



seirbhís tacaíochta
cinnteoireachta
decision support service

Code of Practice for Independent Advocates



April 2023

This code should be read in conjunction with the Assisted Decision-Making (Capacity) Act 2015 (as amended). For the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions in the Act prevail.

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Introduction

1.0 Context and purpose of this code of practice

The Assisted Decision-Making (Capacity) Act 2015 (as amended) (the Act) establishes a modern legal framework for adults who require or may require support in exercising their decision-making capacity, either now or in the future.

The purpose of this code of practice is to provide guidance to independent advocates in the context of the Act. This code is separate to the codes of practice for professional advocates which include legal practitioners, financial professionals and healthcare professionals.

In reading this code of practice, any reference to particular sections and chapters are referring only to those included within this code and not to the Act.

1.1 Supporting decision-making

Supporting a person to make a decision means giving them the tools they need to make the decision for themselves, or to participate in the decision-making process to the fullest extent possible. This can be done through formal decision support arrangements.

1.1.1 Relevant person

A relevant person is the umbrella term used to describe a person who requires or may require support to make a decision. This is a person:

- whose capacity is in question or may shortly be in question in respect of one or more matters (i.e., a person who may have difficulty reaching a decision without the support of someone);
- who lacks capacity in respect of one or more matters (i.e., a person who may be able to make some decisions but not others); or
- whose capacity is in question or may shortly be in question in respect of one or more matters, and who lacks capacity at the same time but in respect of different matters.

Other or additional terms may be used to describe the relevant person within each of the decision support arrangements.

1.1.2 Decision support arrangements

Five formal decision support arrangements are available under the Act. Two of these are for the purposes of advance planning:

- advance healthcare directive; and
- enduring power of attorney.

Three are based on the level of support that a person requires to make a specific decision at a specific time:

- decision-making assistance agreement;
- co-decision-making agreement; and
- decision-making representation order.

A decision supporter is the umbrella term used in this code of practice to describe a person appointed to any of the five formal decision support arrangements.

1.1.3 Role of advocacy in supporting decision-making

For the purpose of this code of practice, advocacy may be defined as working to ensure that a relevant person's decision is articulated and respected.

The role of advocacy is to support and enable people who have difficulty in exercising their rights, expressing their views, exploring options, and making informed choices. Your role is not to make decisions on the part of the relevant person.

Many people may carry out informal advocacy tasks on behalf of a relevant person, for example, family members, friends, and professionals in the course of their professional role. This is separate to the role of an independent advocate in the context of the Act.

1.2 Independent advocacy

1.2.1 Independent advocacy

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.

Delivering a professional independent advocacy service means providing a trained independent advocate who, on the basis of an understanding of a relevant person's will and preferences, will support that person to make a decision and who will, if appropriate, go on to negotiate or make a case for them.

1.2.2 Independent advocates

Independent advocates are recruited, vetted, trained, supported, and supervised by an advocacy organisation. Their work is guided by the quality standards, robust policies, and guidelines of the advocacy organisation with which they are affiliated.

An independent advocate may work with and for the relevant person, where they have difficulty expressing their will and preferences with regard to a specific issue.

In the context of the Act, some of these functions may be provided by a formal decision support arrangement. However, an independent advocate may still work with a relevant person if they have a formal decision support arrangement in place, as described in section 2.2.

1.3 Further guidance

Further information and guidance is available on our website [Decision Support Service](#) or by contacting us.

1.3.1 Other codes of practice

You should read the code of practice on supporting decision-making and assessing capacity in the first instance. This describes how to support decision-making through applying the guiding principles of the Act as best practice when working with a relevant person.

You may wish to read codes of practice for:

- decision supporters appointed under the five formal decision support arrangements; and
- other professionals with whom you may be interacting such as healthcare professionals and special and general visitors.

1.3.2 Other guidance

Where relevant, you may wish to consult your own professional body for guidance, including for relevant codes of conduct and practice directions.

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Understanding your role

2.0 Introduction

In undertaking the role of independent advocate in the context of the Act, you must:

- be aware of how a relevant person may access and consent to independent advocacy services;
- check if the relevant person has a decision support arrangement in place and if so, where your role overlaps with that of the decision supporter;
- understand how to interact with others;
- understand any potential conflicts of interest and not undertake the role of independent advocate where you consider one might exist; and
- be familiar with the eligibility terms to act as an independent advocate.

2.1 Commencing independent advocacy services

2.1.1 Accessing advocacy services

A relevant person can access an independent advocate through:

- self-referral, where a relevant person contacts an advocacy organisation and requests its services; or
- referral by a third party, where an individual or organisation, such as a family member, healthcare professional, care worker, or financial professional, who considers that a person could benefit from an independent advocate, makes contact with an advocacy organisation.

2.1.2 Consent

You should secure the consent of a relevant person before providing independent advocacy services in the context of the Act.

You should follow your own professional or organisational guidance in obtaining consent, for example, by using a 'Consent to Act' form issued by your advocacy organisation. The consent should clearly state the issue or issues on which the relevant person authorises you to act.

Where you cannot obtain written consent, you should attempt to obtain consent by other means, which may include verbal or non-verbal consent.

The consent should be witnessed by a third party such as a family member, care worker or a professional interacting with the relevant person.

Where the relevant person has clearly indicated that they do not want advocacy services, you must respect this decision and make a record of it.

2.2 Interacting with decision supporters

2.2.1 Providing support to the relevant person

You may provide advocacy services to the relevant person who has a decision support arrangement in place, where the relevant person has given consent for you to do so.

You must clarify how to proceed where overlap exists between your remit and that of a decision supporter. Where practicable to do so, you may work together for the benefit of the relevant person.

Where the relevant person is unable to give consent, and you have established the existence of a decision support arrangement, you should not pursue the provision of independent advocacy services.

You may still be able to provide support to the decision supporter where appropriate, as described in section 2.2.2.

If you are concerned that a decision supporter appointed under a formal decision support arrangement is not applying the guiding principles when interacting with a relevant person, you should follow the steps described in section 3.7.3.

2.2.2 Assisting decision supporters

Where the relevant person is unable to give consent, you may still be able to indirectly support them through providing independent advocacy services to their decision supporter. For example, a decision-making representative may request the services of an independent advocate to help them ascertain the relevant person's will and preferences in respect of a specific decision in the decision-making representation order.

2.3 Interacting with others

2.3.1 Interacting with other professionals

You may be contacted by, or seek to contact, other professionals in ascertaining the relevant person's will and preferences, or to clarify other issues where the relevant person has difficulty voicing their wishes with regard to a specific decision.

In interacting with other professionals, you must have due regard for the relevant person's confidentiality and privacy and ensure you only disclose information which you are permitted to and that is necessary to allow for appropriate consultation.

2.3.2 Interacting with general and special visitors

The Decision Support Service maintains a panel of general visitors and special visitors to assist with the supervision of decision supporters as well as the investigation of complaints.

The Decision Support Service may instruct a general or special visitor to visit the relevant person, decision supporter, and other people as necessary. A special visitor

will only be sent where an assessment of the relevant person's capacity is required as part of the visit.

Both general and special visitors are authorised to request specific information, from you. You must not obstruct a general visitor or special visitor in carrying out their visit. You should facilitate the visitor and their requests for information, insofar as is practicable and reasonable.

More information on special and general visitors can be found in the code of practice for special visitors and the code of practice for general visitors.

2.3.3 Interacting with others including family members and informal carers

In providing independent advocacy services to a relevant person, you may interact with family members and others who are providing informal support to the relevant person.

It is important to be aware that only those people formally appointed to a decision support arrangement have the legal authority to provide support to the relevant person when a decision needs to be made. This includes the obtaining of personal information, as well as interpreting the will and preferences of the relevant person. However, when the relevant person has capacity to do so, they may consent to a person obtaining information for them and providing them with support for specific decisions.

2.4 Conflict of interest

As an independent advocate, you must be free from conflicts of interest and must not exercise undue pressure or influence on the relevant person. You must not try to persuade the relevant person to choose one particular outcome over another.

You should not undertake the role of independent advocate where you consider there may be a conflict of interest.

2.5 Ineligibility to act as an independent advocate

People engaged in other forms of advocacy, who do not meet the description of an independent advocate as described in section 1.2, are not independent advocates for the purposes of this code of practice.

There are also people who, due to their relationship with the relevant person, may carry out advocacy tasks on behalf of the relevant person but may not be suitable to act as an independent advocate due to a potential conflict of interest. They include:

- family members and friends of the relevant person;
- anyone providing care for the relevant person in a paid or professional capacity; and
- the owner, registered provider, employee or agent of a support or care facility where the relevant person lives.



Acting as an independent advocate

3.0 Introduction

This chapter describes actions you may take as an independent advocate in supporting the relevant person to exercise their decision-making autonomy, express their views, explore options, and make fully informed decisions.

Your role is to support the relevant person according to their needs so that they participate in the decision-making process as much as possible.

As an independent advocate, you do not have authority to make decisions with, or on behalf of, the relevant person.

3.1 Apply the guiding principles

You should understand and apply the guiding principles underpinning the Act as best practice. Actions described in this code of practice reflect the guiding principles.

The principles give guidance on how to engage with the relevant person. These principles are based on respect for the relevant person's privacy, dignity, and autonomy. This means that you must recognise the relevant person's right to have control over decisions that affect their life. Your role is to understand and work within the support needs of the relevant person.

A detailed guide to the guiding principles is set out in the code of practice on supporting decision-making and assessing capacity which you should read before undertaking your role as an independent advocate.

3.2 Ascertain will and preferences

In undertaking the role of an independent advocate, you must act in accordance with the known will and preferences of the relevant person. This includes those expressed in the past if the relevant person is unable to communicate their current will and preferences.

3.2.1 Work to understand the relevant person's communication methods

As an independent advocate, you should take the time to get to know the relevant person and understand their methods of communication. You must listen and engage in a non-judgemental manner, paying attention to the relevant person's words, tone, and body language.

You should help the relevant person to express their will and preferences through their preferred methods of communication. This could be verbally or through sign language, language interpretation, images, assistive technology, or by other means. If there is a time and place where the relevant person's communication is best, you should accommodate this.

3.2.2 Consult others to better understand how the relevant person communicates

Where appropriate, you may consult with people who know the relevant person well to better understand their preferred methods of communication, as described in section 2.3. Such people may be able to help you communicate with the relevant person directly, or they may be able to better interpret the relevant person's expressed will and preferences.

In consulting others, you must have due regard for the relevant person's confidentiality and privacy and not disclose any personal or sensitive information to a third party.

3.2.3 Concerns regarding will and preferences

There may be situations where you are concerned about the relevant person's expressed will and preferences for a specific decision.

You should discuss your concerns with the relevant person and, where appropriate, provide further information to ensure they are considering the risks and benefits of all available options.

You must not exercise undue pressure or influence on the relevant person. You must not try to persuade the relevant person to choose one particular outcome over another. Further information on how to deal with a conflict of interest is provided in section 2.4.

3.3 Provide and explain information

3.3.1 To support making a specific decision

The relevant person may need information about a decision they must make. They may need to know what the decision involves and what the options are, as well as the consequences of each option, including the consequences of doing nothing.

You should gather information about the relevant decision and present it to the relevant person in an appropriate and accessible way. Where possible, you should obtain information in a format suitable for the relevant person's needs.

In keeping with the guiding principles, you should use all reasonable means to assist and facilitate the relevant person to understand the information presented. You should also check that the relevant person has understood all information presented to them.

3.3.2 Information about decision support services

During your work as an independent advocate, you may engage with a person who you consider would benefit from having a decision support arrangement in place. This encompasses both those who may benefit from decision-making support now, and those who are interested in advance planning for a time when they may lack capacity. It may also include people who are currently wards of court. In this context your role may be to provide the relevant person with information in an accessible format to enable them to access appropriate supports and services.

Where you consider it appropriate, depending on the individual circumstances of the relevant person, you may provide information on the decision support arrangements available under the Act. In doing so, you should discuss the implications of putting such an arrangement in place and the consequences of not doing so with the relevant person.

Information on these support arrangements is available from the Decision Support Service.

3.4 Help to communicate will and preferences

With the relevant person's consent, you can provide support by clarifying what the relevant person wants to convey to people who are not familiar with their methods of communication.

You may also help the relevant person with written communication, for example, in making applications for services or benefits to which the relevant person may be entitled.

You may attend meetings, appointments, and multi-disciplinary meetings alongside the relevant person with their consent. You may also attend meetings, even if the relevant person is unable to attend, so long as you have the relevant person's consent to do so.

If the relevant person wishes, you may speak to others on their behalf to communicate their will and preferences regarding a decision. This may include speaking with a family member, service provider, and a decision supporter.

3.5 Use information appropriately

In communicating with others, you should protect the confidentiality of the relevant person and not disclose any personal or sensitive information to a third party.

There may be situations, however, where you need to disclose information about the relevant person. The relevant person's information should be treated in a confidential manner and their right to privacy must be respected.

3.6 Assistance in court proceedings

As an independent advocate, you may be requested to assist the relevant person where they are involved in a court or tribunal proceeding. This may involve:

- helping the relevant person to understand instructions and information related to the case proceedings;
- explaining the process to the relevant person; and
- helping the relevant person to express their will and preferences to their legal representative.

In the case of court or other applications, the relevant person may not have instructed a legal practitioner.

If they do not have a decision supporter in place who is willing to assist them during the hearing, another person or a court assistant may be appointed by the court to assist the relevant person.

Where you are appointed to the role of another person or court assistant, you should follow the guidance in the code of practice for court assistants and 'another person' assisting in a court hearing.

3.7 Interacting with the Decision Support Service

3.7.1 Follow guidance and practice notes

Where appropriate, the Decision Support Service may issue guidance and practice notes and prescribe training for independent advocates. You should follow any guidance issued and training required in the performance of your actions as an independent advocate in the context of the Act.

3.7.2 Reporting requirements

An independent advocate is not required to submit routine reports to the Decision Support Service.

3.7.3 Reporting concerns or complaints

In carrying out your role as an independent advocate, you may have concerns about the relevant person's decision supporter(s). Reasons for a complaint might include that the:

- decision supporter has acted, is acting, or intends to act outside the scope of their authority;
- decision supporter is unable to perform their functions and duties;
- decision supporter has pressured the relevant person into appointing them; and
- relevant person did not have the capacity to make the appointment.

You should contact the Decision Support Service in the first instance should you have any concerns.



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