



Modernising Wills

Industry Panel Insights

Episode 3:

"Remote Witnessing, Fraud and Undue influence"

Key discussion points and practical insights from Episode 3 of the [Modernising Wills: Reform and Reality](#) podcast.

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September 2026

1. Remote witnessing: The primary issue

The Law Commission's 2025 Modernising Wills Law report recommends that Electronic Wills should be capable of formal validity, if they satisfy the requirements that apply to paper Wills together with an additional requirement that a "reliable system" is used.

The Commission also recommends that Electronic Wills may be witnessed remotely. The requirement for the testator and witnesses to be in one another's "presence" may therefore be satisfied through visual transmission, such as a video call. This is a new development with significant legal and practical implications.

Importantly, the Commission does not make the same recommendation for paper Wills. That is, there is no recommendation that paper Wills could be witnessed remotely.

This distinction raises an important policy question. Does remote witnessing create additional risks of fraud, undue influence or lack of capacity? And, if so, are those risks greater for an Electronic Will than for a conventionally executed paper Will?

This study suggests that four different issues need to be distinguished:

1. Fraud or impersonation in the execution of the Will;
2. Undue influence exerted before execution;
3. Undue influence or coercion during the execution ceremony; and
4. Testamentary capacity.

Electronic Wills do not necessarily increase these risks. In some respects, they may provide materially stronger safeguards and better evidence than the existing paper process.

2. Why permit remote witnessing of Electronic Wills?

The Commission recommends that an Electronic Will should continue to require two witnesses. That is: the testator must sign, or acknowledge their signature, in the presence of two witnesses, and the witnesses must sign or acknowledge their signatures in the testator's presence. For Electronic Wills, however, "presence" may be satisfied remotely through visual transmission.

The Commission's reasoning is essentially functional. Remote witnessing can allow the testator and witnesses to see one another, while also seeing the relevant signatures being applied to the electronic document. The Commission concludes that this can perform the same functions as conventional witnessing.

The draft Bill implements that approach in Requirements A to E in Schedule 2 addressing the general formality requirements applicable to Wills. Requirement F then imposes additional requirements applying exclusively to Electronic Wills, including the use of a reliable system linking each signature to the person signing and protecting the original Electronic Will against unauthorised or unintentional alteration or destruction. Paragraph 9(2) separately provides that, for Electronic Wills, presence may be satisfied by visual transmission.

The result is therefore not simply "Zoom witnessing" as has been permitted in some other jurisdictions. Remote presence sits within a broader electronic execution framework containing safeguards which do not apply to an ordinary paper Will.



Why not allow remote witnessing for paper Wills?

The Commission does not recommend remote witnessing for paper Wills. Remote witnessing of paper Wills was temporarily permitted during the COVID-19 pandemic. The Commission notes that this facilitated Will-making during periods of isolation and shielding but says that it did not specifically examine the operation of remote witnessing of paper Wills as part of this project and therefore did not have sufficient evidence to recommend its permanent introduction.

The distinction should not be understood as a finding that remote witnessing is inherently safe for Electronic Wills but inherently unsafe for paper Wills.

There is also, however, a real distinction. If a paper Will was remotely witnessed, it remains a physical object. The participants would need to somehow establish that the document subsequently signed by each participant is the same document observed during the ceremony. Physical movement of the document, counterparts, scanning and subsequent signatures can introduce additional evidential questions.

A properly designed electronic process can instead allow all participants to observe the same electronic instrument and the signatures being applied to it contemporaneously. The reliable system can additionally record identity, sequence, timestamps and integrity. Electronic execution makes genuine contemporaneous remote witnessing considerably more dependable.

4. Will-making is already frequently remote

Much of what is commonly described as "online will-making" is already "remote" even if the witnessing is contemporaneous and in the same place as the testator's attestation.

A testator may:

- Instruct a solicitor or Will writer by telephone or video conference;
- Provide information through an online questionnaire;
- Receive advice remotely;
- Review drafts electronically;
- Communicate amendments by email or through a portal; and
- Receive the completed Will electronically or through the post.

The parties to the signing ceremony for an "online Will" may never meet physically during the entire process except at the witnessing stage.

The move to Electronic Wills does not necessarily turn an otherwise face-to-face process into a remote one. In many cases, it merely allows the final execution ceremony to take place using the same remote communications through which the preceding Will-making process has already occurred.

If undue influence is exerted while instructions are being given, while testamentary choices are being made or while the contents of the Will are being settled, requiring the witnesses to physically attend at the signing ceremony does not reveal what happened prior to that ceremony.

In this context, the Commission concludes that electronic execution can provide sufficient protective and evidential functions at least as reliably as physical witnessing.

5. Fraud: Patel v Patel – a signature is not enough

The Commission uses *Patel v Patel* [2017] EWHC 133 (Ch) to illustrate the type of fraud against which an Electronic Wills regime should protect. In *Patel*, one of the testator's sons had access to company papers which his mother had pre-signed. He inserted the text of a purported Will onto one of those signed documents.

Expert evidence established that the testator's signature was genuine but older than the witnesses' signatures. There was also the impression of another of the testator's signatures on the purported Will, consistent with her practice of pre-signing documents in a stack.

This highlights a weakness in treating the signature of the testator itself as sufficient evidence of authenticity. In *Patel*, the signature was genuine, the Will was not.

The Commission notes that fraud in the Wills context is more likely to be committed by somebody close to the testator eg a family member, friend or carer, than by a stranger. And that issue persists in the electronic realm where such a family member or associate might legitimately have access to the testator's papers, computer, telephone or passwords.

6. Why possession of a QES is not enough

A Qualified Electronic Signature (QES) provides strong evidence of identity when the person is originally enrolled. The Commission describes the enrolment or onboarding process as robust: identity documents are checked and the person's live image is compared with the identification document.

But the *Patel* problem persists. If a reusable electronic signature has been issued, somebody close to the testator might obtain:

- The testator's phone;
- The relevant application;
- PIN or passkey; or
- Access to a one-time password sent to that phone.

The Commission warns that even a QES may not provide sufficient protection in and of itself. The digital equivalent of *Patel* may simply be a son who has access to his mother's telephone.

Therefore, in order to be effective, the safeguard must determine not only: Who was this electronic signature originally issued to? It must determine: Was that person actually participating when this particular will was executed?

7. QES re-enrolment at execution

To mitigate this issue, the Commission recommends that a testator executing an Electronic Will could be required to re-enrol in the QES, with identity and live participation verified immediately before signing. A one-time electronic signature could then be issued for that specific execution.

Alternatively, identity could be linked to the signature during execution itself, eg example through a contemporaneous photograph or video which is hashed to or otherwise securely associated with the Electronic Will.

The draft Bill deliberately does not prescribe the specific technology. Instead, Requirement F requires a reliable system which links the signature with the person signing at the time of signing.

A properly designed Electronic Will system would not merely ask whether somebody possesses the testator's digital credentials. It could establish that:

- Testator;
- Identity;
- Live presence;
- Particular signature;
- Particular Will; and
- Particular time,

are all cryptographically and evidentially connected.

Applied to the circumstances in Patel, this is potentially a substantially stronger safeguard than the paper Will witnessing process. Possession of the testator's pre-signed paper was enough to facilitate the fraud in Patel. Under a suitably designed electronic regime, possession of the testator's device or even an existing electronic signature need not be enough. The fraudster would also need to pass the contemporaneous identity and live-participation check.

8. Undue influence: two different stages

Discussion of electronic Wills sometimes treats "undue influence" as a single risk associated with remote execution. That obscures an important distinction given influence can arise broadly at two different stages:

a. Undue influence before execution

The testator may be coerced or influenced when deciding what the Will should contain or when giving instructions.

b. Undue influence before execution

The testator may be coerced, bullied, impersonated or improperly assisted at the point at which the Will is actually signed.

Electronic Wills impact these two situations differently.

8.a Undue influence before execution

Electronic execution does not inherently make prior undue influence either more or less likely.

A testator can be pressured by a family member, carer or other person:

- before visiting a solicitor;
- before attending a conventional signing meeting;
- while preparing a DIY paper Will;
- while giving instructions over the telephone;
- while completing an online questionnaire; or
- while preparing an Electronic Will.

The medium, whether paper or electronic does not create the coercion or make it more or less likely. Nor does physical witnessing necessarily expose it.

Two witnesses who enter the room for the final five minutes of a conventional execution ceremony may have no knowledge of what happened prior their involvement or in the preceding days, weeks or months.

The Commission recognises the more limited function of witnesses. It does not regard witnesses as having a specific responsibility for establishing capacity or knowledge and approval, but witnesses can provide useful evidence about the circumstances surrounding execution as well as the testator's demeanour. That evidential function is valuable. But it is not a general safeguard against prior undue influence.

Given the partial (but still important) utility of witnessing generally, arguably the most effective protection against undue influence before execution lies primarily in the Will-making process itself. Not whether the witnesses are physically or remotely present.

The question of undue influence may be mitigated by professional interviews conducted privately, good file notes, recorded instructions, structured safeguarding questions and digital audit trails as each of these provide evidence relevant to that question. Indeed, an electronic Will-drafting process may produce more contemporaneous evidence than the traditional paper process: who initiated the instructions, when changes were requested, what changes were made and when, which account or device made them, and whether unusual activity occurred.

That does not eliminate undue influence, but it does make it easier to investigate after the event.

8.6 Undue influence during execution

The risk of undue influence during the signing ceremony is different as there is potential for another person to be physically present with the testator at that time.

Although there are ways this risk can be significantly mitigated, eg by showing the testator's entire surroundings in the video. However, the risk should be considered at its most robust: a witness physically present in the same room can generally see more of the surrounding environment than somebody appearing on a video call and is arguably in a better position to perceive potential undue influence.

But the comparison should be made against the entire electronic execution process, rather than video conferencing alone. If execution requires the testator to re-enrol in a QES or otherwise prove identity and live participation immediately before applying a one-time signature to the Will, the witnesses and reliable system together provide two different safeguards:

- 1.human observation through the witnessing ceremony; and
- 2.technical verification that the identified testator personally participated in the execution.

Additional safeguards could include:

- a room or environmental check (eg a camera pan across the room);
- a requirement for the testator to confirm that nobody else is present;
- direct questions about voluntariness;
- recording of the execution ceremony;
- independent professional witnesses;
- contemporaneous timestamps;
- recording of the signing sequence; and
- preservation of the resulting audit trail.

It is not necessary that all the safeguards are mandatory, but electronic execution provides the capability to establish a significantly richer evidential record than the signature and attestation clause ordinarily available from a paper Will.

9. Remote witnessing may make execution safer

The Commission itself concludes that Electronic Wills can provide the same level of security against fraud and undue influence as paper Wills and sufficient certainty and evidence about the testator's intentions. Moreover, there is a credible case that, if appropriate technical standards are adopted, remote electronic witnessing could ultimately be significantly safer than conventional paper witnessing, rather than a concession which makes Wills less secure.

Unlike paper Wills, Electronic Wills can establish:

- the identity of each participant in the signing ceremony;
- that each participant was live at the relevant time;
- the specific document that was being signed;
- when each signature was applied;
- the order in which signatures were applied;
- whether the document subsequently changed;
- what the participants could see; and
- potentially what was said during execution.

A conventional paper Will generally records almost none of this automatically.

10. Capacity is not an Electronic Will problem

Testamentary capacity should be treated separately. A testator must have requisite capacity whether the Will is:

- professionally prepared or homemade;
- paper or electronic;
- witnessed physically or remotely.

Nothing inherent in an Electronic Will changes the legal standard.

The Commission separately recommends replacing the existing common-law test with the Mental Capacity Act 2005 test, together with a Code of Practice addressing matters including when capacity should formally be assessed, who should assess it, how it should be assessed and appropriate record keeping.

Those recommendations apply to testamentary capacity generally. They are not a response to some special incapacity problem created by Electronic Wills. The Modernisation Panel's roundtable discussions similarly recognised that capacity concerns arise with both paper and Electronic Wills and that the real question is the quality of the evidence available if capacity is subsequently disputed.

11. **Electronic Wills could provide better evidence of capacity**

Electronic Wills nevertheless provide an opportunity to improve that evidence. A future technical standard could allow an appropriate capacity assessment to be digitally associated with the Will.

Depending upon the circumstances, that evidence might include:

- a structured capacity assessment;
- a practitioner's certification;
- a medical assessment where appropriate;
- a video interview;
- a transcript;
- relevant questions and answers; or
- other contemporaneous records.

The evidential record could then be cryptographically linked (hashed) to the Electronic Will and its execution record.

The existence of the hashed capacity test does not somehow prove capacity. Rather, the technology could prove the capacity evidence that existed in relation to this testator and this Will at the relevant time and show that it has not subsequently been substituted or altered. That is an evidential advantage which paper Wills cannot replicate.

This approach would accommodate whatever standard for assessing capacity is ultimately adopted. The Electronic Will architecture does not itself need to determine what constitutes sufficient capacity evidence. It needs to be capable of securely preserving and associating the agreed evidence with the Will.

12. Policy considerations

There are several policy considerations relating to remote witnessing:

a. Accessibility

Given that only approximately 43% of UK residents have Wills, making it easier for more people to make valid Wills is a desirable policy. Remote witnessing can make Will-making substantially easier for people who:

- have mobility difficulties;
- live in rural areas;
- are overseas;
- are housebound;
- cannot readily arrange two suitable witnesses; or
- already conduct their relationship with their legal adviser remotely.

The COVID-19 experience demonstrated the practical value of remote witnessing.

b. Deliberation and solemnity

While it is desirable that people have Wills, it is equally desirable that those Wills are up to date. However, there is a balance between easily updating one's Will and doing so impetuously. Convenience should not make Will-making a casual transaction. Formalities serve an important cautionary function: they signal that the testator is undertaking an important legal act with meaningful consequences.

A well-designed electronic system can preserve that function through deliberate execution stages, warnings, confirmations and authentication rather than relying simply upon the inconvenience of paper.

c. Technology neutrality

The Commission's "reliable system" approach deliberately permits different technological methods and gives the Secretary of State power to make regulations concerning the systems used to satisfy electronic formalities. That is preferable to mandating a particular signature technology which may be obsolete before the legislation itself.

d. Evidential quality

Perhaps the most significant opportunity is to move from a system heavily dependent upon inference and reconstruction after death towards one which creates reliable evidence contemporaneously.

Challenges involving fraud, undue influence and capacity often arise years after execution, when memories have faded and witnesses may themselves be unavailable. Electronic Wills offer an opportunity to preserve better evidence contemporaneously with events.

13. Conclusion

The key question is not whether Electronic Wills and remote witnessing are or can be entirely free from fraud, undue influence or capacity concerns. No system can achieve that, and paper Wills plainly do not. The better question is whether Electronic Wills can provide protection at least equivalent to paper wills, while improving accessibility and preserving better evidence. The Law Commission concludes that they can.

Fraud of the kind demonstrated in *Patel v Patel* illustrates why simply possessing a genuine signature is not sufficient. Electronic execution can respond by requiring contemporaneous verification of identity and live participation.

Undue influence exerted before execution is largely independent of the medium through which the Will is created and eventually signed. Physical witnesses cannot reliably detect coercion which occurred before they arrived.

At the execution stage, meanwhile, remote witnessing combined with contemporaneous identity verification, live participation, secure signatures and a reliable audit trail may provide stronger protection than conventional paper execution.

Capacity is likewise not peculiar to Electronic Wills. The legal standard should be the same irrespective of the medium. Electronic Wills may, however, improve the evidential position by enabling evidence relevant to capacity to be preserved and securely linked to the Will and the execution event.

The policy should be to identify the safeguards that the law requires: identity, intention, capacity, voluntariness, witnessing, integrity and evidence, and design electronic systems which perform those functions reliably.

Done properly, Electronic Wills offer an opportunity to strengthen the safeguards surrounding Will-making.

Appendix

Hierarchy of safeguards

The law determines:

- the capacity required to make a will;
- what constitutes undue influence;
- the witnessing requirements;
- the evidential consequences of suspicious circumstances; and
- ultimately whether a will is valid.

The reliable system can then provide evidence relevant to those questions.

For example:

Risk	Paper Will	Properly designed Electronic Will
Identity of testator	Witness recognition/evidence	Witnesses and contemporaneous digital identity verification
Forged/testator signature	Handwriting evidence	Signature cryptographically linked to verified signatory
Misuse of genuine signature	Possible: Patel v Patel	Re-enrolment/live verification can materially reduce risk
Identity of witnesses	Usually names/signatures	Verified identities linked to signatures
Signing sequence	Witness recollection	Automatic timestamp/audit trail
Document altered afterwards	Forensic examination	Integrity/hash verification
Prior undue influence	Difficult to detect	Still difficult; digital records may provide additional evidence
Influence during signing	Witness observation	Witness observation and technical controls/audit evidence
Capacity	Practitioner/witness/medical evidence	Same substantive standard, with evidence capable of secure association with will
Evidence years later	Human recollection/file notes	Contemporaneous, tamper-evident digital evidence

The objective should not therefore be to reproduce paper execution electronically.

It should be to identify the purposes served by existing formalities and determine whether technology can perform those functions at least as well, and where possible better.



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