



Rebecca Pow MP  
House of Commons  
London  
SW1A 0AA

**MP ref:** RP15047  
**MoJ ref:** MC78657

19 June 2020

Dear Rebecca,

### **VIDEO WITNESSING FOR WILLS**

Thank you for your email of 3 June, to Alex Chalk MP on behalf of your constituent, Dr Nicholas Bevan of Solicitors Title Bevan, 17A Gandy Street, Exeter, Devon, EX4 3LS, regarding his suggestion of allowing video-witnessed wills during the Covid-19 pandemic. I am responding as the representative of the Secretary of State with responsibility for Civil Law and Justice in England and Wales.

I would like to thank Dr Bevan for his clearly outlined assessment of the benefits of permitting wills to be witnessed via live-streaming or videoconferencing technology during the current pandemic, and for his comprehensive paper exploring the potential legal validity of such documents.

As Dr Bevan has acknowledged in both his letter and paper, the principal statute governing wills is the Wills Act 1837. Section 9 of the 1837 Act lays down the formalities for making a valid will. It provides that a will must be in writing and it must be signed by the person making it (the testator) or by some other person in his or her presence or by his or her direction. The testator's signature must be witnessed by two or more people present at the same time. Each witness either attests and signs the will or acknowledges the testator's signature. This must be done in the presence of the testator, but not necessarily in the presence of the other witness. A will that does not meet these formalities is invalid.

The constraints of the Covid-19 situation must be balanced against the important safeguards in the law to protect elderly and vulnerable people, in particular, against undue influence and fraud. Various reform measures are under review, but all have the aim of alleviating some of the difficulties facing those testators who are seeking to make a will whilst also complying with the prevailing social distancing and isolation conditions of the pandemic.

I note that Dr Bevan has argued that the current statute on wills permits the witnessing of wills by video-link technologies and thus has concluded that legislation would not be required for this practice to become a commonplace response to the public health restrictions imposed to deal with the Covid-19 pandemic. Dr Bevan's paper cites a number of previous cases from which he infers that the judiciary's refusal to outlaw the virtual – rather than physical – witnessing of wills as permitting the act.

It is an argument with force, set out in impressively comprehensive terms in Dr Bevan's paper, but the fact remains that we currently have no explicit judicial authority on whether the witnessing requirements of the 1837 Wills Act can legally be satisfied by means of video-link technologies. In its detailed 2017 paper reviewing the law on this matter, the Law Commission concluded that in the absence of any clarity or definitive judicial sanctioning of virtual witnessing, the law should be interpreted as requiring witnesses to be physically present.

The Government's own conclusion has therefore been that some form of legislative measure or court authority is required to ensure that video witnessing may be used. We are urgently exploring such options and considering the retrospective application of any measure to earlier stages of the pandemic. Unfortunately, I am unable to provide more detail at this precise time but please be assured that the Government recognises the importance and time-sensitive nature of the situation. We have been making tangible progress on the reform options under review and expect to make a public statement to outline our legislative plans in full very shortly.

I note and am grateful for Dr Bevan's suggestions in relation to judicial practice guidance should video-witnessing of wills be permitted in due course, and I know that officials would want to discuss this issue with the judiciary and professional bodies ahead of any implementation of any measures. Guidance will also be provided to practitioners and the public in advance of any changes to the law during the coronavirus outbreak.

In the longer term, the Government will consider reforms to the law on wills arising from the forthcoming Law Commission report on wills, which will explore a range of issues and review both the current law and the case for reform (including on the use of technology). We are committed to considering further work on witnessing documents by video-conference generally, in the light of the recent Law Commission report on Electronic Execution of Documents, which will help to inform potential reforms to the law on wills in the future.

I hope this explanation of the current legal situation and the Government's position proves helpful for Dr Bevan, and I would like to thank him again for his detailed insights on the subject.

Yours sincerely,

A handwritten signature in black ink that reads "Ken J Elie". The signature is written in a cursive, slightly stylized font.

**RT HON LORD KEEN OF ELIE QC**