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# Part 6 Applications and Discharge from Wardship

3<sup>rd</sup> December  
2024

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An tSeirbhís Chúirteanna  
Courts Service

# Introduction

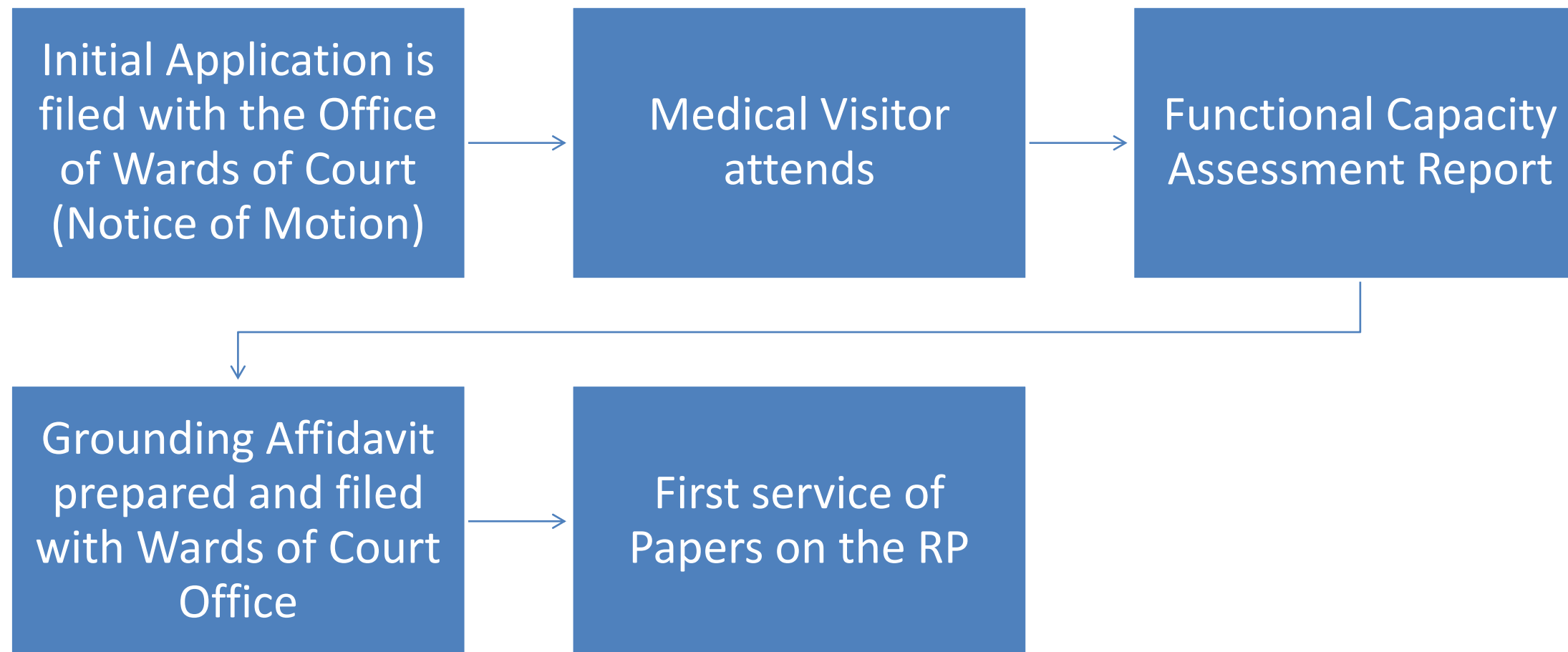
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- Assisted Decision-Making Capacity Act 2015 (“the Act”) commenced 26<sup>th</sup> April 2023
- “Old system” of Wardship is to be phased out
- Jurisdiction remains for Minors but certain timeframes around discharge on majority
- In broad terms – all adult Wards of Court to be reviewed and discharged within three years of the commencement of the Act i.e. on or before the 26<sup>th</sup> April 2026



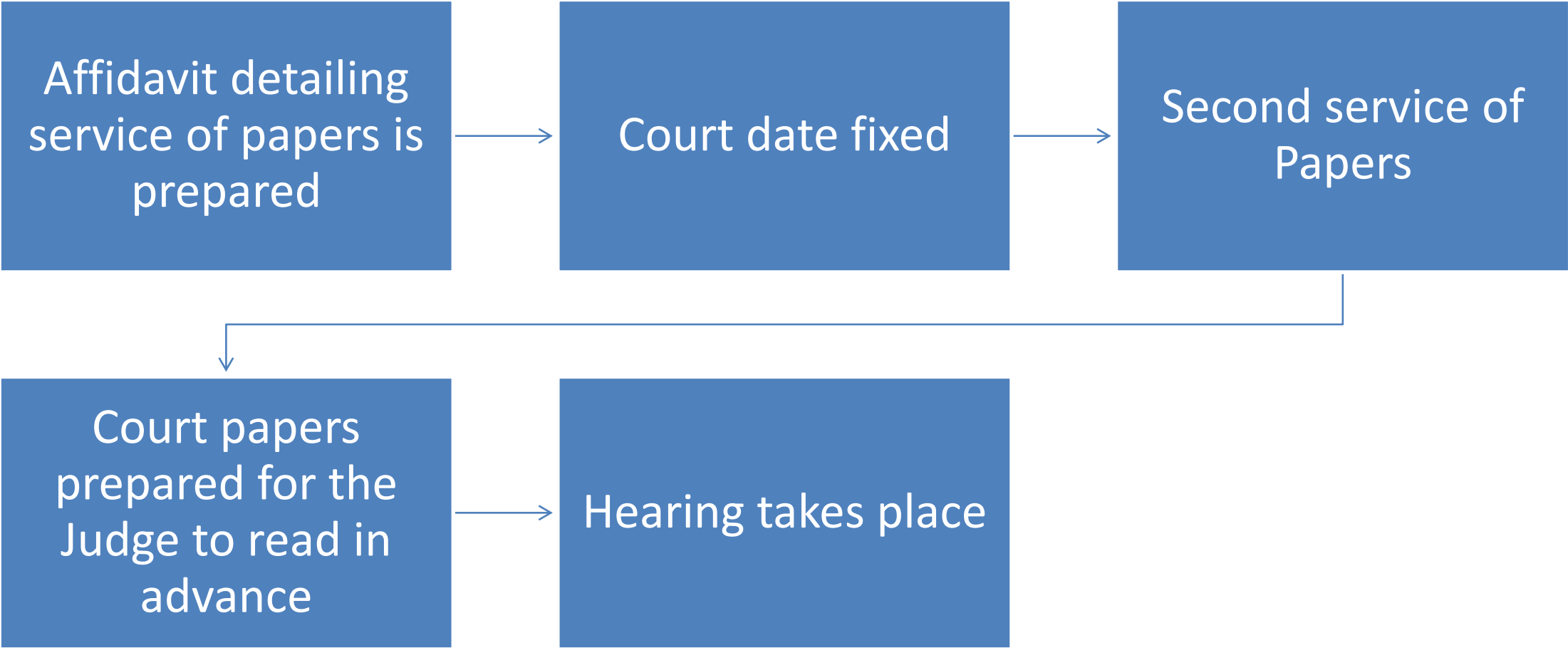
# Discharge Application – Overview of Process

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# Discharge Application – Overview of Process...continued

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# The Review Hearing

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## Capacity Declarations - Outcomes:

<p>Has capacity/ Recommend DMA S55 (1) (a)</p>	<p>Has capacity with the assistance of a suitable person as a CDM S55 (1) (b) (i)</p>	<p>Does not have capacity even with the assistance of a CDM S55 (1)(b)(ii)</p>	<p>Mixed outcomes</p>
<ul style="list-style-type: none"><li>• Discharged from Wardship</li><li>• Assets and property returned</li><li>• DMA not appointed by the Court in this process</li><li>• Discharge not contingent on registration of DMA</li></ul>	<ul style="list-style-type: none"><li>• Suitable person identified by RP</li><li>• Hearing takes place</li><li>• Discharge from Wardship contingent on production of proof of registration of CDMA with the DSS</li><li>• Property and assets returned</li><li>• If no suitable person, DMR from DSS panel nominated to be appointed (provided for in s55 (4) (a) and (b) – they must endeavour to act jointly where possible)</li></ul>	<ul style="list-style-type: none"><li>• Assessment RP does not have capacity even with a CDM</li><li>• This means a DMR is required</li><li>• Suitable person to be identified by the RP (in advance of hearing).</li><li>• If no one suitable to act, nominations can be obtained for panel members from DSS to act.</li><li>• Property and assets returned</li></ul>	<ul style="list-style-type: none"><li>• Can have a mixture of supports on discharge</li></ul>

# What is important to the Court

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- To see engagement with the person – will and preference
- Hearing the person – through the paperwork, a letter, in court
- To know who is a potential decision supporter and if they are willing to help and understand the responsibility
- Hearing from anyone with an interest in the person – family, advocates, professionals, carers



## Some numbers to consider

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- Over halfway through the 3 year legislative period provided for under s54 (2)
- 1918 “active wards”
- 341 discharge applications “in progress”
- 92 Wards of Court have been discharged
  - Discharged: 19
  - Discharged with a Co Decision Maker: 4\*
  - Discharged with a Decision-Making Representative: 73





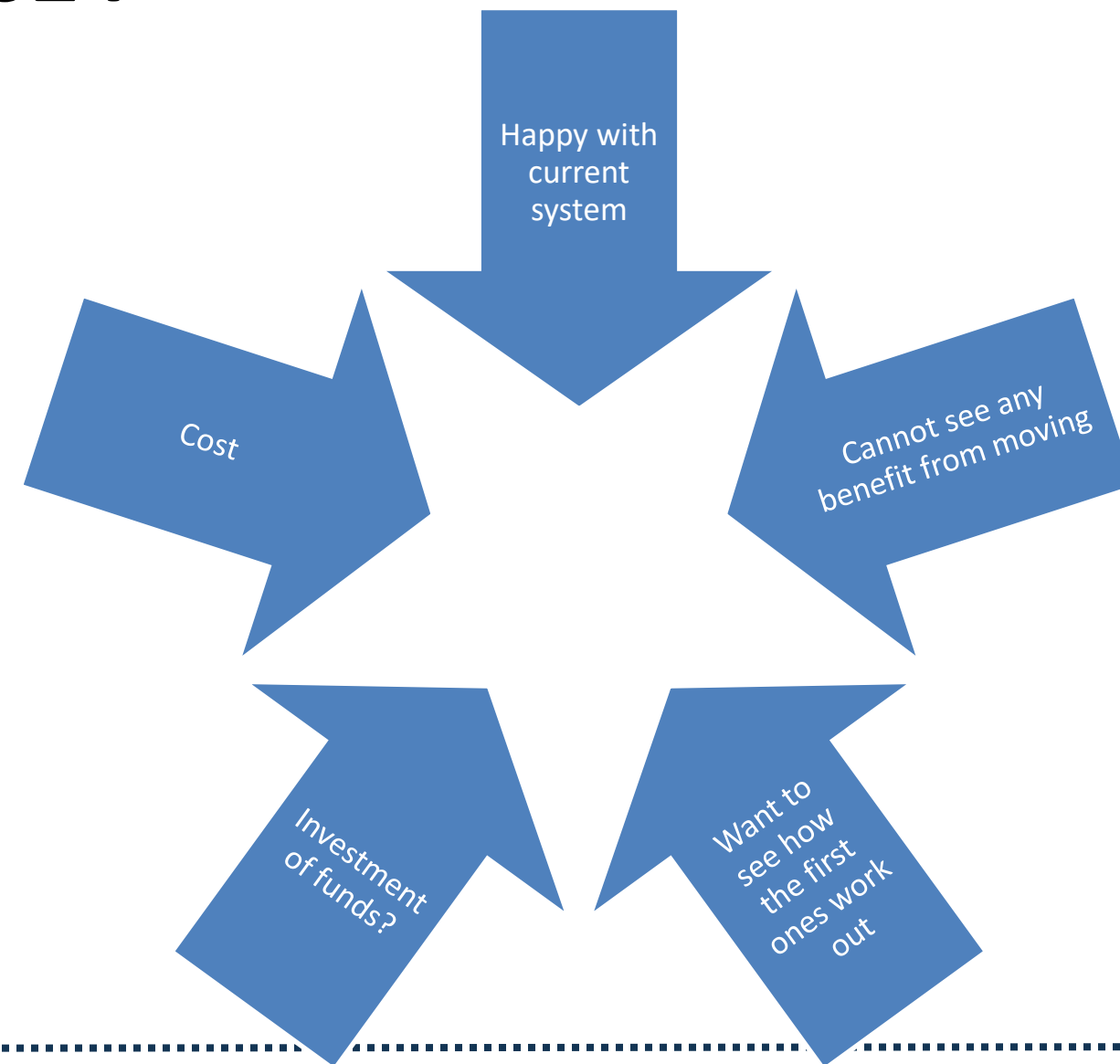
## Wards of Court Office Survey of Committees May / June 2024

- 97% were aware of the 2015 Act
- 95% aware of the requirement to discharge within three years
- At that stage, 57% had discussed it with the person who they act for as Committee
- 53% contacted LAB or solicitor for assistance

# Committee responses – a broad overview:

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## Wards of Court Survey of Committees May / June 2024 – Reluctance to proceed?



# What the Committees are saying:

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*“I can’t find a solicitor to do it!”*

*“Will I end up paying twice for this?”*

*“I would like to see how initial discharges are going before moving forward... costs remain unclear”*

# Some reassurances - Cost

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All adult wards eligible for Legal Aid for discharge applications

Provision for clawback on means test in the future

No regulations in force for this clawback yet

Legal Aid available to assist with CDMA agreement

Legal Aid available to assist with second opinions on capacity

## What the Committees are saying:

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*“I feel nervous about the responsibility that comes with the discharge. Nervous about making the right choices with regard to investing the money”*

*“I’m not clear on how the funds currently held in court can continue to be invested properly”*

*“We are hoping to wait until the 2026 deadline”*

*“I’m a bit nervous about it all, but I will very soon”*

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# Some considerations – Finances and Change

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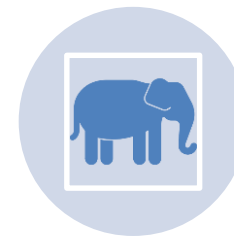
**Investment of funds: talk to financial adviser**



**Financial DMR from the DSS Panel?**



**Change is difficult – reach out**



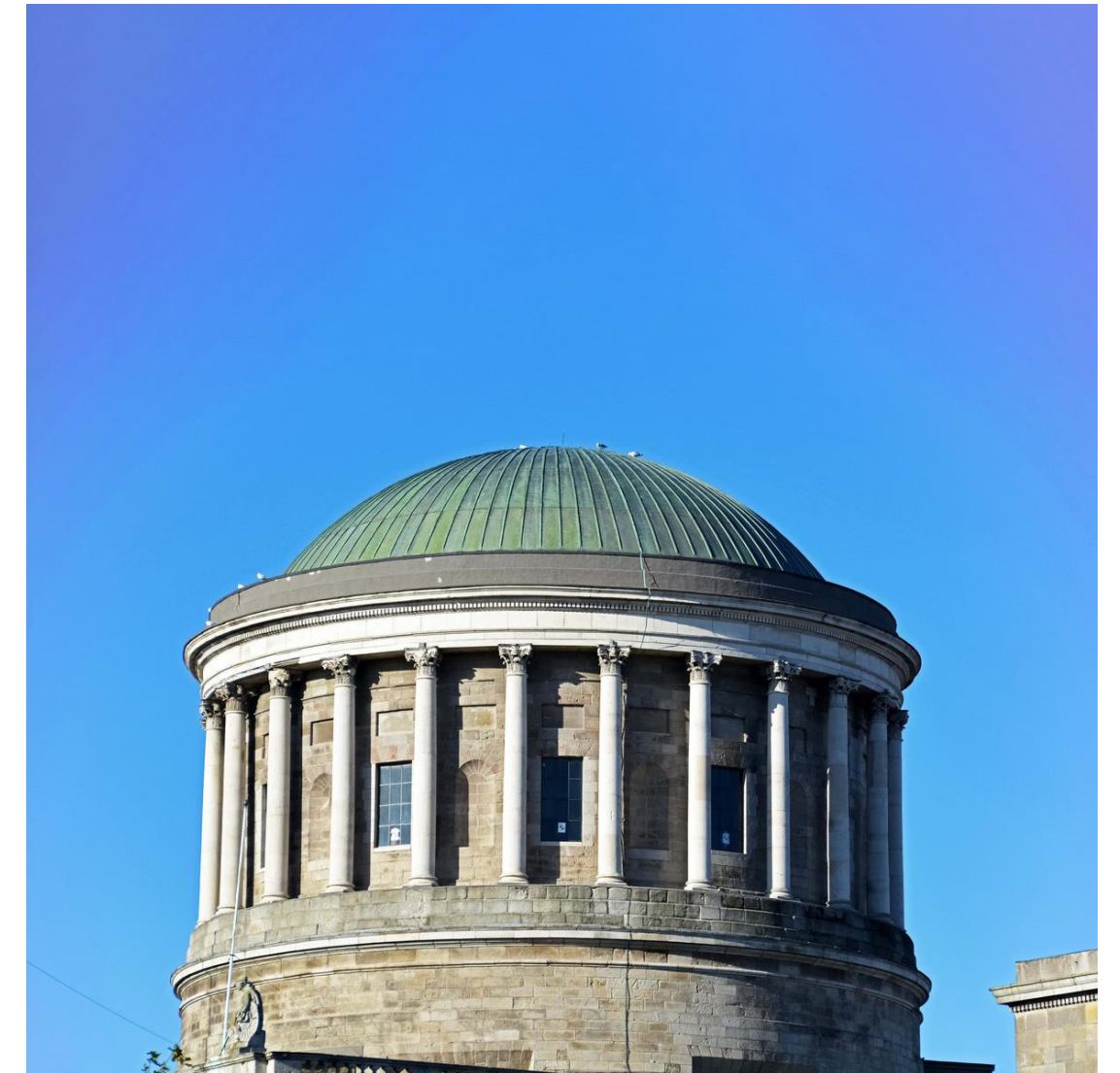
**Don't be in the stampede at the end!**

# Reminder of who can apply?

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## Section 54 (1) ADMCA 2015

- Discharge applications can be made by:
  - The Relevant Person or the Committee
- OR (with the consent of the Court)**
  - A relative or friend (position of trust with the RP)
  - Other person with existing relationship, interest and expertise (e.g. advocate)



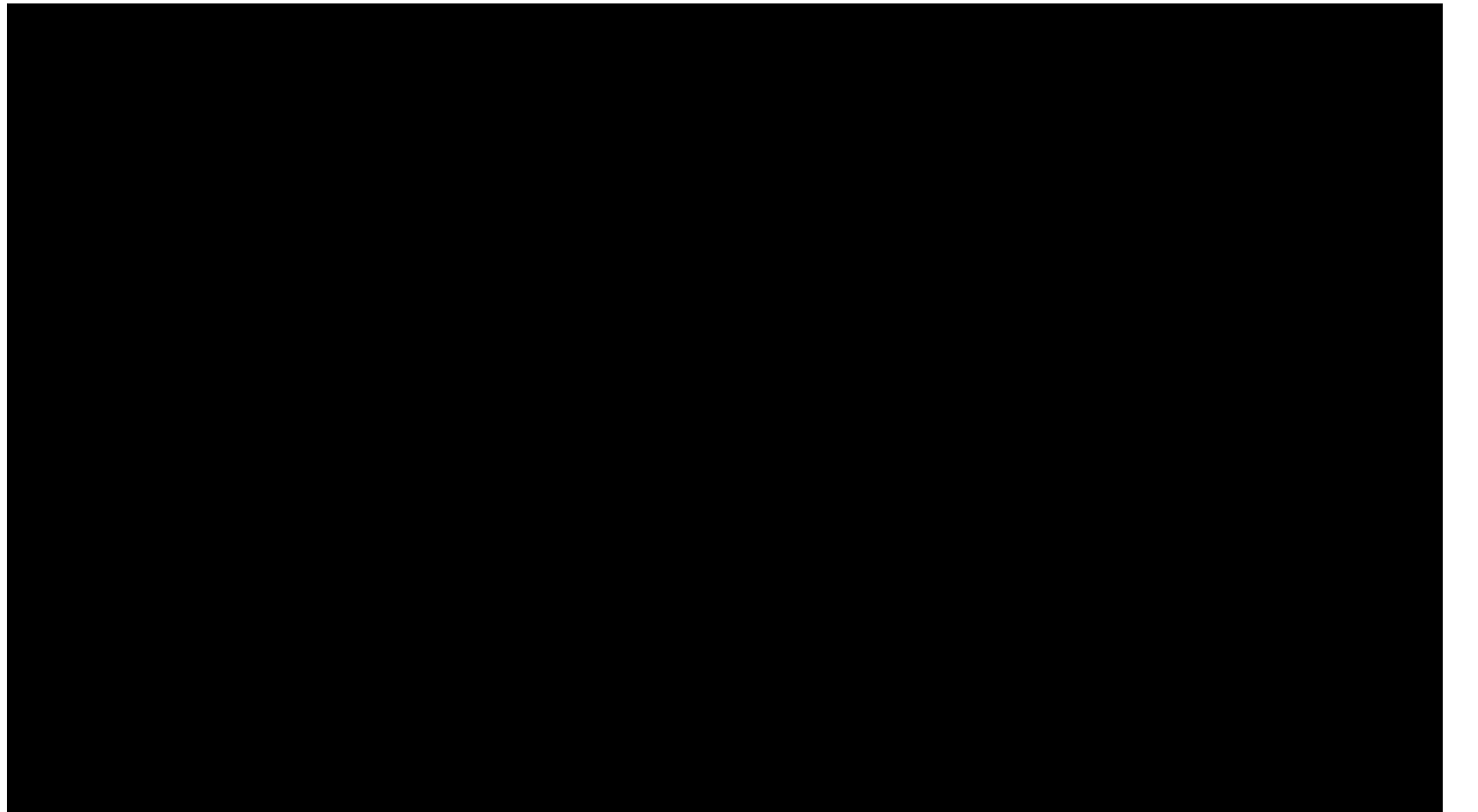
# Final thoughts...

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- ✓ Important to recognise the right of a person to be discharged from Wardship
- ✓ Advocates, professionals – support to move forward
- ✓ Contact Legal Aid
- ✓ It is good to talk!!







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**Thank You – any questions?**

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