

TECHNICAL ALERT 04/2023

Help sheet on the appointment of a Decision-Making Representative under the Assisted Decision-Making (Capacity) Act 2015

This publication has been jointly developed by the member bodies of the Consultative Committee of Accountancy Bodies – Ireland (CCAB-I), being the Institute of Chartered Accountants in Ireland, The Association of Chartered Certified Accountants, The Institute of Certified Public Accountants and Chartered Institute of Management Accountants.

June 2023

Version 1

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Introduction

This help sheet signposts certain features of the Decision Support Service (DSS) as it may relate to the work of our members in their role as a professional accountant.

The DSS is a new statutory service established under the [Assisted Decision-Making \(Capacity\) Act 2015](#) and by the [Assisted Decision-Making \(Capacity\) \(Amendment\) Act 2022](#) collectively referred to in this document as the 2015 Act. The DSS is part of the Mental Health Commission but has a new and separate role. The legislation has replaced wardship for adults and introduced a new protection regime and legal framework of supported decision-making for vulnerable adults. An individual can be appointed to one of a number of roles under the 2015 Act to assist a vulnerable person.

The 2015 Act commenced on 26 April 2023 with the effect that people will no longer be able to be made a Ward of Court. All current Wards of Court will be reviewed and discharged from wardship within three years. The court will decide whether or not a current Ward of Court will require a decision supporter. Further information is available from [the Office of the Wards of Court](#) in the Courts Service.

Decision Support Arrangements

Decision support arrangements are legally recognised arrangements for people who need support to make certain decisions.

The DSS provide five different types of support arrangements for people who have challenges with their capacity and who may need support to make certain decisions. These arrangements are based on the different levels of support that a person requires to make a specific decision at a specific time.

A professional accountant is most likely to encounter the services of the DSS as a decision-making representative. This help sheet therefore focuses on the [Decision-making representation order](#).

The following are other types of support arrangements within the remit of the DSS. They are outside the scope of this help sheet; however, more information is available at the following links:

- [Decision-making assistance agreement](#)
- [Co-decision-making agreement](#)
- [Advance healthcare directive](#)
- [Enduring power of attorney](#)

Decision-making representative

Where possible, the court will make an order appointing someone the person knows and trusts into this role. If there is no one suitable who is willing or able to act, the panel is available to the Circuit Court under Part 5 and the Wardship Court under Part 6.

A DMR's role is to make certain decisions on behalf of a relevant person if they are unable to make those decisions themselves. As a DMR can be appointed to make decisions about property and affairs matters, a professional accountant may be appointed to the [Panel](#).

The DMRs role is to make certain decisions on the relevant person's behalf while taking their wishes into account. The decisions that a DMR will be required to undertake may involve property and affairs or personal welfare decisions or both. This will be written down in a [decision-making representation order](#).

The DSS will maintain a register of decision-making representation orders. There is more information on the DSS register below.

Decision-making representatives must send a written report to the DSS every year, however, the court can require a DMR to send reports to the DSS more frequently. This report will include details of big decisions taken as part of the order. The report will also include details of the financial matters related to the order, including any costs or expenses. The DSS has not yet provided commentary on the level of assurance that will be sought from annual reports provided from a DMR. We will provide more information on this as it becomes available. We are also seeking further information around the measurement bases should be used when preparing these accounts.

It should be noted that upon appointment by the court of a decision-making representative the decision-making representation order is the legal basis for all actions taken by a DMR. This will outline the decisions the DMR will have responsibility for and make provision for other matters the court thinks appropriate.

We recommend that a professional accountant who is appointed as a DMR should also have a letter of engagement in place.

A DMR appointed to make decisions about a person's property and affairs must within 3 months of their appointment submit a schedule of the person's assets and liabilities and a projected statement of the persons income and expenditure. The yearly report will contain information on all transactions relating to the arrangement, for example, the purchase or sale of property.

The DSS can investigate complaints that a DMR has acted, is acting, or is proposing to act outside the scope of, or in breach of his or her functions as set out in the court order, or in breach of the guiding principles or codes of practice. They can also investigate a DMRs suitability to perform in the role. The DSS may ask a general or special visitor to talk to a DMR or they may contact the DMR directly as part of an investigation of a complaint.

Professional Indemnity Insurance, Remuneration and Legal Advice

As part of the eligibility requirements for appointment to the Panel the DSS requires that applicants must hold professional indemnity insurance to cover acting as a decision-making representative and proof of this is required prior to appointment to the Panel.

The 2015 Act and [S.I. No. 203/2023](#) deals with remuneration and provides for reimbursement out of assets of fair and reasonable expenses. A DMRs' remuneration is linked to the court's direction in a decision-making representation order and the Act states there is entitlement to reasonable remuneration for performance of functions.

Further information is available at section 10 of the [Candidate Information Booklet](#) and the [Code of Practice for Decision-Making Representatives](#). See also the Assisted-Decision Making (Capacity) Act 2015 ([Payment of Certain Expenses and Remuneration to Decision-Making Representations Regulations 2023](#)) which makes certain provisions for travel expenses and for certain provisions regarding remuneration.

The 2015 Act provides that a party to an application under Part 5 of the Act (which is the part on applications to court) shall qualify for legal advice under the Civil Legal Aid Act 1995. We also understand that the [Legal Aid Board](#) will have some information on their website on a scheme for legal aid for individuals entering into arrangements.

Capacity

In the context of appointment of a DMR, under the 2015 Act the Circuit Court has power to make declarations as to capacity and to make orders and appoint a DMR. The [DSS guide to a decision-making representation order](#) provides some further guidance including a section on before an application is made to court. The Circuit Court rules on the 2015 Act ([S.I. 201/2023](#)) provides that a capacity application is to be supported by a report from a registered medical practitioner or healthcare professional. Also, in an application to vary/discharge a DMR if the application refers to an alleged change in capacity the application must be supported by a medical report or updated medical report from a registered medical practitioner or a healthcare professional.

A high degree of caution should be exercised by members in this situation and notwithstanding the above statements in the Code it is in general inadvisable and not recommended that a professional accountant would assess capacity of any individual.

Professional Accountant acting as a decision supporter in professional vs personal capacity

A professional accountant may be asked to act as a decision supporter and should be attentive to ensuring compliance with the Code of Ethics of their relevant professional body. They may also be asked to act as a decision supporter to an individual in their personal capacity and must be aware of and heed the distinction between acting in their personal and professional capacity.

A professional accountant must also be mindful that if acting in their personal capacity they should not stray beyond their relevant Code of Ethics and any relevant codes of practice.

This help sheet does not provide any guidance to members seeking to act in their personal capacity. Members should ensure compliance with the relevant laws and regulations and appropriate professional advice should be sought in this regard.

The DSS Register

The DSS website gives information on the [register](#) and who can search the register.

Certain professionals and organisations will be able to search the Register once they are approved by the DSS. Family members and carers may also search the register if they can demonstrate to the DSS that they have a good reason to do so.

The DSS will be able to confirm that an order is in place. It will also be able to give them a certified copy of the order.

The DSS will keep the details of certain types of decision support arrangements including decision-making representation orders in a searchable [register](#). Each register will allow certain professionals, organisations and members of the public to confirm if a decision support arrangement exists. The DSS will also keep a record of every request made to search a register.

Individuals or organisations may need access to the register to make sure that a decision support arrangement is in place. Due to privacy and data protection laws, organisations such as banks, nursing homes and health and social care services, and individuals such as professional accountants, lawyers and registered health and social care professionals may need to confirm that a decision support arrangement is in place before talking to a decision supporter.

There are three categories of individuals who will be able to access the register:

- a) A recognised organisation that has been approved by the DSS;
- b) A member of a professional body that has been approved by the DSS; and
- c) A member of the public who can demonstrate that they have a legitimate interest in searching the register.

[S.I. No. 206/2023](#) Assisted Decision-making (Capacity) Act 2015 (Inspection of Registers and Receipt of Copies of Documents) Regulations 2023 sets out a list of prescribed persons including prescribed accountancy bodies which can become approved to inspect the register and get copy documents.

There is a [fee](#) to search the register and to get a certified copy of a decision support arrangement. Fees may vary depending on the level of access needed. The fee must be paid before access is granted. See [S.I. 202/2023](#) Assisted Decision-Making (Capacity) Act 2015 (Fees) Regulations 2023 which also sets out information on applicable fees.

The DSS has suggested, and it would be good practice that recognised organisations and professional bodies implement a policy around searching the register on a periodic basis to ensure an arrangement is still in place. This is because an arrangement may have been varied, revoked, amended or nullified. It could also happen that Temporary Prohibition Order has been put in place to prevent a decision supporter from acting while an investigation is ongoing.

Complaints

The DSS will review and investigate [complaints](#) about decision supporters and decision support arrangements. There are specific grounds for complaint including, for example, where the decision supporter is not doing their job as intended, or where they are helping with decisions that are not included in the decision support arrangement.

When a complaint is received, the DSS will review it and if the complaint is well founded it may ask the court to take certain actions. In some circumstances, this may mean removing a decision supporter from their role.

A complaint can be made by any person, via the DSS online Complaint Form, by email, post or over the phone.

It will be a criminal offence for any person to use fraud, coercion or undue pressure to induce a relevant person into making a decision support arrangement.

Resources

The DSS have a number of resources available on their [website](#) including Codes of Practice, guidance materials and forms. There are also useful links to other organisations and resources, how-to videos and FAQ pages.

[The Courts Service of Ireland](#) website provides general information on the Assisted Decision-Making (Capacity) Act 2015, and details of how to make an application to the Circuit Court.

The Irish Law Reform Commission (LRC) has produced a very useful [administrative consolidation of the Assisted Decision-Making \(Capacity\) Act 2015](#) which incorporates all amendments updated to 26 April 2023.

An independent website, [Assisted Decisions](#), is a useful centralised information resource for practitioners in the assisted decision-making field.

We recommended a template Schedule of Assets and Liabilities and Projected Statement of Income and Expenditure to the DSS in our submission to the public consultation. These are included at Appendix A for reference.

Appendix A

SCHEDULE OF ASSETS AND LIABILITIES AND PROJECTED STATEMENT OF INCOME AND EXPENDITURE OF [NAME]

1. The First Schedule sets out all the assets to which [NAME] is legally or beneficially entitled and the way such property is held.
2. The Second Schedule sets out all income which [NAME] receives and the sources of such income. *[set out here means by which NAME income is earned (e.g., employment) or the source of NAME income (e.g., social welfare benefits/pension) and the amount per week received from each means or source].*
3. The Third Schedule sets out all [NAME] debts and/or liabilities and the persons to whom such debts and liabilities are due.
4. [NAME] monthly outgoings amount to the sum of €x and the details of such outgoings have been set out in the Fourth Schedule. *[non exhaustive list; can be adjusted depending on the individual].*
5. To the best of my knowledge, information and belief, all pension information known to [NAME] relevant to this statement is set out in the Fifth Schedule.
6. The Sixth Schedule sets out the names of persons for whose support [NAME] is legally or morally liable.

FIRST SCHEDULE

Assets

1.

2.

SECOND SCHEDULE

Income

•

THIRD SCHEDULE

Debts and Liabilities

1.

FOURTH SCHEDULE

Monthly Expenditure

Food	€
Mortgage	€
Other loan repayments	€
Clothes and shoes	€
Broadband	€
Electricity/Gas/Other utilities	€
Holidays	€
School fees	€
Uniforms and books	€
Pocket money	€
TV Licence	€
Mobile phone	€
Hairdressers	€
Outings for self	€
Doctor	€
Medicines	€
Dentist	€
Club Subscriptions	€
Car tax	€
Petrol	€
Car insurance	€
Car maintenance	€
Christmas	€
Birthdays	€
Health Insurance	€
Total	€

FIFTH SCHEDULE

1. Pension scheme etc

SIXTH SCHEDULE

Persons for whose support [NAME] is legally or morally liable:

Please give details in this section of other people who [NAME] is legally or morally liable to support, for example children or any relative who relies on [NAME]. If there is no relevant person, strike through this section.

Name:	Address:	Age:
Name:	Address:	Age:
Name:	Address:	Age: