

REMOVING ATTORNEYS AND DEPUTIES

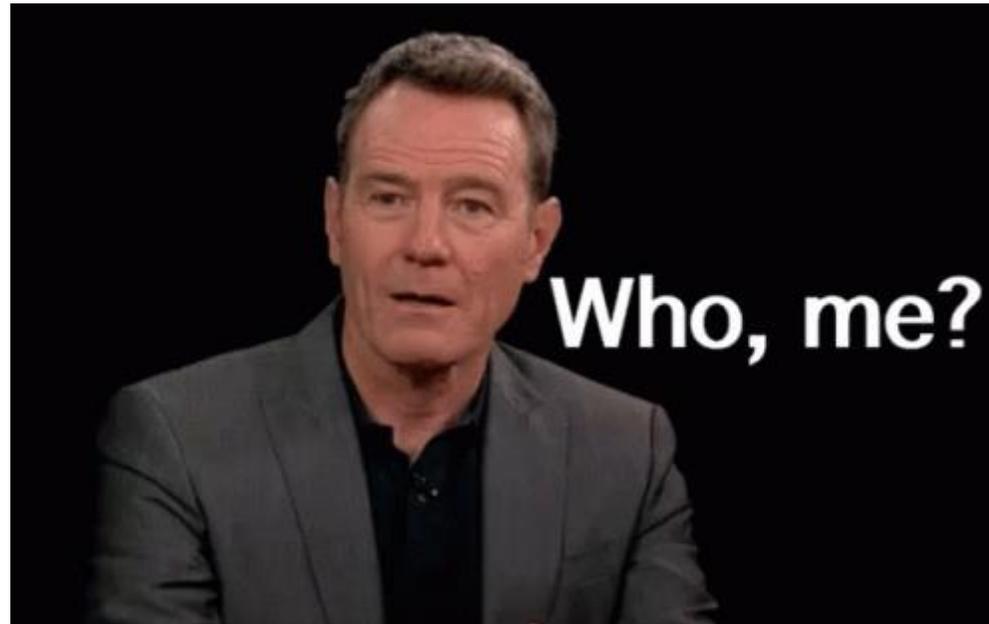
Edward Cumming QC
XXIV Old Buildings

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BARRISTERS' CHAMBERS

REMOVING ATTORNEYS AND DEPUTIES

Who makes the application?



Who makes referrals to the OPG?

38% - concerned relatives

24% - local authorities

9% - solicitors

9% - attorneys/deputies (usually about co-attorney/deputy)

20% - banks, doctors, advocates, carers and the police



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BARRISTERS' CHAMBERS



Office of the Public Guardian

Investigations in 2016/17:	1,199
Investigations in 2017/18:	1,871
Investigations in 2018/19	2,882



Office of the Public Guardian

3,906,416 registered LPAs, EPAs and deputyship orders (as of July 2019)

Investigations = 0.07% of all registered LPAs, EPAs and deputyships



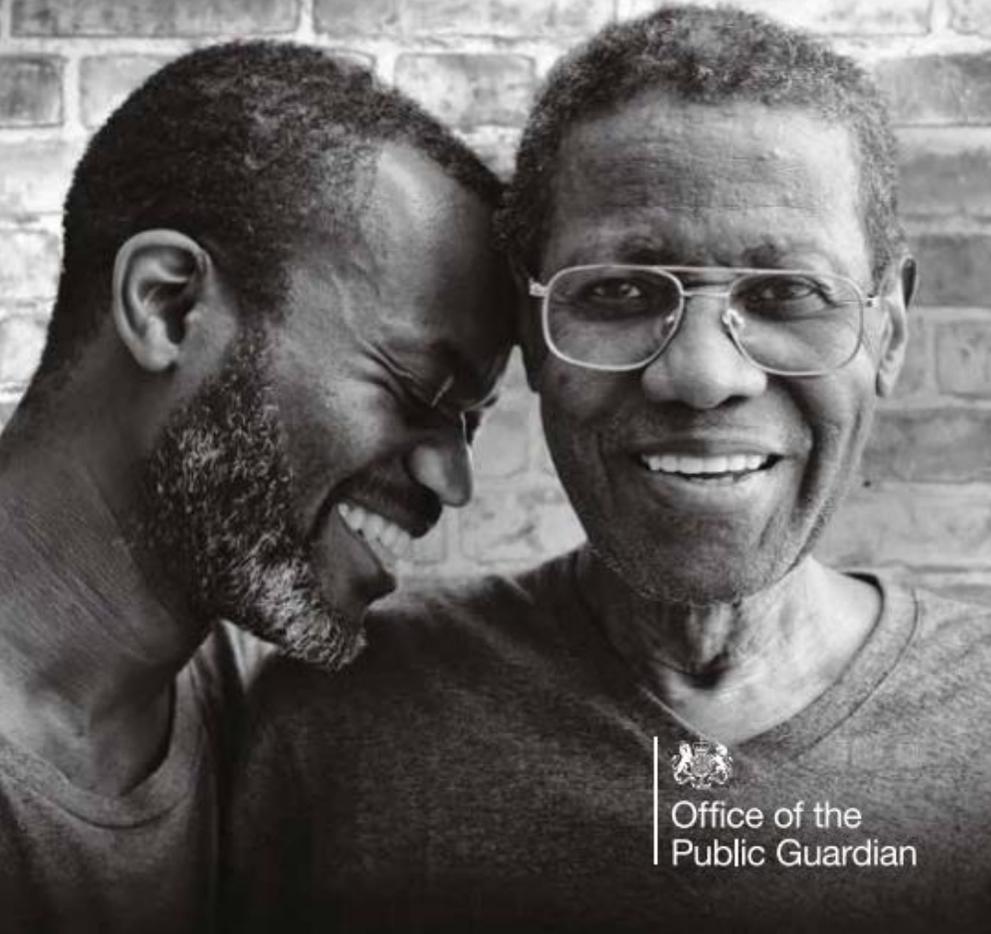
Office of the Public Guardian

High turnover of staff:



Lasting power of attorney

If you lose the power to make certain decisions,
a lasting power of attorney keeps those decisions
with the people you trust.



OPG media campaign, beginning March 2019

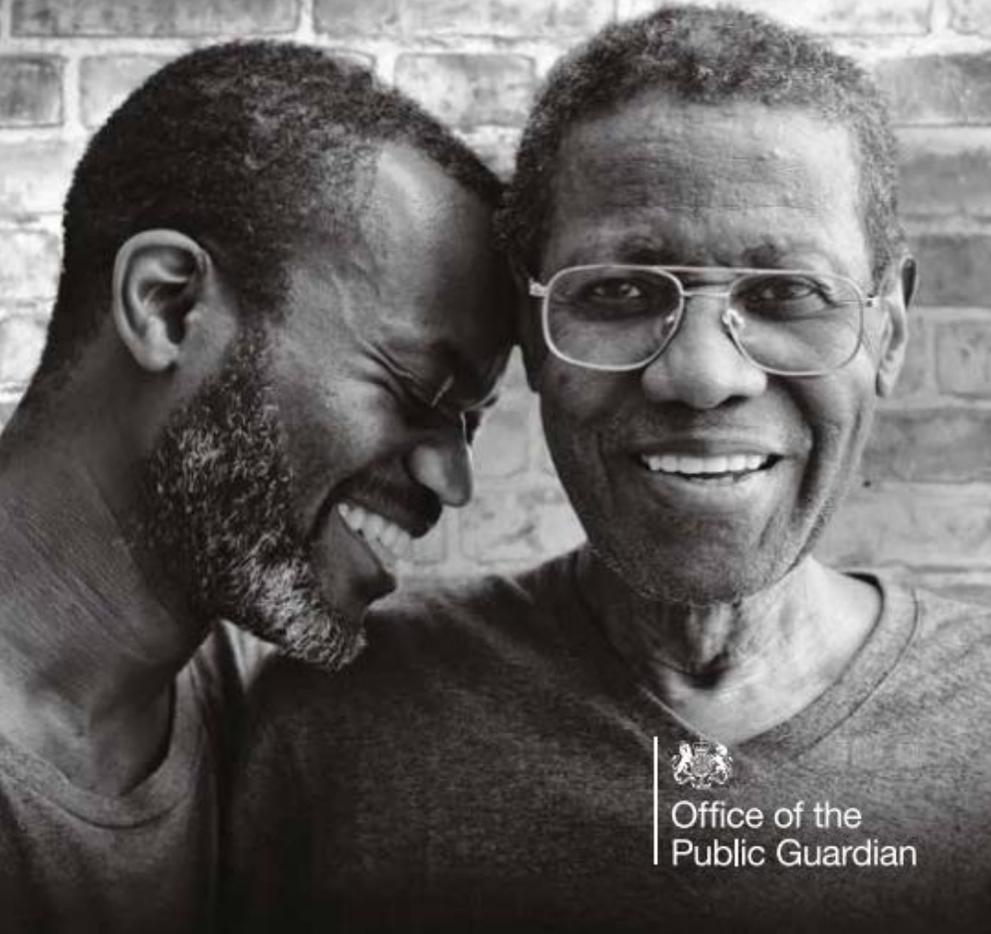
It refers to Health & Welfare LPAs and Property and Financial Affairs LPAS, and says:

***“We recommend you get both so
you’re covered for every eventuality.”***



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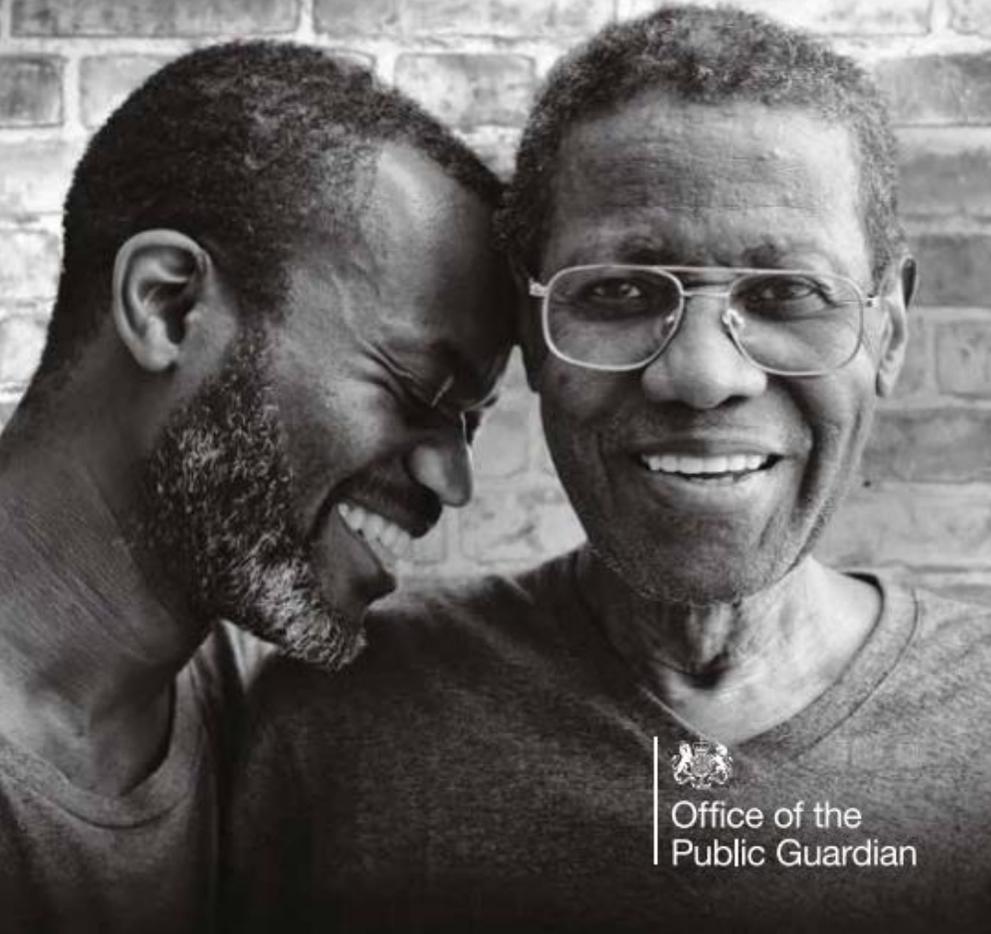
It also says:

“It’s easy to apply online – with help built in at every step. If you’re having difficulty or don’t have access to a computer, simply contact us and we can post the forms to you.”



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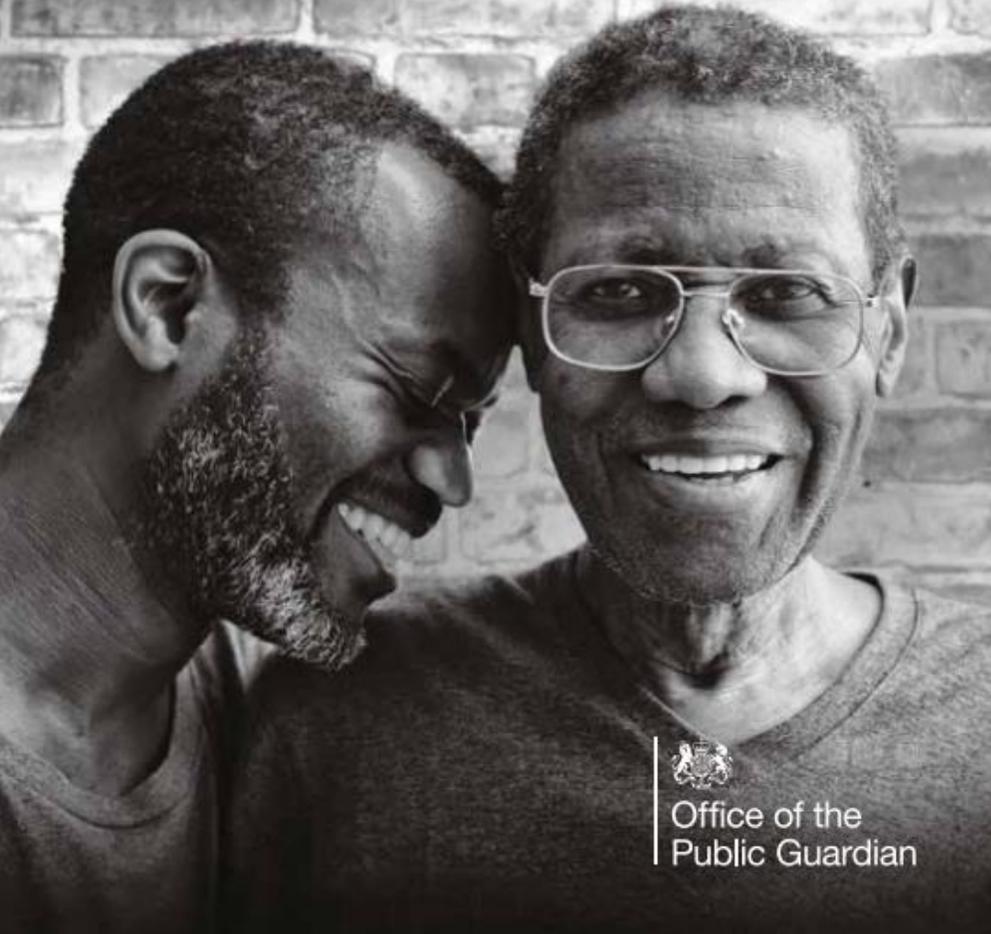
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“If things are straightforward, you don’t need to seek legal advice.”



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It also says:

“If things are straightforward, **you don’t need to seek legal advice.”**

“Registering a lasting power of attorney is probably easier and cheaper than you think.”



Re GM [2013] COPLR 290; Re Gladys Meek; Jones v Parkin & ors [2014] COPLR 535



REMOVING ATTORNEYS

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- If P does not have capacity to revoke, the CoP may revoke/refuse to register an LPA: s.22(4), MCA 2005
- **CoP may only step in where it is satisfied that the donee of the LPA has behaved / is behaving / proposes to behave in a way that:**
 - **contravenes his authority; or**
 - **is not in P's best interests**

REMOVING DEPUTIES

- The CoP has power to vary or discharge an order appointing a deputy at any time: s.16(7), MCA 2005
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REMOVING DEPUTIES

- Removal of deputies is relatively unusual
- Can be sought by any interested person, including P
- *BE v RC* [2011] EWHC 3805 approved guidelines in *Holt v The Protective Commissioner* (1993) NSWLR 227

THE COURT'S APPROACH TO REMOVAL

***Re Harcourt* [2013] COPLR 69**

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Public Guardian v JW [2014] EWCOP B24

Attorney, among other things, failed to pay care home fees & allowed debt of £77k to accumulate



THE COURT'S APPROACH TO REMOVAL

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SAD & ACD v SED [2017] EWCOP 3

Attorneys attempted to assert their authority vs donor's wishes



Advising on removal proceedings



Advising on removal proceedings

Removal is a serious step



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“Forward, not back”



Advising on removal proceedings

- **Is resort to court the best course?**
 - Is removal proportionate?
 - Can the desired outcome be achieved through correspondence or by enlisting the OPG?
 - Can breakdown in communications / disagreement as to P's best interests be resolved by an application to court for directions?
- **Tee things up in correspondence**
- **Evidence is crucial: what can be proved?**
- **Don't forget the role that P might (and should) play**

Advising on removal proceedings

- **Don't forget the threshold tests.**

- Does P have capacity?

Re N (unreported, 25 June 2019) DJ Marin

- Has an attorney contravened, or do they propose to contravene, their authority?

Check any restrictions or conditions in the LPA itself.

- Has an attorney acted other than in P's best interests?

NB. Conduct other than in capacity as attorney/deputy: see *Re J* [2011] Con Vol 716; and *Redbridge LBC v G (No.4)* [2014] EWCOP 17

- **Dig, dig, dig...**



Four common assertions in cases involving removal of attorney for unlawfully using the donor's money

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(2) 'They would have wanted me to have the money if only they had capacity'

(3) 'It will all be mine soon anyway, so what's the problem?'

(4) 'I deserve this, for the sacrifice I am making'

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WHAT QUESTIONS DO YOU HAVE?

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