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GENEALOGISTS AND INTERNATIONAL
PROBATE RESEARCHERS

 irwinmitchell

Webinar with Fraser and Fraser

Presented by

Ian Bond

Partner, Irwin Mitchell

Hosted by

Stuart Haydock

Business Development Manager, Fraser and Fraser

Fraser and Fraser

Our Services

- Location of Missing Beneficiaries
- Missing Beneficiary Insurance
- **Free** Family Tree Check
- Risk-free Administrator Search Service
- Overseas Bankruptcy Searches
- Medallion Signature Guarantee
- Flexible Fee Options (including time spent and fixed fee)



POWER OF
ATTORNEY

...ates attempt to be as accurate as possible. However,
...er content of this site is accurate, complete, reliable
...at as described, your sole remedy is to
...IMITATION

The Powers of Attorney Act 2023

All changes for LPAs

April 2024

Ian Bond

Partner, Irwin Mitchell



Ian Bond

Partner, Lifetime & Estate Planning

Role of Certificate Providers

- TA v Public Guardian [2023] EWCOP 63 has confirmed the responsibilities of a certificate provider.
<https://www.bailii.org/ew/cases/EWCOP/2023/63.html>
- Paragraph 2(1)(e) explicitly requires a certificate to have an opinion on three specific matters:
 - (a) that the donor understands the purpose of the instrument and the scope of the authority conferred under it,
 - (b) no fraud or undue pressure is being used to induce the donor to create a LPA, and
 - (c) there is nothing else that would prevent a LPA from being created by the instrument.
- A valid certificate must therefore be based on an opinion about these matters. If the evidence demonstrates that the certificate provider did not have such an opinion the certificate would not be valid.
- Certificate provider guidance to help CP to reach an informed opinion.

SRA Thematic Review – LPA

<https://www.sra.org.uk/sra/research-publications/lasting-powers-of-attorney-deputyships-review/>



Solicitors **Regulation** Authority

Get it right

www.lawgazette.co.uk/news/solicitor-who-cut-corners-on-witness-signatures-is-struck-off/5118971.article

“Solicitor who cut corners on witness signatures is struck off”

- Krystal Marzen – Solicitor qualified 2014
- Both types LPAs for client signed & registered – August 2015;
- Amended to add attorney July 2016;
- OPG investigation February 2021, reported Marzan to SRA.

SDT found Marzan “asked the donor to sign several copies so that she had spares in case of any errors” in a “thought-out process of corner cutting”

OPG engaging with the public

OPG Blogs

<https://publicguardian.blog.gov.uk/>

YouTube Channel

www.youtube.com/channel/UCszB48-ORpumfA4Cgbzfg2A

X (formerly known as Twitter)

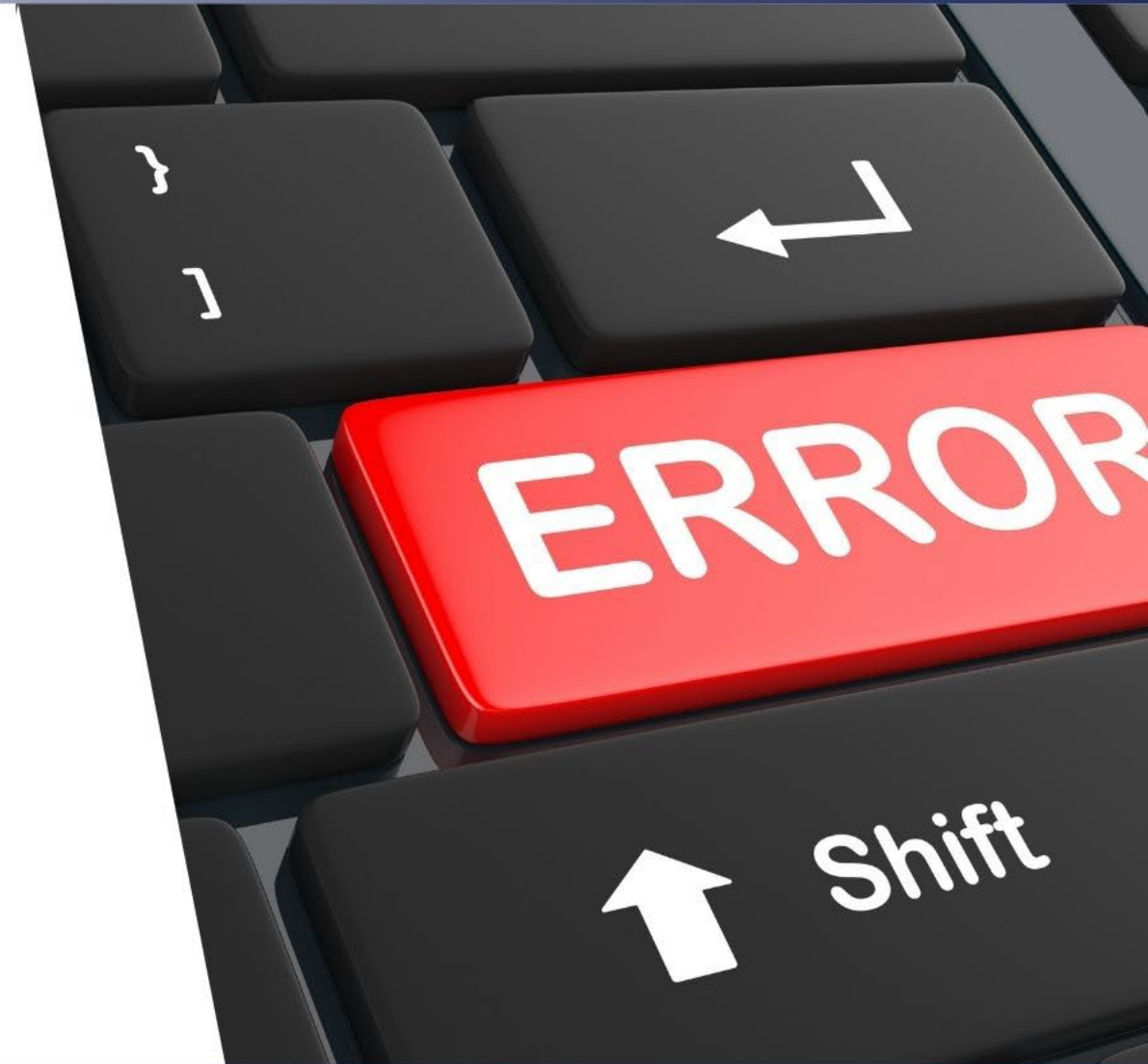
@OPGGovUK

Blog topics include:

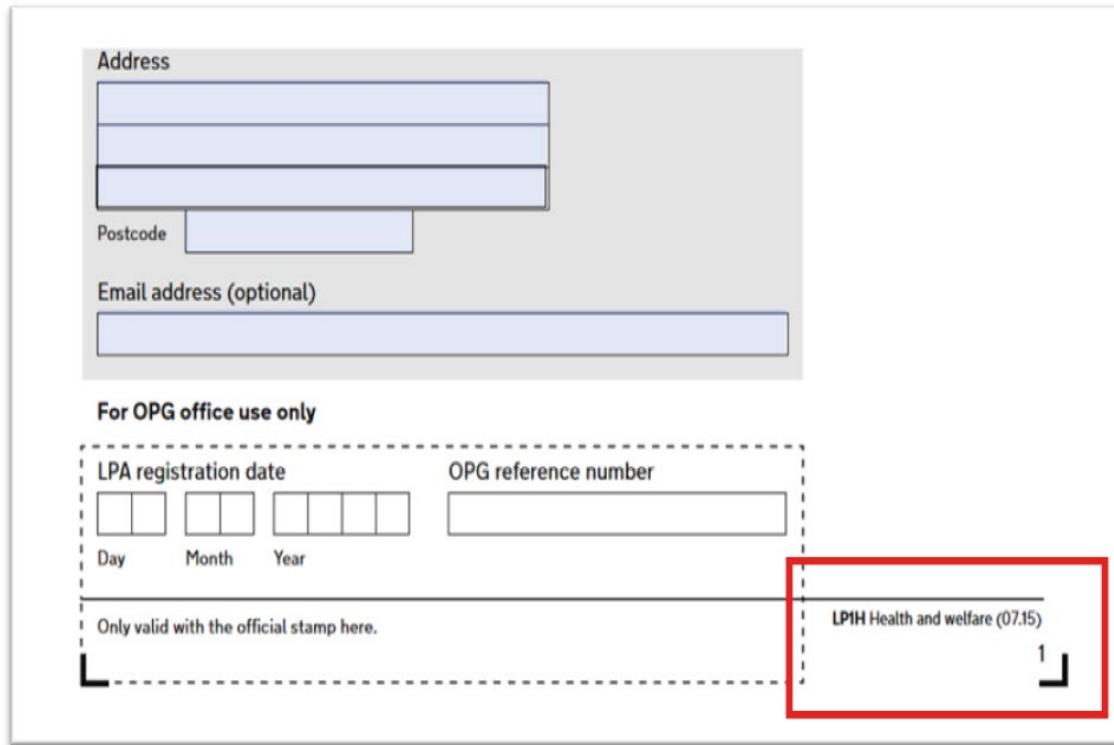
- Making changes to your LPA
- Using your LPA
- Completing forms
- Witnessing and certificate providers
- How to have conversations about LPAs
- Individuals' stories creating LPA

Avoiding drafting errors on LPAs

- Avoiding errors when completing a lasting power of attorney form
- (5th October 2023)
- www.gov.uk/government/publications/avoiding-errors-when-completing-a-lasting-power-of-attorney-form/avoiding-errors-when-completing-a-lasting-power-of-attorney-form



Using the correct form for your LPA



Address

Postcode

Email address (optional)

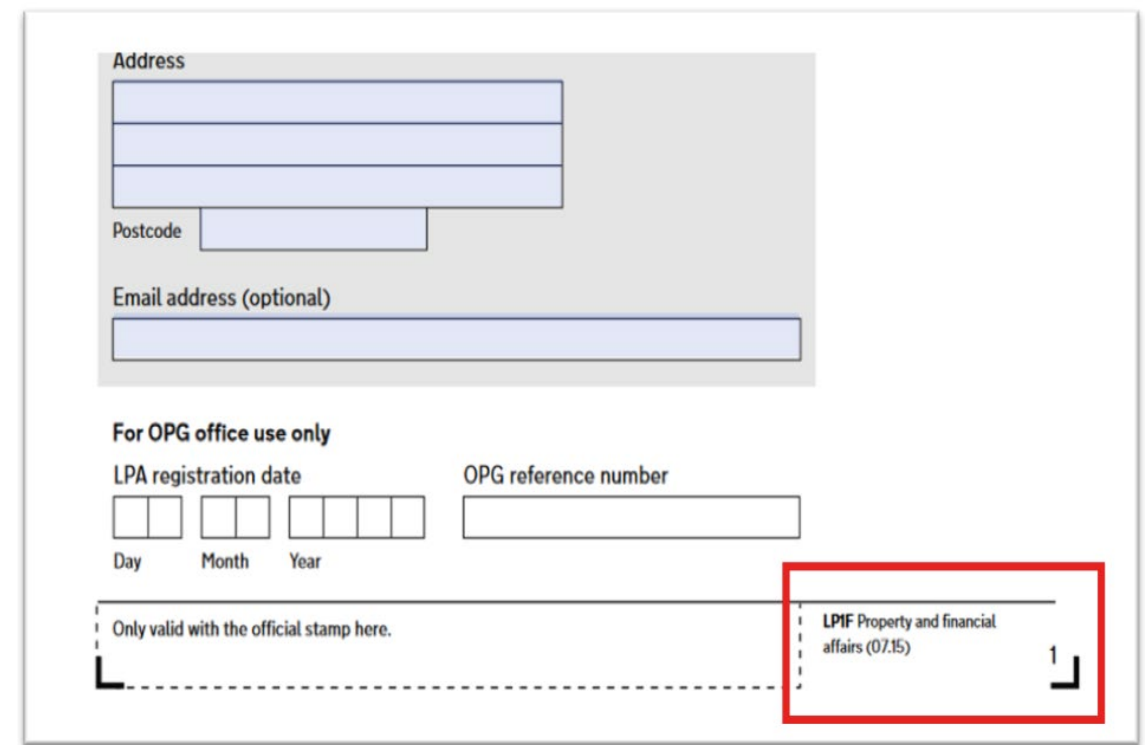
For OPG office use only

LPA registration date: Day, Month, Year

OPG reference number

Only valid with the official stamp here.

LPIH Health and welfare (07.15)



Address

Postcode

Email address (optional)

For OPG office use only

LPA registration date: Day, Month, Year

OPG reference number

Only valid with the official stamp here.

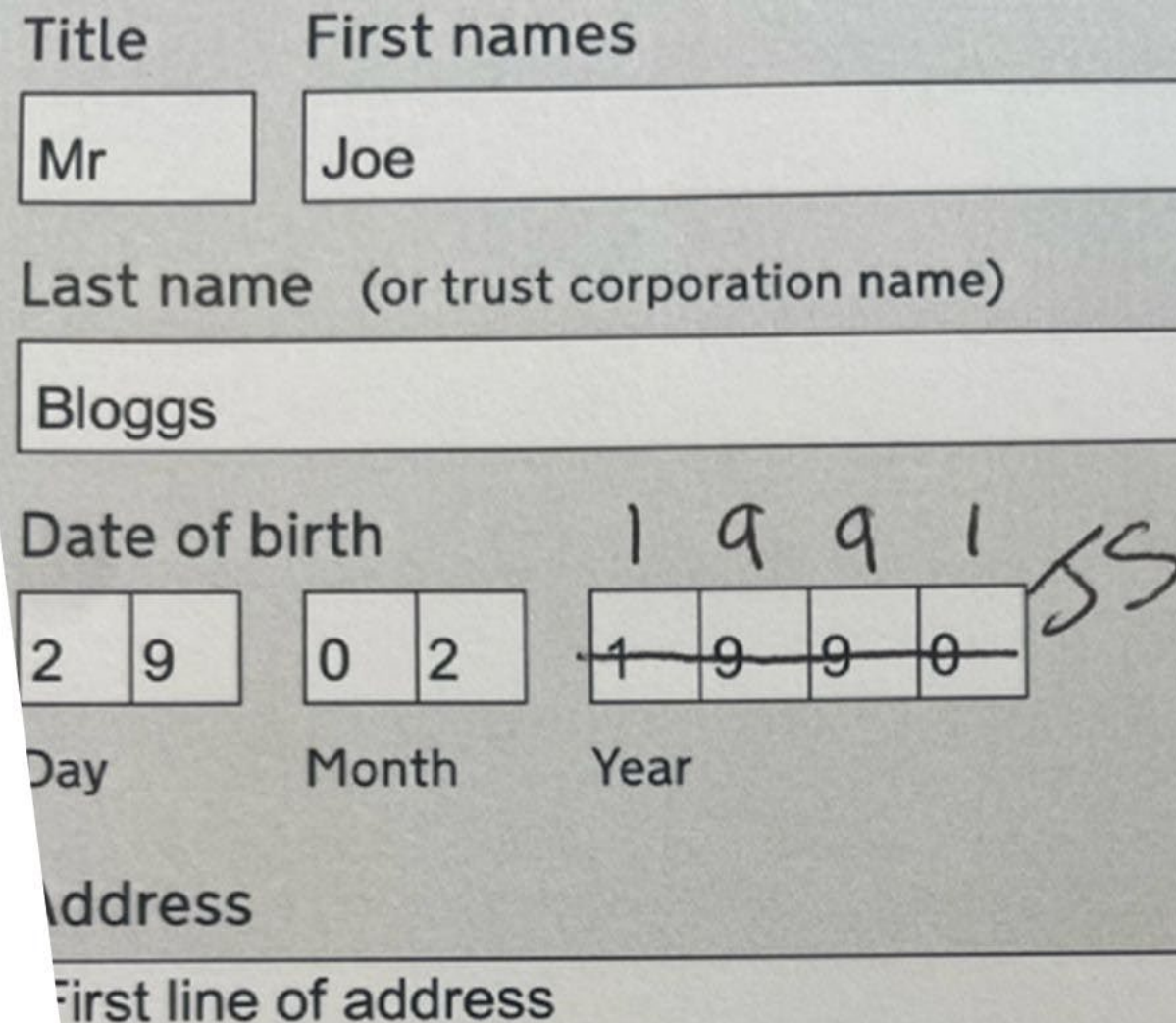
LPIF Property and financial affairs (07.15)

Making corrections to your LPA

If including the wrong date of birth for the attorney on section 2, the donor should:

- Put a line through the wrong date
- Write the correct date next to it
- Write their initials next to the correction

In the example, 'Mr Joe Bloggs' is the attorney, and 'Mr John Smith' is the donor.



Title: Mr

First names: Joe

Last name (or trust corporation name): Bloggs

Date of birth:

2	9	0	2	1	9	9	0
Day		Month		Year			

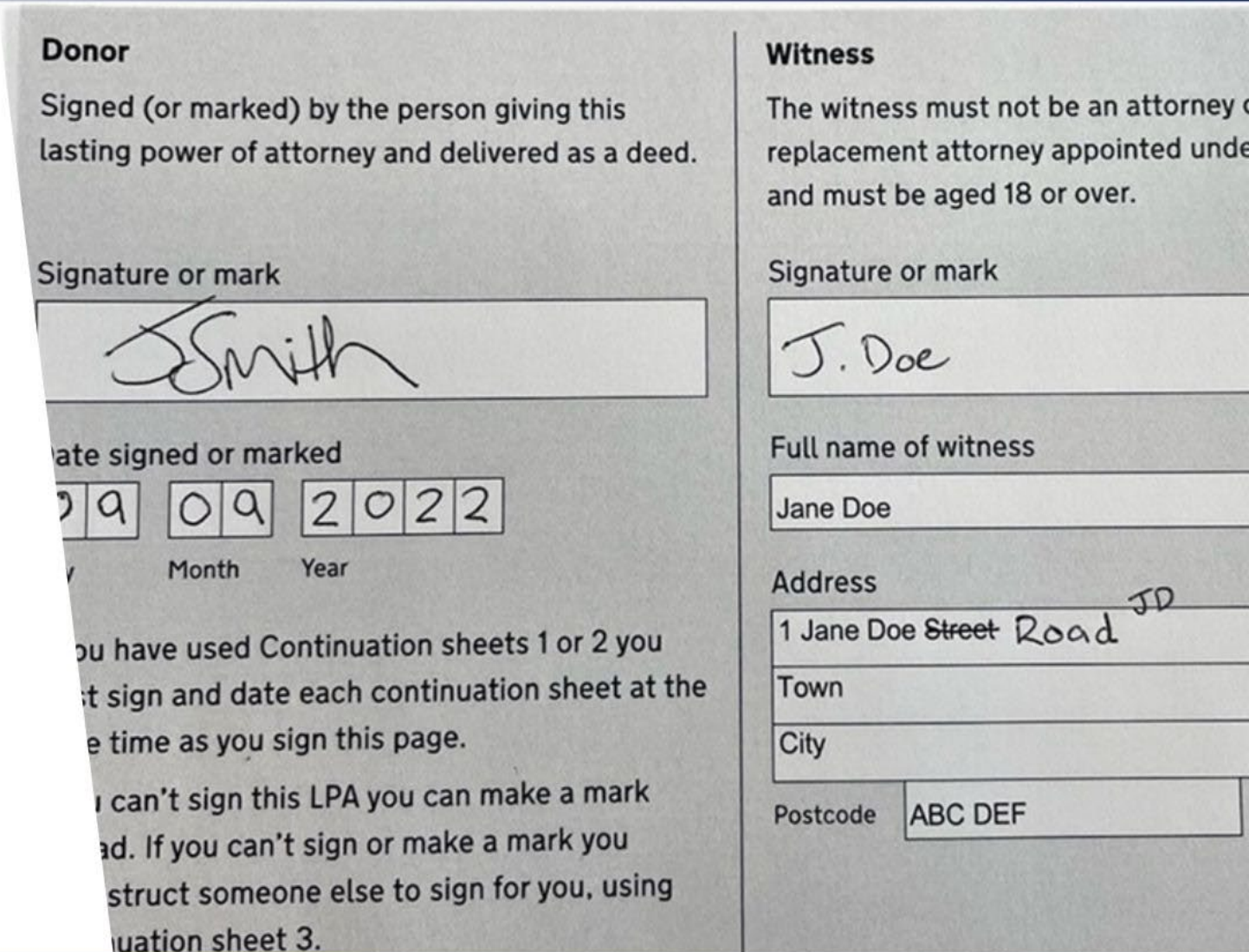
1 9 9 1 JS

Address: First line of address

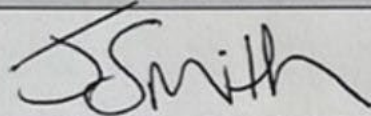
Making corrections to your LPA

If the witness has put the wrong address on section 9, the witness should:

- Put a line through the wrong address
- Write the correct address next to it
- Write their initials next to the correction



Donor
Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed.

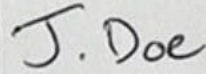
Signature or mark


Date signed or marked
09 09 2022
Month Year

If you have used Continuation sheets 1 or 2 you must sign and date each continuation sheet at the same time as you sign this page.

If you can't sign this LPA you can make a mark instead. If you can't sign or make a mark you must instruct someone else to sign for you, using continuation sheet 3.

Witness
The witness must not be an attorney or a replacement attorney appointed under the Act and must be aged 18 or over.

Signature or mark


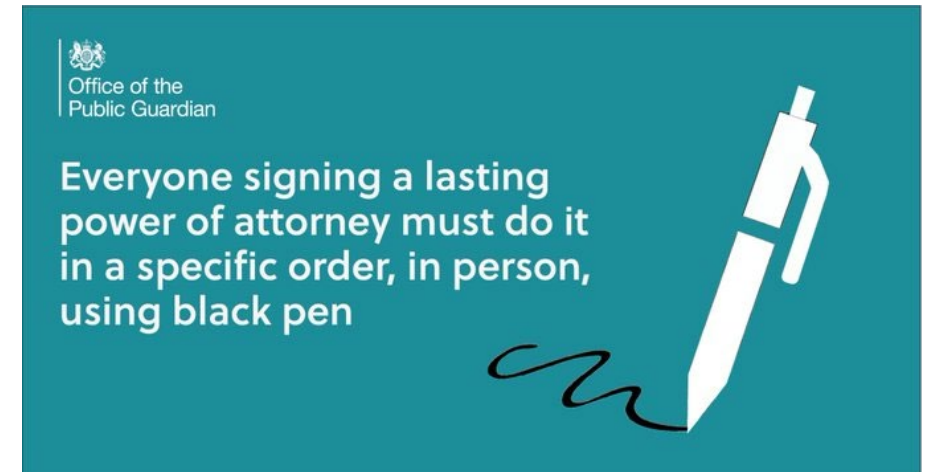
Full name of witness
Jane Doe

Address
1 Jane Doe ~~Street~~ Road ^{JD}

Town
City
Postcode ABC DEF

A final check

- All pages 1 to 20 are present (do not staple, fix or bind the LPA together in any way)
- The LPA page type (LP1F/LP1H) is the same throughout
- Check there are no printing errors
- You have chosen either option A or option B on section 5 (health and welfare only)
- The sections are signed and dated in the correct order
- The details of the Donor and Attorney are all correct
- Each witness has stated their full name on all sections
- A black or blue pen has been used throughout. Pencil is not allowed.
- Handwriting is clear and easy to read
- There is no correction fluid or stickers on the LPA
- Any corrections have been initialled by the correct person



Modernising Lasting Power of Attorney

The Ministry of Justice and OPG are working to modernise LPAs. The aims of this work are to:

- Increase safeguards, especially for the donor
- Improve the process of making and registering an LPA for donors, attorneys and third parties
- Achieve sustainability for OPG whilst keeping LPAs as affordable as possible for all people in society
- Creating a modern LPA service will require changes to the Mental Capacity Act 2005

Powers of Attorney Act 2023

<https://bills.parliament.uk/bills/3210>

- Royal assent on 18 September 2023
- Makes changes to the Mental Capacity Act 2005
- Does not change underpinning idea
- Secondary legislation to amend the regulations which govern LPAs and the process OPG uses to register them

Modernising Lasting Power of Attorney

- The drivers for reform
- Aging population
- Covid Delays
- Increased demand for LPA (6,850,834 current LPAs & EPAs on register)
- Complaints
- Increase in digital uptake
- Errors

<https://www.gov.uk/government/publications/office-of-the-public-guardian-annual-report-2022-to-2023/opg-annual-report-and-accounts-2022-to-2023>

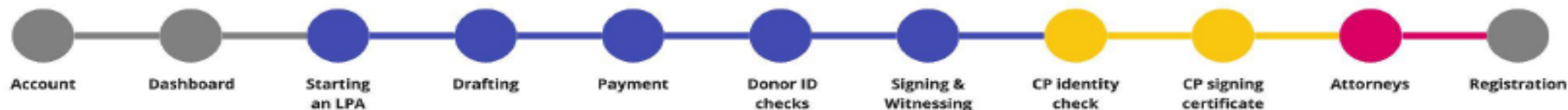
(September 2023)



Modernising Lasting Power of Attorney

Modernisation of the process for making and registering LPA

- ID
- Notification
- Registration
- Objections
- Evidence of Registration / Certification (CiLEX)
- Online – speed up processing times / reduce errors
- Paper – option remains – will be improved

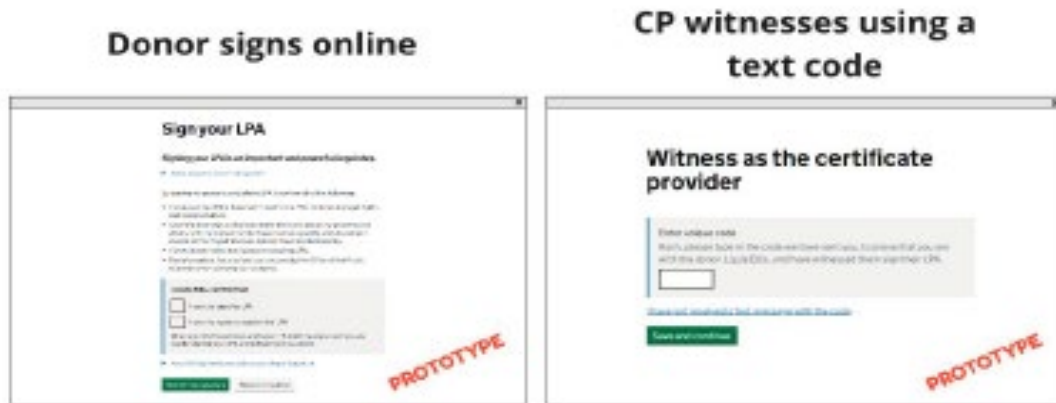


Modernising Lasting Power of Attorney

Modernisation of the process for making and registering LPA

Role of Certificate Providers – confirms understanding not that donor has mental capacity

Donor signs & CP signs as witness on paper



Modernising Lasting Power of Attorney

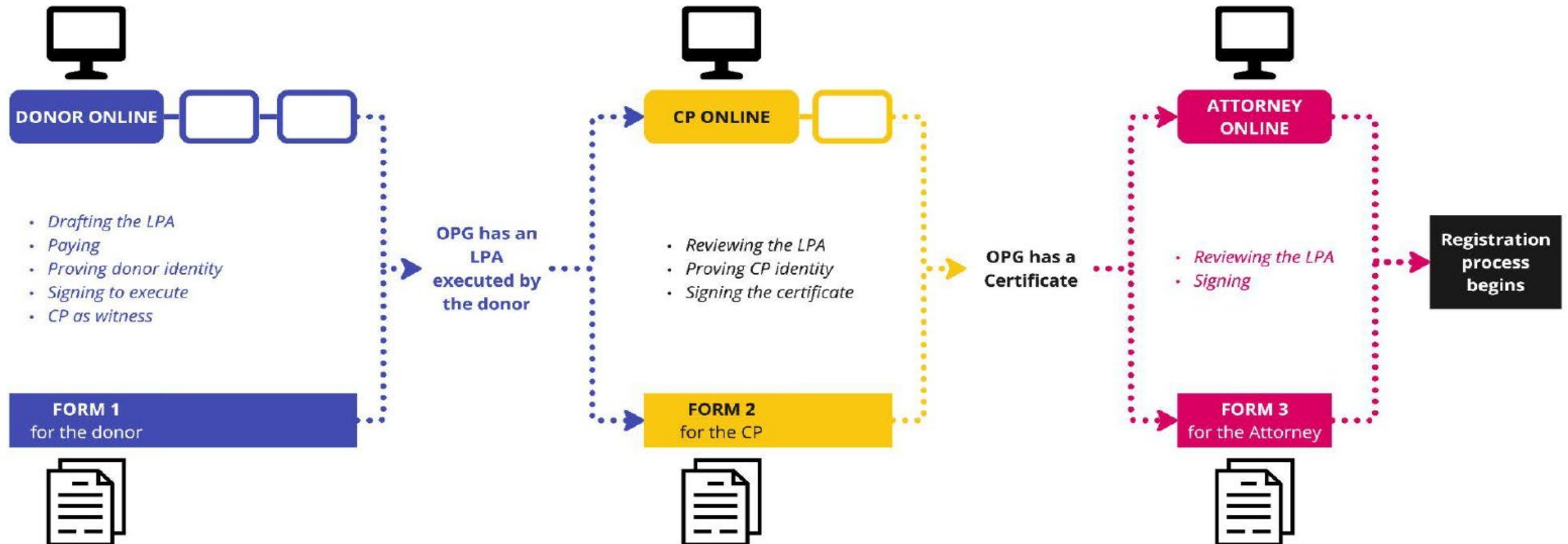
- Modernisation of the process for making and registering LPA
- People will be able to make an LPA completely online for the first time – no wet ink
- The current paper-based system will continue to operate meaning people can choose an accessible process that's best for their specific needs.

Note one form but a 3-stage process:

1. Completed by Donor
2. Completed by CP
3. Completed by Attorney

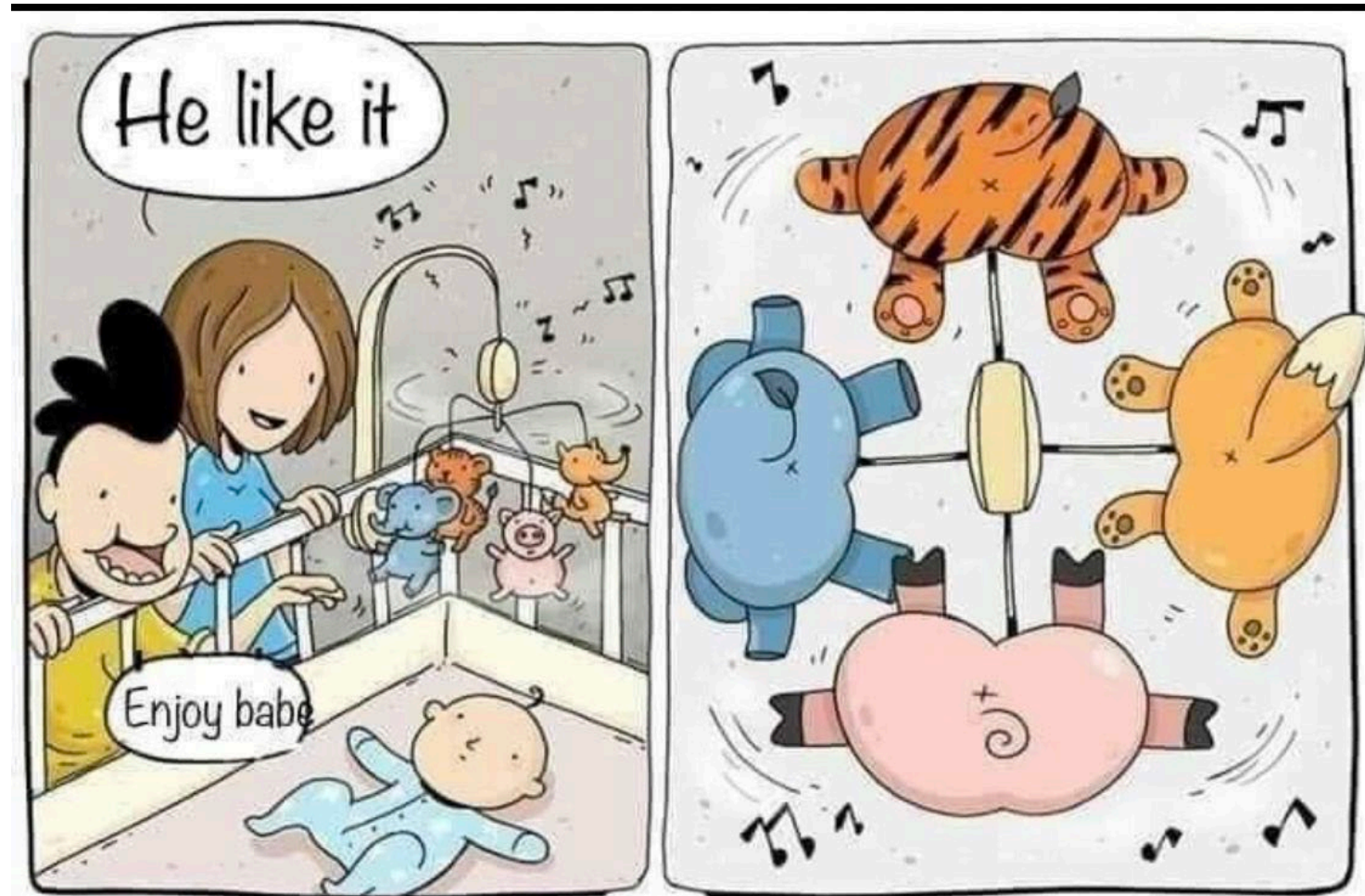


Modernising Lasting Power of Attorney



Co-design

Fluid Services



Questions?





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