Local Placement Forum
Standard Operating Procedure

Older Persons Services,

Access and Integration

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HSE Local Placement Forum Standard Operating Procedure

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Topic:
Local Placement Forum Standard Operating Procedure (LPF SOP) provides operational guidance to all staff involved in the functioning of the local placement forum as stood up by the Health Service Executive (HSE) under the Nursing Home Support Scheme (NHSS)
National Group:
National Working Group for Local Placement Forum Reform, Access and Integration
Short summary:
This procedure supports the functioning of local placement forums to ensure compliance with the legal principles of the Assisted Decision-Making Act (ADMA) 2015 and the Nursing Home Support Scheme (NHSS) (amendment) Act 2021.
Description:
The purpose of this standard operating procedure is to ensure that all persons involved in the local placement forum process and those who are involved in carrying out the care needs assessment are adhering to their legal obligations under the relevant acts as referenced above. The will and preference of the relevant person who is the subject of the application under the NHSS is of utmost importance when making a determination on their care needs assessment.

[3] Records details of the document review or update, even if no changes are made.
[4] Records the document information required for publication on the HSE National Central Repository.

Contents

1. Glossary of Abbreviations

- ADMC Act - Assisted Decision-Making (Capacity) Act 2015
- CSAR – Common Summary Assessment Report
- HSE – Health Service Executive
- LPF - Local Placement Forum
- NHSS – Nursing Homes Support Scheme
- NHSS Act – Nursing Homes Support Scheme Act
- NHSO – Nursing Homes Support Office
- SOP – Standard Operating Procedure

2. Purpose of this Standard Operating Procedure (SOP)

The purpose of this document is to provide operational guidance to all staff involved in the functioning of Local Placement Forums (herein referred to as LPFs). The purpose of the LPF is to make a determination on an assessment of care needs as provided for under Section 7 of the Nursing Homes Support Scheme Act 2009 (as amended) (herein referred to as the NHSS Act). It will support compliance with the NHSS Act and with the legal principles as detailed in the ADMC Act thus providing safeguards for good ethical practice.

3. Scope of the Standard Operating Procedure (SOP)

This Standard Operating Procedure (SOP) applies to the:

- Regional Executive Officers of each health region
- IHA Service Leads in each health region
- Chairperson and membership of each LPF
- Staff performing care needs assessments on behalf of the Nursing Homes Support Office (NHSO) and LPF (named as "assessors" in this document).

4. Legislative Framework for Local Placement Forums (LPFs)

The purpose of the LPF is to make a determination of care needs as provided for under Section 7 of the NHSS Act:

> **7 (1) (b)** A person ordinarily resident in the State…who wishes to make an application for State support may apply for a care needs assessment.
>
> **7 (6)** A care needs assessment of a person shall comprise an evaluation of—
> **(a)** the person's ability to carry out the activities of daily living, including—
> (i) the cognitive ability,
> (ii) the extent of orientation,
> (iii) the degree of mobility,
> (iv) the ability to dress unaided,

(v) the ability to feed unaided,
(vi) the ability to communicate,
(vii) the ability to bathe unaided, and
(viii) the degree of continence, of the person.

(b) the family and community support that is available to the person,
(c) the medical, health and personal social services being provided to or available to the person both at the time of the carrying out of the assessment and generally,
(d) any other matter that affects the person's ability to care for them self, and
(e) the likelihood of a material alteration in the circumstances referred to in paragraphs (a) to (d) during the lifetime of the person.

4.1 Nursing Homes Support Scheme Act 2009

The NHSS Act came into force in 2009. Its intent was to give legal standing to a financial strategy that would support the admission of applicants who are over 18 years of age to long-term care, thus removing any financial impediments that could act as a barrier to those applicants requiring full nursing care in an older person's residential care facility. The NHSS Act makes no discrimination on a qualifying age except that the applicant must be over 18 years of age. This scheme applies to public, private and voluntary nursing homes registered with the Health Information and Quality Authority (HIQA).

4.1.1 Criteria for Assessment for the NHSS

The person who is the subject of the application will be known throughout the SOP as the relevant person and will be assessed for the NHSS under two criteria:

- Financial Assessment: this determines what the relevant person and the HSE will pay in relation to the cost of care[5].
- Care needs assessment: this is an assessment of the relevant persons care needs. This assessment is completed by persons (who may be employees of the HSE[6]) who in the opinion of the HSE are suitably qualified to make that assessment and prepare a report in relation to that assessment, with input from the multidisciplinary team as required.

4.2 Assisted Decision-Making (Capacity) Act 2015

On 26 April 2023, the Assisted Decision-Making (Capacity) Act 2015 was commenced (referred to as the ADMC Act in this document). The ADMC Act reformed the law relating to those who require or

[5] Further information on the financial assessment can be found at https://www2.hse.ie/services/schemes-allowances/fair-deal-scheme/financial-assessment/
[6] The NHSS Act refers to the Executive meaning the Health Service Executive. For ease, this document will refer to the HSE.

may require assistance in exercising their decision-making capacity, whether immediately or in the future. The ADMC Act also modifies how the HSE carries out its responsibilities under the NHSS Act. [7] The ADMC Act presumes that every adult has the capacity to make decisions, unless determined otherwise.

The ADMC Act created new decision support arrangements and decision supporters. Further details on the ADMC Act are available in Appendix 1.

5. Role of Local Placement Forums (LPFs)

The LPF is designated by the HSE as the appropriate body to make a determination of the NHSS applicants' assessed needs.
LPFs were set up throughout the Local Health Offices (LHOs) to allow for the determination of whether a person requires long term residential care or not based on a care needs assessment as provided for under Section 7 of the NHSS Act. At the time of writing this SOP there has been no change to the LPF locations in the context of the new regional structures.

Applications for the NHSS, which is inclusive of an application for a care needs assessment, are sent to the local HSE Nursing Homes Support Office (NHSO). The local NHSO will determine if the NHSS application has been made by a person who is eligible to make the application and may seek documentary evidence to support their eligibility as required. It is the practice of local NHSO's to treat each application in good faith and will only seek qualifying documents if required to provide further clarification. If the LPF or the assessor subsequently has any concerns about the validity of the application being made, they should address those concerns directly with the local NHSO.

The local NHSO must, as soon as reasonably possible, make arrangements for a care needs assessment to be carried out by one or more suitably qualified professionals (assessors). In some circumstances, the LPF may assist the local NHSO in arranging for a care needs assessment, for example by identifying suitable assessors when the relevant person lives in one region but is residing in a nursing home in another region.

[7] Section 102 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 has amended the NHSS Act 2009 (as amended) with effect from 26 April 2023. In line with ADMC Act, applications to the NHSS can be made by:

- The person them self
- A joint application by the relevant person with a co-decision-maker, if the Co-Decision-Making Agreement applies to this kind of decision
- An Attorney appointed under an activated Enduring Power of Attorney, if they have thatauthority
- A Decision-Making Representative if they have that authority in the Decision-Making Representation Order
- A joint application with a Decision-Making Representative if that is permitted under the terms of the Decision-Making Representation Order
- A Specified Person (for more information on specified persons see appendix 2)

The primary role of the LPF is to:

- Fulfil their care needs assessment responsibilities as provided for, in the NHSS Act.
- Consider the completed care needs assessment report and any other relevant reports.
- Make a determination regarding the care needs of the applicant and whether long term residential care is an appropriate option for the applicant or what other types of care may be appropriate, e.g. home support, day care, respite etc.
- Make a determination on the likelihood that the relevant person will ever cease to require care services during the relevant person's lifetime if they need careservices.
- Communicate these determinations, the reasons for them and any other applicable information, to the local NHSO.

The LPF will also record and communicate to the NHSO, if the relevant person who is subject to a care needs assessment articulates that they do not wish to make a NHSS application or do not wish to enter long-term care.

5.1 Determinations that must be made by the LPF

Under the NHSS Act, the HSE must make a determination on the care needs of an NHSS Applicant, the LPF is the administrative instrument used.

That determination is defined under Section 7 (8) of the NHSS Act:

> *(a) That the person needs care services or*
>
> *(b) That the person does not need care services,*
>
> *as it determines appropriate in the circumstances of the case, and where the Executive determines that the person needs care services, the Executive may also make a determination that it is unlikely that the person will ever cease to require care services during the person's lifetime.*

The LPF may also use the care needs assessment to consider what other services may be appropriate: "*the content of a care needs assessment report may be used by the Executive for the purposes of considering what other health services or personal social services may be appropriate for the person" (NHSS Act Section 7 (12))*

The assessment and decision on care needs cannot "*be construed as meaning the HSE will provide or arrange for the provision of any service identified in the assessment"* or that the HSE has an obligation to provide any services (*NHSS Act Section 7(11)).*

See Section 6.5 for guidance in cases where the person who is subject to a care needs assessment articulates that they do not wish to make a NHSS application or do not wish to enter long-term care.

5.2 Required outcomes from LPF care needs assessment decision

The required decisions from the LPF care needs assessment is:

- **Person Requires Long-Term Residential Care:** An LPF determination, based on the care needs assessment, that long-term residential care is needed. This does not determine if, how or where that care will be provided nor does it commit the person who is the subject of the application to a nursing home.
- **Person Does not require Long-Term Residential Care:** An LPF determination that long-term residential care is not needed ceases the NHSS application and the financial application does not proceed.

5.2.1 Implications of a determination that the relevant person does not require long-term residential care

If there is an initial determination that the relevant person does not require long term residential care, a further application for care needs assessment can take place after 6 months, or the applicant can make a further application within 6 months if there is material change in health or circumstances which warrants a new application being made (as provided for in NHSS Act 2009 Section 8).

Some persons who are the subject of an application for NHSS funding may already be residing in a Nursing Home facility under the transitional care[8] funding pathway or by another process. If there is a determination that the relevant person does not require long term residential care this may pose a financial burden to the relevant person if they continue to reside in the Nursing Home. This determination must be communicated to the relevant person as soon as possible. Funding cannot be backdated on any future care needs assessment that may determine a requirement for long-term care.

5.3 Responsibilities for establishment of LPF and roles within LPF

Regional Executive Officer:

- Ensures the establishment of an appropriate LPF team that is fully resourced to carry out its role and responsibilities under the NHSS

Chairperson:

- The LPF must be chaired by a HSE employee.
- Is accountable for all decisions made on behalf of the LPF membership.
- Ensures all decisions are notified to the applicant and the local NHSO.
- Is responsible for ensuring that reviews are undertaken, either at the initiation of the HSE or by an applicant in accordance with the legislation
- Participates in appeals initiated under the legislation

[8] Additional information on transitional care funding can be found in transitional care funding standard operating procedure.

LPF Members:

- All members of the LPF must act in a neutral manner and must not, in the absence of specific clinical justifications, recommend that an applicant be placed with any specific provider.
- If an applicant has expressed a preference for a unit which has a representative on the panel responsible for nursing care, that representative must step aside from the decision on the need for care for that applicant.

Administrative support:

- Prepare meeting agendas
- Arrange for attendees to attend as instructed by the Chairperson
- Record minutes and decisions of LPF meeting
- Ensure decisions are forwarded to the appropriate people
- Ensure all records of care assessments and minutes are stored as per GDPR
- Collate the monthly reporting template on LPF activity

5.3.1 LPF Team Membership

The LPF membership will be determined locally and will include a range of multidisciplinary staff that are able to assist the LPF to meet its statutory obligations in deciding on the suitability of applicants to the NHSS. All LPFs should have a designated chairperson and a procedure for appointing an alternate in the event of absence.

It may also be necessary for other attendees to be called upon to provide expert opinion on a periodic basis to support an informed decision on various applications and care needs assessments. An LPF may include the following representation to provide expert opinion on specific case(s):

- Medical representative e.g. geriatrician, medical officer, psychiatry of later life
- Community nursing
- Health and social care professional
- Social worker
- Hospital discharge coordinator

6. General Operational Procedure

6.1 Care needs assessment

Care needs assessments are carried out by health care professionals who are suitably qualified to make that assessment and prepare the report. Care Needs Assessment Reports such as a Common Summary Assessment Report (CSAR) or the interRAI should be completed in accordance with the appropriate guidance document. Where available, specialist assessment e.g. geriatrician input for older persons, should be integral to the process.

If a current interRAI Assessment has been carried out for the purpose of supporting an NHSS application that report should be attached to the CSAR and therefore there will not be a requirement to duplicate those assessments on the CSAR document. It is planned that interRAI will eventually replace the CSAR process.

Some members of the LPF may at times be the person who has completed or contributed to the care needs assessment report. Other members may have been a specified person who have made an NHSS application on behalf of a relevant person, for example, as part of their role as a doctor, nurse or social worker. It is important in such cases that the NHSS application receives independent consideration from other members of the LPF. Information on who can be a specified person is included in Appendix 2.

For further information, please see the care needs assessment document and guidance.

6.2 LPF Meetings

Local management will determine the frequency of panel meetings, the frequency should be in response to the volume of NHSS applications in that area. However, at a minimum, LPF meetings should be held fortnightly. Meetings should be formally recorded, and minutes kept.

Participation by members of a forum may vary within or between meetings, to reflect the referral source of the application for a care needs assessment. For example, representatives of an acute hospital may attend to discuss care needs assessment reports submitted on behalf of patients in that hospital.

If panel members are unavailable and/or if an urgent decision is required outside of scheduled LPF meetings, the local manager/coordinator (or their designate) may consult with the panel Chair (if separate) to make key decisions e.g. a determination on care needs. All such actions should be exceptional, and all such decisions will be reported to and reviewed by the LPF at their next available meeting.

The chair of the LPF has ultimate responsibility for signing-off on decisions on whether care is or is not required. It is expected that the chair will make such decisions based on the information presented in the care needs assessment report and in consultation with members of the forum.

6.3 ADMC Act, Decision-Making Support Arrangements and the NHSS Act (as amended)

The ADMC Act created new decision support arrangements and decision supporters. The LPF must respect the scope of any decision-making support arrangements, and the views of decision supporters must be considered unless it is not appropriate or practicable to do so. Decision support arrangements are legally recognised arrangements for people who need support to make certain

decisions. Decision supporters are among those who can apply for the NHSS on behalf of a relevant person.[9]

For applications made by a specified person (NHSS Act) or a decision-making supporter appointed under the 2015 Act (e.g. Decision-Making Assistant, Co-Decision-Maker, Decision-Making Representative or Attorney), the specified person or the decision-making supporter does **not** have the power to authorise the deprivation of liberty of the relevant person.

If there are concerns about the actions or authority of a decision supporter making an application these concerns should be reported to the Decision Support Service[10] and notified to the NHSO. If there are concerns about the actions or authority of a specified person, the NHSO should be notified.[11] If there are safeguarding concerns these should be escalated according to the HSE National Safeguarding Policy.

6.4 Determining the care needs of the relevant person

The LPF, in making a determination of whether the care needs assessment indicates that admission to a nursing home is appropriate for the relevant person, should consider the **totality** of all information available to it. This includes the mandatory elements of care needs assessment report and the relevant person's will and preference, if ascertainable (as well as any ancillary reports available to the LPF).

There will be times where the relevant person's will and preference will influence the LPF's determination regarding their care needs. For example, a person with a given level of difficulty carrying out activities of daily living, who wishes to enter a nursing home might be determined to meet the care needs 'threshold' by the LPF.

However, there will be times when the difficulties carrying out activities of daily living identified in the care needs assessment report are so great that the LPF concludes that the care needs assessment indicates that admission to a nursing home is appropriate for the person, irrespective of the wishes of the person. See section 6.5 for more information on this.

[9] The scope of the decision supporter should be checked with the Decision Support Service to ensure that they have authority to make relevant decisions in relation to applying for NHSS.
[10] The Decision Support Service have authority under the ADMC Act to investigate complaints about decision-making arrangements and decision supporters. This may include, for example, where the decision supporter is making decisions that are not part of their role or that are not included in the decision support arrangement.Further information on the complaints process can be found at https://decisionsupportservice.ie/services/complaints-and-investigations.
[11] Section 7(15) of the NHSS Act states (15) "In respect of any application for a care needs assessment by a specified person, the Executive may refuse to deal with the specified person if the Executive is not satisfied that such specified person is acting in the best interests of the person."

6.4.1 Completion of CSAR form (if interRAI is used please attach same to the CSARs form)

The LPF must be satisfied that the assessment report is of a sufficient standard and completeness to allow the determinations of care needs and of the relevant persons will and preference, if ascertainable. If a report is incomplete or unclear, the LPF should seek additional information or clarification or, in consultation with the local NHSO, may seek a new assessment.

The care needs assessment must provide evidence for any decision made on the care needs of the relevant person. In addition to the Chair, participants in the LPF may sign relevant sections of the report giving a determination on care needs.

6.4.2 Communicating with the local NHSO

After the determination, a copy of care needs assessment report must be forwarded to the NHSO. The original documents will be held by the LPF. The relevant person who is the subject of an application and (if different) the applicant will be provided with a copy of the care needs assessment report unless this is expressly not advised.

The NHSO will hold a complete file relating to an individual's application under the NHSS. The decision must be notified to the person making the application or the specified person within 10 days of making that determination, this is provided for under Section 7 (9) of the NHSS Act. The notification must be accompanied by a copy of the care needs assessment and the reasons for the determination (*NHSS Act Section 7 (10)).*

Appendix 3 gives an overview of the NHSS process flow.

The LPF must formally communicate to the local NHSO regarding any of the following:

- The determination regarding the care needs of the relevant person and whether long term residential care is an appropriate option for that person.
- If determining that the relevant person needs long term residential care, that determination is contrary to their will and preference.
- If determining that the relevant person needs care services, the determination of whether it is unlikely that they will ever cease to require care services during their lifetime.
- In exceptional cases, the LPF may conclude that care needs can only be met in a limited number of facilities. This should be notified to the local NHSO as well as the reasons for any such recommendations.

The LPF should also formally inform the local NHSO if:

- An applicant or the relevant person has stated that they wish their NHSS application to be withdrawn.
- The LPF has concerns that a person purporting to be a specified person acting on behalf of a person is not acting in the best interests of that person. In these circumstances, the NHSS Act (as amended) states that the HSE "may refuse to deal with a person purporting

to be a specified person"[12]. Deception of the person is never acceptable. The relevant person should not be led to believe that a NHSS application is a backup plan where there is no genuine plan to try and support them at home. A person should not be led to believe that the NHSS application is to fund short-term care such as respite or convalescent when the plan is for long-term nursing home care. A specified person, however well intentioned, who engages in deception is not acting for the benefit of the relevant person. If the LPF is aware of this, they must notify the NHSO.

- It is understandable that those close to the relevant person with significant care needs may attempt to persuade him or her to agree to an application for the NHSS. However, coercion or threats are never acceptable. A person or specified person who resorts to coercion or threats is not acting for the benefit of the relevant person. If the LPF is aware of this, they must notify the NHSO.
- A determination is delayed e.g. because more information is required or because a court application or creation of a support arrangement under the ADMC Act is needed.
- The local NHSO seeks additional information regarding the determinations of the LPF.
- Any other relevant issue arises.

6.4.3 Monitoring and collation of LPF activity

Monitoring and collation of LPF determinations will be carried out monthly to review present LPF activity and to support future planning and resource allocation.

6.5 Will and preference of the relevant person

The NHSS Act does not address the will and preference of the relevant person to enter long-term care.

A decision to progress an application for state support for long-term care may be a difficult and stressful one for the relevant person. They may be upset that their circumstances, e.g. physical or cognitive decline, are such that this needs to be considered. They may be unhappy that local community services are insufficient for their needs and therefore the relevant person may feel that they have no other option but to enter into long term residential care. If this is the case it should be accepted as an application in accordance with the relevant person's will and preference.

This SOP takes the position that the relevant person's will and preference with regard to the purpose of the NHSS application – seeking State support for long-term care – **must**, if ascertainable, be clear from the care needs assessment report and discussed in sufficient detail with the relevant person and any identified supporters:

- The care needs assessment report must, unless effective communication is impossible, confirm that the relevant person has been informed of the application, using whatever communication aids or supports are necessary to achieve this.
- This requirement that the will and preference are recorded, if ascertainable, is not negated if there is a decision support arrangement in place even if the relevant person is a ward of

[12] Section 48(2) of the NHSS Act

court or if it is thought or stated that the relevant person's decision-making capacity may be in question or lacking.

- If it is stated that the relevant person's will and preference are not ascertainable, it should be reported why this is the case and detail the efforts made to communicate with the relevant person.

6.5.1 Role of the local placement forum

There are several factors to be addressed in the care needs assessment report and considered by the LPF in recording the relevant person's will and preference:

- The relevant person is determined as requiring long-term care and the application and assessment is in accordance with the person's will and preference.
- The relevant person is determined as requiring long-term care, and the relevant persons' will and preference could not be ascertained despite all efforts to do so; or
- The relevant person is determined as requiring long term residential care, but the assessment indicated that this would not be in accordance with their will and preference.

If the care needs assessment presented to the LPF notes that admission to a residential care facility would be contrary to the relevant person's will and preference, the LPF will need to consider, and to document, the following:

Is there a potential deprivation of liberty?

It is a fundamental constitutional principle that no citizen may be deprived of their personal liberty except in accordance with the law. This is the case even if the healthcare worker acts with good intentions, judges that the person lacks capacity and believes the detention to be reasonable and proportionate in the person's individual circumstances, such as when failure to seek admission would post a real and immediate risk to the life of the person.[13]

A deprivation of liberty does not require that the relevant person is, or would be, physically trying to leave and is, or would be, prevented from doing so.

In some cases, it may **be unclear** whether, in the individual circumstances, the relevant person is being deprived of their liberty. For example, the relevant persons wish may be unclear or inconsistent. Further assessment and consultation by the healthcare team may clarify this. However, if a deprivation of liberty remains a possibility, an assessment of capacity should be arranged and, if appropriate, legal advice should be sought.

[13] See Section 8 of the HSE National Consent Policy for more information - https://assets.hse.ie/media/documents/ncr/20241001_HSE_Consent_Policy.pdf

If admission to a residential care facility subsequent to an NHSS application would **be contrary** to the relevant person's will and preference, this on the initial facts would potentially be a deprivation of liberty.

Further details on deprivation of liberty can be found in Appendix 4.

Is the relevant person's capacity to make decisions about their place of residence and an NHSS application in question?

The starting presumption must be that the relevant person has capacity to make these decisions. This presumption must be made irrespective of any pre-existing disability or medical condition.

As a general principle, calling a person's capacity to make a decision into question is a serious matter and there should be an adequate reason to do so. The responsibility lies with anyone who is questioning capacity to provide sufficient evidence that the person may not have capacity to make the decision at this time. It is not the responsibility of the person to prove they have the capacity to make this decision.

A relevant person's decision about their place of residence may be perceived by others to be unwise. Sometimes an apparently unwise decision may reflect differences in values and beliefs.

Where a relevant person makes a decision about place of residence that healthcare professionals, a specified person or the LPF consider to be unwise, this:

- is not evidence that the relevant person lacks capacity to make that decision.
- is not an adequate reason to challenge their capacity to make that decision; and
- does not automatically trigger an assessment of their capacity.

Ultimately, a decision that a relevant person's capacity to make decisions about their place of residence and an NHSS application **is** in question will be made by the LPF, taking all available information into consideration. The reasons for such a determination must be documented by the LPF.

If the LPF considers that capacity is **not** in question, it should notify the NHSO that, for this reason, the specified person does not have authority to act on behalf of the relevant person to make an NHSS application.[14]

Is an NHSS application and admission to long term residential care contrary to the relevant person's will and preference and the least restrictive approach to providing care?

If it is **not** the case that the application and admission is the least restrictive approach to providing care, necessary and proportionate in the relevant person's circumstances and for their overall

[14] S 47 (1) – "Authority of person to act on behalf of another person" - states "…a specified person may act on behalf of another person in relation to the following matters under this Act: (a) an application for a care needs assessment under section 7 and the giving of consent under section 7(13)…." where that other person lacks capacity in relation to one or more of the matters referred to in paragraphs (a) to (g).]

benefit[15], the LPF should inform the NHSO that following consideration of the care needs, long term residential care is **not** an appropriate option for the relevant person.

Is it possible, in the individual circumstances, that further discussions and exploration of alternative care plans will resolve the issue?

If **yes**, the LPF should defer a determination of care needs, for a set period of time, to allow further discussions, exploration of alternative care plans or efforts to advise. The LPF should inform the NHSO that a determination is delayed because more information is required and should indicate when a determination can be made.

Is a functional assessment of the capacity of the relevant person needed?

A functional assessment of capacity will be required if:

1. the relevant person's capacity to make decisions about their place of residence and an NHSS application is considered to be in question and;
2. there is a care needs determination that an NHSS application and admission to long term residential care is necessary and proportionate in the relevant person's circumstances and for their overall benefit and;
3. this decision is contrary to the relevant person's will and preference and;
4. further discussions, exploration of alternative care plans or efforts to advise are unlikely to resolve the issue.

How the LPF should act in these circumstances will depend on the urgency of obtaining the capacity assessment.

- In some cases, there may be a member on the LPF with the expertise to perform the functional assessment of capacity. It is important to note that if the assessment is being carried out for a detention / inherent jurisdiction application, then it will need to be completed by a doctor. See Appendix 5 for more information.
- In other cases, the LPF should notify the agreed senior accountable officer of the HSEthat the capacity assessment is necessary and seek advice on accessing a healthcare worker with the necessary expertise.

It is essential that a lead healthcare worker / case manager is assigned to the relevant person to ensure follow up on the assessment of capacity, ensure contact is made with the HSE Authorised Legal Service User (LSU) in the area and follow the relevant person's application to ensure that the process is tracked and progressed. This must be agreed by the Chair of the LPF prior to the Chair requesting a capacity assessment. The lead healthcare worker / case manager should be a person with sufficient knowledge of the process and have the necessary authority of the organisation. It is at the discretion of the Chair of the LPF who undertakes this role.

The LPF should inform the person who is to assess capacity of the reason(s) why this is sought and the decisions at issue. The LPF must be informed of the outcome of the capacity assessment.

[15] In line with the guiding principles of the Assisted Decision-Making (Capacity) Act 2015

The LPF should inform the NHSO that a determination is delayed because it is necessary to determine the functional capacity of the relevant person.

6.5.1.1 Acting on the outcome of the assessment

If the LPF is informed that the outcome of the assessment is that the relevant person **has** capacity to make the relevant decisions, the LPF should notify the NHSO that, for this reason, the specified person does not have authority to act on behalf of the relevant person to make an NHSS application.

If the LPF is informed that the outcome of the assessment is that the relevant person **does not have** capacity to make the relevant decisions, the LPF should be kept informed of the outcome of legal advice sought and of any subsequent court applications.

The LPF should inform the NHSO that a determination is delayed because it is necessary to seek legal advice regarding possible court applications. (If an application under inherent jurisdiction is expected, there should be an initial court hearing which is held within days in most cases).

Please see Appendix 6 for more information.

6.6 Reviews

The HSE may review the care needs assessment and the LPF determination at any time. A relevant person/specified person/decision supporter may make a further application for a care needs assessment after a period of 6 months.

A further application for a care needs assessment can be made:

- If the HSE is satisfied that there has been a material change in the relevant person's health or circumstances if within the 6-month period after the date of the original determination of the LPF

OR

- If the relevant has been recently seen and examined by a medical practitioner who certifies that there has been a material change in their health or circumstances which warrants in a new application for a care needs assessment

A review may be conducted by the same personnel that undertook previous assessments of care needs.

7. Appeals

An applicant has a statutory right to appeal against a decision of the HSE to the HSE National Appeals Office as provided for under Section 32 (1) of the NHSS Act "a person aggrieved by a decision of the Executive… may appeal against the decision".

Appeals are made to the National Appeals Office[16] who will appoint an Appeals Officer to make a determination on appeal.

The Appeals Officer appointed to make a determination on the appeal will be independent, not be confined to the grounds on which the decision made was based, consider any written/ oral material in support of the appeal, make a decision and state the reasons for the decision, give the HSE directions as appropriate- as provided for Under 32 (3) of the NHSS Act.

If the nature of the appeal is based on the care needs assessment and determination by the LPF then the membership of the LPF must co-operate with the Appeals Officer, which may involve providing all copies of documentation/rational relating to the determination of the LPF. The Appeals Officer will request a copy of the CSAR.

The Appeals Officer may:

- Uphold the appeal that the person does need care services
- Confirm the original determination that the person does not need care services
- Refer the matter back to the HSE (the LPF) for reconsideration in accordance withthe Appeals Officer's directions

The Appeals Officer will inform the appellant and the NHSO of their appeal decision.

[16] Information on the National Appeals Office can be found at https://www.hse.ie/eng/about/who/appeals-service/

Appendix 1 – Assisted Decision-Making (Capacity) Act 2015

On 26 April 2023 the Assisted Decision-Making (Capacity) Act 2015 was commenced. The ADMC Act reformed the law relating to those who require or may require assistance in exercising their decision-making capacity, whether immediately or in the future.

The ADMC Act presumes that every adult has the capacity to make decisions, unless determined otherwise. Capacity is to be interpreted in a functional manner – that is in a time and decision specific manner. It introduces new guiding principles about interacting with a person who has difficulties with their decision-making capacity.

The ADMC Act created new decision support arrangements and decision supporters that may be helpful for those whose decision-making capacity is in question or lacking. Decision support arrangements are legally recognised arrangements for people who need support to make certain decisions. During the care needs assessment process, the LPF and assessor will need to ensure that the appropriate decision supports are present when the care needs assessment takes place

The new decision support arrangements under the ADMC Act are:

- Decision-making assistance agreement
  If the person requires support to make certain decisions on their own, s/he can make a decision-making assistance agreement to appoint someone they know and trust as a decision-making assistant (DMA). He or she can help a person to get information and explain it to them and help to let other people know what a person's decision is.
- Co-decision-making agreement
  If a person is unable to make certain decisions on their own, s/he can appoint a person they trust as their co-decision-maker (CDM) under a co-decision-making agreement. Under this agreement a person specifies decisions s/he needs help with and gives someone the legal authority to make those decisions jointly with them.
- Decision-making representation order
  If a person is unable to make certain decisions, the court can make a decision-making representation order. This may give authority to a person to make those decisions on an individual's behalf. This person is known as a Decision-making representative (DMR). This may be someone the person knows and trusts or the court can select someone suitable from a panel of trained experts.

The ADMC Act also amended the Powers of Attorney Act, 1996. This Act allows a person (the donor) to allow another person (an attorney), to look after their financial or personal affairs, in the event that they no longer have the capacity to do so themselves.

Appendix 2 - Specified persons

A limited number of people can act as a Specified Person under the NHSS Act (as amended):

- the applicant's spouse or partner
- the applicant's child, if over 18 years
- a registered medical practitioner
- a registered nurse
- a registered social worker.[17]

A specified person may apply for a care needs assessment for the applicant where it appears to them that the applicant "by reason of ill-health, a physical disability or a mental condition" is unable to make the application. A specified person has authority to act on behalf of another person where the other person lacks capacity to, amongst other things, make an application for a care needs assessment. A specified person cannot act on behalf of a person who is a ward of court or where there is a relevant decision support arrangement or court order in place, relating to this decision.

The NHSO can refuse to deal with the specified person if they are not satisfied that the specified person is acting in the best interest of the person.[18]

A specified person has new and serious obligations under the NHSS Act (as amended). A specified person must understand and act in accordance with these principles.

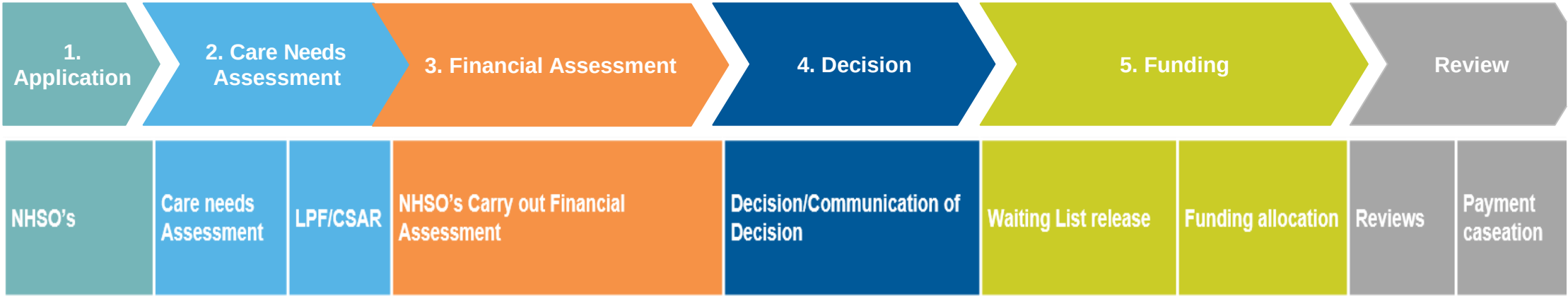
- He or she **must not** act unless it is necessary to do so, having regard to the other person's individual circumstances.
- Any action **must** be done in way which:
    - Minimises the person's restriction of rights and freedom of action.
    - Has due regard to the need to respect the right of the other person to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property,
    - Is proportionate to the urgency and significance of the action.
    - Is a limited in duration as is practicable taking account of the circumstances.
- He or she **must**:
    - Permit, encourage and facilitate the other person to participate in the action.
    - Give effect, as far as practicable, to the other person's will and preferences insofar as these are reasonably ascertainable.
    - Take into account the other person's beliefs and values and any other factors that the person would be likely to consider insofar as these are reasonably ascertainable.
    - Unless they reasonably consider it is not appropriate or practicable to do so, consult anyone named by the other person to be consulted.
    - Act at all times in good faith and for the benefit of the person.
    - Consider all other circumstances of which s/he is aware and which it would be reasonable to regard as relevant.

[17] The range of people who can act as a Specified Person is reduced in the NHSS Act (as amended). For example, relatives over 18 and legal representatives" re no longer entitled to act as a Specified Person

[18] NHSS Act, Section 7 (15).

- Have regard to the likelihood that the other person may recover capacity and the urgency of acting prior to recovery.
- Not attempt to obtain or use personal records unrelated to the action and must keep all records obtained securely.

Appendix 3 – NHSS Application to Payments Process



Appendix 4 - Deprivation of liberty

Adapted from the HSE National Consent Policy 2022 v1.2

It is a fundamental constitutional principle that no citizen may be deprived of his or her personal liberty except in accordance with the law. For example, someone who says that they wish to leave a health or social care facility and is prevented or not facilitated is being deprived of their liberty. This is the case even if the healthcare worker, specified person or member of the LPF:

- Acts with good intentions.
- Judges that the person lacks capacity;
- Believes the detention to be in the person's best interests.

A person who has capacity to decide about where to live, or place of care cannot be detained or transferred for care and treatment, against their will. The general principles of the HSE National Consent policy apply when considering the capacity of a person to decide where they should live, including discharge decisions. The presumption of capacity is the starting point; the fact that healthcare workers or others may feel a decision to go home is unwise does not indicate theperson lacks capacity to make this decision, and the functional approach to capacity assessment should be adopted if the person's capacity to make this decision is in question.

The following principles apply if a person, despite support to make their own decision, lacks capacity to decide where they shall live and seeks to leave or be discharged from a care setting against professional advice:

- Nobody, regardless of capacity to decide for themselves, can be deprived of their personal liberty except in accordance with the law.
- The doctrine of necessity can justify a short period of detention to allow time for capacity assessment and other necessary steps to be taken to seek the assistance of the High Court. To deprive someone of their liberty is such a serious matter that the relevant capacity assessment(s) and application to the High Court must proceed urgently if deemed necessary.
- The voice and wishes of the person - what he or she wants to do, as opposed to what healthcare workers or others such as family members want or think is to the benefit of the person - must be heard by the Court.
- Ensuring that the voice of the person is heard may require providing the person with an independent advocate. This is particularly the case if the preferences of the person are different to those of healthcare workers or to those of familymembers.
- The person or their legal representative must have access to the reports and affidavits on which any application to the Court is based and must be given an opportunity to challenge these.
- Where the risk to a person comes from a third party, it is preferable that appropriate legal measures should be directed at the person creating that risk, rather than unnecessarily depriving the person of his or her liberty;
- Since the commencement of the Assisted Decision-Making (Capacity) Act 2015, an application to authorise a deprivation of liberty in order to vindicate the rights of a person who lacks capacity is made to the High Court under what is called its "inherent jurisdiction" and is no longer made under its wardship jurisdiction.

The duty of the HSE to respect the constitutional right to liberty and freedom of movement of persons in its care may extend to admission to non-HSE facilities depending on the HSE's role in arranging the admission. If unsure, and subject to any legal advice that may be obtained in a specific case, HSE staff should operate on a precautionary working assumption that the duty does extend to a non-HSE facility if the HSE has a role in arranging the admission.

A specified person or a decision-making supporter appointed under the 2015 Act (e.g. Decision-Making Assistant, Co-Decision-Maker, Decision-Making Representative or Attorney) does **not** have the power to authorise the deprivation of liberty of the relevant person. **As the law currently stands, only the High Court exercising its inherent jurisdiction can authorise any deprivation of liberty, including an admission to long term residential care against the will and preference of the relevant person.**

For more information, please see Part 1, Section 8 of the HSE National Consent Policy.[19]

[19] https://assets.hse.ie/media/documents/ncr/HSE_Consent_Policy_2022_v1.2_-_Jan_2024.pdf

Appendix 5 – Role of the capacity assessor and legal advice

Role of the Capacity Assessor

Any assessment of capacity should be conducted by a healthcare worker with the necessary expertise. An inherent jurisdiction application to the High Court will require, at a minimum, a capacity report from a senior doctor. (Capacity reports for Part 5 applications to the Circuit Court for Decision-Making Representation Orders related to an NHSS application can be provided by doctors, nurses and midwives, speech and language therapists, occupational therapists or social workers).

In most cases, it will be preferable only to seek legal advice regarding a possible inherent jurisdiction application only when a supportive capacity report from a senior doctor is available. If there are conflicting views regarding decision making capacity, the solicitors should be informed.

The test of capacity is a functional one. Assessment should follow the procedure outlined in the Code of Practice for Supporting Decision-Making and Assessing Capacity.

The assessor should inform the LPF of the outcome of the assessment.

HSE contracted legal firms may only be engaged by a HSE Authorised Legal Service User (LSU). If the assessor concludes that the person does **not** have capacity to make the relevant decisions, he or she should identify who is the LSU in their area and seek authority via the LSU to contact a HSE contracted legal firm. (Depending on local agreed procedures, there may be a senior staff member who will act as case manager for such cases and remain involved at all stages of the process).

The assessor (or the HSE Case Manager) must provide the legal advisers with all of the assessments, reports and significant correspondence including care plans, opinions, letters and evidence of supports which were put in place for the person with respect to the decisions in question.

Role of legal advice/advisors

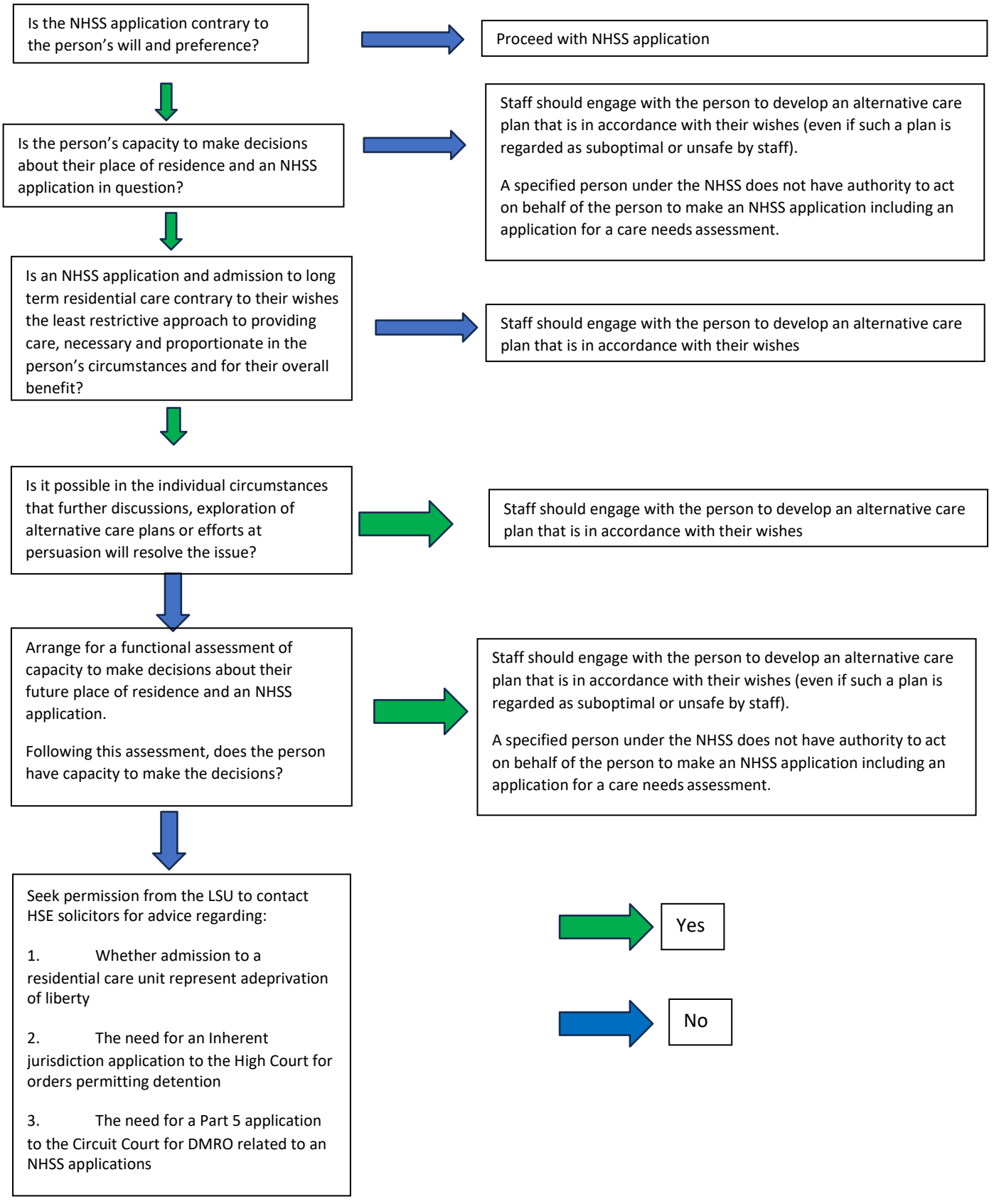
HSE legal advisors will provide advice regarding:

1. Whether admission to a residential care unit contrary to a person's will and preference would represent a deprivation of liberty in the individual circumstances.
2. The need for an Inherent jurisdiction application to the High Court for orderspermitting detention. Since the commencement of the Assisted Decision-Making (Capacity) Act 2015, an application to authorise a deprivation of liberty in order to vindicate the rights of a person who lacks capacity is made to the High Court under what is called its "inherent jurisdiction" and is no longer made under its wardship jurisdiction.
3. The need for a Part 5 application to the Circuit Court for a Decision-Making Representative Order related to an NHSS application.

In general, applications to the High Court under inherent jurisdiction will receive a first hearing in court within days. (Part 5 applications to the Circuit Court can take some months).

If the High Court does grant an application under inherent jurisdiction, it will decide whether or not the person can be admitted to a residential care facility on a temporary or permanent basis.

Appendix 6 - NHSS applications and potential Deprivation of Liberty General Decision-Making Framework



Appendix 7 - Referral for Functional Assessment of Capacity

Referral details	
Referral to:	
Date of referral:	

Details of the Person who is the Subject of the Functional Capacity Assessment	
Surname:	
First Name:	
Current Address:	
Date of Birth:	
Telephone:	
Contact Person Name (if relevant):	
Telephone:	
Formal Decision Supports (if in place):	

Referrer details	
Name of referrer:	
Professional Role:	
Email:	
Telephone:	
LPF Area:	
Name of LPF Chairperson:	
Email:	
Telephone:	
Signature of referrer:	

Reason for referral
Why is decision-making capacity in question?
Decision to be made:
Persons known will and preference in relation to long-term residential care:
Other comments:

*NB Please attach any relevant supporting documentation in support of this referral.

Appendix 8 - Referral for Legal Advice

Referral details	
Referral to:	
Date of referral:	

Details of the Person who is the Subject of the Referral for Legal Advice	
Surname:	
First Name:	
Current Address:	
Date of Birth:	
Telephone:	
Contact Person Name (if relevant):	
Telephone:	
Formal Decision Supports (if in place):	

Referrer details	
Name of referrer:	
Professional Role:	
Email:	
Telephone:	
LPF Area:	
Name of LPF Chairperson:	
Email:	
Telephone:	
Signature of referrer:	

Reason for referral
Results of functional assessment of decision-making capacity (as attached*):
Decision to be made:
Persons known will and preference in relation to long-term residential care:
Other comments:

*NB Please attach any relevant supporting documentation in support of this referral.

Appendix 9 – LPF Monthly Reporting Template

LPF MONTHLY REPORTING TEMPLATE

Local Placement Forum Area:	
Chairperson Name:	
Contact Details:	
Vice Chair/Deputy Name:	
Contact Details:	
LPF Admin Name:	
Contact Details:	

Reporting Period (month end MM/YYYY)	

No. of meetings held (within reporting period)	
No. of new assessments presented:	
No. of previously deferred assessments re-presented:	

No. of Care Needs Assessments considered	No. Approved for LTC	No. Deferred - Further info required	No. Rejected	Of the No. of Approved for LTC how many are:	U65 years	O65 years	Male	Female

Primary Diagnosis	Frailty	Dementia-like condition	Mental Health condition	Neurological condition	Multiple co-morbidities	Disability	Social	Palliative	Other
~~No. of approved applications under each heading~~									

~~Dependency Level of Approved Assessments~~	~~Independent~~	Low Dependency	Medium Dependency	High Dependency	Maximum Dependency
~~No. Approved per Dependency Level~~					

~~No. Referred for Case Management~~	
~~No. Referred for Functional Assessment~~	
No. Referred for Legal Review	

No. Referred for Application for Inherent Jurisdiction	Rejection reason:	category:		
	No. of Applications per		Relevant Person does not wish to enter into long term care	

Other Care Pathways to be considered/more appropriate	Other - Please enter details