

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