

Petitioner submission of 29 March 2024

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

I write in response to the [Law Society submission of 26 February 2024](#).

Accessing solicitors at end of life or within a crisis situation can be positive if rights and wishes are upheld but not for those with vulnerabilities that can cause confusion, anxiety and limited mental health capacity. Individuals may appear fine to non-medical professionals like solicitors in the limited window they see them. Medical experts see the subtle changes and can spot capacity issues. Those making changes at the end of life are in the constant care of medical staff, making access easier.

Certificates for individuals under the Adults with Incapacity (Scotland) Act is important for nursing facilities and treatments. Without these documents families wouldn't be able to get loved ones in nursing homes or the treatment they need. Delays occur but it's just as likely it could be caused by solicitors and the court. My petition would ensure medical and legal sides work together so that people are not shoved from one side to another but looked after by both parties. Keeping the rights and care of that individual at the heart of the situation.

The Law Society have investigated cases where current safeguards and processes have failed to protect vulnerable clients. Families require clarity and reassurance that processes are in place to protect clients when they are most vulnerable. This petition will ensure added protections are in place and processes are more effective.

Documents could be voided due to error or fraud just as a document with multiple partner signatures or business can be voided if there is an issue. The medical professional is not signing the documents as a partner to that document, but would be ensuring that the vulnerable person has had a capacity assessment and can make decisions and understand the consequences of what is being asked of them. My petition would give the individual a chance to pause and reflect while creating a safeguard against controlling behaviour, alerting those around them to a potential situation.

The client protection fund is not a solution to stop vulnerable people being taken advantage of, in fact it could be used as an excuse for bad behaviour. It only protects clients which use solicitors that use legal firms regulated by the Law Society. The Scottish Government moved away from the idea of a single body regulator, and although the majority of solicitors are covered by the Law Society, I don't think all are and not all firms are solicitor-owned. It is not available for most people due to strict guidelines and is a last resort according to the Law Society.

Barriers in the [Client Protection Fund guidelines](#) include:

- 1(B) is elitest, uses professional language that alienates those traumatised by the legal process It puts the responsibility on the victims to justify why they should be considered which is not a fair system that respects those who are most in need of understanding and support.
- 1(C) Sounds reasonable, however it may not be possible for someone to use other means especially if it is costly or they don't feel equipped to deal with it.
- 1(F) Given the cost of a solicitor this is likely the majority of claims. This may not sound like a difficult thing but if you have any health issues including mental health this could be a large hurdle.
- 2(c) Not only is this sort of evidence expensive to achieve if you have lost a significant amount of money, it is also very difficult for some people to do. Going through another process to prove dishonest behaviour can retraumatise victims leading to many people unable to do so or just give up due to constant victimization.
- 2(d) This is not realistic or achievable for some victims.
- Section 3 lists losses not covered by the fund which are extensive and would exclude many applicants.

Section 4 lists losses that don't normally result in a grant.

- 4(c) This could technically apply to someone who signed documents even if they didn't understand the consequences or if there was coercion involved.
- 4(d) This is not always possible due to grief, lack of knowledge about the fund, mental or physical health issues. It also makes no

sense if there is to be civil action etc to gather evidence needed for this, civil action or other process can take years.

- 4(e) Even if a solicitor has been found guilty of misconduct this fund will not cover them.

Complying with Section 6 could be very difficult for some victims, making them relive the trauma that led to their situation.

Section 10 states that a solicitor is not normally needed for the application. However, someone who didn't understand the circumstances that led to their situation may disagree but any legal fees over £500 must be cleared by the Law Society first. This adds a barrier to people seeking legal advice who are already financially vulnerable.

How many people access this fund or indeed start the process but don't complete it? The fund is a barrier which has been set up by the sector themselves.

Guidelines and rules are routinely broken, there is no real impact on dishonest solicitors and current safeguards are skewed in favour of their members. The maximum financial penalty for solicitors is £5000. After a tribunal the maximum compensation after going through another process is £5000. If you felt the need for legal advice during this process, given the accused's knowledge of the law, then you would be out of pocket. Victims could lose money by complaining with no way of recouping it. That's not a fair system for clients. How many people submitted a complaint, how many were upheld or investigated?

Guidance was updated in 2022 but there is no mention what was updated or the process they went through to determine that they were operating in the best way for people, other than the members they protect.

There are failings of the "golden rule", yet it is a more robust system than ours with tighter guidelines. The change proposed by this petition would go further than the "golden rule", making people in Scotland the most protected in the UK.

Having a medical professional co-sign vulnerable individuals' legal documents is not an unnecessary cost and would protect from future costs when a dispute arises. Financial abuse is an under reported issue and this proposed change would help to stop this. Capacity

assessments are under-used by solicitors currently as they deem them not to be necessary.

How do their safeguards protect people who may have temporary or fluctuating capacity issues due to medication, mental health, injuries, dementia, or ageing? This would allow people who know of family disputes or of their fluid capacity to make changes and to have them respected.