



Home

Nursing Home

Hospital



Adult Safeguarding Day Seminar

Maximising Implementation of Assisted Decision –Making In Practice

6th November 2025

Case Examples & Agenda of Issues to be addressed in the future
Bibiana Savin, CEO

About Us

Sage Advocacy is the National Advocacy Service for Older People. It also supports adults at risk & healthcare patients in certain situations where no other service is able to assist. With support from Department of Education, the service was extended to survivors of institutional abuse in 2023.

CONFIDENTIAL & FREE

Independent of family, service provider & systems interests.

In 2024

3,145

ADVOCACY
REFERRALS

9,062

INFORMATION
& SUPPORT CALLS

53

STAFF

15

VOLUNTEERS



What an Advocate Does

An independent advocate **supports decision making** by for example:

Supporting and enabling a person who has difficulty in exercising their rights, expressing their will and preferences, exploring options, and making informed choices.

Optimising participation in decision making by explaining information in a way the relevant person can understand and meeting with them at a time and place where they are best able to engage with the process

Assisting a person to express their will and preferences through their preferred methods of communication. e.g. verbally or through sign language, language interpretation, images, assistive technology, or by other means

Supporting a person where there is family conflict or a family member believes they have the right to make a decision on their behalf

In any interaction, apply the Guiding Principles contained in the Assisted Decision-Making (Capacity) Act 2015

Endeavouring to ensure that a person's decision is communicated and respected.

What an Advocate Does Not Do

An independent advocate **MUST NOT** for example:

Make decisions with or on behalf of a person they are supporting

Carry out a formal functional capacity assessment

Make legal representations on a person's behalf

Assess the suitability of a residential placement or care plan

Influence, persuade or put pressure on a person to choose one option over another

Enter into a formal decision-making arrangement such as becoming a Co-Decision Maker or Decision-Making Representative for a Relevant Person

Share personal information with family members or professionals without a person's consent (See section 3.4 of Role of Independent Advocate resource re Confidentiality and Information sharing for exceptions).

Roles of Solicitor and Advocate in ADMCA Cases

Role of Solicitor	Role of Advocate
Take instructions (in so far as is possible directly from client) and advise client accordingly	Engage with client at time, manner and in a format that best suits the client
Ascertain legal position	Ascertain the current will and preference of the client (or if not possible, the past will and preference)
Have regard to any conflicts of interest	Represent the voice of the relevant person
Consider the benefit, if any, of any application to the court to the relevant person	Where necessary, provide a report to the court under section 50 of the ADMCA
Ascertain the will and preferences of the client in relation to the decisions	Be aware of safeguarding concerns or other matters that may require advocacy intervention
Ensure relevant person's rights under section 139 of the ADMCA are adhered to	Liaise with relevant person's solicitor as necessary (or refer if none in place)

Assisted Decision-Making Act – Guiding Principles

- **Presume capacity**
- All practicable steps must be taken to support a person with making a decision
- An unwise decision does not mean that a person is unable to make a decision
- **No intervention unless necessary**
- **Issue and time specific**
- Least restrictive interventions
- Fluctuating capacity
- Will and preference
- DMR application is **last resort**

ALERT

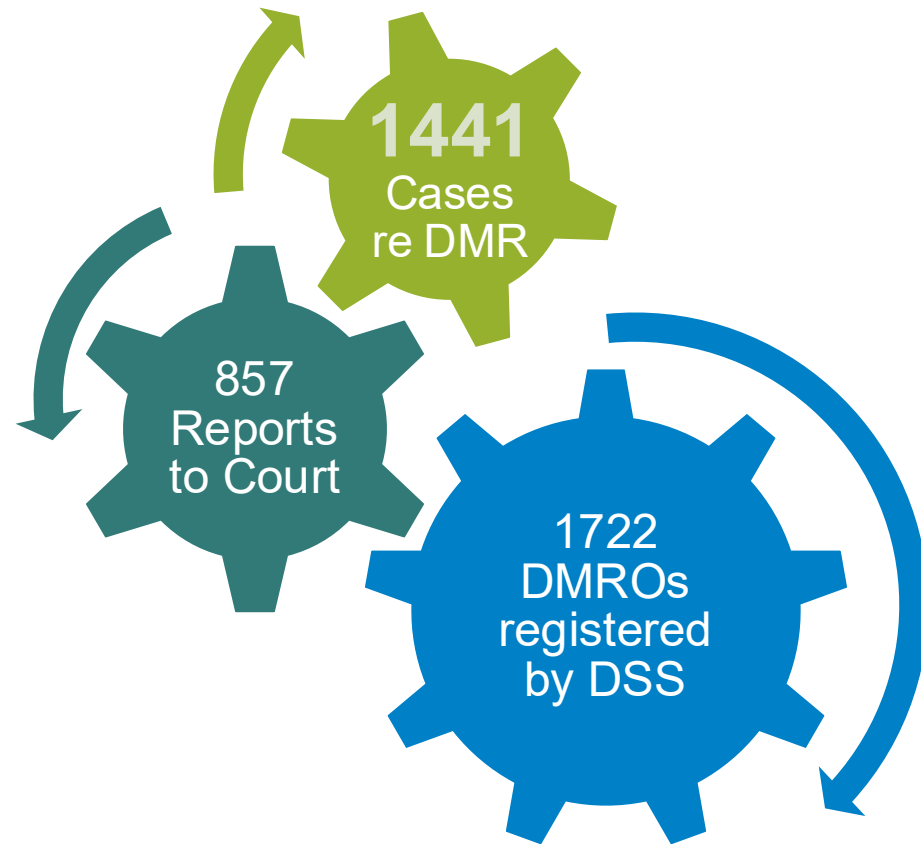
- ASK** What is your understanding of what you have to decide
- LISTEN** Pay attention to words, feelings, body language & other forms of communication
- EXPLAIN** Explain everything, including all the choices, in a way that the person can understand
OR ask someone else to help such as a key worker or independent advocate
- REALITY** Go through all the possible choices and consequences, summarise
- TELL** Tell me about your decision, why that particular choice is important for you and how you made this decision

Informed Decision Making: Options

- What are the person's individual circumstances
- Environmental factors
- Complexity of decision
- Positive risk-taking approach
- The safest option may not be in line with the person's will and preference
- Consider resources available and how they might be applied to enable various options be considered



Context of Sage Work Q3,2023 – Q3, 2025



Q3, 2025

Legal Issues: **277 cases**

- DMR Applications: **212**
- Access to solicitor: **19**
- Issues with Enduring Power of Attorney: **9**
- Deprivation of Liberty: **8**
- Other: **29** (*Court process, Property, Protection Order, Wills, Separation, Wardship, Redress, etc*)

Sean's Story



- Sean contacted a solicitor 5 years ago to put in place an EPA and nominated his son as attorney. Unfortunately, his solicitor didn't get a capacity assessment at the time and Sean's son found out recently that the EPA was not valid and could not be registered, so he made an application for DMR.
- The Court refused part of this application as the orders were too broad – the form listed almost 50 decision items, several of them with secondary issues.
- Despite several attempts to engage with Sean, the advocate did not ascertain any meaningful indication from Sean regarding his will and preference.
- Functional capacity assessments need to align with the proposed decisions.
- Guiding Principles of the ADM Act need to be more closely followed in terms of the least restrictive, necessary and beneficial interventions only.
- Feedback from Sean's son: *"Thank you for all your help and your referral to Legal Aid Board. The Sage report was essential, but the legal aid for dad was invaluable. If we had not had that, we would have got nowhere"*.

Margaret's Story

- Application for DMRO made by a Margaret's son who incorrectly believed that, on granting of the order, Margaret would have to remain in the nursing home against her will.
- Margaret's view on continuing to live in a nursing home: *"Well, nobody spoke to me about this; I think it would be better to get someone in my house to look after me properly than to pay to stay here [...] this place is not for me, when you live in a place like this you have to get used to the way they want you to live – but it's not the way I want to live."*
- Margaret's view on proposed DMR application: *"I am definitely not in agreement with that, every so often you hear bits and pieces but nobody asked me what I would prefer." ... "I will make my own decisions."*
- Margaret's view on the initial meeting with the solicitor: *"He came in unexpectedly but he knows how I feel about this, I didn't say much because, when you meet someone for the first time, it's best not to give too much information but he did say I'm a wise woman and I know what I do and don't want."*
- Margaret attended the Circuit Court hearing with support from the advocate.
- DMRO not granted. Margaret was deemed able to make own decisions with minimal support at that time & was encouraged to make planning ahead arrangements.



Jim's Story

- Sage received a referral to provide a report to Court on Jim's will and preference in relation to a proposed application to NHSS and move to nursing home.
- Referral stated Jim had "no capacity"
- An advocate visited Jim and Jim, initially asked the advocate to leave saying "*I can't hear you! There's no point*"
- Before leaving the advocate attempted to engage with Jim by writing down questions for him to read. Jim responded verbally to questions written down.
- This communication approach worked well and the advocate was able to have a full conversation with Jim in this way.
- The advocate followed up with the referring solicitor to check how this barrier had been overcome during functional capacity assessment and serving of papers.
- This basic communication need had never been identified and incapacity was presumed.
- Application was ultimately withdrawn as client could make decisions with support.

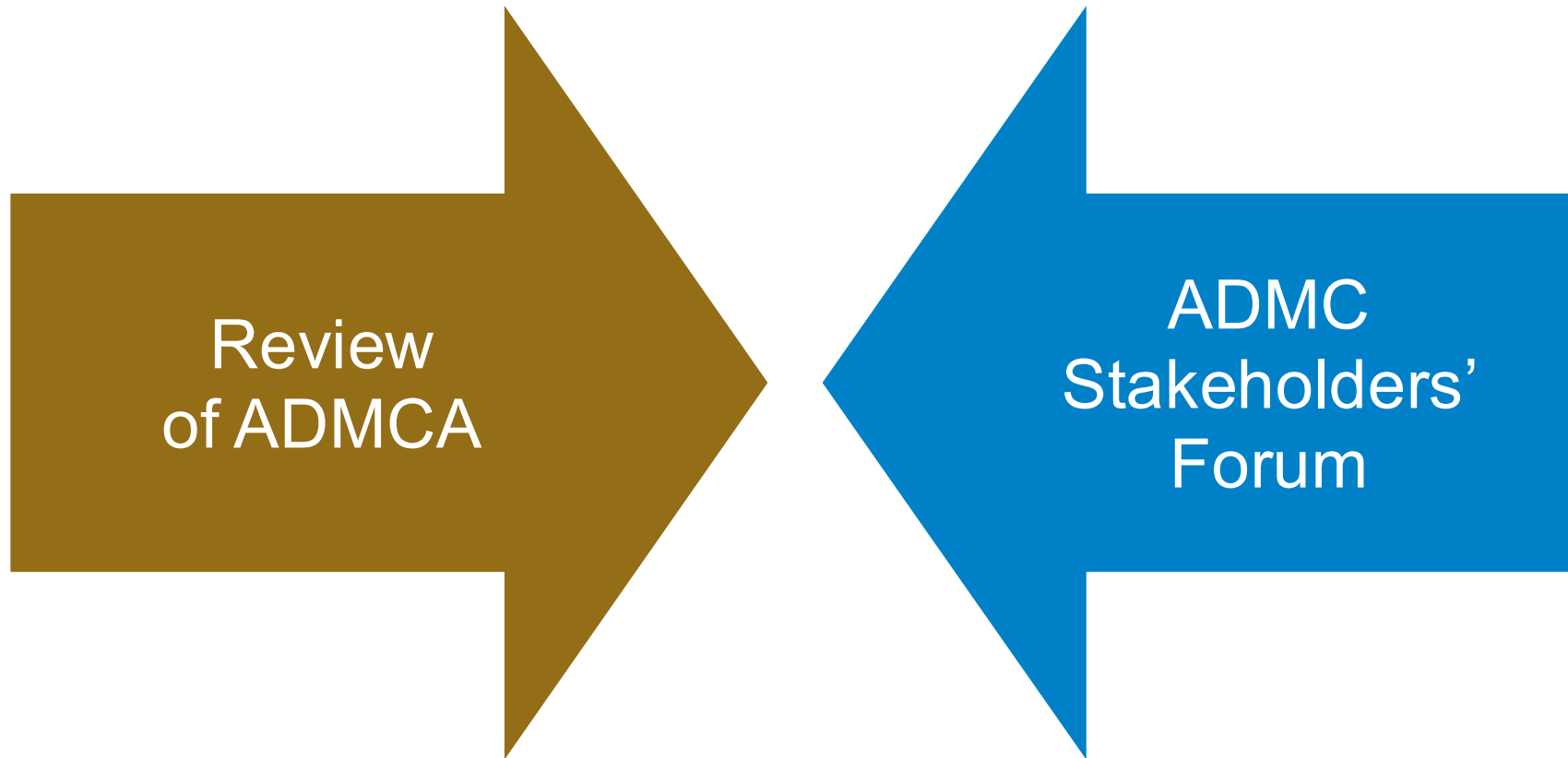


Case Scenarios – rush to DMRO option

- Applicants rush to seek a higher tier decision support arrangement rather than exploring lower tiers of support.
- Several Different Outcomes emerged:
 - Applicants abandoned the plans to bring the Part 5 ADM application to the Circuit Court
 - Applicants withdrew the Part 5 ADM application after the first hearing
 - DMRO not granted, as the person was supported by advocate & LAB solicitor to address some matters and arrangements were made for Decision Making Assistant
 - DMRO not granted, to allow for Co-Decision Maker to be explored



Continuous Improvement and Review





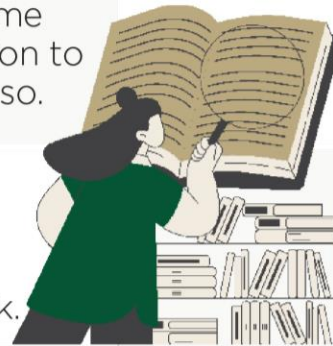
Issue

What needs to be done

There are instances, especially in the case of nursing home residents, where a person is unable to bring an application to the court themselves but where nobody is willing to do so.

This matter needs to be reviewed from a legal and human rights perspective in order to **ensure that no relevant person is excluded**

Although there is a requirement in the legislation for the relevant person to attend court for the hearing and be supported to do so, relatively few people actually attend either in person or via video-link.



There is a need for more **specific guidance** as to who is responsible for ensuring that the relevant person is aware of their right to attend the court hearing and for the provision of support to do so.

For many of the people where an intervention under the legislation is required, there is likely to be a safeguarding dimension and a related need to ensure that the most appropriate and least restrictive support is put in place.

There should be a stronger focus on **positive adult safeguarding** as an overarching consideration in all interventions under the legislation.



It is regularly the case that a DM Representation Order (the most restrictive intervention) is sought for a person when a less restrictive option would be adequate.

A proactive **information campaign** is required to make the public and professionals more aware of the various options under the legislation.

There is a dearth of statistics publicly available relating to attendance at court by Relevant Persons as well as in the areas of legal representation and independent advocacy.



The Courts Service should develop mechanisms for gathering **statistics and reporting** in relation to these matters.

Requirement for Enduring Power of Attorney to be signed by attorney/s in presence of the donor is not always practical

The Minister should make a Regulation providing for the interpretation of 'in the presence of', to **include online presence**

Information and Support Service

Information & Support is the primary point of contact for accessing any of Sage Advocacy's services.

You can contact Information & Support:

 **01-5367330**

 **info@sageadvocacy.ie**

If the issue that you need assistance with is straightforward, we might be able to **resolve it** over the phone or via email. If it is more complex, we will gather the details in conversation with you in order to give **initial guidance** and to inform a **referral for our representative advocacy** service; or, if Sage is not the right service to deal with your particular issue, we will **signpost** you to where you need to go.





SCAN HERE

The Role of an Independent Advocate

A Sage Advocacy Information Resource
October 2024

Nothing about you without you



INFORMATION FOR ALL

Applying To The Court To Become A Decision-Making Representative



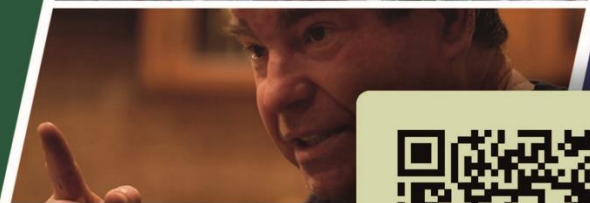
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Voice Matters

The Operation of the Assisted Decision-Making Acts

The Experience and Perspectives of Sage Advocacy



SCAN HERE

April 2025

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without you



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