

# British Medical Association (BMA) Scotland submission of 5 March 2024

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

BMA Scotland is a leading voice advocating for outstanding healthcare and a healthy population, providing members with individual services and support throughout their lives. As a trade union, the BMA is formally recognised for collective bargaining purposes at a UK, devolved nation and local level. It represents, supports and negotiates on behalf of all doctors and medical students in the UK and currently has a membership of more than 191,000 (approximately half of practising doctors) in the UK and more than 17,000 in Scotland. Members of the BMA come from all branches of medical practice and specialities, for example GPs, consultants, public health, occupational medicine, medical academics, students and doctors in training.

BMA Scotland is sympathetic to the issues highlighted in petition PE2061: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents. General practitioners tend to be the doctors who will know the patients independently and therefore most likely to be able to give a view regarding a person's capacity, if it is called into question. Capacity is however not the same as a person's ability to resist coercion. Many people with full capacity can be and have been victims of coercive behaviour.

There is already provision for GPs and other doctors to comment on capacity where this is appropriate. Coercive behaviour in legal issues falls to lawyers to look out for and to protect their clients.

The proposal would not be part of the General Medical Services contract and therefore not be part of NHS activity for doctors, it would be undertaken as additional work and would require a reasonable fee for the time taken, we would envision something similar to what currently happens with Firearms licenses. There is however a risk, that in the currently suggested form, the proposal would create an impossible increase in workload. The NHS is currently not able to meet the demand being placed on it. Doctors and other health care professionals are

struggling with increasing workloads and decreasing capacity. The likelihood is that if such a requirement was brought forward, it would fall majoritively on the shoulders of GPs.

The BMA understand the 'Golden Rule' mentioned in the background information to refer exclusively to testamentary capacity where there may be doubts about a testator's ability to make a will because of age or impediment.