

## Nursing Homes Support Scheme (Fair Deal)

### Volume 2: Review effectiveness of financial declarations

# Review effectiveness of financial declarations

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# 1. Current legislation

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## Financial assessment

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Where an individual seeks State Support for LTRC, a financial assessment report is required to be prepared under the Nursing Homes Support Scheme (NHSS) Act 2009 which considers the means of the claimant. The legislation refers to this report as being prepared by “a suitable person”. In practice we understand that this is the local Nursing Home Support offices (NHSO’s).

The level of state support is expressed as follows:

**S = T - M**

- **S** is the weekly amount of State support,
- **T** is the total weekly cost of the care services provided to the person concerned, and
- **M** is the assessed weekly means of the person.

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## Section 9 of the NHSS Act 2009

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Under section 9 ‘Application for State Support’ paragraph 5 it states that:

*‘Any person who knowingly, or recklessly, gives the Executive information which is false or misleading in a material particular in, with, or in connection with, an application for State support is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both.’*

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## Section 10 of the NHSS Act 2009

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Under Section 10 ‘Financial Assessment of Means’ a financial assessment should be carried out in accordance with Schedule 1. Under this schedule there are three categories of assessment:

1. Assessment of Income
2. Assessment of cash assets
3. Assessment of relevant assets

# 1. Current legislation cont'd

## Section 10 of the NHSS Act 2009 cont'd

The definition of income is widely drawn and would appear to cover all income types. In addition the legislation allows for other forms of benefit to be prescribed for the purpose of the definition.

Cash assets comprise:

- a) Monies, whether held as currency or in an account with a financial institution;
- b) Monies lent to another person which are repayable;
- c) Shares, stocks, bonds, securities, and other financial instruments; and
- d) A transferred asset which is a cash asset.

Relevant assets are defined as all forms of property either in the state or otherwise other than cash assets. This means that the combination of cash assets and relevant assets will cover every asset which the claimant owns.

For both cash and relevant assets the financial assessment will also consider any assets transferred within the previous five years. If such assets have been transferred for no consideration, nominal consideration or consideration of less than 75% of the market value at the time of transfer (with some exceptions related to maintenance settlements).

The “transferred asset value” will be included in the assessment of means. This is defined as follows:

### **MV - CR**

- **MV** is the estimated market value of the asset concerned at the time of the transfer
- **CR** is the amount of the consideration received by the person or the estimated market amount of the consideration received by the person (whichever is the higher)

# 1. Current legislation cont'd

These are three points at which the current legislation provides for verification of financial information

Points	Current legislation
<p>1. Review of information when the application is made</p>	<p>Once the NHSO has all required financial information, i.e. section 3 (Income) and section 4 (Assets), they will calculate the NHSS contribution amount. The financial assessment calculation is then reviewed and signed off by the NHSO.</p> <p><b>When application is first made</b></p> <p>Section 9</p> <ul style="list-style-type: none"> <li>• An application may be refused if the applicant fails to provide all such information requested on the application form or does not provide additional information as requested to determine the application.</li> <li>• Any person who provides false/misleading information on a material matter is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding three months.</li> </ul>
<p>2. Re-assessment after three years in care services and/or periodic reviews</p>	<p><b>Notification of material change</b></p> <p>Schedule 1 Paragraph 6 of NHSS Act 2009</p> <ul style="list-style-type: none"> <li>• A review takes place after three years for those applicants that disclosed a principal private residence (PPR) as part of their financial assessment. The financial assessment is reviewed and the PPR is no longer taken into consideration in the clients financial contribution assessment, therefore a re-assessment is completed.</li> <li>• There are other trigger events which should result in a re-assessments, such as: <ul style="list-style-type: none"> <li>○ A clients spouse dies; and</li> <li>○ The client turns 80 years of age.</li> </ul> </li> <li>• There are provisions in the legislation for further assessments when circumstances change, and failure to make such a notification is an offence and the person is liable on summary conviction to a fine not exceeding €1,000.</li> </ul>
<p>3. Requirement for submission following death</p>	<p><b>Deceased person</b></p> <p>Under section 27 in any respect of deceased person who received financial support at any time, or whose spouse received support the personal representative of the deceased will, within a period not less than three months before any distribution of the assets of the estate of the person;</p> <ul style="list-style-type: none"> <li>➤ provide a schedule and notice in writing of their intention to distribute the assets; and</li> <li>➤ if requested in writing to do so, keep assets which are sufficient enough to repay any amount that is/will be due.</li> </ul>

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## 2. Current practices

### Current approach in verifying financial declarations

#### Some inconsistencies in approach

Most of the NHSOs keep in touch regularly and share knowledge informally in dealing with carrying out financial assessments, this in turn strengthens the support network of the NHSOs in carrying out the financial assessments. In addition the Central Unit meets or holds conference calls with NHSO Managers on a quarterly basis and has organised roadshows to meet with and update NHSO's. However, there remain a number of apparent inconsistencies in approach:

- In most NHSO's financial information is requested straight away as part of the initial application form and financial assessment is undertaken in parallel with Care Needs Assessment (CNA) however in some other NHSO's financial information is not requested until after the CNA process is complete.
- There is no standard practice amongst the NHSO's to their review of the information provided in the financial declarations. Some NHSO's have a designated Community Welfare Officer (CWO) who can assess declarations for example by carrying out some spot checks on bank statements submitted or by using Pension Boards systems to confirm pension income. However other NHSO's do not have access to a CWO and have stated they find it difficult due to resources available to carry out such financial verification spot checks.
- The financial re-assessment conducted at the three year mark is completed to a different level of detail by each NHSO's, some NHSO's remove the PPR and recalculate the clients contribution whereas other NHSO's request updated financial information and perform a full financial re-assessment. Best practice as advised by the Central Unit is that, pending clarification of certain issues, a full review is not required.
- We found that reviews following the death of a client were not taking place at all NHSO's, and where reviews do take place they are not necessarily carried out on every client.

## 2. Current practices cont'd

### Current approach in verifying financial declarations

#### Declaration focus

- The approach in verifying financial declarations is focused on gathering property information, bank statements, pension and other income supporting documentation. The focus of the property section is the private principal residence in which the applicant lived in prior to entering the scheme. The focus here is whether the property is owned by the applicant, therefore valuation documents are requested, or if the applicant has right of residency, in this case legal documentation is required. If a property was transferred from the applicant within five years before entering the scheme, the legal documents are requested and the price of the property at the time of transfer is recorded. Given that the principal property is likely, in most cases, to be the principal asset, this focus seems sensible.

#### Receiving declarations in good faith

- The NHSO's have stated that at the preliminary stage it can be very difficult to know if all financial assets have been declared honestly. The process to locate other assets which the NHSO believe may be omitted for example cash, bank statements or shares can be very time consuming, expensive, and in most cases result in limited findings, therefore such an exercise is not performed. The NHSO's have confirmed that they take declarations in good faith.
- There are also no readily available statistics held relating to false information provided on declarations but from discussions it is believed that such occurrences are infrequent.

#### Reviews following death

- The NHSO's should receive a Schedule of Assets from the clients solicitor on death of that client. However, the NHSO's have confirmed that this process is inconsistent, and in some cases the NHSO's receive no correspondence on the death of a client. NHSO's have advised that where they do not receive the required information, they are not able themselves to establish who to contact i.e. who is the personal representative.



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## 3. Issues identified with the current practices

### **Inconsistencies**

- It is clear that the process around verifying financial declarations is not consistent across all NHSO's. Different processes are followed by NHSO's at different stages of the review process i.e. when requesting the information initially, carrying out re-assessments and carrying out reviews following deaths of clients.

### **Reliance on declarations**

- The NHSO's have stated that they rely heavily on the honesty of the applicant declarations and it must be noted that non-disclosure of certain assets can be very difficult to identify ( for example cash, bank accounts, overseas pension/assets, jewellery).
- There is no evidence to suggest that any investigations/regular spot checks are carried out on declarations as the majority of the NHSO's don't have the resources to do so.
- We believe that financial benefits could be obtained by conducting some random spot checks, whether it be reviewing the applicants bank statements or carrying out a property search to see if a second property is attached to the applicants name. It is not necessary or cost effective to investigate all applicants but the existence of random spot checks on a number of clients would in our view help introduce a culture of compliance among clients.

### **Knowledge sharing**

- There is evidence of informal knowledge sharing between the different NHSO's but in order to ensure information is shared effectively a more formal process should be put in place to review any issues that may arise and common practices across the different NHSO's. This should result in a standardised set of tests which should be carried out.

### 3. Issues identified with the current practices cont'd

#### **Following death of client**

- We have commented above that, even if spot checks are carried out, there would be difficulties in identifying all assets. Therefore reviews following death present a further and potentially more effective opportunity to obtain a complete picture of the clients assets. This is because the personal representative will have responsibility for identifying all available assets for distribution.
- Currently reviews following the death of a client are not always carried out. By not performing this review it is a missed opportunity to reclaim contribution amounts that should not have been paid. Where the NHSO's cannot identify the personal representative, the NHSO's could conduct their own investigation by contacting the next of kin or using the Court Service online probate search tool to identify the personal representative, as discussed in the next section.

#### **Potential under-declarations of assets or income**

Whilst there is no direct evidence of under-declarations taking place, we consider that the current practices are not sufficiently robust to give confidence that there are not instances of under-declaration taking place.

The HSE have advised us that currently 50% of applicants have been assessed as owning a principal private residence. This contrasts with survey evidence which indicates that home ownership amongst the general population is in the order of 73% to 75%. We consider that this disparity could be indicative of the existence of under-declarations and provides further support for the introduction of the recommendations which we detail in Section 5 below.

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## 4. Sources of information

### Useful tools available as sources of information

In this section we highlight some tools which are available to the NHSO's in order for them to investigate and verify aspects of an applicants financial information. We believe these could be of relevance to the random spot checks and to the verification following death.

#### **Property registers; (1) Land Registry and (2) Registry of Deeds**

- To identify all properties or land attached to the applicants name.
- Using an address in which the applicant resided, to identify the ownership of that property and any other property ownerships.

#### **The Private Residential Tenancies Board (PRTB)**

- To identify if the property declared on the application form and/or found through additional searches are being rented and therefore earning rental income.

#### **Local Property Tax – Property valuation guide**

- To obtain an estimation of property recorded on the application form.

#### **Probate**

- Courts Service online tool: To obtain copies of the grant of probate and the original will, to identify the personal representative.

These tools are discussed further below.

## 4. Sources of information cont'd

Sources of information	
Tools	Description
1. Land Registry	<p>The Land Registry is a resource which provides details about a property and its registered owners.</p> <p>Property searches can be completed using the name of the registered owner, with the option to select one or all counties; with the cost varying from €5 to €130 respectively.</p> <p>Each property has an associated folio number which can be used to view a map of the property at a further cost of €5. The title shown on the folio is guaranteed by the State, therefore the folio can act as evidence of title.</p> <p>This resource can be accessed through <a href="http://landdirect.ie">landdirect.ie</a> where an initial subscription will be required.</p>
2. Registry of Deeds (RoD)	<p>The main purpose of RoD is to record the existence of deeds and conveyances associated with an unregistered property.</p> <p>Information disclosed on the RoD is the nature of the deed, the grantor, the grantee and the property location details.</p> <p>Searches can be conducted using the name of the registered owner including/excluding relevant county(s) or by address. The cost of each search is €2.</p> <p>This resource can be accessed through <a href="http://landdirect.ie">landdirect.ie</a> where an initial subscription will be required.</p>

## 4. Sources of information cont'd

Sources of information	
Tools	Description
3. PRTB	<p>The Private Residential Tenancies Board (PRTB) was established in 2004 to act as a national tenancy registration system.</p> <p>The main purpose of the PRTB is to resolve disputes speedily and cheaply between landlords and tenants.</p> <p>However, this resource can also be used to determine if a property is registered as being let and thus generating rental income.</p>
4. Local Property Tax – Property valuation guide	<p>This guide can be accessed through <a href="http://revenue.ie">revenue.ie</a></p> <p>The guide provides average market values of properties in a given locality and offer an indicative valuation band for properties depending on type, age and location. The guidance does not provide market values for individual properties. It is primarily based on the market value of properties sold since the year 2010 in the area, adjusted for average price movements in the interim.</p>
5. Probate	<p><b>Online search:</b></p> <ul style="list-style-type: none"> <li>• The Courts Service online provides a probate search tool. Once a grant of probate or letters of administration has issued, copies of the grant and the original will may be obtained on payment of the appropriate fee by any member of the public.</li> <li>• The Records Office of the Dublin Probate Office holds the records for grants which have issued within the past 20 years. The records for grants which issued prior to this are held at the National Archives. These may be inspected in the Reading Room of the National Archives, Bishop Street, Dublin 8.</li> </ul>

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## 5. Recommendations

### 1. Initial financial assessment

Develop a consistent standard operating procedure for the initial financial assessment based on the shared knowledge of the NHSO's and the potential additional resources identified in Section 4 above.

### 2. Re-assessment

Develop a consistent approach to the review of financial assessments at key trigger points.

### 3. Knowledge sharing

These standard operating procedures can be amended in the light of experience of NHSO's and this would provide a formal mechanism for sharing knowledge.

### 4. Spot checks

Establish a policy of undertaking random spot checks on a number of clients. The sample might be risk based ie focussing clients with higher income or assets and / or those with more complex financial affairs.

### 5. Following death of client

Given that there will always be difficulties in identifying all assets, even where a more in depth spot check takes place, we believe the NHSO's should focus on the requirement for the personal representatives to make a full declaration of assets following death. This could involve:

- A publicity campaign to remind next of kin, nursing home operators and solicitors of this requirement;
- Maintenance of a register of clients who have died identifying whether a return has been received and following up on those where they have not (using the probate records);
- Consider publicising any situations where undeclared assets are identified to demonstrate to the public that the NHSO's are active in reviewing the information.