

Scottish Independent Advocacy Alliance (SIAA) Note

New AWI Practice Note: What Independent Advocates Need to Know

A note on status for SIAA member organisations: This is preliminary guidance based on a new Practice Note by the Sheriff Principal on Adults with Incapacity (AWI) cases. It is likely to be updated as practice under the new Note begins, and as SIAA gathers more expertise and experience from SIAA member organisations and other stakeholders. Please treat it as a starting point and let us know what your experiences are with advocacy partners.

This sits alongside independent advocacy's existing role and principles, set out in the sector agreed [Principles, Standards and Code of Best Practice](#). Nothing below changes that role, however, two recent legal developments make parts of it more consequential in AWI cases.

Background

There were over [3700 cases in the Sheriff Court last year \(2025/26\)](#) which dealt with applications under the Adults with Incapacity (Scotland) Act 2000. The Act sets out a framework for regulating intervention in the affairs of adults who have impaired capacity. It allows for intervention in a wide range of property, financial or welfare matters. These are therefore amongst the most important and complex cases to be brought before the Sheriff Court.

Two developments summarised below are linked and will impact how AWI cases are dealt with in Scotland.

- The [Attorney General for Northern Ireland \(AGNI\) ruling \(Supreme Court, 2 June 2026\)](#) changed how deprivation of liberty is assessed, known as AGNI ruling. A Northern Ireland case, but because it turns on Article 5 of the European Convention on Human Rights, the Supreme Court's reasoning is binding UK-wide, including in Scotland. Courts must now look at the specific circumstances of a person's situation - including whether they are objecting to it, and whether they can express a view about it. SIAA's understanding is that a person who lacks capacity to make decisions about their care may still be found to have given valid consent to it, if they can express that they're content. [SIAA have written a statement about the AGNI ruling](#) and how we currently think it will impact independent advocacy.

- A new [Scotland-wide sheriff court practice note](#) (Practice Note No 1 of 2026, in force from 13 July 2026) sets stricter requirements for applications under the 2000 Act, including new obligations to address the adult's wishes and feelings.

What this means for independent advocacy practice

1. The adult's wishes and feelings need to be clearly evidenced and that now matters more. Applications under the 2000 Act must now set out the adult's present and past wishes and feelings about the order sought, or explain clearly why this could not be established and what steps, including support provided, were taken to try and establish wishes and feelings. Where independent advocacy has been involved in helping someone express a view, that work may be directly relevant to an application. It's worth:

- Keeping clear notes of what the person has expressed, and how they were supported to express it as they are more likely to be needed for the court process.
- Being prepared for solicitors, MHOs, or the court to ask what independent advocacy support was offered or provided, and what it established.

2. Objection, however it's expressed, now carries more legal weight. Since AGNI, whether a person is objecting to their care arrangements is now one of the factors - alongside things like the type and duration of any restriction - that courts must weigh in deciding whether someone is deprived of their liberty. Previously, objection wasn't considered relevant at all. Objection isn't always vocal or direct as independent advocacy organisations are well aware, it can show up as distress, withdrawal, repeated requests, or resistance that others might not read as objection. Independent advocacy workers are often best placed to notice this and make sure it's recorded and passed on, not lost.

3. "Can this person express a view at all" is now a live legal question and supported decision-making is therefore crucial. The practice note requires averments on the adult's ability to understand and express a view on the order sought, and the AGNI ruling turns on whether valid consent can be given. Where independent advocacy has helped someone communicate a view that support is part of the answer to that question, not a side issue.

4. Least restrictive option and proportionality are explicit requirements, not just principles. The practice note specifically flags that where financial powers are sought mainly to manage self-directed support or direct payments, applicants must consider whether narrower powers would be less restrictive and still achieve the purpose. The example used is related to financial powers, however SIAA members note that least restrictive option and proportionality apply to any non-consensual intervention under the AWI Act, importantly matters of welfare which could affect a person's liberty and place of residence. This is worth independent advocates flagging with advocacy

partners, MHOs and/or solicitors as appropriate. It is worth noting, and possibly flagging to funders/commissioners that involvement of independent advocacy can be a useful way to explore less restrictive options with advocacy partners.

5. Explaining the distinction between a safeguarder's role (best interests) and independent advocacy role (views/voice) may be more needed. The practice note requires applications to explain whether a safeguarder is being sought and, if not, why not. As courts and applicants engage more with both roles under the new note, it may be worth being ready to explain that distinction if it comes up.

6. Expect more scrutiny and more paperwork around you, even where independent advocacy isn't directly named. The practice note discourages generic or pro forma applications, requires much more detailed averments throughout, and introduces a mandatory checklist. Solicitors and Mental Health Officers are likely to be under more pressure to evidence engagement with the adult which should mean more requests for independent advocacy involvement, and more requests to explain what that involvement achieved.

What we don't know yet

- How sheriffs will interpret "sufficient" evidence of wishes and feelings in practice, and whether that raises the bar for independent advocacy involvement in some cases.
- Whether increased scrutiny will translate into increased, resourced demand for independent advocacy, or simply increased expectations without increased capacity.
- How this will interact with any future reform of the 2000 Act, which is expected this Parliamentary term, a Human Rights Bill for Scotland that brings supported decision making consideration into scope of Scots Law or the Learning Disability Autism and Neurodivergence (LDAN) Bill impact on supported decision-making.

We'll update this note as those answers emerge. If your organisation is seeing early examples, for example solicitors or Mental Health Officers asking different questions, courts expecting different evidence, or gaps where independent advocacy isn't available, please let SIAA know. That's exactly the kind of practice experience this guidance needs to stay useful.

About SIAA

The Scottish Independent Advocacy Alliance (SIAA) is the national intermediary organisation for independent advocacy in Scotland, with 33 member organisations providing independent collective and individual advocacy across communities,

hospitals, and prisons. SIAA's role is to promote, support and advocate for independent advocacy.

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