

## Lasting powers of attorney and deputyships: thematic review

6 July 2023

Lasting Powers of Attorney (LPA) and deputyships are growing in popularity. Fuelled by increasingly knowledgeable consumers and an expanding older population, this trend is likely to continue.

An LPA is a legal document that helps someone (the donor) give another person (the attorney) the power to help them make or take decisions on their behalf.

Deputyship is a mechanism to allow individuals appointed by the Court of Protection to make certain decisions on another person's behalf.

These arrangements provide for a person who no longer has the 'mental capacity' to make those decisions for themselves. (This is defined in the Mental Capacity Act 2005 as having 'an impairment or a disturbance in the function on the mind or brain'.)

Mental capacity could falter at any stage. Age, illness, traumatic injuries, and disabilities may all result in a sudden and complete (or partial) loss of capacity. LPAs and deputyship orders are powerful documents.

There are two types of LPAs: **health and welfare** and **property and financial affairs**. You can choose to make one type or both. The documents can determine many important life decisions, from an individual's finances, to where they should live, to consent for life changing surgery.

LPA/deputyship are invoked at times of real need, which is generally when clients are at their most vulnerable. Receiving a poor standard of service has severe and long-lasting consequences. When creating or using an LPA/deputyship, it is important that solicitors act appropriately, are supervised, and undertake training.

Engagement with external stakeholders suggests that not all firms and solicitors meet the standards we expect. We undertook a thematic review to better understand the challenges facing the sector and to investigate the nature, extent, and impact of any concerns.

Our file reviews showed that the backgrounds and circumstances of clients varied tremendously.

Firms also confirmed that consumer preference was changing. An increasing interest in health and wellbeing LPAs signaled a change in the traditional consumer focus on property and financial affairs LPAs.

### What we did

During the summer of 2022 we visited 30 firms who provided LPA/deputyship legal services. These firms were selected randomly. Each one completed a questionnaire about their work in this area, followed by a visit where we met with the head of the LPA/deputyship team.

We also interviewed a fee earner in the team and reviewed two files - one setting up an LPA and another managing an LPA/deputyship.

### What we found

#### How busy are firms

##### Demand

Longer lives, an ageing population, Covid-19 and increasing information and support about LPAs and deputyships has driven up demand. Despite this, firms must continue to make sure that the quality of the work and service is not affected. And we were satisfied with the standard of work and the files we reviewed.

##### Capacity

General concerns about the capacity of firms to both write and manage LPAs and undertake deputyship roles have been raised by the Office of the Public Guardian (OPG) and the Court of Protection. Following this, we looked at the ability of firms to handle increasing numbers of LPAs and deputyships. We were satisfied by the steps we saw taken but are aware that the pressure and workloads are unlikely to decrease. Firms should continue to consider how they will keep pace with the increased demand. This situation is likely to be exacerbated by firms' acknowledged difficulty to recruit in this area.

##### Innovation

Firms have begun to explore the use of corporate bodies as professional attorneys. Using entities created and controlled by law firms can help avoid the ongoing problems around attorneys dying or becoming unable or unwilling to act. This provides the security of a named corporate attorney but allows the associated individuals to change.

##### Ongoing service

Many firms were mindful of cost and consumer experience. Some firms went beyond the regulatory requirements and were looking to foster long term relationships with clients. This has benefits for the client and the business. We saw other firms that could do more to keep in touch with clients who had created an LPA.

## Setting up LPAs

### Service and cost information

We were satisfied with the quality of service provided by firms. Despite this, there were still areas where they could help clients make more informed decisions about costs and services. Only a handful of firms had chosen to voluntarily display transparent information about the costs and services consumers could expect. This is something we would like to see firms improve on.

### Improvements

Firms could do more to inform clients about the difficulties associated with a bankrupt attorney. Bankruptcy might prevent an attorney from acting and for various reasons this could be catastrophic for the client. While this is mentioned in the LPA application form, firms could be more explicit.

### Registration

An LPA can only take effect once it has been registered. The OPG raised concerns that firms were failing to do this promptly. We found no evidence of this and thought firms acted reasonably promptly. LPAs could occasionally take significant time to register, but this was due to clients taking time to consider next steps, or the OPG's registration process itself. The OPG has already publicly acknowledged the issue with registration and firms confirmed it is a problem. They OPG have published updates about [managing LPA registration](https://publicguardian.blog.gov.uk/2021/05/10/managing-lpa-registration-delays-an-update-from-opg/) <https://publicguardian.blog.gov.uk/2021/05/10/managing-lpa-registration-delays-an-update-from-opg/> and [service delays](https://www.gov.uk/guidance/coronavirus-covid-19-office-of-the-public-guardian-response) <https://www.gov.uk/guidance/coronavirus-covid-19-office-of-the-public-guardian-response>.

## Managing LPAs and deputyships

### Service

The management of an LPA or deputyship is a demanding and varied role. Fee earners will often act for the most vulnerable people in society, and we found the service that they provided was thorough and thoughtful. Interestingly, firms that managed LPAs and deputyships often delivered the services in a similar way. As deputyships are more heavily scrutinised by the Court of Protection, this led to higher standards of recording and documentation of LPAs. We also examined policies, controls, and procedures to satisfy ourselves that firms could detect and prevent abuse of their clients by fee earners or third parties.

### Conveyancing concerns

Following concerns raised by HM Land Registry, we were interested about the quality of conveyancing undertaken by the firms on behalf of their LPA/deputyship clients. Having reviewed complaints and requisitions, we were ultimately satisfied that firms were behaving responsibly.

### Safeguarding the client

LPAs and deputyships undoubtedly provide opportunities for financial abuse and theft. We were keen to explore how firms prevented this and what, if any, protections were available. We were broadly reassured by each firm's practical approach but thought more could be done to document the safeguarding activities undertaken.

## Competence, training and supervision

### Competence

We expect solicitors to make sure they provide a [competent service in a timely manner](#) [/solicitors/standards-regulations/code-conduct-firms/#rule-4](#). Firms must make sure that managers and employees are competent to carry out their role and keep their professional knowledge and skills up to date. We assessed competence by reviewing the work of fee earners and their training and supervision.

### Training

It is vital that fee earners receive good training and have the right skillset to provide the resilient and expert service that clients demand. All but one fee earner could evidence appropriate training.

Appropriate training helps individuals in law firms to provide a competent level of service to consumers. Our requirement for solicitors to record and evaluate training is an important part of this process. Training records allow individuals to reflect on areas for improvement and progression.

We will monitor the reports we receive in this area to detect if there are any systematic competence issues. We will also consider adding this area to our ongoing schedule of training records reviews.

### **Supervision**

Fee earners acknowledged that the work was demanding and emotionally draining. Unlike some legal areas, LPAs and deputyships require fee earners to make decisions rather than provide a client with options. Ultimately, the responsibility lies with them. We found no issues with supervision.

### **Records and professional support**

Fee earners kept good training records, and some benefited from additional accreditations and support from groups such as the [Society for Trust and Estate Practitioners \(STEP\)](https://www.step.org/) and [Solicitors for the Elderly](https://sfe.legal/).

### **Conclusions**

We were broadly satisfied with our review of the firms in this area. Reassuringly, we found that firms with roles in managing LPAs or deputyships did so diligently. And there was no evidence of any abuse of the trust placed in them by what are often very vulnerable clients.

Firms took their training, supervision and record keeping responsibilities seriously and we did not find deficiencies in the drafting of LPAs. However, neither we nor the profession can afford to be complacent because the impact of poor work for such vulnerable clients is high. And, however small, there is always the risk, that while the overwhelming majority of solicitors do a good job, some could abuse the position of trust that this service provides. As demand increases, so do the risks.

### **Practical help and guidance**

You will find some helpful resources and information within this report (below) including:

- Reminder of what we expect from firms
- Links to relevant guidance, codes and rules
- Checklists for firms

[Open all \[#\]](#)

## **Introduction**

### **What is a lasting power of attorney (LPA)?**

An LPA is a legal document that helps someone (the donor) give another person (the attorney) the power to help them make decisions or take decisions on their behalf.

There are two types of LPA, for:

- property and financial affairs
- health and welfare.

A donor can make one or both types of LPA while they have mental capacity. A donor may lose capacity for various reasons.

LPAs need to be registered with the OPG before they can be used. The OPG is a government body that:

- keeps a register of LPAs
- investigates complaints against attorneys.

### **LPA for property and financial affairs**

This LPA is used to appoint attorneys to make decisions such as:

- buying and selling property
- opening, closing and generally operating a bank account
- dealing with tax affairs
- paying bills
- investing money
- claiming benefits.

The donor can decide whether the LPA can be used immediately after it has been registered or only once they lose mental capacity. The LPA can also restrict the decisions an attorney can make.

### **LPA for health and welfare**

An LPA for health and welfare can be used to appoint attorneys to make decisions about:



- where the donor should live
- day-to-day care (for example, diet and dress)
- medical care
- what the donor should eat
- who can interact with the donor.

Special permission can also be given for the attorney to make decisions about life-saving treatment.

Significantly, this LPA can only be used once the donor has lost mental capacity to make a personal welfare decision for themselves.

## What is a deputyship

Deputyship is a mechanism to allow appointed individuals Court of Protection to make certain decisions on another person's behalf. This can only occur if the person no longer has the mental capacity to make those decisions for themselves.

These are an important part of protecting someone who lacks capacity. The deputy can legally make decisions on a person's behalf and are supervised by the Court of Protection.

There are two types of deputyships:

- Property and financial affairs deputy - the deputy can pay the person's bills or organise their pension.
- Personal welfare deputy - the deputy can make decisions about medical treatment and how someone is looked after.

Acting as a deputy carries significant responsibility. The role can be carried out by a donor's family or friends or alternatively by a professional, such as a solicitor.

Where the deputy is not a professional, it is common for deputies to need support in their role. For example, to help register the deputyship order with banks, provide guidance on dealing with the OPG and help manage the deputyship accounts. Professionals might be approached by family or friends of the donor to assist them make an application or be appointed by the court via the deputyship panel.

## Why are we interested?

Whether firms are helping create or manage an LPA or deputyship we want to protect vulnerable individuals. Firms we regulate must continue to act in their clients' best interests and meet their regulatory responsibilities. This review was triggered by various concerns:

- LPAs and deputyships delegate a broad range of significant decisions to a third party. Individuals seeking legal assistance may have mental capacity issues arising from illness, serious injury or severe learning disabilities. These clients are some of the most vulnerable individuals in society and it is crucial that firms protect them.
- LPAs and deputyships are likely to involve complete control of a person's finances and assets. The risk of abuse or mismanagement could be catastrophic for the individual.
- Concerns were raised by external stakeholders including the OPG and HM Land Registry about the services provided by solicitors. We take these concerns seriously and investigate them thoroughly to make sure firms/solicitors:
  - are providing a quality service
  - are competent to act as a professional attorney or deputy
  - act in the client's best interests.

## Referrals

One firm was referred into our internal disciplinary processes for failing to act in the client's best interests when acting as a joint attorney. Some of our thematic reviews result in significant numbers of referrals but the low number of referrals may reflect that:

- deputyship work is highly regulated and supervised by third parties
- firms we visited regularly ran LPA files like a deputyship matter. This is significant as deputyship files are supervised by the Court of Protection. This results in a greater emphasis on record keeping.

Firms generally had good systems and processes in place when managing LPA/deputyship work.

## How busy are firms?

Improvements in life expectancy and a declining birthrate has seen the UK's population increase in age. A [government study](https://www.gov.uk/government/statistics/english-housing-survey-2018-to-2019-housing-across-the-life-course) [https://www.gov.uk/government/statistics/english-housing-survey-2018-to-2019-housing-across-the-life-course] highlights:

- over a quarter of all households were led by someone aged 65 or over
- older people are more likely to live alone
- most older householders are owner occupiers.



As our population ages the use of LPAs and deputyships is likely to become an increasingly attractive idea for individuals.

The protections and reassurance of LPAs and deputyships are not only enjoyed by older individuals. The onset of the global pandemic has inevitably focused many on caring for loved ones and the need to plan for the future. The availability and quality of consumer information could help people make informed decisions about the service and provider they need.

As more people look to make proactive decisions about their future, we were interested to see how busy the sector was and understand more about consumer choice.

## Why people create LPAs

An LPA can be created at any time if the individual has appropriate mental capacity.

Our file reviews revealed a range of reasons individuals created LPAs:

- 45% wanted peace of mind and to arrange their affairs
- 38% said it was because they were elderly
- 17% had been diagnosed with a medical issue
- 17% had suffered a recent bereavement
- 14% considered themselves to be an isolated individual.

(Some individuals gave more than one explanation for their desire to create an LPA.)

In addition, we were interested about the circumstances of the appointment:

- 35% also created a will
- 31% attended with their partner
- 10% attended with a family member
- 21% updated a previous LPA (or similar document).

These interactions highlight the range of clients and circumstances that firms encounter.

## LPAs and deputyships: types of work

Each version of an LPA or deputyship requires distinct knowledge and skillsets. Firms told us that historically, property and financial affairs LPAs were more popular than health and welfare LPAs. However, following the pandemic and increased consumer education, this was changing. Our file reviews appeared to reflect this.

Our reviews showed:

- 93% concerned a property and financial affairs LPA
- 73% concerned a health and welfare LPA
- 66% concerned both.

Firms mentioned that historically, individuals strongly favoured Property and Financial affairs LPAs but this was changing.

In contrast, when we looked at management files:

- 75% concerned a property and financial affairs LPA
- 25% concerned both LPA formats
- no sole health and welfare LPA work was found.

These figures suggest that firms will increasingly be required to manage health and welfare LPAs on behalf of clients. These LPAs often require a more nuanced and committed relationship with the client. Firms should consider whether they have the knowledge and resources to undertake this work in the future.

We also looked at 14 deputyship files. Again, these files featured a broad range of clients that were unable to manage their own affairs:

- 7 individuals experienced neurological issues
- 6 individuals had received a traumatic life-altering injury
- 2 individuals were children
- 1 individual was elderly.

However, four of the files featured an individual that retained some degree of capacity. The file reviews highlighted the range of clients, firms might encounter. The knowledge and skillsets required will vary and this reinforces the need for broad and ongoing training.

## LPA and deputyship volumes

To understand more about the pressure firms face, we asked for information about the volume of work each firm had done in the past four years. (For 2022 this was half yearly data.)



Surprisingly, firms did not always record information about the volumes of LPAs they had created. While it is not a regulatory requirement, basic information about volumes should inevitably inform decisions about business and resourcing requirements. It may also help a firm keep track of its future commitments as a proposed professional attorney.

Six firms were unable to provide this information. In contrast, all firms who undertook deputyship work could provide this information. This is likely to reflect that the OPG and the Court of Protection regularly require detailed information.

The information we gathered broadly reflected the trends we saw in our file reviews. We asked each firm how many LPAs they had created during the last three calendar years. As expected, property and financial affairs LPAs were significantly more popular than health and welfare LPAs.

Volumes of both were rising, and the half yearly results for 2022 suggested this was likely to continue:

Firms also told us that consumers usually appointed family or friends to be their attorney. This view was reflected in the stark difference between the high volume of LPAs created by the firms and the lower number of LPAs managed by the firms.

Unlike LPAs, deputyships can only be created on behalf of an individual if they cannot make a decision due to their lack of mental capacity. Some degree of management will be necessary as soon as the document is created. Fee earners who carried out work in this area said they felt busier each year.

This feeling was supported by our data shown in the chart below.

## How do firms cope with the increased volume?

Naturally, as the volume of work increases, firms must take steps to preserve the quality of the work they deliver. Worryingly, both the Court of Protection and the OPG have reported a rise in investigations and litigation against individuals acting under an LPA or deputyship.

From 2016 to 2020 investigations carried out by the [OPG](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902958/6.6595_OPG_Annual_Report_and_20_v11_WEB.pdf) [\[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902958/6.6595\\_OPG\\_Annual\\_Report\\_and\\_20\\_v11\\_WEB.pdf\]](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902958/6.6595_OPG_Annual_Report_and_20_v11_WEB.pdf) rose from 1,199 to more than 3,000. Though these figures include all attorneys and deputies and are not limited to solicitors.

External stakeholders raised concerns about whether consumer experience suffered following the rise in volumes. These concerns included:

- how were documents stored safely
- how firms managed multiple LPAs and deputyships
- whether solicitors were keeping in touch with their clients.

## What do we expect

Solicitors and firms are required to [provide competent and timely advice](#) [\[solicitors/standards-regulations/code-conduct-solicitors/#rule-3\]](#). They must also [safeguard client assets](#) [\[solicitors/standards-regulations/code-conduct-solicitors/#rule-4\]](#) and [keep the affairs of clients confidential](#) [\[solicitors/standards-regulations/code-conduct-solicitors/#rule-6\]](#).

## What did we find

### Documents stored safely

LPA documents should be stored carefully:

- Property and financial affairs LPAs broadly allow the attorney to assume the legal rights of the individual. And therefore, deal with their property and assets as they see fit. There is a real and significant potential for fraud and misuse of this document if accessed by unscrupulous attorneys and/or third parties.
- LPAs are created before an individual loses capacity. If the document is lost (or unregistered) at the point it is required, it is useless. A substitute LPA cannot be created if the individual lacks capacity. This will likely lead to some (if not all) of the individual's wishes (previously expressed in the LPA) being superseded by those of other individuals/the court.

Given such high volumes of work we wanted to see how documents were stored.

In our view, this was handled appropriately by firms and the files reviewed had been stored in either a strong room or a storage facility. Other findings:

- firms dealt with storage in a systematic and methodical manner
- one complaint about a firm had concerned a lost document. They remedied this at their own expense and there was no client harm
- most did not charge clients to store their documents



- three firms charged a nominal fee for storing LPAs
- one charged a removal fee to take the LPA out of storage.

In addition to the safe storage by firms, we also found examples where clients safely stored and acknowledged LPAs with third parties. This included:

- informing their GP/medical provider about the existence of their health and welfare LPA. Numerous firms advised clients to do this
- in one extreme situation, a vulnerable individual who lived alone, kept copies of his LPAs in the fridge with his medication and information about his various treatments. The client felt reassured that paramedics would collect these documents if anything happened to him.

Ultimately, firms tended to consider that their role concluded once the LPA was registered. As one firm told us 'we're not the gatekeeper of the documents. [The client has] chosen these individuals and needs to trust them'.

## **How do firms manage multiple LPAs and deputyships?**

High volumes of work put pressure on individuals and may affect the quality and timeliness of their work. Firms must use systems and processes to manage the risks posed by increasing workloads.

Because of the OPG's concerns we asked firms how they managed surges in demand:

- 82% believed a large team helped share workloads
- 26% used centralised systems to review, share and monitor matters, data and capacity
- 22% mentioned they would turn away work if necessary
- 22% mentioned regular team meetings and discussions helped to deliver work and resolve issues.

Just under a third of firms also mentioned they had the capacity to increase their resource. This meant either employing new people/locums or sourcing additional support from other areas of their business.

We query how effective this response may be to a surge in demand. Numerous firms told us that it was difficult to find appropriate candidates to join their teams and that recruitment was difficult.

We also question how useful an individual from another area might be given the knowledge and skills that are necessary to do this work.

## **Firms using corporate vehicles to safeguard client interests**

The OPG also queried the capacity of firms to perform the role of professional attorney for increasing numbers of individuals.

This is problematic because occasionally a professional may no longer wish or be able to carry out the attorney role. An LPA is a deed, so it appoints specific, named individuals to the position of attorney. Although the name may be altered with a deed of revocation, this can be costly and may not be an option if time has passed. Particularly if the subject of the LPA has lost capacity.

Issues include individuals at the firm retiring or leaving the firm or not having the capacity to undertake the onerous role.

These are not fanciful concerns. During our file reviews we found two occasions where a professional deputy had sought to vacate the role:

- one firm paid at their own expense to resolve the issue by appointing another set of partners
- one partner at a firm was retiring. The firm contacted the individual to appoint a replacement attorney. Unfortunately, the firm subsequently realised that the client was having capacity issues. The opportunity to replace the attorney had passed and the client was now dependent on the sole remaining attorney.

However, some firms were clearly considering this issue:

- six firms offered clients the opportunity to appoint a corporate body controlled by the firm as an attorney
- five firms were exploring the possibilities of allowing clients to appoint a corporate body.

By using this sort of corporate body, a firm can appoint different managers/owners to the vehicle. This allows individuals to be replaced as they retire and leave the firm. As the corporate vehicle is appointed as the attorney, the client is unaffected by any change in personnel.

The use of corporate bodies in this capacity is an emerging theme. We know from firms that it can be a costly and complicated idea to execute. There are also associated risks about what happens if the firm closes without a successor practice or a company becomes dormant.

## **How do firms keep in contact with clients?**

Once the LPA has been registered, circumstances will inevitably change. A client may want to update their LPA or alternatively lose capacity. Either issue might require their solicitor.



We asked firms whether they kept in touch with clients:

- most firms considered that the onus was on clients to keep in touch with the firm
- some stated that the work was done on a fixed fee basis and therefore the matter was concluded following the registration of the document
- views differed where they had been nominated as a professional attorney. This required firms to keep in touch so they could undertake their future attorney role
- all firms stored client documents, but this was deemed to be a goodwill gesture that provided security to the client.

We think firms could keep in touch more with clients and help them plan for the future, notwithstanding that there is a limited regulatory requirement to do so. Interestingly, a third of firms also took this view. These firms realised that in addition to being helpful for clients, it also provided a commercial opportunity to provide other services such as wills. Examples of client contact included firms:

- issuing letters periodically to assess whether a change to the LPA was necessary
- making phone calls to individuals who failed to respond to an initial letter
- adjusting periodic enquiries where clients formally or informally raised issues likely to warrant further investigation.

### **How many complaints were there?**

Ultimately, it is difficult to objectively assess whether firms are successfully coping with the demands of high volumes of work. But this is clearly an area which firms should continue to review.

We were interested to see how many complaints firms had received over the last three years and how they were handled. Where complaints were received, each complaint was interrogated in detail with the firm.

We found each firm had a complaints policy and the number of complaints was low:

These results are open to interpretation. This could reflect a high standard of work and low complaints, a lack of knowledge about how to complain or indeed a lack of capacity to complain. However, the files we reviewed were a good general standard and we were satisfied that work was being dealt with appropriately.

### **Checklist for firms**

- Do you record information about the different types of LPA work undertaken to assist with resourcing, training and business requirements?
- Are contingency plans in place to address increases in work? If so, how robust are those plans, particularly any internal/external recruitment strategy?
- Will new staff have the knowledge, skills and experience to act in the best interest of clients and provide an appropriate standard of service?
- Have you put in place measures to make sure any increases in work do not impact on the quality of the work and service offered?
- Are support and wellbeing mechanisms in place to make sure staff can meet increases in demand for legal services?
- Have you considered the suitability of using a corporate body so the firm can appoint different managers/owners to the vehicle?
- Do you take steps to keep in touch with the client to check if the circumstances have changed and the impact this may have on any instructions they have previously given?
- Are you providing information about how to complain in a way that is accessible to vulnerable people?

### **Setting up an LPA**

Anyone over the age of 18 with capacity can create an LPA. The process is straightforward and comprehensive guidance is provided on [GOV.UK \[https://www.gov.uk/power-of-attorney\]](https://www.gov.uk/power-of-attorney). Despite this, many people choose to use a law firm.

### **What is the issue?**

The OPG has received concerns from individuals in the following areas:

- solicitors failing to register the LPA promptly
- the level of service received
- the costs charged by solicitors.

Cost issues were also raised by [Solicitors for the Elderly \[https://www.thetimes.co.uk/article/older-and-vulnerable-clients-deserve-the-same-protection-on-price-transparency-z3sntjhs0\]](https://www.thetimes.co.uk/article/older-and-vulnerable-clients-deserve-the-same-protection-on-price-transparency-z3sntjhs0).

We were interested to look at these areas.

### **Service**



We spoke to firms about the steps they took with their LPA client to help them to understand more about the service provided. This includes how they made sure clients:

- understood the process
- considered what categories of people to appoint
- considered what decisions and instructions they would like to provide to attorneys
- understood the benefits of multiple/replacement attorneys.

Overall, we were satisfied by the responses we received. This aspect of the work is usually generic and requires an individual to work through a series of straightforward questions. We spoke with fee earners and reviewed files and found no issues with either the process or the work. Each firm was able to provide documentary evidence of the steps they took and demonstrated that the clients received a good standard of service.

## **Value for money**

Given the usually generic and simple nature of the work, we were interested whether firms provided value for money. In general, we found firms were not protective of the work:

- nine firms provided free information about the process on their website and directed clients to the OPG website
- various fee earners told clients to review the OPG website before paying a professional to carry out the work. One fee earner said she was sometimes embarrassed to submit a bill because she thought the client would realise this was work they could have done.

Following conversations with fee earners, we reflected on the benefits that law firms offered:

- Providing guidance and support – firms provided additional information to clients (and attorneys) that helped set out the process and how to get the most out of LPAs. Fee earners regularly provided bespoke advice to individuals that was not available elsewhere.
- An impartial and objective soundboard – firms challenged the appointment of inappropriate attorneys, for example due to their location, personal circumstances, capacity and/or competence.
- Protecting clients from undue influence – firms shielded clients from the undue influence of family and friends and took time to check the client's understanding and choices. Firms routinely sought opportunities to discuss matters with their client alone. Fee earners provided anecdotal information about family members trying to register LPAs on behalf of individuals who lacked capacity.
- Administration – most firms provided administration oversight and checked forms were completed appropriately and signed. This benefits the client and the OPG. We saw files where the OPG had rejected previous applications undertaken by the client.
- Convenience – we saw various instances of consumers enjoying the convenience and reassurance of asking a firm to complete work on their behalf.

Significantly, we also noticed that six individuals had attended the firms to update an existing LPA, as drafted by the firm. This repeat business suggests some individuals were satisfied by the previous standard and price of work.

## **Attorney bankruptcy**

An individual who has been declared bankrupt cannot be appointed as a property and financial affairs attorney. If the individual is declared bankrupt after registration, they will not be able to act, and the LPA could be cancelled. We considered this to be a significant risk and expected firms to raise it with clients. Firms provided a range of responses:

- various firms said the insolvency warning was prominently displayed on the LPA form
- one firm showed us evidence that a bankruptcy check had been undertaken where concerns had been raised. A second suggested they would do a check if the client wanted peace of mind
- some firms required fee earners to raise the issue and record it on the file, for example via attendance notes or checklists.

Over half of the firms were not able to evidence any discussion or advice about bankrupt attorneys beyond reference to the LPA document itself. Firms could do more in this area.

## **Mistakes**

According to the OPG, they receive around 67,000 LPA applications each month. They calculate that around 15% of these applications contain mistakes. This prevents the application from being registered and causes delays and, occasionally, additional fees. As mentioned, delays can be significant if the client needs an LPA urgently.

The OPG highlighted several common mistakes they see from applicants:

- missing and mixed pages
- signing the application in the wrong order
- signature errors
- using pencil, tippex or photocopies



- unclear or contradictory instructions.

Read more about this in their [blog](https://publicguardian.blog.gov.uk/2020/01/10/get-it-right-the-first-time-hints-and-tips-to-help-you-complete-your-lpa-application/) [<https://publicguardian.blog.gov.uk/2020/01/10/get-it-right-the-first-time-hints-and-tips-to-help-you-complete-your-lpa-application/>].

We expect solicitors to provide a [competent level of service](#) [[solicitors/standards-regulations/code-conduct-solicitors/#rule-31](#)]. Our review found:

- all firms provided a competent service and there were no significant issues discovered
- evidence that clients had struggled to complete the document prior to instructing a firm of solicitors
- a few minor factual errors that had been corrected at the firm's expense and with no client impact other than delayed registration of the documents.

## Delays

Solicitors are required to deliver services in a timely manner. During the creation of an LPA this can be critical if the client's situation requires urgency, for example due to failing capacity or a medical emergency.

The OPG raised concerns from individuals, that solicitors were failing to register LPAs promptly. We were interested to know more.

### Did delays occur?

We found delays occurred for a variety of reasons. However, we found limited evidence that this was due to inaction on behalf of firms.

We looked at the stages between key milestones, including:

- Instructions to client signature - time between taking initial client instructions and signature of the LPA by the client
- Client to certificate signature - time between the client's signature of the LPA and the send out, signature and return of the LPA by the certificate provider
- Certificate to mail out to attorney - time between the receipt of the certified LPA to sending out the LPA for the attorney's signature
- Attorney send to return - time taken between sending out the document for the attorney's signature to the attorney returning the signed LPA
- Attorney return to OPG send - time taken from receipt of the attorney's signed copy of the LPA to the document being sent out to the OPG
- OPG send to OPG return - time taken between sending and receiving the OPG's registered LPA.

The chart below shows an overview of the time frames for the completed matters we reviewed at each firm. (Data was limited to 22 files as the remaining files were awaiting registration).

We challenged firms about any significant delays. We found:

- firms acted reasonably promptly
- significant delays were accounted for and detailed in the relevant files
- delays were often incurred by third parties such as attorneys and GPs acting as certificate providers.

In addition, firms showed us delays which were caused by the client. This included:

- medical issues
- requests for additional time to consider their instructions and wishes
- general delays during holiday periods.

We also became aware that registration by the OPG could take a significant length of time.

On average, the OPG accounted for 58% of time in the lifecycle of a file. The OPG have already, publicly confirmed that LPA registration is taking longer due to the [impact of Covid-19](#) [<https://publicguardian.blog.gov.uk/2021/05/10/managing-lpa-registration-delays-an-update-from-opg/>] and [staffing issues](#) [[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1004590/opg-annual-report-and-accounts-2020-to-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004590/opg-annual-report-and-accounts-2020-to-2021.pdf)].

## Costs

Firms must provide the [best possible information to clients](#) [[solicitors/standards-regulations/code-conduct-solicitors/#rule-81](#)] about how their matter will be priced and the likely overall cost.

The OPG raised concerns from individuals about costs and costs information. We wanted to find out more. Our discussions and review showed that:

- clients were charged the same amount to create property and financial affairs and health and welfare LPAs
- most firms offered a price incentive to create both LPAs at the same time



- most firms charged a fixed fee with only three charging an hourly rate
- cost information was adequate and provided upfront
- the average price for an LPA was £466 plus VAT. The highest cost was £800 and the lowest was £250, both plus VAT. The average cost (£414 plus VAT), broadly matches [research undertaken by the Legal Services Board](https://legalservicesboard.org.uk/reports/prices-of-individual-consumer-legal-services-2020) (<https://legalservicesboard.org.uk/reports/prices-of-individual-consumer-legal-services-2020>)
- firms attempted to limit the cost of an LPA by making sure the work was undertaken by people at appropriate grades.

Our review did not detect any significant issues about costs. Naturally, costs varied but the work carried out was essentially of a similar standard.

The creation of LPAs and deputyships falls outside the SRA's Transparency Rules and Solicitors for the Elderly have [queried this decision](https://www.thetimes.co.uk/article/older-and-vulnerable-clients-deserve-the-same-protection-on-price-transparency-z3sntjhs01) (<https://www.thetimes.co.uk/article/older-and-vulnerable-clients-deserve-the-same-protection-on-price-transparency-z3sntjhs01>).

We found only four firms voluntarily provided costs and service information on their website. This is likely to act as a barrier for consumers and does not promote competition. We would like firms to do more to promote their prices and services, and this could have benefits for both consumers and the firms' revenue.

## Checklist for firms

- Can fee earners provide documentary evidence to show the steps taken to set up an LPA and demonstrate the client received a good standard of service?
- Have you discussed or advised the client about the implications of bankruptcy affecting an LPA beyond reference to the LPA document itself?
- Do you have processes and procedures in place to avoid common mistakes when making an application for an LPA such as:
  - missing and mixed pages
  - signing the application in the wrong order
  - signature errors.
- Have you considered publishing costs and service information about the LPA work you provide on your website?
- Have you managed client expectations about the time take to register an LPA?

## Managing LPAs and deputyships

Once active, attorneys and deputies are required to act in the best interests of the individual and where possible carry out their wishes.

We wanted to find out more about how attorneys and deputies safeguard their vulnerable clients.

## When is an LPA or deputyship activated?

LPAs and deputyships are activated at different points:

- LPA for property and financial affairs – the client can use the LPA as soon as it is registered or once they have lost mental capacity
- LPA for health and welfare – the document can only be used once the client has lost capacity
- Deputyship – an application can be made to the court if the individual lacks mental capacity. Significantly, they might still be capable of making decisions at certain times.

## Who can act?

While our review focused on professional attorneys and deputies, most adults can act as an attorney or deputy. We found various examples of individuals appointing a family member/friend jointly with a professional.

## Background

In addition to the creation of LPAs, we also looked at the management of LPAs and deputyships. This is a distinct specialism and not all firms do both.

Our review looked at 30 files where the firm was acting as either a deputy or professional attorney. Both these roles allow the firm to charge for their work. Significantly, the volume of work required for each matter can vary tremendously, for example an elderly client in a care home is unlikely to require the same amount of time and decision making as a similar individual living in their own home or a young adult/ child.

## Protecting the individual's wellbeing and best interests

### Health and welfare LPAs and deputyships

Firms told us they rarely managed health and welfare LPAs/deputyships. This was reflected in the data we gathered and confirmed anecdotally by fee earners. We were given various reasons for this:

- Historically, clients had favoured creating property and financial affairs LPAs.



- While decisions about Property and Financial LPAs were typically straight forward and similar for each client (for example the generation and preservation of wealth), decisions about health and welfare were personal to each individual and varied significantly.
- The work requires a deeper understanding about the client's wishes, feelings and personal values and this was often financially prohibitive.
- The Court of Protection rarely appoints health and welfare deputies.

Consequently, our ability to consider this area was hindered by a lack of files to review. Our review was limited to nine files and checked:

- whether a review or care plan had been commissioned?
- had the client's conditions and needs been assessed?
- if care and health reviews had been carried out annually?
- if care providers had been contacted?
- whether access to treatments and therapies had been assessed?
- whether treatments and haircuts were arranged?
- whether carers were DBS checked?

We found that all firms provided a good standard of service on these points.

## Acting in the client's best interest

All firms are required [to act in their client's best interests](#) [[solicitors/standards-regulations/principles/#principle-1](#)]. In addition, firms acting under an LPA or deputyship are required to show and record best interest decisions ([Section 4, Mental Capacity Act 2005](#) [<https://www.legislation.gov.uk/ukpga/2005/9/section/4>]).

This is obviously a key area and given the vulnerable nature of the client, it is a significant and ongoing consideration which poses some potential risks:

- whether solicitors and deputies are acting in the best interests of clients?
- are the interests of firms and clients in conflict?
- theft from clients.

Reassuringly, we found no evidence of these risks having materialised::

- all firms were recording best interest decisions
- we reviewed files for business relationships and required firms to provide information about any relevant separate business relationships. We also enquired about any business relationship between the firm and any of the employees' spouses, family members and partners. While we did find relationships existed, firms were able to show that clients benefited from the relationship and no conflict arose between the firm and the client. Quotes were provided where relevant and information about the relationship was recorded and shared.

Without appropriate checks and processes in place, this work can provide an opportunity for unscrupulous individuals to steal money and assets. We are aware of cases, fee earners provided anecdotal information about incidents known to them and there are reports of such behaviours [in the press](#) [<https://www.thebusinessdesk.com/yorkshire/news/2002360-partner-struck-off-stealing-470000-clients>].

While recognising we only reviewed a limited sample, we did not encounter any issues and were satisfied with the controls and policies we inspected. Most firms had various financial control policies in place covering the responsibilities and requirements expected of fee earners.

This included policies on:

- attorney account
- cash control
- cash handling
- banking

In addition to reviewing controls and processes, we also checked files. We looked for theft, fraud, exploitation of financial affairs, restriction of access to assets and any signs of undue influence. We also reviewed bank statements and client ledgers. We wanted to check:

- what financial movements were occurring and why?
- whether the costs incurred matched the work done and the bill raised?
- whether payments matched the circumstances of the file?
- were there any unusual payments or payments to connected to third parties?

Generally, we found no issues and all but one firm could provide appropriate financial records. We referred this firm for further engagement due to their lack of appropriate financial records and controls. This matter featured an LPA which was overseen by the client's daughter and the firm. While we did not see any criminal activity, the firm had delegated their responsibilities to the daughter and neither party could immediately provide relevant financial documents. This is not in the client's best interests.

## Safeguarding

During our review, we also investigated how firms worked in partnership with local authorities to safeguard vulnerable individuals.

All local authorities are legally obliged to provide care and support to individuals who live in the local area under [The Care Act 2014](https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted) [https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted]. This includes:

- care services to prevent people developing needs for care and support
- information and advice to support good decisions about care and support
- a range of high quality, appropriate services to choose from.

These protections are afforded to adults and their carers.

A significant emphasis is placed on safeguarding vulnerable individuals. The [Care and support statutory guidance \(2022\)](https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#safeguarding-1) [https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#safeguarding-1], states:

'Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect. It is about people and organisations working together to prevent and stop both the risks and experience of abuse or neglect...'

We were interested about each firm's approach to safeguarding. The approach varied:

- just over half the firms had undertaken formal training and had a safeguarding policy in place
- a minority kept a written standalone record of safeguarding referrals they had made.

These findings suggest this is an area where firms could improve. Firms will often be required to work in partnership with local authorities to protect their client and it is important that they understand and promote safeguarding. As highlighted by [the government](https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets#factsheet-7-protecting-adults-from-abuse-or-neglect) [https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets#factsheet-7-protecting-adults-from-abuse-or-neglect].:

'Safeguarding is everyone's business and it is important that organisations work together to protect people who need help and support.'

## Protecting the individual's assets

### Property

Typically, people's homes are their largest asset. When an LPA or deputyship starts, the fee earner must consider whether any property is suitable, safe and secure. A decision may also be required about whether to keep the property. We were interested to see how this was managed.

Clients required assistance with their property on two thirds of the files we reviewed. A third of the individuals still lived at their property. The necessary decision making varied widely. While most files featured some degree of activity, three files featured substantial building works to make the property suitable for the client. This involved obtaining quotes, arranging temporary accommodation for clients and overseeing significant building projects.

Previously, HM Land Registry had raised concerns about the way solicitors were handling properties under LPAs/deputyships. We saw no evidence of this. Where relevant, each firm could provide evidence of the detailed Land Registry checks undertaken.

We also asked firms to provide information about the number of requisitions they had received from HM Land Registry. This happens when further information or clarification is necessary from an applicant. This might be due to a genuine need for additional information or evidence of a poor submission.

Firm's overall requisition numbers were very low and none were found on the files.

During our file reviews, we checked whether each client's property and assets were handled appropriately. The circumstances varied across matters, but we concluded all firms handled client property and assets properly. We did this by undertaking the following checks on each file (where relevant):

- has the client's needs and the properties suitability been assessed?
- had the property been visited?
- had the property been accessed and secured?
- was an inventory of assets available?
- was appropriate housing and contents insurance arranged?
- was the post redirected (where appropriate)?
- had the provision of utilities been reviewed and dealt with?
- had the boiler been serviced/gas certificates been obtained?

### Assets, savings and investments

Inevitably, the personal wealth of clients was extremely varied. We wanted to see how fee earners reviewed and maximised each client's assets, savings, and investments.

Financial advice is a specialised area and firms must observe specific financial regulatory requirements. ([SRA Financial Services \(Conduct of Business\) Rules](#) [[solicitors/standards-regulations/financial-services-conduct-business-rules/](#)] and the [SRA Financial Services \(Scope\) Rules](#) [[solicitors/standards-regulations/financial-services-scope-rules/](#)]).

This protects the client and makes sure the fee earner has the relevant skills and experience to carry out the work. We were interested whether fee earners understood the regulatory regime. Findings were mixed. While fee earners stayed within the regulatory remit of the rules, most were not able to confirm their firm's financial regulatory status. This is significant because a firm's status dictates what financial advice fee earners can provide.

During our review we looked at a broad range of areas:

- had the fee earner searched, identified and secured assets, savings and investments?
- had an appropriate account been opened in the deputy or attorney's name?
- was there an inventory of assets?
- were financial institutions aware of the LPA/deputyship?
- had there been a suitable review of pensions, public authority funding and benefits due to the client?
- were liabilities and payments scrutinised?

We also looked specifically at investments:

- what investments did the client have?
- were these investments scrutinised?
- did the firm obtain investment advice from a third party?
- had the firm reviewed its indemnity insurance provisions?

Our file reviews showed that fee earners took sensible steps to manage the financial affairs of their clients. We also found that independent financial advisors were routinely used.

### **Security bonds - deputyships**

Clients who are subject to a property and financial affairs deputyship usually have the additional security of a deputy/security bond.

Before the court makes an order to appoint a deputy to manage an individual's property or finances, it will usually require security to be given by way of a surety bond to protect the individual's assets.

The purpose of the bond is to safeguard the individual's assets by guaranteeing any financial losses the client incurs due to the deputy's failure.

The OPG has created a scheme to provide bonds which is administered by the insurer, Howden UK Ltd. However, deputies can make their own arrangements with other providers if they wish.

The value of the bond is set by the court during the court hearing. A recurring annual payment is ultimately paid from the assets of the individual subject to the deputyship. The value of the bond is dependent on the extent of the individual's assets.

The benefits and financial security that a bond provides are clear and obvious. Each of the deputy files we reviewed had a bond in place. Firms were undertaking all relevant checks and reviews to make sure the client had the relevant protection.

### **Security bonds - LPAs**

Unlike deputyships the security bond scheme does not apply to individuals who are setting up a property and financial affairs LPA. Ultimately, this means an individual does not receive the same financial protections that are afforded to people subject to a deputyship.

The benefits of a security bond scheme are clear, and several interviewees believed that clients with LPAs could benefit from a similar arrangement. Inevitably, mistakes and occasional wrongdoings occur. A security bond provides financial insurance to individuals and affords peace of mind to them, their family, friends and professional advisers.

We are aware that LPA security bonds are available on the market but are typically not employed. Indeed, we did not encounter any during our review. Despite this, we consider that these products could provide a useful layer of financial protection for some clients and more could be done to put clients in a position to make informed choices on whether they want that protection.

### **Interactions with family and friends**

A client's family dynamics and relationships are another avenue which fee earners must navigate. As one fee earner remarked, this can be an exceptionally difficult aspect of the role. Other interviewees echoed this sentiment:

- one client instructed a firm to act following the theft of her cash and jewellery by her son. He also fraudulently set up another LPA to defraud his mother. The firm had to work with Trading Standards to



retrieve the cash and money. Another firm worked with the police to recover £30,000 that had been stolen from their client by her son

- six firms told us that family pressure/undue influence were the most common issue when administering LPAs
- firms on the deputyship panel told us they regularly received work from the Court of Protection which occurred following theft by family members under an LPA.

Firms can undoubtedly find themselves in difficult situations. However, their responsibilities are clear and firms should be seeking to act in the best interests of the client at all times. On occasion this may mean making unpopular decisions. Most firms were able to strike this balance, but we encountered two matters which required further discussion:

- one firm was acting as a professional attorney for an individual who had lost capacity. The client's friend was in constant contact with the firm and, although well meaning, had sought to impose their will. We queried with the firm whether the friend had any basis to be involved in decision making and on reflection they admitted the friend had gone too far. The firm also acknowledged that the friend's eagerness had cost their client money as they were charged for incoming telephone calls to the firm.
- one firm was acting in a joint capacity with their client's daughter. The firm had failed to take responsibility for decisions or record keeping. Significantly, they failed to review expenditure and their client's bank accounts. We required the firm to obtain the relevant documents from the daughter and account for any expenditure. The matter was referred to our Investigation and Supervision team.

## Interactions with third parties

The role of the attorney and deputy is varied, and their clients' needs can be complex. We do not expect firms to provide every aspect of care so partnerships with third parties are inevitable. We saw firms cooperating with a range of third parties during the file reviews including:

- care homes, carers and social services/local authorities
- medical staff and the police
- auctioneers and house clearance companies
- heir hunters.

Firms must supervise the work of third parties. We found various examples of third-party issues:

- Two files featured a care home which became the subject of a Care Quality Commission (CQC) referral and investigation. On one occasion the home failed to safeguard the financial assets of the individual and on another occasion the home was failing to adequately clean and wash the client. The firm raised concerns and subsequently made a referral to the CQC.
- Three files featured carers who failed to act in the best interests of the client. This included a failure to keep the client clean and well kempt, to deal with their post and poor financial record keeping. This was identified and remedied by the firms.
- One file featured a poor-quality housing assessment conducted by the local authority. The fee earner challenged the report because it failed to acknowledge that the client used a wheelchair and the flat was only accessible via stairs.
- One file featured an auction house who failed to safeguard some of the client's possession prior to a planned sale. The firm had to investigate the matter and arrange for compensation to be paid.

These circumstances highlight the importance of carrying out visits, speaking with clients and reviewing the work undertaken by third parties. It is vital that firms continue to review the actions of third parties.

## Checklist for firms

- Do you have financial control policies in place to outline the responsibilities and requirements expected of fee earners?
- Can you demonstrate that clients' financial records have been properly reviewed to make sure their best interests have been protected?
- Are fee earners aware of the firm's financial services status and the scope and extent to which they can provide financial services advice?
- Have fee earners considered the benefits and protections of using a bond for clients with LPAs?
- Are fee earners always acting in the best interests of the client? Is this particularly when difficult and/or unpopular decisions need to be made or family members are applying pressure?
- Where an individual at the firm is acting as joint attorney, have they taken responsibility for decision making and record keeping?
- Are fee earners aware of the importance of carrying out visits, speaking with the client and reviewing the work undertaken by third parties?
- Do you have policies, controls, and procedures to prevent and detect abuse of clients by either fee earners or third parties?

## Competence, supervision and training

Managing an LPA or deputyship is a demanding role and requires a wide range of decisions.



The nature and complexity reflect the unique circumstances of each client. Decisions and tasks can vary from arranging haircuts and boiler certificates, to reviewing million-pound investments and consenting to life changing medical operations. Each step directly concerns the quality of a vulnerable individual's life.

Unusually, clients can be both willingly and unwillingly drawn into this area. As one interviewee told us, a court decision to appoint a deputy may be a legal decision but it has practical and emotional consequences for individuals and their family and friends. Deputies are often thrust into emotionally charged situations and must navigate the relationships and politics of their client's life.

Creating LPAs is no less varied. As already noted above, our file reviews highlighted the broad range of clients and situations that practitioners can encounter.

Unsurprisingly, these roles demand a high degree of competence, supervision and training across a range of areas.

### **What do we expect?**

We require firms to make sure their managers and employees are competent and supervised, and the service is delivered in a timely manner.

### **What are the benefits of supervision and good training?**

To comply with our Code of Conduct for Solicitors, RELs and RFLs, all solicitors must maintain their competence to carry out their role. Given the demands and range of decisions that deputies and attorneys regularly face, it is vital for the protection of the client that individuals maintain and refresh their knowledge and understanding.

In addition to safeguarding outcomes and the quality of life for clients, interviewees readily discussed the personal benefits of good training and supervision:

- Quality training supports fee earner competence and secures good outcomes for clients and helps them anticipate future problems and tasks. As fee earners told us, the quicker a task is resolved, the cheaper the service is for the client.
- Fee earners told us the work was emotionally draining. Interviewees highlighted clients (and their support network) can have radically different requirements and demands. Our file reviews featured children who had sustained life changing injuries, individuals coming to terms with terminal illness, Alzheimer's, schizophrenia and bereavement. Interviewees told us that training and supervision provided a forum to discuss issues and share problems. Given the emotionally charged aspect of this work, staff resilience and wellbeing should be a key consideration.

### **Supervision - what we found**

Effective supervision helps evaluate and support fee earner competence by highlighting and resolving issues. This ultimately helps to safeguard the interests of the client.

Each fee earner we met told us they were supervised. During each file review, we searched for evidence of supervision. Around 80% of the files featured some degree of documented supervision. This usually took the form of a documented case discussion with a supervisor and all fee earners mentioned this was useful.

Most firms engineered a degree of supervision by the structure of their team(s). This included:

- separate teams to create and manage LPAs/deputyships
- appointing an attorney or deputy to make decisions but leaving day to day administration to an individual or team of file handlers.

This delineation of roles helps to check decisions and work but also allowed files to be run cost effectively. The structures were complemented by other processes:

- most had a process and policy about the delegation of role between decisions makers and file handlers
- over half the firms also formally outlined a list of signatories and/or a schedule of delegations.

Overall, we were satisfied with the type and extent of supervision that we saw.

### **Who is doing the work?**

We looked at the experience and qualifications of fee earners who were responsible for managing LPAs and deputyships. Experience was graded:

- new: less than two years of experience
- experienced: five years or less
- very experienced: ten years or less
- extremely experienced: more than ten years' experience.

### **Who does this work and how experienced are they?**

During our review, we asked firms about the experience of the fee earners who undertook this work. Generally, an individual's years of experience are linked to the depth of their knowledge, skillset and competence.

Firms explained that the creation of LPAs was largely done by junior members to reduce the cost levels. This was reflected in the experience and qualifications of the individuals we interviewed.

We were particularly interested in the experience levels of individuals who were managing LPAs and deputyships. We consider this to be a more demanding role and expected to see experienced individuals in these roles. Reassuringly, this was reflected in the individuals we interviewed:

While three individuals were deemed to be relatively new to the subject area, we were satisfied with the nature of the work they were required to undertake and the degree of supervision they benefited from.

## **Training and training records**

We considered experience to be only one aspect of a fee earner's suitability to do this work. Fee earners must also make sure they have carried out appropriate training to help maintain their ongoing competence.

Reassuringly, all but one individual was able to provide coherent and detailed training records.

Throughout our visits we highlighted the importance of our training requirements and reiterated our commitment to continued competence.

## **Quality of training**

We were unable to assess the quality of training received by each individual but noted generally that we found no issues on the files we reviewed and complaints were low.

## **Variety and frequency of training**

We were interested whether individuals had undertaken specific training in areas that we thought would help them do their day-to-day job. To help assess competence levels, we asked individuals who managed LPAs to confirm how often they had received training in the following areas:

### **Health and welfare**

- NHS free nursing care and continued health care funding
- Allocations of a care professional for lone individuals
- Capacity

### **Property and financial affairs**

- Social security benefits
- Public authority funds and charges for care
- Investments
- Savings and property
- Inheritance tax
- Trusts and wills
- Personal tax returns.

### **LPA and deputyship fundamentals**

- Family conflict
- Mediation
- The Mental Capacity Act
- The Care Act
- OPG
- Court of Protection.

We subsequently graded individuals by the number of topics they had covered and how recently the training had occurred. We found:

- 14 fee earners had received excellent training for example, a wide range of topics on a frequent basis
- four fee earners had received good training, for example a wide range of topics on an infrequent basis or a narrow range of topics on a frequent basis
- 11 fee earners had received reasonable training, for example a narrow range of training on an infrequent basis
- one fee earner had received a low amount of training.

This area requires a good understanding of a broad range of topics. Given the vulnerable individuals involved and the potentially devastating effects of poor outcomes, it is vital that firms make sure fee earners are trained

broadly, regularly and to a good standard. This will require individuals to reflect on the state of knowledge and evaluate their strengths and limitations in relation to the demands of their work.

Firms should also consider the role undertaken by fee earners and whether they have received the relevant training to provide a good standard of service.

We already provide guidance to assist firms and fee earners to [maintain their competence](#) ([/solicitors/resources-archived/continuing-competence/cpd/continuing-competence/](#)). The tools we offer help firms to promote and adhere to an evidence-based approach to training and competence which is founded on reflection, analysis and record keeping.

### Training plans

We also asked individuals about training plans. A training plan promotes proactive, scheduled, consideration of development and growth and was widely considered by fee earners to help support their continuing competence. Most individuals we met had a training plan available for review. In discussion, several fee earners who did not have a training plan said they would consider using one in future.

### Professional accreditation

In addition to our training requirements, some fee earners held professional accreditations which required ongoing training and associated record keeping:

- six interviewees were CILEX members and were required to keep records of their training. This information tended to be thorough and was produced in a uniform manner
- around a third of interviewees were required to record and prove ongoing training for the purpose of their STEP (<https://www.step.org/>) accreditation
- training and support were also offered via the [Solicitors for the Elderly](https://sfe.legal/) (<https://sfe.legal/>) group
- most deputies mentioned they were members of the Professional Deputyship Forum and found the support and training valuable.

Interviewees commonly thought membership of these groups aided both their understanding, skill set and resilience.

### Training summary

Fee earners are not required to undertake any additional accreditations or keep a specific training plan. However, unsurprisingly, these factors appeared to affect an individual's training grade:

- fee earners who had a training plan were more likely to have received excellent training
- fee earners who were members of STEP or solicitors for the elderly were more likely to have received excellent training
- fee earners who were not members of STEP or Solicitors for the Elderly and did not have a training plan received lower scores for their training
- the fee earner who had received no training was at the firm we subsequently referred to our investigation team for failure to monitor and produce financial documents.

### Checklist for firms

- Can you demonstrate that your fee earners actively maintain their competence to carry out their role?
- Is your supervision structure effective and appropriately documented?
- Are supervisors competent and accessible?
- Do you have proper supervision and training in place across appropriate areas to make sure managers and employees deliver services in a timely and competent manner?
- How do you review the work of third parties assisting the client?
- Have you considered the range of clients and work of your firm and what specific training and supervision it may require?
- Do you have a safeguarding policy and if so, do staff understand it and is it promoted?
- Can staff provide coherent and detailed training records?
- Have you considered using training plans to aid training, development, growth and to support continuing competence?
- Can fee earners undertake additional training to meet third party requirements such as CILEX or STEP to assist understanding, skillset and resilience?
- Are staff allocated work according to their skillset and experience, particularly those managing LPAs and deputyships?
- Can all fee earners demonstrate that they meet our continuing competence requirements?