

**south ayrshire**  
health & social care  
partnership

# Briefing Note.

## Training for Trainers

### November 2023



The principles of AWI legislation - specifically the need to consider the five principles every time you intervene under AWI legislation



S47 medical certificates and their specific use as it relates to treatment in hospital



Power of attorney (POA)



How guardianship works – applications and orders particularly in relation to hospital discharge



Supported decision making and where this can be used

# Benefit

Least Restrictive Intervention

Take account of Adult's wishes

Taking account of the views of others

Encouraging the Participation

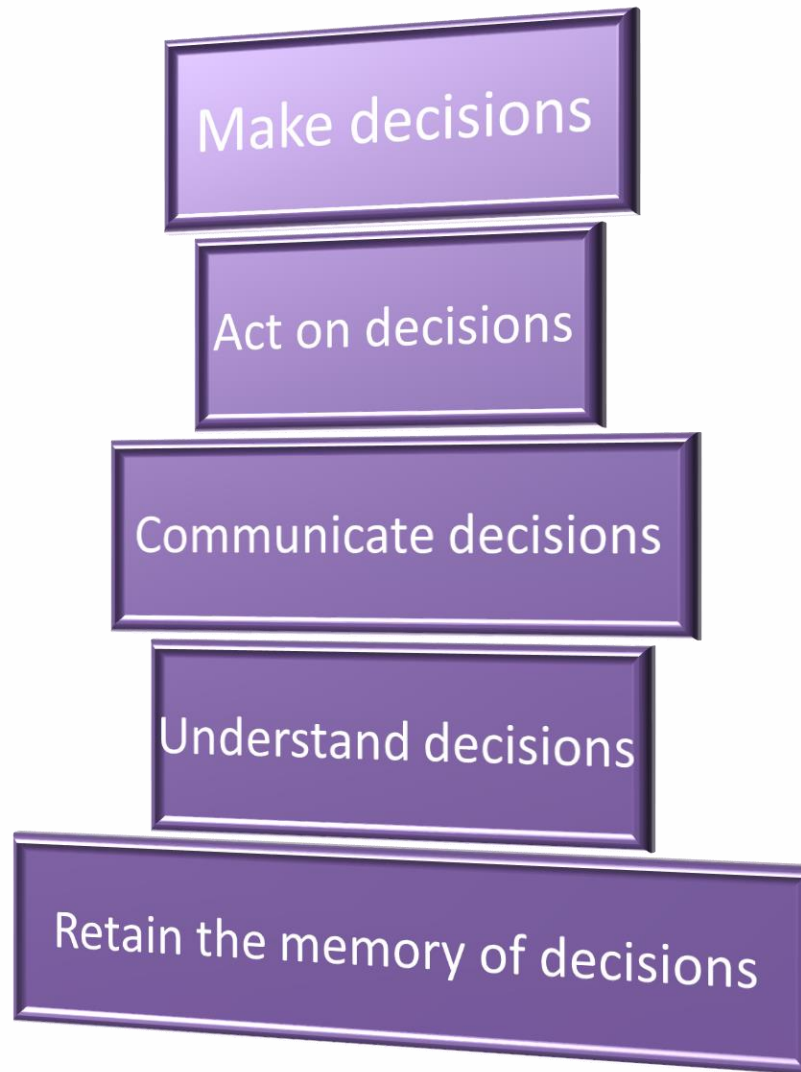
- No such thing as AWI
- Incapacity is decision specific
- A diagnosis alone does not mean that someone lacks capacity to make decisions
- NOK does not automatically have a role under AWI
- AWI does not mention best interests



## REASON FOR A SECTION 47 CERTIFICATE

The Law generally presumes that capable adults are able to make their own decisions regarding the medical care they receive.

Under the act, an adult is incapable if they are unable to:



**The certificate issued by the doctor would need to state:**

The  
nature of  
the  
incapacity

Form of  
medical  
treatment  
proposed

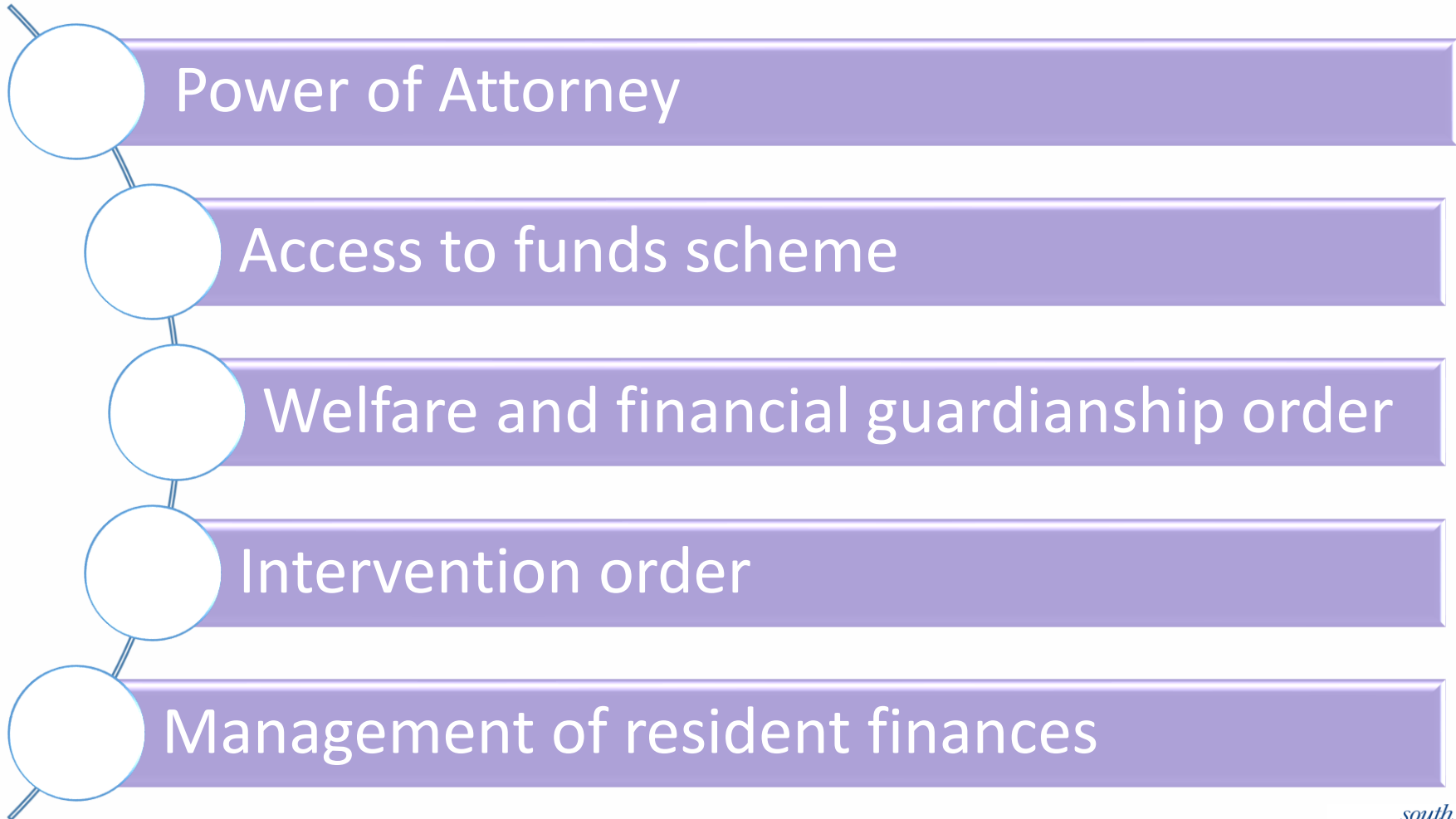
**Duration**  
(maximum 1 year, or  
3 years if  
conditions/circumsta  
nces prescribed by  
Scottish ministers  
apply)

Consultation  
with  
relevant  
others  
  
Nearest relatives,  
primary carers etc

S49  
medical  
treatment

S50  
medical  
treatment

Disagreement  
about  
treatment-  
independent  
view from  
MWC





- A power of attorney is a legal document which allows you to plan for the future. It's drawn up when you have the capacity to do so
- It gives another person, known as [The Attorney](#), the authority to deal with aspects of your affairs. This could relate to financial/property matters and/or personal welfare
- How the POA is triggered
- **There are two types of power of attorney**
- Now days POAs generally have welfare and financial powers

## POA relating to Financial/Property affairs

Known as a 'continuing power of attorney' and may be given with the intention of taking effect immediately and continuing on if you becoming incapable. Or you can decide you only want it to begin if you become incapable.

## POA relating to Welfare

- Allows someone you have appointed to make welfare decisions for you, and these powers cannot be exercised until such time as you have lost the capacity to make these decisions

## USE OF 13Za IN HOSPITAL DISCHARGE

13Za can provide an alternative to a guardianship or intervention order where (in terms of section 13ZA (1)) a local authority determines under the 1968 Act that an adult's needs call for the provision of a community care service. and It appears to the local authority that the adult is incapable in relation to decisions about the service

A meeting is organised with the person and the family present

There is a medical view about the persons capacity

An MHO is invented to the meeting

An advocacy worker is invited

A minute is taken that records the outcome of the meeting and the reasons why 13za was used or not



## Two types of orders:

- Private
- LA applications



- LA applications require an AWIA CC
- Private applications do not require and AWIA CC

Welfare and  
Financial  
Orders

Interim orders

Intervention  
orders

## Sheriff court rules

Six-week timescale for considering private to LA - Role of the social worker

Overall timescales for an order three months from start to finish

Issues that can cause delays –  
Scottish gov requirements

Other issues that may hold up the process

Published 30th  
September

Scott ten  
principles

ADM and SDM as  
the basis of change

Review of AWI legislation  
- urgently required

Often people will have full capacity at this stage and will not require direct support from statutory services

It is therefore important that social work services are able to gauge their requirements and get the correct information to them about what support they may need if they lose capacity, or it diminishes at a later stage

There is often a mixed picture for people where they may have some physical health issues and are able to continue to do certain things independently



They begin to have some capacity issues but can give a clear view still of their preferences for a whole range of things including medical and personal care

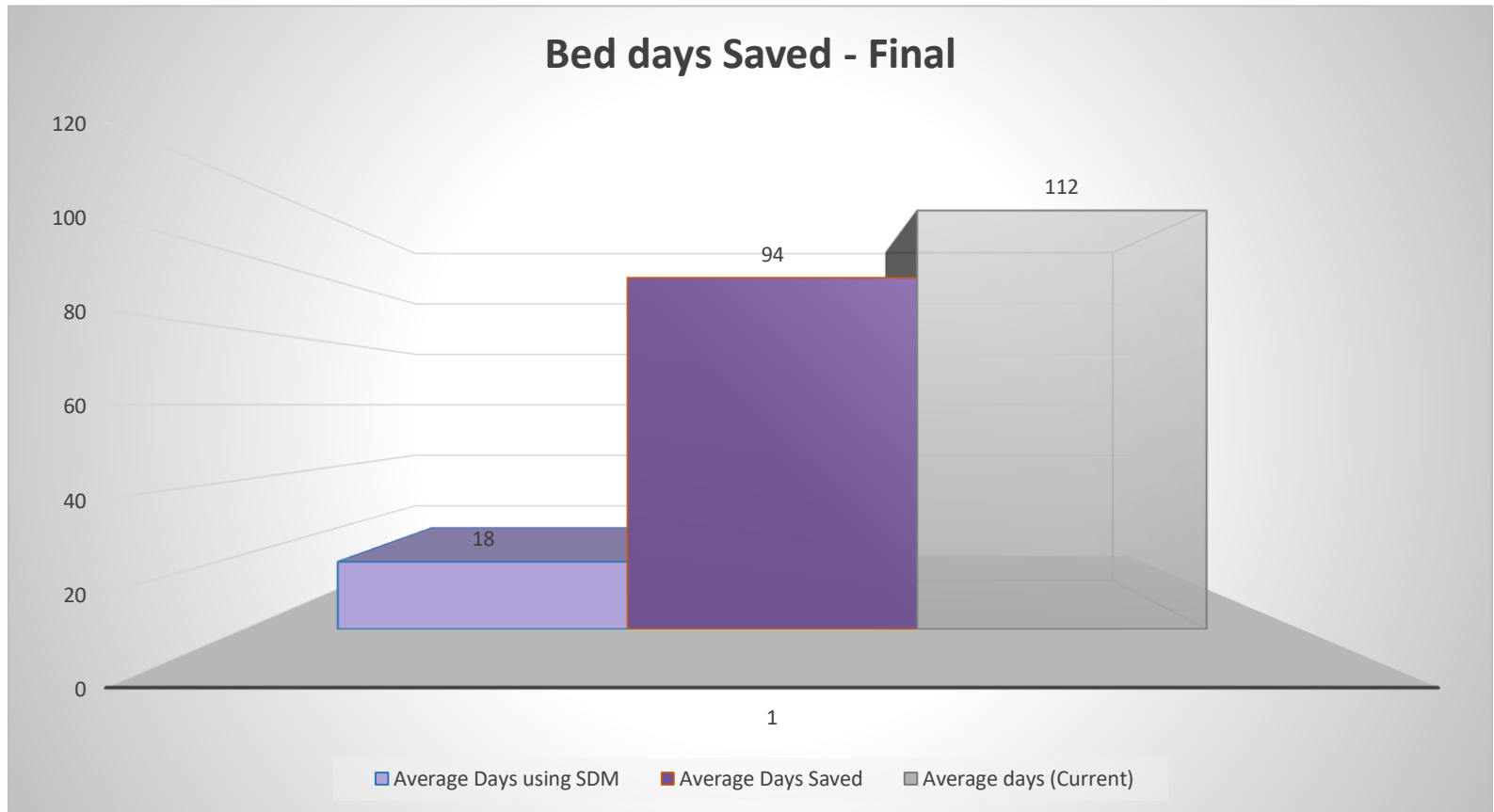


### The case of Ms A1.

- Ms A1 is a 75-year-old lady who has been admitted to CAU suffering from a stroke.
- Ms A1 had two previous admissions in the past two years. Both relating to physical health problems.
- Ms A1 is a bit confused and does not understand the treatment CAU is offering. A section 47 certificate is put in place.
- Ms A1 appears to be able to talk to nursing staff without difficulty. She know she is in hospital.
- Ms A1 has regular visits from family and has good relationships with husband and children.
- Ms A1'S family tell you she has increasing problems with memory and confusion.
- Ms A1 does not have a POA in place.
- Ms A1 is an ideal candidate for input for an SDM assessment

This is where someone has lost capacity, and it is evident at this stage SDM would not be able to support any changes required.

It is most likely that AWI legislation is needed to support people at this stage



# Thank You

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