

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

Mental Welfare Commission for Scotland written submission, 15 April 2024

I am writing further to your letter dated 29 January 2024 in which the CPPP Committee requests a view from the Mental Welfare Commission of Scotland in relation to public petition PE2061, which relates to the following matter:

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.

The Commission has considered the issue and referred to the Committee's Official Report dated 24 January 2024, which provides that two key points are considered which are outlined below with our response.

1. The Commission's view in relation to the requirement for solicitors to have a medical professional co-sign legal documents which confirms a person's capacity.

The Commission views that solicitors are bound by their professional standards of conduct practice rules and expect that solicitors are acting in accordance with their legal and professional standards, which includes safeguarding the interests of a person who may present as vulnerable in relation to capacity to make some or all decisions. The instance described in the Committee's report appears to be a departure from a solicitor's professional standards. We suggest that this does not necessarily indicate that there is a need for a medical co-signatory in all cases, rather we would advocate a proportionate response and expect that solicitors should exercise their professional judgement.

We would further suggest that an individual has a power of attorney document in place, which includes an explicit clause requiring a medical review in circumstances where a person's decision-making capacity, in relation to welfare, finance and/or property matters, is unclear.

It may also be beneficial for the Committee to seek a view from the Office of the Public Guardian given the petition relates to a person's financial and property matters.

2. The potential resource implications for medical professionals.

The Commission, through exercising its functions across Scotland in the field of mental health, is aware of the current workforce challenges, which includes a deficit in medical resources. However, as the medical workforce sits outside

of our remit, we would suggest that the Committee may find it helpful to seek a view from the Academy of Medical Royal Colleges and Faculties in Scotland in relation to medical workforce implications.

We hope that the Committee finds this response helpful.