



seirbhís tacaíochta cinnteoireachta

decision support service

Complaints and Investigations Procedures

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Contents

| | |
|---|----|
| 1. Introduction | 4 |
| 1.1 Background | 4 |
| 1.2 Overview of the complaints process..... | 4 |
| 1.3 Purpose | 5 |
| 1.4 Scope..... | 6 |
| 2. Making a complaint..... | 7 |
| 2.1 Who can make a complaint?..... | 7 |
| 2.2 How do I make a complaint? | 7 |
| 2.3 What information should I provide?..... | 7 |
| 2.4 Who will my identity be shared with? | 8 |
| 2.5 What happens if I want to remain anonymous? | 8 |
| 2.6 Do I need legal representation?..... | 8 |
| 2.7 Is there a time limit for making a complaint?..... | 9 |
| 3. Role of the DSS in investigating complaints..... | 10 |
| 3.1 What complaints can we investigate? | 10 |
| 3.2 Own initiative investigation | 10 |
| 3.3 Grounds for making a complaint | 11 |
| 4. Screening your complaint | 16 |
| 4.1 What happens after you receive my complaint?..... | 16 |
| 4.2 What happens following initial contact? | 16 |
| 4.3 What happens if my complaint is outside remit?..... | 17 |
| 4.4 Complaints within our remit relating to offences under the 2015 Act | 17 |
| 5. Investigating a complaint..... | 19 |
| 5.1 What powers does the Director have when investigating a complaint?..... | 19 |
| 5.2 What is the timeframe for investigating a complaint? | 19 |
| 5.3 What information is gathered during the investigation? | 19 |
| 5.4 Will I be updated in relation to my complaint? | 20 |
| 5.5 What happens if I withdraw my complaint?..... | 20 |
| 5.6 Role of special and general visitors..... | 20 |
| 5.7 Interviewing witnesses..... | 21 |
| 5.8 Temporary prohibition order..... | 22 |
| 6. Outcomes of an investigation | 24 |
| 6.1 What are the possible outcomes of an investigation? | 24 |

| | |
|---|----|
| 6.2 What happens if my complaint is well-founded? | 24 |
| 6.3 What happens if my complaint is not well-founded? | 24 |
| 6.4 What is an internal review? | 25 |
| 6.5 Who can seek an internal review and how can it be made? | 25 |
| 6.6 How will the internal review be conducted? | 26 |
| 6.7 Informal resolution | 27 |
| 6.8 Application to court for a determination..... | 28 |
| 6.9 Referral of information to the National Vetting Bureau..... | 28 |
| 7. Fair procedures | 29 |
| 7.1 How will fair procedures be applied in investigating a complaint? | 29 |
| 7.2 Conflict of Interest policy for staff and panel members | 30 |
| 7.3 What assistance will be available for people with disabilities? | 30 |
| 8. Data protection and Freedom of information | 31 |
| 8.1 How will my personal information be used? | 31 |
| 8.2 Document review..... | 31 |
| 9. Legal disclaimer..... | 32 |
| 9.1 What this policy is intended to do | 32 |
| Appendix 1 Glossary..... | 33 |
| Appendix 2 Statutory powers to investigate a complaint..... | 37 |
| Appendix 3 Functions of decision supporters..... | 39 |
| Appendix 4 Guiding principles | 43 |
| Appendix 5 Offences | 52 |

1. Introduction

1.1 Background

The Assisted Decision-Making (Capacity) Act 2015, as amended, (the '2015 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 overall aim of the Decision Support Service (DSS) is to promote the rights and interests of people who may need support with decision-making. Under the 2015 Act, the DSS is authorised to investigate complaints about appointed decision supporters and decision support arrangements.

1.2 Overview of the complaints process

Throughout this document:

- 'We' and 'us' refer to the Complaints and Investigations Team (the "C&I Team") in the DSS with delegated power to act on behalf of the Director
- 'My' in relation to 'my complaint' refers to the person making a complaint
- 'You' and 'I' refer to the reader, who may be the person making the complaint, the person who has had a complaint made about them, or any other relevant party.

Please see Appendix 1 for a Glossary (a description of other terms used in this document).

When we receive a complaint, our first step is to review the information provided, and to discuss the issues raised with the complainant. This may provide an opportunity for us to clarify any misunderstanding they may have about the role of the appointed decision supporter. Providing clear information about the role at this early stage may result in the complaint being withdrawn.

We will always check to make sure that the complaint relates to something we can investigate – in other words, that it is within our area of responsibility (our remit) as provided under the 2015 Act. If we cannot accept the complaint, we will write to the complainant to explain why, and provide the names of other organisations that might be able to help.

If the complaint relates to an alleged criminal offence, we will refer the matter to An Garda Síochána.

It may also be necessary for us to engage with the relevant HSE Safeguarding and Protection Team if a complaint relates to a safeguarding concern.

The purpose of our investigation is to form a preliminary view as to whether, on the balance of probabilities, the complaint is well-founded. Well-founded means that we consider the complaint to be more likely than not to be true, based on the information and evidence we have gathered.

It will be possible for the parties to the complaint to ask us to review how we arrived at our preliminary view before we finalise the outcome.

Where we consider the outcome to be well-founded, we can help the parties to resolve it informally, provided they want to keep the arrangement in place and where it is appropriate to do so. Alternatively, we can make an application to court. An application to court could result in the court deciding to remove the decision supporter from the role.

Where we consider the outcome to be not well-founded, we will advise the complainant of their right to appeal this outcome to court within three months.

If, during an investigation, an arrangement is revoked or rescinded, or the decision supporter resigns, we will generally discontinue with the investigation. An exception to this is where the complaint relates to an allegation that fraud, coercion, or undue pressure was used on the relevant person to make them revoke the decision support arrangement.

In reviewing and investigating complaints, we will ensure that our processes are conducted in an impartial and fair manner. We will ensure that fair procedures are applied, natural justice is followed, and that our views are evidence based.

Please see Appendix 2 for more information about our statutory powers to investigate complaints.

1.3 Purpose

The purpose of this document is to provide you with information about:

- Who can make a complaint

- How you can make a complaint
- What complaints we can investigate
- What happens after you make a complaint
- What happens if you withdraw your complaint
- The possible outcomes of the complaints process
- How we manage information and apply fair procedures.

1.4 Scope

These complaints procedures are for the information of:

- Any person who wishes to make a complaint under the 2015 Act. We call this person the complainant in this document
- Any person who is the subject of a complaint under the 2015 Act. We call this person the respondent in this document
- Any person who is called as a witness to provide evidence or supply information as part of an investigation
- All DSS staff members and panel members.

In reading these procedures, reference to particular sections should be understood as referring to sections within this document unless the 2015 Act is specified.

2. Making a complaint

2.1 Who can make a complaint?

Any person, including but not limited to a relevant person, appointer, donor, or directive-maker, can make a complaint about an appointed decision supporter or a decision support arrangement.

2.2 How do I make a complaint?

To make a complaint:

1. You can visit our website [Decision Support Service](#) to download, complete and email or post a completed Complaint Form to us
2. If you are not able to download and complete a Complaint Form, you can send us a voice or video message, email, or phone us to make a complaint. We can also send you a copy of our Complaint Form in the post for you to complete and return to us.

If you need any assistance in making a complaint, please get in touch with us as follows:

Email: complaints@decisionsupportservice.ie

Phone: (01) 211 9750

Post: Complaints and Investigations Team, Decision Support Service, Waterloo Exchange, Waterloo Road, Dublin 4, D04 E5W7.

2.3 What information should I provide?

When making a complaint, you should provide:

- Your contact details
- The relevant person's details if you are not the relevant person
- Details of the person you are complaining about
- Details of the decision support arrangement you are complaining about
- Details of the complaint
- Details of other people who may be able to provide supporting information
- Your signature.

Please provide as much information as you can regarding the complaint as possible, including:

- Who is aware that you are making a complaint, for example, the person about whom you are making a complaint, the relevant person or other decision supporters
- Whether the matter that you are making a complaint about is ongoing or something that happened in the past
- How you would like us to communicate with you, for example, through the Portal, email, post or otherwise
- Any evidence such as documents or records which you think may be relevant to the complaint, for example, copies of financial statements, legal or healthcare records
- Where you believe the matter is urgent, please tell us why you consider this to be the case.

If you have some but not all the information listed above, please provide whatever information you have when making a complaint.

2.4 Who will my identity be shared with?

We will usually share your name and all the details you have provided in your complaint with the relevant person and the respondent. There are some exceptions to this, for example, where the complaint may give rise to safeguarding concerns. Please note that confidentiality cannot be guaranteed in any investigation.

However, you should be aware that, even where we do not share your identity, this may become apparent to the parties because of the details you provided or due to the nature of the issues you have raised.

2.5 What happens if I want to remain anonymous?

If we receive an anonymous complaint, we will review the information provided to see whether it comes within our area of responsibility. If it does, and we have enough information to proceed, we may treat it as an own initiative investigation. This is described in section 3.2.

A person who wishes to remain anonymous will not be notified of the outcome to an investigation.

2.6 Do I need legal representation?

You can make a complaint without the help of a solicitor. If you decide to obtain legal representation to make a complaint, you will be responsible for paying any associated costs.

2.7 Is there a time limit for making a complaint?

There is no set time limit for making a complaint. However, the Director has discretion under the 2015 Act to refuse to investigate a complaint where there has been undue delay. Therefore, we would ask you to make your complaint as soon as practicable so that we can examine the matter at the earliest opportunity. An undue delay in making a complaint could, for example, result in a relevant record or a key witness no longer being available. It could also mean that a person's memory of a key event or incident may not be sufficiently reliable to assist with our investigation.

Should this happen, we will write to let you know that we are unable to commence or continue with our investigation. You can ask us to review the decision and thereafter you can appeal the matter to court within three months.

Please see sections 6.4 to 6.6 for further information on our internal review process.

3. Role of the DSS in investigating complaints

3.1 What complaints can we investigate?

We can investigate complaints that fall within our remit under the 2015 Act. The grounds for making a complaint vary depending on the decision support arrangement in place as described in section 3.3. We can investigate complaints about:

- An appointed decision supporter and how they are performing their role
- A decision support arrangement, including how it was made, varied, revoked, or rescinded
- The use of fraud, coercion, or undue pressure to force a person to make, vary, revoke, or rescind a decision support arrangement.

Please see Appendix 3 for information about the functions of decision supporters and Appendix 4 for information about the guiding principles in the 2015 Act.

To find out more about how decision support arrangements can be made, varied, revoked, and rescinded, please visit our website [Decision Support Service](#).

3.2 Own initiative investigation

Where information comes to our attention that warrants follow up action other than by way of a formal complaint, we will undertake an own initiative investigation. This could relate to how a decision supporter is performing, how a decision support arrangement was set up, or how a decision support arrangement is working.

It is possible that, during the investigation of an existing complaint, additional matters may come to our attention which warrant investigation. In such circumstances, we will commence a separate investigation, and the investigation of those additional matters will be subject to a fresh set of investigative procedures, including timelines and due process.

In addition to our statutory powers to undertake own initiative investigations, we may also convert a complaint received to an own initiative investigation where:

- We receive an anonymous complaint as described in section 2.5

- The complainant withdraws a complaint, as described in section 5.5, but we consider it is necessary to proceed or continue with an investigation.

3.3 Grounds for making a complaint

The grounds for making a complaint about appointed decision supporters and decision support arrangements differ depending on the type of arrangement in place.

3.3.1 Decision-making assistant / Decision-making assistance agreement

Complaints in relation to decision-making assistants and decision-making assistance agreements are set out in Section 15(1) of the 2015 Act.

A person may make a complaint in writing to the Director concerning one or more of the following matters:

- a. That a decision-making assistant has acted, is acting, or is proposing to act outside the scope of, or in breach of, their functions as specified in the decision-making assistance agreement, or in breach of the 2015 Act
- b. That a decision-making assistant is unable to perform their functions under the decision-making assistance agreement
- c. That fraud, coercion, or undue pressure was used to induce an appointer to enter into, vary or revoke, the decision-making assistance agreement.

Acting outside the scope of or in breach of their functions, or in breach of the 2015 Act may include where a decision-making assistant:

- i. Fails to apply the guiding principles of the 2015 Act, as described in Appendix 4, when making an intervention
- ii. Fails to apply the code of practice for decision-making assistants
- iii. No longer meets a provision of the 2015 Act such as criteria for eligibility to be a decision-making assistant
- iv. Becomes disqualified from acting, or
- v. where circumstances give rise to nullity of the decision-making assistance agreement.

3.3.2 Co-decision-maker / Co-decision-making agreement

Complaints in relation to co-decision-makers and co-decision-making agreements are set out in Section 30(1) of the 2015 Act.

A person may make a complaint in writing to the Director concerning one or more of the following matters:

- a. That the co-decision-maker has acted, is acting, or is proposing to act outside the scope of, or in breach of, their functions under the co-decision-making agreement, or in breach of the 2015 Act
- b. The suitability of a co-decision-maker in relation to an appointer
- c. A co-decision-making agreement not being in accordance with the will and preferences of an appointer
- d. That an appointer did not, at the time of entry into the co-decision-making agreement, have capacity to make a decision to enter into the agreement
- e. That fraud, coercion, or undue pressure was used to induce an appointer to enter into, or to vary or revoke, the co-decision-making agreement
- f. That an appointer has capacity in respect of one or more of the decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker
- g. That an appointer no longer has capacity in respect of one or more of the decisions which are the subject of the co-decision-making agreement even with the assistance of the co-decision-maker.

Acting outside the scope of or in breach of their functions, or in breach of the 2015 Act may include where a co-decision-maker:

- i. Fails to apply the guiding principles of the 2015 Act, as described in Appendix 4, when making an intervention
- ii. Fails to apply the code of practice for co-decision-makers
- iii. No longer meets a provision of the 2015 Act such as criteria for eligibility to be a co-decision-maker
- iv. Becomes disqualified from acting, or
- v. where circumstances give rise to nullity of the co-decision-making agreement.

3.3.3 Decision-making representative

Complaints in relation to decision-making representatives are set out in Section 47(1) of the 2015 Act.

A person may make a complaint in writing to the Director concerning one or more of the following matters:

- a. That a decision-making representative has acted, is acting, or is proposing to act outside the scope of, or in breach of, their functions as specified in the decision-making representation order, or in breach of the 2015 Act
- b. That a decision-making representative is not suitable, having regard to the matters referred to in Section 38(5), to be a decision-making representative. Matters relating to suitability include:
 - i. The known will and preferences of the relevant person
 - ii. The desirability of preserving existing relationships within the family of the relevant person
 - iii. The relationship, if any, between the relevant person and the representative
 - iv. The compatibility of the representative and the relevant person
 - v. Whether the representative will be able to perform the functions vested in them
 - vi. Any conflict of interest.

Acting outside the scope of or in breach of their functions, or in breach of the 2015 Act may include where a decision-making representative:

- i. Fails to apply the guiding principles of the 2015 Act, as described in Appendix 4, when making an intervention
- ii. Fails to apply the code of practice for decision-making representatives
- iii. No longer meets a provision of the 2015 Act such as criteria for eligibility to be a decision-making representative
- iv. Becomes disqualified from acting.

3.3.4 Attorney / Enduring power of attorney made under the Powers of Attorney Act ('the 1996 Act')

Complaints in relation to attorneys appointed under the 1996 Act and enduring powers of attorney made under the 1996 Act are set out in Section 76(2) of the 2015 Act. Please note that the provisions of the 2015 Act do not otherwise apply in respect of attorneys appointed under the 1996 Act.

A person may make a complaint in writing to the Director concerning one or more of the following matters:

- a. That an attorney under the 1996 Act, is acting or is proposing to act outside the scope of the enduring power under that Act
- b. That an attorney under the 1996 Act is unable, for whatever reason, to perform their duties and obligations as construed in accordance with that Act

- c. That fraud, coercion, or undue pressure was used to induce a donor to appoint an attorney under the 1996 Act.

3.3.5 Attorney / Enduring power of attorney made under the 2015 Act

Complaints in relation to enduring powers of attorney made, and attorneys appointed under the 2015 Act, are set out in Section 76(1) of the 2015 Act.

A person may make a complaint in writing to the Director concerning one or more of the following matters:

- a. That an attorney has acted, is acting, or is proposing to act outside the scope of, or in breach of, their functions as specified in the instrument creating the enduring power of attorney, or in breach of the 2015 Act
- b. That an attorney is not a suitable person within the meaning of Section 59(6). This states that a person is suitable for appointment as an attorney if they are able to perform the functions of attorney as specified in the enduring power of attorney
- c. That fraud, coercion, or undue pressure was used
 - o to induce a donor to appoint an attorney, or to vary or revoke an enduring power of attorney
 - o to make a request to the Director to rescind their acceptance of the notification of the enduring power of attorney as a result of the donor having regained capacity
 - o to rescind the acceptance of the notification as a result of the donor having regained capacity and to recognise the revocation by the donor of the instrument creating the enduring power
- d. That the donor did not, at the time the enduring power of attorney was executed, have the capacity to make an enduring power of attorney
- e. That the donor did not, at the time the enduring power of attorney was registered, have the capacity to register an enduring power of attorney.

Acting outside the scope of or in breach of their functions, or in breach of the Act may include where an attorney:

- i. Fails to apply the guiding principles of the 2015 Act when making an intervention, as described in Appendix 4
- ii. Fails to apply the code of practice for attorneys
- iii. No longer meets a provision of the 2015 Act, such as criteria for eligibility
- iv. Becomes disqualified from acting.

3.3.6 Designated healthcare representative

Complaints and allegations in relation to designated healthcare representatives are set out in Section 88(4) of the 2015 Act.

A person may make a complaint or allegation in relation to the way in which a designated healthcare representative is exercising their relevant powers.

4. Screening your complaint

4.1 What happens after you receive my complaint?

We will acknowledge receipt of your complaint in writing within five working days and may seek additional information from you, if required.

We will review your complaint to check that it comes within our remit. A complaint may be considered outside of our remit where it is not covered by the 2015 Act, for example, where:

- It does not relate to an appointed decision supporter, or an arrangement made under the 2015 Act
- It does not match any of the grounds for complaint associated with the relevant decision support arrangement
- It does not relate to a breach of the 2015 Act, a breach of the codes of practice or the guiding principles.

Where possible, we will contact you by phone within 10 working days of receiving your complaint to:

- Clarify our understanding of your complaint
- Identify any issues that we are not permitted to investigate
- Check that we have all the relevant details to help us decide if the matter comes within our remit
- Clarify your understanding of the role of the respondent (the person about whom you are making the complaint) where applicable, including their responsibility to follow the relevant codes of practice and guiding principles
- Clarify what steps you have taken to try to resolve the matter, or if no steps have been taken, to help us understand the reasons why
- Help us prioritise and risk assess the case.

In some instances, it may be possible for us to clarify any misunderstanding you may have, for example, in relation to the role of the respondent. We may suggest ways in which you could attempt to resolve the complaint directly with the respondent, which could result in you withdrawing your complaint at this early stage.

4.2 What happens following initial contact?

Following our initial contact, and if the matter comes within our remit, we will write to you to confirm that we intend to investigate the complaint.

If we receive additional information from you over the phone following the initial complaint, we will provide you with our written account of the conversation and ask you to confirm that:

- This additional information is an accurate account of the issues you have raised and, if not, to amend the account
- You wish us to proceed with the investigation of these issues.

4.3 What happens if my complaint is outside remit?

If your complaint is outside our remit, we will write to you setting out the reasons why we consider this to be the case. We may suggest that you contact another organisation or body where appropriate.

In this instance, you can ask us to review our decision within 10 working days. The process of internal review is described in sections 6.4 to 6.6. If following this internal review, the outcome remains the same, we will write to you within five working days confirming that the complaint is outside our remit.

Where your complaint is outside our remit but raises an adult safeguarding concern, we will notify the appropriate HSE Safeguarding and Protection Team. Where your complaint is outside our remit but relates to an alleged offence, we will notify An Garda Síochána. In these situations, we will advise you to also contact the applicable organisation in relation to your complaint.

4.4 Complaints within our remit relating to offences under the 2015 Act

Where a complaint that is within our remit relates to an alleged offence, we may need to take urgent action before notifying the relevant person and/or the respondent about the complaint. Urgent action may involve notifying An Garda Síochána.

Examples of the type of offences which may require investigation by An Garda Síochána include:

- Using fraud, coercion, or undue influence to force another person to make, vary or revoke a decision support arrangement
- Ill-treating or wilfully neglecting the relevant person
- Making a statement which a person knows to be false when applying to register an arrangement with us
- Hindering or obstructing the Director or his/her staff when investigating a complaint.

Please see Appendix 5 for information about the Offences which may require referral to An Garda Síochána.

Where a criminal investigation is commenced by An Garda Síochána, we are required to proceed with our investigation as per the 2015 Act.

5. Investigating a complaint

5.1 What powers does the Director have when investigating a complaint?

When carrying out an investigation the Director has the power to:

- Summon witnesses to attend before him or her
- Examine on oath or affirmation a witness attending before him or her
- Require any such witness to produce any document in their power or control
- By notice, in writing, require **any person** to provide such written information that is considered necessary
- Investigate a complaint even though the complainant may be entitled to bring proceedings in any court about the matter
- Seek the resolution of well-founded complaints or own initiative investigations informally, as the Director considers appropriate
- Seek a temporary prohibition order to suspend a decision supporter from acting while an investigation is ongoing.

In carrying out an investigation, the Director may:

- Consult with any person who has any functions in relation to the care or treatment of a relevant person
- Request information relating to the carrying out of functions under this Act from decision-making assistants, co-decision makers, decision-making representatives, attorneys, designated healthcare representatives or relevant persons.

5.2 What is the timeframe for investigating a complaint?

We will aim to investigate a complaint and form a view as to whether it is well-founded within three months of receiving it. This is called the initial investigation period.

We can extend this initial investigation period by a further six months if required. In such instances, we will write to you and the other parties involved before the expiry of the initial investigation period, giving reasons for the extension. The extended period begins from the date of our written notice.

5.3 What information is gathered during the investigation?

The investigation process involves the gathering of facts, information, and responses from various sources. We have authority under the 2015 Act to

obtain any documents we consider relevant to an investigation without the need to seek the formal consent of the parties. We will write to the parties concerned to obtain any documents we may need to help us to carry out our investigation. This may include, for example, health, legal or financial records or statements, as required. We can also seek advice from a subject matter expert to assist us with our enquiries.

We will share information that we receive that is relevant to the investigation with the respondent in accordance with fair procedures and seek their response. For the respondent to defend themselves against the complaint, they will be given full details of the case made against them and have access to the relevant information we have gathered as part of our investigation. They will be given a reasonable period of time to respond.

5.4 Will I be updated in relation to my complaint?

We will keep in touch with you throughout the investigation, but we may not be able to provide detailed information. Our aim is to obtain as much information as quickly as we can and to form a view in relation to the complaint as soon as possible.

It is important that we protect the personal data of third parties involved in an investigation, such as decision supporters, family members and any person we call as a witness to help us with the complaint.

5.5 What happens if I withdraw my complaint?

If you decide to withdraw your complaint, we may close the case provided we are satisfied that there are no grounds for continuing with it.

However, if we consider that an investigation should continue, we will proceed using our 'own initiative' powers, as described in section 3.2. We will notify all relevant parties of our decision, and the respondent will be notified that the complaint is withdrawn.

5.6 Role of special and general visitors

When carrying out an investigation, we will contact the parties to the complaint to seek their responses and relevant documents. In some instances, we may visit the parties to the complaint ourselves or we may appoint a general or special visitor to carry out the visits and to send a report to us.

A special or general visitor may be asked to visit a relevant person, their appointed decision supporter, or any other person whom the Director considers necessary to visit (e.g., doctor, carer, service provider) to obtain further information about the relevant person.

Both special and general visitors are required to seek consent from the relevant person before examining or taking up records. Where consent is not forthcoming, the Director may require the person holding the records to send them to us. General visitors are not entitled to examine or take up any health record of a relevant person unless they are a registered medical practitioner.

Where a complaint has been received about the relevant person's capacity to make, vary, revoke, or rescind an arrangement, we can ask a special visitor to conduct a capacity assessment with the relevant person's consent. We may also ask a special visitor to undertake a capacity assessment of an appointed decision supporter with their consent, where a complaint is made about their continued ability to carry out their functions. A capacity assessment will normally be conducted in private.

5.7 Interviewing witnesses

As part of an investigation, we may need to speak to any person who can provide relevant information. A witness will be invited to attend at interview, but if they cannot attend, or refuse to attend, we can formally summon witnesses and ask them to give evidence under oath or affirmation.

Witnesses may also be asked to provide or bring certain documents with them to interview. Witnesses may attend the interview alone or may be supported by a person of their choice. As the investigation is confidential and private, they must notify the investigating caseworker of the support person's name and title in advance of the interview. A witness may bring a legal representative if they so wish, but they must bear any associated costs.

Any third party permitted to be present must understand that they:

- Are an observer, and may not take part in the discussion or interview
- Should not be a potential witness
- Cannot assist more than one witness to the investigation
- Must respect the confidentiality of the issues discussed in the interview.

We will record in writing all information provided by a witness during the interview. We will ask the witness to sign this record to verify that it is an accurate account of the information they have provided and, if not, to amend the statement. We will then share this statement, documents provided by the witness and any other relevant information with the respondent and invite their response.

The Director has discretion to pay witness expenses provided they have been properly incurred, for example, travel, subsistence, allowances by way of compensation for loss of his or her time. These will be calculated in line with the normal public service rates and conditions.

5.8 Temporary prohibition order

If, at any stage during an investigation, there is evidence to suggest that the relevant person or their property is at immediate risk of harm from their decision-making assistant, co-decision-maker, decision-making representative, or attorney, the Director has the power to apply to court for a temporary prohibition order, pending the outcome of the investigation.

The court may make a temporary prohibition order preventing the decision-making assistant, co-decision-maker, decision-making representative, or attorney from acting as such for the relevant person for a period as specified in the order.

In some cases, the application to court will be made *ex parte*, which means that the decision supporter is not notified before the application is made. Where an *ex parte* application is granted by the court, the decision supporter will be suspended from acting for a period, **not exceeding 14 working days**. The Director may then make a further application to court, which will be on notice to the decision supporter and the relevant person. At this hearing, the court may confirm the order and the order will have effect for a period as specified by the court.

Where the temporary prohibition order is granted by the court, we will, as soon as is practicable, serve a copy of the order and of the affidavit on the decision supporter concerned and on any other people identified by the Director and approved by the court.

The temporary prohibition order takes effect from the date that notice is served on the decision supporter concerned. We will notify the relevant

person that their decision supporter has been suspended on a temporary basis pending the outcome to our investigation.

While the temporary prohibition order is in place, a person may appoint a substitute decision-making assistant or co-decision-maker if they so wish.

Where the temporary prohibition order relates to a decision-making representative, any decisions that need to be made while the order is in effect may be made by the court. Alternatively the court may appoint a decision-making representative to make these decisions on behalf of the relevant person.

Where the temporary prohibition order relates to an attorney and no other attorney exists, decisions may be made by the court or by a court-appointed decision-making representative.

6. Outcomes of an investigation

6.1 What are the possible outcomes of an investigation?

There are two possible outcomes of an investigation. The complaint will be viewed as being either:

- Well-founded, or
- Not well-founded.

6.2 What happens if my complaint is well-founded?

If having received and examined all evidence, we believe that the complaint is well-founded, we will write to you, the relevant person, and the respondent, setting out the reasons why we have formed this view.

The respondent can ask us to review this based on specified grounds, within 10 working days of our letter. Information about the DSS review process is described in sections 6.4 to 6.6.

If no review is sought, we will write to the parties affirming our view that the complaint is well-founded.

Where the complaint is well-founded, we may make an application to court. This is further described in section 6.8.

However, where we believe the complaint has the potential to be resolved informally, following a finding that it is well-founded, we have discretion not to make an application to court.

Further information on the informal resolution of complaints is provided in section 6.7.

6.3 What happens if my complaint is not well-founded?

If having investigated your complaint, we consider that it is not well-founded, we will write to you to explain why.

You can ask us to review the outcome based on specified grounds within 10 working days.

If you do not ask for a review, we will then write to you affirming that your complaint is not well-founded.

You can appeal the matter to court within three months from the date of our notification.

6.4 What is an internal review?

An internal review is undertaken by a DSS staff member of a higher grade (reviewer), who has had no previous involvement with the management of the complaint and has no conflict of interest in reviewing it. The purpose of the internal review is to allow an opportunity to challenge our preliminary view.

A request for an internal review can be made on one or more of the following grounds:

- Challenging our consideration of the facts
- Challenging our application of the relevant statutory provisions, policies, and/or procedures
- New relevant evidence or information has become available that might have had a bearing on our preliminary view of the complaint
- Challenging the adequacy of the reasons we provided when setting out our preliminary view of the complaint, or our decision not to investigate the complaint due to:
 - The complaint being outside remit
 - Undue delay in making the complaint.

6.5 Who can seek an internal review and how can it be made?

An internal review may be requested:

- By the complainant, where we have said that the complaint is outside remit
- By the complainant, where we have decided not to proceed with the investigation because of undue delay in making the complaint
- By the complainant, where we have formed the preliminary view that the complaint is not well-founded
- By the respondent, where we have formed the preliminary view that the complaint is well-founded

A request for an internal review should be sent to us within 10 working days of being notified of our preliminary view. Requests can be made through the DSS portal, by email, letter or by downloading our Request for Internal Review (Complaints) Form from our website [Decision Support Service](#).

Where a request is made by phone and the requester is unable to send the request in writing, we will make a note of this and complete the Request for Internal Review (Complaints) form on their behalf. We will send the requester a copy of the form and seek confirmation, by whatever means appropriate to the requester, that what we have recorded is accurate.

6.6 How will the internal review be conducted?

The reviewer will:

- Examine the material available to the original caseworker along with any new information provided by the requester
- Share any new information with the original caseworker and seek their comments in relation to it
- Discuss the issues raised with the requester to seek clarification if required
- Consider whether further consultation is needed with any relevant party where none was undertaken, or if an earlier consultation did not address issues that have arisen in the internal review.

Where new information has been provided by the requester, the reviewer will additionally:

- Consider whether urgent action is required, which may result in the review being paused, or
- Share this new information with the relevant parties, inviting their comments.

The review will normally be completed within **20 working days** of receipt of the request. If this cannot be achieved, updates will be provided to the requester and the relevant parties as to the reason for the delay and the expected completion date.

Once the internal review is completed, the reviewer will write to **all parties** either:

- Affirming the original caseworker's preliminary view, or
- Overturning the original caseworker's preliminary view.

The reviewer will provide details of the actions taken as part of the internal review process, and the reasons for the particular outcome.

The reviewer will also inform the complainant about their right to appeal the outcome to court within three months where the complaint is considered not well-founded.

Where the complaint is well-founded, the reviewer will outline the possible next steps in the process. This will involve consideration by the Director of the potential to resolve the complaint informally, or of the need to make an application to court.

6.7 Informal resolution

Where we have investigated a complaint that we consider to be well-founded, it may be possible to informally resolve it, avoiding the need to make an application to court. This may be possible in some situations where, for example, the decision supporter is acting in good faith but has misunderstood their role.

Informal resolution is a voluntary process which is agreed to by the relevant person and their decision supporter. The aim is to find a way of keeping the decision support arrangement in place if the Director believes it is appropriate and if it is what the parties wish to do. The decision supporter must be willing to address the issues that have given rise to the complaint.

As part of the informal resolution process, we will engage with the relevant person and their decision supporter to help them to find a mutually agreeable outcome. This may include:

- Providing clarification or guidance to the decision supporter as to what is required of them to fulfil the role
- Facilitating communication between them to agree what actions need to be taken by the decision supporter to maintain the arrangement.

We will facilitate these discussions remotely or in person, as appropriate.

Where the parties agree a resolution, it will be recorded in writing and signed by the respondent. We will monitor the situation to ensure that the resolution reached is implemented and that the arrangement is working as it should.

The commencement of the informal resolution process must take place within three months of our well-founded letter.

6.8 Application to court for a determination

As referred to in section 6.2, where we consider that a complaint is well-founded and cannot be resolved informally, we may make an application to court to seek a determination on matters raised in the complaint.

This could result in the decision supporter being removed from the role.

We do not require the consent of the parties involved to make an application to court. Any application to court will be made on notice to the respondent and must include at a minimum, a copy of the complaint, a copy of the decision support arrangement and a copy of the decision.

6.9 Referral of information to the National Vetting Bureau

The Mental Health Commission, including the DSS, is a scheduled organisation under Section 19 of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012, as amended.

This means that where there has been an investigation in relation to a person by the DSS which causes a bona fide concern as described below, then the National Vetting Bureau must be informed.

A bona fide concern could include that the person may:

- Harm a vulnerable person
- Cause a vulnerable person to be harmed
- Put a vulnerable person at risk of harm.

Informing the National Vetting Bureau is subject to fair procedures. This means that we will notify the person in advance of our intention to inform the National Vetting Bureau of our concern.

7. Fair procedures

7.1 How will fair procedures be applied in investigating a complaint?

We are committed to ensuring that fair procedures and natural justice are applied throughout the investigation process and before we form any view about the complaint.

This includes, but is not limited to, ensuring that:

- We have a clear process around gathering and recording evidence, which can be verified subsequently
- We give the respondent reasonable notice of the complaint being made against them
- We provide the respondent with all relevant information and/or documents, including all relevant information provided by witnesses, and give them every reasonable opportunity to make a response
- We listen to the respondent, and we consider their responses before forming a view about the complaint
- We only reach a final view having considered all the evidence gathered during the investigation/internal review process
- We maintain an open mind throughout the investigation process, and recognise that the burden is not on the respondent to disprove the complaint
- We record the outcome in writing and by whatever other means appropriate, including the reasons for same
- Having prepared a draft Report, we provide adverse findings to the respondent and allow an opportunity to respond, before coming to a preliminary view which is shared with other relevant parties

In certain circumstances, where oral evidence is required as part of the investigation, we will usually hold face-to-face interviews with the respondent, complainant, relevant person, and others who may be relevant to the investigation. Where it is not possible to hold an interview face-to-face, we retain discretion in relation to how such interviews will take place (e.g., over the phone or by video conferencing).

The procedure in relation to holding interviews will be clearly set out, including how such evidence is to be recorded and verified.

7.2 Conflict of Interest policy for staff and panel members

All staff members assigned to your complaint have responsibilities and duties to ensure that the process of investigation is fair and impartial. Our staff carrying out investigations are obliged to ensure that they approach the investigation with an open mind, without any preconceptions based on their knowledge of similar events or the persons involved.

Our Conflict-of-Interest policy sets out how staff are expected to comply with identifying and acting on any potential conflicts of interest. Should a staff member (or a special or general visitor) identify that they have a conflict of interest when investigating a complaint, they are obliged to notify their line manager (or Head of Panel Management) who will reassign the case. A conflict of interest may include a situation where they know the complainant, the respondent, the relevant person, or the decision supporter.

7.3 What assistance will be available for people with disabilities?

If, due to a disability, you need any assistance in making a complaint to us, please let us know and we will assist you directly or you can contact our Access Officer. Alternatively, we can put you in touch with an independent advocate who will be able to support you.

8. Data protection and Freedom of information

8.1 How will my personal information be used?

All personal information received by us in relation to a complaint shall be used in accordance with the Data Protection Act 2018 and the Freedom of Information Act 2014 (FOI). The records generated during the investigation process are exempt from release under FOI legislation.

Personal information provided to us will only be used in line with the purpose for which it was provided, and it will not be shared with third parties unless allowed or required by law. We may use anonymised personal data for statistical purposes.

8.2 Document review

This document and our Complaint Form will be reviewed no later than two years from the first date from which it becomes effective or sooner if required by changes to the law.

9. Legal disclaimer

9.1 What this policy is intended to do

This policy is intended to explain how we deal with complaints under the Assisted Decision-Making (Capacity) Act 2015, as amended. It is not, nor is it intended to be, a definitive statement of the law in this area. You may wish to obtain your own independent legal advice when making decisions relating to any of the matters referred to in this document.

The Director of the DSS and the Director's staff are staff of the Mental Health Commission. Please note that the Mental Health Commission has a separate complaints policy for dealing with complaints about the way we conduct our business, our staff, and our special and general visitors. Further information on making a complaint is available on the website of the [Mental Health Commission](#).

Appendix 1 Glossary

Acting jointly or jointly and severally

Where more than one decision supporter has been appointed, the decision support arrangement can specify how the decision supporters are to interact with each other.

- Acting jointly means that the decision supporters must act together and cannot act separately.
- Acting jointly and severally means that the decision supporters can act together but they can also act separately.

Appointer

A person who is appointing another person(s) to be their decision-making assistant(s) or co-decision-maker(s).

Complaint

An expression or statement that something is unsatisfactory or unacceptable in relation to an appointed decision supporter or active decision support arrangement made to the DSS under the 2015 Act.

Complainant

A person who makes a complaint to the DSS under one of the grounds for complaint provided for in the 2015 Act.

Court

Any reference to “court” in this document means the Circuit Court.

Decision Supporter

A term used by the DSS to mean one of the five legally recognised supporters named in the 2015 Act. These are:

- Decision-making assistant
- Co-decision-maker
- Decision-making representative
- Attorney
- Designated healthcare representative.

Decision Support Arrangement

A term used by the DSS to mean one of the five legally recognised arrangements named in the 2015 Act. These are:

- Decision-making assistance agreement

- Co-decision-making agreement
- Decision-making representation order
- Enduring power of attorney, and
- Advance healthcare directive.

Directive-maker

A person who makes an advance healthcare directive.

Donor

A person who makes an enduring power of attorney.

DSS Portal

This is an online system where decision supporters and others can interact with the DSS in the context of decision support arrangements under the 2015 Act.

Fraud, coercion, or undue pressure

Fraud, coercion, and undue pressure are legal terms each of which may include the following:

Fraud may be where an individual dishonestly persuades another person to do something, or not do something, with the intention of making a gain for himself or herself, or causing loss to another person;

Coercion includes the use of force or threat to persuade someone to do something which they otherwise would not do, or to refrain from doing something;

Undue pressure means putting excessive and unjustified pressure on a person to do something which they otherwise would not do, or to refrain from doing something.

General visitor

A panel member appointed by the DSS to assist with its supervisory and investigative functions.

Neglect

This is when essentials such as food, heating, medication, or hygiene measures are withheld, or a person's money is not used for their own benefit. It includes ignoring medical or physical care needs, failing to provide access to appropriate health and social care, or educational services.

Independent advocate

A person who works in a professional capacity with and for a relevant person where they have difficulty expressing their will and preferences about a specific decision.

Informal resolution

A voluntary process facilitated by the DSS, following a finding that a complaint is well-founded. It aims to resolve the complaint by agreeing a course of action. It is only possible to facilitate informal resolution where the Director is of the opinion that this process is appropriate to the complaint.

Not well-founded complaint

This occurs when having investigated a complaint in accordance with the Complaints and Investigations Procedure the investigator is **not** satisfied on the balance of probabilities that the complaint is more likely than not to be true.

Personal welfare decisions

Under the 2015 Act and in the context of decision support arrangements, these include matters relating to accommodation, employment, education, training, social activities, social services, healthcare research, social care research, and well-being.

Property and affairs decisions

Under the 2015 Act and in the context of decision support arrangements, these include matters relating to finance, property, gifting, business, contracts, debts, taxes, benefits, and court proceedings.

Relevant decision

A relevant decision is a decision made, or to be made, that is the subject of a decision-making assistance agreement, co-decision-making agreement, a decision-making order, decision-making representation order, enduring power of attorney or advance healthcare directive.

Relevant person

A person whose decision-making capacity is in question or may shortly be in question in respect of one or more matters, or a person who lacks capacity in respect of one or more matters.

Requester (Internal Review)

A person who has requested an internal review of a complaints decision we have made.

Respondent

A person against whom a complaint has been made under the 2015 Act.

Reviewer (Internal Review)

A more senior member of the DSS Team who undertakes a review of a complaint, who has not been involved in the management of the complaint and has no conflict of interest in undertaking the review.

Special visitor

A panel member appointed by the DSS to assist with its supervisory and investigative functions with respect to the assessment of capacity.

Well-founded complaint

Having gathered relevant information in accordance with the Complaints and Investigations Procedure, and having regard to the balance of probabilities, the complaint is more likely than not to be true.

Witness

A person who can be summoned and examined under oath or affirmation to give evidence on matters of fact as part of an investigation.

Appendix 2 Statutory powers to investigate a complaint

Section 96 of the 2015 Act sets out the powers of the Director to investigate a complaint under the 2015 Act.

Section 96(1)

This section shall apply to an investigation carried out by the Director under section 15, 30, 47, 76 or 88(4) and a reference in this section to an investigation is a reference to an investigation to which this section applies.

Section 96(2)

The Director may, when investigating a complaint: -

- (a) Summon witnesses to attend before him or her
- (b) Examine on oath the witnesses attending before him or her
- (c) Require any such witnesses to produce to him or her any document in the power or control of the witness
- (d) by notice in writing, require any person to provide him or her with such written information as the Director considers necessary to enable him or her to carry out his or her functions.

Section 96(3)

The Director may investigate a complaint even though the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.

Section 96(4)

The Director may seek resolution of complaints, or of investigations on his or her own initiative, in such manner (including by any informal means) as the Director considers appropriate and reasonable.

Section 96(5)

The Director shall draw up procedures in relation to the making and investigation of complaints, or to investigations on his or her own initiative, as he or she considers appropriate and shall cause the procedures to be published.

Section 96(6)

An investigation by the Director under this Act shall be conducted otherwise than in public.

Section 96(7)

A person who—

- (a) fails to comply with a requirement under this section,
- (b) hinders or obstructs—
 - (i) the Director in the carrying out of an investigation, or
 - (ii) one or more of the Director's staff to whom the Director has delegated one or more functions under section 98(2) regarding the carrying out an investigation,

shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

Section 96(8)

The Director may, if he or she thinks fit, pay to a witness summoned to attend before the Director under subsection (2)-

- (a) sums in respect of travelling and subsistence expenses properly incurred by the witness, or
 - (b) allowances by way of compensation for loss of his or her time,
- that shall be calculated in accordance with such guidance and be paid subject to such conditions as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 96(9)

In this section, 'investigation' includes a review referred to in sections 15(1A), 30(1A), 47(1A), 76(2A) and 88(4)(b)(i).

Appendix 3 Functions of decision supporters

Decision-making assistants

Functions of decision-making assistants include to:

- Assist the appointer to obtain the appointer's relevant information
- Assist the appointer by explaining relevant information and considerations relating to a relevant decision
- Ascertain the will and preferences of the appointer on a matter the subject of, or to be the subject of, a relevant decision and assist the appointer to communicate them
- Assist the appointer to make and express a relevant decision, and
- Endeavour to ensure that the appointer's relevant decisions are implemented.

A decision-making assistant **must not** make a decision on behalf of the appointer. A relevant decision taken by the appointer with the assistance of the decision-making assistant is deemed to be taken by the appointer for all purposes.

Co-decision-makers

Functions of co-decision-makers include to:

- Advise the appointer by explaining relevant information and considerations relating to a relevant decision
- Ascertain the will and preferences of the appointer on a matter the subject of, or to be the subject of, a relevant decision and assist the appointer with communicating the appointer's will and preferences
- Assist the appointer to obtain the appointer's relevant information
- Discuss with the appointer the known alternatives and likely outcomes of a relevant decision
- Make a relevant decision jointly with the appointer
- Make reasonable efforts to ensure that a relevant decision is implemented as far as practicable.

A co-decision-maker is entitled to be reimbursed out of the assets of the appointer in respect of his or her fair and reasonable costs and expenses which are:

- Reasonably incurred in performing his or her functions as co-decision-maker
- Vouched for in a manner acceptable to the Director, and
- Included in a report submitted by the co-decision-maker under section 27 of the 2015 Act.

A co-decision-maker is **not entitled** to remuneration for performing his or her functions as a co-decision-maker.

Decision-making representatives

Functions of decision-making representatives include to:

- Insofar as is practicable, ascertain the will and preferences of the relevant person on a matter the subject of, or to be the subject of, a relevant decision and assist the relevant person with communicating such will and preferences
- Make a relevant decision on behalf of the relevant person and act as the agent of the relevant person in relation to a relevant decision.

The 2015 Act calls out several restrictions on decision-making representatives. They are required to follow the guiding principles and the codes of practice.

Attorneys under the 1996 Act

The enduring power of attorney (EPA) confers authority on the attorney to do on behalf of the donor, anything which the donor can lawfully do.

Functions of attorneys appointed under the Powers of Attorney Act 1996 may be general or specific in relation to property and affairs. If general, these may be subject to specified restrictions/conditions.

- Gifts - specific provision must be provided for an attorney to dispose of donor's property by way of gift, but only seasonal or occasional gifts to those related or connected with the donor, and any charity which the donor made or might be expected to make. Value of gift must not be unreasonable in relation to the donor's assets
- Tenant for life - subject to restrictions/conditions, the attorney may exercise powers/discretions vested in the donor as a tenant for life within the meaning of the Settled Land Act, 1882
- Subject to restrictions/conditions the attorney may provide for the attorney's or other person's needs, if the donor might be expected to do so
- An EPA may also confer authority on the attorney to make any specified personal care decision or decisions on the donor's behalf. (This does not include healthcare decisions).

Attorneys under the 2015 Act

Attorneys appointed under the 2015 Act may be given:

- General authority to act on the donor's behalf in relation to all or a specified part of the donor's personal welfare or property and affairs, or both, or
- Authority to do specified things on the donor's behalf in relation to the donor's personal welfare or property and affairs, or both which may be conferred subject to conditions and restrictions.

An attorney may:

- Act for the attorney's benefit or that of other persons if provided for in the power and subject to conditions and restrictions (only relates to property and affairs)
- Not dispose of the property of the donor by way of gift unless a specific provision to that effect is made in the EPA. Where a power to gift is included in the EPA, this must be limited to gifts made on customary occasions. This means the occasion or anniversary of a birth, marriage or civil partnership, or other occasions which gifts are customary made within families or among friends or associates.

Designated healthcare representatives

If you are planning ahead, you can make an advance healthcare directive (AHD). This arrangement lets you set out your wishes regarding medical and healthcare treatment in case you are unable to make these decisions in the future. Importantly, it lets you write down any treatment you do not want.

You can appoint someone you know and trust as your designated healthcare representative (DHR). They will act on your behalf regarding the decisions in your AHD. A DHR has the power to advise on and interpret your wishes. They can agree to, or refuse treatment on your behalf, based on your AHD.

Doctors and other healthcare professionals must consult your AHD if you lose the ability to make a treatment decision.

A DHR has the power to ensure that the terms of the AHD are complied with. A DHR may only exercise the relevant powers when and for so long as the directive maker lacks capacity. A DHR must not delegate any of the relevant powers. The powers conferred are:

- The power to advise and interpret the directive maker's will and preferences regarding treatment as determined by the representative, by reference to the relevant AHD
- The power to consent or refuse treatment, up to and including life sustaining treatment, based on the known will and preferences of the directive maker as determined by the representative by reference to the relevant AHD

The DHR must, as soon as is practicable after making a relevant decision but, in any case, not later than 7 working days after making the decision, make and keep a record in writing of the decision, and produce that record for inspection at the request of:

- The directive maker, if he or she has regained capacity, or
- The Director of the DSS.

Appendix 4 Guiding principles

The 2015 Act describes **nine guiding principles**. We have set out below each guiding principle as set out in Section 8 of the 2015 Act together with how to apply that guiding principle as taken from chapter 2 of the Code of practice for supporting decision-making and assessing capacity.

1. Presume capacity

8(2) It shall be presumed that a relevant person who falls within paragraph (a) of the definition of “relevant person” in section 2(1) has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act.

When interacting with a person whose capacity is in question, or may shortly be in question, your starting presumption must be that they have capacity to make that decision.

This presumption must be made irrespective of any pre-existing disability or medical condition, reflecting Article 12 of the United Nation’s Convention on the Rights of Persons with Disabilities.

This guiding principle states that capacity must be presumed unless the contrary is shown, in accordance with the provisions of the 2015 Act. This means that a relevant person will no longer be presumed to have capacity if they fail to meet one or more of the following criteria in relation to a specific decision. The relevant person can:

- Understand information and facts relevant to the decision
- Retain that information long enough to make a voluntary choice
- Use or weigh up that information as part of the process of making the decision, and
- Communicate the decision by any means, including by assistive technology.

Where a relevant person’s capacity is being called into question on a specific decision, the responsibility lies with the person who is questioning capacity to provide sufficient evidence that the relevant person does not have capacity to make the decision at this time. It is not the responsibility of the relevant person to prove they have the capacity to make this decision.

2. Support the relevant person

8(3) A relevant person who falls within *paragraph (a)* of the definition of “relevant person” in *section 2(1)* shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so.

When interacting with a person whose capacity is in question, or may shortly be in question, you must take all necessary and practicable steps to support the relevant person in making the decision.

The steps needed to support a relevant person in making a decision will differ from person to person and on the decision in question. Considerations include:

- The person's individual circumstances
- Environmental factors
- The complexity of the decision to be made, and
- When the decision has to be made.

Further information on supporting decision-making is provided in chapter 3 of the code of practice on supporting decision-making and assessing capacity.

3. Recognise unwise decisions

8(4) A relevant person who falls within *paragraph (a)* of the definition of “relevant person” in *section 2(1)* shall not be considered as unable to make a decision in respect of the matter concerned merely by reason of making, having made, or being likely to make, an unwise decision.

A person whose capacity is in question, or may shortly be in question, may make a decision that is perceived by others to be unwise. This guiding principle clarifies that making, being likely to make, or having made such a decision is not sufficient grounds to consider the person unable to make that decision.

Everybody has their own values and beliefs and what you consider to be an unwise decision may reflect differences in values and beliefs between you and the relevant person. Where a person makes, has made, or wishes to make a decision that you consider to be unwise, this:

- Is not evidence that the person lacks capacity to make that decision
- Is not an adequate reason to challenge their capacity to make that decision, and
- Does not automatically trigger an assessment of their capacity.

You must presume that the relevant person has capacity to make the decision in question.

Further guidance on situations where you have a genuine concern about a decision the relevant person has made or intends to make is provided in section 3.3 of the code of practice on supporting decision-making and assessing capacity.

4. Only intervene when necessary

8(5) There shall be no intervention in respect of a relevant person unless it is necessary to do so having regard to the individual circumstances of the relevant person.

If a relevant person has capacity to make the decision in question, no intervention is necessary, and none should be made.

This guiding principle specifies that the circumstances of the relevant person must be considered when determining if an intervention is warranted.

In the first instance, you must examine whether a decision needs to be made regarding the relevant person's property and affairs, personal welfare, and/or healthcare treatment decisions. You should also consider if the decision needs to be made at this time or if it can wait. Where a decision needs to be made at this time, you must consider if the relevant person can make the decision without formal support.

If any of the above circumstances are not met, an intervention may be necessary.

5. Intervene in the least intrusive way

8(6) An intervention in respect of a relevant person shall—

(a) be made in a manner that minimises—

- (i) the restriction of the relevant person's rights, and**
- (ii) the restriction of the relevant person's freedom of action,**

(b) have due regard to the need to respect the right of the relevant person to dignity, bodily integrity, privacy, autonomy, and control over his or her financial affairs and property,

(c) be proportionate to the significance and urgency of the matter the

subject of the intervention, and

(d) be as limited in duration in so far as is practicable after taking into account the particular circumstances of the matter the subject of the intervention.

Where an intervention is necessary, the least intrusive option should be selected. This means ensuring that the intervention:

- Minimises restrictions of a relevant person's rights and freedom of action
- Respects the rights of the relevant person
- Is proportionate to the significance and urgency of the matter, and
- Is as limited in duration as practicable.

Minimise restrictions of a relevant person's rights and freedom of action

Before making an intervention, you must always consider if you can do something else that would interfere less with the relevant person's rights and freedom of action.

This means ensuring that any intervention you make is appropriate to, and does not exceed, the relevant person's level of need at this time. It also includes considering whether there is a need to intervene at all.

Respect rights of the relevant person

An intervention in respect of a relevant person must be made in a way that has due regard to a relevant person's rights to dignity, bodily integrity, privacy, autonomy, and control over their financial affairs and property, as described below.

Dignity: This is the right to be treated with respect, courtesy, and consideration.

Bodily integrity: This is the right for a person to decide what happens to their own body.

Privacy: This is the right to respect for private and family life, home, and correspondence.

Autonomy: This is the right to make decisions according to personal values, beliefs, will and preferences.

Control over own financial affairs and property: This is the right to exercise influence over financial affairs and property.

Be proportionate to the significance and urgency of the matter

An intervention made in relation to a relevant person must be proportionate to the significance and urgency of the decision being made. The personal circumstances of the relevant person should firstly be examined and taken into consideration in deciding what intervention to make.

You must consider all of the potential actions that could be taken and consider the likely outcomes of each option. In doing so, you must consider the importance of the decision being made and tailor the intervention to the relevant person's individual circumstances.

Be as limited in duration as is practicable

An intervention should only last for as long as it is needed, taking into account the relevant person's circumstances and the decision that needs to be made. For example, an ongoing intervention should not be made in respect of a time-bound decision.

6. Use a person-centred approach

8(7) The intervener, in making an intervention in respect of a relevant person, shall—

(a) permit, encourage, and facilitate, in so far as is practicable, the relevant person to participate, or to improve his or her ability to participate, as fully as possible, in the intervention,

(b) give effect, in so far as is practicable, to the past and present will and preferences of the relevant person, in so far as that will and those preferences are reasonably ascertainable,

(c) take into account—

(i) the beliefs and values of the relevant person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and

(ii) any other factors which the relevant person would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,

(d) unless the intervener reasonably considers that it is not appropriate or practicable to do so, consider the views of—

(i) any person named by the relevant person as a person to be consulted on the matter concerned or any similar matter, and

(ii) any decision-making assistant, co-decision-maker, decision-making

representative or attorney for the relevant person,

(e) act at all times in good faith and for the benefit of the relevant person, and

(f) consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant.

You should respect and give effect to a relevant person's known will and preferences in all interactions with them.

When making an intervention, you must ensure that their values, beliefs, will and preferences are given due regard. This includes acting to:

- Permit, encourage, and facilitate the relevant person to participate in the intervention
- Give effect to past and present will and preferences
- Consider the beliefs and values of the relevant person and other factors
- Consider the views of decision supporters and others
- Act in good faith and for the benefit of the relevant person, and
- Consider all other known and relevant circumstances.

Permit, encourage, and facilitate the relevant person to participate in the intervention

When making an intervention, you must do your best to allow, encourage, and support the relevant person to participate in the intervention to the fullest possible extent.

Give effect to past and present will and preferences

When making an intervention, you must do your best to give effect to the will and preferences of the relevant person. If their past and present will and preferences are not known you should take reasonable steps to find out what these may be or have been.

Consider beliefs, values, and other factors

You must take into account the beliefs and values of the relevant person when making an intervention. This includes, but is not limited to, those expressed in writing. In some situations, it may be difficult to find out what the relevant person's beliefs and values are. However, you should take reasonable steps to find out what they are.

You should also include any other factors the relevant person would be likely to consider important.

Consider the views of decision supporters and others

When interacting with a relevant person, it may be helpful to consider the views of those who have a close, ongoing, personal relationship with the relevant person or may be engaging with the relevant person in respect of a specific decision.

When making an intervention you must, where appropriate, consult with:

- A decision supporter under the 2015 Act
- A court friend or another person
- A committee of the ward
- An attorney under the 1996 Act, and
- Any person named by the relevant person as someone to be consulted.

Where you have reason to believe that it is not appropriate to consider the views of such people, you must be able to explain the reasons for this.

Further guidance on consulting other people is provided below in the guiding principle on considering views of others.

Act in good faith and for the benefit of the relevant person

Even after significant efforts have been made, it may not be possible to establish the will, preferences, beliefs, and values of the relevant person.

In these situations, you must act in good faith to make an intervention that most benefits the relevant person and best aligns with your interpretation of their will and preferences.

Consider all other known and relevant circumstances

Other known and relevant circumstances to consider in making an intervention will vary based on the specific nature of the decision to be made and the personal circumstances of the relevant person.

When making an intervention, you must make a record of any other potentially relevant circumstances for the specific decision and how these were taken into consideration.

7. Consider views of others

8(8) The intervener, in making an intervention in respect of a relevant person, may consider the views of—

(a) any person engaged in caring for the relevant person,

(b) any person who has a bona fide interest in the welfare of the relevant person, or

(c) healthcare professionals.

In addition to those named under the previous guiding principle, the views of other people may be considered including:

- A carer for the relevant person
- A person who has a genuine interest in the welfare of the relevant person, and
- Healthcare professionals.

Those who know the relevant person are often able to help ascertain the relevant person's will and preferences, beliefs, and values when the relevant person is unable to do so for themselves. They may also have views on whether they consider a proposed intervention to be necessary, whether it is likely to support the relevant person, and whether there are any less restrictive options.

Their role in such situations is not to make the decision but rather to provide information on the relevant person's previously expressed views and preferences, and what the relevant person would decide for themselves if they had capacity to do so.

8. Consider all available options

8(9) In the case of an intervention in respect of a person who lacks capacity, regard shall be had to—

(a) the likelihood of the recovery of the relevant person's capacity in respect of the matter concerned, and

(b) the urgency of making the intervention prior to such recovery

Where the relevant person lacks capacity to make a specific decision, you should consider the following issues before making an intervention:

- The likelihood of the relevant person regaining capacity; and
- The urgency of making the intervention.

Likelihood of the relevant person regaining capacity

Before making an intervention, you must consider whether the relevant person's lack of capacity to make the decision is temporary or fluctuating as if it is, they may regain capacity.

Urgency of making the intervention

Where there is a possibility that the relevant person may regain capacity, you must consider whether the intervention needs to be made urgently or if it can be postponed until such time as the relevant person can make the decision for themselves.

9. Use of information

8(10) The intervener, in making an intervention in respect of a relevant person—

- (a) shall not attempt to obtain relevant information that is not reasonably required for making a relevant decision,**
- (b) shall not use relevant information for a purpose other than in relation to a relevant decision, and**
- (c) shall take reasonable steps to ensure that relevant information—**
 - (i) is kept secure from unauthorised access, use or disclosure, and**
 - (ii) is safely disposed of when he or she believes it is no longer required.**

When making an intervention you may need to obtain and use certain information. This may include obtaining the relevant person's information from organisations, service providers and professionals. As an intervener, your right to obtain and use information held by third parties is based on:

- The consent of the relevant person, or
- If you are a decision supporter, the authority given to you by the relevant person under a decision support arrangement, together with your statutory obligations to assist the relevant person in accessing their information, or
- The authority given to you by the Director, or
- Powers conferred on you by an order of the court.

When obtaining and using information in these circumstances, you must:

- Only obtain information that is reasonably required
- Only use such information for the purpose that it has been obtained
- Ensure that relevant information is kept secure from unauthorised access, use or disclosure, and
- Ensure that relevant information is securely disposed of after use.

Appendix 5 Offences

Ill-treatment and wilful neglect

It is an offence, under Section 145 of the 2015 Act, for a decision-making assistant, co-decision-maker, decision-making representative, attorney, or designated healthcare representative to ill-treat or wilfully neglect the relevant person. Where a decision supporter is found guilty of such an offence, they will be liable:

- On summary conviction, to a class A fine and imprisonment for a term not exceeding 12 months, or both, or
- On conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding five years, or both.

In addition, the decision support arrangement will become null and void.

Fraud, coercion, or undue influence

It is an offence to use fraud, coercion, or undue influence to force another person to make, alter or revoke a decision support arrangement. This applies to:

- Decision-making assistance agreements
- Co-decision-making agreements
- Enduring powers of attorney under the 1996 Act
- Enduring powers of attorney under the 2015 Act
- Advance healthcare directives.

The reference to coercion or undue influence includes any case where a person's access to, or continued stay in, a designated centre or mental health facility is contingent, whether in whole or in part, on the person having to or being led to believe that they have to make or alter a decision support arrangement.

Where a decision supporter or another person is found guilty of such an offence, they will be liable:

- On summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- On conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding five years, or both.

Making a false statement

It is an offence for a person to make a statement that they know to be false:

- In an application for registration of a co-decision-making agreement, or in connection with such an application, or
- In an instrument creating an enduring power of attorney, or in connection with such an application or in a notification to the Director or in connection with such a notification.

Where a decision supporter or another person is found guilty of such an offence, they will be liable:

- On summary conviction, to a class A fine or imprisonment for a term not exceeding six months, or both, or
- On conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding two years, or both.

Offences in relation to advance healthcare directives

It is an offence for a person to create, falsify, alter, or purport to revoke, an advance healthcare directive on behalf of another person without that other person's consent in writing when the other person has the capacity to do so.

Where a designated healthcare representative or another person is found guilty of such an offence, they will be liable:

- On summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- On conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding five years, or both.

Obstructing the Director or his/her staff

It is an offence to hinder or obstruct the Director or his/her staff in the performance of their functions. Where a person has been found guilty of such an offence, they will be liable:

- On summary conviction, to a class A fine.