### Deprivation of Liberty Safeguards

**What are the Deprivation of Liberty Safeguards (DOLS)?**

- DOLS are a legal set of safeguards to ensure protection for a patient who – for reasons of disturbances to their mental health – lack to capacity to make decisions about their care and treatment and, as such, have their liberty deprived as part of this ongoing care or treatment.
- In particular, the DOLS are designed to ensure:
  - A patient, who has their liberty deprived, has an independent representative to act upon their behalf.
  - That the deprivation of their liberty is reviewed on a regular basis.
  - That the patient – or their representative as assigned above – has a legal basis on which to challenge the deprivation of liberty through the court of protection.
- It has been noted by some clinicians (perhaps cynically) that DOLS are more about legally protecting healthcare professionals rather than the wellbeing of the patients it was intended for.
- DOLS must deprive a patient’s liberty in the most minimally restrictive way possible.
  - The exact details of what this entails is determined on a case-by-case basis during the formal assessment process.

**Why would anyone need a DOLS?**

- An 80-year-old suffering from advanced dementia and recurrent falls who, following IM nailing of a fractured neck of femur is now poorly mobile, but wants to be discharged home. Her family and the medical team feel she needs placement to a nursing home.
  - If she lacks the capacity to understand that she would be unsafe for a discharge home in view of her inability to care for herself, feed herself etc. one would argue that placement in a nursing home is in her best interests.
  - However, a nursing home placement goes against her own (albeit non-capacitous) wishes.
  - A DOLS would be required as part of proceeding with arranging a nursing home placement, and for keeping her on the ward whilst this process is completed.
- DOLS also apply to people who are being held under section from the mental health act.

**How I assess a person’s capacity to make a decision?**

- In order to have capacity, a person must be able to:
  - Understand the information about the decision presented to them.
  - Retain this information long enough to make a decision.
  - Be able to weigh up the information in order to arrive at their decision.
  - Communicate their decision (verbally or non-verbally).
- If any one of the above points is absent, they are deemed to lack capacity.
  - An unwise decision is not the same as a non-capacitous decision.
- Do not make the mistake of being asked to decide if a patient has “capacity” in general.
  - Capacity is decision specific.
  - E.g. A person’s capacity to decide what they want for breakfast does not equate to them having the capacity to decide if they want to risk-feed in view of their poor swallow, or have a PEG sited.

**How does one apply for a DOLS?**

- The specifics of how and who to apply to for a DOLS will vary based on your local trust, and local guidelines should be consulted.
- In general, at the outset of beginning to process of applying for a DOLS, both an emergency and a standard DOLS request should be made.
- An emergency DOLS will last for up to 7 days, but can be extended upon request if the standard DOLS is not yet in place
- A standard DOLS should be applied for at the same time, the formal assessment of which must take place within 21 days of application submission
- The standard DOLS should be left in place for as little time as possible, but can last for up to 12 months, with ongoing reviews

**Who would be the patient’s representative after a DOLS was applied?**
- The representative is normally appointed by the supervising body performing the DOLS assessment, and this person would be involved in the DOLS assessment itself
- It would usually be a patient’s relative or carer
- If there is no immediate family or professional carer, an independent representative may be appointed
  - In the case of a patient with dementia, this may be an Independent Mental Capacity Advocate (IMCA) who would then make best interests decisions on behalf of the patient

**When would the DOLS be reviewed?**
- The patient or their representative can request for a review of the DOLS
- The team instituting the initial DOLS (e.g. medical team, care home) should continually monitor the need for the DOLS to remain in place, and formally review as appropriate
- As mentioned above, the standard authorisation can last up to 12 months – after this a further formal assessment is required. If still indicated a further 12-month standard DOLS is put in place