

PE2061/L: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Academy of Medical Royal Colleges and Faculties in Scotland written submission, 13 December 2024

I am the new Chair of the Scottish Academy of Medical Royal Colleges. We canvassed views when we received your request and then discussed the matter at our meeting on 11 December.

Overall we would support the petition but would note the following:

- a) Doctors in secondary care do feel there is variation in practice by lawyers when working with clients who are hospital in-patients. Some lawyers visiting hospital wards involve medical teams to support capacity assessment, others do not. This inconsistency would ideally be addressed.
- b) Doctors in primary care are also aware of inconsistency in practice at present but have concerns that a process that always requires a medical assessment may prove burdensome, time consuming and potentially more expensive for the person.
- c) Assessment of capacity can be challenging, need not be undertaken by **medically** qualified individuals, but should always be undertaken by individuals trained and qualified to assess it. We were unsure of the process of training in capacity assessment for legal professionals.
- d) Requiring every client to have their legal documents co-signed by a relevant professional who may not know them at all, would potentially be paternalistic, time consuming (and urgency is not unknown in these situations) costly, and an additional chore (paid or otherwise) for hard-pressed doctors and others. The mischief the petition seeks to deal with, should be quite clearly defined and restricted at a minimum to situations where the client is clearly vulnerable, frail, and debilitated and that will still leave grey areas for debate.

Despite these reservations, on balance, and largely on the basis of the view that a more consistent approach would be advisable, we would support the petition at this time.