



# Voice Matters

The Experience and Perspectives of Sage Advocacy

**The Operation of  
the Assisted Decision-  
Making Acts**



Sage Advocacy is the National Advocacy Service for Older People. It also supports vulnerable adults, including survivors of institutional abuse and it supports healthcare patients in certain situations where no other service is able to assist.

Sage provides information, support and advocacy and our work on behalf of clients is independent of family, service provider or systems interests. The Sage team of experienced advocates is available right across the Republic of Ireland and our service is free of charge and confidential. Sage Advocacy ensures that a person's voice is heard, that their wishes are taken into account, and that they are assisted, in whatever ways are necessary, to be involved in decisions that affect them.

Our work is guided by Quality Standards for Support & Advocacy Work with Older People. Our motto is simple: **Nothing About You/Without You.**

## Outline of Scoping Document

This Scoping Document was compiled for Sage Advocacy by Dr Michael Browne (Research and Policy Support) with significant input from the three Regional Advocacy Teams, the Legal Support Unit, the Information and Support Team, senior management and Board members.

The Scoping Document describes the experience and perspectives of Sage Advocacy personnel and outlines issues identified by them based on their significant experience in engaging with the implementation of the Assisted Decision-Making legislation prior to and since its commencement in April 2023. It is not intended to be a research report per se but rather an account of the experience to date of one agency.



# Contents

<b>GLOSSARY</b>	<b>8</b>
-----------------	----------

<b>SUMMARY</b>	<b>11</b>
----------------	-----------

<b>Introduction</b>	<b>19</b>
---------------------	-----------

<b>Section One The Assisted Decision-Making Legislation and its Significance</b>	<b>20</b>
----------------------------------------------------------------------------------	-----------

Underlying ethos of the legislation	21
Review of decision-making capacity	23
Implementation structures	24
Decision Support Service	24
Part 5 of the ADMC Act 2015	25
Supporting people to give effect to their will and preferences	25
HSE ADMC implementation structures	26
Role of independent advocacy in Part 5 applications	26
Overview	26

<b>Section Two Operation of the Legislation to Date: Some Statistical Information</b>	<b>28</b>
---------------------------------------------------------------------------------------	-----------

Introduction	28
Arrangements registered with the Decision Support Service	28
Court operations	30
Legal Aid Board statistics	30
Outcomes of DMRO applications	30
Overview	30

<b>Section Three Nature and Extent of Sage Advocacy Work Relating to ADMC</b>	<b>31</b>
-------------------------------------------------------------------------------	-----------

Introduction	31
The Sage Advocacy focus on adults at risk or living in vulnerable situations	31
How ADMC-related work impacts generally on Sage Advocacy	32
Sage Advocacy ADMC-related activities	32
Sage Advocacy information and support role	35
Role of the Sage Advocacy Legal Support Unit	37
Overview	37

<b>Section Four Sage Advocacy Role in Decision-Making Representative Order (DMRO) Applications to the courts</b>	<b>39</b>
------------------------------------------------------------------------------------------------------------------	-----------

Introduction	39
Legislative basis for Sage Advocacy Reports under ADMC	39
Compiling Independent advocacy reports: The Sage Advocacy process	40
DMRO application independent advocacy reports: Nature and extent of referrals to Sage Advocacy and related outcomes	41
The contribution of Sage Advocacy to the DMRO application process	50
Overview	50

<b>Section Five ADMC Implementation and Operation: The Experience of Sage Advocacy</b>	<b>53</b>
----------------------------------------------------------------------------------------	-----------

Introduction	53
Indicative practice scenarios	53
Synthesis of issues identified in the Indicative Scenarios	59
Examples of good practice and practice that is unsatisfactory	62
Overview	65

<b>Section Six Synthesis of Issues Arising from Sage Advocacy Casework</b>	<b>66</b>
----------------------------------------------------------------------------	-----------

Introduction	66
Capacity assessments	66
Responsibility for ensuring Relevant Person is supported to attend court	67
Referrals to Sage Advocacy	68
Impact of the legislation on families caring for loved ones	68
Wardship	69
Specific issues arising from the Sage Advocacy experience Understanding of the legislation	70
Overview	72

<b>Section Seven Some Overarching Considerations</b>	<b>73</b>
------------------------------------------------------	-----------

Independent advocacy	73
Legal representation	75
The importance of legal representation in the context of a human rights approach	76
The ADMC legislation and gifting	77
Need for continuous professional development	78
Interpretation of ADMC principles in Court judgements	78

Overall understanding of what is required under the legislation	79
DSS Codes of Practice	80
Management of personal finances and financial institutions	80
Adult safeguarding	80
Developing a strong collaborative approach	81
Ongoing implications of the ADMC legislation for Sage Advocacy	81
Overview	82

<b>Section Eight An Agenda of Issues Identified by Sage Advocacy and Proposals for Action</b>	<b>83</b>
-----------------------------------------------------------------------------------------------	-----------

Introduction	83
Areas where a different approach is required	83
Proposals for action arising out of the Sage Advocacy experience	89

<b>Appendix One</b>	
Main Functions of the Decision Support Service	92

<b>Appendix Two</b>	
Role of Sage Advocacy Legal Adviser	93

<b>Appendix Three</b>	
Sage Advocacy Template for Independent Advocacy Report	94

<b>Appendix Four</b>	
HSE Advocacy Guide to Capacity Statement under Part 5 of the Assisted Decision-Making (Capacity) Act 2015	95



*"A person shall not be considered as unable to make a decision... unless all practicable steps have been taken, without success, to help him or her to do so."*

– Guiding Principle 8(3), ADMC Act



# Glossary

**Advance Healthcare Directive (AHD)**  
An Advance Healthcare Directive (AHD) is a document which sets out a person's instructions in relation to the healthcare treatments they wish to refuse or would like to request, in the future when they no longer have the capacity to do so. There is no legally required format for an Advance Healthcare Directive

## Assisted Decision-Making (Capacity) Acts (ADMC)

The ADCM legislation is new legislation which commenced in 2023. It put on a statutory footing the requirement that a person's decision-making capacity be construed functionally – that is, it is time specific and issue specific and refers to a person's ability to understand at a time a decision has to be made as well as the nature and consequences of the decision to be made by a person in the context of available choices at that time. It applies to all regardless of physical or mental health/disability/age and operates on the basis of a presumption of capacity and places the onus/burden of proof of lack of decision-making capacity on the person who is alleging lack of capacity.

## Capacity

Capacity refers to decision-making capacity and means a person's ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by them in the context of the available choices at the time. The ADCM sets out a statutory presumption of capacity approach.

## Co-decision-maker (CDM)

A co-decision-maker's role is to make certain decisions together with a person who may have reduced decision-making capacity. A duly appointed co-decision-maker and registered with the Decision Support Service (see below) has the legal authority to help the person by gathering relevant information and explaining it to them and jointly coming to a decision that respects the wishes of the person.

A co-decision-maker can also support the person to let other people know about the decision that has been made.

## Decision-making assistant

A decision-making assistant also known as an assisted decision-maker is a person appointed to help someone with capacity challenges make decisions about their personal welfare, property, and money matters, while the person retains ultimate decision-making responsibility in respect of all their affairs.

## Decision Support Service (DSS)

The Decision Support Service (DSS) is the body responsible for overseeing the implementation of the assisted decision-making legislation. The DSS has put in place a range of mechanisms relating to the implementation of the legislation, including information on key aspects of the legislation. It has also developed a number of Codes of Practice for professionals and agencies involved in implementing the legislation. It also keeps a register of decision-support arrangements put in place and keeps a panel of people available to be appointed to implement decisions taken by the Courts.

## Decision-Making Representative (DMR)

If a person is unable to make certain decisions, the court can appoint a decision-making representative to them. This will be documented in a decision-making representation order (DMRO). The decision-making representative's role is to make certain decisions listed by the court on the person's behalf and who adheres to the guiding principles of the ADCM. Where possible, the court picks someone the person knows and trusts. If there is no one suitable who is able to do the role, the court can pick a decision-making representative from a panel of experts maintained by the Decision Support Service.

## Decision-Making Representation Order (DMRO)

This is a court order appointing a decision-making representative to make certain decisions on a person's behalf, taking their wishes into account. The order sets out their functions and what decisions they can make. The court may make an order making the decision or decisions on behalf of the Relevant Person where it is satisfied that the matter is urgent or that it is otherwise expedient to do so.

## Deprivation of Liberty (also referred to as Protection of Liberty)

The right to personal liberty is one of the most fundamental human rights. It includes the right to freedom of movement and freedom from arbitrary detention by others and is protected by both national (the Constitution) and international law (Universal Declaration of Human Rights).

## Enduring Power of Attorney (EPA)

An enduring power of attorney (EPA) lets a person appoint someone they trust as their attorney. The attorney's role is to act on the person's behalf to make certain decisions if they are unable to in the future because of reduced decision-making capacity. An attorney can be given the general authority to act on a person's behalf about all or part of their property and affairs and personal welfare or, alternatively, they can be given the authority to do specific things on a person's behalf. An attorney does not need to be a lawyer.

## Ex parte application

If a person who intends to make an application for a capacity assessment under Part 5 of the 2015 Act (see below) does not fall into the category of people listed in the legislation, they must make an ex-parte application to the court for 'consent' to make a Part 5 application to the Court. This can be done without having any other party to the proceedings.

## Guiding Principles of ADCM

Reference to guiding principles in this report refers to those 9 principles set out in Part 2 (section 8) of the ADCM.

## Inherent Jurisdiction

Where there is an absence of specific statutory provision to address a legal need the Courts may be asked to exercise their implied powers for specific purposes in the interest of justice. In the context of this report, reference to inherent jurisdiction refers to the applications made to the High Court for the detention and treatment of people who lack or are alleged to lack capacity. The High Court's role is to ensure that a person's right to liberty is protected and safeguarded.

## Independent Advocacy

Independent advocacy, as defined by the DSS, is a professional support service provided that is free from any conflict of interest and is independent of family and service providers.

## Part 5 Application

A Part 5 application is an application to the Court for a declaration of capacity in respect of decision making and in seeking a Decision-Making Representation Order for a person whose decision-making capacity is in question. This is sometimes referred to as a DMRO application.

## Part 6 Application

Under Part 6 of the 2015 Act, all current wards of court (see wardship) over the age of 18 are undergoing review and shall be discharged from wardship by April 2026.

## Relevant Person

A Relevant Person under the assisted decision-making legislation is a person who lacks capacity in respect of one or more matters or whose capacity is in question or may shortly be in question in respect of one or more matters.

## Section 139 Assisted Decision-Making (Capacity) Act 2015

This section of the 2015 Act requires that an application to the court shall be heard in the presence of the Relevant Person the subject of the application unless, in the opinion of the court, the Relevant person is not or would not be present in court would not cause an injustice; or where such attendance may have an adverse effect on their health; the person is unable to attend the hearing or is unwilling to do so.

### Supported decision-making

The assisted decision-making legislation has as one of its core principles that a person shall not be considered as unable to decide about a particular matter unless all practicable steps have been taken, without success, to help them to do so.

Under the legislation, people whose decision-making capacity is in question are entitled to support tailored to their individual circumstances to help them to make their own decisions. Supporting decision-making includes providing relevant information and ensuring that all available options are explained in a manner that the person can understand.

### Wardship

Wardship is a legal process where the High Court takes responsibility for the welfare and property of an individual who lacks the capacity to manage their own affairs. Wardship was abolished in the Assisted Decision-Making Act 2015 and replaced by new provisions for supported decision-making for people with reduced decision-making capacity.

# Summary

## Overview

The Assisted Decision-Making (Capacity) legislation (ADMC) is rights-based and is Ireland's response to its obligations under the UN Convention on the Rights of Persons with Disabilities, in particular, Article 12 which establishes the right of people with disabilities to equal recognition before the law.

This Scoping Document outlines the experience and perspectives of Sage Advocacy in respect of the implementation of the Assisted Decision-Making Acts 2015 and 2022. Since the legislation is now two years in operation (commenced in April 2023), it is considered important and timely to engage in some considered reflection on its operation to date in order to inform the implementation process going forward.

Because of its significant involvement in informing the implementation of the legislation prior to its commencement in 2023 and its ongoing advocacy and support work with relevant persons under the legislation and with various implementation processes, in particular, courts processes, Sage Advocacy is in a very strong (perhaps unique) position to make informed commentary on the way the legislation is operating.

The Scoping Document is based primarily on data generated from the Sage Advocacy case management database and on the reflected experiences and perspectives of Sage Advocacy staff involved – the regional advocacy teams, the legal support unit and the information and support team. Sage Advocacy has provided support to relevant persons under the ADCM legislation both generally and specifically in respect of applications to the court for decision-making supports provided for under the legislation.

Sage Advocacy's involvement to date in the implementation of the legislation has been very significant. In addition to supporting an ever-increasing number of clients to access services in accordance with their rights under

the legislation, its involvement has included the publication of detailed information about the Acts, the delivery of training to multiple stakeholders and participation in a number of implementation structures relating to the legislation.

During the period from the commencement of the legislation up to the end of 2024, Sage Advocacy dealt with 651 referrals directly related to the implementation of the legislation. This represented 21% of all referrals to Sage during the period. Of these 651 referrals, almost three-quarters involved the preparation of an independent advocacy report for the courts in respect of an application being made for a Decision-Making Representative to be appointed to act for a person whose decision-making capacity is in question, as provided for in the legislation.

During the third quarter of 2023, as the first Part 5 (Decision-Making Representation Order) applications came before Dublin Circuit Court, several representatives from Sage Advocacy attended the court by invitation of the Court in order to observe and gain an understanding of the courts process. The focus of the attendance was on how best to capture the Relevant Person's voice, and on how any other matters related to the application could best be brought to the attention of the Court. In this regard, the attendance at the Court commenced with observing the interaction between the applicants and the Court and hearing the type of issues encountered by Part 5 applicants in order to identify how an independent advocacy service could support Relevant Persons who were the subject of such applications. It should be noted that the majority of these early applicants did not have legal representation and, despite the requirements of s.139 of the Act, the Relevant Person was not in attendance at the court hearing.

Sage representatives engaged in a process of providing information and support to applicants through explaining the Guiding Principles of the Act and, specifically, the need for DMRO applications to be time and issue-specific and based on a functional capacity assessment.



The Sage Representatives also spoke to applicants about less restrictive options that could be explored and the centrality of the Relevant Person's will and preference. During those early months, information and support was provided on-site to applicants or their solicitors and some were encouraged to arrange for the Relevant Person to join the hearing by video link. Others made a referral to Sage Advocacy so that an independent advocate could meet the Relevant Person to document their wishes and to ensure that their voice was heard in court. Where potential conflicts were identified, the Sage representatives ensured an application for legal aid was made on behalf of the Relevant Person.

Out of this engagement with the courts during the early stages of the implementation of the legislation, the value of and need for a report by an independent advocate became clear to the Court. As a result, and following on from a number of Court requests for same, Sage Advocacy began a process of putting protocols and related templates in place for the compilation of independent advocacy reports for the courts in the context of DMRO applications. This process was refined over time and Sage Advocacy has now a system in place which enables it to deliver such reports where requested by an applicant or by the Courts. The structure of the reports submitted to the Court has evolved, and the demand for the service has increased exponentially over time. During the period April 2023 (when the legislation commenced) and the end of Quarter 1 2025, 581 independent advocacy reports were provided by Sage Advocacy to courts around the country.

The direct exposure to these first hearings has informed Sage Advocacy's subsequent engagement with Relevant Persons, the applicants, their legal representatives, and other relevant stakeholders. It uncovered a new and important layer of advocacy intervention in helping to bring the voice of the person, in so far as possible, to the attention of the Court in this critically important context where a person's autonomy and right to self-determination is under scrutiny. The learning gained through this attendance at initial hearings was important and necessary for Sage and has been shared widely with

stakeholders.

The requirement for an independent advocacy report necessitated a focused engagement by Sage advocates with the individuals concerned in order to ascertain their will and preferences and to make those known to the court. This was generally regarded as a critically important aspect of the Court's process and necessary in order to ensure that the perspectives of other people involved in the care and support of a person (relatives and social and health care and legal professionals) are complemented by the voice of the person, facilitated by an independent advocate, in so far as this can be ascertained.

In addition to its involvement in specific courts processes, the commencement of the legislation also created a new dynamic for the approach adopted by Sage since it was first established in 2014 and based on the principle of nothing about you/without you. The commencement of the legislation has resulted in an increased demand for Sage Advocacy services generally as a result of greater public awareness as well as among professionals about fundamental human and legal rights matters such as people's right to a presumption of capacity, the fact that next-of-kin have no legal right to make decisions for another person and that the traditional wardship system ended once the legislation commenced.

### **Nature and extent of Sage Advocacy involvement in the implementation of the legislation**

The Sage Advocacy involvement in the implementation of the legislation is set out in Section 3 of the document and has seven tiers:

- Processing of referrals received with an ADMC component and the provision of information to referrers about what they are required to do under the legislation;
- Provision of advocacy support for people assessed as requiring such support;
- The preparing of independent advocacy reports for the courts where this is requested;
- Involvement in a range of inter-agency

forums monitoring the implementation of the legislation;

- The development of ADMC-related resource materials;
- The provision on an ongoing basis of training around the legislation for other stakeholders;
- Ongoing stakeholder engagement for the purpose of raising systemic issues identified from involvement in the implementation of the legislation;

The Sage Information and Support Team provide a very important information function for both the public and for professionals on all aspects of the legislation. Much of this work is additional to specific advocacy casework with clients.

### **Involvement in courts processes**

The involvement of Sage advocates (supported by Sage legal support personnel) is significant and is set out in Section 4 of the document. The total number of independent advocacy reports sent to the courts during the period from the commencement of the legislation to the end of Quarter 1 2025 was 581. This work involved a considerable engagement with the individuals involved in order to establish their will and preferences about the matters that were the subject of an application to the court. This engagement also enabled the advocates to identify any potential safeguarding or coercive control issues present and to follow up on such matters as deemed necessary.

### **The frontline experience of Sage Advocacy personnel**

The experience of Sage Advocacy and the various challenges encountered in its engagement with various actors is set out in Section 5 under a number of headings:

- Engagement by families of Relevant Persons with Sage Advocacy in relation to the legislation;
- Contact by solicitors with Sage Advocacy in respect of Part 5 DMRO applications;
- Queries and referrals to Sage Advocacy by social workers;

- Capacity assessments and the functional approach to capacity;
- Applications for a DMRO in instances where a DMRO is not required;
- Unequal treatment for nursing home residents where it is unclear whose responsibility it is to make an application under the legislation;

A number of indicative scenarios are outlined which reflect good practice as well as practice that falls short relating to a number of interfaces involving Sage advocates and solicitors and Sage advocates and social workers. The indicative scenarios and examples presented show the complex dynamics that operate and the variations in practice in the understanding of and the implementation of the ADMC legislation.

### **Specific issues with the implementation of the legislation identified**

A number of issues with the implementation of the legislation are identified in Sections 6 and 7 of the Scoping Document.

These relate to difficulties in getting capacity assessments, lack of clarity as to whose responsibility it is to ensure that a Relevant Person is supported to attend court in accordance with the provisions of the legislation; the impact of the legislation on families caring for loved ones; issues relating to creating an Enduring Power of Attorney; issues relating to discharge from wardship required under the legislation; lack of time and issue specific information in referrals to Sage Advocacy about the matters being included in a DMRO application.

### **Understanding of the legislation**

- There appears to be an underdeveloped understanding on the part of some key relevant professionals (legal and health/social care) of the underlying principles of the legislation;
- There are different approaches to implementing the legislation in hospitals around the country;

- Sage Advocacy has experienced isolated instances of DMRO-related referrals using the term “the person’s best interests”;
- There have been referrals requesting that an advocate already supporting a Relevant Person would attend court hearing in order to advise on “assessment”;
- Sage Advocacy has encountered a small number of solicitors who stated that the advocate’s “assessment” was not sufficient for the court hearing (a basic misunderstanding of the role of the Independent Advocacy Report);

#### DMRO applications

- There are inappropriate applications for DMROs by families, e.g., where the decisions being proposed can be resolved by way of a less restrictive form of support;
- Some nursing homes have referred to Sage Advocacy to get assistance with making ‘blanket applications’ for a number of residents as they “lack capacity” even though there are no decisions that are required to be made at that point in time.
- Referrals relating to a DMRO application have been received where the decision being sought was to place someone in a nursing home but the Relevant Person is refusing same. (This is a matter for the jurisdiction of the High Court and not appropriate for a DMRO).
- Referrals are also made in respect of decisions that could be supported by the use of the HSE National Consent Policy.<sup>1</sup>
- A clear issue arises in situations where a person whose decision-making capacity is in question is discharged from hospital to a nursing home but where there is no one is available or willing to make a DMRO application. A crucial question arises here as to whose responsibility it is in such instances to make the application.

- While transitional care funding often ceases on the date a DMRO is granted, there appears to be long delays (up to 6 months in some instances) in the DMR appointed taking up their role and, as a result, nursing home fees are not being paid.

#### Capacity assessments

- There is a heavy reliance on medical professionals to carry out capacity assessments and little use of other professionals to carry out assessments as provided for in the legislation:<sup>2</sup> (It is noted that psychologists are not included among the healthcare professionals who are entitled to provide a capacity assessment).
- Some private nursing homes are of the view that they are not allowed to carry out capacity assessments or are unwilling to do so;
- Sage Advocacy has experience of people having a difficulty in getting a capacity assessment for a DMRO application – for example, in the case of a private nursing home resident or where the cost of an assessment in the community can be prohibitive (family members have reported to Sage Advocacy that they have been quoted fees for such reports of up to €500);
- There is no provision at present for the DSS to establish a panel of relevant professionals to carry out functional capacity assessments– this presents an issue when the Relevant Person is in a private nursing home or other setting where no professional is available to carry out an assessment.

#### Court processes

- There is too long a delay in some DMRO applications being processed arising from infrequency of Circuit Court sittings in some parts of the country.
- There are different approaches by courts around the country with, for example, some very au fait with the role of independent advocacy in the process while others are less so;

#### Legal representation

- The Circuit Court Rules <sup>3</sup> confirm that a capacity application may be signed by the applicant or their solicitor. However, this matter needs to be reviewed as this is not current practice by many solicitors in circumstances where the Relevant Person cannot give instructions.
- Sage Advocacy has had experience of solicitors claiming to act for both the Relevant Person and for the applicant where the applicant is a family member leaving the RP with no independent representation.<sup>4</sup>
- Some solicitors are perceived by Sage advocates as being unwilling to take on DMRO cases for various reasons, including:
  - Not knowing when they will be paid
  - A perception that the process is cumbersome (and not as easy as a wardship application)
  - Negative experiences with families of Relevant Persons

#### Private nursing homes

- Many private nursing homes appear to be reluctant to make Part 5 (DMRO) applications or to carry out functional capacity assessments in the case of people whose decision-making capacity is in question;
- While transitional care funding often ceases on the date a DMRO is granted, there appears to be long delays in the orders being registered with the DSS and, as a result, in some instances nursing home charges are not being paid;

- Sage Advocacy has experience of people being transferred from a Transitional Care Unit to a nursing home against their wishes and without a capacity assessment having been carried out and without an application to the High Court to ensure that the person’s right to liberty is being respected;

#### Independent advocacy

- There are multiple instances where a referral for an Independent Advocacy Report is made to Sage Advocacy where it is evident that other support options have not been explored and where no capacity assessment has been carried out;
- Sage Advocacy often receives referrals very late in the process, and independent advocacy reports cannot be completed in such a short time frame.
- There are different approaches by hospitals around the country to involving and engaging with Sage advocates – some engage very positively with advocates while others are somewhat reluctant to do so;
- There is a delay in some DMRO applications being processed and Sage Advocacy has experienced cases where a DMR is not appointed for 12+ months.

<sup>1</sup> [https://assets.hse.ie/media/documents/ncr/20241001\\_HSE\\_Consent\\_Policy.pdf](https://assets.hse.ie/media/documents/ncr/20241001_HSE_Consent_Policy.pdf)

<sup>2</sup> <https://www.courts.ie/capacity-applications-dmros-what-capacity-report-capacity-assessment>

<sup>3</sup> SI No 201 of 2023, Order 47B Rule 4(3)

<sup>4</sup> This is outside of the requirements of the Solicitor’s Guide to Professional Conduct which states: ‘Where, in the judgement of a solicitor, one of the parties to a non-conveyancing transaction, while having full capacity, is vulnerable, the solicitor should not act on both sides, and each party should be separately represented by a different firm. This is in order to ensure that both parties receive independent advice. It helps preserve the integrity of the transaction and protects it from being challenged at a later date. It also protects the solicitor.’ (Reference: Law Society of Ireland (2022) Solicitor’s Guide to Professional Conduct, 4th Edition, page 40. Available at <https://www.lawsociety.ie/globalassets/documents/committees/conduct-guide.pdf>).



## An agenda of issues identified by Sage Advocacy and proposals for action (see Section 8)

Issue	Why the issue arises	Proposal
Consolidating independent advocacy practice	It is abundantly clear that independent advocacy plays a critical role in the implementation of the ADMC legislation. However, there is no formal recognition in law of the practice of independent advocacy in Ireland.	Legislative provision in Ireland for independent advocacy practice should be introduced as a matter of some urgency.  There is a need for an integrated long-term state funding stream for independent advocacy.
The need to embed ADMC principles more strongly in daily practice	The experience of Sage Advocacy is that some professionals, (both legal and health and social care) appear not to be fully au fait wit what is required under the legislation.	There should be more emphasis on continuous professional development and training around best ADMC implementation practice.
The need to make safeguarding more central to the process	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 infrastructure is put in place.	There should be a stronger focus on positive adult safeguarding as an overarching consideration in all interventions under the legislation.
The requirement for decisions requiring an intervention to be time and issue specific	The Sage Advocacy experience is that regularly a DMRO is being sought to make all decisions for a person (the old wardship approach) which is a matter of some concern.	ADMC awareness raising should continue both within relevant agencies and among the public. The DSS could usefully engage in another public information campaign on the matter.
Responsibility for instigating a DMRO application	There is an issue about whose responsibility it is to make a DMRO application. This is experienced by Sage advocates as being particularly relevant where a person is unable to bring an application themselves and does not have anybody able or willing to bring the application on their behalf (as is the case for some nursing home residents).	This matter needs to be reviewed from a legal and human rights perspective in order to ensure that no person to whom the legislation applies is excluded.
Attendance of RP at court	Relatively few Relevant Persons with whom Sage Advocacy has been involved have attended court to date and attendance by an independent advocate is relatively low.	There is a need for more specific guidance as to who is responsible for ensuring that the RP is aware of their right to attend the court hearing and for the provision of support for this purpose.
Collaboration and joint working	The ADMC process would be enhanced by having jointly agreed mechanisms for collaboration between HSE safeguarding social workers and Sage Advocacy and between medical social workers and Sage Advocacy.	Agreed mechanisms for joint working should be put in place.
Co-decision-making	There are situations where people cannot find a 'trusted other' to take on the role co-decision-maker (CDM). There is provision in the legislation for a DMR to be appointed such instances but this may not be well understood.	It should become the practice and made clear in the application form (application form to be amended) that if no suitable person is available to act as a co-decision-maker, the application being made is for the appointment of a person to act jointly with the Relevant Person.
Court statistics relating to ADMC cases	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 support by an independent advocate	The Courts Service should develop mechanisms for gathering statistics and reporting in relation to these matters.
Court locations	Some courts are perceived by Sage Advocacy as having a clear understanding of the ADMC legislation and its Guiding Principles. There are some Courts where only a small numbers of ADMC Applications are heard.	Serious consideration should be given to reducing the number of court locations dealing with ADMC applications in order to ensure that an efficient service and skills are available in courts where applications are to be processed.

Ongoing advocacy support for Relevant Persons	There is no specific requirement under the current legislation for the courts to provide information on the outcome of a DMRO application where there was an independent advocacy report provided to the court.	A Practice Note should be issued by the Circuit Court taking account of the provisions of Section 38(8) of the Act to place an obligation on the courts to inform an independent advocacy organisation of the outcomes of a DMRO application in instances where an independent advocacy report was provided to the court.
DSS Codes of Practice	It is not at all clear how well their respective Code of Practice is being adhered to in practice by the various actors for whom Codes have been developed.	The DSS should put in place a mechanism to capture actual practice vis-à-vis the requirements under the various Codes.
Reviews of Wardship	There is evidently an issue with the pace of discharge from wardship and a need for further analysis of the factors that contribute to the slow pace of discharge and how these might be addressed.  While amending Section 54 of the 2015 Act to extend the three-year window for wards to exit would be an option, such an amendment would clearly not be desirable form a human rights perspective.	Some further analysis is required in order to understand better the factors that contribute to the slow pace of discharge and how these might be addressed.  The Wards of Court Office should ensure that all wards are given the necessary supports they require to enable them to avail of the review process.
Registering an EPA	The Sage Advocacy experience is that the requirement for the EPA to be signed in the presence of the donor is not always practical, for example, where a person (such as an attorney) is living outside of the jurisdiction.	Section 79(1) of the Act provides – The Minister may make regulation for the purpose of giving this Part full effect. The Minister should make a Resolution providing for the interpretation of 'in the presence of, to include online presence.
Advanced Health Care Directives	There are issues around Advance Health Care Directives, in particular, the fact that there is no central facility for their registration.	The Minister should fast-track the making of a Regulation under Section 84(12) to operationalise the AHD Register already set up by the DSS.
Ex parte applications	The consent of the court is required under Section 36 of the Act by way of ex parte application by a person or organisation who do not come within the specified list in Section 36(4). In effect this results in two separate applications to the court which delays the process.	The Sage Advocacy view is that ex parte applications should be taken by the Registrar of the Court and not by the court itself.  There should be a detailed guidance on what is required for such applications.
Legal representation	A question has arisen about how a person who appears to be unable to give instructions can get legal representation for making a capacity application.	Circuit Court Rules confirm that a capacity application may be signed by the applicant or their solicitor. It is clear that a solicitor can sign an application made by a Relevant Peron who cannot give instructions and should do so where required.
Place of care	There are compelling arguments for people being able to put in place arrangements for care and the place where they wish to receive that care when they have the capacity to do so. This would pre-empt many of the issues around having to apply for a DMRO when a person no longer has capacity.	Place of care legislation should be introduced to complement the provision for an Advance Health Care Directive in the ADMC legislation.
Need for a National Stakeholders Forum	Sage Advocacy has consistently called for a forum for key organisations to convene and meet on a scheduled basis to address interorganisational and operational issues arising from ongoing 'silo' structures and lack of adequate collaborative structures.	A National ADMC Stakeholders' Forum should be established with an independent chair.
Review of ADMC legislation	The Programme for Government includes a commitment to review the operation of the Assisted Decision-Making (Capacity) Act 2015.	All of the factors and related issues outlined in this Scoping Document should be used to inform this review.



# Introduction

The purpose of this Sage Advocacy Scoping Paper is to outline and analyse the experience of Sage Advocacy on the operation to date of the Assisted Decision-Making (Capacity) Acts 2015 and 2022<sup>5</sup> (which commenced in April 2023) and to inform ongoing policy and public debate accordingly. The legislation gives effect to the UN Convention on the Rights of Persons with Disabilities which Ireland ratified in 2018.

Sage Advocacy is the National Advocacy Service for Older People. It also supports vulnerable adults, including survivors of institutional abuse and it supports healthcare patients in certain situations where no other service is able to assist. This Paper is informed primarily by the experience of Sage Advocacy casework and by issues identified during the casework process. The Paper also references and discusses other data relating to the operation of the legislation.

The Sage Advocacy approach is informed throughout its practice by its motto ‘nothing about you/without you’. Six core standards<sup>6</sup> underpin and guide its advocacy practice – respect; social justice; competence and compassion; accessibility; and independence. These six standards are centrally relevant to how Sage advocates go about their work in relation to the assisted decision-making legislation.

**The Scoping Paper is set out in eight main sections:**

**Section 1:** The assisted decision-making legislation: its significance and key provisions

**Section 2:** Operation of the legislation to date: key statistics

**Section 3:** Sage Advocacy involvement in the implementation of the legislation

**Section 4:** Sage Advocacy role in Decision-Making Representative Order Applications

**Section 5:** Assisted Decision-Making (Capacity) Acts (ADMC) implementation and Operation: The experience of Sage Advocacy

**Section 6:** Issues with the operation of the legislation emerging from Sage Advocacy casework

**Section 7:** Some overarching considerations

**Section 8:** An agenda of issues identified by Sage Advocacy and some proposals for action

The document contains four appendices.

<sup>5</sup> Assisted Decision-Making (Capacity) Act 2015 and Assisted Decision-Making (Capacity) Amendment Act 2022

<sup>6</sup> <https://sageadvocacy.ie/wp-content/uploads/2023/12/quality-standards-for-support-and-advocacy-work-with-old-er-people-final-061015.pdf>



# Section One

## *The Assisted Decision-Making Legislation and its Significance*

The commencement of the assisted decision-making legislation in April 2023 was a watershed and a radical departure aimed at bringing about a sea-change in the way we engage with and support people whose decision-making capacity may be in question. The legislation brings about fundamental and necessary changes in the manner in which people who lack decision-making capacity are cared for and supported. People, irrespective of their decision-making capacity, now have the right to be supported to participate when any decision is being made that involves them, for example, in relation to their care or to their personal finances.

The legislation has had major implications for the modus operandi of health and social care professionals, the courts, the Legal Aid Board, and for lawyers generally. It has also had major implications for the practice of independent advocacy and has had a significant impact on the role and work of Sage Advocacy.

The legislation requires that, when there is a doubt about a person's decision-making capacity, assessment should be done at the highest level of functioning and only if it is necessary. It puts the onus/burden of proof of lack of decision-making capacity on the person who is alleging lack of capacity. It requires that the decision-making capacity be construed functionally – that is, it is time specific and issue specific and refers to a person's ability to understand – at the time that a decision has to be made – the nature and consequences of the decision in the context of available choices at that time.

The fact that a person lacks capacity in respect of a decision on a particular matter at a particular time does not prevent them from being regarded as having capacity to make decisions on the same matter at another time. Also, the fact that a person lacks capacity to decide on a particular matter does not

prevent them from being regarded as having capacity to make decisions on other matters. The legislation further requires that a person is not to be regarded as unable to understand information relevant to a decision if they are able to understand an explanation of it that is given in a manner appropriate to their circumstances and communication style – clear language, visual aids or any other appropriate means.

The fact that a person is able to retain information relevant to a decision for a short period only does not prevent them from being regarded as having capacity to make the decision. Under the legislation, a person will be regarded as lacking capacity to make a decision only if they are unable to undertake any one of the following four aspects of the decision-making process:

- Understand the information relevant to the particular decision;
- Retain that information long enough to make a voluntary choice;
- Use or weigh that information as part of the process of making the decision;
- Communicate a decision by any means (including sign language/assistive technology);

The legislation implies and recognises an important distinction between decision-making autonomy and autonomy of execution in that a person may have decision-making capacity but may not be able to execute that decision without additional support.

### Underlying ethos of the legislation

The main purposes of the legislation are to:

1. Provide decision support mechanisms for people who lack decision-making capacity;
2. Abolish the wardship system;
3. Update the procedure for creating, registering and the coming into effect of an Enduring Power of Attorney (EPA);
4. Introduce Advance Healthcare Directives into Irish law;

The 2015 Act (Section 8) contains nine principles, the critical baseline principle being that everyone is presumed to have capacity unless the contrary is shown in accordance with the provisions of the Act. This ensures that each person is treated individually and that no cohort of people is automatically deemed to lack decision-making capacity. Other important Guiding Principles contained in the Act are:

- All practical steps to be taken to support decision-making;
- A person whose capacity is in question or may shortly be in question is not to be considered as unable to decide merely by making or likely to make an unwise decision;
- Intervention only when necessary;
- An intervention where required to be the least restrictive possible and which respects a person's rights;
- Facilitate participation and the articulation of a person's will and preferences;
- Consider the views of others who have a bona fide interest in the welfare of the person;
- Consider the likelihood of recovery and urgency of the matter;
- Maintain strict confidentiality in the collection and use of personal information.

The core ethos of the legislation is one of supported decision-making and of ascertaining and giving effect to a person's will and preferences in all matters affecting them. A person 'shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so' (Guiding principle 8(3)). Under the legislation, in circumstances where a person may be finding it difficult to exercise their decision-making capacity, they are entitled to support to help them to make their own decisions. The type of support to be provided should be tailored to the person's individual circumstances, their means of communication and to the specific decision to be made. There is a responsibility on all those involved to ensure that the person is provided with all reasonable supports to help them to make choices and decisions about matters that affect them. Supporting a person's decision-making includes providing relevant information and ensuring that all options available to a person in respect of a particular matter are explained in a manner that the person can understand, working to the person's pace and giving the person enough time to understand and consider their options. It may include the use of communication aids, getting support from other people, using other professions and expertise and availing of the services of an independent advocate.

## Options for supported decision-making

Depending on an individual's (Relevant Person's) level of decision-making capacity, the legislation creates three new decision support roles:

- A Decision-Making Assistant;
- A Co-Decision-Maker (formally registered with DSS);
- A Decision-Making Representative (DMR) (appointed by the court under a Decision-Making Representative Order (DMRO) and registered with the Decision Support Service (DSS);

Respectively, they may be appointed to:

- A) Assist a Relevant Person to make a decision;
- B) Make a decision jointly with a Relevant Person; or
- C) Make a decision on behalf of the Relevant Person.

These different levels of decision supporters<sup>8</sup> with increasing levels of function and responsibility are aimed at enabling a person to receive support at the appropriate level to ensure that there is limited restriction on their autonomy. It should be noted that, although the Act is titled "Assisted Decision-Making", decisions will not always be "assisted", as it will be possible for the Court or a DMR to unilaterally make decisions regarding a Relevant Person's personal welfare and/or their property and affairs.

If the Relevant Person does not have anyone who could or would step into one of these roles or who would not be a suitable person to act, the Court can make a decision for the Relevant Person or choose a Decision-Making Representative from a panel held by the Decision Support Service (DSS).<sup>9</sup> (see below for additional information on DSS).

A DMR can only make decisions that the court has set out in a DMRO order. For example, a DMR

can only manage a Relevant Person's finances if that is what the court has stated in the order for them to do.

The court will list all of the decisions that the Decision-Making Representative can make. This may include decisions about property and money matters, as well as decisions about personal welfare.

### A DMR must:

- Make every effort to find out the Relevant Person's past and present wishes about a specific decision, for example, getting the views of friends, family and trusted advisors;
- Help the Relevant Person to be involved in the decision-making to the greatest extent possible.

The court can choose different persons to act as decision-making representatives for different types of decisions. For example, one representative may be appointed to manage a person's financial affairs and another representative to manage a person's personal welfare and property.

Decision-making representatives are appointed by the courts and once a decision-making representative order is made, a copy is sent to the DSS to be registered. Co-decision-making agreements and Enduring Power of Attorney made under the Assisted Decision-Making (Capacity) Act 2015 are registered with the DSS. Decision-making assistance agreements must be notified to the DSS. They are not formally registered in the same way as the other two arrangements, but notified decision-making assistance agreements are included in DSS statistics. Currently, there is no requirement to register an Advance Healthcare Directive with the DSS.

Specific people and organisations can apply to search the DSS register if they have a good reason to do so. This could include banks, lawyers or doctors. It might also include family members and carers.

Under the Act, the Court can make one of two possible declarations as to capacity:

1. That the Relevant Person lacks decision-making capacity, unless a Co-Decision-Maker is appointed; or
2. That the Relevant Person lacks decision-making capacity, even if the assistance of a Co-Decision-Maker were made available.

## Review of decision-making capacity

The court is required to review a Relevant Person's decision-making capacity. The Circuit Court Rules for the ADMC<sup>10</sup> state (Section 12):

- (1) Where the Court has made a declaration under section 37 of the Act in relation to a relevant person, or a declaration under section 55 of the Act in relation to a ward, the Court shall specify a date by which the review of the declaration for the purposes of section 49(2).
- (2) Where sub-rule (1) applies or where the High Court as the wardship court has made a declaration under section 55 of the Act in relation to a ward, the date and the place for the review of the declaration for the purposes of section 49(2) of the Act (in this rule, the "review date") shall be fixed in the relevant court office and notified to the relevant person, the decision-making representative (or, as the case may be, co-decision-maker), and any other person directed by the High Court's order to be put on notice of such review.

Section 49(2) of the Act states that the Court is obligated to periodically review any declarations made under section 37(1) of the Act regarding a person's capacity. These reviews typically occur within intervals of not more than 12 months, but they may be extended to not more than 3 years if the Court determines that the person is unlikely to recover their capacity.

## Wardship

The repeal of the wardship system provided for under Part 6 of the ADMC Act 2015 is widely regarded as a significant step forward in the context of Ireland's national and international commitments to protect a person's fundamental human and legal rights and freedoms.<sup>11</sup> The Wards of Court Office stopped accepting wardship applications on 25 April 2023. From 26 April 2023, applications under Part 6 of the Assisted Decision Making (Capacity) Act 2015 as amended are to be made to the Circuit Court. The Act makes provision for a review by the Wards of Court Office of all existing wards within a period of three years from date of commencement of Part 6 of the Act – i.e., by 26 April, 2026; and all existing wards are to be discharged by this date. A review of Wardship can be triggered in a number of ways, by various parties:

- Application by ward or the committee of the ward;
- With the consent of the court, a relative or friend of the ward (where a relationship of trust exists);
- Such other person who is deemed to have sufficient interest or expertise in the welfare of the ward;

## Enduring Power of Attorney and Advance Healthcare Directive

Under the 2015 Act, it is possible for a person to specify what decisions they would like made about their personal welfare and/or property in the event that they lack capacity, via an Enduring Power of Attorney (EPA) or/and an Advance Health Care Directive (AHD).

Under an Advance Healthcare Directive, a person can appoint someone they know and trust (a Designated Healthcare Representative) to act on their behalf in the event that they lack the ability at a future date to make certain decisions.

An Enduring Power of Attorney (EPA) is a legal device that can be set up by a person (the

<sup>7</sup> A Relevant Person under the legislation is a person whose capacity is in question or may shortly be in question in respect of one or more matters or a person who lacks capacity in respect of one or more matters.

<sup>8</sup> A decision supporter is a Decision-making assistant, a Co-decision-maker (CDM), a Decision-making representative (DMR), an Attorney appointed under an enduring power of attorney (EPA), a Designated Health Care Representative (DHR) appointed under an Advance Health care Directive (AHD).

<sup>9</sup> Decision-making representatives that are chosen by the Decision Support Service from the panel of trained experts are paid for their work. This payment may be taken from a Relevant Person's estate.

<sup>10</sup> S.I. No. 201 of 2023, <https://www.irishstatutebook.ie/eli/2023/si/201/made/en/pdf>

<sup>11</sup> It should be noted that in the case of AC v Cork University Hospital & Others [2019] IESC 73, the court commented on the lack of the voice of the person and the lack of legal representation in wardship cases.



donor) to allow another person (an attorney<sup>12</sup>), to look after their financial or personal affairs, in the event that they no longer have the capacity to do so themselves.

A person can make an EPA if they do not currently have capacity issues but would like to plan ahead for a time when they may no longer have decision-making capacity. The role of the attorney is to act on the person's behalf to make certain decisions if they are unable to do so in the future. An EPA cannot cover healthcare matters, as these must be dealt with in an Advance Healthcare Directive. In the event that a person does not have an EPA or an AHD, and they lack capacity, the decision supports provided for in the legislation can and should be put in place at the appropriate level.

An EPA that was made on or after 26 April 2023 only takes effect when each of the following has occurred:

- The EPA has been registered with the Decision Support Service;
- The donor lacks decision-making capacity;
- The Decision Support Service has been notified of the person's lack of capacity and it accepts the fact;

An EPA is registered while the person has capacity and it must be signed in the presence of the donor. Sage Advocacy has encountered instances where the proposed attorney/s are living abroad and cannot physically sign the EPA in the physical presence of the donor. It is understood that the DSS is currently making provision for virtual meetings where the signing can be done.

## Implementation structures

A wide range of mechanisms have been put in place to support the implementation of the legislation. These include the Decision Support Service, new Circuit Court rules<sup>13</sup>,

an Implementation Unit within the HSE (with related lead personnel), an inter-agency ADMC Transitional Oversight Group (comprising of a wide range of stakeholders). The Legal Aid Board has created a weblink, Assisted Decision Making and Discharge from Wardship<sup>14</sup> which includes information on and an explanation of Part 5 and Part 6 processes.

A wide range of training has been carried out across all relevant sectors and professionals and Sage Advocacy has been actively involved in providing information on the legislation and delivering training to various stakeholders. (See Section 3 for further details)

## Decision Support Service

The Decision Support Service (DSS)<sup>15</sup> is the body responsible for overseeing the implementation of the legislation. The main functions of the DSS Director are set out in Appendix 1.

The DSS has put in place a range of mechanisms relating to the implementation of the legislation:

- Information on key aspects of the legislation – decision support arrangements (assisted decision-making, co-decision-making and decision-making representative); advance planning arrangement (Enduring Power of Attorney and Advance Healthcare Directive);
- Panels to support the delivery of supported decision-making;
- Guidance documents in respect of the different functions provided for in the legislation;
- Forms and sample documents for decision support arrangements and complaints;
- A telephone and email information service;
- Codes of Practice for various for various actors;<sup>16</sup>

Not everyone will be able to search the DSS register. Access to the register is limited to certain organisations, people in certain professional bodies that have been approved by the Decision Support Service and some members of the public who can show they have a legitimate interest.

The DSS has also provided a list of the main terms used in the assisted decision-making processes.

## Jurisdiction of the courts

The Circuit Court has exclusive jurisdiction under the ADMC Act 2015 except in the following instances that will be determined by the High Court.

- Any decision regarding the donation of an organ from a living donor, where the donor is a person who lacks capacity;
- Where the application in connection with the withdrawal of life-sustaining treatment from a person who lacks capacity comes before the courts for adjudication;
- An application in relation to an AHD (where it involves consideration of life-sustaining treatment);
- Issues arising in relation to validity of EPAs and other matters under the Powers of Attorney Act 1996 except in relation to complaints against an attorney.

## Part 5 of the ADMC Act 2015

Part 5 of the 2015 Act is centrally important. It stipulates that a Relevant Person, or any person who has attained the age of 18 years and who has a bona fide interest in the welfare of a Relevant Person, may make an application to the court under the Act. Those who may make an application to the Court include:

- The Relevant Person (RP)
- The DSS Director
- The spouse or civil partner of the RP
- A decision-making assistant for the RP
- A co-decision-maker for the RP
- A decision-making representative for the RP
- An attorney for the RP
- A designated healthcare representative for the RP

In addition to this list, any other person or organisation are required, in the first instance, to seek the consent of the court by way of an ex parte application to the court to make an application to the Court under the Act – a two stage process.

## Supporting people to give effect to their will and preferences

There is a requirement under Section 8 (7) (b) of the Act for the court to ascertain the will and preferences of people before a decision is made. This applies even in cases where it is likely that a Decision-Making Representative is required. The court must hear the voice of the person – in the courtroom, by video link, or from an independent third party. The court needs to hear their point of view about:

- What their views are about the decision or decisions to be made;
- How they feel about the person applying to be their Decision-Making Representative;
- Whether they feel that a DMRO is needed;

<sup>12</sup> It should be noted that it is not necessary for an attorney to be a lawyer and they are often family members, partners or spouses.

<sup>13</sup> CIRCUIT COURT RULES (ASSISTED DECISION-MAKING (CAPACITY) ACT 2015) 2023, S.I. No. 201 of 2023, <https://www.irishstatutebook.ie/eli/2023/si/201/made/en/pdf>

<sup>14</sup> <https://www.legalaidboard.ie/en/lawyers-and-experts/assisted-decision-making-capacity-act-and-legal-aid/assisted%20decision%20making%20solicitors%20panel/>

<sup>15</sup> <https://www.decisionsupportservice.ie/>

<sup>16</sup> The actors for whom Codes of Practice have been developed are: Attorneys, Co-decision-makers, Decision-making Assistants, Decision-making Representatives, Designated Healthcare Representatives, Financial Service Providers; General Visitors, Healthcare Professionals, Independent Advocates, Legal Practitioners; Special Visitors; Supporting Decision-making and Assessing Capacity; Advance Healthcare Directives for Healthcare Professionals.



## HSE ADMC implementation structures<sup>17</sup>

The HSE has provided a range of information and educational materials on the legislation and has organised a number of webinars for this purpose. It has also provided an e-learning programme for healthcare workers. In addition, it has established a multi-stakeholder Transitional Oversight Group. The purpose of this Transitional Oversight Group is to: provide advice and guidance on operational issues arising from implementation of the Act; consider potential areas of risk which are notified to the group, which may be escalated; develop a streamlined and unitary process;<sup>18</sup> escalate any matters of significance to the Chief Operations Officer and the Chief Clinical Officer, the Decision Support Service, Department of Children, Equality, Disability, Integration and Youth, Department of Health and Department of Justice; raise operational matters of relevance on ADMC implementation and ensure agreed actions and decisions are disseminated to the relevant sectors of the HSE where appropriate; provide guidance that supports and enables compliance with the wardship transition.

## Role of independent advocacy in Part 5 applications

An independent advocate<sup>19</sup> can fulfil the role of independent third party by preparing a Report for the Court and/or attendance at a court hearing, the latter with or without the Relevant Person. The role of Sage Advocacy to date is set out in detail in Section 4 and Section 5 below.

## Overview

This section has set out the general provisions of the legislation and provided a synthesis of the various implementation structures.

The next section provides key statistical data relating to the operation of the legislation.

<sup>17</sup> <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/webinars/caoimhe%20gleeson%20presentation%20adm%20webinar%2021032023.pdf>

<sup>18</sup> <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/webinars/caoimhe%20gleeson%20presentation%20adm%20webinar%2021032023.pdf>

<sup>19</sup> Independent advocacy is a professional support service provided by an organisation that is free from conflict of interest and is independent of family and service providers.







## Section Two

### *Operation of the Legislation to Date: Some Statistical Information*

#### Introduction

This section provides data on various aspects of the implementation of the legislation to date in so far as relevant data is available to Sage Advocacy. Data is provided in respect of arrangements made under the legislation by the Decision Support Service, applications to the courts and Legal Aid Board activity relating to the legislation.

#### Arrangements registered with the Decision Support Service

Table 2.1 below shows that 1615 EPAs were registered with the DSS in the period up to the 31st January 2025 with 844 DMROs registered during the same period. The lower number of decision-making assistant agreements notified to the DSS for legal effect (70) and the number of co-decision-making agreements registered with the DSS (81) are also provided.

**Table 2.1: Number of individual arrangements registered with the DSS 26 April 2023 - 31 January 2025<sup>20</sup>**

Enduring Powers of Attorney registered with DSS	Decision-Making Assistant Agreement notified for legal affect	Co-Decision-Making Agreement registered with DSS	Decision-Making Representation Orders registered with DSS <sup>21</sup>	Total Registered with DSS
1615	70	81	844	2615

Source: <https://decisionsupportservice.ie/decision-support-arrangement-statistics>

As of March 2025, 59 EPAs had been notified<sup>22</sup> to the DSS.

**Table 2.2: DSS individual support arrangement statistics**

#### 2025: Individual arrangement statistics

Month	Enduring Powers of Attorney registered with DSS	Decision-Making Assistant Agreement notified for legal affects	Co-Decision-Making Agreement registered with DSS	Decision- Making Representation Orders* registered with DSS
January	164	12	11	56
February	242	9	4	124
March	346	15	7	124
Total 2025	752	36	22	304
<b>Overall Total</b>	<b>2,203</b>	<b>95</b>	<b>92</b>	<b>1,095</b>

Individual decision support arrangements registered month by month across 2025.

The overall total refers to the time period 26 April 2023 – 31 March 2025

<sup>20</sup> It is noted that data is not currently available as to geography, disability, gender and age of the people for whom arrangements have been made under the legislation.  
<sup>21</sup> It would be useful to know how many DMRs act as Co-Decision-Makers but this data does not seem to be available.  
<sup>22</sup> If an attorney believes a donor lacks capacity to make one or more of the decisions contained in the EPA, the attorney must notify the EPA to the DSS to bring it into effect.

## Court operations

The Circuit Court is now the Court with responsibility to hear applications when there are questions about a person's decision-making capacity. Applications for discharge from wardship are, in the majority of cases, required to be made to the High Court.

During 2023 (the first eight months of the operation of the ADMC process in the Circuit Court), 413 applications were made, resulting in 270 orders.<sup>23</sup> Provisional data for 2024 provided by the Court Service to inform this Scoping Document shows that there were 1,343 Part 5 applications to the courts in 2024. This figure does not include ex parte consent applications under section 36(3) of which there were 607.

### Other relevant figures provided to Sage Advocacy by the Courts Service are:

- 1,112 Capacity applications have been granted to date;
- 49 capacity applications have been adjourned generally/struck out/withdrawn/refused/dismissed to date;
- 8 ex parte consent applications have been adjourned generally/struck out/withdrawn/refused/dismissed to date;

## Discharge from wardship

Just 482 applications to discharge wards of court have been made to the courts in 2024, leaving 1,469 wards for whom no discharge request has been made<sup>24</sup>. As of March 2025, 118 wards had completed the discharge process.<sup>25</sup>

## Legal Aid Board statistics

- 1,631 applications for legal services received for all ADMC matters
- Legal advice granted in connection with 38 EPA Applications and 4 Advance Healthcare Directives
- Legal advice granted in connection with 106 Decision Making Assistance Agreements

- Legal advice granted in connection with 25 Co-Decision Making Agreements
- Legal Aid Cert granted - 1,459 (of which, 1,131 Part 5 and 328 Part 6). 1,053 went to panel solicitors (783 part 5 and 270 part 6).

## Outcomes of DMRO applications

Data which is available for one circuit court<sup>26</sup> (the court which hears by far the highest number of DMRO applications) from the commencement of the legislation to October 2024 provides an informative and useful snapshot of DMRO applications. There were 334 DMRO applications during the period with DMROs granted in 253 cases. Of the 334 cases before the Court, 245 applicants sought orders which included, among other powers sought, capability to apply for the Nursing Home Support Scheme. One-third of the cases before the Court required the consent of the Court prior to issuing the Capacity Application. Ex parte applications made by hospitals or the HSE account for almost half (44.6 %) of the total ex-parte applications. Other groups making applications included parents, siblings, aunts, cousins, nieces and nephews, sisters-in-law, social workers, and neighbours.

In the cases where a DMRO application was not granted, there were a number of different outcomes - ex-parte consent application successful but no Capacity Application lodged; the Relevant Person passed away; a Co-Decision-Making Agreement entered (5 cases); presumption of capacity remained intact (3 cases); adjourned for further proofs; adjourned for Service of Notice Parties.

## Overview

This section has presented relevant statistical data relating to the operation of the legislation in respect of both DSS activity, some data on courts activity in respect of the legislation, Legal Aid Board activities and outcomes DMRO applications.

The next section will set out in a general way the nature and extent of Sage Advocacy involvement in the implementation of the legislation.

# Section Three

## Nature and Extent of Sage Advocacy Work Relating to ADMC

## Introduction

This section summarises the nature and extent of Sage Advocacy involvement in the implementation of the ADMC legislation. This involvement has been substantial since the commencement of the legislation. Sage Advocacy has also played an important role in the provision of information and training in respect of the legislation even prior to the commencement.

A significant amount of Sage Advocacy casework is inherently ADMC-related and covers a wide range of general aspects of the legislation as well as more specific areas relating to decision support arrangements and engagement with the courts. The work of Sage Advocacy staff on a day-to-day basis focuses on maximising clients' participation in decisions and often provides the support and information to allow them to make their own decisions about their care and about their finances and property. In addition to supporting clients, Sage Advocacy also plays an important role in the provision of information to the other professionals and to members of the public.

## The Sage Advocacy focus on adults at risk or living in vulnerable situations

Not all Sage Advocacy clients are Relevant Persons under the definition of a Relevant Person as included in the legislation. However, a high proportion of clients have support needs that would to some extent fit broadly with the definition of 'Relevant Person' included in the

legislation (Section 2).

A "relevant person" means—

*(a) a person whose capacity is in question or may shortly be in question in respect of one or more than one matter,*

*(b) a person who lacks capacity in respect of one or more than one matter, or*

*(c) a person who falls within paragraphs (a) and (b) at the same time but in respect of different matters, as the case requires;*

The general profile of Sage Advocacy clients in terms of vulnerability and challenges associated with the ageing process, and the issues with which they present typically means that the case management process has to explore whether or not there is an issue about the client's decision-making capacity, both at the outset and as the case progresses, while always operating on the presumption of capacity principle. This constitutes a significant component of Sage Advocacy casework. It clearly has significant resource implications in terms of applying the principles of the legislation and in terms of the number of people that need to be contacted to establish what support networks are in place, and whether or not there is a need for an additional support structure, e.g., an assistant decision-maker as provided for in the legislation.

<sup>23</sup> <https://www.courts.ie/acc/alfresco/2b552955-e0f9-41a2-80e7-c526d24651e2/Courts%20Service%20Annual%20Report%202023.pdf/pdf/1>

<sup>24</sup> <https://www.lawsociety.ie/gazette/top-stories/2025/march/1469-wards-of-court-remain-despite-looming-deadline/>

<sup>25</sup> Communication from Courts Service to Sage Advocacy in respect of this Scoping Document.

<sup>26</sup> <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/assisted-decision-making-resources/cork-assisted-decision-making-capacity-act-2016.pdf>



## How ADMC-related work impacts generally on Sage Advocacy

Since the commencement of the legislation, there has been a significant number of queries from the public relating both directly and indirectly to the legislation, including, for example, queries about rights of next-of-kin, what the various decision-making supports mean and the implications for families caring for their frail older relatives and those with diminished decision-making capacity as a result of some form of dementia.

In practice, Sage Advocacy staff spend a significant amount of time explaining to family members and professionals what people's rights are under the legislation.

This is regarded by Sage Advocacy as an important part of its role and is seen as a significant and essential supplementary component of individual casework. The general perception on the part of Sage Advocacy staff is that increasingly the public are becoming more aware of the human and legal rights of individuals and wish to 'do the right thing', especially in relation to hearing the person's voice in all matters concerning them. In this regard, the public education role of Sage Advocacy has been significant and is likely to be important into the future, at least until the principles of the legislation become fully embedded and understood in both health and social care practice and in legal practice.

## Sage Advocacy ADMC-related activities

Sage Advocacy has been proactively involved in a range of activities relating to the implementation of the legislation. This has involved, inter alia:

- Developing a number of on-line resources in relation to the legislation; <https://sageadvocacy.ie/resources/assisted-decision-making/>
- The development of Guidance on Independent Advocacy <https://sageadvocacy.ie/wp-content/uploads/2024/10/The-Role-of-an-Independent-Advocate-021024-1.pdf>

- Raising awareness about the legislation and its policy and practice implications for health and social care agencies, the courts service, lawyers, NGOs, community groups, joint forums and the public generally by providing information on the legislation;
- The compilation of a Scoping Document, Older Persons in Receipt of Care: Five Human Rights Concerns in Ireland<sup>27</sup>
- Collaborating with healthcare providers in awareness raising campaigns for staff around the legislation;
- Delivering training on the legislation for health and social care personnel and for lawyers;
- Delivering a series of information workshops on the legislation across the public private and community and voluntary sectors;
- Responding to requests from various professionals and the public for information;
- Dealing with a significantly increased number of casework referrals associated directly or indirectly with the ADMC legislation;
- Membership of the HSE Transitional Oversight Group and related sub-groups;
- Regular inputs at conferences and seminars;
- Regular engagement with a range of stakeholders (HSE, DSS, LAB, HIQA, IHREC, Courts Service and the Department of Health – the latter around protection of liberty safeguards);
- Awareness raising of ADMC at international level through Erasmus and engagement with third-level students in other jurisdictions;
- Responding to information requests relating to both individuals in specific circumstances where the legislation might apply, and to what the implications of the legislation are for families caring for loved ones and for health and social care staff;

## ADMC Information Exchange Forums

In 2023, prior to the commencement of the legislation, Sage Advocacy organised a series of six information exchange forums on the ADMC legislation<sup>28</sup> with the aim of providing an overview of the legislation, and designed to familiarise people with the legislation and address the challenges it would inevitably bring from a range of differing perspectives.

These forums had inputs from legal experts and were attended by a wide range of legal and health and social care professionals. The attendance at these forums ranged from 22 to 39 with a total of 177 external participants over the six forums, with a total of 533 having indicated an interest in attending and booking tickets.

The forums were attended by representatives of a wide range of organisations, (including, the HSE, Policing Authority, Ulster Bank, Banking and Payments Federation Ireland, Safeguarding Ireland., The Citizens Information Board, National Advocacy Service for People with Disabilities, the NUJ, lawyers and judges.

These forums created an opportunity for a necessary exchange of information, discussion on, and exploration of various aspects of the legislation and its critical importance for a human rights approach to people whose decision-making capacity may be in question. As well as facilitating an exchange of information, these forums also provided an important starting point for ongoing stakeholder collaboration.

The forums culminated with the launch of the first awareness-raising video, Minding Your Marbles,<sup>29</sup> about the ADMC and people's right to protection under the legislation.

## Other ADMC-related activities

Sage Advocacy has provided a number of training sessions and presentations to relevant stakeholders in relation to the legislation, including to legal professionals, nursing home groups, acute hospital staff, community groups, government bodies, and third- level education institutions. This training has placed a particular emphasis on the importance of

having the Relevant Person's voice heard during the course of proceedings. This is considered by Sage Advocacy to have been a very significant input by the organization.

During 2024, Sage Advocacy staff participated in some 150 events at national, regional and local levels which had as either their main or subsidiary focus an ADMC component.<sup>30</sup> This took the form of information provision, clarification of various aspects of the legislation and related Q&A sessions. These events took place in various settings – in the community, in nursing homes and in acute hospitals – and typically involved health and social care staff and, in the case of nursing homes, residents. Sage Advocacy staff also engaged with the media at national and local levels in providing information to the public about the legislation. This work is ongoing in 2025.

Sage Advocacy is involved in a number of working groups, and has participated in multiple meetings with services to highlight issues that can arise for the Relevant Person. Such meetings and groups include: the HSE Transitional Oversight Group, HSE Local Placement Forums, the Legal Aid Board, the Decision Support Service, the Courts Civil Reform Office.<sup>31</sup> In the case of the latter, Sage Advocacy was centrally involved in informing the development of guides to ensure that ADMC information is written in Plain English, aligned with court rules and accessible for court users.

Sage Advocacy has established a Legal Support Unit to support its own regional advocates and its Information and Support staff with interpreting and applying the ADMC legislation, both in respect of interpreting the legislation in individual client casework and in relation to engagement with the courts and legal practitioners (see below).

Sage Advocacy has provided extensive training on the legislation for its staff at all levels with a particular emphasis on the role of its Information and Support Team (the first point of referral to Sage) and for its frontline service managers and advocates.

27 <https://sageadvocacy.ie/wp-content/uploads/2025/03/Five-Rights-Issues-210225.pdf>

28 These forums were organised with the support of the HSE.

29 <https://www.youtube.com/watch?v=Cqac57r2ByY>

30 This information is gleaned from the Sage Advocacy database.

31 <https://www.courts.ie/content/strategy-and-reform-directorate>

## How Sage Advocacy works

Sage Advocacy works in accordance with the Guiding Principles of the legislation and seeks to ensure that it works with clients in a manner that respects their values, beliefs, wills, and preferences. Sage Advocacy plays a very significant role in Part 5 applications as is evidenced in the data in the next section.

Since the commencement of the legislation, Sage Advocacy has been facing unprecedented demand for its services with some 80% of cases<sup>32</sup> having an ADMC component. Apart from responding to cases where there is a specific ADMC component, Sage Advocacy casework has also had to respond to the new ethos arising from the legislation in relation to, for example,

- Ensuring that people are supported to maximise their decision-making capacity in all instances relating to their health and social care and to the management of their finances;
- Advocating for and raising awareness of less intrusive interventions which could be explored for individuals;
- Ensuring that the concept of valid consent is adhered to in all decisions made for or on behalf of a person and that HSE Consent Policy is fully implemented irrespective of an individual's decision-making capacity;
- Developing an approach based on the central importance of voice of the individual and on the related fact that next-of-kin have no rights in law to make decisions on behalf of the individual – this fact relating to next-of-kin has not been well understood by the public until recently;<sup>33</sup>
- Dealing with cases where there is a safeguarding concern or where there is coercive control being exercised over an at-risk adult;

Significant informal education is being delivered by Sage advocates and by the Sage Legal Support Unit in day-to-day engagements

with applicants' solicitors some of whom have an underdeveloped understanding of the guiding principles of the Act and the functional capacity assessment process.

The Sage Advocacy Information and Support Team plays a pivotal role in enabling Sage Advocacy involvement in the DMRO application process. The team ensures that all relevant information is gathered in respect of all DMRO-related referrals<sup>34</sup> before a new Sage case file is created (or the information added to an existing file where relevant) and the case referred to a Sage Advocacy Regional Manager or advocate. Information gathered in respect of a proposed DMRO application, for example, typically involves the purpose of the DMRO, the court location and court date (if known). Sometimes this involves asking the referrer to identify the specific areas requiring a decision to be made in accordance with the requirements of the legislation.

Sage Advocacy has developed specific referral forms for cases relating to ADMC Part 5 and Part 6 applications.<sup>35</sup>

It should also be noted that the Information and Support team continuously, during the course of processing referrals, provide information and advice to referrers regarding the process of DMRO applications.

## Sage Advocacy Information and Support role

Since the commencement of the legislation, there have been multiple queries to Sage Advocacy for information and advice about the ADMC but which did not require an advocacy casework intervention. The following table shows that just over two-thirds of these information and advice queries related to a DMRO, 13% referred to an EPA and 15% were seeking general information about the legislation and its implications for them.

**Table 3.1: Categories of ADMC queries to Sage that did not become advocacy cases, 2024**

Query Type	Number	%
DMRO	157	68.9
EPA	30	13.1
CDMA <sup>36</sup>	5	2.2
AHD	1	0.4
General information about the legislation	35	15.4
<b>Total</b>	<b>228</b>	

An analysis of a random sample of these queries shows that the main information requirements related to:

- Help with an NHSS ('Fair Deal') application;
- Getting access to a person's finances for the purposes of an NHSS ('Fair Deal') application and payments to nursing home;
- Access to a person's finances to pay nursing home fees;
- Advice on how to deal with a delay in having a capacity assessment completed;
- Access to person's accounts for their ongoing care and personal needs;
- Clarification of whether a DMRO is required for management of a person's finances (e.g., paying utility bills);
- Clarification of nature and purpose of a DMRO;
- Advice to families /public on the different tiers of support;
- Explaining the move away from wardship to a very different approach to people with reduced decision-making capacity;
- Intervention to secure placements for nursing home residents whose accrued debt payments had led to notice to quit;

<sup>32</sup> In 2024, Sage Advocacy had 9, 062 calls for information and support and 3,086 advocacy cases.

<sup>33</sup> <https://sageadvocacy.ie/wp-content/uploads/2023/12/sage-red-c-next-of-kin-survey-final.pdf>

<sup>34</sup> The Information and Support Team receive DMRO referrals by website, email and post.

<sup>35</sup> <https://sageadvocacy.ie/make-a-referral/>

<sup>36</sup> It should be noted that queries about co- decision-making arrangements and Advance Health Care Directives are generally not dealt with by Sage Advocacy but are referred to the DSS Information Helpline on the basis that the DSS has all the relevant information and is the appropriate agency to deal with such queries.



The following table shows the length of time referrals remained with the Information and Support Team before they could be transferred as cases to a Sage regional advocacy team. Almost three-quarters of referrals (74.1%) were assigned to a regional team within 1-14 days with 5% taking more than 3 months. This delay for the most part was related to the fact that all of the relevant information relating to a DMRO application had not been provided and there was a need for follow up with the referrer, which in many instances was a relatively slow process, due for example, to referrers not responding to emails or telephone calls in a timely manner. In a small number of instances, the applicant abandoned the application process and it is unclear what happened to the Relevant Person.

**Table 3.2: Length of time a referral remained with the Sage Advocacy Information & Support Team before it could be assigned to a Regional Advocacy team, April 2023 to December 2024**

Number of days	Number of cases	%
1 to 14 days	340	74.1
15 days to 1 month	42	9.1
1-2 months	38	8.3
2-3 months	15	3.3
3-6 months	16	3.5
6-12 months	7	1.5
1 year +	1	0.2

### Indicative example of information required by Sage Advocacy from referrers in order to progress a referral

Has the Relevant Person's decision-making capacity been assessed functionally?

Are the Relevant Person's wishes known?

Steps taken to date to support the Relevant Person to make their own decisions?

Length of stay in hospital or Transitional Care Unit (where relevant) and progress and state of recovery;

Is there a multi-disciplinary care team in place for their care?

Are there trusted others in their life?

Has the Relevant Person being made aware that a DMRO application is being made?

Has the Relevant Person consented to nursing home care?

Does the Relevant Person have their own solicitor and accountant?

Does the Relevant Person have an EPA or an Advance Healthcare Directive in place?

Does the Relevant Person have any clinical diagnosis that could impact on their decision-making?

Could the Relevant Person's care needs be met in their own home and what supports would be required for this?

Relationship of Relevant Person to DMRO applicant;

What are the specific decisions that require the DMRO to be made, e.g., personal welfare, property and financial affairs, access to Relevant Person's finances in order to make an application for 'Fair Deal'?

Has a referral been made to the Legal Aid Board?

Can the Relevant Person attend court for a hearing in respect of a DMRO application?

### Role of the Sage Advocacy Legal Support Unit

The Sage Advocacy Legal Support Unit plays an important role in ensuring that best advocacy practice operates in the management of all cases, especially those where there is an ADMC component. (See Appendix 2: The Role of the Legal Adviser).

Since the establishment of Sage Advocacy, legal support has always been available to advocates internally. Sage Advocacy's Board of Directors and its team has recognised the important role that the law can have in promoting and protecting the rights of people who are often marginalised. Sage Advocacy had lobbied for development of the Assisted Decision-Making Capacity legislation and has worked in line with its guiding principles before the Act was ever commenced.

Until the commencement of the Assisted Decision-Making (Capacity) Act, the internal legal support function had one part time employee. However, since the commencement of the Act in April 2023, the requirement for enhanced legal support for advocates became increasingly evident. In 2023 the legal support function increased its complement to one full time and one part time legal adviser. Funding received from the Department of Justice has supplemented funding from the HSE and the Department of Education to enable Sage Advocacy to expand its Legal Support Unit. This resulted in the employment of two full-time legal advisers, one part-time legal adviser and one coordinator during the latter part of 2024 and early 2025 to specifically support the work being undertaken in relation to the ADMC.

The remit of the unit has thus been extended to now include the following work areas in addition to existing ongoing advocacy support work:

- Providing support to advocates in their work to ensure that they are promoting the voices of relevant persons in the court process through the provision of advocacy support and the review and submission of reports to court as required;

- The development and management of relationships with key stakeholders in the area;
- Providing ongoing responsive and strategic legal support to advocates on both an individual and team basis;
- Development of a knowledge bank to support the promotion and sharing of knowledge in relation to matters that have legal and/or rights- based issues;
- The identification of and support to address systemic issues that arise in advocacy casework;
- Deliver training and shared learning to stakeholders in relation to the ADMC or other issues of relevance to Sage Advocacy and its work.

### Overview

This section has set out the in a general way the nature and extent of Sage Advocacy's involvement in the implementation of the ADMC legislation in relation to information provision, training and education and the development of relevant resources. It has also described the nature and extent of the role of the Sage Advocacy Information and Support Team in processing referrals, compiling the information required to refer a case to a frontline Sage Advocacy regional advocacy team. It has outlined the role of the Sage Advocacy Legal Support Unit and how it has been expanded to support ADMC-related work.

The next section will set out in detail the Sage Advocacy involvement in the ADMC Decision-making Representative Order application process.





## Section Four

### *Sage Advocacy Role in Decision-Making Representative Order (DMRO) Applications to the courts*

#### Introduction

Where an application for a Decision-Making Representative Order (DMRO) is being made and where attendance in court, even via video link, will be difficult or impossible for the Relevant Person, the person's voice can be brought to the court by an independent third party. An independent advocate can fulfil the role of an independent third party. While not involved in all cases before the courts, Sage Advocacy has carried out that role in a significant number of cases to date and this work has become a very significant component of the work of Sage Advocacy.

This section sets out the involvement of Sage Advocacy in compiling such reports. As stated above, DMRO applications can be made by an individual (Relevant Person) or by a range of other parties listed in the legislation.

#### Legislative basis for Sage Advocacy Reports under ADMC

Section 50 of the Assisted Decision Making (Capacity) Act 2015 provides that the court shall have the power to direct that any reports (that it considers necessary to assist it in reaching a decision) be provided including medical reports, reports relating to the circumstances of the person (including their property), reports from healthcare professionals and reports from other relevant experts relating to the relevant person.

Sage Advocacy has been directed in a number of cases to provide reports to the court under this section of the legislation. In addition, many court offices advise applicants that there is a requirement for such a report at the hearing and referrals are made to Sage Advocacy in advance of the court hearing.

The reports provided by Sage Advocacy seek to outline the will and preferences of the person in relation to the decision(s) that are the subject of the application and on the person(s) being proposed to act as the person's decision-making representative.

In many instances in the process of capturing the voice of the Relevant Person through the advocacy engagement it results in issues outside the scope of the orders sought emerging. This results in additional orders being made by the court, and/or referrals to a Safeguarding and Protection team or to an Occupational Therapist or a Speech and Language Therapist for an assessment.

Section 139 of the Assisted Decision Making (Capacity) Act 2015 obliges that any proceedings heard in relation to Parts 5, 6, 7 and 8 of the Act must be in the presence of the relevant person unless to do so would not cause an injustice to the person, would have an adverse impact on the person's health or where the person is unable or unwilling to attend. In most of the of cases for which Sage Advocacy has prepared reports, the Relevant Person has not attended court and in those situations the advocacy report has ensured, in so far as is possible, that their voice is communicated to the court.



Since the commencement of the ADMC legislation in April 2023 up to the end of 2024, 21% of all Sage Advocacy cases have been related to Part 5 (DMRO) applications and requests for Independent Advocacy Reports. Up to the end of March 2025, Sage Advocacy had prepared 581 reports for the courts (see Table 4.13, page 46). Data from one Circuit Court<sup>37</sup> (the court which hears the highest number of DMRO applications in the country) shows that of 253 cases where a DMRO was granted, the voice of the Relevant Person was communicated via a Sage Advocacy Report in 164 cases (65%); a Social Worker's Report in 26 cases (10%); National Advocacy Service Report in 9 cases (3%) and other means (22%). In some cases, the Relevant Person's voice was heard via a combination of means.

### Compiling Independent advocacy reports: The Sage Advocacy process

The Sage Advocacy in-house process for preparing an Independent Advocacy Report for the Courts is set out sequentially in the Figure on the page which follows.

In preparing the Independent Advocacy Report for the Court (see Appendix 3 for Report Template), the advocate seeks to ensure that the person's voice is communicated to the greatest extent possible to the relevant Circuit Court and that their will and preferences is stated in so far as this can be ascertained.

- The Sage Advocate arranges to visit the Relevant Person at their place of residence;
- The advocate completes at least 2 visits to the Relevant Person, to ascertain the person's wishes in relation to the decisions that are being included in the Order and to discuss the proposed DMR (sometimes a joint visit is required involving another advocate or a legal advisor);
- The advocate explains to the Relevant Person as fully as possible and in a way that they can understand, the reason for the visit;
- The advocate ascertains directly from the person, insofar as possible, what their wishes are about the decision or decisions that need to be made;

- As part of the engagement with the Relevant Person, the advocate seeks to find out the nature of their relationship with the proposed Decision-Making Representative, e.g.,
  - Whether it is one of trust?
  - Could there be a conflict of interest?
  - Is there any element of undue influence present?
- The advocate notes any particular support needs they may have that may not have been mentioned in the application;
- The advocate informs the person that they have the right to be supported to attend the court hearing;
- The advocate establishes what supports the person needs to attend the court and makes appropriate arrangements accordingly;
- The advocate identifies any other supports that the Relevant Person may require and determines whether any matters have arisen that give rise to a safeguarding concern and whether ongoing advocacy support might be required;
- In instances where very complex issues arise, the case is discussed by the Sage Advocacy Case Management Group and additional visits to the Relevant Person or engagements with other stakeholders may be recommended;

The advocate writes up all the information in a report. Which is then reviewed internally by Sage Advocacy's Legal Support Unit and then delivered directly to the relevant Circuit Court by Sage Advocacy.

In some instances, the Sage advocate provides support to the Relevant Person to attend court in person or via video-link.

The process for compiling an independent advocacy report for the court has evolved since the commencement of the legislation with new templates developed and additional training provided for staff. The current process is set out on the following page.

### DMRO application independent advocacy reports: Nature and extent of referrals to Sage Advocacy and related outcomes

Data on the levels of activity engaged in by Sage Advocacy in relation to DMRO reports for the courts is presented below.

Table 4.1 shows that there were 993 referrals during the period April 2023 to March 2025 that were related to a DMRO application. Primary means that it was the reason for the referral in the first place while secondary means that a Part 5 application commenced during casework for that client. In the majority of cases (82%), the reason for the referral to Sage Advocacy related to a DMRO application.

**Table 4.1: Referrals to Sage Advocacy with a DMRO application component Q 2 2023 - Q1 2025**

Qtr.	Primary	Secondary	Total
Q2 2023	8	11	19
Q3 2023	32	13	45
Q4 2023	66	20	86
Q1 2024	114	51	165
Q2 2024	138	44	182
Q3 2024	145	33	178
Q4 2024	147	4	151
Q1 2025	164	3	167
TOTAL	814	179	993
% of total referrals	82.0	18.0	

Table 4.2 refers to all referrals to Sage Advocacy and to referrals in respect of Part 5 applications from April 2023 up to the end of the 2024. It shows that there were 651 referrals relating to DMRO applications (21% of all referrals).

**Table 4.2: Sage Advocacy DMRO application cases as a percentage of all cases, Q 2 2023 - Q4 2024**

Qtr.	DMRO cases	Other cases	TOTAL cases	DMRO cases as % of all cases
Q2 2023	13	474	487	3
Q3 2023	45	514	559	9
Q4 2023	85	420	505	20
Q1 2024	161	449	610	36
Q2 2024	174	631	805	28
Q3 2024	173	629	802	27
Q4 2024	162	665	827	20
Total	651	3117	3768	21

Up to the end of 2024, 475 requests for independent advocacy reports as part of Part 5 (DMRO) applications were completed. The remaining cases (176) were still active at that juncture, or paused pending more information on the outcome of the application.

<sup>37</sup> Cases before Judge O'Connor from ADMC date of commencement to 31 October 2024, <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/assisted-decision-making-re-sources/cork-assisted-decision-making-capacity-act-2016.pdf>

# ADM Court Reports: Process Map

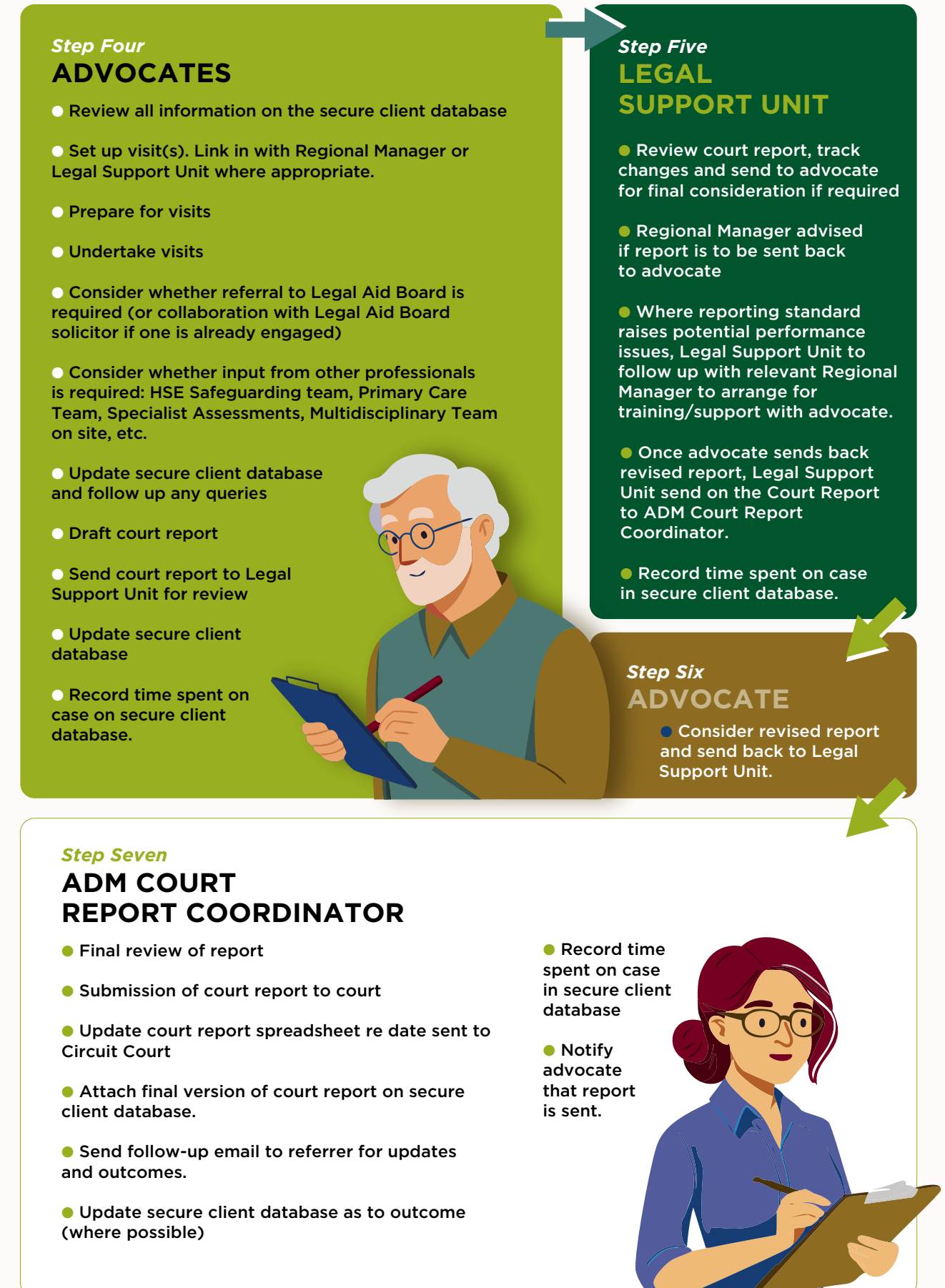
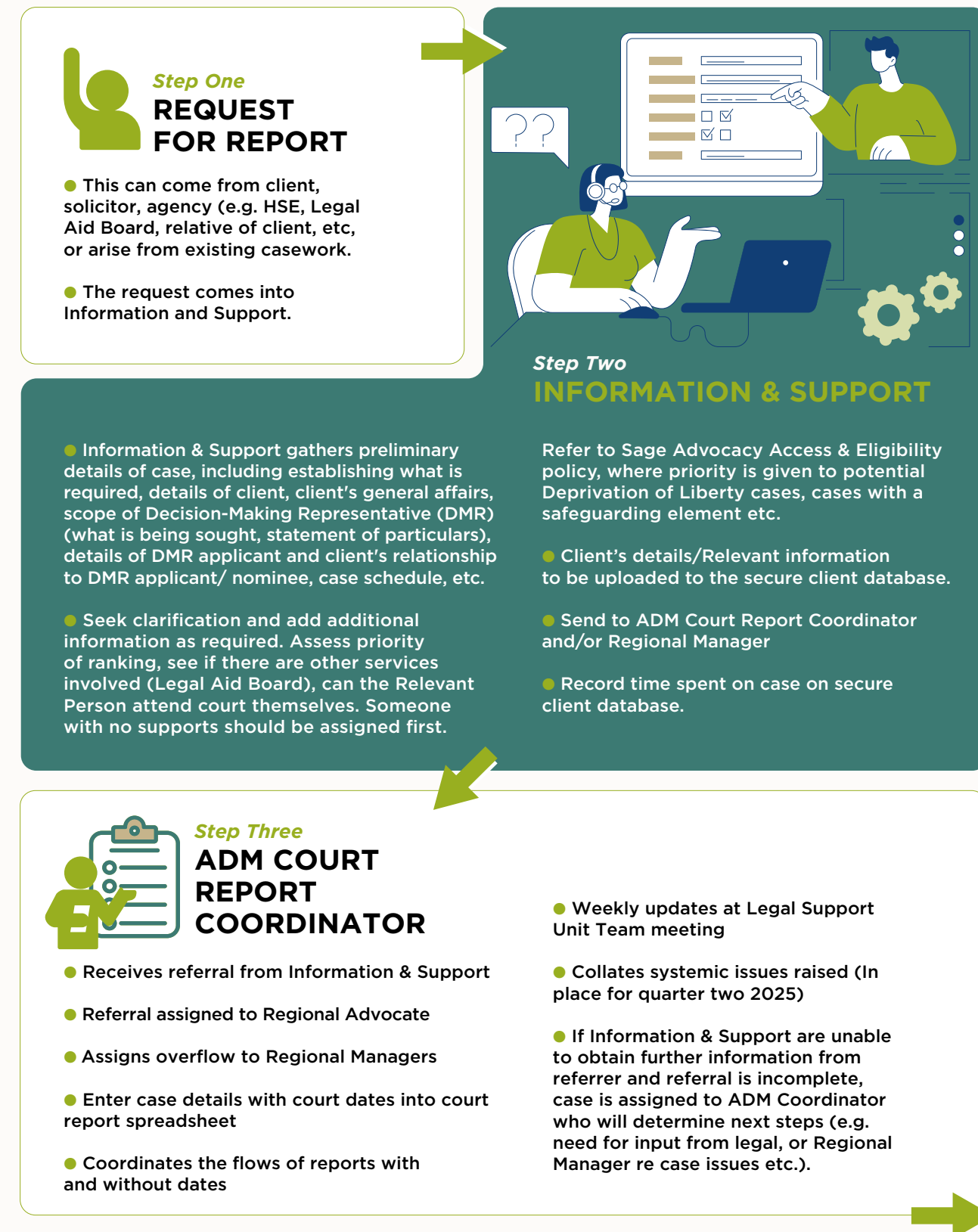




Table 4.3: Sources of referral to Sage Advocacy for completed Independent Advocacy Reports, April 2023 to December 2024

Source of Referrals	Number	%
Family/friend	146	31
Community health and social care services	14	3
Solicitor	166	35
Courts	21	4
Hospital social worker	93	20
Hospital (other) <sup>38</sup>	14	3
Nursing home	21	4
Total Number	475	100

Referrals from community services included referrals from social workers and from mental health services while referrals from hospitals included referrals from discharge coordinators and the medical team.

Table 4.4: Place of residence of people for whom assistance with DMRO applications was sought (completed cases) April 2023 to December 2024

Location	No.	%
At home	51	11
Disability Services	2	0
In a nursing home	308	65
In hospital	99	21
Step-down Facility	15	3
Total Number	475	100

Table 4.5: Stage of process at which a referral was made to Sage Advocacy (completed cases) April 2023 to December 2024

Stage of process referral received	No.	%
After ex-parte consent for application granted	21	4
Prior to application being submitted to Court	201	42
Referral received after capacity application sent to court	43	9
Referral received after initial Court hearing	209	44
Where amendment to order was required	1	0
Total Number	475	100

38 This included Discharge Coordinator, CNM and Medical Team.



**Table 4.6: HSE areas where referrals came from (completed cases), April 2023 to December 2024**

Area	No.	%
Area A: Dublin N, Meath, Louth, Cavan, Monaghan	196	41
Area B: Dublin SW, Wicklow W, Kildare, Laois, Offaly, Westmeath, Longford	112	24
Area C: Dublin SE, Wicklow, Carlow, Wexford, Waterford, Kilkenny, Tipperary S	70	15
Area D: Cork, Kerry	51	11
Area E: Limerick, Clare, Tipperary N	9	2
Area F: Galway, Roscommon, Mayo, Sligo, Leitrim, Donegal	37	8
<b>Total Number</b>	<b>475</b>	<b>100</b>

**Table 4.7: Visits per client by Sage Advocates re. DMRO applications (completed cases) April 2023 to December 2024**

Number of visits		%
1	47	11.5
2	294	72.2
3	48	11.8
4	8	2.0
5+	10	2.5
<b>N= 407</b>		

Table 4.7 shows that in almost three-quarters (72.2%) of cases, 2 visits were required by the advocate with 3 or more visits being required in almost 17% of cases. It should be noted that there were a number of cases where a visit was not required because the DMRO application was withdrawn for various reasons.

**Table 4.8: Purpose of DMRO application (completed cases), April 2023 to December 2024**

Purpose	No.	%
Personal welfare and property affairs (combined)	236	50
Personal Welfare Decisions	12	3
Property and affairs	226	48
Unknown	1	0
<b>Total Number</b>	<b>475</b>	<b>100</b>

**Table 4.9: Status of person making DMRO application (completed cases), April 2023 to December 2024**

Applicant details	No.	%
Defined person under the Acts	308	65
Family member ex-parte Application	114	24
Other person with <i>bona fide</i> interest	53	11
<b>Total Number</b>	<b>475</b>	<b>100</b>

**Table 4.10: Client attendance at court (completed cases)**

Attendance in Court (Responsible Person)		%
No	455	95.8
Yes - In Person	8	1.7
Yes - Via Video Link	12	2.5
<b>N = 475</b>		

Table 4.10 shows that in a high majority of cases (96%), the Relevant Person did not attend court. This highlights the critical importance of the person's voice being heard via a report from an Independent advocate.

Table 4.11 shows that in almost 13% of cases for which an independent advocacy report was provided to the court, the Sage advocate attended the hearing either in person or via video link. While Sage advocates may not be able to attend court routinely because of resource constraints associated with high caseloads, they do attend where specifically requested to do so by the court, or by the Relevant Person or by their legal representative.

**Table 4.11: Advocate attendance at court (completed cases), April 2023 to December 2024**

Attendance in Court (Advocate)	No.	%
Yes - In person	40	8.5
Yes - Via Video Link	19	4.0
Attendance not required	416	87.5
<b>Total Number</b>	<b>475</b>	<b>100</b>



Table 4.12 shows that in 85 cases referred to Sage Advocacy, a DMRO was not required for various reasons, including, in particular, alternative arrangements being facilitated by Sage Advocacy (11) and by other agencies (23).

Table 4.12: DMRO application not progressed (completed cases), April 2023 to December 2024

Reason DMRO Not Progressed	No.	%
An alternative arrangement was made due to Sage intervention	11	13
An alternative arrangement was made external to Sage	23	27
Applicant did not progress application	2	2
Client deceased before completion	45	53
Referred to another service	4	5
Total Number	85	100

Table 4.13 shows that almost two-thirds of cases (65%) referred to Sage Advocacy in respect of a DMRO application were heard in the Dublin Circuit Court with the Cork Court accounting for 34 reports and Galway Court 32 reports.

Table 4.13: Court (geographical) location of DMRO applications (completed cases), April 2023 to December 2024

Circuit Court Location	No.	%
Bray	14	2.4
Carlow	4	0.7
Castlebar	10	1.7
Cavan	3	0.5
Cork	45	7.7
Dublin	370	63.7
Dundalk	9	1.6
Ennis	3	0.5
Galway	38	6.5
Kilkenny	1	0.1
Killarney	3	0.5
Letterkenny	1	0.1
Limerick	12	2.1
Mullingar	3	0.5
Naas	16	2.8
Nenagh	1	0.1
Portlaoise	8	1.4
Tralee	8	1.4
Trim	24	4.1
Tullamore	4	0.7
Waterford	3	0.5
Wexford	1	0.1
Total Number	581	

Table 4.14: Outcomes for clients of DMRO applications where there was a report provided by Sage (completed cases), April 2023 to December 2024

Outcome	Number	%
Client deceased before completion	38	8.0
Did not progress	40	8.4
Granted for Applicant(s)	145	30.5
Granted for Panel (Applicant applied)	10	2.1
Granted for Panel (Panel applied)	10	2.1
Order not granted	9	1.9
Order split between Applicant/Panel	4	0.8
Partially Granted	7	1.5
Advocacy report no longer required	22	4.6
Unknown	190	40.0
N = 475		

The relatively high proportion of cases where the outcome was unknown to Sage Advocacy arises because there is no mechanism in place for Sage Advocacy to be informed of the decision taken by the court. This is noted as a significant gap in the process and an area where some mechanism is required. It is almost certain that some of the Relevant Persons would benefit from ongoing independent advocacy support whether or not a DMRO was granted. It is also the case that many of the Relevant Persons in respect of whom a DMRO was granted would benefit from the involvement of an independent advocate when the order is being reviewed.

It is Sage Advocacy’s view that the relevant mechanism can be put in place by the Circuit Court issuing a Practice Note taking account of the provisions of Section 38(8) of the Act to place an obligation on the courts to inform an independent advocacy organisation of the outcomes of a DMRO application in instances where an independent advocacy report was provided to the court. Section 38(8) provides that in making a decision-making order or decision-making representation order, the court shall make provision for such other matters as it considers appropriate

## The contribution of Sage Advocacy to the DMRO application process

It is evident from the data presented above that the contribution of Sage Advocacy to the DMRO application process has been significant. The independent advocacy role has provided an additional and necessary perspective to the courts process in general. The approach and modus operandi of Sage Advocacy since its establishment in 2014, based on its mission statement, nothing about you/without you, strongly resonates with the principles of the assisted decision-making legislation. In the context of preparing independent advocacy reports for the courts, Sage brings another essential dimension to the process – ensuring that the voice of the Relevant Person is articulated not only to the court but, also, to the person's family and to health and social care providers. The practice of visiting the Relevant Person on a number of occasions before compiling a report for the court provides a valuable opportunity to identify broader issues that may be affecting the person relating to, for example, safeguarding, coercive control or a belief that other people (next-of-kin) can make decisions for them.

The engagement with the ADMC process has necessitated an enhancement of Sage staffing levels, especially the establishment of its Legal Support Unit, and the development of a number of additional in-house protocols and processes. For example, over a period of time, a standard report template was created to best reflect advocates' engagement with clients. The report had to use language that spoke plainly and directly, conveying not only the advocate's experience of the person, but to the greatest extent possible, the Relevant Person's choice about a range of issues, including where they wish to live, who they trusted with their money, who they wanted to have access to their bank account(s), who they had confidence in to make decisions about their lives, for them.

In carrying out their role, advocates had to be able to explain the various processes to the individuals involved (some of whom would have communication challenges), ask them if they wished to be in Court, and outline that their presence could be in person or remotely,

through a screen. Such explanations could be difficult in many instances.

While these challenges were complex, unsolicited feedback provided to Sage Advocacy from families, solicitors, social workers and relevant persons themselves clearly indicate that the Sage contribution was widely experienced as positive and helpful. Clearly, there will be ongoing challenges for Sage Advocacy in maintaining the standards that it has set for itself and in ensuring that the role of independent advocacy is embedded throughout all ADMC processes. While some aspects of this are outside the control of Sage (e.g., formal recognition by the State of the practice of independent advocacy), aspects such as high quality and ongoing professional training as well as focused legal support are within the remit of Sage and will require ongoing focus within the organisation.

### Overview

This section has set out in detail the nature and profile of cases which involved the preparation by Sage Advocacy of independent advocacy reports for the courts in respect of DMRO applications. It has shown that the majority of such reports are for the Dublin Circuit Court (the court that hears the highest number of DMRO applications). It has also shown that in the majority of the cases in which Sage Advocacy was involved, neither the Relevant Person nor the Sage Advocate attended court, despite the attendance of the Relevant Person being required under the legislation unless there were specific extenuating factors present.

The next section will explore the Sage Advocacy experience in relation to its engagement with the process and the main actors therein.





## Section Five

### *ADMC Implementation and Operation: The Experience of Sage Advocacy*

#### Introduction

The previous two sections have set out the considerable involvement of Sage Advocacy to date in the implementation of the ADMC legislation. This section of the document outlines the experience of Sage Advocacy<sup>39</sup> in respect of its involvement on a daily basis in the implementation of the legislation since its commencement in April 2023. In considering these issues, it is important to note that the ADMC legislation introduced a whole new and radical way of thinking about decision-making capacity based on the principles of presumption of capacity, a functional assessment of capacity that is time and issue based, and a focus on supported decision-making and a rights-based approach.<sup>40</sup>

#### Indicative practice scenarios

The experience of Sage advocates is set out below in five different indicative scenarios.

1. Engagement by families of Relevant Persons with Sage Advocacy in relation to the legislation;
2. Contact by solicitors with Sage Advocacy in respect of Part 5 DMRO applications;
3. Queries and referrals to Sage Advocacy by social workers;
4. Capacity assessments and the functional approach to capacity;
5. Applications for a DMRO in instances where a DMRO is not required;

<sup>39</sup> These issues were identified initially by Sage Advocacy staff and were refined further by means of focus group discussions involving the Information and Support Team and the three regional advocacy teams. These focus groups were facilitated by the Sage Advocacy research and policy support person. There was also significant input into the process of identifying the issues by the Sage Advocacy Legal Support Unit.

<sup>40</sup> As noted by the court in KK [2023]IEHC 306, this is a seminal shift [https://www.courts.ie/view/judgments/36e5f23c-8fa2-4318-b348-b0e5b032f8a6/0765cae7-1e44-42ba-b52b-ae7ca22738ec/2023\\_IEHC\\_306.pdf/pdf](https://www.courts.ie/view/judgments/36e5f23c-8fa2-4318-b348-b0e5b032f8a6/0765cae7-1e44-42ba-b52b-ae7ca22738ec/2023_IEHC_306.pdf/pdf)

### *Indicative Scenario 1: Family members' engagement with Sage Advocacy*

Family members typically contact Sage Advocacy following advice from the court office following the submission of an application for a DMRO, (for example, for a parent). They might also be advised by their solicitor to contact Sage Advocacy. There are occasions when a family member attends court for the initial hearing and the judge requests a report from Sage Advocacy and in some instances provides an adjourned court date.

Frequently, the family member does not know why they are contacting Sage Advocacy or anything about its role or the service provided. In many cases, family members are confused about the process and have limited information. It is rare that family members who contact Sage Advocacy have been in touch with the Decision Support Service (DSS) or know anything about the DSS's role in providing information and guidance on the processes involved in the ADMC.

In order to provide appropriate support and guidance to families, the Sage Information and Support Team regularly engages with the DSS and with the Courts Service.

It is the role of the Sage Advocacy Information and Support Team - at this point - to inform the family member of the role of the Independent Advocate in the DMRO application process. Some family members can be sceptical and need reassurance regarding an independent advocate meeting with the RP and discussing the DMRO. Some family members are concerned that this will upset and confuse their loved one. The Sage Advocacy Information and Support Team will often send on information in the form of the "The Role of an Independent Advocate" and direct family members to the resources on the Sage Advocacy website.

Some family members have contacted Sage Advocacy with very specific queries regarding their DMRO application and related matters and the processes involved. In such instances, they would generally be referred to the DSS by the Information and Support Team. There have been a number of times when a family member has asked Sage Advocacy to complete the Capacity Application form for or with them. They will, again, be directed to the DSS for

support. On occasions, family members have requested that Sage Advocacy carries out the capacity assessment and think that is the reason that they have been referred to Sage and had not been advised that Sage Advocacy has no role in this matter.

An ongoing issue with regard to referrals to Sage Advocacy arises when a family member requesting an independent advocacy report is uncertain about how much or what information to include in the referral form. Sometimes, family members are reluctant to disclose information, such as which financial institutions the Relevant Person has accounts in, ownership of property and/or planning ahead documentation. In such instances, it is the role of Sage Advocacy staff to reassure the family member that this information forms the basis of meaningful engagement with the Relevant Person and is required for an effective intervention by an advocate.

On occasion, the information provided in the Sage Advocacy Referral Form<sup>41</sup> differs from that in the Capacity Application and therefore, it is necessary for Sage Advocacy to request from the family member, the information included in Form 55B (the Statement of Particulars)

Sage Advocacy has also received calls from family members and/or would-be applicants who dispute the results of capacity assessments and are enquiring as to why the Relevant Person could be deemed to have capacity to make a decision when they have a diagnosis of dementia.

#### **Issues identified**

- There is a significant gap in families' understanding of the role of the Independent Advocate in the DMRO application process;
- There appears to be a gap in understanding of the role of the DSS in the DMRO application process and often, Sage Advocacy is the first "port of call" for people seeking information and understanding of the process;

### *Indicative Scenario 2: DMRO-related queries and/or referrals made by solicitors*

Many referring solicitors are fully au fait with the ADMC DMRO process and have a good understanding of the role of independent advocacy as separate from and complementary to their own role. However, it is also common for the solicitor involved not to be fully familiar with elements of the Part 5 process and, therefore, having to seek guidance and advice from the Sage Advocacy Information and Support Team. This relates in particular to the role of Sage Advocacy in the process. Often, the solicitor is directed by the court to obtain an independent advocacy report. A lot of time is spent by the Information and Support Team informing solicitors of the role of an independent advocate in the process and the necessity for same. Some solicitors do not see the benefit of or need for an independent advocacy intervention. There have been occasions where the requirement for independent advocacy involvement is perceived by a solicitor to be 'holding up the process'. Delays can arise because referrals by solicitors with short time-frames cannot be processed by Sage Advocacy within that time-frame. The issue arises mainly because the need for the advocate to have a meaningful engagement with the Relevant Person before compiling a report is not well understood.

In some instances, Sage Advocacy has received letters from solicitors requesting Sage to visit a Relevant Person to carry out a 'capacity assessment'. This suggests an underdeveloped understanding of the role and limitations of independent advocacy in the DMRO process. (It is clearly not the role of an advocate to carry out a capacity assessment).

A regular issue experienced by Sage Advocacy is when the referring solicitor has not completed the referral forms fully or has left out important details. Typically, the information that is not included relates to time and issue specific decisions. This often results in numerous emails and calls to the solicitor in order to obtain the relevant information. It can be a lengthy process, and in some cases, the solicitor cannot understand the rationale for same in the

context of the advocacy report. Sage Advocacy frequently has to explain to a solicitor why this information is required and how it forms the basis of meaningful engagement with the Relevant Person. In some instances, it has been necessary for Sage Advocacy to contact the applicant directly for the information required.

Short turn-around requests (e.g., 1-2 weeks before the court hearing date) from solicitors for independent advocacy reports create challenges for Sage Advocacy. Some solicitors have questioned why the Independent Advocacy Report cannot be furnished within the timeframe. This suggests some lack of understanding of the need for Sage Advocacy to engage fully with the Relevant Person (sometimes necessitating multiple visits) in order to ensure that any information provided to the court is accurate and comprehensive and to ensure that the Relevant Person is fully supported to participate in line with the guiding principles of the legislation.

<sup>41</sup> <https://sageadvocacy.ie/make-a-referral/>



### *Indicative Scenario 3: Queries and/or referrals to Sage Advocacy from social workers*

Many social workers are fully au fait with the ADMC DMRO process and have a good understanding of the role of independent advocacy as separate from and complementary to the social work process.

A social worker may be assisting family members/applicants as they start the application process but often, at this juncture, the decisions that are required to be made are not clearly defined. This leads to incomplete details being provided to Sage Advocacy by the referrer.

The Sage Information and Support Team respond to all incomplete or non-specific referrals requesting details of the issue-specific decisions for which a DMRO is being applied for. This can frequently require sustained follow-up by email and telephone reminders in order to get the information required before Sage can proceed and engage in a meaningful way with the Relevant Person. Challenges arise for the Sage Information and Support Team when:

#### **Issues**

- There appears to be an underdeveloped understanding on the part of some social workers of the context within which a DMRO application is appropriate;
- Referrals have been made to Sage Advocacy prior to capacity assessments being carried out in a hospital;
- Sage Advocacy has received some referrals that suggest a DMRO is being applied for as the person is not agreeing to long-term care -- a person's right to liberty is protected and can only be limited by the High Court (not through a DMRO);
- In some instances, Sage has been sent too much information (including medical information) and copies of capacity assessments in addition to the DMRO referral form, an indication that the role of the independent advocate in the process is not well understood;

- The applicant has not prepared the documentation required or has not finalised the decisions about which a DMRO is being applied for prior to the referral being made;
- The Relevant Person has been discharged from hospital after the referral has been made and the referring MSW is no longer involved;
- Contact details of the person who will be dealing with the Relevant Person are not provided by the referring MSW;
- A new referral may be required if significant time has passed since the referral was first received;

### *Indicative Scenario 4: Capacity assessments and the functional approach to capacity*

The Assisted Decision-Making (Capacity) Act 2015 sets out the classes of healthcare professionals (in addition to medical practitioners) who may provide capacity assessments.

These are:

- Occupational therapists – registered members of the profession of occupational therapist
- Registered midwives
- Registered nurses
- Social workers – registered members of the profession of social worker
- Speech and language therapists – registered members of the profession of speech and language therapist

Sage Advocacy receives calls from both family member applicants and nursing home staff reporting an inability to get capacity assessments completed by a professional from the approved list.

Sage advocates have suggested that there seems to be a reluctance among some GPs providing medical services to nursing home residents to complete capacity assessments for them. Registered nurses in nursing homes sometimes contact Sage Advocacy in relation to this matter notwithstanding the fact that they themselves are included in the listing of approved health care professionals who can do a capacity assessment. While Sage Advocacy has some experience of community-based social workers visiting nursing homes to complete capacity assessments, this does not appear to be common practice.

#### **Issues**

- Some GPs have requested a solicitor's letter from applicants in order to carry out capacity assessments;
- Frequently DMRO-related referrals are received by Sage Advocacy before a capacity assessment has been carried out – this means that a person is deemed (without an assessment) not to have capacity to make the relevant decisions;
- In practice, many applications remain on the Sage Advocacy wait list for inappropriately long periods before applicants inform Sage that a capacity assessment has been completed;

### Indicative Scenario 5: Application for DMRO when not required (not implementing the least restrictive approach)

The legislation stipulates that, as far as possible, all adults have the right to play an active role in decisions that affect them. These decisions can be about their personal welfare, including health and social care, and their property and affairs.

Under the guiding principles of the legislation, any action/intervention taken for a Relevant Person should be the least restrictive of their rights and freedom and any intervention should respect the person's right to control their affairs to the greatest extent possible and in accordance with their will and preference.

Sage Advocacy regularly receives queries and referrals in relation to DMROs that do not adhere to the guiding principles of the Act. A number of instances where a DMRO is not required or appropriate but being applied for have been identified by Sage Advocacy.

#### Where the Relevant Person:

- *Is consenting to nursing home care and has an adult child to sign the Fair Deal application* (which is provided for under the NHSS legislation ('the specified person')<sup>42</sup>;
- *Is consenting to nursing home care and does not own property or does not require the 'Ancillary State Support' (Nursing Home Loan)*<sup>43</sup>;
- *Has joint bank account with spouse or family member named on RP's account* DMRO being applied for to access finances;
- *Is objecting to Nursing Home Care* DMRO being applied for in order to provide a legal basis to move the person into a nursing home against their will (when this matter should be dealt with under the inherent jurisdiction of the High Court);

- *Has demonstrated capacity to make decisions with support* DMRO being applied for with general future-proofing decisions when other less restrictive arrangement would be appropriate at this juncture;
- *Appears not to have capacity to consent to healthcare treatments/procedures* DMRO being sought to make decisions on behalf of a Relevant Person without the HSE Consent Policy<sup>44</sup> provisions having been fully explored, in particular, Section 5.2.4. "It is often relevant to consider whether there is significant risk or potential long-lasting consequences for the person associated with the decision ... and whether the intervention would be appropriate and proportionate in the circumstances".

<sup>42</sup> Sage Advocacy believes that the practice of seeking a third party to sign contracts of care in circumstances where the resident is unable to do so (where those third parties have no legally recognised decision-making authority to do so) is not in line with the ADMC. Sage Advocacy understands that HIQA are seeking amendments to their regulations to address this issue.

<sup>43</sup> A DMRO is only required where a charge is being put on a property and not for the general NHSS application.

<sup>44</sup> [https://assets.hse.ie/media/documents/ncr/20241001\\_HSE\\_Consent\\_Policy.pdf](https://assets.hse.ie/media/documents/ncr/20241001_HSE_Consent_Policy.pdf)

### Synthesis of issues identified in the Indicative Scenarios

The five scenarios outlined highlight a number of cross-cutting issues in relation to various actors which are summarised below.

#### Solicitor referrals

The experience of Sage Advocacy is that there are gaps in some solicitors' understanding of the legislation:

- Lack of adequate understanding of role of an independent advocate;
- Information provided not being issue and time specific;
- An underlying alignment with the outdated 'best interests' approach;
- Time frames required for completion of an independent advocacy report being unrealistic;
- Instances of a solicitor making a DMRO application on behalf of a family and believing that they can also represent the Relevant Person;

Sage advocates have reported varying experiences with different solicitors. Some Legal Aid Board (LAB) offices are experienced as being efficient and very engaged in the process while other LAB offices have been less proactive and slow to engage, for example, refusing to appoint a solicitor unless the documents such as photo ID and proof of address are provided. Sage advocates have also had experience of some LAB offices not understanding the need for separate representation for an applicant (e.g., a family) and the Relevant Person.

In some instances, solicitors have contacted Sage Advocacy without having ever met or communicated with the Relevant Person. They may have been relying on (sometimes very inaccurate) third party information and, in some instances, on an outdated capacity assessment report. Also, some solicitors inform Sage Advocacy that they have been advised by the court to contact Sage Advocacy but do not understand why this is necessary. Some solicitors see any involvement by Sage Advocacy in DMRO application processing as an unnecessary additional layer in the process.

Issues also arise because some solicitors do not send information to Sage Advocacy about the specific decisions to be made in relation to a Relevant Person. This means that the case cannot be progressed in a timely manner within the Sage system – on some occasions, it can take several weeks before the specific information required is provided. (Sage Advocacy estimates that over half of the referrals it receives in relation to assistance with a DMRO application contain insufficient information about the purpose of the application).

In a small number of instances, Sage advocates have experienced a solicitor giving their opinion on a person's decision-making capacity as distinct from representing the persons views and interests in so far as these can be ascertained.

Sage advocates have also encountered some solicitors who are of the view that once the Relevant Person is legally represented, there is no need for an Independent Advocacy Report. Also, some solicitors continue to believe that, if a person lacks decision-making capacity, all decisions could be included in a DMRO – in effect a 'wardship type' application for general decision-making.

There have been instances of a solicitor seeking an Independent Advocacy Court Report within a turn- around time which was quite unrealistic given that the Relevant Person had complex medical issues requiring careful consideration and where the advocate would need a number of visits in order to facilitate communication and the ascertaining of the person's will and preferences.



## Referrals from social workers

In 2024, one-fifth of referrals for advocacy support originated from social workers. Generally, the frequent communication and exchange of information between social workers and advocates have proven invaluable in supporting older people at risk of abuse and enabling them to live in accordance with their will and preferences. Notably, Sage Advocacy has experienced numerous cases where safeguarding social workers and advocates have successfully co-worked and conducted joint visits to older persons where there was a safeguarding concern.

In relation to the implementation of the ADMC legislation, the Sage Advocacy experience is that many social workers see Sage advocates as allies and work with them to support a Relevant Person. However, others are perceived as regarding Sage Advocacy as somewhat of an obstacle to them in facilitating a person's timely discharge from hospital.

It should be noted here that Sage Advocacy works to collaborate where possible and to challenge where necessary and where a person's rights are being impeded, a challenge may be required to ensure that any intervention aligns with a human rights-based approach and with ADMC principles.

The social work input into supporting Relevant Persons and seeking the most appropriate option is perceived by Sage advocates as being affected by a relatively high turnover of social workers in relation to individuals, in particular, those who require long-term nursing home care. This impacts on the process of effecting a seamless transition to a residential care setting with the appropriate support mechanisms in place, e.g., 'Fair Deal' funding.

Referrals to Sage Advocacy for assistance with a DMRO application are sometimes made before a capacity assessment has been carried out – this is perceived as failing to operate on the basis of a presumption of capacity as required by the legislation.

As is the case with medical social workers in general, it is the Sage Advocacy experience that some HSE ADMC Leads (usually social

workers) are very au fait with the legislation and its underlying principles while others are not. The Sage Advocacy experience has been that some HSE ADMC Leads experience challenges in understanding their relatively broad remit. For example, there is reference to their role in the HSE Newsletter<sup>45</sup> as one of supporting "staff on the ground" relating to Assisted Decision-Making (Capacity) Act issues. This includes educational sessions for various stakeholders.

The Sage Advocacy experience is that HSE ADMC Leads around the country are working differently. For example, there is a perception among Sage advocates that some ADMC Leads might not, in many circumstances be confident about applying the legislation and are somewhat fearful of the consequences for them if something goes wrong while others are more confident in implementing the legislation. There were also a small number of instances noted by Sage advocates where an ADMC Lead had asked Sage Advocacy to 'complete an assessment' and attend a court hearing.

In a general way, there are indications to Sage advocates that social worker engagement may be reflective of the overall ethos and policy in the hospital where they work. For example, there is a perception on the part of Sage advocates that in some hospitals a DMRO application to the courts is the default position where there is any question about a person's decision-making capacity, while in other hospitals every other avenue of supporting the person is explored in terms of providing necessary supports to enable a less restrictive option for the individual before resorting to a DMRO application. In the latter instances, hospital social workers are most likely to work closely with Sage advocates, particularly in the context of people transitioning out of hospital.

## Referrals from nursing homes

When a referral from a nursing home comes to Sage Advocacy, the Relevant Person is often in significant arrears in payments to the nursing home as the process of supporting the person regarding financial matters and completion of the Nursing Home Support Scheme application has been paused.

Many private nursing homes are perceived by Sage advocates as having an underdeveloped understanding of the legislation and its underlying principles, e.g., the presumption of capacity, the absence of any legal standing for next-of-kin, the fact that a DMRO can only be granted for specific decisions and a belief (inaccurate) that they (the private nursing home) cannot make a DMRO application for a resident.

Nursing homes are experienced as having difficulty in getting a capacity assessment completed, in particular, where a person has been transferred from hospital to a nursing home without a capacity assessment having first been completed. As already stated, some nursing homes appear to be unaware of who can carry out assessments. They appear to operate on the basis that all assessments must be done by a consultant or by a GP.

A critically important question arises as to who is ultimately responsible for ensuring that a capacity assessment is carried out for nursing home residents when there is a question about their decision-making capacity.

Some nursing homes are perceived by Sage Advocacy as not having a full understanding of the legislation in general and, specifically, of the DMRO process; and that these nursing homes were also of the view that a DMR can make decisions for the Relevant Person on all matters going forward.

Some private nursing homes have indicated to Sage Advocacy that they believe that there is a conflict of interest in them bringing applications to court where the DMRO is related to an NHSS application ('Fair Deal') and setting up related payment arrangements.

Typically, private nursing homes are seen as relying on Sage Advocacy for support, information and guidance around the ADMC.

While key nursing home staff have attended information webinars, they have reported to Sage Advocacy that these have tended not to be sufficiently focused in terms of the real-life situations of Relevant Persons resident in a nursing home.

The Sage Advocacy experience is that on occasions Relevant Persons are transferred from acute hospitals to private nursing homes without the necessary processes for paying the nursing home charges having been first put in place, including, the commencement of a DMRO application and/or application for 'Fair Deal' funding. This has resulted in people unnecessarily accruing debt and not having anyone to make a DMRO application. In this regard, the evidence from Sage advocates is that private nursing homes are unwilling to make DMRO applications resulting in some instances in residents being discharged back to an acute hospital setting. In some instances where a referral is made to Sage Advocacy, an advocate works with the Relevant Person to try to prevent transfer back to an acute setting where there is no medical need to do so. This typically involves supporting the client to find alternative suitable accommodation or to remain in the private facility with 'Fair Deal' funding.

Challenges for private nursing homes in implementing the ADMC legislation are identified by Sage Advocacy as including high staff turnover resulting in a significantly underdeveloped understanding of what is required under the legislation.

It is the experience of Sage Advocacy that HSE nursing homes have a better understanding of the legislation and the requirements for making a DMRO application. However, it is also the case that some staff in public nursing homes are reliant on Sage advocates for information and support around the legislation but this to a much lesser extent than with private nursing homes.

<sup>45</sup> <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/newsletter-autumn-22-9-2023.pdf>

### Engagement with a Relevant Person in the court process

The legislation requires that the Relevant Person be present in court for the DMRO application hearing either in person or by video link unless other factors are in play (see Section 2 above). Sage Advocacy has encountered varying approaches by the courts in how they deal with the Relevant Person. For example, some courts insist on the Relevant Person being present in person where possible or by video link and engage with them fully, while other courts do this less so.

There have been some isolated instances reported by Sage advocates where the court did not engage with the Relevant Person until after a decision had been made on the DMRO application.

### Examples of good practice and practice that is unsatisfactory

In order to provide a better insight into the ADCM process as experienced by Sage Advocacy, four examples are presented below – two relating to what is regarded as good practice and two that are regarded as less than satisfactory practice.

The purpose of these is to present a summary snapshot of practice based on the experience of Sage Advocacy of different approaches. This is considered important in order to highlight what should be aspired to as appropriate practice by all stakeholders with an obvious need to keep the focus clearly on the Relevant Person. The good practice examples refer to a DMRO application process and to practice by a solicitor. The two examples of unsatisfactory practice refer to the court process and to practice by a solicitor.

### Indicative ‘good’ practice examples identified by Sage Advocacy

#### Good Practice Example 1: Interface with Court

Referrer	Hospital seeking to progress discharge of patient.
Applicant for DMR	Hospital
Proposed DMR	Independent member of DSS Panel
Interface with court	Advocate met with client in hospital setting on day of court hearing and supported person to attend via video link. Advocate’s report had included details of previous meetings and of person’s objection to having DMR appointed. Client advised advocate that they did not want to speak on the video link. When the case opened, the court report was reviewed and the court commented positively on the work of Sage Advocacy. The court noted that a DMR was not the least restrictive intervention and dismissed case whilst noting that client’s supports in the form of the advocate and legal aid board solicitor could support the client with less restrictive interventions such as a Decision-Making Assistance Agreement.
Outcomes	<ul style="list-style-type: none"> <li>✓ Least restrictive options explored</li> <li>✓ Client retained decision making autonomy</li> <li>✓ Client was very happy with outcome of court and was empowered to plan their hospital discharge, collaboratively with professionals and other natural supports, in line with their will and preference.</li> </ul>
Alignment with Act	<p>Guiding principles (Section 8)</p> <ul style="list-style-type: none"> <li>• Ss 5- No intervention unless necessary having regard to relevant person’s circumstances;</li> <li>• Ss 6- Intervention promoted that minimises the restriction on the relevant person’s rights and freedom of action and that respects their right to dignity, privacy, autonomy and control over financial affairs and property;</li> <li>• Ss 7-Respectful of relevant person’s will and preference, beliefs and values and other factors of importance to relevant person;</li> <li>• Ss 8-Considered the views of persons who had a bona fide interest in the welfare of the relevant person (natural supports)- the advocate had included same (with the consent of the relevant person) in the court report;</li> <li>• Ss 9-Considered the need and urgency for such an intervention.</li> </ul>



**Good Practice Example 2: Solicitor practice**

A solicitor involved in a DMRO application to the Court established that the Relevant Person was clear on their preference to make their own decisions around their lace of care, that they were capable of putting an EPA in place, and that their clear preference was to have support from a family member.

This picture emerged following on engagement between the solicitor representing the Relevant Person and the Sage advocate, and a joint visit being made to the Relevant Person. The solicitor asked for a report from the advocate pursuant to their engagement with the Relevant Person which highlighted the Relevant Person’s wishes and understanding. This enabled the solicitor to request that the court decline the application. The report was compiled and submitted, and the court declined the DMRO application.

**Indicative sub-optimal examples identified by Sage Advocacy**

Example 1: Interface with courts

Referrer	Proposed DMR, family member
Applicant for DMR	Proposed DMR
Proposed DMR	Family member
Interface with court	Advocate met with client in nursing home on day of court hearing and supported person to attend via video link. A family member also arrived at request of proposed DMR and affirmed to client the reason for application and view of DMR. When video link opened, Judge spoke to client and asked for their view on the application and noted that the Sage Advocacy report was helpful. The Judge then advised that he would consider all matters and the client was reliant upon their solicitor to hear outcome of case.
Outcomes	<div>✓ Client felt heard by Judge but was dissatisfied that they didn't hear what applicants and notice parties said in court;</div> <div>✓ Client continued to engage with advocate and solicitor;</div>
Alignment with Act	<div>Guiding principles (Section 8)</div> <div><div><input type="checkbox"/></div>Ss 7-Respectful of relevant person’s will and preference, beliefs and values and other factors of importance to relevant person;</div> <div><input type="checkbox"/></div> Ss 8-Considered the views of persons who had a bona fide interest in the welfare of the relevant person (notice parties);

☐☐

The above example clearly points to areas that could be improved but equally it had positive aspects in that, for example, the Relevant Person did attend court. In many of the cases where Sage Advocacy is involved, the Relevant Person does not attend court – some by choice and others who experience barriers to accessing it. Instances where a Relevant Person wishes to attend court but is prevented from doing so (for whatever reason/s) raise significant issues about how the legislation is being applied in practice.

**Indicative Example 2: Practice by solicitor**

Solicitor stated in the referral to Sage that the Relevant Person was “bed bound” and unable to give instructions. However, when the Sage advocate visited the Relevant Person, they presented and engaged well with the advocate and understood the information being given. The solicitor subsequently acknowledged that they had never visited with Relevant Person and that the information they had provided to Sage Advocacy was third-party information which turned out not to be accurate.

The matter was resolved by a joint visit by the solicitor for the Relevant Person and the Sage Advocate which resulted in a positive engagement and the Relevant Person being able to understand the distinct roles of the solicitor and the advocate.

The role of the independent advocate was critical in this instance.

**Overview**

The indicative scenarios and examples presented in this section have shown the complex dynamics that operate and the variations in practice in the understanding of and the implementation of the legislation.

Examples of optimal practice between advocates and solicitors and between social workers and advocates have been provided as well as examples of effective collaboration and joint working. Some less than satisfactory practice was also identified based on the experience of Sage advocates, in particular, relating to an underdeveloped understanding on the part of some stakeholder of the underlying principles of the legislation, especially, the need for DMROs to be issue and time specific. Challenges faced by nursing home residents in respect of DMRO applications were noted.

The next section will set out the main issues arising from the Sage Advocacy experience.

# Section Six

## Synthesis of Issues Arising from Sage Advocacy Casework

### Introduction

The ADMC legislation has generated a whole new ethos of greater awareness of people's right to be heard in all matters affecting them. Arising from this new rights awareness, Sage Advocacy regularly receives queries from the public about what people's rights are under the legislation and what a family needs to do to be compliant with the legislation. The experience of Sage Advocacy indicates that there are a number of issues with implementation of the legislation, in particular the capacity application process. Issues arising identified in this section need to be considered in the broader context of this fundamental shift in thinking and the challenges faced by all stakeholders in getting 'up to speed' with the legislation.

### Capacity assessments

It is the experience of Sage Advocacy that capacity assessments tend not to be challenged by solicitors even when the Relevant Person is opposed to an application and/or when the capacity assessment is out of date or was conducted in an acute hospital while the Relevant Person was unwell or confused and has since recovered their decision-making capacity.

The experience of Sage Advocacy to date suggests that functional capacity assessment (that it must be time and issue specific) is still not well understood by some health care professionals or by some legal professionals. The matter is more complex in some instances. For example, reduced decision-making associated with some forms of dementia or with acquired brain injury can be very complex. Therefore, for some people, identifying the specific types or range of decisions requiring a DMRO can be difficult. Also, and, very importantly, decision-making capacity for some people can fluctuate over time.

While in many instances, there is a need for inter-disciplinary assessment, including both medical professions and allied health professionals, in practice, for the most part, capacity assessments are carried out by medical personnel (primarily consultants).

There are ongoing issues identified by Sage Advocacy around legal and health professionals understanding of what functional capacity assessment means in practice and the processes involved therein.<sup>46</sup> There is understandable concern among Sage advocates about the practice of carrying out a "functional capacity assessment" without fully knowing what the relevant decisions that are to be made actually are. The Sage Advocacy experience is that frequently courts tend to accept a capacity assessment once it is provided in the recommended template. While Sage Advocacy would not normally see capacity assessments, there is a perspective that the overarching DSS Code of Practice on assessing capacity<sup>47</sup> is not being applied in full. The Code states (2.6.4) that an intervention should be as limited in duration as is practicable and should only last for as long as it is needed, taking into consideration the Relevant Person's circumstances and the decisions that need to be made.

While there is a requirement for Relevant Persons to be informed of the outcome of the capacity assessment, it would appear that this rarely occurs. Also, notwithstanding the provision for a range of persons to carry out assessments, it is still predominantly medical practitioners who carry out capacity assessments.

The Sage Advocacy experience is that in some instances the responses of medical professionals to requests to carry out functional capacity assessments have been less than satisfactory, for example,

- Requesting a letter from a solicitor (which family could not afford);
- Charging relatively high costs for reports (which family could not afford);<sup>48</sup>
- Refusal to carry out an assessment for a new resident in a nursing home on the basis that they do not have a long-standing relationship with them;

### Responsibility for ensuring Relevant Person is supported to attend court

Section 139 of the Assisted Decision Making (Capacity) Act 2015 obliges that any proceedings heard in relation to Parts 5, 6, 7 and 8 of the Act must be in the presence of the Relevant Person. Whilst there are exceptions to this - where to do so would not cause an injustice to the person, would have an adverse impact on the person's health or where the person is unable or unwilling to attend - the wording of the legislation creates a positive obligation on the court to examine this and some judges do explore the reason/s why the Relevant Person is not present.

Under the rules of the Circuit Court (SI201/2023)<sup>49</sup>, Rule 5 obliges that notice of the application for a DMRO shall be served on the Relevant Person at least 21 days before the hearing date. In this regard, the Relevant Person is on notice of the hearing and should be advised of their right to be present. Sage Advocacy would regularly seek the clients' will and preference in relation to attending court and would include this information in their court report. In other cases, the advocate might join the relevant person in court or might support the client joining via video link.

The available data (both from Sage Advocacy and other sources<sup>50</sup>), which indicates a very low participation rate of Relevant Persons in court hearings, raises the question of whether applicants and, where there is one, their legal advisors, are aware of their obligations under Section 139 of the 2015 Act. In this respect, it is noteworthy that the Circuit Court Rules set out a requirement that, on serving a capacity application, the Relevant Person should be informed that they are permitted and encouraged to participate.

Form 55C (Reply to Capacity Application)<sup>51</sup> must be given to the Relevant Person. This form may be filled by the Relevant Person so that they can reply to the application that has been made to the court about decisions that will be made for them. Section C asks the Relevant Person, if they are attending the hearing and require special assistance or facilities, to list these.

The affidavit of service is filed with the courts to say that the other forms were served on the person.

In Form 55 A (the capacity application), the applicant (or solicitor) fills it out. The following stipulation (p.7) is centrally relevant:

*If you are the Relevant Person to whom this Capacity Application relates (i.e. the person in respect of whom a declaration concerning capacity is sought), you may reply to the application by completing Form 55C (or if you have a solicitor, your solicitor may do so).*

*Copies of the completed form should be sent to the applicant or applicant's solicitor at the address given above and to the Court Office at the address above at least seven days before the hearing date.*

*You are also free to deliver evidence by affidavit or, if the Court permits, in another manner. If you have a solicitor, he or she can advise you about this. You may attend the hearing in person and/or your solicitor can attend on your behalf.*

Form 55B (the statement of particulars) (Section B) provides the option of the Relevant Person themselves filling the form., and section D asks if the application has been discussed with the Relevant Person.

Other sections ask about whether or not other support options have been explored and what the benefits/reasons of the application are, and makes provision for outlining the Relevant Person's previous will and preference. The form ends with "The statement of particulars must be verified by an affidavit (Form 55I). When served on the Relevant Person, a form of reply (Form 55C) should also be served".

46 See Sage Advocacy ALERT process [https://sageadvocacy.ie/wp-content/uploads/2023/12/supporting-decision-making-maximising-capacity\\_15012019.pdf](https://sageadvocacy.ie/wp-content/uploads/2023/12/supporting-decision-making-maximising-capacity_15012019.pdf)

47 [https://decisionsupportservice.ie/sites/default/files/2023-03/1.%20COP\\_on\\_supporting\\_decision-making\\_and\\_assessing\\_capacity\\_0.pdf](https://decisionsupportservice.ie/sites/default/files/2023-03/1.%20COP_on_supporting_decision-making_and_assessing_capacity_0.pdf)

48 It should be noted that a fee for a capacity assessment is not covered under A Medical Card.

49 <https://www.irishstatutebook.ie/eli/2023/si/201/made/en/print>

50 NAS Annual Report 2023, [https://advocacy.ie/app/uploads/2024/12/24.12.09\\_NAS\\_Report-3.pdf](https://advocacy.ie/app/uploads/2024/12/24.12.09_NAS_Report-3.pdf)

51 [reply-to-capacity-application-form-55c.pdf](https://advocacy.ie/app/uploads/2024/12/24.12.09_NAS_Report-3.pdf)



The Act does not specify the steps that an applicant should take to ensure the Relevant Person's attendance at court (in so far as is possible).

Sage Advocacy has worked with clients who have expressed a wish to be in court in person but who were not invited to do so either by the applicant or by the court (for example, where the client was an inpatient in a hospital and where the applicant is in hospital).

A prima facie question arises as to whether attendance at court by a Relevant Person is merely an entitlement to be there or a legal requirement. There is an argument that the court should seek to ascertain why the Relevant Person is not in court at the outset of each hearing and that the burden of proof should be on the applicant to state why the person is not in court and the efforts that were made to support their attendance. The low numbers who attend the court hearing would suggest that this does not happen regularly. This is a matter where greater clarity about the courts' obligations under the legislation might be examined further.

Section 100 of the ADMC Act which provides that a court friend may be appointed for a Relevant Person is not yet commenced, but may well assist Relevant Persons to attend court. In particular, subsection 9 of that section states: 'A court friend for a relevant person shall assist and attend with the relevant person in court or, if the relevant person is not attending the hearing concerned, promote the interests and the will and preferences of the relevant person in court.'

### Need for independent support for Relevant Person to attend court

Sage advocates have encountered some instances where a Relevant Person is not only not encouraged to attend court but actively discouraged from doing so, for example, nursing home staff being asked by relatives not to facilitate attendance by providing transport. A related issue encountered is where the support provided to the Relevant Person to attend via video link is not truly independent and where some 'coaching' and undue influence may occur. (Typically, a camera may not capture others present in a room).

### Referrals to Sage Advocacy

DMRO-related referrals to Sage Advocacy can sometimes be very broad at the outset and Sage Advocacy has to work on getting applicants to identify, in particular, the specific areas requiring a decision to be made. This is regarded as somewhat surprising since a high proportion of referrals come from professionals. Sage Advocacy often receives referrals with incomplete information regarding the decisions that require the appointment of a DMR. On some occasions, families who make a referral have stated that they had been advised to make an application to the court, but were unsure of the reasons that an application was required or why they were told to contact Sage Advocacy.

It is common for DMRO referrals to Sage Advocacy to contain broad statements such as, "all personal welfare" or "anything that may arise". While this is not compliant with the functional approach to capacity, it also has resource implications for Sage Advocacy in that the required information has to be got from the referrer before it can proceed with the case. Follow-up with solicitors, social workers, and/or family members in order to get the required information can be resource intensive. It can often take several communications and requests to get the required information. In this regard, typically, at any given time, the Sage Information and Support Team are processing multiple DMRO application referrals – a task that has to be completed before the case can be handed over to a Sage regional advocacy team to progress.

### Impact of the legislation on families caring for loved ones

The Sage Advocacy experience is that there is an underdeveloped understanding among families regarding the legislation and its implications for their role, and a lack of a clear pathway from beginning to end for those engaging with the DMRO application process for the first time. The various forms of supported decision-making provided for in the legislation are not always well understood by family members, which is understandable given that it is so fundamentally different to the concept of wardship. Many families struggle with the initial process of DMRO applications

as they feel that there is no support available to them. In instances where a family cannot get a solicitor to represent them, they rely on Sage Advocacy for guidance.

### Cost of legal assistance and implications for families

The cost of legal assistance for families and the barriers they face when they cannot afford a solicitor are identified as a significant concern. Some applicant family members have withdrawn during the process of the application as they cannot afford legal fees and find the whole process overwhelming.

Families whose income is outside the limit for civil legal aid sometimes do not have the resources to employ a solicitor to make a DMRO application and are sometimes of the belief that they must have a solicitor to do so. The Courts Service has noted in their 2023 Annual Report that a number of family members have applied to the courts without the support of legal aid due to the family member's means being assessed, as opposed to those of the Relevant Person.<sup>52</sup>

### Issues relating to creating an Enduring Power of Attorney

Three issues relating to making an Enduring Power of Attorney have been identified through Sage Advocacy casework:

- Some solicitors unwilling to take on cases involving an EPA and people having difficulty in finding a solicitor to do so;
- The requirement for the creation of an EPA that the person creating the EPA and their attorney must sign and date the donor and attorney declarations (the execution) and that this must be done together in the same place and at the same time, in front

of the same 2 witnesses<sup>53</sup> is problematic - Sage Advocacy has come across cases where a witness is living abroad;

- Delay in getting an EPA in place for people whose decision-making capacity may be deteriorating;

### Wardship

Only 118 Wards of Court have been discharged from Wardship to date. This presents a significant ongoing challenge for the courts and, indeed, for society in general. While efforts to promote the process of discharging people from Wardship in advance of the deadline of April 2026 set in the Assisted Decision Making (Capacity) Act 2015 are ongoing, the pace of discharge from wardship remains too slow. While the reasons for the slow pace of discharge need to be explored fully, there are a number of factors that are likely to be relevant.<sup>54</sup>

There are challenges for families arising out of people coming out of wardship in that it places additional challenges on them to work with whatever decision-making support mechanism is put in place. Families may not make the application for discharge for various reasons, such as not being able to afford their own legal representation and, also, on the basis that they are happy with the current arrangement, or they are unsure as to how to proceed with the process.

<sup>52</sup> <https://www.courts.ie/acc/alfresco/2b552955-e0f9-41a2-80e7-c526d24651e2/Courts%20Service%20Annual%20Report%202023.pdf/pdf/1>

<sup>53</sup> <https://decisionsupportservice.ie/services/enduring-power-attorney-epa/making-enduring-power-attorney>

<sup>54</sup> It is noted that the NDA is conducting research to evaluate the impact of the cessation of wardship on people who were made wards and their Committees.

The experience of Sage Advocacy is that there is a strong residual feeling among the families of many wards about people coming out of wardship. This concern was reflected in comments made recently by Justice David Barniville and cited in an Irish Times piece<sup>55</sup>. Justice Barniville is quoted as stating that “wards’ relatives are very reluctant to take on the burden of taking someone out of wardship and then to take on the burden of looking after them”. The current situation, as experienced by Sage Advocacy, is that some families find the current process convenient in that, for example, there is relatively little oversight on the use of assets and they do not wish to have the DSS involved in reviewing this. It should be noted that if a family have concerns about managing money, a DSS panel member can be appointed to assist.

The fears of families in the context of their loved ones leaving wardship, especially people who have been wards for relatively long periods, are very understandable and clearly need to be addressed. The principle of a person’s right to have wardship reviewed in accordance with the legislation and new decision-making arrangements put in place where necessary, is a critically important one and needs to be kept to the forefront of discourse on the matter.

Essentially, this is a human rights issue relating to autonomy and self-determination in that some wards will be found to have capacity and there will be a number where a lesser intrusive approach is required.

The State has a clear obligation to ensure this matter is dealt with urgently and the Wards of Court Office should ensure that all wards are informed of their right to a review and asked what supports they need to enable the review to proceed.

## Specific issues arising from the Sage Advocacy experience

### Understanding of the legislation

- There appears to be an underdeveloped understanding on the part of some key relevant professionals (legal and health/social care) of the underlying principles of the legislation;
- There are different approaches to implementing the legislation in hospitals around the country;
- Sage Advocacy has experienced isolated instances of DMRO-related referrals using the term “the person’s best interests”;
- There have been referrals requesting that an advocate already supporting a Relevant Person would attend court hearing in order to advise on “assessment”.

### DMRO applications

- Some DMRO application referrals to Sage indicate that a ‘blanket’ approach is being adopted with no limits to the decisions for which a DMRO is being sought, i.e., neither issue or time specific.
- There are inappropriate applications for DMROs by families, e.g., where the decisions being proposed can be resolved by way of a less restrictive form of support;
- Some nursing homes have referred to Sage Advocacy to get assistance with making DMRO applications for a number of residents on the basis that they “lack capacity” even though there are no decisions that are required to be made at that point in time and no capacity assessment has been carried out.
- DMRO applications are also being made in respect of decisions that could be supported by the use of the HSE Consent Policy;

- A clear issue arises in situations where a person whose decision-making capacity is in question is discharged from hospital to a nursing home but where there is no one available or willing to make a DMRO application. A crucial question arises here as to whose responsibility it is in such instances to make the application.
- There is a delay (up to 6 months in some instances) between a DMRO being granted and the DSS Panel DMR engaging with Relevant Person;

### Capacity assessments

- There is a heavy reliance on medical professionals to carry out capacity assessments and little use of other professionals as provided for in the legislation to carry out assessments;
- Some private nursing homes are of the view that they are unable to make DMR applications due to a conflict of interest;
- Sage Advocacy has experience of people having a difficulty in getting a capacity assessment for a DMRO application – for example, in the case of a private nursing home resident or where the cost of an assessment in the community can be prohibitive (family members have reported to Sage Advocacy that they have been quoted fees for such reports of up to €500);
- The DSS does not have a panel of relevant professionals to carry out functional capacity assessments – it is the Sage experience that this presents an issue when the Relevant Person is in a private nursing home or other setting where no such professional is available or willing to carry out such an assessment.

### Court processes

There is too long a delay in some DMRO applications being processed -- Sage Advocacy has seen cases where a DMR is not appointed for 12+ months.

There are different approaches by courts around the country with, for example, some very au fait with the role of independent advocacy in the process while others are less so;

### Legal representation

- Sage Advocacy has had experience of solicitors acting for both the Relevant Person and for the applicant where the applicant is a family member leaving the RP with no independent representation.<sup>56</sup>
- Some solicitors are perceived by Sage advocates as being unwilling to take on DMRO cases for various reasons, including:
  - Not knowing when they will be paid;
  - A perception that the process is cumbersome (and not as easy as a wardship application);
  - Negative experiences with families of Relevant Persons;

It should be noted that there is now a statutory requirement for the Relevant Person to be fully informed and engaged in the process with a right to legal representation.

<sup>55</sup> <https://www.irishtimes.com/crime-law/courts/2025/03/10/senior-high-court-judge-has-misgivings-over-having-to-transfer-wards-of-courts-to-new-decision-making-system/>

<sup>56</sup> This is outside of the requirements of the Solicitor’s Guide to Professional Conduct which states: ‘Where, in the judgment of a solicitor, one of the parties to a non-conveyancing transaction, while having full capacity, is vulnerable, the solicitor should not act on both sides, and each party should be separately represented by a different firm. This is in order to ensure that both parties receive independent advice. It helps preserve the integrity of the transaction and protects it from being challenged at a later date. It also protects the solicitor.’ (Reference: Law Society of Ireland (2022) Solicitor’s Guide to Professional Conduct, 4th Edition, page 40. Available at <https://www.lawsociety.ie/globalassets/documents/committees/conduct-guide.pdf> .



## Independent advocacy

- There are multiple instances where a referral for an Independent Advocacy Report is made to Sage Advocacy where it is evident that other support options have not been explored and where no capacity assessment has been carried out. This means in effect that, before proceeding, Sage Advocacy has to explore other less restrictive options in terms of decision-making support – a task that could reasonably be expected to have been carried out by the referrer.
- Sage Advocacy often receives referrals very late in the process, and independent advocacy reports cannot be completed within such a short time-frame because of the need for the advocate to have a meaningful engagement with the Relevant Person before completing a report for the court;
- There appears to be some misunderstanding about the role of an independent advocate – in other words, it may not always be well understood that advocacy actions are not separate opinion-based actions by advocates but are actions that are taken with or on behalf of a Relevant Person.

## Overview

This section has summarised the main issues identified by Sage Advocacy staff based on their experience of engaging with the implementation of the ADMC Act over a period of two years. These issues arise broadly because of an underdeveloped understanding of the legislation by referrers, particularly, the need for functional capacity assessments to be time and issue specific, the need for the support sought under the legislation to be the least restrictive possible, the need the voice of the Relevant Person to be heard in all matters affecting them and the specific role of an independent advocate in relation to the latter.

Some courts are perceived by Sage Advocacy as having a clear understanding of the legislation and its principles and concepts while there are others (e.g., those who only hear a small number of cases) who are less experienced.

Sage advocates have different experiences of social workers' engagement with the legislation. Some are fully attuned to the requirements of the legislation and some work in liaison with advocates to ensure that best practice is adhered to while others do not see a role for independent advocacy.

The next section will outline some overarching considerations relevant to the implementation of the ADMC legislation.

# Section Seven

## *Some Overarching Considerations*

This section sets out a number of overarching considerations relevant to the implementation of the legislation.

### The core of the ADMC legislation

The Assisted Decision-Making (Capacity) Acts 2015 and 2022 are a sea-change in how Ireland accommodates people whose decision-making capacity is in question. The legislation is based on a human rights legal and social support infrastructure. It gives primacy to individual voice<sup>57</sup> and agency and the right of each individual to be supported to maximise their agency. The legislation applies to a wide range of health, social care, legal and financial services settings as well as family households, and contains the following key features:

- People must be legally presumed to have decision-making capacity unless the contrary is shown by a due process of capacity assessment;
- People must be given the supports that they require to maximise their decision-making capacity;
- Capacity assessments must be time specific and issue specific;
- Decision supports must be at the appropriate level and a Decision-Making Representative should only be appointed by the court where it is clear that none of the other supports are adequate.

While much of the operation of the legislation is at various interfaces involving health and social care and financial management, the courts and judicial proceedings have a specific and centrally important legislative role in relation to the granting of DMROs where such orders are deemed to be required, making other less restrictive orders, and the discharging of people from wardship.

### Independent advocacy

The legislation requires that any intervention 'give effect, in so far as practicable, to the past and present will and preferences of the Relevant Person, in so far as that will and those preferences are reasonably ascertainable and that account must be taken of the Relevant Person's beliefs and values in so far as these are reasonably ascertainable.

Independent advocacy is a centrally important component in the implementation of the legislation in that an independent advocate in their engagement with clients can seek to ensure that the principles of the legislation are adhered to in all decision-making forums, in particular, the right of people to be supported to articulate their will and preferences and to be presumed to have capacity unless they have been properly assessed in accordance with the legislation as not having decision making capacity. Notwithstanding the fact that there is no provision for independent advocacy in the ADMC legislation, it is clear that the role of independent advocacy in the court process has been strongly endorsed by the judiciary.

The experience of Sage Advocacy to date shows clearly the critical role that independent advocacy can play in the ADMC process generally as well as in cases involving a DMRO application. For example, an advocate may have worked with a person for a prolonged period (e.g., 12 months) before a DMRO court application and have developed a constructive relationship with the person and be very well placed to communicate the person's will and preference to the court. This enables the advocate to fully explore the person's will and preference in respect of their ongoing care and support. An advocate can also ascertain the property interests of the person and contribute to the court process in relation to safeguarding their assets.

<sup>57</sup> Mary Donnelly and Caoimhe Gleeson (2024), THE ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 IN THE COURTS: HEARING THE VOICE OF THE RELEVANT PERSON [https://www.ijsj.ie/editions/2024-edition-2/#the-assisted-decision-making-\(capacity\)-act-2015-in-the-courts-hearing-the-voice-of-the-relevant-person](https://www.ijsj.ie/editions/2024-edition-2/#the-assisted-decision-making-(capacity)-act-2015-in-the-courts-hearing-the-voice-of-the-relevant-person)

The advocate can also support a person to understand and participate in the various applications and processes that are under way in respect of their care. The advocate, as an independent person, can liaise between the hospital, family members, financial institutions and other stakeholders on behalf of the person.

This independent advocacy engagement clearly indicates alignment with the ADMC provisions, viz.,

- Section 8(6), Least restrictive intervention explored;
- Section 8(7), supporting, facilitating and encouraging the client to participate in the process by regularly ensuring that their will and preference is to the fore in all decisions affecting them and that the required support for them to articulate their will and preferences are put in place;
- Section 8(5), ensuring that there is no intervention until necessary (application for a DMR only to be considered as a last resort and the client is to be supported to make an informed decision insofar as this is possible).

The requirements to hear the Relevant Person's voice are an integral part of the legislation and the Sage Advocacy experience is that there is a growing awareness by the courts and by solicitors of this provision and that independent advocacy reports to the courts are a critical component in this. The need for independent advocacy to be made centre-stage in the process is clear in order to provide an additional safeguard of a Relevant Person's rights. This requires sufficient time to enable an advocate meet with the Relevant Person in a manner that enables a high-quality engagement and respectful interaction.

The experience to date of Sage Advocacy suggests that advocates may need to intervene more proactively to clarify the scope of decisions and to ensure that any proposed orders align with the legal standards of specificity and least restrictiveness, promoting

the individual's autonomy as much as possible.

The experience to date of Sage Advocacy is that there would be much merit in involving an independent advocate at an early stage in the process. While this happens in some instances, for example where the Sage advocate has developed a good working relationship with an HSE ADMC Lead, frequently this is not the case and a referral only comes to Sage when a DMRO application has already been made or where a court seeks an Independent Advocacy Report.

An important question arises as to whether the resources available for independent advocacy are commensurate with the growing need arising from the implementation of the ADMC. The National Advocacy Service for People with Disabilities (NAS) has reported an exponential rise in the numbers of referrals relating to the 2015 Act since its commencement with growing waiting lists.<sup>58</sup> Sage Advocacy works on the basis of assigning a priority rating to cases which means that DMRO application cases are likely to be given a priority rating.

Notwithstanding the absence of legislation to underpin independent advocacy for Relevant Persons, it is clear that the role of independent advocacy has become an integral part of the courts' process. This will almost certainly continue as healthcare and legal professionals as well as the general public become more attuned to the concept of individual 'voice' and to the need for it to be facilitated and validated by a person/agency that is independent of other interests, relatives and/or health and social care providers.

Clearly, there is a need for legislative provision for the practice of independent advocacy. The Law Reform Commission<sup>59</sup> has recommended that adult safeguarding legislation should introduce a duty on a proposed Safeguarding Body to facilitate, so far as is reasonably practicable, access to independent advocacy services for an adult who is, or is believed to be, an at-risk adult, where it engages with such adult directly for the purposes of exercising its functions under adult safeguarding legislation.

## Legal representation

The extension of legal aid to the Relevant Person for Part 5 and Part 6 applications is clearly an important aspect of the legislation. However, this will only be fully effective when solicitors assigned to cases (whether through Legal Aid or not) are fully au fait with the requirements of the legislation. The experience of Sage Advocacy described throughout this Scoping Document strongly suggests that this is not always the case and that some of the profession seem to struggle in moving away from the previous 'best interest' approach to one that aligns with the Guiding Principles of the ADMC.

It is reasonable to suggest that this will change over time as solicitors access additional training in the requirements under the legislation, as they become more experienced in practice and as the courts continue to issue judgments with important learning implications. However, this cannot be taken for granted.

It is also the case that legal representation on its own may not guarantee that the voice of the person is always heard. The distinct and complementary role of the independent advocate and the solicitor representing a Relevant Person as outlined below is relevant in this regard. While this does not exhaustively list the functions of each role nor exclude cross over, it does show that a Relevant Person can benefit from having both legal representation and independent advocacy support.

Role of Solicitor	Role of Independent 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 ADMC
Ascertain the will and preferences of the client in relation to the decisions	Be aware of safeguarding concerns or other matters that may require an advocacy intervention
Ensure Relevant Person's rights under Section 139 of the ADMC are adhered to	Liaise with the Relevant Person's solicitor as necessary (or refer if none in place)

The courts have also published a number of judgments which help further clarify the role and expectations of a Relevant Person's legal representative such as in the case of *In the Matter of AB* [2024]<sup>60</sup> where the judgment states "The necessity of independent legal advice, and the various equitable principles such as for example undue influence, unconscionable conduct, improvident transactions (*Carroll v. Carroll* [1999] IESC 11) and misrepresentation etc. are still relevant if a person's lacks capacity.

The Relevant Person's lawyer should at least attempt to ascertain the legal position. The minimum starting point is to be aware of the possibility of conflicts of interest and so advise the Court if there are any legal issues which the Court should consider."

In addition to the above, a recent article<sup>61</sup> has stated, in relation to the ADMC that "Voice, in this respect, includes legal representation but crucially, it is not limited to this. Hearing the voice of the relevant person is an important indicator of respect for the human rights of people whose capacity is in question. However, voice also plays a humanising role."

58 Annual Report 2023. National Advocacy Service. December 2024. [https://advocacy.ie/app/uploads/2024/12/24.12.09\\_NAS\\_Report-3.pdf](https://advocacy.ie/app/uploads/2024/12/24.12.09_NAS_Report-3.pdf)

59 A Regulatory Framework for Adult Safeguarding. Law Reform Commission. 2024 [https://www.lawreform.ie/\\_fileupload/Reports/as/lrc-128-vol-1-160424-final.pdf](https://www.lawreform.ie/_fileupload/Reports/as/lrc-128-vol-1-160424-final.pdf)

60 IECC 16, [https://www.courts.ie/view/Judgments/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/3a853958-6410-47ea-855f-a3c0b2a512eb/2024\\_IECC\\_16.pdf/pdf](https://www.courts.ie/view/Judgments/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/3a853958-6410-47ea-855f-a3c0b2a512eb/2024_IECC_16.pdf/pdf)

61 Donnelly, Mary and Gleeson, Caoimhe (2024) The Assisted Decision-Making (Capacity) Act 2015 in the Courts: Hearing the Voice of the Relevant Person, Irish Judicial Studies Journal Vol 8(2), <https://ijsj.ie/assets/uploads/images/2024%20edition%202/4.%20Donnelly%20and%20Gleeson.pdf>



Advocacy and legal representation therefore are complementary and not mutually exclusive and through collaboration can better serve a relevant person through the court process in particular.

### The importance of legal representation in the context of a human rights approach

An important aspect of decision-making capacity is capacity to litigate and the need for this to be given effect in practice by appropriate legal representation. This matter was addressed in a recent judgement by Judge John O'Connor.<sup>62</sup> The hearing in the case considered a situation where a concern had arisen as to whether the Relevant Person lacked litigation capacity in relation to a specific matter.

The applicant, AB, sought a declaration that the Relevant Person (JD) lacked capacity to make decisions regarding his property and affairs and sought to have a Decision-Making Representative appointed from a panel managed by the Decision Support Service. The Applicant was concerned that the Relevant Person did not comprehend the seriousness, and potential consequences of declining to engage his legal advisors and his medical advisors in relation to litigation which he initiated. (This litigation referred to proceedings that JD had instructed his solicitors to commence pursuant to s. 117 of the Succession Act 1965).

Based on the evidence provided, the Court was satisfied that the Relevant Person lacked capacity, even if the assistance of a suitable person as a co-decision-maker were made available to him, to make decisions in respect of the litigation he initiated. However, noting the minimum intervention required under the 2015 Act and that intervention is to be proportionate and least restrictive in accordance with the Guiding Principles set out in Section 8 of the 2015 Act, the Court granted an order to appoint a decision-making representative for the Relevant Person for an initial period of six months in respect of these proceedings after which the DMRO should be reviewed.

The judgement stated that, in assessing the capacity to litigate, a preliminary step is that the individual who is taking the proceedings should be provided in so far as it is possible with all relevant information in an appropriate manner. "If an individual's family, medical advisors, and legal advisors can provide clear and straightforward information about the proposed proceedings, it may be possible for the individual to be treated as having litigation capacity even if, for example, they would not have the capacity to understand the full complexity of the litigation involved".

The judgement also noted (7.10) that the following factors may enhance litigation capacity:

- a) The manner (including tone of voice) of the experts and lawyers;
- b) The accompaniment of a support person;
- c) The time of day, length of session, and a calm environment;
- d) The involvement of professional services such as an advocate, speech and language therapist, social worker;

This judgement is important because it raises a fundamental question about how a person's capacity to litigate is regarded which is a basic tenet of their human and legal rights. Factors which can enhance a person's capacity to litigate were listed in the judgement which are very informative in how the matter might be approached in a pre-emptive fashion. There is a prima facie question about how a person who appears to be unable to give instructions can exercise their capacity to litigate and what measures are required to achieve this.

A person's capacity to litigate is important not only when it refers to a person's right to bring or defend proceedings outside of the Assisted Decision Making (Capacity) Act 2015 but it is arguable that it is more pressing in these matters. In relation to Part 5 proceedings, it is clear that a relevant person may make an application under section 36 of the Act.

In this regard, a person themselves has the right to litigate.

Section 52 of the Assisted Decision-Making Capacity Act made a number of amendments to the Civil Legal Aid Act 1995 and in this regard a Relevant Person is eligible for legal aid in relation to matters under the legislation. However, if a person is considered as unable to instruct solicitors to bring such an application, the Legal Aid Board have advised that they cannot initiate such proceedings in the absence of instructions. This leaves Relevant Persons (whose capacity limits their ability to give instructions) at risk of not being able to benefit from this legislation or access the supports available.

The Circuit Court Rules<sup>63</sup> confirm that a capacity application may be signed by the applicant or their solicitor. In this regard, a Relevant Person or their solicitor may sign such an application. Therefore, it is clear that a solicitor can sign an application made by a Relevant Person and should do so where required. Indeed, the court acknowledged in the JD case that the application was made in the Relevant Person's name (as provided for in the Act) and signed by the solicitor as provided by the Rules.

A previous judgment in the case of *In the Matter of AB*<sup>64</sup> was analysed in an article published in the Law Society Ireland Gazette<sup>65</sup> and it confirmed that the duty of lawyers, in circumstances where instructions cannot be obtained, is to seek to ascertain the legal position and to advise the court of any possible conflicts of interest and indeed ascertain the will and preferences as far as is practicable. Furthermore, it noted the duty to consider the benefit of any application to the Relevant Person.

### The ADMC legislation and gifting

The ADMC legislation includes specific provision for the making of gifts by a Relevant Person under the various Decision Support arrangements. The 'gift' of a person's property falls within the definition of 'property and affairs' decisions as outlined in the legislation. In this regard, particularly for Enduring Powers of Attorney or decision-making representation, the decision maker will not have authority to make decisions in relation to gifts unless they have been granted specific authority to do so, either by the donor (in the case of an EPA) or the court (in the case of a DMR).

Furthermore, even if authority has been given to make such decisions, the legislation states that any such decisions must have regard to the person's assets and financial obligations and that in those circumstances, such a gift must be reasonable.

The written judgment of Judge O'Connor in the matter of AB<sup>66</sup> sets out clearly the legal position in relation to gifts of property as permitted by the ADMC. Furthermore, it outlines the need for any intervention to be made in good faith and for the benefit of the Relevant Person. The court held that a request to transfer a family home into the Relevant Person's spouse's sole name was not in line with the ADMC in the circumstances in that case.

The judgment further outlined the important duty that a lawyer for the Relevant Person holds in relation to the investigation of any such application and an examination of evidence or witnesses in relation to the rights of the Relevant Person and their protection in the context.

62 In the matter of the Assisted Decision-Making (Capacity) Act 2015 and in the matter of JD, [https://www.courts.ie/view/Judgments/11494d64-c93f-4e68-bc90-f4847f005117/93447f00-a2fa-47a8-a04e-64223f001450/2025\\_IECC\\_1.pdf/pdf](https://www.courts.ie/view/Judgments/11494d64-c93f-4e68-bc90-f4847f005117/93447f00-a2fa-47a8-a04e-64223f001450/2025_IECC_1.pdf/pdf)

63 SI No 201 of 2023, Rule 4(3)

64 [2024] IECC 16

65 Hynes, Trish and Ralston, Joanna Dr (2024) AB Ruling clarifies rights-based principles of 2015 Act, published in the Law Society Ireland Gazette, 3rd December 2024 <https://www.lawsociety.ie/gazette/top-stories/2024/december/ab-ruling-clarifies-rights-based-principles-of-2015-act/#:-:text=The%20court%20concludes%20that%20the,based%20legislation%20before%20the%20courts.>

66 In the Matter of the Assisted Decision-Making Capacity Act 2015 and in the Matter of AB [2024] IECC 16, [https://www.courts.ie/view/Judgments/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/3a853958-6410-47ea-855f-a3c-0b2a512eb/2024\\_IECC\\_16.pdf/pdf](https://www.courts.ie/view/Judgments/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/3a853958-6410-47ea-855f-a3c-0b2a512eb/2024_IECC_16.pdf/pdf)

Sage Advocacy has been involved in a number of cases where gifts of land or other real property are being proposed as part of a DMR application and, having regard to the foregoing judgment, has gained knowledge and experience in supporting the Relevant Person to express their will and preference and in communicating with their legal representatives in relation to their duty.

### Need for continuous professional development

The experience to date of Sage Advocacy highlights the need for ongoing professional development (including for independent advocates) and the promotion of a consistent understanding of the ADMC principles among referrers. Advocates may need to intervene more proactively to clarify the scope of decisions and ensure that any proposed orders align with the legal standards of specificity and least restrictiveness, promoting the individual's autonomy as much as possible.

The Sage Advocacy experience is that, even in cases where the referrers are experienced professionals, there is sometimes a significant gap in their understanding of the core principles of the ADMC. For example, a professional may fail to apply the presumption of capacity, which requires that individuals are assumed to have capacity unless proven otherwise. As a result, they may suggest an overly restrictive intervention, such as proposing a DMRO where a less restrictive option would be more appropriate.

Clearly (and, perhaps, understandably) there are disparities in the level of understanding of the ADMC across different referrers and settings. Some hospitals have made significant efforts to integrate ADMC knowledge into their practice, offering training and creating a culture of shared learning. In these environments, referrers are more likely to submit well-grounded applications and engage with the principles of the ADMC in a manner that respects the Relevant Person's capacity and autonomy. Many also support applicants in understanding their rights, the role of a DMR and the lack of a basis of authority for the traditional understanding of next-of-kin. However, in other hospitals, there appears to

be an insufficient focus on ADMC knowledge-building which results in an inconsistent and sometimes inadequate approach. Sage Advocacy regularly has to fulfil the role of informing referrers regarding what is required under the legislation.

### Interpretation of ADMC principles in Court judgements

Two judgements by Judge O'Connor are highly informative in clarifying the underlying principles of the ADMC legislation as set out in Section 8 of the 2015 Act.

The first judgment<sup>67</sup> made in October 2024 concerns an application by the Relevant Person's two children, who had previously been appointed decision-making representatives (DMRs), to transfer AB's family home into the joint names of AB and his wife.

Judge O'Connor's ruling on the core issue in question stated that because AB, who now lacked decision-making capacity, had not transferred the property into the joint names but made a will leaving the property to his wife, did not infer an intention or give rise to a situation that would allow the transfer of the house into the joint names by way of gift at this point and, therefore, rejected the application.

The judgment refers to the framework within which a Decision-making Representative (DMR) can act and the place of the Relevant Person within that framework as well as the oversight role of the Decision-Making Service (DSS). It also emphasises the role of a DMR to act as an agent for the RP in accordance with the known will and preferences of the RP. The court stated that it must ensure that the powers conferred on a DMR are as limited in scope and duration as is necessary in the circumstances and not simply give authority to transfer legal interests by way of gifting the RP's assets to third parties. It was submitted on behalf of the applicants that the court is mandated to give effect to the RP's will and preference to transfer the property into the joint names.

However, the court took the view that this is an unintentionally misleading interpretation of the 2015 act and its Guiding Principles. A more appropriate interpretation according to Judge O'Connor is that the court is mandated to give very serious consideration to the transfer of Relevant Person's property if it can be clearly established that it is the Relevant Person's will and preference. The court did not accept that there was sufficient clarity in the submission that the will and preference of the Relevant Person was to transfer the family home into the joint names.

This judgment is a significant one as it highlights the importance of the will and preference of the Relevant Person to be ascertained and determined independently of the Decision-Making Representative. The judgment also refers to the duty of lawyers where instructions cannot be obtained to at least attempt to ascertain the legal position and to advise the court of any possible conflicts of interest or legal issues that the court should consider.

The court concluded that the 2015 act is one which upholds the rights of vulnerable persons whose capacity is diminished and that this is relevant in construing its provisions.

The second judgment by Judge O'Connor in December 2023<sup>68</sup> in the case of Joan Doe v HSE affirmed both the procedural and substantive importance of the Relevant Person's voice. The HSE had sought a declaration that Ms Doe, who was in long term hospital care and had substantial assets, lacked capacity to make decisions about long-term accommodation, medical treatment, and financial matters and sought the appointment of a Decision-Making Representative from the Decision Support Service (DSS) panel. Ms Doe's siblings argued that they should be appointed as Decision-Making Representatives and that Ms Doe should be cared for at home. The court judgement recognised that Ms Doe's mental illness did not mean she was 'incapable of furnishing her will and preferences'. Although Ms Doe said that her brothers were 'excellent', there was no evidence of her views as to who should act as her Decision-Making Representative and no clear evidence as to where she wished to live. Judge O'Connor concluded that, whilst

Ms Doe's siblings were devoted to her, too many issues had been raised in the Court which indicated a serious conflict of interest. Accordingly, he appointed an independent Decision-Making Representative from the DSS panel, expressing the hope that this would not impact on Ms Doe's close relationship with her siblings.

### Overall understanding of what is required under the legislation

The requirement under Section 36(5)(c) of the Act for the court to ascertain the will and preferences of the Relevant Person before deciding does not appear to be well understood and court applications are being made without decision-making capacity being properly or at all assessed (the old wardship approach).

There is clear evidence from Sage Advocacy casework that the Decision-Making Representative option is frequently the first option sought rather than the last one as required by the legislation. Sage advocates have noted that, in some such instances, it became clear as the application process progressed that some of the individuals involved could in fact make decisions on their own, others were able to do so with a decision-making assistant or enter into a Co Decision-Making agreement or had the capacity to make an ordinary power of attorney or an Enduring Power of Attorney (EPA) for future time. This suggests that there is unnecessary use of costly legal interventions through the courts.

The presumption of capacity principle does not seem to be well understood by some referrers with some referrers stating that a person has no capacity without any capacity assessment having been carried out.

The experience of Sage Advocacy is that in some instances where a DMRO is being sought, an intervention by Sage Advocacy can indicate that a DMRO is not required with a less restrictive option being put in place. It is also sometimes the case that the language used in referrals to Sage Advocacy runs contrary to the Guiding Principles of the legislation regarding the presumption of capacity and people's right to make decisions for themselves.

<sup>67</sup> [https://www.courts.ie/acc/alfresco/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/2024\\_IECC\\_16.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/84d7b5f8-e665-4787-bd5b-77e39e3a28aa/2024_IECC_16.pdf/pdf#view=fitH)

<sup>68</sup> [https://www.courts.ie/viewer/pdf/1055ac2b-f301-4d0f-a1e1-e3b81844efd3/2023\\_IECC\\_10.pdf/pdf#view=fitH](https://www.courts.ie/viewer/pdf/1055ac2b-f301-4d0f-a1e1-e3b81844efd3/2023_IECC_10.pdf/pdf#view=fitH)



## DSS Codes of Practice

Codes of Practice have been developed by the DSS for 13 interveners – Attorneys, Co-decision-makers, Decision-making Assistants, Decision-making Representatives, Designated Healthcare Representatives, Financial Service Providers; General Visitors, Healthcare Professionals, Independent Advocates, Legal Practitioners; Special Visitors; Supporting Decision-making and Assessing Capacity; Advance Healthcare Directives for Healthcare Professionals. In addition to the Codes of Practice, a number of detailed Guidance Documents have been published by the DSS.

This Scoping Document does not seek to examine in any way the extent to which the DSS Codes of Practice are being implemented. However, based on the Sage Advocacy experience to date, there is an a priori question as to the extent to which the relevant Codes of Practice is applied by the various actors in their day-to-day practice. It would be important at this juncture (2 years since the legislation was commenced) to put in place a mechanism to capture actual practice vis-à-vis the requirements under the various Codes relevant to each intervener.

## Management of personal finances and financial institutions

The Sage Advocacy experience is that there is variation around the country in the practice of financial institutions. For example, a banking branch in one town may differ to another branch in the same town. There is a mix between positive engagement and non-engagement of financial institutions with Sage Advocacy. In some instances, on request from Sage Advocacy, bank staff will visit with private nursing home residents to support them with managing their finances.

An issue has been identified around stopping Standing Orders that are no longer required. Such orders can only be stopped by a person with legal authority. This has resulted in a situation where, if a person can no longer give instructions, banks seek to have a DMR appointed to do so. This is a particular issue where a nursing home is closing down

and residents' Standing Orders have to be stopped and new Standing Orders put in place. Any delays in this regard evidently present difficulties for the individuals concerned.

Also, Sage Advocacy has experience of delays in getting a DMRO in place to support a person with managing their finances resulting in nursing home residents being given a Notice to Quit or not being able to gain timely admission to a nursing home until their finances are in order. It is also the case that some nursing home residents have no one to make an application for a DMRO and this exacerbates an already difficult financial situation.

## Adult Safeguarding

An important theme running through the ADMC legislation is adult safeguarding with reference to people whose decision-making capacity may be in question. The importance from a safeguarding perspective of ensuring that the Relevant Person's voice is heard in Part 5 applications is clear and the important role of independent advocacy in this regard is evidenced in court data<sup>69</sup> and in data from Sage Advocacy which was presented earlier in this Scoping Document. Advocates may need to intervene more proactively to clarify the scope of decisions.

In a general way, adherence to the ADMC principles by all professionals clearly contributes to adult safeguarding. It is the experience of Sage Advocacy that sometimes DMRO applications are made when such an application is totally unnecessary. There is some evidence of a DMRO being the default option and other less intrusive support options not being explored. This sometimes results in the courts having to refuse a DMRO application. While in the latter instances, the person involved is safeguarded, such safeguarding should not be reliant on the court but should permeate the whole ADMC process. Notwithstanding the fact that it is almost two years since the ADMC legislation commenced, the functional approach to capacity does still not seem to be widely understood by all stakeholders. In the absence of specific adult safeguarding legislation, this should be a matter of concern for all.

Sage Advocacy has experience of very effective joint working between HSE safeguarding social workers and Sage advocates. However, there is a perception that this collaboration could be more strongly replicated across all HSE areas than is currently the case.

## Developing a strong collaborative approach

The experience of Sage Advocacy to date highlights the need for a shared understanding and a strong collaborative and inter-disciplinary approach among and between key actors, legal, social work and independent advocacy. While, as noted earlier, there are clear examples of good collaboration between social workers and Sage advocates, and between solicitors and Sage advocates, there is a perception that this is very much dependent on the individuals involved and that there is not a strong ethos of collaboration throughout the system. For example, there is a perception by Sage advocates that some health care and legal professionals do not acknowledge the fact that independent advocates have a separate and distinct role from other professions such as social workers and lawyers.

## Ongoing implications of the ADMC legislation for Sage Advocacy

The ADMC legislation has significant ongoing implications for Sage Advocacy for a number of reasons. As well as the specific involvement of Sage Advocacy in the courts system in respect of the requirement under Section 139, there are broader matters arising from the legislation relating in particular to safeguarding and protection of liberty of at-risk adults.

The focus on completing the Independent Advocacy Report for the court may inadvertently lessen the focus on broader areas in a person's life where they may need support, including, in particular, in relation to safeguarding. In many instances, there is more involved than just completing a report with a need for liaison with family members social workers and lawyers.

It is critically important that Sage Advocacy does not inadvertently focus only on courts processes relating to applications under the Act. Equally and, perhaps, more fundamentally important, is the broader area of advocacy support for people who are referred in relation to a DMRO application.

This will require significant ongoing staff upskilling and resource deployment.

In the medium-term, there will be a need for Sage Advocacy to introduce on a phased basis a plan for all future staff to have some form of professional qualification which is overseen by a regulatory body, as suggested by the Law Reform Commission Report on Adult Safeguarding. In order to achieve a sustainable service delivery model in the longer-term, Sage will need a more formalised Government-driven structure for independent advocacy than is the case at present. Pending such a development, the supports currently provided by the Department of Justice for the Legal Support Unit needs to be institutionalised and a single integrated sustainable stream of funding developed by Government rather than from three different sources (HSE, Department of Justice, Department of Education) as is the case at present. The establishment of a National Adult Safeguarding Agency/Authority would provide a useful opportunity to create a National Council for Advocacy which would address standards, training, continuous professional development, qualifications and pay and conditions for independent advocates.

<sup>69</sup> Judge John O Connor presentation, <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/assisted-decision-making-resources/cork-assisted-decision-making-capacity-act-2016.pdf>

## Overview

This section has set out a number of overarching factors arising from the experience of Sage Advocacy which, it is suggested, should inform ongoing deliberations about the implementation of the ADMC legislation and its implications for all stakeholders. A central factor identified is the extent to which the provisions of the legislation are understood and the need for ongoing learning in this regard. The latter can be significantly enhanced by a number of important court judgements referenced.

The ADMC legislation is still relatively new and all actors are still coming to grips with its provisions. However, in a general way, the commencement of the legislation has to some extent raised awareness among professionals and the public about matters such as a person's will and preference and their right to decide and a growing awareness of the concept of decision-making capacity and related supported decision-making and the ramifications of these for policy and practice.

The next section will identify a number of areas where a different approach is required and will set out a number of specific proposals accordingly.

# Section Eight

## *An Agenda of Issues Identified by Sage Advocacy and Proposals for Action*

### Introduction

Based on the information, analysis and commentary provided throughout this Scoping Document, this section identifies a number of areas where a different approach and some change is required. It includes a number of specific proposals for action arising out of that experience.

### Areas where a different approach is required

#### Need to consolidate the role of independent advocacy

The ADMC legislation has had major implications for the practice of independent advocacy and independent advocacy is a centrally important component in the implementation of the legislation in that an independent advocate in their engagement with clients can ensure that the principles of the legislation are adhered to in all decision-making forums, in particular, the right of people to be supported to articulate their will and preferences and to be presumed to have capacity unless they have been properly assessed in accordance with the legislation as not having decision making capacity. While provision for independent advocacy is not included in the ADMC legislation, its importance has been acknowledged by the Decision Support Service which has developed a Code of Practice for Independent Advocates<sup>70</sup>.

Notwithstanding the absence of legislation to underpin independent advocacy, it is clear that the role of independent advocacy has become centre-stage in the implementation of the legislation.

Healthcare and legal professionals as well as the general public are becoming more attuned to the concept of individual 'voice' and to the need for it to be facilitated and validated by a person/agency that is independent of other interests, relatives and/or health and social care providers.

Clearly there is a need for legislative provision for the practice of independent advocacy. The Law Reform Commission<sup>71</sup> has drawn attention to the fact that, in Ireland at present, statutory duties to facilitate access to independent advocacy in the adult safeguarding context are limited to adults with disabilities, older people residing in residential centres, and people with mental health disorders receiving treatment in residential centres under the Mental Health Act 2001.

#### Need for a stronger focus in ADMC practice on safeguarding at-risk (vulnerable) adults

The ADMC legislation is pivotal in safeguarding at-risk (vulnerable) adults. This means that its underlying principles must be at the very forefront of and embedded in daily practice. The experience of Sage Advocacy is that this does not always appear to be the case. Some professionals, (both legal and health and social care) have informed Sage advocates that they have insufficient understanding of the ADMC, the role of DSS, the options available for people whose decision-making capacity is in question, how to access/start a DMRO application process, and an underdeveloped understanding of the role of independent advocacy. Many professionals have been reliant on Sage Advocacy to provide guidance, support and advice.

<sup>70</sup> [https://decisionsupportservice.ie/sites/default/files/2023-04/9.%20COP\\_for\\_independent\\_advocates\\_O.pdf](https://decisionsupportservice.ie/sites/default/files/2023-04/9.%20COP_for_independent_advocates_O.pdf)

<sup>71</sup> Report. A Regulatory Framework for Adult Safeguarding. Law Reform Commission. 2024  
[https://www.lawreform.ie/\\_fileupload/Reports/as/lrc-128-vol-1-160424-final.pdf](https://www.lawreform.ie/_fileupload/Reports/as/lrc-128-vol-1-160424-final.pdf)



## Responsibility for instigating DMRO applications

There is an issue about whose responsibility it is to make a DMRO application. This is experienced by Sage advocates as being particularly relevant in the case of residents in private nursing homes. This is particularly in the case where the Relevant Person is unable to bring an application themselves and does not have anybody able or willing to bring an application on their behalf. This is particularly problematic in circumstances where decisions are required to protect the rights of the person. For example, Sage Advocacy has come across instances where because there was nobody to make an application for a person in a nursing home to address financial issues, the resident receives a notice terminating their contract of care as debts continue to accrue. This is clearly not appropriate and can often result in severely negative impacts on the person's rights and quality of life in addition to unnecessary hospital re-admissions.

Some hospitals are experienced as being very proactive in making applications while others are not. There are three aspects of this: (i) The primary focus of some hospitals is on providing the necessary decision-making supports with DMRO seen as an absolute last resort; (ii) Some hospitals are experienced as opting for a DMRO application without fully and exhaustively exploring other less restrictive interventions; (iii) There is also a perception that some medical social workers and ADMC leads are fearful of engaging in the whole ADMC process because it is radically different and, as a result, some people's needs may not be addressed in the appropriate manner and the functional approach to capacity is sometimes not being implemented.

There is also a perception that in some instances the primary focus is on expediting discharges from hospitals with bed management being the priority and, as a result, insufficient attention being given to the requirements under the ADMC legislation. In this regard, there is a strong view among Sage advocates that there should be engagement by an independent advocate much earlier in the process than is the case at present. In instances where an independent advocate has been involved, e.g., where the Relevant Person is already a Sage Advocacy client, the process is more likely to be reflective of the ADMC principles. Sage advocates believe that there are vulnerable individuals whose rights are at risk where there is nobody mandated to take an application for a DMRO. This arises where a person's circumstances require an application to be made but where there is nobody willing to do so. This risk is further compounded where the Relevant Person cannot instruct nor communicate their will and preferences.

## Attendance at court of Relevant Person

Section 139 of the 2015 Act<sup>72</sup> states that an application to the court or the High Court shall be heard in the presence of the Relevant Person unless, in the opinion of the court or the High Court, as the case may be—

- a) the fact that the relevant person is not or would not be present in court would not cause an injustice to the relevant person;
- b) such attendance may have an adverse effect on the health of the relevant person,
- c) the relevant person is unable, whether by reason of old age, infirmity or any other good and substantial reason, to attend the hearing; or
- d) the relevant person is unwilling to attend.

The experience of Sage Advocacy suggests that there is a need for better guidance to ensure that a Relevant Person is supported both in advance and during a court hearing. While the Circuit Court rules do require that the applicant notify the court office of any special arrangements that may be required to facilitate the Relevant Person's participation in the hearing of a capacity application, there is a need for more specific guidance in this regard.

It has been suggested<sup>73</sup> that the decision not to commence the provisions of the 2015 Act relating to court friends<sup>74</sup> means that the provision of independent support to the Relevant Person during the hearing falls on independent advocates. In practice, very few Relevant Persons with whom Sage Advocacy has been involved have attended court to date and attendance by an independent advocate is relatively low.

## Ongoing advocacy support for Relevant Persons

There is no specific requirement under the current legislation for the courts to provide information on the outcome of a DMRO application where there was an independent advocacy report provided to the court. It is suggested that this is a significant gap in that many of the Relevant Persons would be likely to benefit from ongoing independent advocacy support as part of whatever assisted decision-making mechanism was put in place by the court. It is also the case that many of the Relevant Persons in respect of whom a DMRO was granted would benefit from the involvement of an independent advocate when the order is being reviewed. This is a matter that requires further consideration.

Sage Advocacy's view is that this could be achieved by the court issuing a Practice Note taking account of the provisions of Section 38(8) of the Act which provides that in making a decision-making order or a decision-making representation order, the court shall make provision for such other matters as it considers appropriate.

<sup>72</sup> Assisted Decision-Making (Capacity) Act 2015, Section 139

<sup>73</sup> Mary Donnelly and Caoimhe Gleeson (2024), <https://www.ijsj.ie/assets/uploads/images/2024%20edition%202/4.%20Donnelly%20and%20Gleeson.pdf>

<sup>74</sup> Under the legislation, a court friend can in certain circumstances assist and act on behalf of a Relevant Person in applications to court under Part 5 (applications to determine whether the relevant person has capacity) or Part 6 (applications to review capacity of adults who are wards of court).

## Co-decision-making

Sage Advocacy has experience of situations where a person cannot find a ‘trusted other’ to take on the role of co-decision-maker (CDM) and where a DMR has been appointed purely because there was nobody available to fulfil the CDM role.

There is already provision in the legislation to accommodate such situations but this provision may not be well understood.

Section 41 of the Act sets out the Performance of the Functions of a Decision-Making Representative.

*In exercising his or her functions as specified in the decision-making representation order, a decision-making representative shall, insofar as this is possible, ascertain the will and preferences of the relevant person on a matter the subject of, or to be the subject of, a relevant decision and assist the relevant person with communicating such will and preferences (Section 41(1)).*

*A decision-making representative shall make a relevant decision on behalf of the relevant person and shall act as the agent of the relevant person in relation to a relevant decision (Section 41(2)).*

*Notwithstanding subsection (2), a decision-making representative appointed in circumstances where section 38(1)(a) or section 55(4) applies shall ensure, in so far as is practicable, that he or she jointly makes decisions with the relevant person. (Section 41(3))*

Section 38(1)(a) provides that where the court has made a declaration under Section 37(1) that the Relevant Person lacks capacity, unless the assistance of a suitable person as a co-decision-maker is made available to him or her, and there is no suitable person to act as co-decision-maker for the Relevant Person, the court may make an order making the decision/s or appoint a decision-making representative (DMR).

In such circumstances, where the court has appointed a DMR because no suitable Co-Decision-Maker is available, the court will provide in its order that the DMR should comply with Section 41(3) and effectively act as a co-decision-maker.

It is suggested that it should become the practice and made clear in the application form (application form to be amended) that, if no suitable person is available to act as co-decision-maker the application being made is for the appointment of a person to act jointly with the Relevant Person.

## Enduring Power of Attorney (EPA)

Sage Advocacy has had experience of people being unable to create an EPA because of the requirement for the EPA to be signed in the presence of the donor which is not always practical, for example, where a person (e.g., an attorney) is living outside of the jurisdiction. However, while the Act does provide that the EPA is to be signed in the presence of the donor, there is no requirement in the Act that presence should be interpreted as being in the same location.

Evidently, advances in technology provide for new ways as to how a person can be ‘present’ with others even if not in the same location. Indeed, under Section 139 of the ADMC Act, when the presence of the Relevant Person is required in court, this is accommodated by the court by video link in many cases.

It is important that a person who wishes to create an EPA and appoint a person whom they trust is facilitated in doing so and not be debarred by a very narrow interpretation of the legislation, particularly in this post-COVID period where online facilitation has become the norm.

## Ex parte applications

The consent of the court is required under Section 36 of the Act by way of an ex parte application by a person or organisation who do not come within the specified list in Section 36(4). In effect, this results in two separate applications to the court. In some court locations where there are long periods of time before a court will list ADMC matters for consideration, this causes delay. In some cases, there may be two visits to a court (e.g. notices on relevant parties not served) before the consent of the court is given which gives rise to further delay.

There is a strong argument that ex parte applications should be taken by the Registrar of the Court and not by the court itself. There should be a detailed guidance on what is required for such applications and times given at a minimum on a monthly basis, (for busy courts it would be on a weekly basis) where the Registrar is available.

## Number of court locations

Some courts are perceived by Sage Advocacy as having a clear understanding of the ADMC legislation and its Guiding Principles. There are some Courts where only a small numbers of ADMC Applications are heard.

While there is a circuit court in every county, some counties have had very few ADMC-related applications while in others there is a long delay in having cases listed. This results in a less than optimum facilitation for a Relevant Person whose needs need to be addressed promptly. The Sage Advocacy experience is that many suffer stress, financial hardship and inappropriate care as a result of such delays.

It is suggested that serious consideration be given to reducing the number of court locations and ensuring that an efficient service and skills are available in courts where applications are to be processed.

## Timeframe for compiling an independent advocacy court report

While Sage Advocacy continuously aims to assess and prioritise referrals in accordance with its access and eligibility criteria and need, the timeframes provided for independent advocacy reports in respect of a DMRO application are sometimes extremely short and cannot be met. This is because of the need for the advocate to make a number of visits to the Relevant Person in order to build trust and a meaningful relationship and to ascertain as accurately as possible the person’s will and preferences.

## Collaboration and joint working

There are many examples of positive collaboration between Sage Advocacy and both medical social workers and HSE Safeguarding and Protection Teams in respect of both safeguarding adults generally and putting in place the decision supports provided for under the ADMC legislation. There is much positive and effective co-working between social workers and Sage Advocacy. However, such collaboration is not fully operational across all areas of the country and across all hospitals. For example, there is considerable variation in how financial abuse concerns are managed in different CHO areas. Some of this arises because of custom and practice. The approach to the ADMC being taken in different hospitals varies with some hospitals being experienced as focusing primarily on putting in place the least restrictive decision support option while others are experienced as applying for a DMRO before other options are fully explored.

There is a cogent case for frontline collaboration between all personnel involved in safeguarding at-risk (vulnerable) adults and in ensuring that the ADMC principles are applied in both a preventative as well as on a reactive basis, the latter being the dominant approach in many instances and in cases in which Sage Advocacy is involved.



## Codes of Practice

Codes of Practice have been developed by the DSS for 13 interveners – Attorneys, Co-decision-makers, Decision-making Assistants, Decision-making Representatives, Designated Healthcare Representatives, Financial Service Providers; General Visitors, Healthcare Professionals, Independent Advocates, Legal Practitioners; Special Visitors; Supporting Decision-making and Assessing Capacity; Advance Healthcare Directives for Healthcare Professionals. It is not at all clear how well these Codes are being implemented in practice and whether or not their implementation is being monitored.

## Data on ADMC courts processes

There is a lack of published data on various aspects of the courts process relating to Part 5 applications. For example, data is not available on the number of Relevant Persons who attend court in person or via video link, the percentage of cases where the Relevant Person had independent legal representation or the number of cases where the Relevant Person had independent advocacy support.

It is noted that the Office of Wards of Court estimates that approximately 90% of wards attend either in person or on-line and that of the 118 discharges from wardship made to date, 117 applicants were represented by a solicitor.<sup>75</sup> This type of information should be captured in respect of Part 5 applications.

There is a need for the Courts Service to develop mechanisms for gathering statistics and reporting in relation to attendance at court by Relevant Persons, legal representation and support by an independent advocate. This is important in order to monitor whether or not the voice of the Relevant Person is being heard at all times to the greatest extent possible, including in particular, during court processes. This is a key principle of the ADMC legislation.

## ADMC Stakeholders' Forum

Sage Advocacy has consistently called for an ADMC Stakeholders Forum for key organisations to convene and meet on a scheduled basis (with an independent Chair) to address interorganisational and operational issues arising from ongoing 'silo' structures and lack of adequate collaborative structures. Membership of such a forum could include the Decision Support Service, the HSE, the Legal Aid Board, the judiciary and courts service, the Law Society, Banking and Payments Federation Ireland and, very importantly, independent advocacy services.

The Sage Forums on the ADMC held in 2023 and referenced earlier in this document involved a wide range of speakers across differing sectors of society, including the judiciary, lawyers, Policing Authority, the HSE, Banking & Payments Federation Ireland (BPFI), and could be usefully developed by the DSS to take place on an annual basis to continue to build institutional awareness

# Proposals for action arising out of the Sage Advocacy experience

## Consolidating independent advocacy practice

It is abundantly clear that independent advocacy plays a critical role in the implementation of the ADMC legislation. However, there is no formal recognition in law of the practice of independent advocacy in Ireland.

Legislative provision in Ireland for independent advocacy practice should be introduced as a matter of some urgency. There is a need for an integrated long-term state funding stream for independent advocacy.

## The need to embed ADMC principles more strongly in daily practice

The experience of Sage Advocacy is that some professionals, (both legal and health and social care) appear not to be fully au fait with what is required under the legislation.

There should be more emphasis on continuous professional development and training around best ADMC implementation practice.

## The need to make safeguarding more central to the process

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 infrastructure is put in place.

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

## The requirement for decisions requiring an intervention to be time and issue specific

The Sage Advocacy experience is that regularly a DMRO is being sought to make all decisions for a person (the old wardship approach) which is a matter of some concern.

ADMC awareness raising should continue both within relevant agencies and among the public. The DSS could usefully engage in another public information campaign on the matter.

## Responsibility for instigating a DMRO application

There is an issue about whose responsibility it is to make a DMRO application. This is experienced by Sage advocates as being particularly relevant where a person is unable to bring an application themselves and does not have anybody able or willing to bring the application on their behalf (as is the case for some nursing home residents).

This matter needs to be reviewed from a legal and human rights perspective in order to ensure that no person to whom the legislation applies is excluded.

## Attendance of Relevant Person at court

Relatively few Relevant Persons with whom Sage Advocacy has been involved have attended court to date and attendance by an independent advocate is relatively low.

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 for this purpose.

## Collaboration and joint working

The ADMC process would be enhanced by having jointly agreed mechanisms for collaboration between HSE safeguarding social workers and Sage Advocacy and between medical social workers and Sage Advocacy

Agreed mechanisms for joint working should be put in place.

## Co-decision-making

There are situations where people cannot find a 'trusted other' to take on the role co-decision-maker (CDM). There is provision in the legislation for a DMR to be appointed in such instances but this may not be well understood.

It should become the practice and made clear in the application form (application form to be amended) that if no suitable person is available to act as a co-decision-maker, the application being made is for the appointment of a person to act jointly with the Relevant Person.

<sup>75</sup> Communication from Courts Service to Sage Advocacy in respect of this Scoping Document.

### Court statistics relating to ADMC cases

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 support by an independent advocate

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

### Court locations

Some courts are perceived by Sage Advocacy as having a clear understanding of the ADMC legislation and its Guiding Principles. There are some Courts where only a small numbers of ADMC Applications are heard.

Sage Advocacy believes that serious consideration should be given to reducing the number of court locations dealing with ADMC applications in order to ensure that an efficient service and skills are available in courts where applications are to be processed.

### Ongoing advocacy support for Relevant Persons

There is no specific requirement under the current legislation for the courts to provide information on the outcome of a DMRO application where there was an independent advocacy report provided to the court.

A Practice Note should be issued by the Circuit Court taking account of the provisions of Section 38(8) of the Act to place an obligation on the courts to inform an independent advocacy organisation of the outcomes of a DMRO application in instances where an independent advocacy report was provided to the court.

### DSS Codes of Practice

It is not at all clear how well their respective Code of Practice is being adhered to in practice by the various actors for whom Codes have been developed.

The DSS should put in place a mechanism to capture actual practice vis-à-vis the requirements under the various Codes.

### Reviews of Wardship

There is evidently an issue with the pace of discharge from wardship and a need for further analysis of the factors that contribute to the slow pace of discharge and how these might be addressed.

While amending Section 54 of the 2015 Act to extend the three-year window for wards to exit would be an option, such an amendment would clearly not be desirable from a human rights perspective.

Some further analysis is required in order to understand better the factors that contribute to the slow pace of discharge and how these might be addressed.

The Wards of Court Office should ensure that all wards are given the necessary supports they require to enable them to avail of the review process.

### Registering an EPA

The Sage Advocacy experience is that the requirement for the EPA to be signed in the presence of the donor is not always practical, for example, where a person (such as an attorney) is living outside of the jurisdiction Section 79(1) of the Act provides – The Minister may make regulations for the purpose of giving this Part full effect.

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

### Advanced Health Care Directives

There are issues around Advance Healthcare Directives, in particular, the fact that there is no central facility for their registration.

*The Minister should fast-track the making of a Regulation under Section 84(12) to operationalise the AHD Register already set up by the DSS.*

### Ex parte applications

The consent of the court is required under Section 36 of the Act by way of ex parte application by a person or organisation who does not come within the specified list in Section 36(4). In effect this results in two separate applications to the court which delays the process.

The Sage Advocacy view is that ex parte applications should be taken by the Registrar of the Court and not by the court itself. There should be a detailed guidance on what is required for such applications.

### Legal representation

A question has arisen about how a person who appears to be unable to give instructions can get legal representation for making a capacity application.

Circuit Court Rules confirm that a capacity application may be signed by the applicant or their solicitor. It is clear that a solicitor can sign an application made by a Relevant Person who cannot give instructions and should do so where required.

### Place of care

There are compelling arguments for people being able to put in place arrangements for care and the place where they wish to receive that care when they have the capacity to do so. This would pre-empt many of the issues around having to apply for a DMRO when a person no longer has capacity.

Place of care legislation should be introduced to complement the provision for an Advance Health Care Directive in the ADMC legislation.

### Need for a National Stakeholders Forum

Sage Advocacy has consistently called for a forum for key organisations to convene and meet on a scheduled basis to address interorganisational and operational issues arising from ongoing ‘silo’ structures and lack of adequate collaborative structures.

A National ADMC Stakeholders’ Forum should be established with an independent chair.

### Review of ADMC legislation

The Programme for Government includes a commitment to review the operation of the Assisted Decision-Making (Capacity) Act 2015.

All of the factors and related issues outlined in this Scoping Document should be used to inform this review.



# Appendix One

## Main Functions of the Decision Support Service

- Promote public awareness of the Act and matters relating to the exercise of their capacity by persons who require or may shortly require assistance in exercising their capacity;
- Promote public confidence in the process of dealing with matters that affect persons who require assistance;
- Provide information to relevant persons in relation to their options for exercising capacity;
- Provide information to decision-making assistants, co-decision-makers, decision-making representatives, designated healthcare representatives, and attorneys in relation to the performance of their functions;
- Supervise compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys in the performance of their functions under the Act;
- Provide information in relation to the management of property and financial affairs to relevant persons and to decision-making assistants, co-decision-makers, decision-making representatives and attorneys;
- Identify and make recommendations for change in practices in organisations and bodies in which the practices may prevent a relevant person from exercising his/her capacity;
- Disseminate information to members of the public to assist the public to understand the operation of the Act and the Director's role in relation to it;
- Investigate complaints;
- Make recommendations to Minister on any matter in relation to the operation of Act;
- Establish and maintain a Register of: Co-Decision Making Agreements, Decision Making Representation Orders and Enduring Powers of Attorney;
- Establish a panel of suitable persons willing and able to act as – A Decision-making representatives, Co-decision-maker, General visitors<sup>77</sup> and Special visitors<sup>78</sup>;

decision-making representatives and attorneys; Provide information and guidance to organisations and bodies in the State in relation to their interaction with relevant persons and all interveners<sup>76</sup>;

<sup>76</sup> An Intervener is understood in the legislation as the Circuit Court or High Court, a Decision supporter, the Decision Support Service, Special/General Visitor, Healthcare professional, Court friend or 'another person' (Independent Advocate).  
<sup>77</sup> The DSS can ask a general visitor to visit a person who has a decision support arrangement or their decision supporter.  
<sup>78</sup> A special visitor is a person with knowledge, expertise and experience in matters relating to capacity assessment. They may assist the Director of the DSS in the supervision of decision support arrangements put in place and in the investigation of complaints and objections made under the Act and in undertaking capacity assessments in connection with applications to court by the Director.

# Appendix Two

## The Role of the Legal Adviser

### Reviewing Court Reports

*An advocate submits a draft court report (e.g. exploring a client's preferences about the funding of their care and management of their finances; and the appointment of their daughter as their decision-making representative).*

#### ACTION

**The Legal Adviser completes an initial document review (15-20mins) and identifies any issues to discuss with the advocate.** E.g. unanswered client questions; unclear information to client; use of leading questions; client wish to attend court via video link perhaps not followed up on.

**The Legal Adviser phones the advocate, who gives their full description of events; of how they explained things to the client; and how they responded to any concerns.**

*The Legal Adviser updates the draft to reflect new detail and sends to advocate and Regional Manager for approval.*

#### RESULT

**Often in discussion with the advocate, concerns can be quickly cleared up. In other cases, a further visit to the client may be required and the advocate may need support in the form of a joint visit with RM or legal adviser. By identifying potential gaps or ambiguities, the Legal Adviser enables the advocate to present the client's wishes clearly to the court and reinforces our person-centred approach. It also ensures our advocates are acting in line with our quality standards and the DSS Code of Practice for Independent Advocates and the Guiding Principles of the Assisted Decision-Making Acts.**

### Explaining Legal Terminology

*An advocate struggles with legal jargon, for example, in a letter received by a client in a nursing home regarding her late brother's estate of which she is sole beneficiary. The advocate phones the legal adviser on the spot as they can see from the letter that the client is supposed to respond by tomorrow and the client wants the advocate to help her call the solicitor.*

#### ACTION

**The legal adviser spends 10 to 15 minutes on the phone with the advocate explaining and contextualising terms**

### Liaising with External Solicitors

*Specific example: An advocate flags a new referral where the client is a Relevant Person in a Part 5 Application under Assisted Decision-Making legislation for a Decision-Making Representation Order. The advocate identifies that the orders sought by the applicant are different than what we would typically see in that they involve gifting the client's property to her daughter and son-in-law so they can take out a mortgage to fix up the property for the benefit of our client. The advocate is worried that there has been some miscommunication and asks legal adviser to seek clarity on what exactly is being applied for from the applicant's solicitor.*

#### ACTION

**The legal adviser phones the applicant's solicitor to clarify the purpose of the application, to better enable the advocate to support the client and explain the issues at hand. In a 20-minute conversation, the legal adviser finds that the solicitor's understanding of the ADM Act is very limited and this is the first Part 5 Application he has made. The legal**



### Legal Research

*(Survivor of Institutional Abuse example)*

*A caller to Information & Support asks, in relation to the work-related payment in the Mother & Baby Homes Redress Scheme, why their institution was not listed as eligible – even though similar institutions were. The Legal Adviser is asked to examine legislative scope to appeal.*

#### ACTION

**The Legal Adviser carried out thorough research into the issue (2-3hrs) – reading the legislation and related documents, submissions and reports to understand why a seemingly arbitrary distinction had been made between different institutions. The Legal Adviser then compiled clear summary of the issue and background for the Information and Support team.**

#### RESULT

**By providing a comprehensive summary, the Legal Adviser empowers the team to accurately respond to similar queries from Mother and Baby Home survivors. The Legal Adviser also identified a potential systemic issue within the redress scheme noting the distinction made in the legislation between “work of a commercial nature” and other forms of forced labour in the institutions, which was then flagged with the CEO to consider wider advocacy.**

**such as letters of administration, intestate and beneficiary. The legal adviser also reminds the advocate of the limits of the support they can provide in this situation e.g. supporting the client to contact the solicitor.**

#### RESULT

**When an advocate knows how to explain a situation in plain English, they can better support a client to understand their options and next steps.**

**adviser directs him to the Guiding Principles of the Act and also highlights potential risk for the client should she ever need to avail of the Nursing Home Support Scheme given that all assets transferred within five years of entering nursing home are included in the means test.**

#### RESULT

**The solicitor expresses gratitude to Sage Advocacy legal adviser for making him aware of the Guiding Principles and the risk in relation to potential means test for NHSS and advises he will consult with the barrister and revise scope of the application. The legal adviser then follows up with the advocate to provide a clear understanding of the key issues and decisions that need to be discussed with the client; and offers to facilitate a joint visit.**

**This kind of engagement with external solicitors raises awareness of the guiding principles that underpin the ADM Act, potentially saves court time by preventing inappropriate applications, and most of all gives our client (the Relevant Person) an opportunity to weigh in and express a view on the decisions that affect them.**

# Appendix Three

## Sage Advocacy Template for Independent Advocacy Report

### Application under Part [5/6/48/49] of the Assisted Decision-Making (Capacity) Act

<b>Report Date:</b> /    / <b>Court:</b>
<b>Reference Number/Location:</b>
<b>Name of Person:</b>
<b>Referral made by:</b> Name Surname
<b>Date of referral:</b> /    /
<b>Place of Visit:</b>
<b>Date/s of Visit/s:</b>
<b>Purpose of Visit:</b>
(Refer to section of relevant form if applicable)
<b>Date of Court hearing:</b> /    /
<b>Name of Independent Advocate:</b>
<b>Report on Visit 1:</b>
(State if any other person was present)
<b>Response on Decisions:</b>
(Set out each decision, the information given on each decision and then the response and any other relevant comment)
<b>Person's comments on proposed DMR:</b>
(If applicable)
<b>Other relevant comments:</b>
(Include any specific request/comments made by the person)
<b>Report on Visit 2:</b>
(State if any other person was present)
<b>Response on decisions:</b>
(Set out each decision, the information given on each decision and then the response and any other relevant comment)
<b>Person's comments on proposed DMR:</b>
(If applicable)
<b>Other relevant Comments:</b>
(Include any specific request/comments made by the person)
<b>Signature of Independent Advocate</b>

# Appendix Four

## HSE Guide to Capacity Statement under Part 5 of the Assisted Decision-Making (Capacity) Act 2015

Please note this document is a guide to the functional assessment of capacity required for a Capacity Application under Part 5 of the Assisted Decision Making (Capacity) Act 2015.

This is not a legal document and has been developed for guidance purposes only.

Please note that the information in italics is for guidance purposes only.

### Part A: Details of the relevant person

<b>Name of person:</b>
<b>Date of Birth:</b>
<b>Address:</b>

### Part B: Details of the decision(s)

If there is more than one decision to be made each decision must be considered and recorded separately.

What is/are the particular decision(s) that need(s) to be made at this time?

Summarise the information relevant to the decision(s) which was provided to the person

The information about different options that the relevant person is required to understand, retain and use and weigh in reaching his or her decision(s) should be recorded. This includes information about the reasonably foreseeable consequences of each of the available choices or failing to make the decision. Information should be given in a format that the relevant person can understand.

Please list actions taken and supports given to enhance the decision-making capacity of the relevant person to make his or her own decision(s)

Why is there a concern about the capacity of the person to make the decision(s) at this time?

There should always be an adequate reason for assessing decision-making capacity. The fact that someone is or is likely to make an unwise choice is not of itself an adequate reason to challenge someone's capacity to make the decision(s).

### Part C: Details of the Assessor

<b>Name, title, specialty and organisation of the assessor:</b>
<b>The role of the assessor has had in care and treatment of the person:</b>

Expertise of the assessor in relation to the assessment of capacity in the situation in question



## Part D: Details of the assessment

Date of the assessment and duration:

(If conducted over a period of time, note this with details)

### Place of assessment:

**Name, details and role of others present to support the relevant person (including other healthcare professionals, interpreter, advocate or supporters):**

N.B. For each of the following questions, the assessor must provide details of the lines of enquiry and responses including verbatim quotes, if appropriate, to show how he or she came to their conclusions.

### Is the relevant person able to understand the information relevant to the decision(s)?

#### Yes/No – provide details

A broad, general understanding of the most essential points in a person's individual circumstances is all that is required.

### Is the relevant person able to retain the information relevant to the decision(s) long enough to make a voluntary choice?

#### Yes/No – provide details

The fact that a person is able to retain the information relevant to a decision(s) for a short period only does not prevent him or her from being regarded as not having the capacity to make the decision(s).

### Is the relevant person able to use and weigh that information as part of the process of making the decision(s)?

#### Yes/No – provide details

In assessing this criterion please note that people use and weigh information in accordance with their own beliefs and values. Different people may give weight to different factors. This may explain apparently unwise decisions. Making a decision that the assessor or others consider unwise is not of itself evidence that the relevant person is unable to use and weigh the information relevant to the decision.

### Is the relevant person able to communicate his or her decision(s)?

#### Yes/no – provide details

For example, is the person able to communicate his or her decision(s) whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision(s) requires the act of a third party, to communicate by any means with that third party?

## Part E: Conclusions from assessment

**Based on this assessment, does the relevant person the capacity to make the particular decision(s) at this time? Provide details and reasons for the conclusion**

**Yes**

**No**

### Outcome is unclear

If there is more than one decision to be made each decision must be considered and recorded separately.

For any decision(s) for which the person lacks capacity please answer the following questions:

Would the person have capacity if the assistance of a suitable person as co-decision maker were made available to him or her in relation to one or more of the decision(s) to be made?

Please explain the reasons and state if are you aware if there is a suitable person to act as a co-decision maker?

**Would the person lack capacity even if the assistance of a suitable person as co-decision maker were made available to him or her in relation to one or more of the decision(s) to be made?**

*Please explain the reasons.*

**What is the likelihood of recovery of the person's capacity in respect of the decision(s) concerned?**

*Please explain your reasons and, if relevant, provide an approximate timeframe within which recovery could occur.*

## Part F: Additional information if the person lacks capacity for the decision(s)

**What are the past and present will and preferences of the relevant person with regard to the decision(s) (if reasonably ascertainable)?**

Provide details of your efforts to ascertain the person's past and present will and preference and the person's responses.

**What are the beliefs and values of the person relevant to the decision(s)?**

Provide details of your efforts to ascertain the beliefs and values of the person and the person's responses (in particular those expressed in writing).

**Please record the outcome of consultations with any of the following:**

Please note that anyone named by the person to be consulted and any formal decision supporter must be consulted. An assessor may not always be in a position to provide this information.

1. Anyone named by the person as a person to be consulted on the matter concerned or any similar matters?
2. Any Decision-Making Assistant, Co-Decision Maker, Decision-Making Representative, Designated Healthcare Representative or Attorney for the person.
3. Anyone else consulted including those closest to the person, family or friends

**Nothing About You Without You.**





## **Information & Support Service:**

**01 5367330    [info@sageadvocacy.ie](mailto:info@sageadvocacy.ie)**

Sage Advocacy  
24-26 Ormond Quay Upper,  
Dublin 7 DO7 DAV9

CRO # 610824  
RCN # 20162221  
CHY # 22308

**[sageadvocacy.ie](http://sageadvocacy.ie)**