

# Transition from Wardship to the Assisted Decision-Making (Capacity) Act 2015

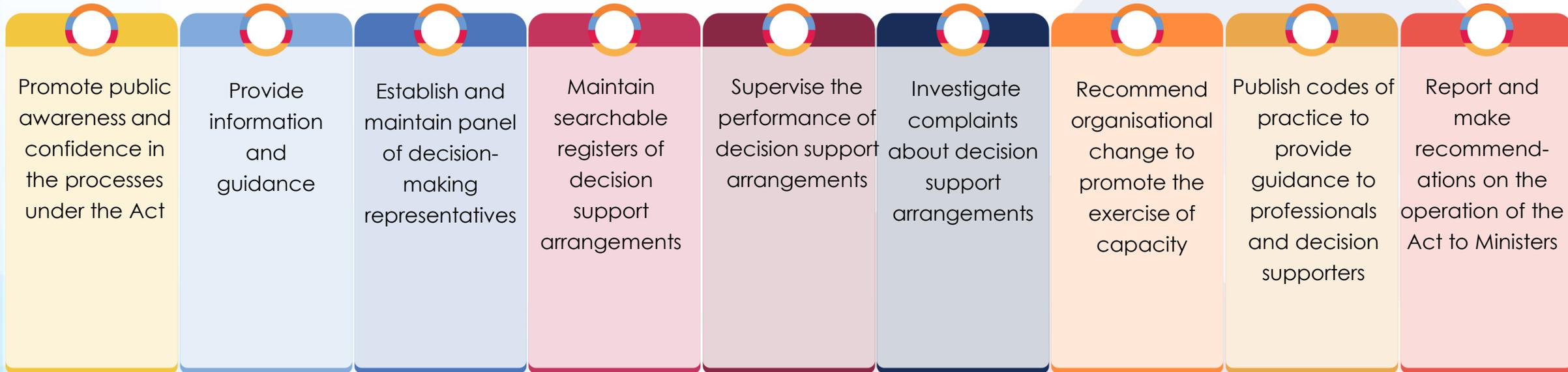
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# Decision Support Service (DSS)

## Functions include:



# How is the Decision Support Service involved in new processes relating to the end of wardship?

- Part 6: Review of capacity of adult wards by the wardship court
  - the DSS is not directly involved in these applications
  - section 57 process involving the Director in consultation with the wardship court is to be repealed; see Assisted Decision-Making (Capacity) (Amendment) Bill 2022
  - the Director of the DSS may be asked by the court to nominate from its panel of decision-making representatives in certain circumstances
  - a decision-making representation order made by the court is notified to the DSS
  - the DSS maintains a searchable register of decision-making representation orders
  - the decision-making representative is supervised by the DSS and submits reports
  - the DSS approach is to 'support the supporter'
  - non-compliance issues that cannot be resolved may be escalated to court
- as an outcome of Part 6 review, the wardship court may declare that a **co-decision-making agreement** is appropriate
- co-decision-making agreements are registered with and supervised by the DSS





## Part 5 applications to court

- Section 36 application to court by person with *bona fide* interest in welfare of the relevant person
- Circuit Court jurisdiction
  - exceptions: decisions regarding life-sustaining treatment and living donor organ donation are reserved to High Court
- the DSS is not directly involved in Part 5 applications
- application must set out the benefit to be achieved for the relevant person and why a less intrusive approach is not appropriate or practicable
- Form of proceeding is to be provided for in court rules
  - application is for a declaration in relation to the relevant person's capacity in respect of specific decision(s) and for related orders
  - application must be supported by a statement in relation to the relevant person's capacity
  - the court may seek other expert reports
- the relevant person must have access to the court and to representation; Legal Aid will be available

## Part 5: court declarations and orders



- court may declare that the relevant person
  - lacks capacity unless a co-decision-making agreement is registered
  - lacks capacity even with a co-decision-making agreement
- declaration is subject to periodic review by the court
- court may make decision for the relevant person or may make a decision-making representation order
- court shall have regard to matters, including:
  - will and preferences of the relevant person
  - desirability of preserving family relationships
  - any conflict of interest
  - complexity of financial affairs/expertise available to a proposed decision-making representative (DMR)
- where no suitable, willing DMR, court shall seek nominations from the DSS panel
- court may appoint more than one DMR or may appoint different DMRs in relation to different decisions
- decision-making representation order is finite in time and scope and may be varied or discharged

# Functions of decision-making representative

Authority is based on court order, registered with the DSS

Acts as agent, making decision(s) on behalf of the relevant person

Ascertains and assists with communication of will and preferences

DMR is supervised by the DSS and submits reports

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



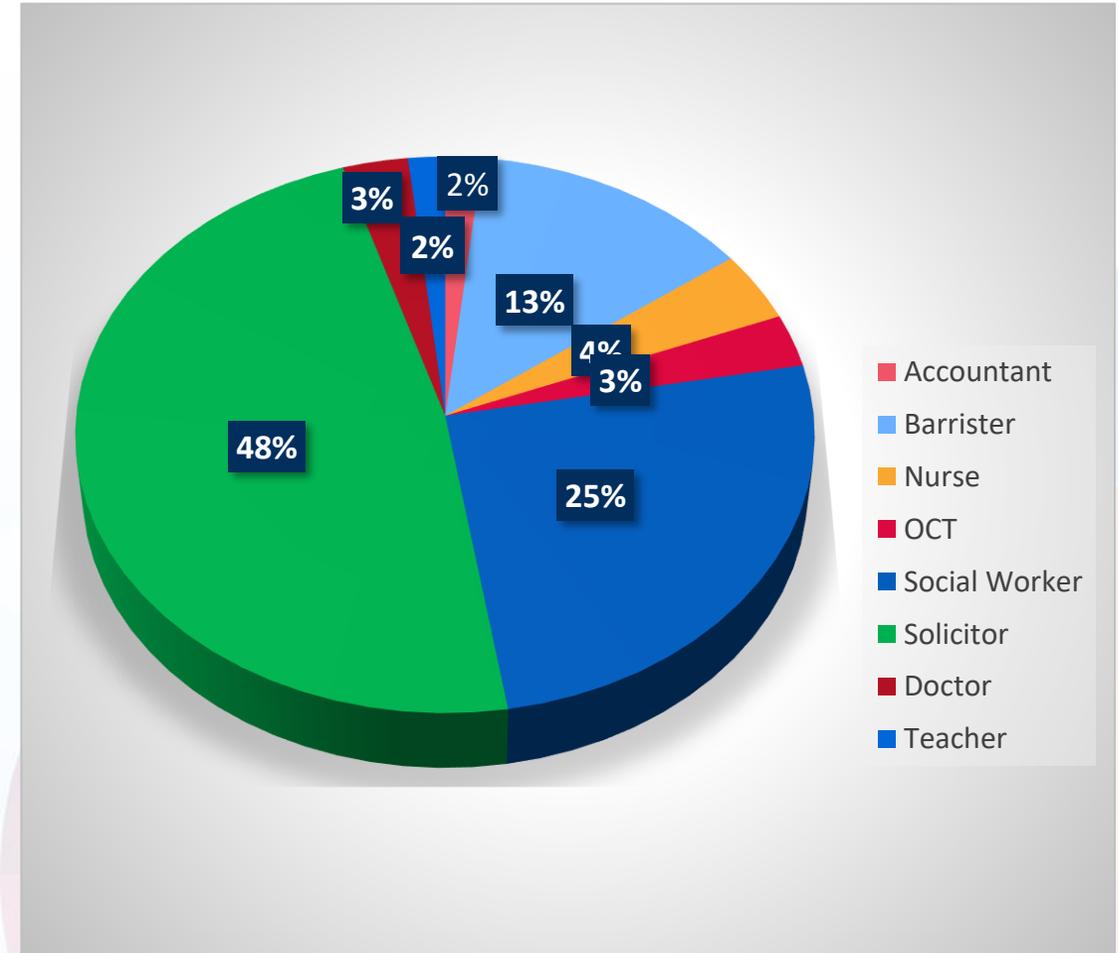
# DSS panel of decision-making representatives 2022

DSS public recruitment campaign 2022

approximately 120 professionals selected, vetted and trained

available across all circuit court areas

expertise in property and affairs and personal welfare decision-making



# Investigations of complaints by the DSS

## Grounds of complaint

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



## Director may

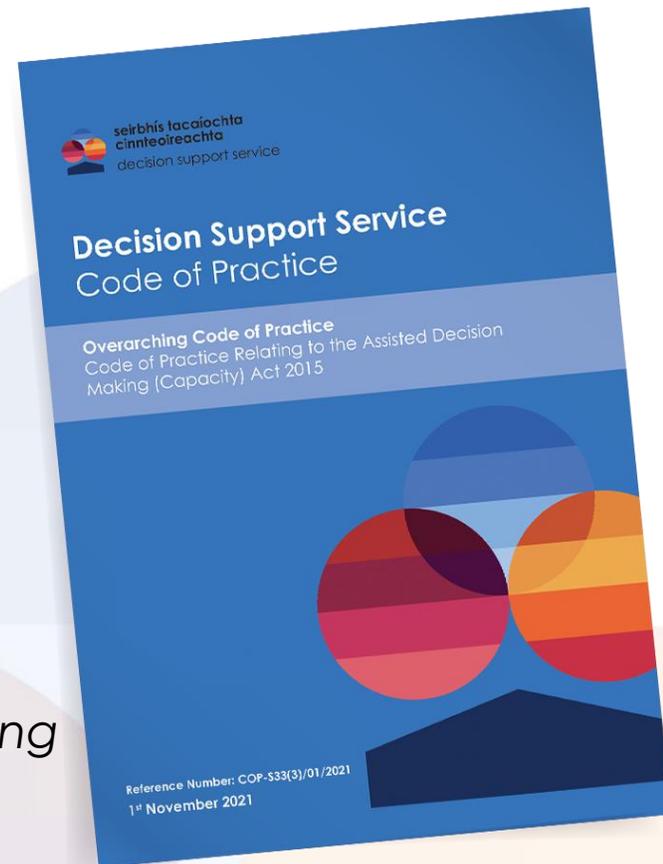
- Commission a special or general visitor
- Summon witnesses
- Take up evidence
- Escalate to court
- Amendment Bill: allows DSS to apply to court for temporarily suspension pending investigation
- Escalate for criminal investigation, if necessary
- Conduct own initiative investigations
- Resolve informally

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

# Codes of Practice

## 14 codes, including:

- general guidance code on supporting decision-making and assessing capacity
- guidance for healthcare, legal and financial professionals
- guidance for all categories of decision supporters
- codes to be published with Ministerial approval
- *A person concerned shall have regard to a code of practice when performing any function under the Act in respect of which the code provides guidance*



# Thank You



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decision support service

[www.decisionsupportservice.ie](http://www.decisionsupportservice.ie)

**Twitter:** @DSS\_Ireland

**Sign up to our newsletter** <https://landing.mailerlite.com/webforms/landing/x8t4e6>

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



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