

The Assisted Decision Making (Capacity) Act 2015: Considerations for Mental Health Services

Is the ADMCA a conduit for realising human rights in mental health?
Challenges, opportunities and action.

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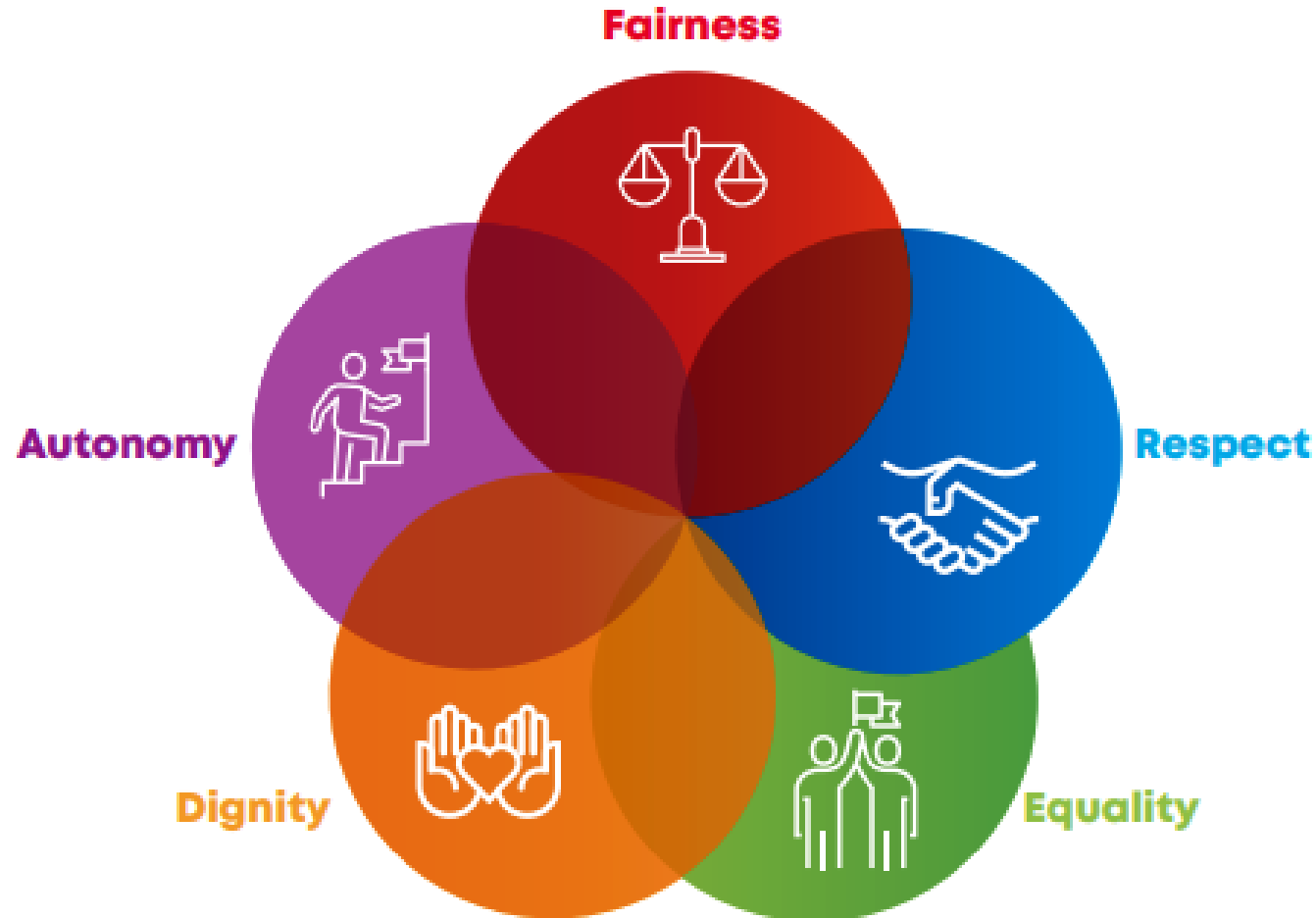
Legal Capacity / Decision-Making Capacity

“The loss by an individual of his or her mental capacity does not result in any diminution of his or her personal rights, recognised by the Constitution, including the right to life, the right to bodily integrity, the right to privacy including self-determination and the right to refuse medical care and treatment”.

- Hamilton C.J.

In Re a Ward of Court (No.2) 1996 2 IR

Realisation of rights in healthcare setting: FREDA principles



Will and preferences \neq Wish fulfilment



Decision Support Service



- ❑ Integrated office within the Mental Health Commission
- ❑ *Director's duties include:*
 - To promote public awareness of the Act
 - To promote public confidence around dealing with people who require assistance in exercising their capacity
 - To supervise compliance by decision supporters
 - To provide information to relevant persons
 - To provide guidance to organisations and bodies in relation to their interaction with relevant persons and decision supporters
 - To identify and make recommendations for changes of practices in organisations which may prevent a relevant person from exercising capacity
 - To publish codes of practice

❑ Section 91: AHDs

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



❑ Section 103

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

Abolition of Adult Wardship and Review of Current wards



❑ Wardship under Lunacy Regulation (Ireland) Act 1871:

*‘a person of **unsound mind** and incapable of managing himself or his affairs’*

❑ *“An order making a person a ward of court has real consequences. It can deprive a person of the power to make many of the choices which are fundamental and integral to day-to-day life. Such orders were sometimes over-broad in their effect and disproportionate in their scope”*

- Supreme Court HSE v A.M. 2019



Universal Declaration of Human Rights 1948

“Unless these rights have meaning in the small places close to home, they have little meaning anywhere.”

- Eleanor Roosevelt

Concluding Comments

Thank You

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