

National **Safeguarding** Committee

Promoting the rights of adults who may be vulnerable



Ms. Ciara Pidgeon
Principal Officer
Department of Health

31 July 2018

Deprivation of Liberty: Safeguard Proposals

Dear Ms Pidgeon

I write to you following the meeting of the National Safeguarding Committee (NSC) held on 25th July 2018 when there was a brief discussion on the recent decision of the Court of Appeal AC v Cork University Hospital and the Health Services Executive [2018] IECA and further to the NSC's submission in March 2018 to the Department with regard to proposed legislative provisions to be included in Part 13 of the Assisted Decision-Making (Capacity) Act with regard to Deprivation of Liberty Safeguards.

The NSC is of the view that it is important that people are encouraged to communicate their will and preferences with regard to 'place of care decisions.' The NSC believe that it would be advantageous to both the individual and to healthcare professionals if such a decision was accommodated in an Advance Healthcare Directive (AHD). The NSC is aware that these decisions can be made in an Enduring Power of Attorney (EPA) but noted that to create an EPA it is necessary to obtain legal advice and also an EPA does not come into effect until it is registered. The NSC believes that it would be an advantage if when a person interacts with a healthcare professional that they are encouraged to make a valid directive with regard to 'place of care' decision that can be acted upon in the event that they subsequently lack capacity to consent.

The NSC therefore recommends that Part 8 of the Assisted Decision-Making (Capacity) Act 2015 be amended to include provision for the making of a 'place of care' decision in an AHD. Section 62(5) of the 2015 Act already appropriately covers a situation where there may be a duplication of a decision in both an AHD and an EPA.

Yours sincerely

Patricia T Rickard-Clarke
Chair, National Safeguarding Committee

South East Wing
Mulgrave St.
Limerick V94 C8DV – Ireland

M: +353 86 0255044
W: Safeguardingcommittee.ie
E: info@safeguardingcommittee.ie