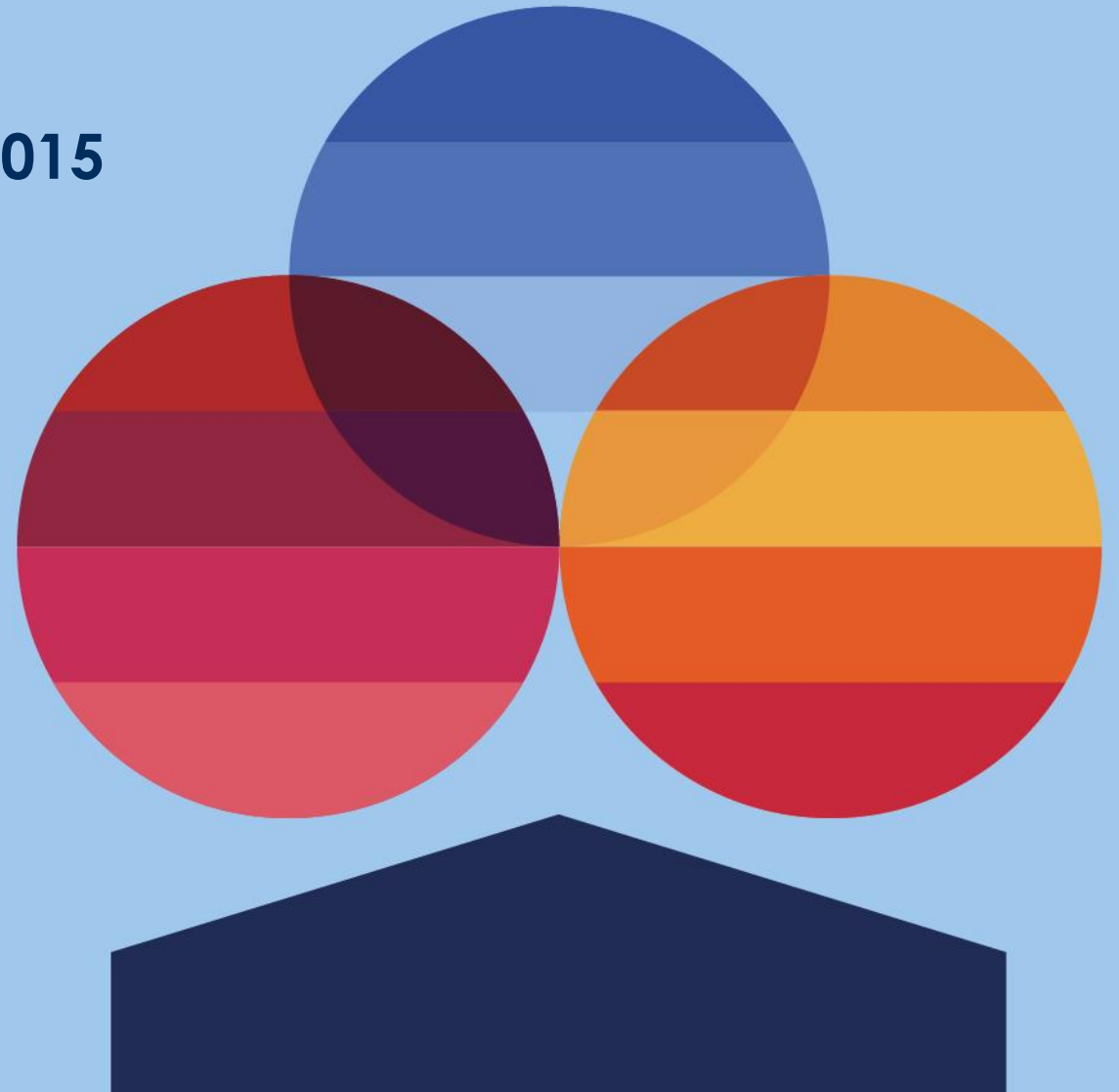


**Disability Special Interest Group
Social Care Ireland**

**Assisted Decision-Making (Capacity) Act 2015
& Decision Support Service:
a practice perspective**

**Áine Flynn,
Director, Decision Support Service**

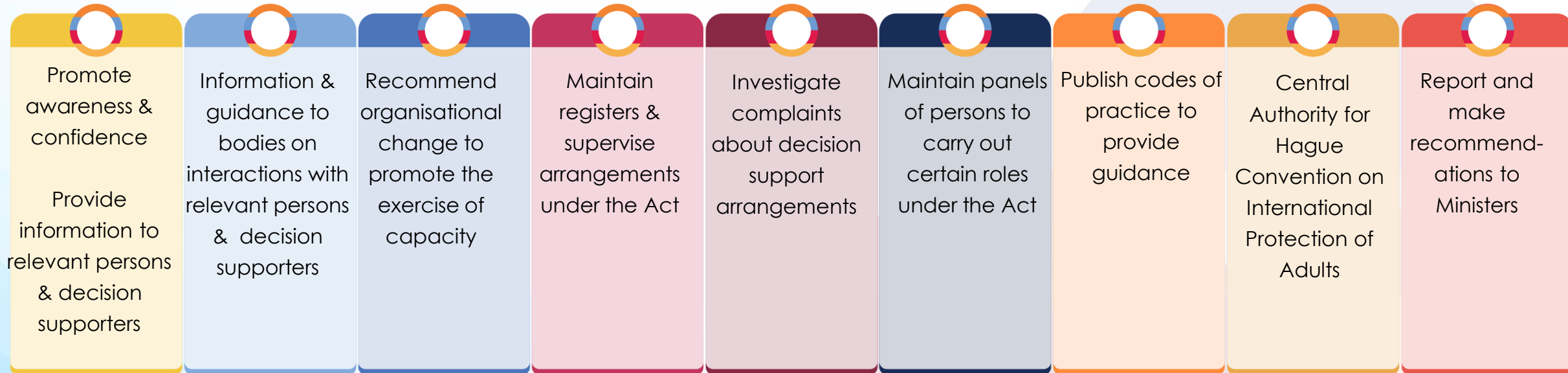
8 November 2024



Decision Support Service (DSS)

The Director of the DSS is appointed by the MHC to carry out functions conferred on the Director by the 2015 Act

Functions include:



○ The DSS must apply section 8 guiding principles

My decisions. My rights.



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DecisionSupportService.ie



Margaret's story.

I have the right to make the decisions that matter to me. Decisions about my money, my property, where I live. Decisions about care and medical treatment. If I need formal supports, the new Decision Support Service can help. And if I want to plan ahead so that my wishes are always known and respected, I can do that too. The Decision Support Service can help me and those close to me to understand the options available.

My decisions. My rights.



An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Oige
Department of Children, Equality,
Disability, Integration and Youth



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DSS Director

DSS Panels



Recruitment, training of panel members.

Assigning cases to panel members.

Forwarding panel nominees to the court on request.

Managing payment of panel members.

DSS Panels:

- Special Visitor
- General Visitor
- DMRs

Registration



Supporting the creation of decision support arrangements

Receipt of notified decision-making assistance agreements.

Review (including consideration of objections) and registration/ acceptance of notification of co-decision-making arrangements and enduring powers of attorney.

Registration of decision-making representation orders received from court.

Maintaining and controlling access to a searchable registers

Supervision



Supervise compliance of decision supporters, in the performance of their functions (CDMAs, DMRs, attorneys).

Receipt and review of annual reports and accounts

Receipt and review of 3 months statements of assets and liabilities and projections of income and expenditure (DMRs, attorneys with properties and affairs responsibilities)

Periodic review of CDMAs under section 26.

Requesting and managing supervision visits by special and general visitors.

Complaints & Investigations



Handling complaints regarding decision-supporters and active decision-support arrangements.

Investigating complaints, including own-initiative investigations, with assistance from special and general visitors as required.

Summon witnesses and take up information

Apply to court for temporary prohibition orders if necessary .

Referral of complaints to court for determination following investigation

Informal resolution

Operations



Business operations, ICT, administration.

Includes Information and Support Services Team, providing information and assistance around all general queries and feedback (emails, phone calls, letters).

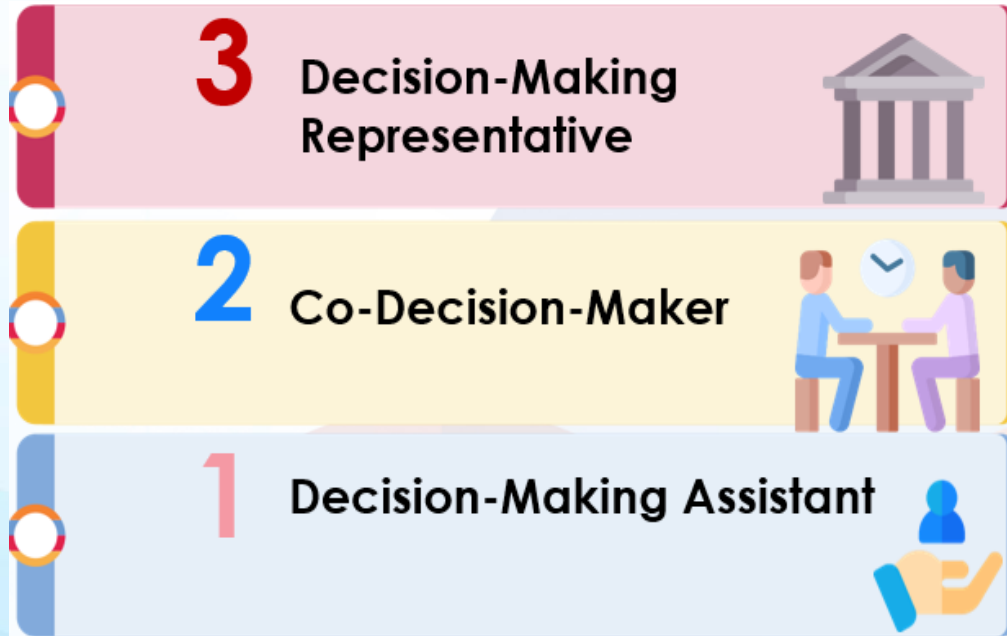
Management of 'MyDSS' account opening

Escalation of complex queries or specific feedback to appropriate teams.



Statutory Decision Support Arrangements

▶ 3-tier framework



▶ Instruments for Advance Planning

- Enduring Power of Attorney



- Advance Healthcare Directive



- All decision supporters must apply the guiding principles

What decisions may be supported?

Property and affairs, including:

- Buying and selling property
- Applying for benefits
- Carrying on a business
- Paying debt and liabilities
- Providing for other persons
- Court proceedings

Personal Welfare

- Accommodation
- Education and training
- Social services
- Healthcare, including treatment
- Participation in healthcare and social care research but not including clinical trials
- “...other matters relating to the relevant person’s wellbeing”

- Section 138: limited exceptions apply where existing law on capacity/consent is unaffected

Guiding Principles

Including:

- presumption of capacity; already the standard at common law
 - persons must be supported to make own decisions as far as possible
 - an unwise decision does not mean that the person lacks capacity
 - minimal restriction of rights and freedom of action
 - dignity, bodily integrity, privacy, autonomy
 - permit, encourage and facilitate participation in intervention
 - give effect to as far as practicable to past and present **will and preferences**
 - act in good faith and for the benefit of the person
 - **no reference to 'best interests'**
-
- United Nations on the Rights of Persons with Disabilities: ratified by Ireland in 2018



1.

Decision-making assistant (DMA)



- Lowest and least formal tier
- Appointed by a person ('the appointer') who considers that his or her capacity is or may shortly be in question – a voluntary arrangement
- Relevant decisions are set out in a decision-making assistance agreement
- Functions of decision-making assistant:
 - assist to obtain and explain relevant information
 - ascertain and help appointer to communicate will and preferences
 - assist appointer to make and express decisions
 - help to ensure that decisions implemented
- **The appointer still makes the decision**
- No capacity assessment required
- Notified to but not formally registered with the Decision Support Service
 - the DSS is able to confirm that someone is a DMA

2.

Co-decision-maker (CDM)



- Appointed by a person who considers that his or her capacity is or may shortly be in question- voluntary
- Co-decision-maker is in a pre-existing relationship of trusting decisions
- Relevant decisions are set out in a co-decision-making agreement and made jointly
- Formal capacity statement required from medical **or other healthcare professional prescribed by regulation**
- Section 23: effect of registration
 - relevant decision made other than jointly is null and void
 - decision made within scope shall not be challenged on basis that appointer lacked capacity to make the decision
- Section 26 periodic reviews by the DSS have commenced
 - updated capacity statement is required
 - general visitors have assisted with reports
- Co-decision-makers have been submitting their annual reports to Supervision team

3. Decision- making representative



- **Court appointment under:**
 - Part 5: application by *any person with a bona fide interest in the welfare of the relevant person* or
 - The court may make a declaration about the person's capacity; this declaration is kept under review
 - **DSS is not party to these applications**
 - Court rules set out the process and required documentation, to include a report on capacity
 - The court may make the decision
 - Court may appoint a decision-making representative
 - Section 50: the court may take up other expert reports

Decision-making representation order

- Court has regard to matters including:
 - will and preferences of the relevant person
 - desirability of preserving family relationships
 - any conflict of interest
 - complexity of decisions and expertise available to DMR
- 'Joan Doe' v. HSE Dublin Circuit Court, 8 December 2023
- Where no suitable, willing DMR, court shall seek nominations from the DSS panel
- Court may include limitations and conditions in DMRO as appropriate
- Court may appoint more than one DMR
- Provisions for re-entry, variation and discharge
- Decision-making representation order is sent to the Decision Support Service for registration and supervision of reporting duties.



Functions of Decision-making Representative (DMR)

Authority is based on court order; restrictions apply

Ascertain and assist with communication of will and preferences

Make decisions on behalf of & act as agent for the relevant person

DMR keeps accounts and submits reports to the DSS

- DMR may not make decisions about refusing or discontinuing life-sustaining treatment
- May not prohibit contact by another person
- Amendment Act removes provision relating to restraint by a DMR

Advance healthcare directive (AHD)

- Treatment in relation to a person means:
 - an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose,
 - related to the physical or mental health of the person
 - and includes life-sustaining treatment
- Treatment may be refused by an adult with capacity for any reason even though refusal:
 - appears unwise
 - not based on sound medical principles
 - may result in death
- Purpose of an advance healthcare directive:
 - to enable person to be treated according to will and preferences
 - to provide healthcare professionals with information about treatment choices



Advance healthcare directive

- **Refusal** of treatment in an AHD is as effective as if made contemporaneously
- Directive-maker may appoint a **designated healthcare representative**:
- AHD :
 - may extend to life sustaining treatment; must be explicit
 - may not include refusal of basic care
 - **does not require registration to be valid**
- Minister for Health *may* make regulations to provide for a DSS register; none at present
- Minister for Health has approved a template AHD for guidance; now published on the DSS website
- Process applies where there is doubt about validity and applicability; court may determine
- Protections from civil and criminal liability for healthcare professionals
- Existing criminal law (murder, manslaughter, assisted suicide) is unchanged



Part 6 review and discharge of current wards of court by the wardship court

- All adult wards must be discharged from wardship within 3 years of commencement (by 26 April 2026)
- Minor wards must be discharged from wardship within 6 months after 18th birthday
- Discharge applications may be made to the wardship court by:
 - the ward,
 - committee, or with the court's consent by
 - relative or friend in position of trust
 - other person with interest and expertise
- **DSS is not involved in applications**
- Office of Wards of Court manages this process
- DSS has collaborated on information and events for wards, committees and families
- Section 56(3): wardship applications made before commencement have been progressed since commencement of Act



Safeguards: Investigations of Complaints

Grounds of complaint

- Acting outside scope
- Unsuitability
- Arrangement not in accordance with will and preferences
- Fraud, coercion, undue influence
- Capacity issues
- Breach of function or a breach of Act, including guiding principles



Director may

- Commission a special or general visitor
- Summon witnesses
- Take up evidence
- Escalate to court
- Temporarily suspend pending investigation
- Escalate for criminal investigation, if necessary
- Conduct own initiative investigations
- Resolve informally

- **Complaint may be raised by service provider**
- **DSS may need to take up information from service provider**

Register searches

- DSS register is searchable by:
 - bodies and classes of persons as prescribed by regulation (S.I. 206/2023) and approved following DSS process
 - a person who can demonstrate a legitimate interest
- DSS registers:
 - co-decision-making agreements
 - decision-making representation orders
 - EPAs under the 2015 Act

DSS keeps record of searches

Prescribed bodies include:

- Designated centres
- Approved centres
- Public bodies and authorities
- Banks
- Regulated financial service providers

Prescribed classes of persons include:

- Legal practitioners
- Financial professional
- Registered healthcare professionals
-

Legitimate interest:

- Any person can apply to the DSS
- Must demonstrate a legitimate interest in inspecting the register at that time

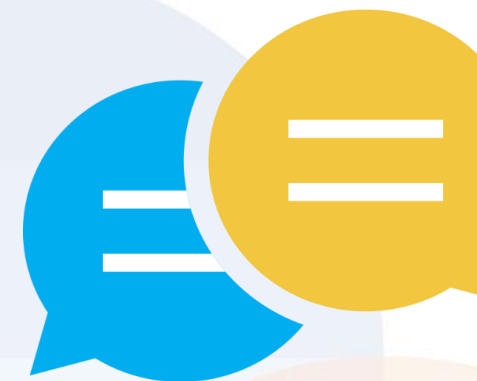
24/7 access when approved

Pending development of digital searches:
registersearches@decisionsupportservice.ie

Case-by-case access

Considerations for healthcare professionals and service providers

- The Act does not say that anyone has to enter into a decision support arrangement. This will depend on their circumstances and the decisions that they need to make
- How to support adult wards with discharge from wardship; possible transition to new framework
- Please direct queries about the support framework to the DSS information service
- Anticipate interaction with decision supporters and understanding their remit
 - under the Act, including the guiding principles and
 - in specific decision support arrangements
- Access to DSS registers and obtaining copies when necessary
- Formal capacity statements in relation to co-decision-making agreements and enduring powers of attorney
- Problems arising in a decision support arrangement; escalation of complaints to DSS





Online resources

[Easy to Read Guide to the 2015 Act | Decision Support Service](#)

[Key Terms | Decision Support Service](#)

[My Choices: Getting Support to Make Decisions | Decision Support Service](#)

[Wards of Court | Decision Support Service](#)

[MyDSS online portal Help](#)

[Courts Service: information about applications to court](#)



Thank You



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decision support service

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This presentation is intended as an overview of certain parts of the Assisted Decision-Making (Capacity) Act 2015 and related matters and should not be relied on as legal advice or opinion



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