

Drilling Deep into the Assisted Decision Making (Capacity) Act 2015: Considerations for Health and Social Care Practice

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Assisted Decision-Making (Capacity) Act 2015

“An Act to provide for the reform of the law relating to **persons** who require or may require assistance in exercising their decision-making, whether immediately or in the future”

- Signed into law 30th December 2015; not yet fully commenced



United Nations Convention on the Rights of Persons with Disabilities

Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 12.2 Equal recognition before the law

States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

-Ratified by Ireland April 2019



Assessing Capacity



CHAP. 22.

An Act to amend the Law in Ireland relating to Commissions of Lunacy, and the proceeding under the same, and the management of the Estates of Lunatics ; and to provide for the visiting and the protection of the Property of Lunatics in Ireland ; and for other purposes.

[25th May 1871.]

'A person of unsound mind and incapable of managing himself or his affairs'



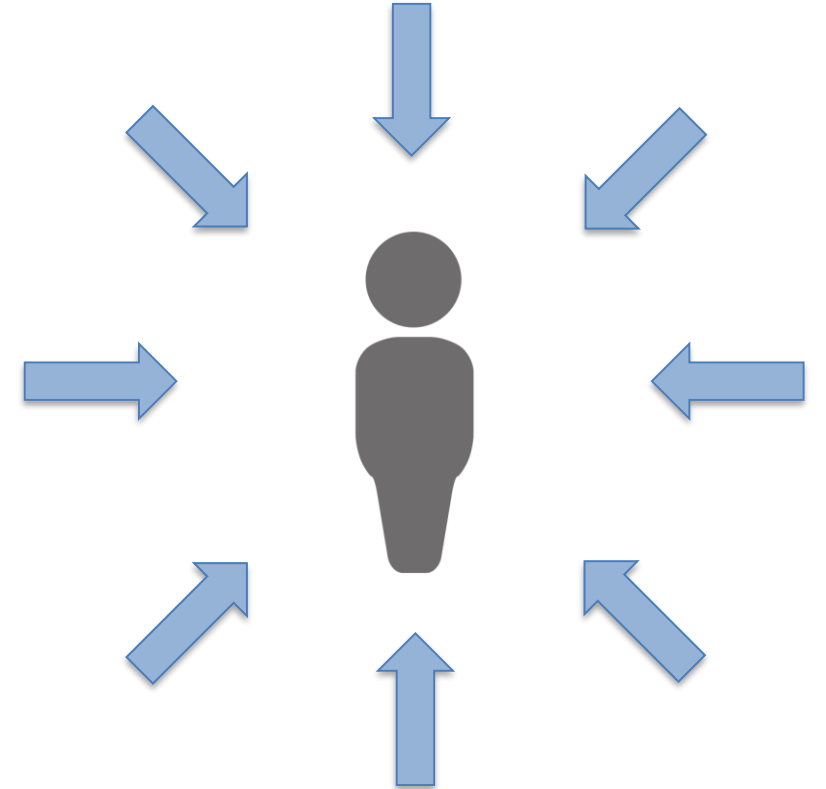
Number 64 of 2015

Assisted Decision-Making (Capacity) Act 2015

**Functional assessment:
time-specific and issue-specific**

The 'Relevant Person' in the Assisted Decision-Making (Capacity) Act 2015

- a person whose capacity is in question or may shortly be in question in respect of one or more than one matter,
- a person who lacks capacity in respect of one or more than one matter, or
- a person who falls within paragraphs (a) and (b) at the same time but in respect of different matters



Functional assessment in common law and policy

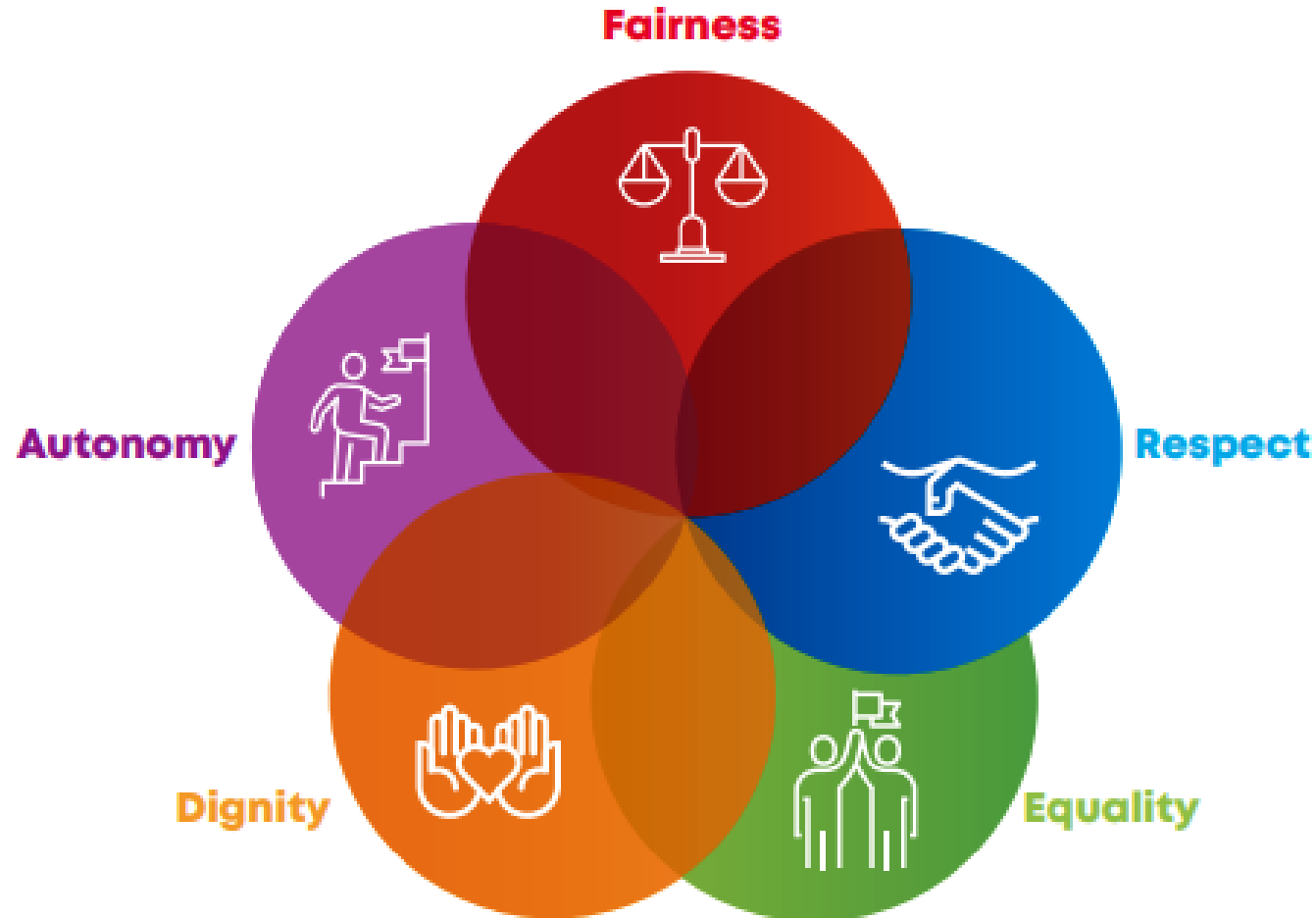
- Fitzpatrick & Anor –v- K. & Anor, [2008] IEHC 104 (2008)
- Governor of X Prison -v- P. McD. [2015] IEHC 259
- HSE: National Consent Policy:
...cognitive deficits are only relevant if they impact on decision making
- Irish Medical Council: Guide to Professional Conduct & Ethics (8th Edition 2019)

Statutory Guiding Principles for ‘Interveners’

- Presumption of capacity: already applies
- Steps must be taken to maximise capacity and encourage participation
- ‘Right to be unwise’
- Minimal intervention
- Respect for dignity, bodily integrity, privacy and autonomy
- Give effect to past and present will and preferences
- No reference to ‘Best Interests’
- Act in good faith and for the benefit of the relevant person



FREDA principles in Health and Social Care Services



Categories of Decisions

Property and affairs including:

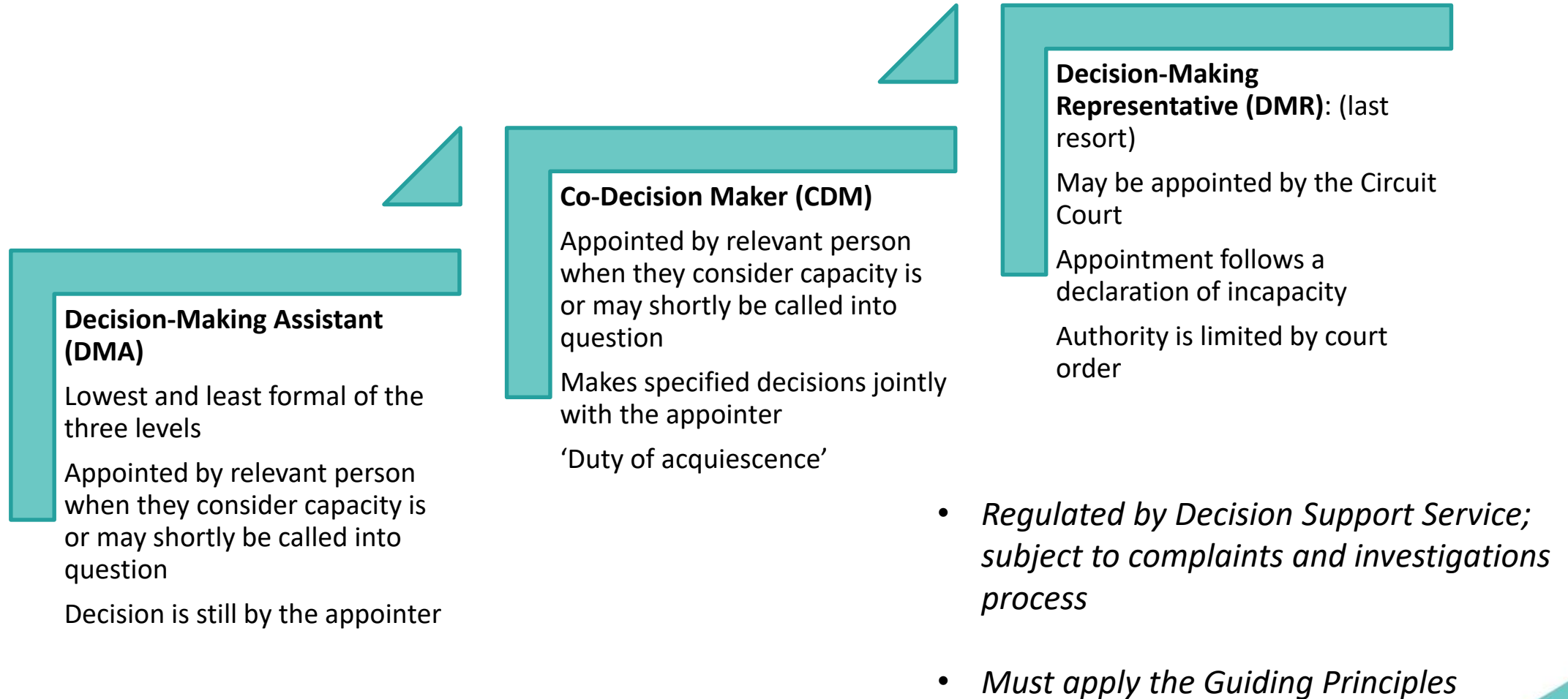
- Custody, control and management of property
- Sale, exchange, mortgage, gift etc. of property
- Acquisition of property
- Carrying on of business
- Discharging debt and liabilities
- Providing for other persons
- Conduct of court proceedings
- Applying for housing, social welfare or other benefits

Personal Welfare

- Accommodation
- Education and training
- Social services
- Healthcare
- “...other matters relating to the relevant person’s wellbeing”



Tiered framework of 'Decision Supporters'



Advance Planning



- ❑ Enduring Power of Attorney (EPA): can be authorised to make healthcare decisions

- ❑ Advance Healthcare Directive:
 - to enable persons to be treated according to their will and preferences
 - to provide healthcare professionals with information about treatment choices
 - may appoint a designated healthcare representative

Decision Support Service

- Integrated office within the Mental Health Commission
 - Implementation project is underway
 - Service design:
 - public-facing
 - accessible
 - person-centred
 - digital first
 - Amending legislation and regulations are in drafting
- Director's duties include:
 - Promote public awareness and confidence
 - To provide information and guidance to organisations and bodies in relation to their interaction with relevant persons and decision supporters
 - To identify and make recommendations for changes of practices in organisations which may prevent a relevant person from exercising capacity
 - To appoint panels
 - To publish codes of practice

Section 91: AHDs

- Multidisciplinary Working Group, appointed by Minister for Health, has drafted:
- Code on how to make an AHD
- Code of Practice for DHRs
- Code of Practice for Health and Social Care Professionals on AHDs



Section 103

- Working Group has also drafted code to provide guidance for healthcare professionals:
 - On assessing capacity and supporting decision-making
 - On circumstances where urgent treatment can be carried out without consent of the relevant person
 - On dealing with relevant persons
- Public consultation prior to publication



“Nothing about me without me”

Concluding Comments

Thank You

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