

Citizen Participation and Public Petitions Committee
Wednesday 18 June 2025
11th Meeting, 2025 (Session 6)

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

Introduction

Petitioner Laura Johnston-Brand

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to help prevent coercion of vulnerable, frail, and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

Webpage <https://petitions.parliament.scot/petitions/PE2061>

1. [The Committee last considered this petition at its meeting on 30 October 2024](#). At that meeting, the Committee agreed to write to the Office of the Public Guardian, the Academy of Medical Royal Colleges and Faculties in Scotland, the Law Society of Scotland, and the Scottish Legal Complaints Commission.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from the Office of the Public Guardian, the Scottish Legal Complaints Commission, the Law Society of Scotland, the Academy of Medical Royal Colleges and Faculties in Scotland, and the Petitioner, which are set out in **Annexe C**.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial response to the petition on 30 November 2023](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 419 signatures have been received on this petition.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee

CPPP/S6/25/11/5

June 2025

Annexe A: Summary of petition

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

Petitioner

Laura Johnston-Brand

Date Lodged

2 November 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to help prevent coercion of vulnerable, frail, and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

Previous action

I have contacted MSPs Keith Brown and Jim Fairlie. Keith Brown responded to say he has written to the Cabinet Secretary for Justice and Home Affairs to highlight our campaign and seek the Scottish Government's view on this proposed change.

Background information

Our dad was terminally ill in the high dependency unit of Perth Royal Infirmary, when during his final days his solicitor along with his business partner presented him with legal documents to sign. These documents affected the value of our dad's estate, consuming his final moments and the little time we had with him.

We took the matter to the Law Society of Scotland, and the solicitor was found guilty of 5 counts of misconduct and received a £5000 fine. During the tribunal, part of the defence was that the solicitor didn't have to ensure dad's capacity in the same way as he would have to in England, where they have a "golden rule" to ensure any frail or extremely sick person has to get a medical professional to co-sign legal documents to guarantee capacity and confirm there has been no coercion.

Annexe B: Extract from Official Report of last consideration of PE2061 on 30 October 2024

The Convener: I am conscious that Mr Rowley has joined us this morning. The petition that he is here for is a little further down the agenda, but I will pull it forward to facilitate his participation in our proceedings, because he arrived early and did not quite understand that our evidence was a bit behind schedule.

PE2061, from Laura Johnston-Brand, calls on the Scottish Parliament to urge the Scottish Government to help to prevent coercion of vulnerable, frail and debilitated individuals by requiring solicitors to have a medical professional co-sign legal documents confirming the capacity of the individual.

As I said a moment ago, we welcome our colleague Alex Rowley.

We last considered the petition at our meeting on 24 January, when we agreed to write to the Law Society of Scotland, the Mental Welfare Commission for Scotland, the British Medical Association and the General Medical Council. Responses have been received from all those organisations and are detailed, as colleagues will have seen, in our papers for today's meeting.

Although expressing sympathy for the petitioner, the Law Society tells us that it does not consider it "necessary or desirable" to replicate the golden rule approach in Scotland

"in light of the other safeguards which exist."

The society also expressed concern that any requirement for medical professionals to co-sign legal documents could add significant complexity, delays, and costs to the legal process.

The General Medical Council noted that doctors must work within the limits of their competence, and so should not be expected to make assessments about the capacity of their patients to make financial decisions if they felt unable to do so.

The British Medical Association highlighted that there is already provision for doctors to comment on capacity where appropriate, and expressed concern that the petition's proposal risks creating an impossible increase in workload.

In its response, the Mental Welfare Commission advocates a proportionate response and an expectation that solicitors exercise their professional judgment, and has suggested additional organisations that we might wish to hear from, including the Office of the Public Guardian.

We have received two submissions from the petitioner sharing her reflections on the responses that we have received. She expresses concern about processes that are designed to protect clients, such as access to the client protection fund, and restates the view that this petition aims to build on the good practice that already exists to ensure that vulnerable people are further protected from exploitation.

Before the committee considers how it might proceed, I invite Alex Rowley to contribute to our deliberations.

Alex Rowley (Mid Scotland and Fife) (Lab): I am grateful to the committee for giving me this brief time this afternoon. I am here to speak on behalf of my constituents, because I believe that they raise an issue that requires further examination.

One of the fundamental points that are raised by the petition is the fact that an injustice has happened and that, therefore, we should consider what action is needed to stop that from happening again.

As I understand the Scottish Government's position, it believes that the rules that are detailed by the Law Society of Scotland, alongside the additional safeguards that are currently in place, are sufficient to protect vulnerable individuals when signing legal documents, in terms of their capacity, yet we have seen multiple instances of those rules and safeguards not being sufficient.

Although the decision on whether a client has capacity remains a question for the solicitor to satisfy themselves of the answer to, it is easy to see how a bad-faith actor could manipulate the situation. The question of the golden rule, which is best practice in England, has also been raised. It states that the capacity of someone who is elderly or is suffering from a serious illness, or has recently suffered from one, should be assessed by a medical practitioner when they seek to make or change a will. We must question why that is considered best practice in England but is considered not to be needed in Scotland. It could appear that we have fewer safeguards for vulnerable people in this situation than England does.

I do not come here today with all the answers, and I appreciate that the issue is not straightforward, but it appears to me that some form of action needs to be taken to address the issues that are raised by the petition and I would appreciate it if the committee would consider investigating the matter further by writing to the appropriate organisations to establish the levels of complaints that have been made and the levels of concern that exist in Scotland around the issue.

The Convener: Thank you, Mr Rowley. At the very least, I think that we should consider taking forward the Mental Welfare Commission's suggestion that we write to the Office of the Public Guardian. I also suggest that we speak to the Academy of Medical Royal Colleges and Faculties in Scotland to discuss the issues, because I am slightly disappointed by the dismissive response that we have received from other organisations that seem to find the proposal inconvenient. Are there any other suggestions for action?

David Torrance: Perhaps the committee could consider writing to the Law Society of Scotland to seek information on the number of applications that have been made to the client protection fund in each of the past five years and the outcomes of those applications. Further, we could write to the Scottish Legal Complaints Commission to seek information on the number of complaints that it has received in each of the past five years relating to concerns about a client's capacity or coercive behaviour by solicitors, and on how many times those complaints have been upheld.

The Convener: So we would be seeking some factual responses.

I see that a member of the public would like to speak. I welcome them but, unfortunately, we are not able to take contributions from the public gallery.

CPPP/S6/25/11/5

Mr Rowley, would you like to add anything to what we have said about actions that we will take?

Alex Rowley: Mr Torrance's proposals would help to move this matter forward. This is not straightforward, but the more information we have, the more we can look at whether there is a way forward, so I very much welcome those proposals.

The Convener: The committee is persuaded that there are issues, and I am not satisfied that just being told that everything is as it should be by all the organisations that currently operate matters is sufficient comfort to the committee.

Is the committee content to keep the petition open and to pursue the avenues of inquiry that we have discussed?

Members *indicated agreement.*

Annexe C: Written submissions

Office of the Public Guardian written submission, 4 December 2024

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

I refer to the above petition to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS) and in particular the Office of the Public Guardian (OPG).

The provisions for Powers of Attorney, Guardianships and Intervention Orders and Access to Funds authorisations under the Adults with Incapacity (Scotland) Act 2000 (“2000 Act”) already provide for the submission of medical certification/ medical reports as part of those processes for consideration by the judiciary/ OPG.

The SCTS nor the OPG would provide comment on matters of policy, however we note that the proposals may have an impact for the signing of legal documents such as a testamentary writing or in the situation referred specifically to by the petitioner.

Any change in policy approach may also impact on the matters we have set out above under the 2000 Act. However, it is not entirely clear what role the courts or OPG would have for example in a scenario where the OPG had no locus where no individual(s) had been appointed to manage the financial and property affairs of adults who lack the capacity to do so for themselves or where for example medical approval/ certification of a “vulnerable” testator would be required before making or changing a Will.

On the basis of the above, if any policy changes were proposed, we would be content to work with policy colleagues and other stakeholders to ensure effective implementation. We hope this assists.

Scottish Legal Complaints Commission written submission, 9 December 2024

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

The Citizen Participation and Public Petitions Committee has requested information from the Scottish Legal Complaints Commission (SLCC) to inform its consideration of the above petition. The Committee is seeking information on the number of complaints the SLCC has received in each of the past 5 years related to concerns about a client’s capacity or coercive behaviour by solicitors, and how many of those complaints have been upheld.

We would firstly like to convey our condolences to the petitioner and her family.

The SLCC uses its data on individual complaints to identify trends in complaints and complaint handling. We do not collect specific data against the issues identified by the Committee. However we have conducted a textual search across the issues of complaint made to us to identify potentially relevant cases which relate to concerns about solicitors assessing a client’s capacity. Such data should be treated with caution, and we cannot guarantee that they are statistically correct. However, given

the Committee’s consideration, we thought this data might still be helpful, so we share it below, with the caveat that it should be taken as indicative. We have added total incoming complaint numbers for each year as context.

We were unable to identify a reliable method for identifying cases which alleged coercive behaviour by solicitors. However, the vast majority of cases we identified did not make such an allegation, but simply stated a concern about the steps taken by the solicitor to assess capacity. Some cases specifically referred to whether a solicitor had sought, or taken into account, medical input on capacity. In its response to the Committee of 26 February 2024, the Law Society of Scotland set out the rules and guidance relevant to this issue, which is what we consider when we assess a complaint to see if it is eligible for investigation.

To contextualise the data provided, the SLCC has two main roles in relation to complaints which are relevant here. Firstly, we are the gateway for all legal complaints and we apply a series of legal tests to all complaints we receive to determine if they are eligible for investigation. If so, we decide whether they relate to the service provided by the firm or the conduct of an individual practitioner. Each complaint may have multiple issues which are individually categorised. If the complaint relates to the conduct of an individual practitioner, we pass it to the relevant professional organisation – which for solicitors is the Law Society of Scotland – to investigate and determine. We investigate any issues relating to the service provided.

Year	Total number of complaints received	Complaints with an issue relating to a solicitor’s assessment of capacity	Of those, conduct complaints passed to Law Society of Scotland	Of those, complaints investigated as service issues with outcome	Of those, complaints not eligible for investigation or withdrawn or settled prior to a decision
2019/20	1036	11	2	1 (1 settled)	8
2020/21	1054	15	7	4 (1 settled, 3 not upheld)	4
2021/22	1159	18	10	0	8
2022/23	1281	8	4	1 (not upheld)	3
2023/24	1385	8	5	0	3

The data show a small but consistent number of complaints made to the SLCC which raise some manner of concern about the steps taken by the solicitor to assess capacity. The numbers are small and therefore caution should be taken in drawing conclusions.

A number of those complaints are passed each year to the Law Society of Scotland for investigation. They may be able to provide further information on the number of relevant complaints upheld. A very small number are service complaints where we could consider whether the complainer might be awarded any redress for inadequate service by the firm. A number of complaints are not considered eligible for further investigation. That may be because they are time-barred or they are considered to be frivolous, vexatious or totally without merit, which are the legal tests for eligibility. Or in some cases, a complainer may withdraw or agree to settle their complaint with the firm before we reach a decision.

In conclusion, we can confirm that we do receive a small but steady number of complaints each year which raise some manner of concern about the steps taken by the solicitor to assess capacity. Some of those issues have been investigated. None of those investigated by the SLCC have been upheld. The Law Society of Scotland may be able to provide information on the relevant conduct complaints it has investigated.

I hope this is of help to the Committee in its consideration of this petition and we would be happy to provide any further information we can that might be helpful.

Law Society of Scotland written submission, 9 December 2024

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

Thank you for your letter of 8 November 2024 regarding the above petition. You requested information on the number of applications made to the Client Protection Fund in each of the past 5 years, and the outcomes of those applications.

Analysis of claims 2019-2024

Year (1/11 to 31/10)	New Claims Received	Outcomes
2019/2020	11	<ul style="list-style-type: none">• 6 Paid• 5 Rejected
2020/2021	6	<ul style="list-style-type: none">• 1 Paid• 4 Rejected• 1 Withdrawn
2021/2022	7	<ul style="list-style-type: none">• 3 Paid• 1 Rejected• 3 Withdrawn
2022/2023	9	<ul style="list-style-type: none">• 2 Paid

		<ul style="list-style-type: none"> • 3 Rejected • 4 Ongoing
2023/2024	14	<ul style="list-style-type: none"> • 2 Paid (1 in 2024/2025) • 1 Rejected (in 2024/2025) • 11 ongoing

Please note that, line with your request, the above figures represent all claims made to the fund within the time frame identified- we have not attempted to identify claims relating to capacity issues. We could, if requested, provide some further data on the breakdown on the types of claimants – eg: individuals, solicitor firms, companies, other professionals etc.

Ongoing Claims

Claims have been described as “ongoing” where a decision on the claim is outstanding. This can be for various reasons including that:

- The client accounting position is still to be determined by the Judicial Factor
- Further information is required from claimants
- Outcomes of insurance and other litigation awaited

Further information regarding the Client Protection Fund

The Scottish Solicitors’ Guarantee Fund trades as the Client Protection Fund. The Scottish Solicitors' Guarantee Fund exists to protect clients who have lost money because of the dishonesty of a solicitor or a member of their staff. The fund is paid for entirely by solicitor firms without the use of taxpayer money from government. The fund was created by statute under section 43 of the Solicitors (Scotland) Act 1980.

The Law Society of Scotland's Client Protection Sub-committee has delegated authority for all claims and investment decisions. It further delegates minor claims to the Director of Financial Compliance, with these decisions being sample checked by the sub-committee regularly.

The fund’s annual report and financial statements for the year ended 31 October 2023 are available here: [2023-ssgf-accounts-final-signed-lsdocx.pdf](#)

Further information about the Client Protection Fund is available on our website: [Client Protection Fund | Law Society of Scotland](#)

I hope that the above information is helpful to the Committee. If we can be of further assistance, please do not hesitate to contact me.

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

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

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.

Petitioner written submission, 13 February 2025

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

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.

Hourglass (Safer Ageing) written submission, 5 June 2025

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

On behalf of Hourglass, the only UK-wide charity dedicated to ending the abuse and neglect of older people, I am writing to reiterate our firm support for the above petition and, therefore, for the introduction of a so-called **Willie's Law**.

The changes advocated by the petition represent an important starting point for discussion and a crucial step forward in addressing the specific and often invisible harms inflicted through economic and financial abuse – a form of coercive control that disproportionately affects older people. In our frontline work across Scotland and beyond, we continue to witness the devastating impact of such abuse: loss of autonomy, stolen life savings, manipulated wills, coerced loans and the routine exploitation of vulnerability within family dynamics and by nefarious individuals with links to the victims through professional relationships.

Last year Hourglass teamed up with YouGov to carry out polling across the four UK nations on attitudes toward the economic abuse of older people. Many of the prevailing attitudes we discovered are alarming and distressing:

- 26% of respondents did not believe that 'Taking items from an older relative's home without asking' is a form of abuse;
- 20% of respondents did not believe that 'Using a Power of Attorney over an older relative for personal financial gain' is a form of abuse;
- 27% of respondents did not believe that 'Family members trying to change the Wills of older relatives' is a form of abuse;
- 13% of respondents did not believe that "'Scamming" an older person out of money either online or over the phone' is a form of abuse

([Economic Abuse by Numbers](#), November 2024)

Economic abuse is too often ignored or misunderstood. Introducing legislative changes to recognise economic abuse as a distinct form of harm in its own right would give statutory backing to the experiences of countless victims and survivors and empower the justice system to respond appropriately.

Furthermore, we strongly believe that, should Willie's Law become a reality, it must be considered a cornerstone of a **national strategy on economic abuse**. The introduction and passage of such a law would not only provide legal clarity, but also send a powerful message – that Scotland will not tolerate the financial exploitation of older people and will act decisively to close the current gaps in protection.