

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

Petitioner written submission, 13 February 2025

I would like to offer the following comments on submissions received on my petition.

Office of the Public Guardian submission of 4 December 2024

There are a couple of points arising from this submission that I would like to address.

While the Adults with Incapacity (Scotland) Act 2000 provides the current framework guidance it was subject to a review in 2024, with [the Adults with Incapacity Amendment Act consultation analysis published on 27 January 2025](#).

Within the findings of the review questions 14 to 20 were related to power of attorney documents, and in all questions the majority agreed there needed to be relevant changes to how power of attorney documents are obtained and by whom, including regulation. Questions 22 to 35 related to finance and the issue of financial abuse. Financial abuse is on the rise in Scotland according to the charity Hourglass. Financial abuse does not solely comprise of stealing money, but it also includes circumstances where vulnerable people find themselves signing legal documents that give control over their properties, insurance policies, and even their businesses to unscrupulous individuals.

The consultation analysis of the proposed Amendment Act also showed 67% of consultees believe that further mandatory attorney training is needed. These proposed amendments show that the current Act is outdated and needs reformed, therefore the current Act should not be seen as an acceptable framework to safeguard individuals, it's the bare minimum we have to offer. Something more robust is urgently required.

The other point was to clarify the term 'vulnerable'. I regard the term as meaning a person in need of support, care or protection because of age, disability, frailty, or illness whether that's long term or temporary although it could be easily defined in the implementation of this change.

I am encouraged that the Office of the Public Guardian does support us overall stating that

“... if any policy changes were proposed, we would be content to work with policy colleagues and other stakeholders to ensure effective implementation.”

Scottish Legal Complaints Commission submission of 9 December 2024

I appreciate that these figures may not be accurate or complete as stated, given the nature of complex complaints and recording of same but it does show an interesting glimpse into potential complaints against solicitors.

It is worth noting that complaints in general have been steadily rising in number over the last five years.

The data provided shows that on average only a third of complaints specifically to do with a solicitor's assessment of capacity get past the first hurdle to go on to the Law Society's investigation stage and almost half (43.3%) are dropped in some way: settled / withdrawn / not taken forward.

There is no figure for settlements so potentially almost half are not able to go forward with their complaint. Of the complaints taken forward to the final stages only 10% have an outcome and only 2 in the last five years were upheld. This shows how difficult the process is to complete when the organisation paid to protect its members is the one regulating them and asked to investigate these complaints.

Law Society of Scotland submission of 9 December 2024

The Law Society information about the Client Protection Fund shows that only 47 people applied for the fund in the last five years.

The SLCC in their submission show that there have been 5915 complaints in this time although not everyone suffers financial loss because of solicitors or their staff, this is a very low number at 0.7%. Out of this staggeringly low number only 14 have been paid, which equates to 0.2 % of all complaints, and only 29.7 % of the people who applied.

This fund is not accessible to most due to its terms and conditions and many don't know it exists which is what these figures show.

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

I agree with this submission relating to some of the concerns I have addressed previously but these are all possible to solve, and I'm encouraged to read they support our petition.