

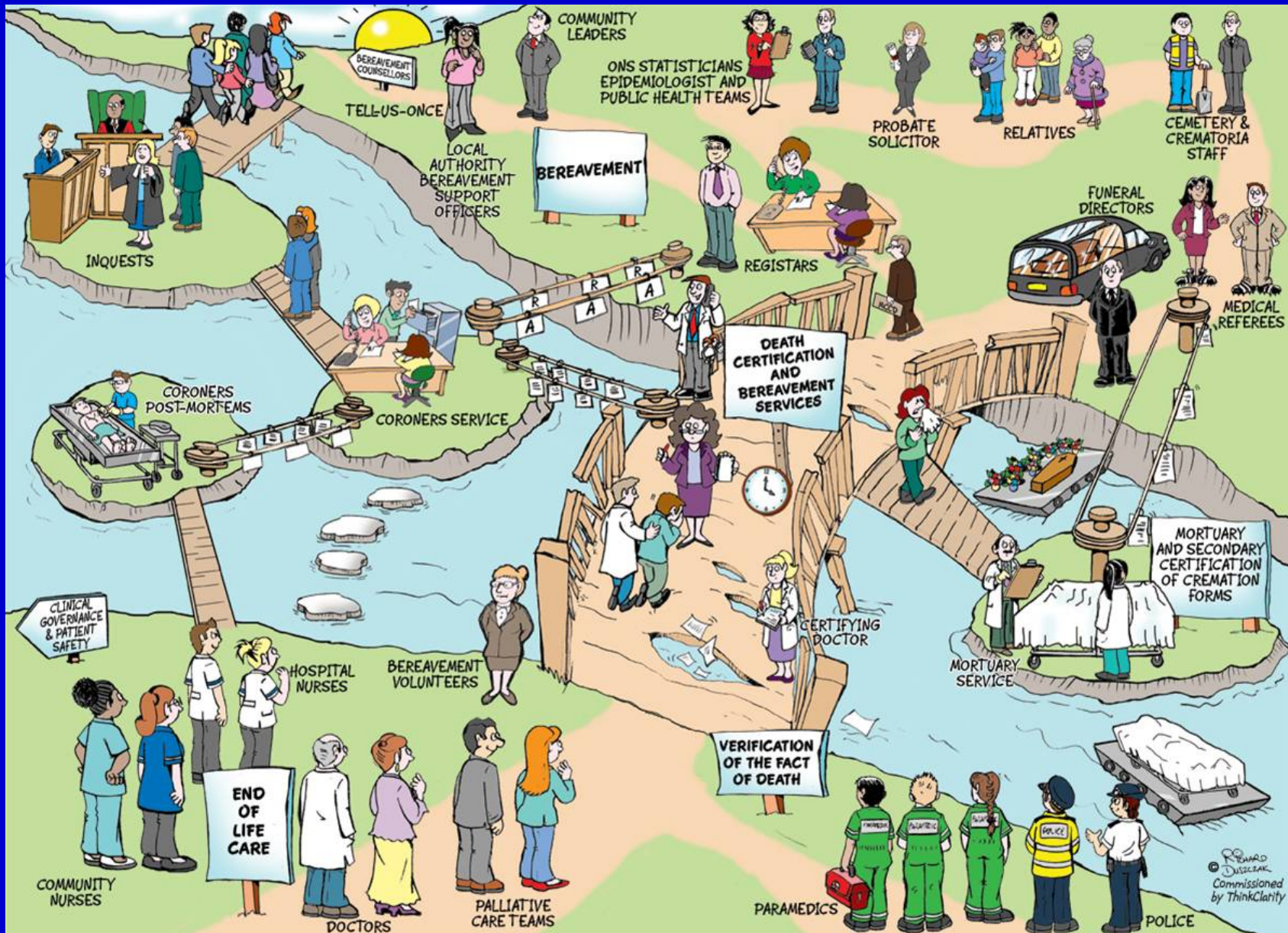
DoLS UPDATE

Derek Winter DL

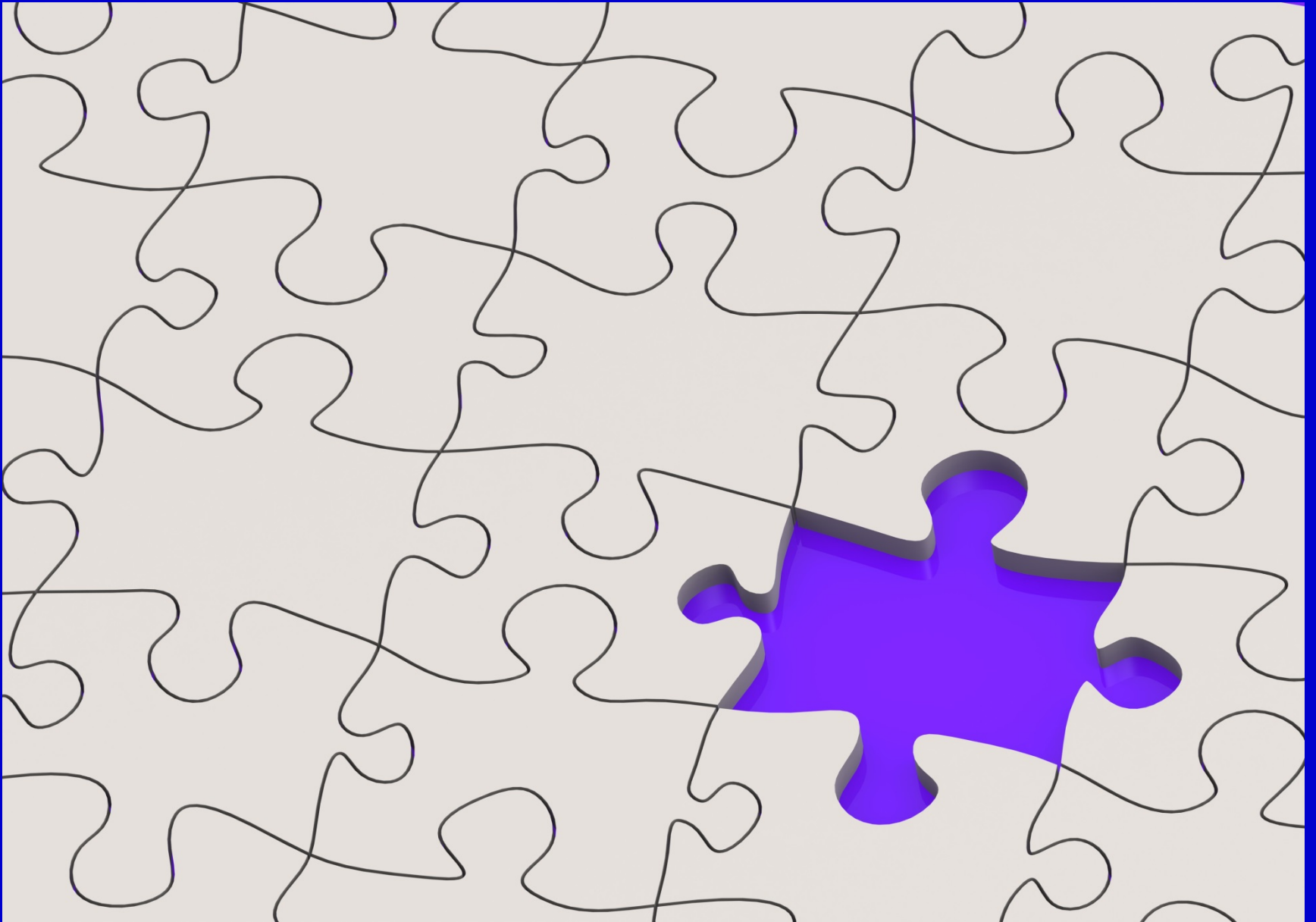
Her Majesty's Senior Coroner
for the City of Sunderland

www.sunderland.gov.uk/coroner

“Show me the manner in which a nation cares for its dead and I will measure with mathematical exactness the tender mercies of its people, their respect for the laws of the land and their loyalty to high ideals.” – Sir William Gladstone



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Caseload 2014

- 497,424 deaths in England and Wales
- 223,841 reported to Coroners (45% of all registered deaths)
- 25,889 Inquests
- PM rate – 40% (Sunderland – 29%)
- Average waiting time to Inquests – 28 weeks (Sunderland – 11 weeks)
- <https://www.gov.uk/government/statistics/coroners-statistics-2014>

Caseload 2015

- 529,613 registered deaths in England and Wales
- 236,406 reported to Coroners (45% of all registered deaths)
- 7,183 DoLS reported to Coroners – DoLS Inquests
- 35,473 Inquests
- 241 Sunderland DoLS Inquests
- PM rate – 38% (Sunderland – 30%)
- Average waiting time to Inquests – 20 weeks (Sunderland – 6 weeks)
- <https://www.gov.uk/government/statistics/coroners-statistics-2015>

The Legislation

Coroners and Justice Act 2009
= CJA

The Coroners (Investigation) Regulations 2013
= Regs

The Coroners (Inquest) Rules 2013
= Rules

The Coroners Allowances, Fees and Expenses Regulations 2013
= FRegs

Coroners and Justice Act 2009

Investigations

- ✓ conclude by discontinuing if the death is natural
- ✓ conclude with an Inquest if the death is unnatural / violent / in State Detention
(who, when, where and how)



What are they?

- MCA 2005 amended by MHA 2007, implemented 2008
- Protections to vulnerable people who suffer with a mental disorder and lack capacity to make decisions for themselves
- Who do not appear to **object** to either their placement or treatment
- Who are deprived of their liberty **by the state**

6 qualifying requirements

1. Age – 18 or over (CoP 16)
2. Mental disorder
3. Lack capacity
4. Best interests
 - i. To be deprived of liberty?
 - ii. To prevent harm to themselves?
 - iii. Proportionate response to likelihood of individual suffering harm and seriousness of the harm
5. Eligible – ie not subject to MHA
6. No refusals – no advance decision of conflicting decision by donee or deputy

How?

- Standard authorisation + 6 assessments
- Urgent authorisation for 7 days
- Application to CoP for outside care homes and hospitals for a welfare order
- Nb they specify where the dol is authorised eg. the care home

Who do they apply to?

- Dementia – 75%?
- Acquired brain injury
- Severe learning disability
- Delirium
- 2m people “may...at some point due to illness, injury or disability”
- 800,000 with dementia over 65 and rising to 1,000,000 – aging population, 1:6 over 80

dementia

“in the later stages of dementia most people will become increasingly frail due to the progression of the illness” Alzheimer's Society website

- Memory loss, communication, loss of mobility, risk of falls, blood clots and infection, weight loss, agitation, possibly psychotic symptoms, incontinence with associated UTIs, severe constipation, prostate gland trouble, forgetting where toilet is

The point is we are not talking about healthy people. Although there are many of them the vast majority will die of entirely natural causes and the trick is to manage that

Cheshire West [2014] UKSC 19

- Continuous supervision and control and a lack of freedom to leave
- **Irrelevant:**
 - P's compliance or lack of objection;
 - the relative normality of the placement (whatever the comparison made); and
 - the reason or purpose behind a particular placement

“A gilded cage is still a cage”

- Moves away from some of the tortured distinctions in earlier case law
- Extends DoLS from care homes and hospitals to domestic settings with support but only if authorised by the Court of Protection
- Many more applications for authorisations expected by LAs and to Court of Protection
- “Because of the extreme vulnerability of people [like those about whom the appeal concerned], I believe we should err of the side of caution in deciding what constitutes a deprivation of liberty in their case” Lady Justice Hale para 57

Impact

- Massive increase in DOLS applications:
 - 55,129 reported in first two quarters of 2014/15
 - 13,222 were reported in the whole of 2013/14
 - 100,000 and rising??
- Impact on applications to CoP less clear:
 - Public authorities may have been waiting for further guidance
 - New Re X procedure: take up reportedly slow
 - Re X (Deprivation of Liberty) [2014] EWCOP 25 and 37

Rochdale MBC v KW

[2014] EWCOP 45

- 52 year old woman cared for in own home
- 24 hour package of care funded jointly by local authority and CCG
- Mostyn J disagreed with Supreme Court
- Overturned by Court of Appeal

Where?

- Hospital and registered care homes (LAs)
- Note not usually psychiatric wards (LA)
- Supported housing (CoP)
- Foster placements (CoP)
- Children's Home (CoP) *Liverpool City Council v SG* [2014] EWCOP 10, *Barnsley MBC v GS & Ors* [2014] EWCOP 46
- Community settings including own home when deprived of liberty there by the state (CoP) – See *Re X* procedure

Other possibilities

- Hospices – next slide
- ICUs - next slide but 1
- Residential schools for over 16s - likely
- Short term placements eg. respite and day care

DoH - Palliative care

- If patient consents to arrangements before admission or during care then no deprivation of liberty
- They have capacity
- “normal care arrangements”
- “practitioners will be only too aware that an unnecessary DoLS assessment could cause considerable distress to the family with no benefit to the individual”

ICU

- R(On the application of LF) v SC for Inner South London 2015
 - Principles of CW are capable of extending to hospital and ICU patients
 - Applying CW to hospital patients would have significant practical consequences
 - Qu whether there is DOL is fact specific

Applying CW to ICU patients would be mechanistic, unwarranted and divorced from the mischief CW was trying to address – Gross LJ

DoLS and State detention

- “Compulsorily detained by a public authority within the meaning of s. 6 HRA “ 48(2)
- CC guidance – yes but not binding (DoH)
- Intention to protect the vulnerable and place people on same footing as if detained on MHA
- Could include de facto detention?? No - CC
- NB. New MHA CoP (1 April 2015) – DoLS are **not** less restrictive than the MHA
- But in domestic settings? Jervis and *Rochdale*
- Extent of state involvement – all evolving – KD and YCC

Investigation and Inquest

- YES! If individual has a DoLS authorisation or CoP has authorised
- Whether home or hospital is public or private if state paying
- No duty to investigate if DoL not authorised
- What if the person has been moved to a hospital or to their own home? Cf. on an outing

Jury s. 7 CJA

- S. 7(2)(a)- violent or unnatural, cause of death unknown
 - (b) – act or omission of police officer etc
 - (c) – notifiable accident, poisoning or disease
- I.e. not natural causes
- Discretion will be used in very limited circumstances s. 7(3)
- Await more info re a JR on this point

Article 2

- Arguable breach of duty to protect life?
- Natural causes – no arguable breach of either the state's general duty to protect life or of the Osman test
- If death not natural – accident, self harm, suicide, unexpected etc & DoLS then Article 2 may be engaged but look at circumstances

DoH letter 14 Jan 2015

- “normal” care environments
- No suspicion of untoward factors “we would hope that any inquest puts the least possible stress on the family and is completed as rapidly as possible”
- Strongly urge avoiding families being visited by uniformed police officers assigned to investigate deaths or delays in releasing bodies

What if there is no body?

- Chief Coroner's Guidance no.18
- CJA 2009 s1(4)

Procedure

- **No Police Attendance**
- **Body to Chapel of Rest**
- **Local Authority documents**
- **Doctor's Statement: -**
 - ✓ **ID**
 - ✓ **cause of death**
 - ✓ **natural causes**
- **Care Home Statement**

Inquest

- **Within days – website**
- **Documents (r23) – absence of family**
- **No concerns from family**

Conclusions

- Simple straight forward inquests on limited evidence
- “Natural causes” – expected and not preventable.
Short form conclusion
- How – by what means and not in what circumstances
- Mostly summary

The Future

- Law Commission consultation
- Coroners and Justice Act 2009 (Duty to Investigate) (Amendment) Bill: -
 - A Bill to amend the Coroners and Justice Act 2009 to provide that a person who dies while deprived of their liberty under Schedule A1 to the Mental Capacity Act 2005 shall not be considered to have died while in custody or otherwise in state detention for the purposes of section 1 of the 2009 Act; and for connected purposes.

The 2015-16 session of Parliament has ended and this Bill will make no further progress.

Mental Capacity and Deprivation of Liberty Interim Statement

1.46 We have also concluded that the Coroners and Justice Act 2009 should be amended to remove our proposed scheme from the definition of state detention. In conjunction with the Department of Health's proposals for a medical examiner system, this will mean that deaths of people subject to our new scheme are reported to medical examiners, who will be under a duty to make enquiries and refer the death to a coroner if the medical examiner forms the opinion that the death was attributable, amongst other matters, to a failure of care.⁸ The coroner will have the power to conduct an inquest in an appropriate case but will not be obliged to do so.

⁸ *Department of Health, Introduction of medical examiners and reforms to death certification in England and Wales: policy and draft regulations (2016).*



Department
of Health

**Introduction of Medical
Examiners and Reforms to
Death Certification in England
and Wales: Policy and Draft
Regulations**

Consultation



Department
of Health

Reforming death certification: Introducing scrutiny by Medical Examiners

Lessons from the pilots of the reforms set out
in the Coroners and Justice Act 2009

May 2016

NHS/Hospital No.: _____

Reference No.: ____ / ____ / ____
(To be completed by medical examiner's office.)

Final Entry in Clinical Record Following a Death

The information provided in this form is confidential

The clinical information to be provided to a medical examiner or, where necessary, a coroner is prescribed by Regulations made under the Coroners and Justice Act 2009. It can be documented in the deceased person's clinical record or given on this form.

1. Name of deceased person and the date and time of death

| | |
|---|---|
| Name: _____ (Forename) (Family name) | Date and time of death: ____ / ____ / ____ (Date) (Time) |
|---|---|

2. Synopsis of circumstances, medical history and record of any external examination of the deceased person

This information must be documented before speaking with a medical examiner, coroner or one of their officers. Please include information about safeguarding concern, whether the deceased is subject of a Deprivation of Liberty Safeguarding (DoLS) or if a DoLS is pending an assessment.

continuation sheet

Death: Unexpected Sudden but not unexpected Expected Individualised end of life care plan

3. Implants, medical devices and communicable infections

| | |
|--|---|
| Did the deceased person have any implants or medical devices? <input type="checkbox"/> Yes (as stated below) <small>Provide information based on review of records, external examination (if carried out) and / or discussion with relatives.</small> <input type="checkbox"/> No <small>Please specify the type of any implants or devices and the dates on which they were inserted.</small> | Communicable infections? <small>(If infectious, complete below)</small> <input type="checkbox"/> Inoculation / splash (blood-borne) <input type="checkbox"/> Aerosol (air-borne) <input type="checkbox"/> Ingestion <input type="checkbox"/> Contact ACDP Hazard Group (see guidance) |
|--|---|

Questions

Useful Contacts

Office of the Chief Coroner

11th Floor - Thomas More Building

Royal Courts of Justice

London

WC2A 2LL

Email: chiefcoronersoffice@judiciary.gsi.gov.uk

The Coroners' Society of England and Wales

www.coronersociety.org.uk

Andre.Rebello@liverpool.gov.uk

Coroners' Officers and Staff Association (COASA)

<http://www.coasa.org.uk/>

