

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

Petitioner written submission, 24 April 2024

I am responding to the submissions provided by the British Medical Association (BMA), General Medical Council (GMC), and Mental Welfare Commission for Scotland.

The GMC don't give figures for formal assessments and there is no way of knowing how many times this should have been carried out but wasn't asked for.

Doctors, as with all medical professionals, should work within their knowledge. The petition is asking that vulnerable people have the right to be assessed, which is well within the limits of a doctor's competence.

The responses highlight that GPs and other doctors already deliver this support, and when asked many practices have a person responsible for safeguarding. It is very likely local GPs are the ones to be able to assess capacity, however with an increase in GP practices being taken over by NHS boards, it may be others who, through their role as a consultants or district nurses, are the most relevant person to carry out the assessment.

The petition aims to build on the good practice that already exists and ensure the most vulnerable people, who don't have capacity at that time, are further protected from exploitation. The Mental Welfare Commission failed to highlight the practices in place into which this could be added, such as an Advanced Statement allowing individuals to lay out their wishes while they have capacity. We want to give vulnerable individuals the ability to advocate for themselves and to be advocated for.

Power of Attorney documents are also great if put in place before capacity issues arise, if the individual has the right one and it contains all the necessary information. It's not routinely done before illness arises and there are many issues that can occur with Power of Attorney documents as outlined in the Mental Welfare Commission of Scotland's documents. It is not a blanket solution for individuals who are vulnerable and lacking capacity. It can be a tool for unscrupulous people and is often not set up for the occurring situation.

There are lots of documents that can be put in place if someone knows what's coming, but most don't, and these documents are useless. There is no consistent protection for people whether they have a long-term or variable capacity issue, especially if it's not predicted which is usually the case.

The petition aims to allow for legal documents to be set aside until such time when an individual is equipped to understand and deal with them.

The ask of this petition will not stop vulnerable people with capacity being victims of coercive behaviour, however, it is an added safeguard for those who may be exposed to controlling behaviour, and for those around them to be aware of these situations.

People already are accustomed to paying a fee for letters of support, medical assessments for work etc.

There is a duty of care for medical staff and solicitors, the proposed change requires both to take responsibility and hold the other accountable, while having the vulnerable person at the centre. It is currently not under the General Medical Services Contract, however these contracts are reviewed to meet the needs of their patients so it could be added in the future.

We are looking for a fair system for all where individuals can be supported to reduce the risk of further harm through exploitation which would have life-changing consequences.

Presently, it is up to the individual solicitor to decide if the assessment is required, something which is beyond their remit and not always done although it's best practice. It is also putting pressure on doctors, consultants, and medical staff to be aware of potential exploitation and a need for an assessment. At the moment, it is also up to the individual or their family to know that an assessment can be carried out. All these factors result in an inconsistent approach which is not a fair system for all.

Without additional checks put in place the impact on individuals and their families can result in increased stress, and anxiety which may cause long-term health issues, further impacting the limited resources of the NHS at this time.

Lack of resources should not be a reason not to put in additional protection for those most vulnerable in our society.