

Practice Tool 7

Promoting Less Restrictive Practice

This tool aims to help practitioners identify restrictions in a person’s care, in order to examine whether the care is the ‘least restrictive’ possible in line with the ECHR, the UNCRPD & the Irish Constitution. It is underpinned by the Department of Health ‘Towards a Restraint Free Environment, 2011.

The following test must be applied: there must be law or policy that allows the restriction of the rights, there must be legitimate reason for restricting the right and the restriction must be absolutely necessary.

(HIQA,2019)

1. **Is it lawful?**
If not, stop it or change it.
2. **Is it necessary?**
If not, stop it or change it.
3. **Is it proportionate?**
If not is there a less restrictive way of doing it?

The legal perspective:

Article 40.4.1 of Bunreacht na hÉireann, the Constitution of Ireland, provides that ‘no citizen shall be deprived of his personal liberty save in accordance with law’.

Article 5 of the European Convention for Human Rights states that the right to liberty and security of the person is protected, while Article 14 of the United Nations Convention on Rights for Persons with Disabilities (UNCRPD, 2007) protects the right to liberty and security of persons with disabilities.

AC v CUH & HSE (2018) has established that there is no current legislation that allows Ireland’s healthcare providers to detain a person against their will in a healthcare setting outside of the Mental Health Act 2001, S.23.and for Infection Control purposes (Health Act, 1947).

Key human rights (as set out in the European Convention on Human Rights Act (ECHR) 2003 and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 2006.

Right to life

- Right to life
- Prohibition of and freedom from torture or inhuman or degrading treatment or punishment
- Right to liberty and security
- Right to a fair trial and access to justice
- Right to respect for private and family life
- Right to freedom of thought, conscience, religion, expression and opinion
- Prohibition of discrimination
- Protection of property

The Assisted Decision-Making Act 2015

The Assisted Decision-Making Act sets out the guiding principles for supporting decision-making and maximising a person's capacity to make decisions.

Nine guiding Principles

1. Presumption of capacity unless the contrary is shown.
2. Support decision making
3. Right to make an unwise decision
4. Intervene only where necessary.
5. An intervention is proportionate, minimises restriction of rights and limited in duration in so far as is practicable.
6. An intervention gives effect to the person's past, and present will and preferences.
7. Consider the views of others.
8. Consider likelihood of recovery of capacity and urgency of the matter
9. Obtaining, using, and storing of relevant information

Useful Links

HSE: ADMA Guiding Principles Explanatory Video link <https://www.youtube.com/watch?v=4yOgk2cWk6M>

HIQA: National Standards for Adult Safeguarding (2019) <https://www.hiqa.ie/reports-and-publications/standard/national-standards-adult-safeguarding>

HIQA: Guidance on a Human Rights Based Approach in Health and Social Care Services (2019) <https://www.hiqa.ie/reports-and-publications/guide/guidance-human-rights-based-approach-health-and-social-care-services>

HIQA: Guidance on promoting a care environment that is free from restrictive practice: Disability Services.

<https://www.hiqa.ie/reports-and-publications/guide/guidance-restrictive-practice-dcd>

HIQA: Guidance on promoting a care environment that is free from restrictive practice: Older People's Services. (2023) <https://www.hiqa.ie/reports-and-publications/guide/guidance-restrictive-practice-dcop>

HSE, National Quality Improvement Office Disability Services; Preventing the Need for Restrictions Guiding Principles (2021) [preventing-the-need-for-restrictions.pdf \(hse.ie\)](https://www.hse.ie/preventing-the-need-for-restrictions.pdf)

HSE, National Quality Improvement Office Disability Services; Practical Guidance to Support the Preventing the Need for Restriction Guiding Principles (2021) [practical-application-of-pnr.pdf \(hse.ie\)](https://www.hse.ie/practical-application-of-pnr.pdf)

HSE, National Quality Improvement Office Disability Services; A Rights Based Approach to Behavioural Support: Guiding Principles (2021) [provision-of-behavioural-support.pdf \(hse.ie\)](https://www.hse.ie/provision-of-behavioural-support.pdf)

Questions to ask

- 1. Is it lawful?**
 If not, stop it or change it.
- 2. Is it necessary?**
 If not, stop it or change it.
- 3. Is it proportionate?**
 If not is there a less restrictive way of doing it?

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>1. Freedom of movement</p> <p>Is the person as free as anyone else to come and go where they like, when they like?</p>	<p>The person is, or would be, prevented from leaving the premises (some or all of the time).</p> <p>The person is, or would be, prevented from entering certain parts of premises (eg kitchen, bathroom, garden) (some or all of the time).</p> <p>The person is not, or would not be, allowed to go to certain places without an escort.</p> <p>Doors are locked (or deliberately made difficult to open) to prevent the person leaving, or otherwise to restrict their movements.</p> <p>Bed rails or other equipment (eg tipping chairs) are used to keep the person in a particular place.</p> <p>A person's shoes, other items of clothing, mobility aids or such like are, or would be removed from (or refused to) them to restrict their movements in particular circumstances.</p> <p>On occasions, the person is made to be separate from others and/or stay in a confined area (eg "seclusion"/"time out").</p> <p>Sometimes the person is, or would be, taken or made to go somewhere despite their objections (eg to or from their bedroom, to the doctor).</p> <p>The person is relatively free to come and go but would not be able to discharge themselves or live elsewhere.</p> <p>Access to communal rooms and gardens is limited and controlled by staff.</p>	<p>Although free to come and go, the person is expected to ask "permission".</p> <p>The person is discouraged from going out (or other people are discouraged from taking the person out) for the convenience of staff or the provider.</p> <p>Although free to come and go, the person cannot in practice to do so without asking someone else to unlock doors etc.</p> <p>Limited availability of help from staff means the person cannot, in practice, exercise their right to come and go as they wish.</p> <p>Even though they do not object, where and when the person goes is, in practice, decided by others.</p> <p>Access to gardens or outdoor areas are restricted due to "weather".</p>	<p>Can changes be made to the environment which will enhance the person's freedom of movement?</p> <p>Could a programme be put in place which will mean at some point in the future the person will be free to come and go?</p> <p>Does a risk assessment simply need reviewing?</p> <p>Does the person need to learn a new skill as a result of which they will be able to come and go more freely?</p> <p>Are some restrictions on movement historic and are no longer needed?</p> <p>Are behavioural approaches always implemented before removing or restricting people?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Questions to ask
<p>2. Eating and drinking</p> <p>Is the person as free as anyone else to eat and drink as they wish?</p>	<p>Certain types of food or drink (eg. alcohol, hot drinks, takeaways), would be removed from the person if they bought them, or were given them by someone else.</p> <p>Certain types of food or drink are not, or would not be, provided to the person on request (even though they could, in practice be provided and they could afford them).</p> <p>The person is, or would be, prevented from preparing their own food, or from doing so unsupervised (either generally, or at particular times).</p> <p>The person is, or would be, prevented from eating and/or drinking at certain times or in certain places, or from doing so unsupervised.</p> <p>The person is, or would be, prevented from smoking when other people would be allowed to smoke.</p> <p>The person is not being allowed to eat according to their cultural or religious beliefs.</p>	<p>The person could select and/or prepare food and drink for themselves, but in practice is discouraged from doing so for the convenience of staff or the provider.</p> <p>Limited availability of help from staff means the person cannot, in practice, exercise their right to eat and drink as they wish.</p> <p>Meal times and/or menus are more restricted than they need be, for the convenience of staff or the provider.</p> <p>Even though they do not object, what and when the person eats and drinks is, in practice, decided by others.</p> <p>It is difficult in practice for the person to eat according to their religious beliefs.</p>	<p>Can the person be taught skills to help them increase independence with cooking?</p> <p>Could a trial be put in place to provide food in a different way?</p> <p>If the person is unable to prepare a full meal can they contribute to elements of meal preparation?</p> <p>Can the person be involved in deciding what food choices are on offer?</p> <p>Could you get advice from someone else to assist with cultural or religious food issues?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Questions to ask
<p>3. Washing and toileting</p> <p>Is the person as free as anyone else to use the bathroom as and when they wish?</p>	<p>The person is, or would be, prevented from using the toilet unsupervised (some or all of the time).</p> <p>The person is, or would be, prevented from washing, bathing, showering and/or shaving unsupervised (some or all of the time).</p> <p>The person is, or would be, prevented from using the toilet/ bathroom/shower room at certain times.</p> <p>The toilet/bathroom/shower room is, or would be, locked to prevent the person using it without supervision/permission (some or all of the time).</p> <p>At times, the person is, or would be, washed, bathed and/or shaved despite their objections.</p> <p>The person is kept in incontinence pads for the convenience of staff (even though continent).</p> <p>There is a delay for incontinence pads to be changed which relates to staff levels and priorities.</p>	<p>The person could use the toilet and/or wash and bathe themselves, but in practice is discouraged from doing so, for the convenience of staff or the provider.</p> <p>The facilities necessary for the person to use the toilet and/or wash and bathe themselves are not provided.</p> <p>Limited availability of help from staff means the person cannot, in practice, use the toilet and/or wash or bathe as they wish.</p> <p>Even though they do not object, when and how the person is washed or bathed is, in practice, decided by others.</p>	<p>Could any changes be made easily to bathroom facilities to enable the person to do more for themselves?</p> <p>Can the person be provided with any aids to help them with washing or toileting?</p> <p>Would visual prompts or reminders help the person to be more independent with washing and toileting?</p> <p>Can the times for washing and toileting be agreed with the person and added to a planner or visual reminder?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Questions to ask
<p>4. Personal appearance</p> <p>Is the person as free as anyone else to wear what they like, when they like and appear as they like?</p>	<p>The person is, or would be, prevented from wearing certain items of clothing, jewellery or make-up (some or all of the time).</p> <p>Certain items of clothing, jewellery or make-up would be removed from the person if they bought them or were given them by someone else.</p> <p>The person is, or would be, made to wear protective clothing/ headgear (either generally or for certain activities for which other people would not).</p> <p>At times, the person is, or would be, dressed or undressed, despite their objections.</p> <p>At times, the person's hair is, or would be, cut or dressed despite their objections.</p> <p>At times, the person's clothes are, or would be, washed or cleaned despite their objections.</p> <p>The person is not dressed in their own clothing.</p>	<p>The person could choose their own clothes, but in practice is discouraged from doing so, for the convenience of the staff or provider.</p> <p>The person is deliberately offered only a limited selection of clothing to choose from, despite other items being available.</p> <p>Limited availability of help from staff means the person cannot, in practice, wear what they want and/or look as they wish.</p> <p>The person has little choice over when and how their clothes are washed or cleaned.</p> <p>Even though they do not object, what the person wears and how they look is, in practice, decided by others.</p>	<p>Can staff provide visual or written reminders of what is appropriate clothing?</p> <p>How can the person be more involved in the choice of clothing eg using catalogues to select clothing?</p> <p>If the person's choice of clothing is not seen to be appropriate can some elements of it be facilitated within the final choice?</p> <p>Can the establishment change the arrangements for hair and beauty to encourage independence?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>5. Living environment</p> <p>Is the person as free as anyone else to arrange their living environment the way they want it?</p>	<p>There are limits on what personal property the person can have with them, or where it is kept.</p> <p>Specific items of their property (eg phones, computers, games, musical instruments) are, or would be, withheld from the person (some or all of the time).</p> <p>Certain items of property be would removed from the person if they bought them, or were given them by someone else.</p> <p>The person cannot access items of their own property at all times as they wish (eg because it is kept in storage by staff, or a “safe place” to which they do not have direct access).</p> <p>At times, items of the person’s property are, or would be, moved and/or cleaned despite their objections.</p> <p>Property which has been stored by staff is not appropriately labelled or securely stored.</p>	<p>The person could exercise greater control of their living environment, but in practice is discouraged from doing so, for the convenience of staff or the provider.</p> <p>Limited availability of help from staff means the person cannot, in practice, control their living environment as much as they want.</p> <p>The person has little choice about when or how their living environment is tidied or cleaned.</p> <p>Even though they do not object, the person’s living environment is, in practice, decided by others.</p>	<p>Can simple changes be made so the person can have more familiar items and personal property?</p> <p>Can the person be involved in practical tasks such as cleaning and tidying their room?</p> <p>Have you involved the person in all the details of their room and immediate environment?</p> <p>Consider how the person lived when they were in their own home and what their preferences for cleaning were?</p> <p>Is there anyone close to the person who can help to personalise the environment with them?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>6. Family and social life</p> <p>Is the person as free as anyone else to see – or not to see – whom they like, when they like and to live a fulfilling family and social life?</p>	<p>The person is, or would be, prevented from contacting particular people, or that contact is, or would be, restricted (eg face to face contact not permitted, limits on the amount of contact, contact must be supervised).</p> <p>Another person is, or would be, prevented from seeing or contacting the person, or that contact is, or would be, restricted.</p> <p>Another person is or would be, permitted to see the person, despite the person's objections.</p> <p>The person is, or would be, prevented from forming, or continuing, a sexual relationship.</p> <p>Visitors are restricted to specific rooms, and are not allowed general access.</p> <p>Electronic methods of communication are restricted or banned (such as email, social networking, mobile phones).</p>	<p>The person could exercise greater control of their contacts and social life, but in practice is discouraged from doing so, for the convenience of staff or the provider.</p> <p>Other people are discouraged from seeing or maintaining contact with the person.</p> <p>The person's contact with others is limited in practice, eg because visiting is only allowed at certain times or access to computers is limited to certain times.</p> <p>Limited availability of help from staff means the person cannot, in practice, control their contacts and social life as much as they want.</p> <p>Even though they do not object, the person's contacts and social life are, in practice, decided by others.</p>	<p>If contact is restricted is the person involved in this decision and a formal plan for restriction or supervised visits agreed?</p> <p>If contact is restricted can the decision be reviewed regularly with a plan to remove this altogether?</p> <p>Can you find other places for contact to take place which works better for the person and their family?</p> <p>Have you explored all methods of keeping in touch including electronic and social media?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>7. Privacy</p> <p>Is the person as free as anyone else to be alone, and to keep their own business private?</p>	<p>The person is not, or would not, be allowed to spend time on their own/ out of sight (some or all of the time).</p> <p>The person is not permitted to lock the door to their own private space (either when they are in it, or when they are elsewhere).</p> <p>The person’s whereabouts or activities are remotely monitored (eg by electronic tags, CCTV, door alarms) (and they do not have capacity to make this decision themselves).</p> <p>The person’s post is, or would be, intercepted by staff.</p> <p>Their telephone calls are, or would be, listened in to by staff.</p>	<p>The person is discouraged from being on their own/ out of sight, or locking their door, when they want, for the convenience of staff or the provider.</p> <p>The way the service is provided, or the provider’s premises, makes it difficult for the person to maintain their privacy when they want.</p> <p>Staff do not knock, or seek permission, before entering the person’s private space.</p> <p>Staff do not properly respect the person’s confidentiality when talking to other people.</p>	<p>Is there a restriction in place which is historic and has not been updated, can this be reviewed?</p> <p>Can negotiation take place with the person about times to be alone and for this to be respected by all staff?</p> <p>Are monitoring devices necessary? Ask what would happen if they were not used. How great is the risk, how likely and is the use of such a device proportionate?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>8. Health and healthcare</p> <p>Is the person as free as anyone else to control their own health and healthcare?</p>	<p>Medication is, or would be, used specifically to control the person's behaviour (and they lack capacity in relation to this decision).</p> <p>The person does not always have their glasses, hearing aids or false teeth at times they need them.</p> <p>The person is not, or would not be, permitted to keep and control their own medication if they wish (eg because it is kept elsewhere by staff).</p> <p>The person is not permitted to register (or stay) with a GP surgery of their own choosing, or to decide which hospital to attend, despite those choices being available.</p> <p>Drips, or similar equipment, are fixed in such a way that the person cannot remove them (and they lack capacity in relation to this decision).</p> <p>At times, the person is, or would be, given medication – or other treatment – despite their objections.</p> <p>The person is put under considerable pressure to consent/ agree to medication.</p> <p>The purpose, risks, side effects, benefits, nature, likelihood of success and alternatives of specific treatments have not been explained to the patient prior to them starting treatment.</p>	<p>The person could exercise greater control of their healthcare, but in practice is discouraged from doing so, for the convenience of staff or the provider.</p> <p>Limits on the availability of assistance from staff means the person cannot, in practice, control their health or healthcare as much as they want.</p> <p>Even though they do not object, the person's healthcare is, in practice, decided by others.</p> <p>The person's glasses or hearing aids are not removed but they are not actively promoted.</p>	<p>Can the person gradually increase control over their own health related decisions?</p> <p>With a short programme of input from health professionals could the person make some issue specific decisions?</p> <p>Can you involve other professionals to explain aspects of medication or treatment to enable the person to develop understanding?</p> <p>Are there publications, DVDs or books which would assist the person to make their own decisions?</p>

Domain	Examples of direct restrictions	Examples of possible indirect restrictions	Changes to consider
<p>9. General</p>	<p>Staff are not trained and encouraged to see themselves as enablers and supporters, rather than as exercising control.</p> <p>The person is at risk, through boredom, isolation or under stimulation, of losing skills, or missing opportunities to gain them, because they are not being enabled to interact with other people, keep fit and alert, and/or challenge themselves.</p> <p>The person is at risk of not having their wishes and feelings understood properly, or reluctant to engage, because there is a lack of continuity in who is supporting them and/or because they aren't involved in choosing who supports them.</p>	<p>Activities and external stimulation is offered but, restricted for the convenience of staff or the provider.</p>	<p>Ensure all staff have attended Assisted Decision-Making Act training and can demonstrate that they understand and can apply the principles of the Act.</p>