

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

DUBLIN CIRCUIT

COUNTY OF THE CITY OF DUBLIN

Record Number: 2023.DUBL.ADMC/0000002

IN THE MATTER OF PART 5 OF THE ASSISTED DECISION-MAKING
(CAPACITY) ACT 2015, AS AMENDED AND IN THE MATTER OF THE
RELEVANT PERSON, JOAN DOE

Between:

JOAN DOE

RELEVANT PERSON

-and-

HEALTH SERVICE EXECUTIVE

APPLICANT

-and-

JOHN DOE

NOTICE PARTY

Judgment of His Honour Judge John O'Connor delivered on the 8th day of
December 2023

1. Introduction:

1.1 The identity of all parties in these proceedings are protected. For the purposes of this judgment, the parties have been allocated fictional names.

1.2 This case explores the tensions that arise in respect of the Relevant Person's vulnerability, due to her significant cognitive impairment, against the actions of her family, in this case siblings. In seeking to promote what they assume are the Relevant Person's will and preferences, the family believe that they are speaking on behalf of their sister, whereas the Health Service Executive ("HSE") in their application would contend that their conduct would suggest otherwise.

2. The HSE's Application:

2.1 Essentially the HSE as the Applicant are seeking a declaration that the Relevant Person lacks capacity to make decisions regarding long-term accommodation, medical treatment decisions and financial decisions, and to appoint a Decision-Making Representative (DMR) from a panel managed by the Decision Support Service (DSS).

3. The Family:

3.1 The Doe family, mainly siblings, have stated that they have managed to look after their sister for many years throughout her adult life and know her will and preferences. While they accept that their sister, the Relevant Person, lacks capacity to make decisions regarding her long-term care and accommodation, medical treatment decisions and financial decisions, they believe that representatives from their family are best placed to be appointed DMRs.

4. Summary of the Proceedings:

4.1 On the 25th of May 2023, the Notice Party in these proceedings, Mr. John Doe, applied to this Court ex parte seeking the consent of the Court to bring an application pursuant to Part 5 of the Assisted Decision-Making (Capacity) Act 2015 as amended ("the ADMC Act"), in respect of his sister the Relevant Person.

4.2 Pursuant to section 36 of the ADMC Act, the Court granted Mr. John Doe consent to bring the application.

4.3 No application was lodged in the Court Office following this.

4.4 On the 23rd of June 2023, the Health Service Executive (HSE) applied to the Court ex parte seeking the consent of the Court to lodge a Part 5 Application in respect of the same Relevant Person. The Court granted consent to the HSE to bring the application and directed that Mr. John Doe be joined to the proceedings as a Notice Party.

4.5 On the 19th of July 2023, the HSE filed a Capacity Application in the Circuit Court Office.

4.6 The HSE's application is grounded on the affidavit of Dr. AB, Consultant Psychiatrist, which exhibits a detailed capacity report.

4.7 The Application was served on the Relevant Person on the 10th of July 2023 at an acute hospital in Dublin, where she currently resides. By Order of the Court made on the 21st of July 2023, the court directed that service of all further documents be made

upon Ms. BC, an independent solicitor, who communicated the voice of the Relevant Person to the court in the proceedings.

4.8 On the 29th of August 2023, the Notice Party, Mr. John Doe, filed a replying affidavit to the HSE's application. Mr. John Doe states in this affidavit that "*it is not disputed that the Relevant Person lacks capacity to make the specified decisions sought by the Applicant*". However, there is a dispute as to whether an independent person be appointed to look after the Relevant Person's affairs, should this court declare that she lacks capacity, or whether the Relevant Person's family members are suitable to assume this role.

4.9 The HSE filed an affidavit responding to Mr. John Doe's replying affidavit.

4.10 On the 10th of November 2023, the court granted consent to Mr. James Doe, the Relevant Person and Mr. John Doe's brother, to bring a Part 5 Application.

4.11 After the hearing, but before the delivery of this judgment, Mr. James Doe's solicitor formally lodged a Part 5 Capacity Application in the Court Office.

5. Background of the Relevant Person:

5.1 The Relevant Person is a widow aged in her late sixties without issue. Her parents are deceased, and she has the following siblings, Mr. John Doe, Mr. James Doe, Ms. Joy Doe and Ms. June Doe, who have applied to become her DMRs.

5.2 This application of the siblings and possibly one nephew was not technically before the court when the case was heard. However, out of deference to the family, and also considering Section 38(5) of the Act, the Court has said it would consider the application of the siblings if an application was formally made. As stated above, an application was received from the family.

5.3 The HSE in their application were concerned about lack of transparency in relation to the Relevant Person's assets. However, the court is satisfied that she has substantial assets comprising of her principal primary residence, an apartment and some savings. She is in receipt of 3 pensions.

5.4 The Relevant Person has been diagnosed by her current treating Consultant Psychiatrist, Dr. AB, with frontotemporal dementia with a severe symptomatic component. She has a significant history of mental illness with significant episodes of suicidal ideation.

5.5 However, the issues of her mental illness do not mean that she is incapable of furnishing her will and preferences.

6. Legal Points:

6.1 This matter arises under the Assisted Decision-Making Capacity Act 2015, as amended (“the ADMC Act”). The ADMC Act provides that it is the Circuit Court that now has jurisdiction to make declarations as to whether a person lacks capacity to make decisions. The Circuit Court has exclusive jurisdiction under the Act save for specific matters reserved for the High Court as outlined in section 4 of the Act. In addition, the ADMC Act does not confer on the Circuit Court a jurisdiction for making orders in relation to the detention of persons who lack capacity. Presently such an application can be made under the inherent jurisdiction of the High Court. Specifically Article 34.3 vests the High Court with “*full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal*”.

6.2 Article 40.4.1 of the Constitution provides that “*no citizen shall be deprived of his personal liberty save in accordance with law*”.

6.3 Article 40.4.2 further provides that a complaint may be made by or on behalf of any person to the High Court that such person is being unlawfully detained. The court shall order the release of such person from such detention unless satisfied that he is being detained in accordance with law.

6.4 Section 4(5) of the ADMC Act provides that “*nothing in this Act shall affect the inherent jurisdiction of the High Court to make orders for the care, treatment or detention of persons who lack capacity*”.

6.5 The Guiding Principles outlined in section 8 of the Act are considered throughout the court’s analysis.

Voice of the Relevant Person:

6.6 Section 139 of the Act states that an application to court under Part 5 of the Act shall be heard in the presence of the relevant person the subject of the application unless, in the opinion of the court or the High Court, as the case may be -

- (a) the fact that the relevant person is not or would not be present in court would not cause an injustice to the relevant person,
- (b) such attendance may have an adverse effect on the health of the relevant person,
- (c) the relevant person is unable, whether by reason of old age, infirmity or any good and substantial reason, to attend the hearing, or
- (d) the relevant person is unwilling to attend.

6.7 The court dispensed of the requirement for the Relevant Person to attend the hearing on the grounds that her lack of attendance would not cause an injustice to her as her voice was represented throughout by an independent solicitor.

6.8 The court also notes the guidance in the recent decision of Hyland J. in the case of *In the Matter of KK* [2023] IEHC 565, specifically that:

“a court should ensure that the views of the person themselves have been heard. This is not precisely the same as representation. A person whose capacity is in question is often already disadvantaged in their communications with the world and needs a clear pathway in the context of court proceedings to be heard in relation to their wishes and preferences. The ADMCA has provided this pathway by the legislative provisions identified above.

As to how a person’s views and wishes are heard will be a matter for the Court depending on the circumstances.”

Safeguarding Issues:

6.9 The court is conscious of the constitutional rights of vulnerable persons which encompass personal rights but also rights for protection of vulnerable persons. In this regard the court is conscious of the seminal judgment of O’Malley J. in *AC v. Cork University Hospital* [2020] 2 IR 38. Although that case concerned wardship, deprivation of liberty and the doctrine of necessity which are not issues in this case, it does emphasise the need that in all cases a relevant person’s constitutional rights need to be respected.

6.10 As already outlined, the court must be mindful of the fact that a person not having the ability to make a decision on a particular matter, does not mean that their wishes are to be totally disregarded. Also, where there is a risk from a third party for example a family member, it is preferable that any legal measures are taken against that party, rather than restricting the rights of the Relevant Person.

6.11 While the court is mindful of the fact that the right to have a voice heard and respect the will and preference of the Relevant Person, it is not the only consideration. The court must also consider the issues of vulnerability and how that can be best dealt with.

6.12 Conflicts of law and medicine in respect of capacity are not a black and white issues. It is not a matter on whether the parties agree or not. It is ultimately a matter for a court that makes a final determination taking into account the legal and medical evidence and the testimony of the various witnesses and submissions.

6.13 It is self-evident that when someone lacks capacity, they are vulnerable. So, while the court has to be very respectful of respecting the past will and preferences of persons who lack capacity, it has to also be conscious of the need for effective safeguards to prevent abuse. For example, Article 12(4) of the United Nations Conventions on the Rights of Persons with Disability clarifies that this is an issue. It states:

“State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free from conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interest.”

6.14 Safeguarding vulnerable person’s rights is an important consideration as outlined in the AC case referred to above.

7. The Evidence:

7.1 The court has considered in detail the extensive affidavits, exhibits and documents furnished comprising of approximately 1,000 pages and the evidence of the following persons:

- Dr. AB, the Relevant Person’s treating Consultant Psychiatrist
- Mr. John Doe, brother of the Relevant Person
- Ms. BC, the Relevant Person’s Independent Solicitor
- Ms. June Doe, sister of the Relevant Person
- Ms. Joy Doe, sister of the Relevant Person
- Mr. CD, a Senior Mental Health Social Worker

7.2 Overall, the court acknowledges that it is useful to have someone who is not involved in a dispute to give effect to the voice of the Relevant Person. The court takes particular note of the evidence of the Relevant Person’s Independent Solicitor, Ms. BC, who is an experienced, independent solicitor with an expertise in capacity law. The Court notes that her evidence was not contradicted by the HSE or the Doe Family’s lawyers.

Evidence of the Relevant Person's treating Consultant Psychiatrist, Dr. AB:

7.3 Dr AB's oral evidence focused primarily on the requirements and suitability of the Relevant Person's decision-making representative. The court is satisfied that Dr. AB gave her evidence in an objective and very detailed manner as the Relevant Person's treating psychiatrist.

7.4 Dr. AB updated the Court on the Relevant Person's current capacity and mental presentation. She gave evidence that the Relevant Person's presentation remains fluctuant. She remains severely impaired. Her mood and anxiety are reasonably stable. However, her motor symptoms have progressed. Dr. AB stated that the Relevant Person is at a high risk of falls. This is more pronounced since the previous time she gave evidence to Court.

7.5 Dr. AB described a letter that was furnished to her by Mr. John Doe in August 2022, stating that Mr. John Doe should be present at all medical reviews. Dr AB took this letter as the Relevant Person's wishes as she had signed the letter. It was Dr. AB's understanding at this point that Mr. John Doe's role was that of the Relevant Person's advocate rather than him making decisions on her behalf. Although she followed this up by saying with hindsight, in her view, he was conflating advocacy and decision-making, maybe with no sinister intent, but if she had thought he was making decisions for the Relevant Person, her care plan would have been different.

7.6 A decision which Dr. AB concentrated on in her evidence was the decision to reduce the Relevant Person's medication, as her family were of the strong view that her medication was causing her physical symptoms. Dr. AB in her evidence stated that she advised the family at length that this was not the case. A letter was produced, signed by the Relevant Person, requesting the medication to be reduced. Dr AB stated in evidence "*we did not have any choice because she [the Relevant Person] had signed the letter*". Dr. AB gave evidence that the reduction in medication caused acute catatonia. This is a behavioural syndrome which presents with an inability to move normally. It is a severe condition.

7.7 With regards to the Relevant Person's future long-term care, Dr. AB gave evidence that the Relevant Person's needs exceed what can be provided at home. She has a high level of care. She requires one to two professional carers 24 hours a day. Dr. AB stated that "*the family care is not a substitute for professional care and would not equip the family to make medical decisions*" should the need urgently arise.

7.8 Dr. AB explained that the Relevant Person had spent many years in hospitals and was familiar to that environment. Prior to her admission to the acute hospital, the Relevant Person was a resident at an assisted living hostel. Dr. AB accepted that the Relevant Person had previously expressed a wish not to go to a nursing home in 2016

and again in 2020, but she stated that at this time the Relevant Person also did not want to return to living at home. It was Dr. AB's view that any choice the Relevant Person made in the past regarding a nursing home is not applicable to what she would choose now with the level of care she requires. Her choices in 2016 and in 2020 were very specific to that time in her life and not now.

7.9 Dr. AB gave evidence of what she regarded as threatening and intimidating behaviour that she was subjected to at the hands of the Relevant Person's family and in particular reference was made to a voicemail message Mr. John Doe had left on Dr. AB's phone. The voicemail was played aloud in Court on the 10th of November 2023.

Evidence of Mr. John Doe:

7.10 The Court also heard evidence from Mr. John Doe, the Relevant Person's brother. He gave evidence that he, along with his siblings Ms. June Doe and Ms. Joy Doe, would like to apply to the Court to become the Relevant Person's DMRs. He stated that all the family members have a very close relationship with the Relevant Person. He gave evidence that the Relevant Person suffered from OCD for many years. However, in 2011 something went wrong. He said at that time she had a series of admissions to a Mental Health Service and "*she has never been well in the same sense since 2011*".

7.11 With regards to the Relevant Person's financial affairs, Mr. John Doe gave evidence that from 2014/2015 onwards he would handle any complex decisions regarding the Relevant Person's finances, including paying her bills. He has access to her bank account. If maintenance work was required around the house, he would organise the work and it would be paid for from the Relevant Person's account.

7.12 With regards to the Relevant Person's properties, the Relevant Person owns a house. Mr. John Doe moved into this house in 2021. At that time the Relevant Person was living in an assisted living hostel and would come home to the house every weekend. It became a regular requirement for someone to be there at the weekends, so Mr. John Doe moved into the house permanently. He does not pay rent to the Relevant Person.

7.13 The Relevant Person also owns an apartment. Mr. John Doe gave evidence that he owns an apartment in the same complex. The Relevant Person is a Director of the Management Company of the Apartment Complex. Mr. John Doe gave evidence that the Relevant Person asked him to represent her interests in the Management Company and he does so. He stated that the extent of the Relevant Person's involvement in the management company is signing off on the annual accounts.

7.14 During the course of Mr. John Doe's evidence, it was brought to the Court's attention that since 2016/2017, the Relevant Person pays a standing order of €25 to her brother, Mr. James Doe, weekly. The Relevant Person also contributed to the payment of Mr. James Doe's holiday costs in June 2022 when the Relevant Person, Mr. James Doe, the Relevant Person's nephew and Ms. June Doe went abroad on a family holiday.

7.15 When questioned on whether he believes that a conflict of interest exists by virtue of the fact that Mr. John Doe lives in the Relevant Person's property and the family members will all inherit from the Relevant Person's estate when she passes, Mr. John Doe gave evidence that his inheritance does not influence him in any way, specifically he stated *"I will spend the Relevant Person's money on her behalf and act in a responsible way to preserve her estate but that just means I will prudently manage her estate by making sure her money is not squandered and is spent prudently"*.

7.16 Mr. John Doe gave evidence that since 2011 the Relevant Person had a problem living at home on her own due to the risk of suicidal ideation. She was admitted to an acute hospital in 2016 on foot of a suicide attempt. At that stage she did not want to go to a nursing home, her will and preference was to re-establish an independent life. The family thought she was far too young to be living in a nursing home and at that stage the family were not in a position to commit to the responsibility of living full time with the Relevant Person. Mr. John Doe gave evidence that as a result of persistent advocacy from the family, the Relevant Person was able to move into an assisted living hostel.

7.17 With regards to future long-term care, the family are now in a position to provide this care at home. The family contacted an organisation who provide care attendants for people cared for at home. At an initial assessment it was decided that 4 hours care could be provided daily to the Relevant Person by carers. Mr. John Doe accepted that the Relevant Person needs to be supervised 24 hours a day but disagreed that she needed professional care 24 hours a day.

7.18 With regards to the concerns expressed by Dr. AB over the administration of medication, Mr. John Doe stated that he would be happy for the care staff to provide the medication only, and not the family.

7.19 In addressing the circumstances surrounding the reduction of the Relevant Person's medication, Mr. John Doe gave evidence that he was acting upon a professional opinion expressed by a different consultant to which he organised the Relevant Person to meet. Mr. John Doe's evidence in this regard focused on the referral letters passing between the Relevant Person's GP and Dr. AB. Mr. John Doe accepted that he played a role in constructing this letter.

7.20 Mr. John Doe disagreed with the evidence of Dr. AB wherein she stated she pleaded with him not to reduce the Relevant Person's medication.

7.21 Mr. John Doe admitted to withholding certain medication from the Relevant Person over the course of a weekend in March 2023. He stated that his rationale was that he was extremely worried with the Relevant Person's immediate reaction to the medication. He did some research online referring to a Paper published by the British Alzheimer's Society on Anti-Psychotics and Parkinsonism. He believed the Relevant Person was having a toxic reaction to the medication. He accepts now that that may have been the wrong decision.

Voice of the Relevant Person: Evidence of Ms. BC, the Relevant Person's Independent Solicitor

7.22 Ms. BC is an experienced solicitor with a speciality in capacity law. She gave evidence of six consultations she had with the Relevant Person in connection with this application, spanning in time from the 30th of June 2023 to the 9th of November 2023.

7.23 On the first visit, on the 30th of June 2023, the Relevant Person was in bed. She was dressed in full. She was facing the wall and spoke in a low voice, which made it difficult to ascertain what she was saying. When asked about her family, she mentioned she has two brothers and said they were excellent. When asked where she would like to reside in the future, she replied "*hard to know*".

7.24 On the second visit, on the 10th of July 2023, the Relevant Person was in the communal living area of a ward in an acute hospital. Ms. BC had the benefit of pictures provided to her by the Relevant Person's sister. The photographs assisted in engagement and conversation. On this occasion, when asked about residing in a nursing home, the Relevant Person replied "*I'd hate the idea but it might have to come to that*". When asked if she would like to live near her siblings, she responded "*somewhere near the three of them but it doesn't bother me at this stage*".

7.25 On the third visit, on the 18th of August 2023, Ms. BC found it difficult to have any meaningful engagement with the Relevant Person.

7.26 On the fourth visit, on the 6th of September 2023, when Ms. BC arrived at the ward she was advised that the Relevant Person was having a particularly bad day, so Ms. BC did not proceed with the visit.

7.27 On the fifth visit, on the 31st of October 2023, the Relevant Person was in bed. She seemed agitated but there was a willingness to engage. Ms. BC looked up pictures

of a Nursing Home on her phone and showed them to the Relevant Person. She did not engage with the pictures.

7.28 On the final visit, on the 9th of November 2023, the Relevant Person was quite distressed and agitated. The Relevant Person said, *"I know you're very nice but I am too stressed"*.

Evidence of Ms. June Doe:

7.29 Ms. June Doe gave evidence of the close bond the family have with the Relevant Person. Documents were opened for the court demonstrating the Relevant Person's love for her family members. Ms. June Doe gave evidence that it was her belief that it was and always has been the Relevant Person's will and preference to live at home. This was based upon the views expressed by the Relevant Person in 2016 and 2020 before her transition to the assisted living hostel. At this time, the Relevant Person accepted that she could not go home as there was nobody available to care for her at home. She differentiates that time to the present time where the family are now in a position to provide the support she needs.

7.30 Ms. June Doe gave evidence that in the past the Relevant Person expressed a wish to have her medication reduced. She stated that the Relevant Person often expressed those wishes as she had worried her psychiatric medication wasn't helping her.

7.31 In response to an allegation raised of an alleged assault by her on a nurse manager in March 2023, Ms. June Doe emphatically denied it. She stated that the exchange was heated as the family were frustrated that the Relevant Person's appointment with her Geriatrician had been cancelled. However, she insisted that she in no way assaulted the nurse manager. She placed her hand on the nurse manager's shoulder to invite her to move to a different space so they could talk in private. She accepted that she did call the nurse manager *"a bitch"* and expressed that she regrets saying that very much.

7.32 With regards to her suitability to make financial decisions on the Relevant Person's behalf, Ms. June Doe gave evidence that she was suitable and willing to do so. Up to this point, she has never been in control of the Relevant Person's funds, as this is her brother, Mr. John Doe's, role.

7.33 In response to a question about the home care identified by the family, Ms. June Doe updated the Court on advancements since the hearing date of the 10th of November 2023. The family have identified a professional nursing recruitment agency and are arranging to interview two nurses to provide live in care for the Relevant

Person. In addition to this, the family are hoping to avail of home support from the HSE and the home care organisation originally brought to the Court's attention in Mr. John Doe's evidence will be utilised to supplement any nursing care required. Alongside the professional nursing care, the family intend to operate a rota. Ms. June Doe accepted that the Relevant Person's needs are going to evolve and to cater for that the family are also applying for nursing home care, should it be needed. The family will consult with a geriatrician in deciding when is the best time to move the Relevant Person into a nursing home.

7.34 With regards to the administration of medication, Ms. June Doe accepted that no issue will be raised by her if medication is to be provided to the Relevant Person by the professional staff only.

7.35 Finally, Ms. June Doe concluded her evidence by stating that the family's support for their sister over the last 40 years is ample proof of their total commitment to the Relevant Person, and they as a family would never do anything that would compromise her care.

Evidence of Ms. Joy Doe:

7.36 Ms. Joy Doe is the Relevant Person's older sister. She told the court that she has a particularly close bond with the Relevant Person as a result of their common commitment to their Roman Catholic faith. She stated, "*in our adult lives we were sisters but also very good friends*".

7.37 Ms. Joy Doe told the court she was willing to manage the Relevant Person's finances, willing to take part in the care rota, despite living down the country, and willing to take advice from the Relevant Person's medical team. She emphasised that she would like to get a second opinion from a geriatrician.

7.38 Ms. Joy Doe gave evidence that she is currently undertaking a training course with her local Alzheimer's Society. She finds the contributions from the other participants to be very useful and inspiring.

7.39 In cross-examination, the practicalities of Ms. Joy Doe acting as the Relevant Person's DMR were explored bearing in mind she lives down the country. Ms. Joy Doe reiterated that she is available and willing to act, and would make it her business to be present at the Relevant Person's medical appointments. If she was not available, she would nominate another sibling to act on her behalf.

7.40 In the course of her evidence, Ms. Joy Doe conveyed her view that despite the Relevant Person's presentation she can still have meaningful engagement with her

family members. She still recognises Ms. Joy Doe, she still laughs and smiles in conversation, and she summed it poignantly by stating that “*she [the Relevant Person] is very much still with us*”.

Evidence of the Relevant Person’s Senior Mental Health Social Worker, Mr. CD:

7.41 Mr. CD informed the Court that Ms. Joy Doe’s views in relation to the Relevant Person’s current presentation were very much his opinion also. Mr. CD gave evidence that he visited the Relevant Person last Thursday whilst on the ward and played Christmas carols with her on his phone. “*There was a smile on her face throughout.*” He said she can still enjoy and engage in moments.

7.42 The court has the benefit of two reports prepared by Mr. CD. Mr. CD has been involved with the family since 2006. He describes the Relevant Person as a very pleasant but very anxious lady.

7.43 Mr. CD gave evidence of an interaction he had with Mr. John Doe on the 2nd of June 2023. Dr. AB had asked Mr. CD to be the go between the family and Dr. AB as Dr. AB found any face-to-face meetings with the family intimidating. It was only at this time that Mr. CD felt that the family did not have the Relevant Person’s sole best interests in mind but substituted the family’s best interest for the Relevant Person’s. In particular he referenced that Mr. John Doe was reluctant to share the Relevant Person’s financial information with him for the purposes of completing the Fair Deal Scheme. In cross-examination, it was put to Mr. CD that the rationale for this was because Mr. John Doe had already applied for the Fair Deal Scheme. Mr. CD said that this would be unusual.

7.35 Mr. CD believed the Relevant Person had the best of both worlds when living in the assisted living hostel. She was cared for during the week by professionals and went home to her family at the weekends, which kept a lot of her skills going. In Mr. CD’s opinion the Relevant Person would be very happy in a nursing home environment and would still be able to go home for the weekend or a day.

8. The Court’s Finding – Capacity Declaration

8.1 The Court notes that any arrangements for the Relevant Person needs to be proportionate and least restrictive in accordance with the Guiding Principles of the Act as outlined in Section 8. Her past will and preferences are important and should be respected. However, the Court accepts the evidence of Dr. AB, Ms. BC, the Relevant Person’s Independent Solicitor and Mr. CD, the Relevant Person’s Social Worker,

which clearly indicate that the Relevant Person's circumstances have radically altered in recent months. Regrettably she no longer has the capacity to understand will and preferences affecting her current issues that need to be addressed.

8.2 Firstly, the Court is satisfied that, pursuant to section 37(1)(b) of the Act, the Relevant Person lacks capacity, even if the assistance of a suitable person as a co-decision-maker were made available to her, to make the following decisions.

8.3 In respect of personal welfare, the Court is satisfied the Relevant Person lacks capacity, even if the assistance of a suitable person as a co-decision-maker was made available to her, to make decisions regarding her long-term accommodation and to make decisions regarding any medical treatment, save for medical decisions coming within the remit of section 4(3) and section 4(5) of the Act, to which this Court does not have jurisdiction to make.

8.5 In respect of property and financial affairs, the Court is satisfied the Relevant Person lacks capacity, even if the assistance of a suitable person as co-decision-maker was made available to her, to make decisions regarding her finances, specifically, the management of her properties, her house and apartment, the management of her bank accounts and the management of her pensions. Furthermore, the court makes a declaration that the Relevant Person lacks capacity to apply for Ancillary State Support under the Nursing Home Support Scheme Act, should it be required.

8.6 The management of her properties shall not be interpreted as permitting the disposal of any of her properties. For the purpose of clarity, disposal means sale but not short-term letting e.g. 12 months. If the DMR deems this necessary, a further application to court will be required.

8.7 The rationale for this is set out in section 44(3)(a) which states a decision-making representative for a relevant person shall not, without the express approval of the court—

(a) exercise any powers in relation to the settlement of any part of the property of the relevant person, whether for the relevant person's benefit or for the benefit of others.

9. The Court's Finding - Appointment of Decision-Making Representatives:

9.1 Section 38(5) of the Act states:

"When considering the suitability of a person to be a decision-making representative for a relevant person, the court shall have regard to the following:

(a) the known will and preferences of the relevant person;

(b) the desirability of preserving existing relationships within the family of the relevant person;

(c) the relationship (if any) between the relevant person and the proposed representative;

(d) the compatibility of the proposed representative and the relevant person;

(e) whether the proposed representative will be able to perform the functions to be vested in him or her;

(f) any conflict of interest."

9.2 Having carefully considered the factors outlined in section 38(5) of the Act, the court is of the view that whilst the siblings are devoted to their sister, they lack insight into the issues resulting in a conflict of interest. In the Court's view the family cannot objectively deal with financial, medical and care decisions on behalf of their sister.

9.3 The Court has come to the conclusion that there is a lack of transparency and accountability in the presentation of the Relevant Person's assets. The Court has a duty to ensure that the financial rights and freedoms of persons who have limited capacity such as the Relevant Person are protected against any perceived financial abuse. The Law Reform Commission in its issue paper entitled "*A Regulatory Framework for Adult Safeguarding*" has comprehensively heightened many of the issues that can arise in these circumstances.

9.4 While the Court acknowledges that the Relevant Person's individual family members have a strong belief that they are acting out of a genuine caring disposition and in good faith, there is regrettably too many issues outlined to the Court that give rise to a serious conflict of interest for the Doe family unit.

9.5 The court does not come to this conclusion lightly because the court would like the family to continue to be involved in the Relevant Person's life.

9.6 However, as an example of the conflict, Mr. John Doe lives in the Relevant Person's house. In relation to the apartment, it is unclear as to what the arrangements are or if there is any agreement in place. There was no evidence of any written agreement furnished to court. Despite the fact that Mr. John Doe looked after her financial affairs for a number of years, no accounts were furnished to the court. In addition, he resides in the dwelling house. The use of the apartment is unclear. At least one holiday was taken which Mr. James Doe benefitted from and there is a financial payment of €25 per week to Mr. James Doe. This creates issues that need to be resolved by an independent decision-making representative.

9.7 The court is of the view that despite good intentions Ms. Joy Doe and Ms. June Doe do not have the financial expertise to deal with complex financial matters. In addition, it has to be borne in mind that, this is a family that have acted as a unit collectively when in fact the Relevant Person's assets should have been solely for her benefit. In summary the Court's view is there are just too many conflicts for family members to deal with financial matters.

9.8 In relation to medical care decisions, this court has power to deal with medical care decisions but not deprivation of liberty. With regard to medical care decisions, the sad fact is that members of the family instead of acting as advocates, which would have been admirable, have effectively overreached. They put themselves into a position without expert knowledge acting as the Relevant Person's decision-makers for medical decisions. This would make it impossible for medical professionals to objectively treat the Relevant Person. Their subjective views are not backed up by any objective analysis.

9.9 In relation to the care situation, the Court is of the view that the Relevant Person's needs are very complex and that the draft plan produced by the family is not realistic bearing in mind the very high supports that the Relevant Person now needs.

9.10 In these circumstances and for the reasons outlined, it is the Court's view that an independent DMR be appointed from the panel to make financial decisions, to make medical treatment decisions and to make decisions regarding the Relevant Person's long-term care and accommodation.

9.11 The Court reiterates its hope that this will not impact upon the close relationship that the Relevant Person evidently has with her siblings. In this regard, the Court would like to draw the parties' attention to Section 44(1) of the Act wherein it states, "nothing in this Part shall permit a decision-making representative for a relevant person to be given the power to prohibit a particular person from having contact with the relevant person".

9.12 The Court requests that two nominees be furnished to the Court in respect of the personal welfare matters namely the medical treatment decisions and decisions relating to long term care and accommodation, with a view that one be appointed. Further, the court is requesting two separate nominees be provided in respect of property and financial affairs, with one to be appointed.

9.13 It is the court's sincere hope that the family will cooperate with the two DMRs and that they continue to visit their sister. In view of the rapidly evolving complexities of this matter, the Court believes that a relatively short review date be appropriate, proposing six months.

9.14 The Panel Member DMRs are to be reasonably remunerated from the Relevant Person's estate in accordance with the DSS Criteria.

9.15 The Court adjourns the proceedings to the 21st day of December 2023 for the appointment of two decision-making representatives.