

**THE HIGH COURT
WARDS OF COURT**

[WOC 1301]

**IN THE MATTER OF [H] A WARD OF COURT AND IN THE MATTER
OF AN APPLICATION PURSUANT TO SECTION 55 OF THE ASSISTED
DECISION-MAKING (CAPACITY) ACT 2015 (AS AMENDED)**

RESPONDENT

Ex Tempore Ruling of Mr Justice Mark Heslin delivered on the 28th day of January 2025

Welcome

1. I am very grateful to Ms. O'Dwyer, solicitor, who moves today's application.
2. I am particularly glad that Mr. H, his support worker, and his girlfriend could join us today. They are very welcome. I hope the train journey was pleasant, as I know you have travelled a long way.

Most important person

3. I want to thank you for coming and to say that, although most of the talking today has been done by Ms. O'Dwyer, and will now be done by me in responding to and deciding this application, no one is losing sight of the fact that the most important person in the court room today is Mr. H. That is because today's application about him leaving wardship.

The 2015 Act

4. This is an application brought under a particular piece of legislation called the "Assisted Decision-Making Capacity Act" of 2015, which I will call the "2015 Act". The application is brought under s. 55 of that Act and Mr. H, whom I will call "*the respondent*" during this ruling, is the "*relevant person*" under that Act.

The Court's job

5. The job which this court has to do today - based on a careful consideration, in advance, of all the evidence, as well as having had the benefit of Ms. O'Dwyer's helpful submissions - is to

make one or more 'declarations' in relation to capacity, or ability, to make decisions in certain areas, followed by orders.

Declarations

6. There are alternatives which are set out in the 2015 Act and the first is to declare, based on the evidence, that someone *does not lack capacity*. The second option is to declare that someone *does lack capacity unless the assistance of a suitable person as co-decision maker can be made available to them*. The third alternative is that, on the evidence, they *lack capacity even with the assistance of a co-decision maker*. If that third situation arises from the evidence, or if there is no suitable person willing and available to act as co-decision maker, the court should appoint someone called a 'decision making representative', or "DMR".

Certain facts

7. Turning to the facts, the respondent is a gentleman in his sixties. The medical evidence, which I will come to, confirms that he has a diagnosis of mild intellectual disability, which I will refer to as "I.D.". He was admitted to wardship, in April 2001, following the receipt of compensation for personal injuries suffered in a road traffic accident in 1997. The general solicitor is his committee in wardship and he currently resides in supported accommodation under the care of the St. John of God's service.

Grounding affidavit

8. The committee has brought today's application and it is based, or 'grounded', upon something called an affidavit. An affidavit is a written document containing information which the author swears to be correct and, in this case, Ms. Linda Harney, a solicitor in the office of the committee, has sworn an affidavit on the 4th December 2024.

9. That affidavit sets out relevant information, including, with regard to the respondent's condition; admission to wardship; his living situation and supports; steps taken prior to this application coming before me; the relevant medical evidence; and issues such as the respondent's assets.

Letters

10. In the manner 'averred' (i.e. sworn to be correct) from paras. 8 onwards Ms. Harney explains the letters which were sent to the respondent, and to others, including a "*Reader-friendly leaflet about the leaving wardship*". Correspondence was also sent to the 'person in charge' at St. John of God's [named], and to the [named] Assisted Decision-Making Co-ordinator with the service.

Medical evidence

11. Turning to the medical evidence Dr. R is a consultant psychiatrist and he carried out an assessment on the 6th September of last year. Dr. R assessed the respondent's capacity to make Health (including care and treatment) decisions and found the respondent "*can understand*

information to a certain extent but may require explanations and assistance regarding any complicated health related issue". He found the respondent "able to retain straight-forward information" and "able to use or weigh information for straight-forward matters although he may need assistance for more complicated issues". Dr. R found the position to be similar in relation to the respondent's capacity to make Welfare-related decisions.

12. In relation to Property and Financial decisions, Dr. R found that the respondent *"does not have the ability to understand information for matters relating to property and finance and relies on his support staff in the St. John of God's service for this". His view is that the respondent does not have capacity to retain, or to use and weigh, that information.*

Discharge recommendations

13. The report concludes by stating: *"In my opinion [Mr H] lacks capacity unless the assistance of a suitable person as co-decision maker is made available to him to make one or more than one decision in the realms of managing any complex issues relating to health, dealing with any complex issues relating to his welfare and dealing with financial matters, other than simple day to day shopping transactions and paying for entertainment or leisure activities".*

No dispute

14. As Ms. O'Dwyer points out, no issue has been taken with Dr. R's findings. There is no dispute raised in relation to the doctor's views and, therefore, no second opinion was sought by or on behalf of the respondent.

Service

15. This court also has the benefit today of two affidavits of service. They were sworn by Mr. Risteárd Pierse, Solicitor, on the 20th December 2024 and on the 10th of January of this year. They make clear that the papers in relation to this application were properly served, personally, on the respondent and that relevant explanations were given.

Agreement

16. Mr. Pierse makes averments (i.e. he swears to be correct) that, in relation to Dr. R's medical report, the respondent said *"I agree with it, I am happy to get help"* and the respondent later indicated that he was appreciative of help and his view is that he *"can cope well with simple stuff"*.

Important work

17. It is also important to note - as Mr. Pierse records - that the respondent is someone who is working in a supermarket *"in the backroom doing boxes and recycling and assisting with deliveries"*. I want to congratulate Mr. H on what is clearly very important work and to thank him for the help he gives to very many people by doing this work. If I may say so, he can feel very proud of his efforts and I hope he continues to do well in that job.

Sincere thanks

18. I also note from her affidavit that Ms. Harney congratulated the respondent on his participation in a conference on the topic of the 2015 Act. I want to repeat that congratulations, and to express my sincere thanks to Mr. H, for being willing to share his experiences in wardship. It speaks volumes about Mr H's generosity to others that he would be willing to do that.

No co-decision maker

19. Ms Harney also confirms that the respondent was asked if he had someone in mind to act as co-decision maker, and he did not.

Independent Social Worker

20. The papers also make clear that the committee retained an independent social worker, Mr. Mc, who he met with the respondent. I note the contents of his reporting, including certain concerns raised about diet and physical health, and this is something which Dr. R also touched on. The respondent's preference was not to comment on that aspect which is, of course, his absolute entitlement. I also note what Mr. Harney avers, at paras. 18 and 19 of her affidavit, about the convening of a multi-disciplinary team meeting on the question of diet and lifestyle from which it is clear that this issue is 'in hand'.

Assets

21. Turning to assets, Mr. Harney makes averments, from para. 20 onwards, about the respondent's assets, which are detailed in a Schedule exhibited. In summary, they comprise certain monies in court; and in the committee account; as well as the respondent's disability disallowance paid into a Post Office account; and, of course, his earnings from six hours per week in the supermarket.

No EPA / AHD

22. At para. 29 it is averred, it is sworn, that there is no enduring power of attorney ("EPA") or advanced health care directive ("AHD") known to exist.

Independent person

23. It is a matter of fact that there is no suitable person available and willing to act as co-decision maker in this particular case. I am guided by the respondent's preference in that regard, which is for an *independent* person. In these circumstances, the nomination of Mr. Anthony O'Brien was approved by the President. I understand he is 'online' and I am very grateful to him for that. Mr O'Brien is a very experienced solicitor with a particular expertise in acting for and assisting vulnerable persons, having been, among other things, a member of the Mental Health Commission's panel since 2010.

Declarations

24. In light of the evidence which I have summarised, it is appropriate to make the following declarations and orders.

25. First, to declare, in light of **s. 55(1)(b)(i)** of the 2015 Act, that the respondent, Mr. H, lacks capacity in the areas of Personal Welfare and Property and Affairs decisions, unless the assistance of a suitable person as co-decision maker is made available to him.

26. In light of **s. 55(4)(a)** of the 2015 Act, given that there is no suitable person willing and available to act as co-decision maker, and in consideration of **s. 55(4)(ii)**, it is appropriate that the respondent be discharged from wardship with the appointment of a DMR, in lieu, but always subject to the obligations sets out in **s. 41(3)** of the 2015 Act.

27. **Section 41(3)** makes clear it that the DMR needs to ensure, so far as practicable, that he *makes decisions jointly* with the respondent.

Orders

28. As I indicated at the outset, it is appropriate to make a '**s. 27 order**' restricting reporting which might identify the respondent as someone suffering from the relevant condition.

29. In terms of further orders, I am formally discharging Mr. H from wardship, under **s. 55(1)(b)(i)** of the Act, and remitting him to the management of his own affairs with the appointment of a suitable person to act as DMR, having regard to **s. 55(4)(a)** and **55(4)(ii)**.

30. I am ordering the appointment of Mr. Anthony O'Brien as the respondent's DMR in the areas of Personal Welfare and Property and Affairs decision-making, in light of **s. 55(4)(ii)** of the Act.

31. This is subject, always, to the obligations in **s. 41(3)** - in other words, Mr. O'Brien and Mr. H will be making decisions *jointly*, insofar as that is possible.

32. I am also ordering that the DRM is permitted to take custody, control and management of the respondent's assets as held by the accountant of the Courts of Justice; and in the committee account; and the assets, if any, in the particular bank account referred to in the papers.

33. Consistent with other provisions in the 2015 Act, the DMR is ordered to account to the Director of the Decision Support Service, in accordance with **s. 46(6)** of the 2015 Act.

34. In relation to the Department of Social Protection payment, I am ordering that the respondent continue to receive this directly, which arrangement should be reviewed by the DMR within twelve months from today.

35. In light of sections **42(1)** and **42(2)** of the 2015 Act, I am ordering that the DMR is not entitled to be reimbursed from Mr. H's assets in relation to any expenses or remuneration incurred

by the DMR in the performance of his function. This is in circumstances where he is a 'panel' DMR and there are other routes to ensure he is properly reimbursed and remunerated.

36. Given the medical evidence, in which Dr. R describes the respondent's I.D. as a lifelong, the capacity of the respondent is to be reviewed by the Circuit Court no later than 3 years from the date of this order.

37. The applicant is authorised to provide a copy of the court booklet, in relation to today's application, to the DMR.

38. I note that the applicant is not seeking any order for costs and, therefore, there will be no such order.

Congratulations

39. After all of that 'formal business', the most important thing is to congratulate Mr. H on leaving wardship and to thank him, again, for all he does for others, both his work in the supermarket and his willingness to share his experiences for the benefit of others.

40. I would also like to wish him, and his girlfriend, the very best for the future.

41. No doubt he will get the support he needs, going forward, in his new relationship with Mr. O'Brien, who is well qualified to assist him.