

Assisted Decision Making (Capacity) Act, 2015

Wards of Court Office Planning Arrangements

October 2023



An tSeirbhís Chúirteanna
Courts Service

Decision Supports

Assisted Decision Making has replaced substituted decision making in Ireland

All adult wards of court will be discharged, the relevant person (RP) assessed and will align with one of the following tiers of support:

1. Discharge and no decision making assistance is required
2. Discharge with the assistance of a Decision Making Assistant
3. Discharge with the assistance of a Co-Decision Maker
4. Discharge with a Decision Making Representative

When and Who

- ADMCA commenced 26th April 2023
- WOCO is accepted wardship applications until cob 25th April 2023
- Transitional Arrangements are introduced in the Amendment Bill at S. 47 amending S. 56 of the original Act
- This allows for a person to be made a ward of court but also for the solicitor to withdraw the application and look for the wardship court to make a declaration under S.55 of the Act

Where to from 26th April

- New applications for decision making assistance will be made to the Circuit Court from the date of commencement under Part V of the Act
- Care Rep applications under NHSS Act ceased new applications will be under ADMCA to Circuit Court, this could be for a DMR or a CDM
- Applications for detention for the purpose of medical treatment will be made to the High Court, under Inherent Jurisdiction

Capacity Review

- Court's Medical Visitor will carry out the review
- Committee or RP can obtain their own functional capacity report
- Functional Capacity Assessment – assess the RP's capacity in the areas of **Healthcare, Welfare/ADL and Property & Finance**
 - to understand the information relevant to the decision
 - to retain that information long enough to make the decision
 - to use or weigh that information as part of the process of making the decision, or
 - to communicate his or her decision (by talking, writing, using sign language, assistive technology or to communicate by any means with that third party)

The Discharge Application

- Discharge Applications can be made by:
 - The Relevant Person, Committee or their solicitor or **On the consent of the Court**
 - Relative or friend (position of trust with the RP)
 - Other person with existing relationship, interest and expertise (eg advocate)
- Notice of Motion, grounding Affidavit, Affidavit of Service
- Functional Capacity Assessment Report – from the Court’s medical visitor
- A Functional Capacity Assessment Report – from the applicant (optional)
- Schedule of Property and Assets (prepared by WOCO)
- Outline of plans for future management of funds on discharge (not required in all cases)
- Remote hearing or in person hearing where requested – held in the Four Courts, Dublin

Service

- Discharge application to be served on the RP, the Committee, the applicant
- Solicitor serving to explain nature and impact of the application to RP
- Response of the RP to be recorded in AOS (if any)
- The office will provide document samples and assistance to families and solicitors

Will & Preference

- The applicant enquires as to the Will & Preference of RP
- Grounding Affidavit to include the known will and preference of RP
- Relating to a decision supporter, accommodation, supportive arrangements in place

Discharge with DMA or CDM

- If the person has capacity within the meaning of the Act or capacity with DMA or jointly with a CDM
- Grounding Affidavit to include the will and preference of the relevant person and other relevant information as referred to S. 8(7)(b) and (c)
- Affidavit of Service to include averments; as to service, explanation of the application and implications, the response of the relevant person
- Functional capacity report –to be provided to the
 - Applicant
 - Committee
 - Relevant Person
- Schedule of Assets to be provided by the Wards of Court Office
- Hearing will take place and the RP will be discharge and their property and assets returned to them

Discharge with Decision Making Representative

A Decision Making Representative (DMR) will be appointed if:

- The relevant person does not have capacity with a CDM
- A panel DMR will be requested if:
 - A CDM agreement is not registered within 5 weeks of signing, time may be extended by Court
 - A person is not available to act as CDM for the relevant person
- DSS will nominate two panel members for Court to choose a DMR (in chambers)
- A DMR is appointed by the Court
- The Court Order (DMRO) is registered with the DSS and the property and assets are returned to the person – in reality it's the DMR
- The DMRO acts as the agreement for the DMR to operate within

Decision Making Representative Order

- Court can
 - Confer powers on DMR
 - Impose duties
 - Attach conditions to making decisions
 - Set a time period for the order
- Order should be limited in scope and duration having regard to RP
- More than one DMR can be appointed to RP
- Only level of Decision Support appointed by Court
- Order is registered with the DSS
- The appointment of a DMR will be reviewed in the Circuit Court no later than 12 months or up to 3 years where Court is satisfied there will be no change in capacity

Circuit Court Applications

- 216 applications received in total to the Circuit Court
- 55 are applications for consent of the Court to bring a Capacity application
- 50 consent applications have been completed
- 161 Capacity applications have been received
- 75 Capacity applications have been completed
- Legal Aid is available – 33 applications have been made to LAB
- Majority are applications from families where a care rep application was previously in place
- Helpdesk available for lay litigants, healthcare staff and solicitors admcc@courts.ie

Inherent Jurisdiction of High Court

- In the absence of POLs legislation –
- Applications under the inherent jurisdiction of the High Court
 - Where a person requires medical treatment and/or be detained to provide medical treatment
 - Where an existing WOC is required to be detained to provide medical treatment (new detention application)
 - Where an application cannot be dealt with in the Circuit Court or is not provided for under ADMCA – withdrawal of life sustaining treatment, organ donation

Inherent Jurisdiction of High Court

- Since 26th April 2023
 - 49 applications for treatment and detention under Inherent Jurisdiction
 - Guardian ad Litem is appointed by the Court to represent the voice of the detainee in Court (mirroring the Wardship Court position)
 - Detention on foot of medical evidence mostly from consultant psychiatrist or geriatrician but also other registered medical practitioners
 - The legal costs of applications are usually met by the detaining party – this is at the Court’s discretion
 - Orders reviewed as per timelines in MHA (mirroring the Wardship Court position)

Communications Campaign

- Communications commenced September 2021
- Brief initial introduction to ADMCA and what it will mean
- De-risking of funds invested through the Courts Service
- Further information on the role of DMA, CDM, DMR and the changes to come
- Advice on preparing for the Court discharge application and what it will involve
- Electronic, postal, webinars, online Q&A sessions (currently ongoing)

Administration & Sitings

- To date 56 discharge applications have been received
- 2 people have been discharged from wardship
- Business as usual list for detention reviews, treatment orders, EPAs, Minor declarations
- Legal Aid Scheme is being extended to cover Part VI applications under the Amending Act – this will provide for family members meeting the criteria to also receive legal advice
- 12 applications for Legal Aid made & 6 approved (Part VI)
- All Wards of Court are entitled to representation with a clawback of approx. E5,385 where financial eligibility is not met
- Court Funds have been de-risked in preparation for commencement and communications on this have issued directly to Committees

**2023 to 2026 –
3 years**

