

Best Practice in Supporting Adults Who May Be Vulnerable to Manage Their Own Finances

A Discussion Document



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This Discussion Document has been compiled by Sage Advocacy in consultation with the National Federation of Voluntary Bodies (NFVB), the HSE Patient Private Property Accounts Section, HIQA, representatives of the private nursing home sector and the Department of Employment Affairs and Social Protection.

A Draft of the Document was circulated to a number of selected stakeholders and responses received (12) are reflected in the document.

It should be noted that supporting vulnerable adults to manage their finances is a hugely complex area and one where there is a wide range of views, including among the above stakeholders. How best to ensure that people's independence in managing their finances is maximised within a rights-based supported decision-making framework is critically important as is the need to ensure that people's legal rights are protected.

Arriving at definitive guidance on best practice is challenging because of the need to cater for the needs of people in very different circumstances and with different levels of capacity to manage their finances, including those living in nursing homes, people with disabilities in residential care facilities and those with disabilities living their lives in the community.

It is envisaged that the Discussion Document will contribute to opening up further discussion on this important matter and will contribute to developing best practice in supporting adults who may be vulnerable to manage their finances and to maximise their capacity in this regard.

Sage Advocacy acknowledges with thanks the valuable contributions to this document of the agencies listed above and of the stakeholders who commented on a Draft of the Document.

Structure of Document

The Document contains four sections.

Section 1 (Introduction) explains the rationale for the document, its purpose and sets out some key contextual factors.

Section 2 describes the background to and current regulatory context for the management of the finances of adults who may be vulnerable.

Section 3 provides principles and related guidance for effective support in the management of vulnerable adults' personal finances.

Section 4 contains some concluding observations.

A Glossary of Terms used in the Document is provided.

Six appendices are included.

Section One

Introduction

Purpose of Document

This Discussion Document aims to promote openness, accountability and consistency in working with adults who may be vulnerable and who may need support in the management of their personal finances. It also seeks to place the protection of the human and legal rights of such persons to the fore through ensuring the safe, open and accountable management of their money. This is deemed necessary in order to reflect the basic principles of ‘voice and ‘nothing about you/without you’.

The document locates the discussion on best practice in the context of existing guidelines and standards, viz. HIQA Standards¹ and HSE Patients Private Property Guidelines². It takes cognisance of principle that an individual’s finances are theirs to be used by them for their benefit and as they choose in accordance with the principles outlined in the HIQA and Safeguarding Ireland Guidance on a Human Rights-based Approach in Health and Social Care Services.³ These are fairness, respect, equality, dignity and autonomy and are often referred to as the FRED A principles.

Who the Document is for

This Discussion Document is for consideration by those who are over 18 years of age who may be vulnerable to financial abuse, their families, service providers, including financial, legal, medical and allied health care professionals, along with housing, day care and residential care service providers.

Also, it is relevant to the Department of Employment Affairs and Social Protection (DEASP) and it is hoped that it will be taken into account by the Department in setting out the requirements for Agents for social welfare payments which are likely to arise out of the implementation of the Assisted Decision-Making (Capacity) Act 2015.⁴ It should also have relevance for the Decision Support Service in implementing the Act.

Focus of Document

While the focus of the document is on supporting adults who may be vulnerable to manage their finances, it is acknowledged that the term ‘vulnerable’ presents difficulties for a number of reasons, not least because vulnerability may have as much to do with people’s living circumstances and environment as with their ability/disability, decision-making capacity or coping skills. Also, there is a wide spectrum of vulnerability and some people may be more vulnerable because of their high level of risk-taking.

Defining and understanding vulnerability

Broadly speaking, vulnerability can be defined as the diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard. The concept is relative and dynamic. Vulnerability can arise when people are isolated, insecure and defenceless in the face of risk, shock or stress.

People differ in their exposure to risk as a result of their social group, gender, ethnic or other identity, age and other factors.” (International Federation of Red Cross and Red Crescent Societies⁵)

While acknowledging the vast spectrum of vulnerabilities that people may experience, vulnerability is understood in this document in accordance with the definition of a vulnerable person in the HSE Safeguarding Vulnerable Persons at Risk of Abuse – National Policy and Procedures’ (2014).⁶

“An Adult who may be restricted in capacity to guard himself/herself against harm or exploitation or to report such harm or exploitation” Restriction of capacity may arise as a result of physical or intellectual impairment. Vulnerability to abuse is influenced by both context and individual circumstances” (p.3).

It is also noted that a vulnerable consumer is defined in the Consumer Protection Code as meaning a person who:

- Has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example people with hearing or visual difficulties); and/or
- Has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)

It is acknowledged that there are important issues associated with the quick onset of vulnerability arising from, for example, dementia or Acquired Brain Injury which need to be further identified, analysed and addressed but which are beyond the scope of the current document.

Why additional discussion on supporting vulnerable adults with financial management is important

There is a clear obligation to ensure that the financial rights and freedoms of adults who may be vulnerable are promoted and protected. Many people face challenges to their financial independence due to cognitive, physical or sensory disability, an acquired brain injury, mental health difficulties, an inability to communicate effectively, lack of family and community supports, or an inability to access financial services that meet their needs. For some people, this vulnerability is due to a lifelong condition and for others their ability to manage their financial affairs effectively deteriorates slowly as a condition, such as dementia, develops over time.

While it is likely that the majority of persons supporting people to manage their finances (e.g., those acting as Agents for social welfare payments for people unable to do so themselves) act out of a genuine caring disposition and in good faith, there is an increasing awareness and evidence of the financial abuse of vulnerable adults which has been documented in research.⁷

A Red C poll⁸ conducted for Safeguarding Ireland highlighted the fact that half of all Irish adults say they have experienced the abuse of vulnerable adults either through being abused themselves or having seen somebody close to them abused. Two in 5 people think vulnerable adults are badly treated and 1 in 3 believes vulnerable adult abuse to be widespread.

National Centre for the Protection of Older People (NCPOP) research⁹ shows that financial abuse is the most common type of abuse reported in relation to older persons.

1 National Standards for Adult Safeguarding (2019), <https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>
National Standards for Residential Services for Children and Adults with Disabilities Standard 3.1 <https://www.hiqa.ie/sites/default/files/2017-02/Standards-Disabilities-Children-Adults.pdf>
National Standards for Residential Care Settings for Older People in Ireland, <https://www.hiqa.ie/sites/default/files/2017-01/National-Standards-for-Older-People.pdf>
Guidance for Designated Centres: Resident’s Finances <http://www.fedvol.ie/fileupload/Quality%20&%20Standards/HIQA/Residents%20Finance%20Guidance.pdf>

2 HSE Patients Private Property Guidelines, <https://www.hse.ie/eng/services/publications/corporate/patients%20private%20property%20guidelines.pdf>

3 <https://www.hiqa.ie/sites/default/files/2019-11/Human-Rights-Based-Approach-Guide.PDF>

4 It is envisaged that Agent payments will, post the commencement of the ADM Act, come within the remit of the Act and be governed by its provisions for supported decision-making.

5 <https://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/what-is-vulnerability/>.

6 <https://www.hse.ie/eng/services/publications/corporate/personsatriskofabuse.pdf>

7 Safeguarding Ireland Report <https://www.safeguardingireland.org/wp-content/uploads/2018/10/the-national-safe-guarding-office-report-2017.pdf>

RED C Poll National Public Opinion Survey in relation to Vulnerable Adults in Irish Society <http://familycarers.ie/wp-content/uploads/2017/06/Red-C-Survey-Vulnerable-Adults-in-Irish-Society-060417-1.pdf>

Fealy, G., Donnelly, N., Bergin, A., Treacy, M.P., Phelan, A. (2012) Financial Abuse of Older People: A Review, NCPOP, University College Dublin. <https://www.safeguardingireland.org/wp-content/uploads/2018/10/Financial-Abuse-Older-People--A-Review.pdf>

8 <http://safeguardingcommittee.ie/wp-content/uploads/2017/04/Red-C-Survey-Vulnerable-Adults-in-Irish-Society-060417.pdf>

9 See <https://www.safeguardingireland.org/wp-content/uploads/2018/10/Financial-Abuse-Older-People--A-Review.pdf>

These research findings indicate a very worrying prevalence of vulnerable adult abuse, uncertainty over what constitutes psychological and financial abuse, and a lack of knowledge of what to do when someone becomes aware of the abuse of vulnerable adults. It should, of course, be noted that adults without any cognitive impairment or lack of financial capacity can be financially exploited through the use of psychological manipulation or misrepresentation, coercion or undue influence.

A question arises as to how well current policy and practice supports and facilitates the development of people's decision-making capacity to the greatest extent possible in respect of understanding and using money, experiencing 'ordinary' social transactions in the community, knowing where their money comes from, why they receive it, how much money they get and where it goes.

Ireland currently does not have legislation giving a statutory right to protections for vulnerable adults, but legislation is planned¹⁰. In 2017 the Government approved the development of a national policy on national safeguarding in the health and social care sector and underpinning legislation. HIQA and the Mental Health Commission (MHC) have jointly developed National Standards for Adult Safeguarding.¹¹

While this safeguarding legislation is pending, there remains inadequate protection for vulnerable adults relating, inter alia, to protection from financial abuse. For example, there are no guidelines in existence for safeguarding the finances of a person who may be vulnerable to financial abuse who lives on his/her own in the community or with a family member or in a house with other people (apart from HSE funded community group homes).

DEASP requirements in respect of Agency for Social Welfare Payments (see below) provides some protection in that the Department will act promptly to investigate any case of alleged non-compliance by an

agent with the obligations set out in its legislation (which the nominated person/agent undertakes to adhere to at the outset, and which are again notified to the agent at the time of their appointment). While legislation provides for the payment recipient to request the discontinuation of an agent arrangement if at any time they are not satisfied with the arrangement, this presumes that the recipient has decision-making capacity. There is some concern expressed by Sage advocates and other frontline staff about the level of control which may be exercised by family members over people's finances in some instances, with particular reference to the Agency system for social welfare benefit payments.

Significant progress has been made in recent decades in relation to the way the finances of people in residential care facilities are managed taking into account the need to protect the rights of vulnerable adults. Residential care service providers are generally engaged in a process of developing appropriate protocols in this regard. Many have set out in detail policies and procedures, including staff role and responsibilities in facilitating and supporting service users' choice. Protocols for accounting, record-keeping, opening and managing bank accounts have been developed and disciplinary action relating to any misuse of service users' accounts has been identified.

HIQA inspection reports over the years have referenced evidence in many residential care services of robust systems in place in relation to the management of residents' finances. However, a gap identified in HIQA Inspection Reports has referred to insufficient support being provided to residents to manage their own financial affairs as well as some lack of transparency around the use of residents' money to cover certain staff expenses. For example, a 2019 Overview Report¹² noted that in some services where it was deemed that the risk of financial abuse was too great, some residents were denied the right to manage (with support if required) their own financial affairs.

Current Standards and Guidelines for the management of the finances of people living in residential care services may not be sufficiently detailed to cater for the specific support needs of a range of people with different decision-making capacity in relation to financial management. For example, feedback from Sage Advocacy personnel on this matter refers to a 'one size fits all' approach in some services to the management of residents' personal finances with active engagement with residents around money matters remaining underdeveloped.

Understanding 'financial abuse'

Financial abuse is broader than abuse relating to personal finances. Financial exploitation of vulnerable adults can often include the illegal or improper use of property, the misuse of an adult's home, theft of possessions, inappropriate use of resources such as utilities, food and transfer of resources such as property and assets and coercion and intimidation to gain access to assets including gift giving and creating a will. The HIQA National Standards for Residential Services include the protection of both personal property and finances (3.6.1).

Financial Capacity

Financial capacity has been found to be an advanced activity of daily life, conceptually distinct from household activities and basic activities of daily life. Research has shown that financial capacity is already significantly impaired in mild Alzheimer's disease especially in the more complex domains of cheque book use and management, bank statement management, bill payment and financial judgement.¹³ The decline in financial capacity can be rapid, for example, in Alzheimer's disease.

The development of a domain-based approach to financial capacity recognises that an individual may be competent to carry out some financial activities and not others.

The following related domains have been identified¹⁴ - basic monetary skills, financial conceptual knowledge, cash transactions, cheque book management, bank statement management, and financial management. For example, support with everyday transactions is clearly different to the more complex task of managing investments.

Decision-making capacity

The matter of the management by vulnerable adults of their personal finances is intrinsically linked to decision-making capacity. There is a common law assumption, now given statutory effect in the Assisted Decision Making (Capacity) Act 2015¹⁵ (ADM Act), that all persons are presumed to have the capacity (or ability or competency) to make a specific decision or decisions until the contrary is indicated. A person is therefore ONLY to be regarded as having reduced capacity to understand and manage their finances AFTER all efforts have been made to support their decision making by facilitating them to understand the decision to be made (see Appendix 4).

Pending the implementation of the Act, the presumption of capacity and a functional approach to capacity (detailed in Section 3 below) should prevail in all situations. Under current provisions, where there is no legal provision for the management of a person's personal finances on their behalf, e.g., an attorney or attorneys under a registered Enduring Power of Attorney (see Glossary), the only alternative available in order to safeguard a vulnerable adult's personal money is wardship. When the ADM Act is fully commenced a number of decision support mechanisms will be available to people (see below). Under the Act, where a person who has been assessed as lacking decision-making capacity for specific matters, the Circuit Court will appoint a Decision-Making Representative to act for that person.

¹⁰ In March 2017, the Adult Safeguarding Bill was introduced in the Seanad. The Bill received cross party support and was passed to committee stage.

¹¹ <https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>

¹² <https://www.hiqa.ie/sites/default/files/2019-08/HIQA-DCD-5-Year-Regulation-Report-2019.pdf> p.46

¹³ Marson, D.C. et al (2009), Clinical Interview Assessment of Financial Capacity in Older Adults with Mild Cognitive Impairment and Alzheimer's Disease, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2714907/>

¹⁴ Ibid.

¹⁵ Assisted Decision Making (Capacity) Act 2015 Section 8 (2)

Section Two:

Regulatory Framework and Legislative Provisions

Management of the personal finances of people in residential care services

National Quality Standards

National Quality Standards¹⁶ stipulate that each person should be facilitated and supported to take responsibility for his/her own financial affairs.

The National Standards for Adult Safeguarding require that each person is supported and encouraged to make decisions around their personal welfare, affairs and property and that: Arrangements are in place for each person to look after their own personal belongings and finances in a way that takes account of the will and preferences of the person. Where a person needs support to do this, the service has transparent and secure arrangements in place (3.1.9).

Standard 3.6 of the National Standards for Residential Care Settings for Older People in Ireland requires that each resident's personal property and finances are managed and protected. The criteria set out under this Standard provide a comprehensive framework for the development of mechanisms and protocols for an effective and inclusive approach to the management of people's personal finances which would support and maximise personal control.

3.6.1 The residential service has a clear policy and procedure on the management and protection of personal property and finances including pension management.

3.6.2 Each resident has access to their personal property and finances and secure facilities are provided for the safe-keeping of money and valuables.

The resident's right to control their own personal property and finances is respected for as long as they wish.

- 3.6.3** The residential service keeps an accurate and up-to-date record of all money, personal possessions and valuables held on behalf of each resident. Each resident, if they choose to do so, may nominate a person to keep an account of all monies spent.
- 3.6.4** Where any money or valuables belonging to the resident is handled by staff within the residential service, dated, signed records and receipts are kept. All records are signed by the resident.
- 3.6.5** Where residents need support to manage their financial affairs, they are facilitated to access information, advice and support on money management.
- 3.6.6** A resident does not contribute to any communal or business fund without their informed consent. Where funding is pooled or communal, proper accounting for contributions to and withdrawals from the fund are ensured.
- 3.6.7** Where arrangements are in place for staff to collect social welfare payments or pensions for residents, guidelines issued by the Department of Social Protection are adhered to.
- The HIQA National Standards for Residential Services for Children and Adults with Disabilities stipulate that:
- 3.1.13** Information, advice and support on money management are made available.
- 3.1.14** People have easy access to personal monies and control their own financial affairs in accordance with their wishes.

3.1.15 Where people need support to manage their financial affairs, they nominate a person to be entrusted with this responsibility. Nominated persons keep an account of all monies spent. If nominated persons are staff members, they are accountable to the person in charge as well as the person concerned.

3.1.16 People do not contribute to any communal fund without their informed consent.

3.1.17 People can avail of facilities for the safe storage of their money and valuables.

3.1.18 Records and receipts of possessions handed over for, or withdrawn from, safekeeping are kept up to date.

3.1.19 The person-in-charge ensures that people have access to advocates and/or legal advice in any situation where it appears they are subject to any form of financial abuse by a third party.

HSE Private Property Accounts

People in residential services who are deemed unable to manage their own property (including money) are assigned a 'Patient's Private Property Account' (PPPA) (see Appendix 2) if they have capacity to indicate this preference. It may also be considered the most appropriate option for people who are a Ward of Court or have another legal representative. These accounts are managed by the HSE or by someone else on behalf of the HSE (a service provider). Monies on behalf of people with a PPPA are kept in special accounts separate and apart from the HSE's own accounts. The HSE is responsible for the administration of these accounts and acts as trustee of the funds. Patients' Private Property accounts are independently audited each year.

Money lodged into private property accounts can only be used for the benefit of the individual. The HSE Central PPPA Unit may invest the money held in account or spend it for the benefit of the account holder unless directed otherwise by the account holder or by any person legally appointed by the court. The HSE may apply to the Circuit Court

for directions as to the use of amounts over €5,000. The HSE must inform the account holder and publish a notice of its intention in a daily newspaper. Concern has been expressed about this requirement and an important question raised as to right of the wider community to have access to such information and related data protection issues.

The Minister may appoint an independent person to monitor Patient's Private Property accounts and ensure that the money is used for the person's benefit. Regulations may be made to enable the HSE to impose a charge for administering Patients' Private Property accounts under the terms of the 2006 Act.

HSE Guidelines

The HSE Patients' Private Property Account Guidelines and associated information can be viewed on-line at <https://www.hse.ie/eng/services/list/4/olderpeople/pppaccounts/>

The Guidelines state (Par. 7.3.3) that they do not adopt the status-based concept of capacity whereby all clients are classified as either having full capacity or not having capacity.

The following stipulations are included in the Guidelines:

- HSE responsibilities to its service users include respecting and reinforcing their personal dignity and their freedom to determine matters relevant to them;
- The functional interpretation of capacity is to be used to the greatest extent practicable, i.e., that capacity is specific to the particular act or decision at the time it is being made;
- People, whether they are deemed to have decision-making capacity or not, must be involved in decisions affecting them, including decisions around finance, to the greatest extent practicable and consistent with their overall well-being.

¹⁶ HIQA and Mental Health Commission, National Standards for Adult Safeguarding, <https://www.hiqa.ie/sites/default/files/2019-12/National-Standards-for-Adult-Safeguarding.pdf>
 HIQA, National Standards for Residential Services for Children and Adults with Disabilities <https://www.hiqa.ie/sites/default/files/2017-01/Standards-Disabilities-Children-Adults-Plain-English.pdf>
 HIQA, National Standards for Residential Care Settings for Older People in Ireland, <https://www.hiqa.ie/sites/default/files/2017-01/National-Standards-for-Older-People.pdf>

The HSE's responsibilities, where there are doubts around a person's decision-making capacity, are set out as follows:

- The HSE's sole duty concerning PPPA funds is to ensure their funds held by the HSE are safeguarded for their direct benefit and their benefit alone;
- The HSE has a duty to be able to properly record and account for any movements in the funds held by it in safekeeping for clients;
- The HSE has no clear legal power to hand over, without their informed consent, the funds of any individual, to any other person other than where that person is a Ward of Court (WOC), or has in place an operative Enduring Power of Attorney (EPA) or has died;
- The continued independence of people is promoted to the greatest extent practicable, consistent with the provision of safe and appropriate care;
- In allowing any utilisation of PPPA funds where a person cannot give an informed permission, the HSE must be guided by the overriding requirement that it acts in the clear best interests of the individual;
- The HSE cannot permit any 'pooling' or 'general use' of funds -- each person's individual fund can only be used for his/her specific benefit;
- Service users' funds must be clearly separated from service provider funds in order to ensure clarity as to what service users are expected to fund from their own resources and what they can reasonably expect the HSE to provide for as part of its care obligation;
- Any net interest earned on investment of PPPA funds belongs to the clients and cannot be retained by the HSE.¹⁷

The Guidelines state that it is neither practical nor appropriate for the HSE to seek to be fully prescriptive, particularly "on issues impacted by the lack of capacity of clients" and that local clinical and other staff are best placed to know what is appropriate for an individual service user. Local discretion must, however, "be exercised purely on the basis of the client's best interests and their interests alone and must be within the parameters set by these guidelines" (Par. 7.6.3 p.8).

Process for accessing PPPA Funds for the benefit of the Individual

The Guidelines stipulate that each person's ability to derive benefit from any item or service that might potentially be purchased using their PPP funds must be assessed by clinical staff in the context of the person's overall Care Plan. In cases where there is an agreed decision by the clinical team that a service user would benefit from the purchase of an item or service not deemed to be necessary for his/her care, application can be made to use the person's PPPA funds to purchase such an item or service.¹⁸

Social welfare payments agents

The Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No.6) (Nominated Persons) Regulations 2009¹⁹ provide for the payment of social welfare benefits and pensions to a person other than the claimant or beneficiary. A person may be either nominated by the claimant or beneficiary to act as Agent and receive the payment on his/her behalf or be appointed by the Minister. The Regulations specify the circumstances in which such appointments may be made and, also, set out the duties and responsibilities of the appointed person. The Agent must be over the age of 18 years and be a prescribed relative, a person who has been appointed to be a Care Representative of the person (other than the medical practitioner

who signed the form) or a person who appears to the Department to have a good and sufficient interest in the welfare of the claimant. If the person lives in a residential service for a continuous period of four weeks or more, and, if no other person is available or willing to be appointed as an Agent, a representative of the service provider may be appointed as an Agent.

There are two types of Agent:

Type 1

This type of agent collects the payment on behalf of a person who is unable to do so due to illness or loss of mobility.²⁰ Type 1 agency confers no authority on the agent to do anything other than collect the payment and s/he has no responsibility in relation to informing the DEASP of any changes of circumstance - the recipient retains responsibility for this. The person may cancel or revoke an agent arrangement at any time and appoint another agent by completing the Authority to Appoint an Agent form²¹. The Department can also withdraw consent to a nomination at any time where it has reason to believe that the arrangement is not working satisfactorily or that that the payment is not being used for the benefit of the recipient. If this occurs, the Agent must, where relevant, return the payments on request.

Type 2²²

This applies where a person is deemed unable to manage his/her own financial affairs and an agent is appointed to collect the payment and act on behalf of the claimant.²³ In all cases a medical practitioner must certify that the person is unable for the time being to manage his/her own financial affairs for reasons which may include:

- An inability to understand the basis of possible entitlement to benefit

- An inability to understand and complete the claim form
- An inability to understand and deal with correspondence and enquiries concerning the claim
- An inability to manage benefit payments received

The DEASP has advised that where a registered care provider is acting as a Type 2 agent, the Department can facilitate electronic payments directly to the central residents' account of the institution. All monies transferred must be individually and correctly managed on behalf of the resident.

Ward of Court or Power of Attorney

In the case of a Ward of Court or an attorney appointed under an enduring power of attorney (EPOA), the DEASP will make payments directly to the Committee of the Ward or to the attorney by nominating them as agent for the beneficiary. All such payments are made electronically to a nominated bank account. In EPOA cases, this must be a financial institution account of which the payment recipient is a registered party.

The DEASP is in the process²⁴ of reviewing and revising the general use of Agents for receiving the State payments of adults who may be vulnerable to financial abuse and to this end established a Working Group to examine and make recommendations on the adequacy of the current procedures and processes for:

- Appointing agents for social welfare payments
- Reviewing existing agent arrangements
- Dealing with specific complaints regarding named agents when they arise (with the involvement of relevant external agencies as necessary) and

²⁰ This practice is sometimes just an informal arrangement between the two parties.

²¹ <https://www.gov.ie/en/form/fdc1cd-authority-to-appoint-an-agent/>

²² It is likely that a significant number of Type 2 agents are service providers.

²³ An Application Form, Appointment of Agent - Where a person is unable to manage their financial affairs,

4 must be completed and returned to the relevant section of the DEASP - see <https://www.gov.ie/en/service/451fd7-authority-to-appoint-an-agent/>.

²⁴ Source: <https://www.gov.ie/en/publication/3f6bc5-safeguarding-vulnerable-adults/#safeguarding-vulnerable-adults-at-risk>

¹⁷ The HSE may however retain a portion of interest earned on funds invested by the PPPA Central Unit, Tullamore as provided for in Statutory Instrument No. 639 of 2007.

¹⁸ Concern has been expressed about the requirement for the HSE to apply to Circuit Court as to the use of monies over €5000 and publish a notice in the daily newspaper and an important question raised as to right of the wider community to have access to such information.

¹⁹ <http://www.irishstatutebook.ie/eli/2009/si/378/made/en/pdf>

- Continuing to raise the awareness of staff on safeguarding and protection of vulnerable adults, with a particular emphasis on financial abuse

The Working Group is also assessing the implications for processes and procedures for agent arrangements in the context of the Assisted Decision-Making (Capacity) Act 2015 and will make recommendations for changes necessary in order for the Department to comply with that legislation.

The Group has submitted its Report and Recommendations to the Management Board.

Persons that can be appointed Agent

The Minister can appoint a person or an organisation to be Agent.²⁵ Appointed agents have a legal duty to ensure the money is used for the benefit of the recipient and they must also notify the DEASP of any changes to the benefit recipient's circumstances.

Many family members act as the Agent for individuals who lack the capacity to manage their money or do not wish to do so. Some services may ask families to transfer the agency for the social welfare payment to the service, when a person in receipt of a payment goes into residential care.

If the person concerned wishes that their family member continue as the agent, they may do so. However, it is important that the weekly contribution to the residential care service continues to be met. There is no legal obligation to have the service provider take on the agency but a resident of a nursing home may decide to nominate the person in charge of the nursing home as their Agent.

The person nominated to act as Agent must be over 18 years:

- Spouse
- Parent, step parent or foster parent
Legal guardian
- Child or step-child
- Brother or sister, step-brother or step-sister; half-brother or half-sister
- Son-in-law or daughter-in-law

- Niece or nephew
- Grandchild
- Grandparent
- Aunt or uncle
- An appointed Care Representative (see Glossary)
- A representative of a residential care facility
- A person, other than the medical practitioner who signed the form, who appears to the Department to have a good and sufficient interest in the welfare of the beneficiary

Obligations of persons appointed as Agents

A 'Type 1' agent must hand all monies collected to the due recipient without deduction of any kind.

A 'Type 2' agent is responsible for ensuring that:

- The payment is used for the benefit of the recipient
- Monies are not spent on items or services that the recipient has an entitlement to and are available
- The payment is lodged to an interest bearing account for the benefit of the recipient
- Any changes in the recipient's circumstances are reported to the Department

The Agent must also keep a record of all sums received and all transactions made in relation to the benefit payment, and produce the records if requested to do so by either the recipient, his/her advocate or an officer of the Department.

The Department may cancel an agency arrangement at any time where it has reason to believe that the arrangement is not working satisfactorily or that the payment is not being used for the benefit of the recipient. If this occurs, the Agent must, where relevant, return the payments on request.

Institutional Agents

SI 142/2007, as amended by S.I. No. 378 of 2009 202A(f),²⁶ stipulates that after an institutional agent has collected a pension or benefit payment (normally by direct EFT transfer to the residential care centre account)²⁷ and after the agent has undertaken any authorised financial transaction/offset on behalf of the recipient/patient, they must ensure that the balance of any benefit is lodged to an interest bearing trust account for the benefit of the claimant or beneficiary (see Appendix 3). In line with the above provision, as long as all monies are used by the institution only for the benefit of the recipient (Provisions 202A (d) and (e)) and that clear and accurate records are maintained (Provisions 202A (g) and (h)), the interest-bearing account need not be an existing or new personal account in the name of the person concerned.²⁸

The DEASP is satisfied that the accounting obligation in paragraph (f) of the legislation can be met by a designated centre if it has in place a secure and reliable internal structure/system for individualised accounting and tracking of patients' finances. This means that once there is a detailed account of every transaction which is traceable to each individual resident then the entirety of the funds for all residents can be held in one dedicated client account.

The DEASP takes into account the practical difficulties and legislative obstacles which would be encountered in the opening of a new bank account by a person with diminishing decision-making capacity and by a designated centre if it were seeking to facilitate that for a number of its residents. The Departmental view is that the legislation does not require that new personal accounts be opened for this purpose.

The financial management structures outlined in the HSE's Patient's Private Property

Guidelines are regarded by the DEASP as fully meeting the current requirements under social welfare legislation and are regarded by the Department as best practice in this area.

Ways of getting assistance with managing accounts

There are people who need 'physical' support in managing their financial affairs as, for example, their mobility deteriorates but who still understand and can still give direction as to what they want done with their money. They may want support or assistance with paying bills or withdrawing funds for daily living.

Putting an account into a "Joint Account"

It is often suggested to people who are experiencing such difficulty in managing their finances that placing their bank or credit union account into the joint names of themselves and the other person who is prepared to support them is a way of achieving this. This, however, can present a significant problem which is very difficult to address if this "arrangement" is not set up with due diligence and absolute clarity as to the intentions of the account owner. The putting of an account with a financial institution which contains money belonging to one party only (for example accumulated Disability Allowance or savings from it or other income or allowances) into joint names with another party has serious legal (and potentially taxation) consequences because of the operation in law of the concepts known as "resulting trusts" and "presumption of advancement".²⁹ These legal concepts can operate to deprive the rightful owner of some or even all of their money and may make it impossible for them to access the funds without the approval and/or signature of the other party whose name is put on the account.

²⁶ <http://www.irishstatutebook.ie/eli/2009/si/378/made/en/pdf>

²⁷ There is a DEASP Application Form for Direct Payment to an Account in a Financial Institution <https://assets.gov.ie/43104/d9435859f91b4d53b02231380994ce7e.pdf>

²⁸ These regulations are likely to be updated when the ADMC Act and related Codes of Practice are implemented.

²⁹ These are relatively complex legal terms which highlight the potential consequences for a person of putting an account in the sole name of an individual into a 'joint account'.

Third Party/Agency Account

The only way of making sure that the legal concepts of “resulting trust” and “presumption of advancement” DO NOT apply to an account in joint names and ensure that the money in the account continues to be the property of the original account holder or owner and is to be used for their benefit only, is to make sure that all of the parties involved are made aware in writing that the additional person whose name is being added to the account is being appointed as AGENT for the original account holder only. These parties include the financial institution, the original account holder, the person whose name is to be added to the account and all other relevant parties (for example, a care provider or solicitor or family members). In the case of the financial institution, a note to the effect that the additional person acts only as an agent for the account holder should be put on the account. In banking terms this additional person is called a “third party signatory” being given third party authority.

A third party authority allows the account owner to select a third party (usually a trusted relative or close friend) to do their day-to-day banking without opening a joint account. The third party is regarded in law as the account owner’s agent. The account still belongs to the account owner, not to the agent, and the agent is bound to use the money in the account at the direction of the account owner and for their exclusive benefit.

Like any other agency agreement, there can be rules or limits imposed on the agent. In the context of a vulnerable account owner needing support with personal finances, those rules would include an agreed list of bills to be paid on the third party’s authorization and a weekly/monthly limit to the cash that can be taken out by the agent. The account owner can at any stage cancel the authority of the third party by giving notice to the bank and to the third party.

Not all financial institutions will offer the “third party signatory” facility. For those that do it is recommended that the assistance of the financial institution’s Vulnerable Customer Service be requested.

This is necessary in order to ensure that it is identified as an agency account and that their customer receives full information and that the third party signatory is properly designated.

A third party authority ceases automatically if the account owner lacks the capacity to make decisions around their finances or to direct the agent in matters concerning the money in the account. If this occurs, any Enduring Power of Attorney made by the account owner should then be registered to enable the attorneys appointed by the account owner to act on behalf of the account owner in relation to their finances. If not, then an application to court will be necessary – currently wardship is the only option available and this will remain the case until the ADMC Act 2015 is implemented.

Power of Attorney

Another option for a person who needs physical support in managing their finances is to put in place a Power of Attorney (POA). This is often referred to as an “ordinary” or “general” Power of Attorney provided for in Section 16 of the Powers of Attorney Act 1996. It is completely different to an Enduring Power of Attorney (EPA) also provided for under the same Act. A POA automatically ceases when the person creating it loses capacity, unlike an EPA which is only capable of being brought into effect after the donor loses capacity. As with the appointment of any agent, the attorney under a POA should be given clear instructions in the POA as to which of the donor’s assets they will, as attorney, have power over, how they are to exercise that power and for whose benefit. In the context of a vulnerable account owner needing the support of an attorney with personal finances, those instructions would include an agreed list of bills to be paid by the attorney out of a specified bank account and a weekly/monthly limit to the cash that can be taken out by the attorney.

Without these limitations an attorney could deal with all of the assets of the donor and, for example, sell their land or shares even though the intention of the donor was simply that the attorney be able to utilize their current account to pay household bills and expenses.

Provisions of the Assisted Decision-Making (Capacity) Act 2015

It is almost certain that the full implementation of the Assisted Decision-Making (Capacity) Act 2015 will have significant implications for the management of people’s personal finances in that the Act takes the presumption of capacity to another level by making provision for supported decision-making. The Act provides for three types of decision-making support options to respond to the range of support needs that people may have in relation to decision-making capacity.

The legal requirement to engage in supported decision-making mechanisms and related provisions envisaged in the ADM Act 2015 provides necessary impetus and a more robust system for ensuring that people are enabled to manage their own financial affairs to the greatest extent possible. The full implementation of this legislation will be a significant milestone and will reflect in Irish law core provisions of the UN Convention on the Rights of Persons with Disabilities in respect of supported decision-making.

The Act sets out guiding principles that are intended to safeguard the autonomy and dignity of the person with reduced decision-making capacity. The guiding principles state that:

- There is a presumption of decision-making capacity unless the contrary is shown;
- No intervention will take place unless it is necessary;
- Any act done or decision made under the Act must be done or made in a way which is least restrictive of a person’s rights and freedoms;
- Any act done or decision made under the Act in support or on behalf of a person with reduced decision-making capacity must give effect to the person’s will and preferences.

Capacity assessment

The Act provides for a flexible and functional approach whereby capacity is assessed only in relation to the matter in question and only at the time in question. If a person is found to lack decision-making capacity in one matter, this will not necessarily mean that she/he also lacks capacity in another matter. The Act recognises that capacity can fluctuate in certain cases.

Decision-making support options

The legislation recognises different levels of decision-making capability and, therefore, provides for different categories of interveners to assist a person in maximising his or her capacity. The Act thus provides for three types of decision-making support options to respond to the range of support needs that people may have in relation to decision-making capacity.

- 1) Assisted decision-making: a person may appoint a decision-making assistant – typically a family member or carer – through a formal decision-making assistance agreement to support him/her to access information or to understand, make and express decisions;
- 2) Co-decision-making: a person can appoint a trusted family member or friend as a co-decision-maker to make decisions jointly with him or her under a co-decision-making agreement;
- 3) Decision-making representative: for the small minority of people who are not able to make decisions even with help, the Act provides for the Circuit Court to appoint a decision-making representative where no other provision is in place and whose functions will be as limited in scope and duration as is reasonably practicable.

Section 8 of the ADM Act 2015 includes the principles that apply and which should be given effect when supporting a person to make decisions which are summarised on the next page.

Pending the implementation of the legislation, there would be much merit in all those supporting people with reduced decision-making capacity with financial transactions to follow these principles. In other words, assessment of decision-making capacity must be in a time-specific, issue-specific way

that considers whether a person is able to understand the nature and consequences of the decision in the context of the available choices. The test is a functional one, which asks whether the person can understand, retain and weigh up information and communicate their decision.

Guiding Principles of the ADM (Capacity) Act 2015 (Section 8)

- A person is presumed to have capacity
- All practical steps have to be taken to help a person make a decision
- A person is not unable to make a decision merely because they make an unwise decision
- A decision (intervention) is only made for a person when it is necessary

A decision (intervention) made for a person must

- be the least restrictive of their rights and freedom
- respect the person's right to dignity, bodily integrity, privacy, autonomy and control over their financial affairs and property
- be proportionate to the significance and urgency of the decision
- be time limited

The person making the decision (intervener) must

- permit, encourage and facilitate the person to participate in the decision
- take into account the person's past and present will and preferences
- take into account the person's beliefs and values
- take into account any other factors the person themselves would consider if they were able to
- act in good faith and for the benefit of the person
- consider all other circumstances which are relevant
- consider the likelihood of the person recovering the ability to make the decision themselves and the urgency of the decision to be made
- obtain relevant information only, use the information only for the purpose of making the decision, keep the information secure and dispose it safely when no longer required

The person making the decision must, unless not appropriate or practical

- consider the views of others the person names as people to be consulted
- consider the views of the person's decision-making assistant, co-decision-maker, decision-making representative or attorney

The person making the decision may

- consider the views of a health professional, the person's carer or other person who has a genuine interest in the person's welfare

Role of HSE Safeguarding Teams

HSE Safeguarding and Protection Teams are in place all over the country and work with services, families and community organisations to stop abuse and to ensure that people are safeguarded. These Teams can be contacted through local HSE Community Healthcare Organisation Areas (CHO).³⁰

Safeguarding Teams have an important role to play in addressing concerns about financial abuse. In circumstances where a service, professional or family members believes there are concerns about bad practice and are a mechanism for reporting any such concerns.

The underlying rationale for the Safeguarding Teams is that all adults have the right to be safe and to live a life free from abuse regardless of their circumstances. They have a right to be treated with respect and to feel safe, regardless of the setting in which they live.

The "Safeguarding Vulnerable Persons at Risk of Abuse - National Policy and Procedures", which applies to all HSE and HSE funded services, outlines a number of principles to promote the welfare of vulnerable people and safeguard them from abuse, including, in particular, respect for human rights and empowerment of individuals. All vulnerable people have a right to be protected against abuse and to have any concerns regarding abusive experiences addressed.

Financial or material abuse, which includes theft, fraud, exploitation; pressure in connection with wills, property, inheritance or financial transactions; or the misuse or misappropriation of property, possessions or benefits, is listed among the types of abuse.

A HSE National Safeguarding Office was established in December 2015 in accordance with the HSE's Social Care Division Safeguarding Vulnerable Persons at Risk of Abuse National Policy & Procedures in order to oversee the implementation, monitoring, review and ongoing evaluation of the Safeguarding Policy as well as coordinating the development and roll-out of safeguarding training.

Role of financial service providers in safeguarding the finances of an adult who may be vulnerable to financial abuse

The Central Bank of Ireland Consumer Protection Code³¹ stipulates that where a Bank has identified that a personal consumer is a vulnerable consumer, the Bank "must ensure that the vulnerable consumer (see Glossary)³² is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity" (3.1).

A Financial Service Provider who is engaging with a person who is perceived by a staff member of that Financial Service Provider to be potentially vulnerable to financial abuse has a particular duty of care to that person on account of their vulnerability. This was established by a High Court judgement in October 2010.³³

³⁰ <https://www.hse.ie/eng/services/list/4/olderpeople/elderabuse/protect-yourself/safeguardprotectteams.html>

³¹ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/4-gns-4-2-7-cp-code-2012.pdf?sfvrsn=6>

³² A vulnerable consumer is defined in the Consumer Protection Code as meaning a person who:
a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example people with hearing or visual difficulties); and/or
b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

³³ Bourke v O'Donnell & Others [2010] IEHC 348 The bank's customer was a woman who had been in bad health for some years and was now living in a nursing home. She attended at the bank to withdraw all of the proceeds of an insurance policy, which had recently been lodged to her account and which was her only asset, in order to give the money to her neighbours. Mr Justice Hedigan considered that the customer was highly vulnerable, the transaction wholly improvident and its circumstances so bizarre that the bank ought to have enquired further to satisfy itself that their customer had the capacity to issue instructions free from undue influence and in not doing so had breached its duty of care and so was liable for the sum of money. See also <https://www.lawsociety.ie/Solicitors/Practising/Practice-Notes/Transactions-involving-vulnerableolder-adults-to-include-requests-for-visits-to-residential-care-settings/#.XZ97SUZKg2w>

The ADM Act 2015 provides for the development of a statutory Code of Practice for the guidance of, inter alia, independent advocates and other persons (including healthcare, social care, legal and financial professionals) acting on behalf of relevant persons.³⁴ The Code for Financial Professionals is expected to confirm a duty of care and set out the steps that financial professionals must take in order to comply with that duty.

Pending the commencement of the ADM Act, Financial Service Providers should assist adults who may be vulnerable and their Support Providers in setting up and managing appropriate accounts as referred to in this Document. They should have a mechanism in place for periodic checking to ensure that the arrangements in place continue to meet the vulnerable adult's needs. Financial Service Providers should collaborate (if possible) with that individual's Support Provider and if necessary challenge them to account for the use of the vulnerable adult's funds. This is particularly important in the case of Joint Accounts (see above). It is crucially important that staff in financial institutions have experienced staff trained in the legal and tax consequences of transferring financial accounts into joint names and be able to explain the issues to the customer.

Financial service providers should, if appropriate, recommend the assistance of an Independent Advocate where difficulties are perceived or identified in relation to the proper management of a vulnerable adult's funds for the benefit of that vulnerable adult and/or collaborate with an Independent Advocate where one has been appointed to assist the vulnerable adult.

The Banking and Payments Federation of Ireland Guide to Safeguarding your Money Now and in the Future,³⁵ provides a valuable guide for this purpose. It provides guidance on, inter alia, asking your bank for help, managing everyday banking, getting another person involved in managing your money, setting up a joint bank account, setting up a third-party authority and setting up a power of attorney.

Role of Independent Advocacy in ensuring the support needs of an adult who may be vulnerable to financial abuse are adequately met

The HIQA National Standards for Residential Services for Children and Adults with Disabilities (3.1.19) stipulate that the person-in-charge should ensure that people have access to advocates and/or legal advice in any situation where it appears they are subject to any form of financial abuse by a third party. While many health and social care professionals have an advocacy role, there is an important distinction between the advocacy role of such professionals and the role of independent advocates. While the role of families and relatives as advocates is crucially important, there is an additional and necessary perspective that independent support and advocacy can bring to ensure that the voice of the person is clearly articulated in all circumstances, and, particularly, where crucial decisions are being made in relation to medical interventions, place of living and care arrangements.

The reality is that some people, due to circumstances, age, isolation, disability or cognitive impairment are not able to defend their rights and interests. For example, they may not be aware that financial abuse is taking place or may not know or have access to a means of dealing with violations to their human rights. In addition, in many cases where abuse or violation of rights occurs, such people are under the control of the perpetrator of the abuse or violation and may fear retaliation. In other cases, there are higher levels of abuse where people do not have the capacity to voice their concerns. NGOs working with vulnerable adults are at times frustrated in assisting people they believe to be vulnerable because of the lack of a statutory framework within which the role of independent advocates is recognised and acknowledged.

The reality is that vulnerable adults on occasions experience financial abuse and exploitation at the hands of individuals, organisations and family members who are

charged with supporting and caring for them, it is of critical importance that vulnerable adults have access to an advocacy service that is independent of both service providers and family members.

Independent advocacy refers, essentially, to advocacy support provided by an organisation that is structurally and financially autonomous and independent from the services that deliver health and social care, as well as from the family of the person to whom the advocacy service is being provided.³⁶ For this reason, an independent advocacy service should be regarded as a vital part of safeguarding vulnerable persons' rights.

Independent advocacy can make a vital contribution to the safeguarding of vulnerable adults by:

- 1) Ensuring in a general way that all of the rights of vulnerable adults in respect of their personal finances are safeguarded;
- 2) Enhancing people's right to have their 'voice' heard and to participate in the making of decisions regarding their finances;
- 3) Supporting the will and preferences of the vulnerable adult and ensuring that as far as possible the individual remains in control of their finances;

Sometimes the intervention of an Independent Advocate for an adult who may be vulnerable to financial abuse may be indicated or even necessary to ensure that financial abuse does not occur. The role of the Independent Advocate can include, for example,

- Clarifying the fact that families or service providers have no legal right to make financial decisions unless duly appointed in accordance with the law, e.g., attorneys under an Enduring Power of Attorney or a Ward of Court Committee
- Verification of invoices raised by, for example, a residential care provider

- Ensuring that people's finances are used for their benefit as distinct from lying dormant in a bank account
- Creating awareness of the need to have in place a proactive environment within which vulnerable adults can use their money in a creative and useful manner
- Ensuring that appropriate support is in place to enable a vulnerable adult, (e.g., a person in residential care) to decide what to spend their money on
- Acting as an intermediary where there are divergent views on how a vulnerable adult's money should be spent between the vulnerable adult, his/her family and a residential care provider
- Encouraging families and service providers to engage purposefully and proactively with vulnerable adults to get them to spend their money on, for example,
 - Social activities that they enjoy and/or would benefit from
 - Equipment that would enhance their quality of life

In carrying out one or more of these roles, the Independent Advocate is giving effect to the Guiding Principles set out in Section 8 of the ADM Act (see Appendix 4).

Non-instructed advocacy is where the advocate acts independently of the individual, in some cases through necessity, as the individual's decision-making capacity may be impaired or s/he may not have the skills to advocate for themselves. Capacity to instruct or understand can be diminished for a number of reasons, for example, mental health problems, dementia, or learning disabilities.

While, generally speaking, an Independent Advocate operates on the instructions of the person being supported, s/he can also take on a safeguarding role in respect of people with reduced decision-making capacity by exploring with those responsible for the care of the individual how their human rights are being protected.

³⁴ Assisted Decision-Making (Capacity) Act 2015, Section 103.

³⁵ <https://www.bpfi.ie/wp-content/uploads/2018/06/BPFI-Guide-to-Safeguarding-Your-Money-Now-and-in-the-Future.pdf>

³⁶ There are a number of agencies providing dedicated independent advocacy support to individuals across the country, in particular, Sage Advocacy, National Advocacy Service, Citizens Information Services, Irish Advocacy Network and SHEP Cork Advocacy Service.

This is ensuring that people's rights are protected in all cases but especially in cases where a person because of reduced decision-making capacity is unable to give informed consent.

Non-instructed advocacy has been defined as:

“Taking affirmative action with or on behalf of a person who is unable to give a clear indication of their views or wishes in a specific situation. The non-instructed advocate seeks to uphold the person's rights; ensure fair and equal treatment and access to services; and make certain that decisions are taken with due consideration for their unique preferences and perspectives.”³⁷

It is of course important to acknowledge that a person's capacity can vary from day to day depending on their condition or the issue with which they are dealing. It is also obviously centrally important that communication difficulties would not in any way be equated with reduced decision-making capacity.

The Adult Safeguarding Bill 2017 makes provisions for adults at risk accessing an independent advocate³⁸. Under the Bill, the Safeguarding Authority (to be established) can arrange for a person who is independent (an “independent advocate”) to be available to represent and support an individual. The condition for appointment of an independent advocate is that the Authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following:

- (a) Understanding relevant information;
- (b) Retaining that information;
- (c) Using or weighing that information as part of the process of being involved;
- (d) Communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means). 12(3)

Section Three: Providing Assistance to People Who Require Support with Money Management

Legal presumption of capacity

The management of people's personal finances must at all times be governed by the general legal presumption that an individual has the capacity to make his/her own decisions. This approach assumes that a person has capacity to make any given decision unless there is a strong basis to be concerned that this may not be the case. This means in effect that any funds belonging to a person which are in the safekeeping of another person or an agency cannot be utilised for any purpose without the clear permission of the person.

The HSE PPA Guideline that “if there is no reason to doubt the capacity of the person, then the golden rule is to ask the client and get their permission before doing anything with their funds” (HSE Patient Private Property Guidelines 7.2.4 p.7) should apply in all situations.

Where a person is deemed not to be able to give permission due to reduced decision-making capacity, the Guiding Principles of the ADM (Capacity) Act 2015 should, as far as possible, be applied (see Appendix 4), in particular:

- Permit, encourage and facilitate the person to participate in the decision
- Take into account the person's past and present will and preferences
- Take into account the person's beliefs and values

- Take into account any other factors the person themselves would consider if they were able to
- Act in good faith and for the benefit of the person
- Consider all other circumstances which are relevant
- Consider the likelihood of the person recovering the ability to make the decision themselves and the urgency of the decision to be made

Best practice considerations

All adults, irrespective of personal circumstances or decision-making capacity, have a right to have their own money to be accessible to and available to them. Therefore, there needs to be complete openness, transparency and accountability in this regard. Best practice requires that:

- a) A person's right to manage their own finances and to spend their own money as they choose is recognised and fully acknowledged;
- b) A distinction is made between a person's legal right to make decisions about their own finances and their ability or lack thereof to put their decision into effect;
- c) There is ongoing monitoring of an individual's ability to understand and manage their finances in order to ensure that they receive appropriate support to do so;
- d) Supports to people to manage their finances are at the lowest level required in accordance with the provisions of the ADM Act 2015;

- e) Where a person in a residential care facility has their money managed by the facility, they have a right to have such money kept in their name in a client account, separate from the residential care facility and, as far as possible, to receive regular statements of their own client account in a manner that they can understand;
- f) Where people are assessed as lacking decision-making capacity, arrangements which are put in place should have a proper legal basis, an attorney appointed under an Enduring Power of Attorney or a Court Appointed Decision-making Representative (under the ADM Act when implemented) or under current arrangements a Ward of Court Committee.³⁹

Supporting adults who may be vulnerable to financial abuse to manage their money

The following support needs are, to a greater or lesser extent, common to all adults who may be vulnerable to financial abuse, depending on the individual's own circumstances and decision-making capacity:

- To be enabled to control their own money to the greatest extent possible (**empowerment need**)
- To have ease of access to their own money (**accessibility need**)
- To be able to use their own finances for their personal benefit in order to enrich their lives and reach their full potential (**social and comfort need**)
- To have their money readily and openly identifiable as their own (**accountability need**)
- To have their money kept safe (**safeguarding need**)

³⁷ Henderson, R. Non-instructed Advocacy in Focus http://aqvx59.dsl.pipex.com/What_is_non_instructed_advocacy.pdf

³⁸ Adult Safeguarding Bill 2017, Section 12

³⁹ The ADM Act 2015 makes provision for the ending of the Ward of Court system.

When supporting a person to personally manage their finances and (if necessary) assessing which method of protecting them from possible abuse is most suitable for them at any particular time, the functional approach⁴⁰ to assess their ability to manage their finances should be used. This means that service providers, relatives and independent advocates should adopt an approach that enables people with diminished decision-making capacity to understand as far as possible that:

- They have an income of a certain amount per week or month;
- Their income is collected at a Post Office or goes directly into a bank, credit union or other account which is in their name;
- From that account they have to contribute a certain amount towards their accommodation and food whether living in a residential care setting or in a family household;
- The balance remaining is theirs to spend as they choose, such as an evening out with friends, going to the cinema, buying clothes, having a haircut or other personal care services;
- Access to that money in a Bank or Credit Union Account is gained by either on-line banking (which has log in codes) or going into the bank/credit union themselves or using an ATM (bank) card which has a PIN number which they need to remember OR that their ATM card and PIN number is kept safe for them by someone else – a residential care provider or a relative;
- They cannot spend more money than they have.

Supports should, therefore, be provided on a graded scale in accordance with an individual's financial capacity and should include enabling them as far as possible to:

- ✓ Accurately count money
- ✓ Verify change from financial transactions of increasing complexity
- ✓ Make payments by cheque
- ✓ Understand PIN numbers and on-line log-in systems
- ✓ Understand bank statements
- ✓ Understand simple financial concepts

Need for an individualised support needs approach

Support for people who may be vulnerable to financial abuse should mirror that set out in sections 3.3 to 3.7 inclusive and Section 8.2 to 8.4 inclusive of the ADM 2015 Act (see Appendix 5) (whether or not that Act has been fully commenced) in order to comply with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) which Ireland has ratified.⁴¹ Article 3(3) is particularly relevant in respect of support for financial management – “A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (whether using clear language, visual aids or any other means)”.

Given the range of adults who may be vulnerable to financial abuse for a variety of different reasons, it is not possible to suggest any one particular method of providing money management supports. Additionally, the ability of people to manage their finances, may in common with other abilities, change from time to time depending on the extent to which they are supported and empowered to do so by third parties (a positive change in ability) or due to a deterioration in their ability due to

an illness or condition (a negative change in ability). It is also the case that family members due to the changing needs of the person requiring support or due to changes in their own situation related to, for example, illness or ageing, may not be able to continue to provide the support at the level required.

In order to provide for people's individual abilities or capabilities and any change in these, different methods of supporting and managing the finances of adults who may be vulnerable to financial abuse are required and indicative methods of providing such support are suggested below.

Indicative methods of support identified

Three indicative methods of supporting people who may be vulnerable to financial abuse were identified through discussions and consultation with independent advocates and staff of residential care facilities during the process of developing this Document. These support methods apply to all vulnerable adults and to all financial accounts (social welfare payments and accumulated financial assets) belonging to a vulnerable adult.

The indicative support methods outlined in the Document are:

- 1) Minimal support
- 2) Support with oversight and
- 3) Management by a third party

Method 1: Minimal Support

This method is indicated where the adult who may be vulnerable to financial abuse has the ability to understand and manage, or has been empowered to manage their own finances, can make their own spending decisions, and can readily access their money which is held in an account in their sole name with minimal support. This support may amount, for example, to assistance with going through their bank account or other statements at the end of the month and/or some guidance to manage their account on-line. The person

themselves holds their own Bank details, including ATM card and PIN number or on-line log in numbers, which are not known to others.

In such scenarios, it is crucially important that the support provider has established that the individual involved has the capacity to understand the processes involved and is able to remember or access their own PIN in a secure manner.

Needs met by this method

This method meets all of the needs set out above (empowerment, access, social and comfort, accountability and safeguarding) and has minimal supervision or support requirements.

Role of the Support Provider

Minimal, perhaps assistance with balancing statements.

Method 2: Support with oversight

- This method requires more supervision and support from a Support Provider;
- This method places a significant responsibility on the Support Provider;
- Adults being supported to use this method to manage their finances would have an account in their own name into which their income is paid;
- There is an ATM card for the account and a PIN number, but one or both are retained by the Support Provider for safekeeping, not by the person themselves;
- When accessing money in their account either in person or on-line, the person needs the support of a third party who will assist them with these transactions.

Before a Support Person would retain a person's ATM card, PIN or on-line access code and 'assist' the person with financial transactions' it would be important to establish that the person is capable of understanding and appreciating the financial concepts associated with these transactions.

⁴⁰ “A person's capacity shall be assessed on the basis of his or her ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time” (ADM Act 2015 Section 3 (1)).

⁴¹ See Sage Advocacy ALERT on Supporting Decision Making at https://www.sageadvocacy.ie/media/1479/supporting-decision-making-maximizing-capacity_15012019.pdf

Needs met by this method:

This method prioritises the empowerment need over the safeguarding need and caters for the accountability need.

Role of the Support Provider

In order to balance the safeguarding need with the accountability need, the Support Provider needs to have procedures to ensure accountability and transparency of practice.

Requirements for residential care services

- A resident's ATM card and their PIN number should be kept separately and safely and there should be a protocol in place to record all instances where a staff member accesses and uses these for financial transactions with or on behalf of a resident;
- There should be a staff "sign out" and "sign in" process for both ATM card and PIN number;
- A full record should be kept of any staff attendance at banks with residents (and when) so that withdrawals/lodgements can be matched to items that appear on financial statements;
- The receipts for all ATM transactions (and any other transactions on the account such as an in-bank withdrawal or lodgement) are requested at the time of use of the ATM machine and are kept safely both for the Resident's information as well as the protection of individual staff providing support to a Resident;
- Data protection requirements in respect of personal information should be adhered to in all protocols and practice;
- A system is in place for weekly/monthly recorded oversight of the transactions which can be made available to the Health Care Regulator (HIQA) as required;
- There should be provision for an annual external audit which can be made available to the Health Care Regulator (HIQA).

Requirements for families

The procedural requirements for financial management in residential care settings outlined above should inform the financial management process where a vulnerable adult who requires support and oversight in respect of managing their finances lives with family members. This is desirable in order to ensure transparency and accountability and to protect both the individual and the relative/s.

While family members should seek to follow these procedural requirements and regard them as best practice, there is obviously a need for a pragmatic approach that suits the needs of different family dynamics and ways of supporting their vulnerable adult relatives.

Requirements for community-based social and health care providers⁴²

Pending the regulation and development of quality standards for home care provision, community-based social and health care providers (e.g. home helps and public health nurses) who are acting informally as a Support Provider to people in managing their finances should be guided in a general way by the process outlined above for residential care services.

Method 3: Management by a third party

This method should be used where neither of the two methods set out above are suitable because:

- a) The person is unable to understand or make a decision regarding their finances even with support⁴³ and
- b) The person does not have in place a registered Enduring Power of Attorney whereby they have appointed an attorney or attorneys to manage their finances for them or are not a Ward of Court.

It should be documented clearly how it was established that the person is unable to manage their finances even with support. For example, the fact that a capacity assessment has been carried out needs to be documented.

Needs met by this method

Since the persons for whom this method must be used are effectively unable to act autonomously, and, therefore, cannot have their **empowerment need** met, there is a need to ensure that systems put in place are fully transparent and are the least restrictive possible.

Role of the Support Provider

The role of the Support Provider will differ depending on a person's place of residence.

- A)** If the vulnerable adult lives in a residential care service run directly by the HSE (such as a community unit), or a residential care service run by an independent provider availing of "Section 38" funding from the HSE (certain congregated or community settings) (see Appendix 5), the method set out in Paragraph A below should be used in the management of their finances
- B)** If the adult lives in a nursing home in private ownership or in Section 39 funded services (see Appendix 5), the method set out in Paragraph B below should be used in the management of their finances.
- C)** If the vulnerable adult resides with family members, the method set out in Paragraph C below should be used in the management of their finances.

A) HSE run/funded places of care: the role of the Support Provider:

In the case of both HSE directly managed services and some "Section 38" services funded by the HSE, the management of the personal finances of those people for whom method three is indicated is the use of the HSE Patient Private Property Account (PPPA) system⁴⁴ (for those who have such accounts). Most of these accounts are operated by the HSE Central PPPA Account Unit but some are managed locally.⁴⁵

The HSE *Patients' Private Property Guidelines* apply to all patients' private property where the HSE directly holds the client's monies for safekeeping or where third-party provider holds the monies and the contract for care is between the HSE and that provider. The Guidelines (see Part 1 above and Appendix 1) provide guidance on:

- Using a client's funds for his/her benefit
- Deciding on capacity for purposes of using the funds
- Providing information to clients and families
- Maximising involvement of clients in decision-making about finances
- Advise the HSE PPPA section of the resident's individual needs on an ongoing basis which will be released on a weekly basis (**access to own funds need met**)
- Advise the HSE PPPA section of any personal needs of the Resident as they arise (other than basic care, healthcare and healthcare equipment and appliances) and request sufficient funds to meet that need, for example, funds for a holiday or trip, or new clothes for an upcoming family event.⁴⁶

42 A Guidance Document is needed for all providers of health and social care in people's own homes in respect of supporting people with financial management.

43 ADM Act, Section 8 – see Section 2 above and Appendix 4.

44 HSE Guidelines for Patient Private Property Accounts operated under Health (Repayment Scheme) Act 2006. <https://www.hse.ie/eng/services/publications/corporate/patients%20private%20property%20guidelines.pdf>

45 The majority (95%) of PPPAs are held and managed in the HSE PPPA Central Unit.

46 Evidence gleaned in the compilation of this Discussion Document suggests that there are certain inequities in the implementation of the HSE Guidelines in relation to the provision for a resident of certain healthcare equipment and appliances depending on which CHO Area they reside in and it may be necessary to argue this with the HSE or call in an independent advocate to assist.

To avail of this system for the Resident for whom Method 3 is deemed most appropriate for the management of their personal finances, the service provider should request that a HSE PPPA be opened and should advise the HSE PPPA section about all pensions and benefits and all other income to which the Resident is entitled. This will enable the HSE to become the agent for the Resident ensuring that all payments are paid directly into the Resident's personal PPPA.

B. Non HSE run/funded Places of Care – the role of the Support Provider

As a general principle, the HSE Patients' Private Property Account Guidelines should be used by all private and not-for-profit residential care services as a basis for developing their own guidelines and procedures.

Currently, the HSE PPPA system for managing the finances of residents for whom this method is deemed suitable does not apply in privately owned Places of Care such as a nursing home. Nor is it mandatory for "Section 39" funded operators to use the HSE PPPA system for residents in their service where it would be appropriate to do so based on an assessment of the person's decision-making capacity.

The systems for the management of the personal finances of residents in either privately owned or privately run residential care settings or in "Section 39" services should mirror in their procedures and protocols the HSE PPPA system having reasonable regard to the size of the service and the number of residents whose finances are managed.

Therefore, it is recommended that all Residential Service Providers should manage the account for each Resident for whom this method is indicated as follows:

- Open in the Service Providers own bank both a current account and a deposit account which are clearly marked as "client accounts" so that the bank is aware that the money in these accounts do not belong to the organisation itself but is held in trust by the organisation for the benefit of the named clients for whom the organisation holds personal funds and are not part of the assets of the Service Provider.⁴⁷
- Become the Agent for the receipt of the individual resident's social welfare payment (**safeguarding need met**)
- Provide details of the client current account as the account into which the resident's social welfare benefit is to be paid
- Raise a valid and verifiable invoice within the organisation's own system for the portion of the Resident's funds which is owed to the Residential Service Provider and transfer that amount out of the Residents account into the organisation's own current account (**accountability need met**)
- Transfer the balance of the Resident's money remaining in the current account into the client deposit account (which can be a pooled account) (**safeguarding and accountability needs met**);
- Apportion the interest earned periodically on the deposit account proportionally between the various Residents who own the money in the client deposit account (**accountability need met**);
- Abide generally by the same rules set out in the HSE PPPA Guidelines for the use of a Resident's funds for their own benefit (**social/comfort and empowerment needs met**);

- Adapt the various forms contained in the HSE Guidelines for PPPAs to record how and when a Resident's money was used for their benefit (**accountability need met**);
- Have a set transparent procedure for assessing the amount of money needed to meet the Resident's weekly social and comfort needs (**social/comfort and accessibility needs met**);
- Have a set transparent procedure for assessing the amount of money needed to meet the Resident's "out of ordinary" social or comfort needs (**empowerment need met**);
- Have a system for weekly/monthly recorded oversight of the transactions which can be made available to the Health Care Regulator (HIQA) and to an independent advocate where appropriate;
- Have an independent audit at the end of the year which can be made available to the Health Care Regulator (HIQA).

C. Role of family members as Supporter Provider where an adult may be vulnerable to financial abuse

There is a clear obligation on relatives to ensure that people's money is used for their benefit only. This is stated explicitly in the *Obligations and Responsibilities* of an Agent outlined by the DEASP.⁴⁸ It is also the case that many families spend considerably more in providing the supports and assistance that their vulnerable adult member/s requires than the income the latter receive from the State.

The Family Member as a Support Provider in these circumstances should ensure:

- That there is in place an accessible Trust Account which is clearly marked as such so that the bank is aware that the money in that account does not belong to the individual opening it but that the funds in the account are held in trust by that individual for the benefit of their named relative;
- Be aware generally of the requirement that the money in their vulnerable relative's funds should be used only for the benefit of the latter (**social/comfort and empowerment needs met**);
- Be in a position to account for how and when their vulnerable relative's money was used for their benefit (**accountability need met**);
- Work out in a transparent manner a sum of money which it would be reasonable to expect their vulnerable adult relative to contribute to the household budget and arrange with the financial institution where the trust account is held to transfer that amount out of the trust current account into the Support Provider's own current account (**safeguarding need met**);
- Meet their vulnerable relative's assessed "out of ordinary" social/comfort needs, for example holidays, chiropody, massage, hairdressing (**empowerment need met**) as and when they arise, out of their available money.

In all cases, supporting people to manage their money should be based on the principle of empowering individuals to the greatest extent possible and interventions should be proportionate to each individual's support needs.

As in Method 2, a basic practice for all families should be to keep a record of all withdrawals on paper/online and ensure that this can be reviewed at any stage.

⁴⁷ Under current provisions, this can be an account into which all of the residents have their monies pooled. The DEASP have advised that once there is a robust internal accounting system for individual amounts in place, this will satisfy the requirements of social welfare legislation.

⁴⁸ <https://www.gov.ie/en/publication/17b5aa-responsibilities-of-an-agent-for-welfare-payments/>

Section Four:

Concluding Observations

Overarching factors

The use of the term ‘vulnerable’ is somewhat problematic given that vulnerability may be as much to do with people’s living circumstances/ environment as with their cognitive ability and that there is a vast spectrum of vulnerability relating to people’s reduced decision-making capacity. The fact that there are different domains of financial capacity is also relevant. There is also the matter of the quick onset of vulnerability arising from, for example, dementia or Acquired Brain Injury which requires additional consideration.

In considering the question of how best to support vulnerable adults to manage their finances, there are a number of factors which need to be taken into account. These include, in particular,

- Ensuring that all interventions are based on the fundamental rights principle of ‘nothing about you/without you’
- The need to keep the principle of supporting the individual’s will and preference at the core of any supports provided
- Viewing people who may need assistance to manage their finances primarily as individuals requiring support rather than just service users
- Ensuring that all individuals have access to independent advocacy, that is advocacy support that is independent of families and service providers
- The right of each individual to have any money that they own in an account in their own name or in a properly constituted Trust Fund
- The right of each individual to have Bank, Credit Union or Post Office Account
- The need to exercise great caution in changing a Bank Account into a Joint Bank Account

Once the ADM Act 2015 is implemented, supports for a person with financial decision-making will be available at the appropriate level – assisted decision-making, co decision-making, and a court appointed Decision Making Representative. However, pending the implementation of the Act, the support provided to vulnerable adults in managing their finances will continue to be provided by service provider staff or by families unless the person has an Enduring Power of Attorney or is a Ward of Court.

Families as support providers

In the case of families supporting vulnerable adult relatives with managing their finances, the situation is somewhat more complex. It is important to make a clear distinction between supports for people living in the community to manage their finances and those in residential care facilities – family members typically do not have the training or support systems that are available to paid staff in residential services.

For example, families may find it difficult to adhere to protocols and systems that are geared primarily towards residential services. There is also an issue highlighted by some service providers of people living in the community, (e.g. with parents), absolutely refusing to contribute to their household expenses. While it is suggested that family members should seek to follow the various support methods and related protocols outlined, it is also acknowledged that there is a need for a pragmatic approach that suits the needs of different family dynamics and ways of supporting their vulnerable adult relatives. This is an area where further reflection and analysis is required and where there is a need to involve families and vulnerable adults living with relatives in identifying how best to develop appropriate guidance for such scenarios. In the meantime, a basic practice for all families should be to keep a record of all withdrawals

on paper/online and ensure that this can be reviewed at any stage.

Assessing decision-making capacity

The matter of decision-making capacity and how such capacity is to be assessed is particularly important in the context of the ongoing delays in implementing the ADM Act. The Act provides for the Director of the Decision Support Service to prepare and publish a Code of Practice *for the guidance of persons, including healthcare professionals, assessing whether a person lacks capacity in relation to any matter*. Pending the full implementation of the Act, it would be helpful in the context of supporting people to manage their finances to have more clarity in the short-term about who does this and how it is done at present. For example, full functional capacity assessment may require the assistance of a Speech and Language Therapist to help the person to understand the concepts and language used. Additional work in this area could usefully inform the implementation in practice of the ADM Act. For example, a detailed protocol could be developed in respect of how it is to be established that a person understands financial transactions and the implications of effectively giving someone else access to their accounts and how to ensure that staff are protected in such instances. Also, more discussion would be useful in relation to people’s right to use their money as they choose and to make ‘unwise’ decisions.

Home care providers

The matter of home care provider staff (private and HSE) supporting people with managing their finances has not been dealt with in this document. There continues to be an absence of a regulatory structure for the delivery of professional care in the home. In contrast to HIQA monitoring of compliance with regulations and standards in designated centres for people with disabilities and in nursing homes, there are currently no quality standards in relation to the provision of homecare. The issue was addressed in a 2011 Law Reform Commission Report which called

for action on a number of fronts to ensure that home care packages were delivered in a transparent manner and to the highest quality standards and set out a number of important recommendations in this regard. In recent years, HIQA has asked the Government for a new regulatory envelope that covers not just residential care facilities but also the home care sector. In a 2017 Submission to the Department of Health’s public consultation on homecare services, HIQA highlighted the fact that in the absence of independent regulation, the safety and quality of health and social care cannot be guaranteed, placing vulnerable people at risk in their own homes.⁴⁹

A HIQA Consultation Paper⁵⁰, *Exploring the regulation of health and social care services* states that homecare services means home help, homecare packages and intensive homecare packages. The Assisted Decision-Making (Capacity) Act 2015 – will further enhance the rights and entitlements of people who need care and may be vulnerable.

This is a complex area which can only be dealt with adequately in the context of Quality Standards for Home Care. Such standards will become absolutely necessary as we move more and more towards a society that supports more people to remain at home for as long as possible. The reality is that with the introduction of a statutory scheme for the homecare sector, there will be more vulnerable adults relying on professional carers to support them with their day-to-day finances.

Additional research and analysis is, therefore, required to explore how home care providers can best and support people in managing their finances, what parameters should operate and how this is to be monitored.

49 <https://www.hiqa.ie/sites/default/files/2017-10/HIQA-submission-to-the-Dept-Health-homecare-services.pdf>

50 <https://www.hiqa.ie/sites/default/files/2017-05/exec-summary-exploring-the-regulation-of-health-and-social-care.pdf>

Joint Accounts

This is an area where further discussion and greater transparency is required especially since it is likely that joint accounts are sometimes set up without due cognisance having been given to the serious legal (and potentially gift and inheritance tax consequences) of a transfer of assets from the name of the account owner into joint names with a third party.

A Third Party/Agency Account is the only way of making sure that an account in joint names continues to be the property of the original account holder or owner and is to be used for their benefit only.

Another option for a person who needs support in managing their finances is to put in place a Power of Attorney (POA). However, as with the appointment of any agent, the attorney under a POA should be given clear instructions as to exactly which of the donor's assets they will as attorney have power over, how they are to exercise that power and for whose benefit. These limitations are important to ensure that there is no potential for misuse of the person's assets.

The question of getting assistance with managing finances is one which requires careful and ongoing attention in order to ensure that potential for financial abuse is eliminated.

Other issues

There are a number of specific issues arising from the analysis carried out in the preparation of this Discussion Document':

- The use of Group Accounts which, for example, is currently acceptable to the DEASP for social welfare payments may not in keeping with the principle of individual rights.
- The matter of opening Joint Accounts is potentially a hugely problematic area which requires ongoing consideration.
- Difficulties with opening Bank Accounts for people who may have reduced decision-making capacity are reported on an ongoing basis by frontline staff.

- The HSE PPPA Guidelines are too limiting in some situations, for example, where a person needs to draw down some of their funds urgently.
- The length of time the Ward of Court application process takes can present practical difficulties – it is reliant on a number of parties, such as doctors and consultants who must furnish medical evidence and can take approximately 9-12 months in some instances.
- Recommended practice for supporting vulnerable account holders who are in need of support with personal finances needs to be reviewed.

Glossary of Terms

Abuse: a single or repeated act, or omission, which violates a person's human rights or causes harm or distress to a person. The main areas of abuse which cause people harm are physical abuse, emotional abuse, sexual abuse, neglect of the person and financial abuse. It is important to note that this is not an exhaustive list.

Adult: a person aged 18 years or older.

Adult at risk: a person who is aged 18 years or older who needs help to protect themselves from harm at a particular time. A distinction should be made between an adult who is unable to safeguard him or herself and a person who is deemed to have the skill, means or opportunity to keep him or herself safe, but chooses not to do so.

Advocate: a person who assists an individual in making their views known. Advocacy comes in different forms. This may include informal support or independent advocacy services.

Assisted Decision Making (Capacity) Act 2015: This legislation was passed into law in December 2015. It reforms our outdated law on decision-making capacity and provides that Irish domestic legislation is in compliance with the UN Convention of the Rights of Persons with Disabilities (UNCRPD). The Office of the Director of the Decision Support Service (DSS) has been established, staff have been recruited and Codes of Practice are being developed. At the time of writing (April 2020), the Act has not yet fully commenced.

Autonomy: the ability of an individual to direct how he or she lives on a day-to-day basis according to personal values, beliefs and preferences.

Capacity: in line with the Assisted Decision-Making (Capacity) Act 2015, 'capacity' means 'decision-making capacity' and refers to the ability to understand, at the time that a decision is to be made, the nature and consequences of the decision in the context of the available choices at that time.

Care Representative: A Care Representative is appointed by the Courts when an individual is suffering from reduced decision-making capacity, ill- health, a mental health difficulty or a physical disability. For the appointment of a Care Representative, an application must be made to the courts on behalf of the individual and two medical reports are required.

Decision-making capacity: Every adult is presumed to have capacity to make decisions about their own life and affairs including their own money. Decision making capacity is the ability or competency of a person to understand at the time a decision is to be made, the nature and consequences of the decision in the context of the available choices at that time. This means that decision making is time and issue specific, that is each individual decision stands on its own.

Enduring Power of Attorney (EPA): a legal device that enables a person to choose a person (called an "attorney") to manage his/her property and affairs in the event of him/her lacking capacity to do so. The Assisted Decision-Making (Capacity) Act 2015 extends the authority of an EPA to include healthcare decisions. A person may choose one attorney or more than one. An Enduring Power only comes into effect when the person lacks decision-making capacity and the EPA is registered in the High Court.

Equality: individuals or groups of individuals have equality of opportunity, and are treated equally and no less favourably than other individuals or groups on different grounds set out in equality legislation.

Exploitation: the deliberate maltreatment, manipulation or abuse of power and control over another person; to take advantage of another person or situation.

Family: individuals who are a parent, guardian, son, daughter, brother, sister, spouse, civil partner or cohabitee of the person using services.

Family member: People who are close in affection, knowledge and care to a person. They may not be biologically related or related by marriage to a person.

Financial abuse: In the context of this Document, financial abuse means the illegal or unauthorised use of the personal finances as defined below of an adult who may be vulnerable to financial abuse by any third party or agency.

Financial capacity: recognises that an individual may be competent to carry out some financial activities and not others ranging from basic monetary skills, financial conceptual knowledge, cash transactions, cheque book management, bank statement management, and financial management..

Financial service provider: An organisation or body providing a professional financial service and which is bound by the terms of the Central Bank.

Harm: the impact of abuse, exploitation or neglect on the person. Harm arises from any action, whether by a deliberate act or an omission, which may impact negatively on a person's physical, intellectual, emotional or mental health and wellbeing.

Health Care Regulator: The Health Information and Quality Authority (HIQA) is the Health Care Regulator. HIQA is an independent authority established to drive high-quality and safe care for people using health and social care services in Ireland. HIQA's role is to develop standards and inspect and review health and social care services.

Joint Account: A joint account is a bank account that has been opened by two or more individuals or entities. Joint accounts are commonly opened by close relatives or by business partners. Typically, both account holders get can lodge and withdraw money from the account.

Integrated care and support: health and social care services working together to ensure people using services receive continuous and coordinated care and support.

Neglect: whenever a person withholds, or fails to provide, appropriate and adequate care and support which is required by another person. It may be through a lack of knowledge or awareness, or through a failure to take reasonable action given the information and facts available to them at the time.

Nominated person: a person who has been expressly identified by the person using the service and who has been given authority by that person as an individual with whom information in relation to them may be shared and who can assist them in making their views known. A nominated person can be a family member or another person who has an interest in the welfare of the person using the service. The involvement of any person is in line with the expressed wishes of the person using the service.

Patients Private Property Accounts: Patient Private Property Accounts (PPPA Accounts) are accounts set up under the system established by the HSE whereby the HSE holds and manages money on behalf of a vulnerable adult either at the person's request or where they have nobody to assist them to manage their money. The HSE facilitates the central cashing of state allowances and discharges the contribution to care as part of this service. It also pays bills where necessary and makes money available on request or as needed for daily purchases.

Personal finances: An individual's personal finances means their income whether deriving from a pension (private or from the Department of Employment Equality and Social Protection), any accumulation of such income and any other cash assets to which the individual is or becomes entitled, including statutory or other compensation awarded to them.

Person who may be vulnerable: In this Document a person who may be vulnerable means a person over the age of 18 years who may be vulnerable for any reason to financial abuse.

Place of care: Any residential setting where an individual is being provided with both residential and other care services under a Contract of Care or Service Provision.

Person using services: a person who uses health and or social care services.

Power of Attorney: a legal document in which a person "(the Donor) can give another person (the Attorney) the authority to act on their behalf. In Irish law there are two different Powers of Attorney – Power of Attorney which automatically ceases if the Donor lacks the ability to make decisions and Enduring Power of Attorney (EPA) made when a person has capacity to come into effect at a future time in the event that the Donor lacks the ability to make decisions

Positive risk taking: the taking of calculated and reasoned risks, which recognises that there are benefits as well as potential harm from taking risks in day-to-day life.

Resident: A Resident is an adult who may be vulnerable to financial abuse who resides in either a Place of Care or other environment where they have a Support Provider.

Residential service provider: An organisation or body providing accommodation, care and support to adults who may be vulnerable in accordance with a Contract of Care or a Contract for Service Provision.

Restrictive practices: practices that intentionally limit a person's movement, communication and or behaviour.

Risk assessment: the overall process of risk analysis and risk evaluation. Its purpose is to develop agreed actions for dealing with the identified risks. It involves collecting information through observation, communication and investigation.

Risk management: the systematic identification, evaluation and management of risk. It is a continual process that aims to reduce risk to an organisation and individuals.

Safeguarding: measures that are put in place to reduce the risk of harm, promote and protect people's human rights and their health and wellbeing, and empowering people to protect themselves. Safeguarding is fundamental to high-quality health and social care.

Service: any health or social care service where care and support is provided to adults.

Staff: the people who work in, for or with a health or social care service. This includes individuals who are employed, self-employed, temporary, volunteers, contracted or anyone who is responsible or accountable to the service.

Support provider: any individual or organisation providing support to adults who may be vulnerable to financial abuse – family members, residential care services, community-based health and social care providers, financial service providers.

Third-party/agency account: This is an account where a bank, building society or other account provider has been mandated by the account holder to accept instructions about their money from a specific named person. It gives that person the authority to run the bank account according to agreed parameters but not to make any other financial arrangements for the account holder.

Trust: Property, including money assets, may be held in trust on behalf of another person or to achieve a particular purpose. A Trust exists when a person (the trustee) holds the property of another (the settlor) for the benefit of named people. The beneficiaries may be the settlor or may be other people. By creating a Trust a person can ensure that, should they subsequently lose decision-making capacity, their affairs will be managed in a particular manner.

Voluntary protocol: a protocol which does not have the validity of law but is nonetheless recognised by organisations concerned with or carrying out the care and support (including residential care) of vulnerable adults.

Vulnerability: refers to an adult who may be restricted in capacity to guard himself/herself against harm or exploitation or to report such harm or exploitation. Restriction of capacity may arise as a result of physical or intellectual impairment. Vulnerability to abuse is influenced by both context and individual circumstances. Restriction of capacity may arise as a result of reduced physical functioning or decision-making capacity. Vulnerability to abuse is influenced by both context and individual circumstances.

Vulnerable adult: A person who is or may be a resident in a continuing care facility or who requires community care and support services because of physical or mental disability and who is unable to take care of him/herself without assistance or unable to protect him/herself against abuse or exploitation. This includes adults with physical, sensory and mental impairments which have been there since birth or which have arisen due to an acquired brain injury, advancing age or illness.

Vulnerable consumer: a person who has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example people with hearing or visual difficulties); and/or has limited capacity to make his or her own decisions and who requires assistance to do so.

Ward of Court: a person who is deemed by the court to lack capacity to make decisions for himself or herself. The court must make a decision as to whether they are capable of managing their own property for their benefit and the benefit of their dependants. If it is decided that the person cannot manage their own property because of decision-making incapacity, a Committee is appointed to control the assets on the Ward's behalf.

Appendix One: Indicative Case Examples

Case Example 1: *Nursing home resident*

Annie is 87 years old, with advancing dementia. She has recently moved from an acute hospital to a residential nursing home. Annie's husband is dead 12 years and she has 3 adult children. For the past 6 years, Annie could not get to the Post Office and allowed her eldest son, Tom, to become the Agent for her state pension, which he collected and gave to her.

On admission to the nursing home, it is explained to the family that Annie can avail of the Nursing Home Support Scheme (Fair Deal) and that 80% of her pension will be paid to the Nursing Home with the remainder available to Annie for her own use. The nursing home advises the family that they are willing to act as Agent for her social welfare pension and will open a Patient Private Property Account (PPPA) in her name.

Good practice

Annie's family agrees to the transfer of agency to the nursing home and a PPPA is opened in Annie's name. Small savings in Annie's credit union account are also transferred to the PPPA.

Bad practice

Tom is not willing to relinquish the role as Agent for the collection of his mother's pension. The family agree to pay the 80% Fair Deal contribution but are unwilling to make the 20% remainder available for social/comfort funds, e.g., getting her hair done each week.

The good practice in this example is an illustration of the movement from informal family support to the formal, fully transparent and safeguarded Method 3 described in the Document.

Case Example 2: *Resident in a Disability Residential Service*

Brian is 33 with a mild to moderate intellectual disability and has been living in a residential care service since he was 18 years of age. Brian's Disability Allowance has been paid directly into a bank account that is in both his name and that of his mother. The disability service have always involved Brian's mother in all financial decision making relating to Brian.

Brian no longer wants this banking practice to continue, he wants his mother's name to be removed from his account – he wants to take full responsibility for his own finances. While Brian is fully supported by his service provider to do this, Brian's mother has concerns that Brian is unable to manage his finances independently.

Good practice

A meeting with Brian, his disability service provider and his mother takes place, at which everyone's worries and concerns are raised. The service provider highlighted that a planned and phased transition to financial independence was being put in place, along with an ongoing review process. This addressed the new skills needed by Brian to be financial independent and alleviated the concerns his mother's concerns.

Bad practice

Brian's mother is not convinced that Brian can, even with the support of the service provider, manage his financial affairs and refuses to remove her name. The service provider takes no further action.

The good practice in this example means that Method 1 is now being used by Brian.

As Brian ages, his key worker notices that Brian is returning from his trips to the ATM increasingly upset because he is unable to remember his PIN number. Brian then starts to

ask his friend and house mate to accompany him to the bank and he gives his friend his ATM number to remember for him. The service provider arranges a conversation with Brian about his continued confidence in his own ability to manage his money by himself. Brian agrees that he now needs more support with his finances. Method 2 is explained to him and he agrees that his key worker should accompany him to the bank and assist him with his withdrawals. On the first occasion he insists that he wants more money than usual to treat his friend to a coffee and cake as a thank you for his help. This then becomes the spending pattern each week. The key worker questions why it is Brian who pays for a coffee and cake each week for his friend and why they don't take turns at paying. Brian explains that he likes to treat his friend because, unlike Brian, his friend has a television of his own in his room which his parents gave him and he invites Brian into his room to look at certain programmes with him that they both enjoy. The weekly coffee and cake is in return for that. Brian's key worker explains that Brian could save up for a television in his own room if he liked. Brian says no, that he likes the present arrangement.

Brian in due course develops early onset dementia. His friend has by now passed away. Brian is no longer interested in accompanying his key worker to the bank and seems increasingly confused about money and "paying" when he has his weekly coffee and cake which he still enjoys. His service provider asks Brian if he would now like the service to take over management of his finances and Brian agrees. The DEASP is contacted to redirect Brian's disability allowance into the service's own client account so that his money can now be managed using Method 3 as outlined in the Document.

Case Example 3: **Change in support needs of person in a residential service**

David is 49 and has been living in a residential disability service since his mid-20s. When David moved to the disability service he was supported to open a bank account, with 2 other signatories who were staff members. David has now developed dementia and has lost the ability to manage his finances, even with support.

Good practice

The service provider informs the DEASP and requested that they become the Agent for the payment of his Disability Allowance and for it to be paid into a client account within their service.

Bad practice

The signatories on David's account continue to withdraw funds for David, using his bank card and details.

Case Example 4: **Young adult in receipt of Disability Allowance living with family**

Claire is 22 years of age and lives at home with her parents and older sister, Claire is in receipt of a disability allowance. Claire's family have always managed her finances but now Claire's parents want to ensure that Claire can manage her finances if they are no longer in a position to assist her or when they pass away.

Claire, her parents and her older sister, along with support from the day service Claire attends have been supporting Claire to manage her own finances.

Good Practice

Claire and her family, with the support of the day service she is attending have built Claire's capacity to understand and manage her finances since she was a teenager. Claire, along with her sister, were in receipt of pocket money from an early age and this money could be spent on items of their own choosing, however when the money was spent extra finances were not made available to them. Over time a greater responsibility was placed on the value of the money available, for example, if Claire wished to attend a concert it was the responsibility of Claire to save for and purchase her own ticket, along with personal items or gifts; Claire was supported to save small sums of money to be used at a future date.

Claire, with the support of her local bank opened a bank account in her own name and requested her sister to support her ONLY if she wished to spend money over a specific limit.

Bad Practice

Claire has never been given the opportunity to learn or explore the value of money. From a young age all of Claire's expenses were managed by her parents. Claire's Disability Allowance is paid in to her mother's bank account. Claire is given money at the discretion of her parents and her parents decided how Claire's money should be spent and this has limited her opportunities to develop her own preferences and identity. There is a lack of transparency in relation to ensuring that Claire's Disability Allowance is only used or spent for her benefit.

Implementing 'Good Practice'

Claire continues to operate her own bank account successfully but one summer her sister Brenda notices that Claire is starting to "borrow" Brenda's nail varnish and other cosmetics. When Brenda asks her why, Claire replies that she doesn't have enough money to buy her own until her next Disability Allowance payment. As this has never happened before, Brenda suggests that she and Claire go through her bank statements together. When they do this Brenda realises that Claire is indeed short of money because she is treating herself daily to ice cream from one of the "designer" ice cream shops which has opened recently in their local shopping centre. Brenda explains to Claire that these expensive ice creams are the cause of her being short of money now whereas before an ordinary choc ice was her usual treat. Claire simply does not see why she shouldn't treat herself to the ice cream she now likes "which is her right" especially because the shop has seats outside where Claire can sit in the sun and enjoy watching people go by. Working with Claire's day service provider Claire and Brenda go through Claire's other weekly spending to see what could be saved so that Claire can continue to get her ice cream of choice. Claire listens to the discussion about the need to make savings elsewhere and opts to stop having her usual pizza on Fridays at lunchtime with her friends and instead to introduce them to "her" ice cream place. She agrees to go there just every second day. Claire sticks to this arrangement and so method 1 continues to be used for her.

Case Example 5: **Spending one's money 'unwisely'**

John is 63, single and lives in sheltered accommodation. John is in receipt of a State payment as he has been unemployed since he returned from the UK 10 years ago. John has no savings and has struggled with alcohol addiction and social anxiety issues for the majority of his life. John's health is deteriorating. He suffers from COPD, diabetes and heart disease. John regularly struggles to pay his rent and fears he may be made homeless if he does not pay his rent regularly as agreed.

Good Practice

John has spoken to the management of his sheltered accommodation service, together they set up a direct debit system for his rent. The service has also linked him with addiction services, the Money Advice and Budgeting Service and a service for those feeling socially isolated. John is made aware of the support services available to him and these services link with him to ensure John is not isolated.

Bad Practice

John's sheltered accommodation service is aware of the issues John is experiencing but has not engaged with him on the matter. John's GP is aware of his health issues but does not engage with his social anxiety issues or addiction issues as John has not raised these in his consultation sessions. John continues to struggle and spend his money on alcohol and cigarettes leading to rent arrears and possible homelessness and to his health deteriorating.

Implementing 'Good Practice'

John continues to live in the sheltered housing service. Staff check in on him and start to notice that he has very little food in the house even though he still goes to the local shop after he gets his pension. He agrees to accept meals on wheels three times a week. Shortly afterwards the staff are contacted by the Gardaí who report that John has been seen giving out cigarettes and cash to a cohort of what the shop keeper describes as "unsavoury characters". When staff members speak to John he says they are his new friends and he likes buying things for them but he agrees that for a while a staff member will accompany him to the shops. John becomes aware then that

the people he thought were his friends are not and he starts to lose confidence in his ability to take care of himself. At the same time staff realise that they are now unable to meet all his support needs. They discuss this with John and he agrees to go to see various nursing homes. He likes a place run by the HSE as it provides more services and he moves in. John agrees with staff there that his own bank account should be closed and his money transferred into a HSE Personal Private Property Account and that the HSE should become the agent for his the pension as he no longer wishes to manage his own money himself. John's transition was from method 1 to method 3 as his ability to manage, or want to manage, his finances changed.

Case Example 6: Person taking back control over their finances

Sean sustained an acquired brain injury as well as physical injuries after he was knocked off his bicycle by a car in traffic. While he was in hospital for treatment for his physical injuries, his mother applied for a Disability Allowance for him and arranged that it was paid into an account in her name in her local bank which was a Trust Account for Sean. Sean then got a place in a specialist neurological injury rehabilitation hospital and gradually both his physical and decision-making abilities improved.

Good Practice

Sean started to enquire about going home and expressed worry about how he would be able to support himself. His mother explained about the Trust Account out of which she had been buying small things for him and Sean was happy with that arrangement. Ultimately, Sean did go home to live supported by a home care package which included a Personal Assistant (PA) to take him out daily. Sean said to his mother that he now wanted to have control over his own Disability Allowance and have it paid into his own old bank account. His mother agreed but pointed out that Sean's memory for numbers was still not great and so he would not be able to manage cash withdrawals from an ATM by himself. Sean asked that his PA be given the PIN number as they always went out together. This was discussed with the PA and a system was set up whereby

Sean's mother gave Sean and the PA the ATM card when they were going out, and the PA supported Sean to withdraw money using the PIN number. They were careful to always bring the ATM and other receipts back home so that there was always a record of what money had been taken out and what was spent.

This was a collaborative approach transitioning Sean from method 3 to method 2 as his ability, and his desire, to control his own finances improved. Sean remains determined to work on his ability to remember his own PIN number so that he would ultimately be able to independently manage his own money in the future.

Appendix Two: HSE Patients' Private Property Account Guidelines: Selected Extracts

7.7 Clients Funds Versus HSE Funds – who should pay for what?

Central to the effective administration of patients' private property is the need to clearly separate clients' funds from HSE funds. This ensures appropriate protection for both clients and staff. In order to implement this separation we require clarity as to what clients are expected to fund from their own resources and what they can reasonably expect the HSE to provide for as part of its care obligation. It should be noted that funds raised by the HSE from charges correctly levied on clients under relevant legislation are HSE funds and cease to be clients' funds once collected by the HSE. Process for accessing client PPP funds for the benefit of the client it is not possible to provide a definitive list of items that may or may not be purchased from an individual client's PPP funds. Rather, each client's ability to derive benefit from any item or service that might potentially be purchased using their PPP funds must be assessed by clinical staff in the context of his/her overall Care Plan. Each client must be assessed individually and in line with local policy. In cases where there is an agreed defined decision by the clinical team that a client would benefit from the purchase of an item or service not deemed to be necessary for the client's care, application can be made to use the PPP funds of that client to purchase same. To access this funding the following process must be followed:

1. There must be a documented valid reason for the benefit of the client to purchase an item or service;
2. The intervention (equipment, service, therapy etc.) must be documented as part of the client's Care Plan and reviewed as per the therapeutic intervention;
3. The request must be put in writing to the Director of Nursing/Unit Manager

or their designate and signed off as appropriate by them; and

4. For ongoing services and therapies, an appropriate monitoring and review date must be agreed not greater than three months. Please refer to Appendix 6, which outlines in flowchart format the steps to be taken in arriving at a decision to use client PPP funds to purchase an item or service.

The following sections provide guidance to staff in making a decision on the appropriateness of utilising client PPP funds for the benefit of clients. This should be used as a guide only and does not purport to be a definitive list of Patients' Private Property Guidelines 8 Patients' Private Property Guidelines items that may or may not be purchased from PPP funds. The overriding factor in all decisions is whether the client will benefit from the purchase of an item or service, as per their Care Plan. It is not appropriate to request or utilise clients' funds for the following:

7.7.1 Facilities Upkeep/Refurbishment / Maintenance/ Decoration – Such costs are a matter for the HSE to fund.

7.7.2 Ongoing In-patient Charges or Arrears of Charges – Such charges should not be deducted from a client's PPP a/c without the authorisation of the client themselves. All charges should be funded from the client's ongoing income on which their charge has been assessed. This is of particular relevance where the HSE is not the appointed Agent to collect DSFA allowances and a key client contact is paying ongoing In-Patient charges from the client's income.

7.7.3 Furniture/Fittings/Equipment - It is the HSE's responsibility to fund from its own resources, the cost of necessary furniture,

fittings and equipment within wards, residences, day areas etc. Please refer to situations, below, where it may be possible to use client PPP funds for their benefit in the purchase of certain items.

7.7.4 Medicines – The costs of medicines required by clients are generally covered directly or indirectly (via public demand led schemes) by the HSE. Should any issues arise in this area it is reasonable for the HSE to only cover the costs of medicines which its care professionals are satisfied are both necessary and appropriate for the care and well-being of the client.

7.7.5 Aids/Appliances – To the extent that the HSE is satisfied that aids/appliances are required for the appropriate care of the client then it is generally a matter for the HSE to fund same, to the extent that it is in a position to do so within available resources. Please refer to situations, below, where it may be possible to use client PPP funds for their benefit in the purchase of certain items.

7.7.6 Nutrition Supplements/Food – Generally for the HSE to fund. The client may augment what HSE provides, from their own funds, additional personal items of food/ nutritional supplements that the client desires, which are over and above the norm of what HSE provides and which are not considered necessary for the care of the specific client or clients in general.

7.7.7 Personal Hygiene/Personal Grooming

- The standard hygiene items such as soap, toothbrush, toothpaste, deodorant, etc., should be provided at HSE expense. The client may augment, from their own funds, these basic products with additional grooming products such as make-up, perfumes, aftershave, etc. In regard to hair dressing this is normally undertaken at the client's expense. However, appropriate local professional discretion involving the use of HSE funds must be exercised to ensure clients personal grooming, including hair, does not fall below a minimum standard consistent with their general well-being.

7.7.8 GP/Chiropody/Optical/Aural/

Immunisation etc - These services, to the extent that HSE is in a position to provide them within available resources, will normally be provided either as part of the facilities of the unit or may be accessed through the resident's medical card/GP visit card. It will be necessary for appropriate local professional discretion, involving use of HSE funds, to be exercised in respect of the small minority of clients who are both: a) not eligible for a medical card and b) in need of additional services beyond those directly provided by the unit they reside in. It may be appropriate to request or utilise clients' funds for the following:

7.7.9 Trips/Outings/Other Social Activities - A resident should only be liable for reasonable costs for trips/outing /other social activities (including parties etc). Local discretion must play a significant role in relation to this area and in considering what is reasonable the following must be taken into account:

1. It is not appropriate for any costs relating to HSE staff attending or facilitating such trips, outings or social activities to be borne by clients' funds;
2. Residents should only be asked to contribute to the costs of trips etc that they will be attending or are likely to attend;
3. Where a group of clients are taking part in a group activity, Each client must get an equitable benefit of the money spent from their PPP a/c. PPP funds may only be spent for group activities from the PPP funds of those clients actually participating in the activity, A record of clients' participation in the activity must be kept, e.g. in such a scenario, a list of those who attended the activity is recorded, so that the spending of PPP funds can be linked to participation in the activity.

Furniture/Enhanced Aids & Appliance for Personal Use

- A client may augment, from their own funds, these basic items with additional items that the client desires which are over and above the norm of what HSE provides and which are not considered necessary for the care of the specific client or clients in general. This might include the purchase of chairs, items of bedroom furniture or enhanced aids & appliances from which the client would benefit.

7.7.10 Clothing – The general position is that clothing is something which clients should provide from their own funds if for no other reason than the fact that this reinforces their personal dignity and independence. A client's tastes and needs should be considered when deciding on types of clothing to be purchased and costs incurred should be reasonable. However, appropriate local professional discretion involving use of HSE funds must be exercised to ensure clients clothing does not fall below a minimum standard consistent with their general well-being.

Appendix Three:

S.I. No. 378 of 2009 Social Welfare (Consolidated Claims, Payments And Control) (Amendment) (No. 6) (Nominated Persons) Regulations 2009

Amendments to Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (Selected Sections)

(c) by inserting the following article after article 202:

“Obligations of appointed person.

202A. (1) Where a person is appointed under article 202(3) or (4) he or she shall have a duty to act in the best interests of the claimant or beneficiary and shall—

- (a) act in a personal capacity and shall not delegate responsibility to any other person,
- (b) subject to paragraph (c), receive and deal with any sum payable by way of benefit on behalf of the claimant or beneficiary,
- (c) in the case of a person appointed under article 202(4)(a) where payment of benefit is made directly to the Executive pursuant to article 202(4)(b), deal with the balance of any sum payable by way of benefit after deductions specified in the Health (Charges for in-patient Services) Regulations 2005 (S.I. No. 276 of 2005) (as amended by the Health (Charges for in-patient Services) (Amendment) Regulations 2008 (S.I. No. 521 of 2008)), have been made in respect of in-patient care in the institution,
- (d) subject to sub-article (e) make payments only on items or services which are of benefit to the claimant or beneficiary including all reasonable expenses for assuring the personal welfare of the person concerned,

- (e) not spend money on items or services to which the claimant or beneficiary has an entitlement where those items or services are available and accessible to the person concerned,
- (f) ensure that the balance of any benefit is lodged to an interest bearing account for the benefit of the claimant or beneficiary, 6 [378]
- (g) keep a record of all sums received by way of benefit which have been lodged to an interest bearing account on behalf of the claimant or beneficiary,
- (h) keep a record of all other transactions made in relation to sums received by way of benefit on behalf of the claimant or beneficiary, and
- (i) produce the records specified at paragraphs (g) and (h) when requested to do so by the claimant or beneficiary or by his or her nearest relative or by an officer of the Minister.

- (2) For the purpose of this article “nearest relative” means a person over the age of 18 years belonging to one of the classes of persons listed in sub-article 202 (3) (a) to (j) who was caring for the claimant or beneficiary immediately before his or her admission to an institution.”

(d) by substituting the following article for article 209:

“209. A person who fails to comply with article 188(1), 198(3), 201(3) or 202A shall be guilty of an offence and shall be liable on summary conviction to the penalties provided for in section 257(a).”

Appendix Four:

Selected Sections of the ADM (Capacity) Act 2015⁵¹

3. Person’s capacity to be construed functionally

- (1) Subject to subsections (2) to (6), for the purposes of this Act, a person’s capacity shall be assessed on the basis of his or her ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time.
- (2) A person lacks the capacity to make a decision if he or she is unable—
- (a) to understand the information relevant to the decision,
 - (b) to retain that information long enough to make a voluntary choice,
 - (c) to use or weigh that information as part of the process of making the decision, or
 - (d) to communicate his or her decision (whether by talking, writing, using sign language, assistive technology, or any other means) or, if the implementation of the decision requires the act of a third party, to communicate by any means with that third party.
- (3) A person is not to be regarded as unable to understand the information relevant to a decision if he or she is able to understand an explanation of it given to him or her in a way that is appropriate to his or her circumstances (whether using clear language, visual aids or any other means).
- (4) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him or her from being regarded as having the capacity to make the decision.

- (5) The fact that a person lacks capacity in respect of a decision on a particular matter at a particular time does not prevent him or her from being regarded as having capacity to make decisions on the same matter at another time.
- (6) The fact that a person lacks capacity in respect of a decision on a particular matter does not prevent him or her from being regarded as having capacity to make decisions on other matters.
- (7) For the purposes of this section, information relevant to a decision shall be construed as including information about the reasonably foreseeable consequences of—
- (a) each of the available choices at the time the decision is made, or
 - (b) failing to make the decision.

8. Guiding principles

- (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.
- (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.
- (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.

⁵¹ <http://www.irishstatutebook.ie/eli/2015/act/64/enacted/en/html>

Appendix Five: State Funding for Services Provided by Non-Governmental Organisations

Section 38 of the Health Act 2004 provides that the HSE may 'subject to its available resources and any directions issued by the Minister under section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive'.

'Section 38' agencies are, therefore, those that provide services on behalf of the HSE and are funded under Section 38 of the Health Act 2004, which states, inter alia, that 'The Executive may, subject to its available resources and any directions issued by the Minister under Section 10, enter, on such terms and conditions as it considers appropriate, into an arrangement with a person for the provision of a health or personal social service by that person on behalf of the Executive'. For each financial year, before entering into an arrangement for the procurement of services with a service provider, the HSE is obliged to determine the maximum amount of funding it proposes to make to the service provider and the level of services it expects to be provided for the funding.

Section 39 of the Health Act 2004 refers to services assisted by the HSE (formerly under Section 65 of the Health Act 1970). Under this Section, the HSE is empowered to 'give assistance to any person or body that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide.

'Section 39' agencies are, therefore, those undertaking services which are similar or ancillary to those of the HSE and to whom the HSE is providing grant aid to do so. They are funded under Section 39 of the Health Act 2004, which states, inter alia, that 'The Executive may, subject to any directions given by the Minister under section 10 and on such terms and conditions as it sees fit to impose, give assistance to any person or body that provides or proposes to provide a service similar or ancillary to a service that the Executive may provide'. The support provided by the HSE may be given in a number of ways, including the provision of funding for premises.

Appendix Six: Useful Resources

Banking Payments Federation of Ireland, Guide to Safeguarding your Money Now and in the Future

<https://www.bpfi.ie/wp-content/uploads/2018/06/BPFI-Guide-to-Safeguarding-Your-Money-Now-and-in-the-Future.pdf>

Citizens Information

www.citizensinformation.ie

Citizens Information Phone Service

0761 07 4000

Health Service Executive (HSE) Safeguarding Team

www.hse.ie/eng/services/list/4/olderpeople/elderabuse/protect-yourself/safeguardprotectteams.html

Tel: 061 461 165 **or the HSE Information Line on** 1850 24 1850

Email: safeguarding.socialcare@hse.ie

Inclusion Ireland

Tel. 01 855 9891

info@inclusionireland.ie

Money Advice and Budgeting Service (MABS)

www.mabs.ie

National Helpline: 0761 07 2000

National Federation of Voluntary Bodies

091 792316

info@fedvol.ie

Sage Advocacy

Information & Support Rapid Response Service

1850 71 9400

info@sageadvocacy.ie

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