

## Petitioner submission of 11 December 2023

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

Although grateful for the condolences for our situation expressed by the Scottish Government in their response, I wish to point out that we are not an isolated case and each day we hear in different ways how our changes outlined in petition number PE2061, also known publicly as "Willie's law", could have helped someone. I have no doubt that the changes are necessary and appropriate.

The Law Society of Scotland rules are not sufficient to deter less-discerning solicitors from taking actions they shouldn't or from stopping lazy ones from doing proper checks. The Law Society complaints procedure is an isolating and distressing process lasting years for victims to go through. The solicitors are still in a more privileged position given their knowledge of the law which many can't afford to access and rarely given more than a fine if found guilty. Many people don't feel equipped for such an undertaking and the maximum fine is less than a week's work for most solicitors, hardly reflective of the years of trauma any victim must go through to succeed.

Seeing capacity as solely a legal issue as stated in the Scottish Government submission is where the problems occur. Capacity is also used medically, there is a definition of capacity on the NHS website. Given a solicitor will only meet their client a handful of times during their lifetime and medical professionals will meet with their patients on a regular basis, it stands to reason that the medical staff are likely to see issues in a vulnerable person's capacity long before a solicitor would, as they have a baseline to judge. Many people in mental health crisis, or in a diminished capacity state such as early dementia, or medications can appear to a stranger as having capacity whereas to a relative or medical professional they would understand they are not presenting as normal for them.

It is best practice for a solicitor to obtain a medical opinion if there are doubts but "best practice" is not a legal requirement even if there are doubts about someone's capacity. There is no actual consequence for a

solicitor if they don't. The solicitor's legal responsibilities can all be circumvented especially if they state they felt they were acting in their client's interest and even if they weren't, where are the consequences? In our case there were 5 separate counts of misconduct agreed upon between the Law Society solicitor and the solicitor we brought the complaint against, and he still only got a token fine as that is the maximum they can impose.

The additional safeguard of the Client Protection Fund or insurance assumes that the lay person would know of its existence and then have the means to claim. Neither are a safeguard for most victims, but a means through which solicitors can avoid any severe consequences.

The golden rule is indeed best practice in England and although it doesn't necessarily go far enough to ensure all vulnerable people are protected as it should and can be flouted. It does, however, take into account frail, elderly and people who have recently suffered from illness which our best practice rules don't specifically deal with. This is a wide section of people who are truly the most vulnerable and who should be protected. The golden rule was brought up as a defence in our Law Society case specifically stating that since we don't have it in Scotland the solicitor could not be held to its standards. This was an acceptable defence and clearly shows the golden rule is a more robust and inclusive system even if it is not legally binding in all cases it is strong enough to be used as a defence.

These changes are not just to protect the vulnerable, they have far-reaching effects. It would help solicitors to have their clients' wishes respected and for them to be challenged less. It allows a vulnerable person's decisions to be supported and for their voice to be heard. It also lets medical professionals advocate for their patients, avoiding harmful effects to a person's mental health which can have dire consequences.

The Government have acknowledged that there are potentially long-standing gaps in the law, and that there needs to be changes to ensure stronger rights, protections, and safeguards are put in place. There are mental health reforms underway with the aim of addressing gaps in advocacy, along with how to support decision-making of vulnerable people. The changes this petition proposes will do this, along with supporting carers who make legal decisions for the person they care for.

Society is judged on how we treat the most vulnerable not how we protect the most privileged. Changing the law to reflect this is, in my view, necessary and appropriate.