

# Clarifications On Lasting Power Of Attorneys

## Question

**Asst Prof Mahdev Mohan**

**Nominated Member of Parliament**

To ask the Minister for Social and Family Development to date, how many Lasting Power of Attorneys (LPAs) or similar instruments have been revoked due to fraud or undue pressure being used to induce the donor to enter into them and due to the donee behaving in a way that contravenes his authority or in a manner not in the donor's best interests.

To ask the Minister for Social and Family Development since the last amendments to the Mental Capacity Act came into effect in 2016 (a) how many orders of suspension have been made where there is a risk of dissipation of the donor's property; and (b) how many errant donees, deputies or prescribed certificate issuers have been dealt with by the courts or the Office of the Public Guardian.

To ask the Minister for Social and Family Development (a) what are the safeguards to ensure that a certificate issuer verifies that the donor understands the purpose of the Lasting Power of Attorney or a similar instrument and the scope of the authority conferred under it; (b) whether the Ministry will add further safeguards against abuse by donees or deputies; and (c) whether pro bono legal advice will be afforded to donors in the absence of a professional donee or deputy.

## Answer

Since its inception, the Office of the Public Guardian ("OPG") has processed around 1,000 Lasting Power of Attorney ("LPA") revocations as at end January 2017. This

represents approximately 4% of the LPAs accepted as at end January 2017. The overwhelming majority (98%) of all revocations are due to death of the donor or donee; or because the donor decided to make a new LPA.

Section 17(3) of the Mental Capacity Act ("MCA") allows for the Court to make a determination on an LPA if the Court is satisfied that fraud or undue pressure was used to induce the donor into making an LPA. To date, the Court has not revoked any LPAs under this clause.

To better protect those without capacity, the Ministry introduced a new section (S36A) of the MCA in March 2016. Now the Public Guardian can go to Court and apply for a suspension order to preserve the donor's assets where there is clear evidence that a donee or deputy has acted in a way which compromises the interests of the donor and there is no one else to protect him.

Once the Court makes the suspension order, OPG will annotate on the original LPA that the LPA is suspended. This information is uploaded on its website so that third parties can check and not proceed with any transactions. The appointed donees and deputies would no longer be able to make decisions and act on behalf of the donor for the time period as stipulated in the Court order.

Since the amendments came into effect, the Public Guardian has acted in 2 cases. She has applied to Court in one case to suspend a donee's powers and revoke the LPA. She has also filed an application to revoke the powers of a deputy. As both cases are still pending in Court, we are unable to provide more details of the cases.

An LPA certificate issuer is required to sign on the LPA certificate to state that he had seen the donor and is of the opinion that the donor understands the purpose of the LPA and the scope of the authority conferred under it. He has to satisfy himself that no fraud or undue pressure was used to induce the donor to make the LPA and there is nothing else that would prevent the LPA from being created.

Due to the crucial safeguarding role played by an LPA certificate issuer, the OPG has engaged the Law Society, the Singapore Medical Association and the Singapore Psychiatric Association so that their members understand the roles and responsibilities of a certificate issuer. For doctors who are not specialists in psychiatry, they are also required to undergo an online course administered by the Singapore Medical Association before they can be accredited by the Public Guardian.

OPG takes a serious view of breaches made by certificate issuers and will not hesitate to bring them to Court or report them to their professional bodies if they breach their professional duties. To date, OPG has reported one case of professional misconduct of two lawyers to the Law Society, for their investigation. The original LPA application signed by a first lawyer was rejected because of her relationship to the donee. She then asked a second lawyer to sign off on the LPA as the certificate issuer, which he did without meeting the donor. After the OPG report, the Law Society started disciplinary proceedings against the lawyers involved in this one case. The matter was determined to be serious enough to be referred to the Court of 3 Judges. The Court found that both lawyers had acted improperly and suspended the first lawyer from practice for 2.5 years. The second lawyer was suspended for 1 year. These lawyers can no longer practice law during the periods of suspension.

The MCA has also a 'whistle-blower' clause to protect the identity of a whistle-blower in a report of ill-treatment of a person who lacks mental capacity. Thus, anyone who knows, suspects or believes that a person who lacks capacity is not properly looked after and/or needs care or protection can report this to the OPG. The same whistle blowing measure applies for deputies who have been appointed by the Court. In addition, deputies have to submit an annual report containing information on major decisions made by the deputy in the past year, for the Public Guardian's review. If there are areas of concern highlighted through a report, the Public Guardian will take the appropriate action to safeguard the person's well-being.

These few cases form a very small proportion of the thousands of LPAs made,

accounting for only about 0.003% of all LPAs submitted. The vast majority of all certificate issuers act diligently and honestly in carrying out their professional duties. We also need to balance against having excessive safeguards measures which makes the LPA less accessible to many Singaporeans. This is why we encourage donors to choose their donee wisely, and to inform their families and loved ones of their decision.

My Ministry also understands that there are costs involved in the making of an LPA. In order to encourage more Singaporeans to make an LPA, the application fee waiver for Singaporeans putting in place a basic LPA has been extended till 31 August 2018. While there is still a professional fee involved to engage a certificate issuer to act as a witness to the donor's statement in the LPA and issue the required LPA Certificate, there is also a social service agency, Lifepoint, which offers help to senior citizens. They organise LPA sessions and work with lawyers to help the elderly get their Forms certified at a lower cost. The OPG website also identifies a list of accredited medical practitioners who are the most active and may offer applicants a more competitive rate for most of the cases they see.

Families in financial difficulty can also seek legal assistance from the Legal Aid Bureau under the Ministry of Law to file the deputyship application. Applicants will have to go through a Means Test and Merits Test to qualify for legal aid.

When choosing to make an LPA, it is important that the donor appoints someone he trusts, and whom he knows can make the best decisions on his behalf in future if he should become vulnerable one day.