



Resident Experience Board  
Wednesday 20 July

**The Impact on Surrey's County Coroner relating to formal inquests for residents that pass away whilst under a Deprivation of Liberty Safeguards Authorisation**

**Purpose of the report:** Scrutiny of Services and Budgets

To update the Board regarding the current impact of Deprivation of Liberty Safeguards on Surrey County Council's Adult Social Care and the Coroner Services.

**Background:**

1. The Deprivation of Liberty Safeguards are a provision of the Mental Capacity Act implemented in April 2009. Their purpose is to prevent the arbitrary detention (deprivation of liberty) of adults in care homes or hospitals for the purpose of receiving care or treatment.
2. When a person who lacks mental capacity to consent to their admission to a care home or hospital it is sometimes necessary to restrict or restrain them in some way to ensure that they receive the necessary care or treatment e.g. Locking exit doors, use of medication, close supervision, physical restraint etc. This can be lawful under the Mental Capacity Act as long as it the restrictions do not constitute a deprivation of the person's liberty.
3. Where a care home or a hospital (Managing Authority, MA ) believes that it is necessary for a person to be deprived of their liberty in order to give them care or treatment they must apply to their local authority (The 'Supervisory Body' - SB ) to authorise this. The process for assessing, recommending and authorising such arrangements and putting appropriate protections in place are regulated by the 'Deprivation of Liberty Safeguards' (DoLS) provisions of the Mental Capacity Act.
4. SCC is the 'Supervisory Body' for all DoLS requests made by care homes and hospitals in Surrey, and as such must commission all assessments required in order to authorise a deprivation of liberty and must authorise this if they meet the statutory criteria.

5. Authorisations can be put in place for a maximum of one year, and need to be reviewed and renewed if they are required for a longer period.
6. The assessment process involves six separate assessments:
  - Age assessment
  - Mental Health Assessment
  - Mental Capacity Assessment
  - Eligibility Assessment
  - No Refusals Assessment
  - Best Interests Assessment.
7. These assessments must be completed by at least two different professionals, including an approved doctor and a 'Best Interests Assessor (BIA)'.

<b>Impact of the Supreme Court Ruling: P v Cheshire West &amp; Chester Council; P &amp; Q v Surrey County Council [2014] UKSC 19</b>
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8. SCC was party to a widely reported Supreme Court case in March 2014. This was not because of any criticism of the council regarding their professional actions or their care and support for 'P&Q' – two sisters in their early twenty's who have a learning disability. The case was bought by the Official Solicitor as an appeal against an earlier High Court judgment which determined that they were **not** deprived of their liberty. The case was about a matter of law rather than professional practice and the judgement specifically made positive reference to the role and actions of SCC in supporting both of these young women.
9. The Supreme Court Ruling effectively lowered the threshold set for what constitutes a deprivation of liberty compared to previous court rulings. It established that if a person is a) without the mental capacity to consent to their care and treatment and b) is not free to leave and c) is under continuous supervision and control, then their accommodation arrangements (in Hospital or Care Home) must to be assessed under the DoLS provisions to lawfully authorise their detention.
10. Currently we prioritise assessments according to the Association of Directors of Adult Social Services (ADASS) guidelines, and the level of restrictions and restraint that may be required to support someone safely. Because of the significant increase in numbers of requests SCC, as with most other local authorities, has a large backlog of assessments. However we have increased our capacity to complete and authorise more assessments over the past year. Performance of SCC DoLS activity is scrutinised and monitored by both the Social Care Services Board, chaired by Mr Keith Witham and the councils Strategic Risk Network, chaired by the David McNulty.
11. When an authorisation is granted it gives the care home or hospital the legal authority to stop someone leaving in order to give them the care and treatment that they require as a result of their mental disorder. This may mean that if someone is constantly expressing a wish to leave or trying to leave that they need to be distracted from doing so, or in some situations

restrained. However, all care provided should always be in least restrictive manner possible to safeguard the person against harm in a proportionate way.

12. If an application for a DoLS does not meet all the criteria required, then it cannot be granted, and a less restrictive care and support plan must be implemented or arrangements made for the relevant person to be placed elsewhere if appropriate, or allowed to return home if that is a viable option for them that they wish to pursue.
13. Appeals for DoLS authorisations are heard in the Court of Protection, and this is one of the many safeguards incorporated into DoLS provisions to ensure that people subject to DoLS and their representatives have the right of access to the court.
14. The table below sets out details of the number of requests made to SCC for DoLS authorisations since 2011. It highlights the significant spike in applications following the Supreme Court case in 2014, and the number of requests waiting for assessment.

<b>Year</b>	<b>No. of requests</b>
2011-2012	57
2012-2013	60
2013-2014	113
<b>Supreme Court Judgment handed down 19<sup>th</sup> March 2014</b>	
2014 -2015	3,045
2015- March 2016	3,852
<b>Number of requests waiting for assessment</b>	
8 <sup>th</sup> July 2016	5037

15. The number of requests awaiting assessment is very high. However this unprecedented demand has been acknowledged by the Department of Health and ADASS. This level of delay is replicated in neighbouring authorities with, for example, Hampshire County Council and West Sussex County Council reporting waiting lists of 4200 and approx 3000 respectively.
16. In 2015-16, 233 assessments were completed and 169 authorisations were given. Currently there are 183 active authorisations in place.

<b>The Coroner Service:</b>
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17. Local authorities' role in the Coroner Service is somewhat unique within the local government setting. Coroners are independent judicial office holders appointed and paid by local authorities. Coroners, not local authorities, are legally responsible for providing the service and local authorities cannot seek to interfere in any way with judicial decisions taken by coroners. The governing legislation is set out in the Coroners and Justice Act 2009 (the CJA 2009) and the associated rules and regulations. SCC has four main responsibilities arising from the CJA 2009:
  - To meet all the costs of the service

- To indemnify Coroners against legal challenge
- To appoint Coroners
- To provide sufficient Coroners Officers, support staff and accommodation to enable Coroners to discharge their statutory functions

18. A Coroner's duty is to investigate deaths that have been reported to them if they have reason to think that the death was violent or unnatural, the cause of death is unknown, or the person died whilst in prison, police or another type of state detention such as where a DoLS order is in place. In supporting the delivery of the service, SCC aims to ensure an efficient, empathetic and resilient countywide service for families impacted by deaths investigated by the Coroner.

19. The service is also supported financially by Surrey Police who currently provide coroners officers and some support staff. Coroner's Officers are the eyes and ears of the coroner and carry out the practical aspects of investigations on behalf of the coroner, such as organising post mortems, arranging for witness statements, organising inquests and liaison with bereaved families.

20. In practice therefore the day to day operation of the service consists of a tripartite arrangement between the Senior Coroner (Richard Travers), SCC and Surrey Police. A good and harmonious working relationship exists and all parties are committed to providing the bereaved people of Surrey with a responsive and caring service. The SCC budget for the coroner service for 2016-17 is £1.775m. The Surrey Police contribution to Coroner's Officer staffing is circa £500,000.

21. By way of information there is an impending legislative change that will impact on the coroner service. The Department of Health (DoH) carried out a consultation on 'Reforms to the Death Certification Process and Introduction of the Medical Examiner' which closed on 15 June 2016. SCC responded to the consultation. The reforms propose to place a new duty on upper-tier authorities (which includes SCC) to appoint medical examiners to provide independent oversight of the death certification process for all deaths, not just those referred to the Coroner. There was no specific guidance included in the consultation with regards to where a DoLS authorisation is in place but a separate report will be compiled to brief the Board of the implications of this new legislation, if and when it is approved by Government.

### **Chief Coroner Guidance on DoLS Authorisations**

22. The Chief Coroner for England and Wales issued Guidance Note No.16 in December 2014 (revised January 2016) which concluded that when a person dies who is subject to a DoLS authorisation, the death should be reported to the Coroner and the Coroner should commence an inquest. The Chief Coroner concluded that the person is not 'in state detention' for these purposes until the DoLS is authorised.

23. The Chief Coroner also advised that the coroner may conduct a brief 'paper' inquest in open court but where the family or witnesses are not present, preferably within 2 weeks of the death. This would be in circumstances where the coroner obtains a copy of the DoLS authorisation, and a medical report indicating that the death was from natural causes, and the coroner checks that the family have no particular concerns about the death. Bereaved families have this process explained to them in advance.
24. By reason of the exceptionally high number of unauthorised DoLS applications the Surrey Senior Coroner initially requested that any death where a DoLS request was pending was also referred to him. However, he subsequently revised his view in December 2015, and only authorised DoLS are now to be referred to him. He has also requested that the Surrey Registration Service enquire whether the deceased person was subject to a DoLS authorisation when they died. This has been incorporated into the death registration on-line and telephone booking process.

### **The Law Commission Review**

25. DoLS have been subject to considerable criticism ever since their introduction. In March 2014, two events inflicted significant damage. First, the House of Lords post-legislative scrutiny committee on the 2005 Act published a report, which amongst others matters, concluded that DoLS were not fit for purpose and proposed their replacement. A few days later a Supreme Court judgement (usually referred to as '*Cheshire West*') gave a significantly wider definition of deprivation of liberty than that which had been previously understood to apply in the health and social care context. The judgement laid down an 'acid test' for deprivation of liberty: whether a person is subject continuous supervision and control and is not free to leave.
26. The practical implications of this judgement for local authorities and the state have been significant. For example there has been a tenfold increase in DoLS applications in England and a 16 fold increase in Wales since the judgement, and it is estimated that only half of these have been processed owing to the resulting pressures on local authorities and health boards.
27. As a result of these events the government asked the Law Commission to carry out a review of the DoLS. The Consultation finished on 2 November 2015 and the Law Commission is currently considering the responses. SCC responded to the consultation and a copy is available on request. The DoH indicates that there is unlikely to be any legislative change before 2018 and at the present time there is no clear indication as what those changes may be, or the impact on SCC and the coroner.

## The Financial and Resource Impact of DoLS on the Coroner Service

28. From 1 April 2015 to 31 March 2016 16\* DoLS inquests were completed in Surrey. Since 1 April 2016 a further 11\* DoLS inquests have been completed. NOTE: the 2015-16 figures are an estimate as the coroner's software does not currently enable proper retrieval of DoLS data.
29. At this stage it is difficult to quantify the resource implications of DoLS cases for the coroner and SCC's budget. For natural DoLS deaths each case takes between 2-3 hours of Coroner's Officer time and between 30 minutes-1 hour for the Coroner to hear the case. However, for unnatural DoLS deaths a longer formal inquest is necessary which requires a jury and all the usual expenses associated with a jury case.
30. An indication was given at a South East regional meeting for Local Authority Coroner Service managers that between 13-25% of DoLS authorisations result in Coroner's cases per year. Based on the 2015-16 authorisations (169) this could potentially result in 22-42 additional inquests. If all 5,037 pending DoLS applications are processed this could result in an additional 654-1,259.
31. Although the exact figures are very difficult to calculate, the average cost of an inquest in 2015, based on 508 inquests was circa £2,000. This is based on the following expenditure:
- Mortuary storage fees - £349,000
  - Inquest expenses (Post mortems, histology, toxicology) - £440,000
  - Coroner body transfer fees - £88,000
  - Staffing (Assistant Coroners) - £134,000
  - Total - £1,011,000**
32. If all 5,037 pending DoLS applications are processed this could mean an additional budget pressure of £1,308 - £2,518,000 per year. An additional £430,000 has been added into the Coroner Service budget this year (2016-17) to cover the potential increase in DoLS and other inquests.

### Conclusions:

33. It continues to be very challenging time to meet the level of demand within ASC and the coroner service to deal with DoLS authorisations and inquests.
34. The service will continue to consult and work with the relevant government departments to influence future policy, procedures and legislation.
35. The outcome of the Law Commission review on DoLS is awaited and there is no clear indication as what those changes may be, or the impact on SCC and the coroner.

**Suggested recommendations:**

36. That the Coroner Service and ASC continue to work together to discuss the on-going implications of DoLS.
37. That the Chairman writes to the Chief Coroner, the DoH and the Law Commission to lobby for a timetable in terms of the publication of the Law Commissions proposed changes, and when they are likely to be implemented.

**Next steps:**

38. Ongoing liaison with HM Senior Coroner for Surrey, Richard Travers, Yvonne Rees, Strategic Director for Customer and Communities and Giles Adey, SCC Coroner Service Manager, to facilitate a joined up approach in managing the increase in referrals to the Coroner Service.
39. On-going monitoring of DoLS requests and authorisations and inquests.
40. ASC and the Coroner Service will continue to review information governance and the referral process to ensure bereaved families are looked after in a timely manner.
41. The Coroner Service will continue to review the DoLS inquest process to that it is as efficient and quick as possible for families whilst still ensuring proper investigation is undertaken.
42. At the appropriate time a separate report will be presented to the Board on the implications of the proposed new legislation regarding the introduction of Medical Examiners.

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**Report contacts:**

Giles Adey, Coroner Service Manager

Jim Poyser, Senior Manager, MCA and DoLS

Andy Butler, Principal Social Worker

**Contact details:**

Email: [giles.adey@surreycc.gov.uk](mailto:giles.adey@surreycc.gov.uk) Tel: 07967 584876

Email: [jim.poyser@surreycc.gov.uk](mailto:jim.poyser@surreycc.gov.uk) Tel. 01372 833527

Email : [andy.butler@surreycc.gov.uk](mailto:andy.butler@surreycc.gov.uk) Tel. 01483 517610