

The Assisted Decision-Making (Capacity) Act 2015 and Decision Support Service: Update on Assisted Decision-Making functions, including resources and supports

“Maximising implementation of the Act in Practice”

6 November 2025

Patsy Fitzsimons
Head of Complaints and Investigations



April 2023



seirbhís tacaíochta
cinnteoireachta
decision support service

DSS Director

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
Decision-making
Representatives

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 agreements and enduring powers of attorneys.

Registration of decision-making representation orders received from court.

Maintaining and controlling access to a searchable register

Supervision



Supervising compliance by decision supporters in the performance of their functions

Engagement to promote understanding of supporters' roles and functions

Receipt and review of initial reports and annual accounts (CDMAs, DMRs, and attorneys).

Formal review of CDMAs under section 26.

Requesting and managing supervision visits by special and general visitors.

Referrals to court where required.

Complaints & Investigations



Managing complaints about decision supporters and decision support arrangements.

Investigating complaints with assistance from special and general visitors as required.

Exercise powers of investigation, including own-initiative investigations: summon witnesses and take up information

Apply for Temporary Prohibition Order if necessary

Escalation of complaints to court for determination

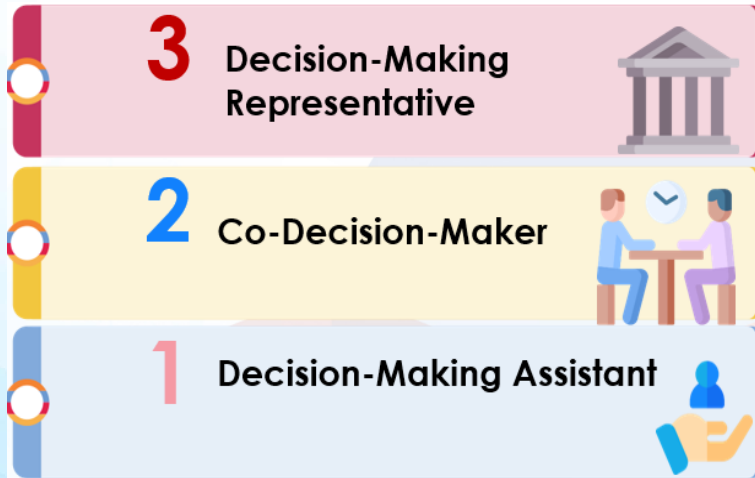
Operations



Business operations and administration
ICT: running of the digital systems
Information and Support Services Team: providing information and assistance around all general queries and feedback (emails, phone calls, letters).
Enduring power of attorney helpdesk
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' apply the guiding principles
- Eligibility criteria apply

Decision-making assistance agreement (DMAA)

1

- 'Appointer' is a person who considers that his or her capacity is or may shortly be in question
- 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
- Process is provided for by [Regulation S.I. No. 205/2023](#)



Co-decision-making agreement (CDMA)

2

- 'Appointer' is a person who considers that his or her capacity is or may shortly be in question
- Co-decision-maker is a relative or friend in a pre-existing relationship of trust
- **Functions of co-decision-maker:**
 - assist the appointer to obtain relevant information
 - advise the appointer, explain relevant information ascertain and help to communicate will and preferences
 - make a relevant decision **jointly**
 - make reasonable efforts to ensure that decision is implemented
 - to acquiesce unless serious harm is foreseeable
- Co-decision-making agreement takes effect when registered with the DSS
 - includes capacity statement by medical/other healthcare professional-
- Relevant decisions taken otherwise than jointly are null and void
- Co-decision-maker reports to and is supervised by the DSS



Co-decision-making agreement (CDMA)

- Capacity statement by registered medical practitioner or healthcare professional as prescribed by regulations states that the appointer has:
 - capacity to make a decision to enter into the CDMA
 - requires assistance in relation to the decisions in the CDMA
 - has capacity to make the decisions in the CDMA with the assistance of the co-decision-maker
- Regulation S.I. 204/2023 prescribes classes of healthcare professionals
- DSS has collaborated with HSE to develop and host training
- DSS conducts separate mandatory periodic reviews of CDMAs- updated capacity statement is required.

2



Statement of capacity by medical or healthcare professional for CDMA



Co-decision-making agreement - statement of capacity

Note: The notes in this form are provided by way of guidance only and do not constitute a statement of the law or the provisions under the Assisted Decision-Making (Capacity) Act 2015 (as amended) or any ancillary or related legislation.

Note: This statement can be completed by a **registered** medical practitioner, or a **registered** healthcare professional as prescribed by regulations, as follows:

- A nurse
- A midwife
- An occupational therapist
- A speech and language therapist
- A social worker

Name of appointer:	Peter Jones
Name of co-decision-maker:	Mary Jones
Arrangement type	Co-decision-making agreement
Pursuant to:	Section 2(4)(f) of the Assisted Decision-Making (Capacity) Act 2015
Category of decisions within co-decision-making agreement:	Personal welfare decisions and property and affairs decisions
Unique reference number:	CDM-2023-000000-001

I undertook an assessment of capacity of Peter Jones, in accordance with section 3 of the Assisted Decision-Making (Capacity) Act 2015 (as amended) (the Act), for the purposes of making a statement of capacity required by the Act.

I have discussed the content of this co-decision-making agreement with the appointer and, in my opinion, the appointer has the capacity to make the decision to enter into or vary the co-decision-making agreement.

In my opinion, the appointer requires assistance in exercising their decision-making in respect of the relevant decisions contained in the co-decision-making agreement.

In my opinion, the appointer has capacity to make the relevant decisions specified in the co-decision-making agreement with the assistance of the co-decision-maker.

Note: For use only in accordance with the Assisted Decision-Making (Capacity) Act 2015 (as amended). Penalties may apply for giving false or misleading information.

Name:	Dr Jonathan Fitzgerald	
Profession:	General Practitioner	
Registration number:	12345678	
Contact number:	01 1122334	
Email address:	jonathanfitzgerald@complexmailclinic.ie	
Any other comments:		
Signed:	Jonathan Fitzgerald	Date: 27/04/2023

Note: It is an offence to knowingly provide a false or misleading statement.

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Court-appointed Decision-making representative (DMR)

3

- Outcome of:
 - Part 5 Circuit Court: application by *any person with a bona fide interest in the welfare of the relevant person or*
 - Part 6 wardship court on review and discharge of a former ward
- DSS is **not** a party to court applications
- Court Rules set out the process- a capacity report is required
 - Courts Service: information about applications to court
 - Template capacity report has been approved by the Circuit Court
- The court may make a declaration about the person's capacity:
 - relevant person lacks capacity unless assisted by a co-decision-maker
 - relevant person lacks capacity even if a co-decision-maker were available
- Court may make a decision-making order or appoint a DMR
- Capacity declaration is reviewed by Circuit Court at least every 36 months –updated capacity report is required



Functions of 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 refusal or discontinuation of life-sustaining treatment**
- **May not prohibit contact by another person**
- **A DMRO may not authorise restraint or detention**
- **Section 43: specific provision must be made for gifts**

Advance Planning: two instruments

- A person with capacity can create legal instruments to set out their will and preferences about their property and affairs and personal welfare
- In the instrument, the person can appoint trusted decision-maker(s) to decide for them
- **The instrument only becomes effective in the future if the person lacks capacity to make the decisions that are covered in the instrument**



- Enduring power of attorney (EPA)
- Advance healthcare directive (AHD)
- 11% of adults have an enduring power of attorney
- 4% of adults have an advance healthcare directive



-Safeguarding Ireland Survey, November 2023

Enduring Power of Attorney: new 2-stage process

Stage 1: Registration

- Donor executes the EPA and submits to the DSS
- Supporting documents include a capacity statement
- DSS reviews for compliance, considers any objections and registers EPA if appropriate

Stage 2: Notification

- Attorney(s) notify DSS when donor loses capacity for one or more decisions that are included in the EPA
- Evidence needed that donor has lost capacity for the decisions
- DSS reviews notification application
- If notification is accepted, then EPA comes into effect

Legal practitioner statement: practising solicitor or barrister



Legal practitioner statement

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Name of donor:	Joan Smith
Name of proposed attorney(s):	Tom Smith
Name of proposed replacement attorney(s), if applicable:	
Arrangement type:	Enduring power of attorney
Pursuant to:	Section 60(1)(b) of the Assisted Decision-Making (Capacity) Act 2015
Category of decision types within enduring power of attorney:	Personal welfare decisions and property and affairs decisions
Unique reference number:	EPA-2023-000000-001
Date of interview:	12/04/2023

I have interviewed Joan Smith and made any enquiries necessary for the purposes of making

Note: For use only in accordance with the Assisted Decision-Making (Capacity) Act 2015 (as amended). Penalties may apply for giving false or misleading information. Page 1 of 2

I am satisfied that the donor is aware that they may vary or revoke the enduring power of attorney prior to its registration, and on or after its registration until the attorney notifies the Director of the Decision Support Service under section 71A of the Act that the donor lacks capacity in relation to one or more of the relevant decisions which are subject of the enduring power of attorney and this notification has been accepted by the Director of the Decision Support Service.

I have no reason to believe that the donor is executing the instrument a result of fraud, coercion or undue pressure.

Name:	James Murphy
Firm (if applicable):	Example & Co solicitors
Registration number:	12345678
Contact number:	011 111 1111
Email address:	james@exampleandco.ie

Any other comments:

Signed: *James Murphy* Date: 12/04/2023

Note: For use only in accordance with the Assisted Decision-Making (Capacity) Act 2015 (as amended). Penalties may apply for giving false or misleading information. Page 2 of 2

Statement of capacity by medical or healthcare professional : completed after execution and witnessing



Enduring power of attorney - statement of capacity

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Note: This statement can be completed by a **registered** medical practitioner, or a **registered** healthcare professional as prescribed by regulations, as follows:

- A nurse
- A midwife
- An occupational therapist
- A speech and language therapist
- A social worker

This statement **must** be completed **after** the enduring power of attorney is executed. This means the statement must be completed after the donor and all attorney(s) (including replacement attorney(s), if any) have signed and witnessed their declarations.

Name of donor:	Joan Smith
Name of attorney(s):	Tom Smith
Name of replacement attorney(s), if applicable:	No replacement attorney appointed
Arrangement type:	Enduring power of attorney
Pursuant to:	Section 40(1)(c) of the Assisted Decision-Making (Capacity) Act 2015
Category of decision types within the enduring power of attorney:	Personal welfare decisions and property and affairs decisions
Unique reference number:	EPA-2023-000000-001

I undertook an assessment of capacity of Joan Smith, in accordance with section 3 of the Assisted Decision-Making (Capacity) Act 2015 (as amended) (the Act), for the purpose of making a statement of capacity as required by the Act.

I am of the opinion that at the time the power was executed, the donor had the capacity to understand the implications of creating the power.

Name:	Michael Johnson		
Profession:	General Practitioner		
Registration number:	87654321		
Contact number:	081 112 1222		
Email address:	michaeljohnson@generalmedical.ie		
Any other comments:			
Signed:	Michael Johnson	Date:	21/04/2023

Note: It is an offence to knowingly provide a false or misleading statement.

Certified copy

- Once approved, applicants receive a certified copy of the EPA



Enduring power of attorney

Unique reference: EPA-2023-000000-001
Date of registration: 14-May-2023

Details of the donor

Donor name: Joan Smith
Donor address: Ivano House
Cork City
Cork
Donor Eircode: C01 A234
Donor date of birth: 14-April-1960

Details of the attorney(s)

Attorney 1 name: Tom Smith
Attorney 1 address: Ivano House
Cork City
Cork
Ireland
C01 A234
Attorney 1 Eircode: C01 A234
Attorney 1 date of birth: 13-March-1955

Authority in relation to personal welfare decisions

The donor confers the following authority on the attorney(s) in relation to personal welfare decisions: Authority to do specified things on the donor's behalf in relation to the donor's personal welfare

Details of relevant personal welfare decisions

The following personal welfare decisions fall within scope of this enduring power of attorney, to be made by the attorney(s) on behalf of the donor:

- Decisions relating to Accommodation

Details:

Decisions relating to my primary residence. Decisions relating to living in residential care. Decisions relating to moving into a nursing home.

Exclusions or exceptions:

N/A

Authority in relation to property and affairs decisions

The donor confers the following authority on the attorney(s) in relation to property and affairs decisions: General authority to act on the donor's behalf in relation to the donor's property and affairs

Functions of the attorney(s)

Attorney(s) appointed under this enduring power of attorney are authorised under Section 59 of the Assisted Decision-Making (Capacity) Act 2015 (as amended) to act on the donor's behalf in relation to the relevant decisions specified.

Where a general authority is conferred on the attorney(s) in relation to personal welfare decisions, this authority relates to the following matters:

- accommodation, including whether or not the donor should live in a designated centre
- participation by the donor in employment, education or training
- participation by the donor in social activities
- decisions on any social services provided or to be provided to the donor
- healthcare
- participation by the donor in healthcare research and social care research except in relation to clinical trials of medicinal products for human use or clinical investigations undertaken to assess the safety or performance of medical devices
- other matters relating to the donor's well-being

Where a general authority is conferred on the attorney(s) in relation to property and affairs decisions, this authority relates to the following matters:

- the custody, control and management of some or all of the donor's property or property rights
- the sale, exchange, mortgaging, charging, gift or other disposition of the donor's property
- the acquisition of property by the donor, or on his or her behalf
- the carrying on, on behalf of the donor, of any profession, trade or business which may lawfully be carried on by a person other than the donor
- the making of a decision which will have the effect of dissolving a partnership in which the donor is a partner
- the carrying out of any contract entered into by the donor
- the discharge of the donor's debts, tax and duty liabilities and obligations or other obligations
- the execution or exercise of any of the powers or discretions vested in the donor as a tenant for life
- providing, to the extent that the donor might have been expected to do so, for the needs of a decision-making assistant, a co-decision-maker, an attorney, a designated healthcare representative or a decision-making representative for the donor or for the needs of other persons
- the conduct of proceedings before any court or tribunal, whether in the name of the donor or on his or her behalf
- making an application for housing, social welfare or other benefits or otherwise protecting or advancing the interests of the donor in relation to those matters

CERTIFIED COPY

THIS DOCUMENT IS AN AUTHENTICATED COPY OF A DECISION SUPPORT ARRANGEMENT, REGISTERED WITH AND CERTIFIED BY THE DIRECTOR OF THE DECISION SUPPORT SERVICE IN ACCORDANCE WITH THE ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (AS AMENDED).

Áine Flynn, Director of the Decision Support Service

Authenticated on: 14/05/2023 14:16:03 EPA-2023-000000-001

Page 3 of 3

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
- **Treatment decisions may not be included in an EPA**



Approved template advance healthcare directive available on DSS website

ADVANCE HEALTHCARE DIRECTIVE FORM

In this Advance Healthcare Directive form you can record your refusals and requests for healthcare treatments. You can also appoint a Designated Healthcare Representative and an alternative Designated Healthcare Representative to speak on your behalf should you lack capacity to make decisions about your healthcare treatment in the future.

This document is legally binding when signed and witnessed as explained in Section 5 of this form.

FORM

Under section 84(9) of the Assisted Decision-Making (Capacity) Act 2015 (as amended) the Minister for Health may for the guidance of persons wishing to make advance healthcare directives, specify forms of such directives, not inconsistent with this Part, that such persons may use or adapt in making their respective advance healthcare directives.

Under section 84(11), the Minister for Health may publish any forms of Advance healthcare directives that he or she has specified under sub-section (9) in such manner that he or she thinks appropriate, including by the use of a website on the internet.

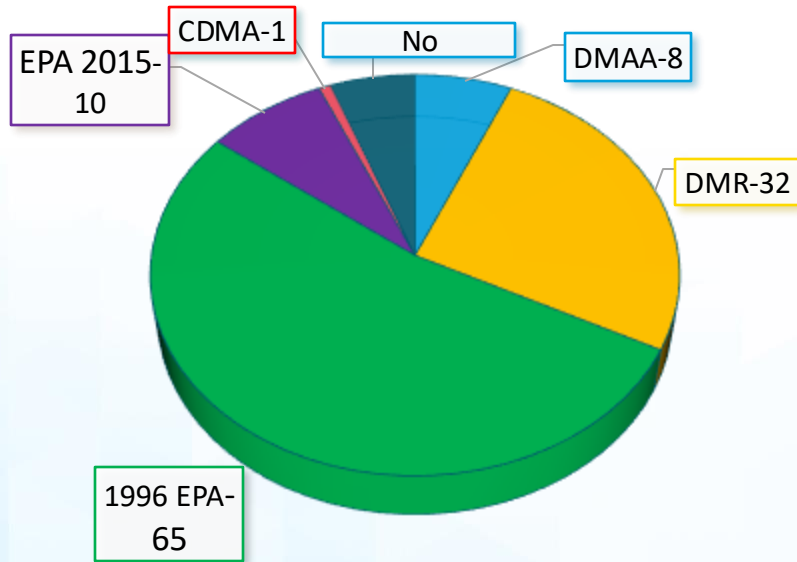
This template advance healthcare directive has been approved by the Minister for Health and released for publication on the DSS website.

November 2023

SECTION 1: DETAILS OF THE PERSON MAKING THE ADVANCE HEALTHCARE DIRECTIVE (THE DIRECTIVE-MAKER) THESE DETAILS MUST BE COMPLETED

Name:	
Date of Birth:	
Contact Details (one or more of the following):	
a. Phone Number:	
b. Address:	
c. Email:	

Complaints and Investigations stats April '2023-October '2025



Total 123 complaints received since commencement

Sources of complaints- family members, social workers, independent advocates, nursing homes, other healthcare professionals/providers, financial services

Complaints to date:

- 1996 EPA – 65
- 2015 EPA – 10
- DMAA – 8
- CDMA – 1
- DMR – 32 (6 Panel DMRs)
- No Arrangement – 7
- **TOTAL: 123**

Planned activities

- Review of complaints procedures + individual complaint forms relating to each support type.

Examples of Complaints/Investigations

Joint Attorneys not taking decisions together in accordance with the EPA

DMA making decisions – not in scope of a DMAA

DMR failing to pay RP's nursing home fees, medication etc

Attorney caring for Donor at home – complaints about level of care

Attorney not considering Donor's wish to leave nursing home care

Use of undue influence on the Donor to appoint them as attorney

DMR not engaging with the RP for months following court appointment

DMR seeking to move RP out of nursing home against medical advice

DMR acting contrary to the Code of Practice by retaining RP's cash at home

Communication issues between DMR and service provider

Attorney misunderstanding their role – curtailing Donor's expenditure unnecessarily and contrary to the Donor's wishes.

DSS Stakeholder Forum



Links to useful resources

- ▶ [Specimen completed forms](#)
- ▶ [Code of Practice - Supporting decision making and Assessing capacity](#)
- ▶ [Code of Practice for Attorneys](#)
- ▶ [MyDSS online portal Help – Videos](#)
- ▶ [MyDSS online portal help – written guides](#)

Email addresses:

- ▶ Dedicated EPA Helpdesk Freephone (01) 211 9750 or email EPAhelpdesk@decisionsupportservice.ie
- ▶ Complaints Team – complaints@decisionsupportservice.ie
- ▶ queries@decisionsupportservice.ie

Other online resources

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

HSE resources:

www.assisteddecisionmaking.ie



Thank You



www.decisionsupportservice.ie/

Email: queries@decisionsupportservice.ie

Freephone: 01 2119750

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