PUBLIC GUARDIAN PRACTICE NOTE

SUBJECT: Updating Public Guardian registers
Relevance: to: Deputies and Attorneys

Title: Notification of death

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1. Summary

1.1 The Public Guardian is responsible for maintaining a register of attorneys acting under a registered power of attorney and deputies appointed by the Court of Protection. This practice note outlines the requirements for notifying the Office of the Public Guardian (OPG) of deaths affecting the registers.

2. When to notify the Public Guardian of a death

2.1 The following deaths should be notified to the Office of the Public Guardian:

- Death of the donor of a registered Enduring or Lasting Power or Attorney
- Death of an attorney acting under a registered Enduring or Lasting Power of Attorney
- Death of a replacement attorney (but see paragraph 5)
- Death of a deputy appointed by the Court of Protection
- Death of someone for whom the Court of Protection has appointed a deputy (P)
3. **Death of a donor of a registered Enduring or Lasting Power of Attorney**

3.1 The Public Guardian is obliged to cancel the registration of an Enduring or a Lasting Power of Attorney if he is satisfied that the power has been revoked as a result of the donor’s death.

3.2 The OPG require proof of the donor’s death (see paragraph 8) and the EPA or LPA (the instrument) should be returned to the office for cancellation.

3.3 The OPG will notify the attorney/s accordingly.

4. **Death of an attorney acting under a registered Enduring or Lasting Power of Attorney**

4.1 If the attorney was a sole attorney, his/her death revokes the power. The OPG require proof of the attorney’s death (see paragraph 8) and the EPA or LPA should be returned to the office for cancellation.

4.2 If the attorney was appointed to act jointly (i.e. s/he could only act together with someone else), then his/her death revokes the power. The OPG will require proof of the attorney’s death (see paragraph 8) and the instrument should be returned to the office for cancellation.

4.3 If the attorney acting under an LPA was appointed jointly and severally with another attorney or attorneys (i.e. s/he could act independently or in conjunction with the other attorneys), then the LPA is still valid.

4.4 If a replacement attorney has been appointed, then the LPA is still valid provided there is a surviving attorney. The OPG will require proof of the attorney’s death (see paragraph 8) and return of the instrument to activate the replacement attorney. They will stamp and return the instrument accordingly.

4.5 In the case of EPAs, the successor attorney only needs to show the death certificate to financial institutions to demonstrate entitlement to act.

5. **Death of a replacement attorney**

5.1 Proof of a death of a replacement attorney will not be required if the main attorney or attorneys continue to act. Proof of death of a replacement attorney will only be required if the original attorney subsequently dies or ceases to act for any reason, which would render the LPA invalid. If that happens, the LPA will need to be returned to the OPG for cancellation, together with the required proof of death.
6. **Death of a deputy appointed by the Court of Protection**

6.1 The Public Guardian must be notified of the death of a deputy appointed by the Court of Protection so that the register of Deputies can be updated.

6.2 The OPG will require proof of death (see paragraph 8)

6.3 The Public Guardian’s jurisdiction ends on the death of a deputy unless s/he was jointly and severally appointed or/and until the Court appoints a replacement deputy. However, the Public Guardian can request a final report from the deputy’s personal representatives and can apply to Court for an appropriate remedy if he is dissatisfied with any aspect of the final report. This is irrespective of any other party applying to Court to be appointed as deputy.

7. **Death of someone for whom the Court has appointed a deputy**

7.1 The Public Guardian must be notified of the death of someone for whom the Court has appointed a Deputy so that the register of Deputies can be updated. The death will bring the deputyship to an end although the Public Guardian can request a final report from the deputy. The OPG will require proof of death (see paragraph 8)

8. **Proof of death**

8.1 In all cases, the correspondent must provide the OPG’s case reference number, full name, date of birth and last address of the deceased person, together with any of the following proof of death:

- A completed solicitors’ death verification form
- A copy of a letter from someone who is able to confirm the date of death, for example:
  - A solicitor, barrister or advocate authorised to practice in the country where the declaration is made
  - A legal Executive who is a member of the Institute of Legal Executives
  - A Willwriter who is a member of either: the Society of Willwriters, the Institute of Professional Willwriters or the European Association of Willwriters
  - A doctor or surgeon registered in the country where the declaration is made
  - A notary public or any person allowed to administer oaths in the country where the declaration is made
  - A Magistrate
  - A Chartered accountant
  - A funeral director
  - An officer of a bank (a letter on headed paper is acceptable)
o An officer of the Department of Work and Pensions responsible for administering benefits
o A social worker registered to practice in the country where the declaration is made
o A local government officer responsible for administering benefits or council tax
o A care home manager or owner
o A consular or embassy official, if the person died abroad
o A Local Authority Holder of the Office of Deputyship Officer

(N.B. the above list is not exhaustive, and other forms of confirmation may be accepted at the OPG’s discretion)

- A certificate issued by the Registrar General, a Superintendent Registrar or a Registrar of Births and Deaths
- The equivalent of a certificate issued abroad by the appropriate registration authority if the person died abroad

8.2 The OPG preference is not to receive original certificates, but should these be sent, they will be returned to the sender on receipt.

9. Process followed by the OPG when a death is reported

9.1 When a death is reported to the OPG by telephone, the caller will be advised to send in written verification of the date of death. The OPG’s electronic record will be updated straight away to note the date of death, if known, and, if the caller does not know the date of death, then date of death is recorded as the date of the call. However, a phone call is not regarded as strong enough proof of death and the OPG will require proof as set out in paragraph 8.1 above in order to stop any further registration process or routine correspondence.

9.2 Once notified of a death, the OPG will send a letter to the appropriate person. If the death cancels a power of attorney, the OPG will ask for the return of the instrument for cancellation, and will notify the attorneys if applicable. If the person who died is someone with a Deputy, then the letter will advise the Deputy of any further action he or she should take. In both cases, the OPG will request verification of the date of death if this hasn’t already been provided.

9.3 The Public Guardian’s jurisdiction ends once a deputy has died. If it is necessary to appoint a new deputy, then the OPG will advise the next of kin that an application to the Court of Protection is needed. If it is unclear whether anyone will make the necessary application, then the OPG will advise the person’s local authority adult care services so that they can take any necessary action under their protection of vulnerable adults procedures.
10. **OPG Fees**

10.1 EPA and LPA registration fees are payable on application and no refund is available should either donor or attorney die after the application has been scanned onto the system. This applies to all registration fees regardless of whether the application was invalid, imperfect or withdrawn before registration. The registration fee is recoverable from the estate if the donor dies before the fee is paid.

10.2 In cases where notification of death is received before the date an application is scanned onto the OPG’s systems, a full refund will be agreed. Notification can be by telephone initially, provided it is followed up by one of the accepted forms of proof of death (see paragraph 8 for a list) which must be sent within 10 days of the death. A refund will not be paid until proof of death is received.

10.3 An application for fee remission can still be submitted after the death of the donor and must be accompanied by supporting evidence.

10.4 The deputy fee is one-off payment for placing the Deputy’s details on a register and carrying out a risk assessment to determine the appropriate supervision regime. The invoice will be sent out when the assessment is carried out and the fee is not refundable if the deputy or person for whom the Court has appointed dies after the assessment has been made.

10.5 If the person who lacks capacity dies, supervision fees will be calculated on a pro-rata basis up to the date of death and an invoice will be sent to the deputy to arrange payment.

10.6 If the deputy dies supervision fees will be calculated up to the date of death and the new deputy will be invoiced for the outstanding fees when appointed.

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