also part of the answer here, we acknowledge that a vulnerable donor could end up using a digital channel they are not comfortable with because the person or people supporting them insist it is the easiest way. This is where additional safeguards within the service will be important to mitigate this risk:
- The ability for a certificate provider to raise concerns directly with OPG rather than simply not signing the LPA.
 - A clear process for unnamed third parties (e.g. local authorities, the police, legal professionals, charities) to raise concerns with OPG.
 - Careful consideration of how we implement a mechanism for a supporter to help in the creation of the LPA, that can help protect against abuse.
 - How we use digital to create breathing space for donors that exists in the paper channel, so that they feel they can take the time to think through these important decisions.
 - The importance of guidance for all parties so they understand their roles and responsibilities, the protection afforded from discussing the LPA with a wide group of people and, most of all, the purpose and power of the LPA itself.
44. We also need to recognise that often abuse will not come to light until after the LPA is created. Therefore, OPG will continue to triage and investigate the concerns that it receives about the use of LPAs. We aim to improve this service by realising efficiencies for OPG which release more resources to these teams.
45. **In conclusion:** As stated, the majority of current donors are over 65, and are therefore most impacted by modernisation of the service. Many of these impacts will be positive, as the process will be more straightforward and safeguards will be enhanced, including against fraud through the introduction of identity verification. We believe that we have identified the appropriate ways to ensure access. This includes ensuring a wide range of identification options are available and keeping a paper channel in place. Therefore, we do not think this group will be disproportionately impacted by our proposals, and will keep this under review as we further develop the process.

Disability:

46. Disability was the second highest protected characteristic that respondents identified could be impacted by proposals, with 21 responses citing possible impacts.
47. **Changes to the LPA:** For those who have or may develop a disability that impacts their mental or physical capacity, an LPA is one of the tools available to protect and facilitate their rights and freedoms. The proposals on signing and witnessing were highlighted as potentially creating challenges for disabled donors or attorneys. While no specific reasons why were provided, these mainly related to proposal 1b on using

technology to allow remote witnessing. However, we do not have evidence to suggest our proposed changes will have a disproportionate impact on people with this protected characteristic and are not proceeding with approach 1b.

48. **Access to identification documents:** There is no evidence that demonstrates identity checks will particularly impact people with this protected characteristic, if further evidence emerges, we will consider this and reassess this position.
49. **Digital Access:** Most of the concerns raised by respondents related to people with disabilities accessing or using technology. 2020 ONS data suggests that 8% of adults with disabilities are “non-users” of the internet (a lower figure than that for the protected characteristic of age). It also shows that the number of disabled adults who were recent internet users increased from just over 10 million (78% of disabled adults) in 2019 to almost 11 million (81% of disabled adults) in 2020.
50. Some consultation respondents highlighted potential positive impacts of the proposals, for instance a digital channel making guidance and forms more accessible for those with learning disabilities. A digital channel could also use assistive technology, such as text to speech, which is not available with paper forms. This could give more independence and control over the process for individuals who are currently reliant on the support of other people.
51. There is evidence that innovations in assistive technologies have given disabled individuals easier access to public services when a digital channel is introduced. For instance, through:
 - software to read web pages aloud, magnify text or display it on braille devices
 - voice recognition software and selection switches help those with hand tremors or dexterity issues.
 - spelling and grammar tools support those with dyslexia or learning disabilities and can work in tandem with read-aloud software.
 - online content and apps allow those who have colour blindness to adjust browser settings so any visual design cues in information are not missed.
52. **In conclusion:** Our current view is that the proposals will not have a disproportionate impact on people with the protected characteristic of disability. In introducing a digital channel we will continue to consider evidence, and work with those with disabilities to develop a service that meets their needs and makes the best use of assistive technologies to aid the creation of an LPA. This aligns with MOJ and OPG’s duty to consider and make reasonable adjustments within the services they provide and reflects our overall aim to make the process more accessible for our users. For those who do not have access to the necessary technology, the option of a paper channel will remain. In addition, under the proposed system users will be able to choose from a variety of accessible options to verify the required identity attributes.

Race and ethnicity:

53. **Changes to the LPA:** OPG are aware that people from ethnic minority backgrounds are less likely to have an LPA, and there has been ongoing work to address this. A small number of respondents to the consultation said that changes to the LPA service could worsen the under-representation of those from ethnic minority backgrounds, but did not specify how.
54. **Access to identification documents:** We have limited evidence of the impacts of this proposal on people from an ethnic minority background. This risk can be mitigated by ensuring we allow a wide range of documents to be used to demonstrate identity.
55. **Digital Access:** Some respondents suggested that digital skills might be lower amongst some ethnic minority groups. However, ONS data suggests the internet usage gap between different ethnic groups has narrowed as the proportion of internet non-users has declined. In 2018, its overall figure for internet non-users was 10%, with figures for each ethnic group as follows:
- White: 10.6%
 - Black, African, Caribbean, black British: 8.2%
 - Bangladeshi: 8%
 - Indian: 7.2%
 - Pakistani: 5.7%
 - Chinese: 1.8%
 - Other Asian background: 2.9%
 - Mixed and multiple ethnic background: 1.8%
 - Other ethnic group: 4.3%
56. The introduction of a digital channel could have positive impacts for those from ethnic minority backgrounds who are more likely to have digital access than those from white backgrounds. We will continue to consider how proposals could impact this people with this characteristic to ensure that we improve access rather than create barriers.
57. **In conclusion:** Our current view is that the proposals will not have a disproportionate impact on people with the protected characteristic of race. Modernising LPAs could even offer opportunities to widen access for ethnic minority groups. We will continue to work on understanding the impacts on those with this protected characteristic, by examining any relevant data on LPAs, identity and digital access.

Sex:

58. **Changes to the LPA:** As stated above OPG's registration process for LPAs collects information on the sex of the donor and their attorney(s), based on titles such as Mrs or Mr. OPG data for 2019 estimates that approximately 60% of LPA donors are

women while attorneys are equally likely to be men or women. (Ambiguous titles like Dr or Reverend account for around 4% of cases and are likely to be randomly distributed across sex so are unlikely to significantly impact on estimates.) Sex did not feature heavily in people's responses to Q16, with only one response mentioning the potential impact on this group in terms of the under-representation of men amongst donors.

59. ONS data in 2021 indicates that women have a longer life expectancy – there are 3m more females than males aged over 65, and almost double as many females as males aged over 90 in the UK. This data coupled with the fact that the average age of a donor is 74.5 suggests that women are likely to be more represented in the group affected by the proposals.
60. **Access to identification documents:** We do not have data to assess the sexes' relative access to digitally verifiable ID documents.
61. **Digital Access:** 2020 ONS figures indicate that 57% of people in the UK who had never used the internet were women (1.97 million people). A further 415,000 women and 391,000 men had not used the internet for at least three months. In 2018 women made up 61% of 4.3 million UK adults with no digital skills at all. Gov.Wales data indicates that digital proficiency also intersects with age (as covered above) with men aged 64 and over more likely to be digitally skilled than women in the same age groups.
62. **In conclusion:** As women, particularly older women, are more likely than men to register LPAs and less likely to have digital access, our proposals could have a greater impact on women. However this impact is judged to be proportionate to the overall aims of modernisation as, to mitigate against possible negative impacts, we will ensure that a paper channel continues to be available for those that need it with equivalent levels of safeguards introduced, including identity checks. We are also working to ensure that organisations who support people to make LPAs will have access to a digital channel. Regarding verifying identity attributes, we will continue to look for and examine relevant data.

Characteristics identified by respondents to the consultation:

63. In addition to the four characteristics covered above, respondents identified two additional characteristics where they believed there could be impacts.

Religion and belief:

64. We do not have any evidence that our proposals would disproportionately impact people with the protected characteristic of religion and belief. A member of the public raised a concern in the consultation that some customs and cultural norms of minority religions may be potentially impacted by the LPA proposals, but did not specify how. OPG does not collect information on the religion or belief of those

involved in creating LPAs. Additionally, there is no data available that looks at access to identity information or digital access in relation to religion or belief.

65. **In conclusion:** Our current understanding is that our proposal will not have a disproportionate impact on people with the protected characteristic of religion and belief. We will continue to work on understanding the impacts by considering any relevant data on LPAs, identity and digital access.

Gender reassignment:

66. OPG does not collect information on gender reassignment in relation to those involved in creating LPAs. Additionally, there is no data available that looks at the intersection of either access to identification documents or digital access in relation to this protected characteristic.
67. One member of the public raised a concern in the consultation that any person who has undergone gender reassignment requires additional safeguards from "inaccurate 'official' data". We anticipate that this phrase might be a reference either to someone having transitioned after registering an LPA or having changed gender before the LPA was registered but not having changed identification documentation on which identity attribute checks are based at the time they register an LPA.
68. **In conclusion:** We are unable to draw conclusions on the impacts on this group but will continue to look for and examine relevant data to assess any impacts our proposals may have, especially in relation to the introduction of identity checks.

Other protected characteristics:

69. There are three additional protected characteristics which we had identified as not being impacted disproportionately by the proposals and which respondents did not mention in their consultation responses. These are:
- marriage and civil partnership
 - sexual orientation
 - pregnancy and maternity
70. OPG does not collect data on these characteristics, and there is no data available that looks at the intersection of either access to identification documents or digital access in relation to these. While current evidence suggests there will not be a disproportionate impact on people with these characteristics, if further evidence emerges, we will consider this.

Non-protected characteristics

71. As set out in paragraph 18, 69 consultation responses also cited people with non-protected characteristics being impacted by modernising LPAs. While this sits outside of our Public Sector Equality Duty under the Equality Act, we acknowledge that

respondents had these concerns and are also considering the impacts of our changes on these groups.

72. Respondents particularly focused on the impacts on people who lack digital access, digital literacy and general literacy. They also spoke about the impacts on those from different socio-economic groups. As well as recognising these concerns, we acknowledge that some groups with protected characteristics are more likely to have low incomes and/or be digitally excluded.
73. The focus of the concerns around digital literacy was that mandatory digital submission would be a barrier for people with low digital skills, particularly those without support. Regarding socio-economic groups, most concerns related to people who would not have their own digital access. There were also concerns about access to professional advice, lack of knowledge of LPAs and susceptibility to abuse.
74. In response to these concerns, a paper channel will remain available for those who need it. Legal and non-legal support services will continue to be available across a wide range of price points and we hope modernisation will also allow OPG to focus more on the support and information it can provide to users. As we have outlined elsewhere in both the consultation and the equalities statement, improving safeguards is our primary aim. Many of the proposals are therefore focused on how to address fraud, abuse and coercion, and this will apply to anyone who uses the LPA system.
75. As with the other areas of our development, we will continue to consider these impacts so we can better understand how to provide the LPA service that people need, but which also protects them when things go wrong.

E. Conclusions and ongoing work

76. We will continue to consider the equality impacts of our proposals as the modernising project progresses. We will incorporate information, evidence and feedback if additional impacts are identified. This is important to ensure that individuals with protected characteristics are not hindered in accessing an LPA in the future, and aligns with the government's policy intention that LPAs should be attainable, accessible and affordable for all.
77. Where there are impacts on those with protected characteristics, these are largely related to the same areas: identification documents, digital access/skills and to a lesser extent, abuse of vulnerable individuals. To mitigate these risks and impacts, a paper channel for creating LPAs will remain available and we are working to make the process of verifying identity as accessible as possible. We are also proposing to

improve a number of other safeguards in the system to protect against abuse and coercion.

78. We have considered the above analysis in relation to our duty under Section 149 of the Equality Act to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. We propose to proceed with the modernising LPA project as planned, as at this stage there is no evidence of adverse or disproportionately negative impacts on people with a protected characteristic:
- **Direct Discrimination:** We do not believe that the LPA proposals are directly discriminatory as they will not result in people being treated less favourably due to any protected characteristic.
 - **Indirect discrimination:** Indirect discrimination occurs when a policy applies equally to all individuals but would put those sharing a protected characteristic at a particular disadvantage compared to those who do not. As described above, there are some potential impacts of the proposals which will indirectly impact some groups who have certain protected characteristics – sex, age, race and disability.
79. The negative impacts are indirectly related to those protected characteristics in that the disadvantages where they arise, for example, access to technology, may have a greater impact on such groups. However, the picture is mixed and we have also explored where there may be advantages and improvements provided by the proposals to such groups.
80. We have set out in this document the potential scale of the disadvantage to such groups, the mitigations which will be available, and the ongoing consideration of how to develop the proposals with further mitigation where possible. Overall, and in light of the stated aims of the project, we believe the proposals to modernise the LPA are a proportionate means of achieving a legitimate aim.

Annex D: Glossary of Terms

Here are some terms you'll see when reading the consultation.

Applicant

The applicant is the person who applies to register the LPA – that can be the donor or one or more of the attorneys.

See also: 'Registration'

Attorneys

Attorneys are the trusted people the donor chooses to help them make decisions. Attorneys do not need to be lawyers. Many people choose their wife, husband, civil partner, partner, children, close friends or relatives.

Certificate provider

The certificate provider is an impartial person who confirms that the donor understands the LPA and is not being pressured or coerced into making it. An LPA must have a certificate provider.

Deed

An LPA is a deed, which is a type of legal document. For a deed to be valid, it must be executed. This means it must be:

- signed
- witnessed
- attested
- delivered

See also: 'Lasting power of attorney' and 'Witnessing'.

Donor

The donor is the person making the LPA and choosing their attorneys. Only the donor can make decisions about their LPA. A donor must be at least 18 years old and have mental capacity when they make their LPA.

See also: 'Attorneys'.

Executed

See 'Deed'

Imperfect

An LPA is imperfect if it has errors that can be corrected without making and executing a new LPA.

OPG writes to the person who made the LPA, and asks them to make corrections. Once these are made, the LPA can be registered by OPG.

See also: 'Invalid'.

Instructions

The donor can make instructions in their LPA. These tell the attorneys things that they must and must not do when making decisions and acting for the donor. See also: 'Preferences'.

Invalid

An LPA is invalid if it has errors that cannot be corrected without making and executing a new LPA.

An invalid LPA cannot be registered by OPG. The donor will need to make and execute a new LPA, then pay another fee.

See also: 'Deed' and 'Imperfect'.

Lasting power of attorney (LPA)

An LPA is a legal document. It lets the donor choose trusted people who'll be able to help them make decisions, if the donor ever wants or needs them to. There are 2 types of LPA:

- health and welfare
- property and financial affairs

An LPA must be registered by the Office of the Public Guardian (OPG) before it can be used.

Mental capacity

Mental capacity is the ability to make a specific decision at a specific time.

- This includes the ability to make a decision that affects daily life – such as when to get up, what to wear or whether to go to the doctor when feeling ill – as well as more serious or significant decisions.
- It also refers to a person's ability to make a decision that may have legal consequences – for them or others. Examples include agreeing to have medical treatment, buying goods or making a will.

Under the mental capacity act, a person lacks mental capacity if:

1. they are unable to make a specific decision even with relevant support;
2. there is an impairment or disturbance in the functioning of their mind or brain; and
3. the person's inability to make the decision is because of the impairment or disturbance.

Sometimes people have the capacity to make some kinds of decisions but don't have the capacity to make others.

Similarly, some people may have the capacity to make a particular decision at one time, but not at other times.

Objection

A donor, attorney or person to notify can object to an LPA being registered. There are set reasons why they can object.

- Prescribed objections: the LPA was never legally executed in the first place, for example, because the donor did not have capacity to create it or undue pressure was applied to them.
- Factual objections: while the LPA was legally executed, it has ceased to confer power, for example due to the death of the donor or bankruptcy of an attorney.

Objections can only be made during the statutory waiting period.

See also: 'Statutory waiting period'

Office of the Public Guardian (OPG)

OPG is the agency in England and Wales that registers LPAs and investigates where an attorney may have misused an LPA. See also: 'Registration'.

People to notify

People to notify are individuals the donor chooses, who must be told about the application to register the LPA.

Preferences

The donor can make preferences in their LPA. Preferences are things the donor would like their attorneys to think about when making decisions on their behalf. Attorneys should take the preferences into account but do not have to follow them.

See also: 'Instructions'.

Registration

An LPA must be checked and registered by OPG before it can be used.

Statutory waiting period

This is a 4 week period, set out in legislation, that's part of the registration process. Any objections to the LPA's registration can only be made during this period.

See also: 'Objections'

Witness

Witnesses are people who watch the donor and attorneys sign the LPA. They also attest the LPA by signing to say they've witnessed the signatures.

See also: 'Deed' and 'Executed'.

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