



Ministry of JUSTICE

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The Right Honourable Kenneth Clarke QC MP
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11 June 2012

Dear Lord Chancellor,

While this letter, our final report to you, marks the end of the Public Guardian Board, the Office of the Public Guardian (OPG) is set to begin a new chapter. The organisation has evolved since 2007 and is now at a pivotal point, with a new Public Guardian, new executives joining the team, a new Management Board, the move to the West Midlands and the prospect, at last, of moving to modern digital services. We are very encouraged by these developments. They present real opportunities for the OPG to move forward in a dynamic way. These opportunities must be seized.

In writing to you, for the last time, we highlight the areas that, in our view, should be at the top of this progressive agenda. We hope that our comments will be helpful to the new Management Board, as it takes our work forward.

Over the last five years our annual reports have documented our observations, judgements and priorities. We are pleased that many of our recommendations have been implemented. However, some of our fundamental concerns are still to be addressed and it is on these that I concentrate.

The ultimate measure of success for the Mental Capacity Act (MCA) would be for every adult to have a Lasting Power of Attorney (LPA), recording their wishes for the future and choosing who will make decisions, if they are unable to do so themselves. Despite the steady annual increase in the number of registered LPAs, this ambition is still a very long way from being realised. There are more than 51 million adults in England and Wales but only a tiny percentage have registered LPAs - just over 604,000 Powers of Attorney are now registered - yet it is estimated that there are one million people currently who lack capacity and that number is expected to double over the coming years. The figures for those suffering abuse are also a source of considerable concern.

To make a real impact on those numbers the LPA forms must become more user friendly, reducing the need for legal advice in completing them and drastically cutting the cost. The forms have already been simplified but there is still considerable scope for improvement. We urge the new Management Board to examine ways of streamlining, what is still, a lengthy and complex process, including looking at changes requiring secondary legislation. It has become clear to us that some of the fundamental requirements of the process need to be reconsidered, including those relating to "certificate providers," "named persons" and the 42 day statutory waiting period. Common errors in the completion of the form, combined with a waiting period rooted in historical practice rather than empirical evidence, have resulted in delays and backlogs that are unacceptable.

The MCA is essentially an empowering piece of legislation, intended to enable individuals to take control of their lives with safeguards for those whose capacity is limited. It is against this principle that a review of the forms should take place. The balance between accessibility, cost and the effectiveness of safeguards needs to be reassessed. Tension remains between the OPG's commitment to increase the number of LPAs and its ability in terms of human, financial and technical resources to deliver when there is a surge in interest.

A constant theme in our reports has been the urgent need to replace the IT infrastructure at the OPG. Inadequate and outdated systems have placed a huge strain on the organisation, limiting its capacity to cope with rising volumes and the ability of management to produce sustainable solutions to recurring problems. As we depart, we are very pleased to know that investment funds are now in place to build the new IT infrastructure on which the digital by default programme depends. We are also very encouraged by the pace of the work on creating digital forms. It is vital that the investment and ongoing finance for these crucial developments continues and that it is protected from cross government restrictions such as the comprehensive spending review cycle. It is key, too, that alongside the financial resources, staff with the appropriate skills, knowledge and experience are in place. The Office of the Public Guardian, as you are aware, is largely self-funding. Investment in new technology will make it more cost effective and accessible. If delivered successfully, digital transformation will make LPAs available to a wide range of people online, cut bureaucracy and costs and allow the OPG to refocus its resources on its vital role in safeguarding vulnerable people, rather than on processing documents.

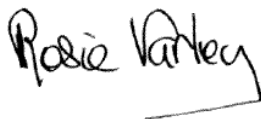
Another area that has consistently featured in our recommendations has been the importance of maintaining and developing relations with stakeholders. Joint working with organisations that are in direct contact with the people who use the OPG's services is essential. While much has been achieved, since the launch of the Stakeholder Strategy, in improving communications, more still remains to be done. Stakeholders have a major role to play in ensuring the success of digital by default. We are pleased that you will have the opportunity to meet some of those key players at our final public meeting.

As you are, of course, aware, the Public Guardian Board was set up under the Mental Capacity Act, which covers England and Wales. Although we have a specific statutory remit in relation to the OPG, we have always been conscious that the aspirations of the MCA could only be realised by the OPG working in partnership with the other statutory and voluntary organisations across health, social care and justice which together

comprise the MCA landscape. In order to make a meaningful contribution the Board has widened its focus, looking, in particular, into the education and regulation of health and social care professions.

We have argued strenuously for a powerful and independent Champion for the Mental Capacity Act, to ensure the Act's potential is realised. The MCA enshrines the rights of every citizen to exercise choice and to receive assistance to do so when their ability is limited: quite simply "No decision about me without me." To achieve this, we believe many different players from across government, health, social care and the third sectors need to work together. We were, therefore, particularly heartened by the acknowledgement in your letter of the MOJ's lead responsibility in this respect and your commitment to ensuring that the OPG maintains regular dialogue with all relevant policy officials, including those leading on the Act in other government departments, so as to deliver the MCA's central principles.

After the inevitable pressures and teething problems of the initial years we look forward to seeing the OPG build on the foundations that have been laid and exploit the opportunities that currently exist. Successfully facing the operational challenges, which still remain, seizing the chance to deliver and develop the most efficient, effective and up-to-date technology but above all maintaining its focus on providing a customer centred service, empowering every citizen, whilst assisting and safeguarding those whose capacity is impaired.

A handwritten signature in black ink that reads "Rosie Varley". The signature is written in a cursive style and is positioned above a short horizontal line.

Rosie Varley OBE
Chair of the Public Guardian Board