

Private and Confidential

Our Ref: [REDACTED]

Your Ref: [REDACTED] Winston Harris [REDACTED]

Date: 24 August 2016

HM Coroner for Birmingham & Solihull Areas
Coroner's Court
50 Newton Street
Birmingham
B4 6NE



Dear Madam,

Re: Winston HARRIS – Deceased

**Response of Birmingham City Council to Regulation 28 Report to Prevent
Future Death**

1. Recipients of Report

1. Sandwell and West Birmingham Hospitals NHS Trust;
2. Kerria Court residential home
3. DoLs team at Birmingham City Council

2. Coroner's Concerns

During the course of the Inquest the evidence revealed matters giving rise to concern. In my opinion there is a risk that future deaths will occur unless action is taken. In the circumstances it is my statutory duty to report to you.

3. The Matters of Concern – Birmingham City Council

(4) The application for DOLS order was not processed before Mr Harris's death. I heard evidence that it often takes many months to process a DOLS

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application. Given that these are extremely vulnerable people applications should be processed more quickly.

4. Response of Birmingham City Council to (4) above.

Following the Supreme Court judgment in *P v Cheshire West and Chester County Council and Another; P and Q v Surrey County Council* [2013] UKSC 19, [2014] COPLR 313, SC (referred to as *Cheshire West and MIG and MEG*), there was an immediate eleven-fold increase in the number of applications for Deprivation of Liberty Safeguards (DOLS) in England. Birmingham, as in every other local authority area, experienced this increase and saw its referrals for this work rise from 198 in 2013/14 to 3,278 authorised in the last 12 months. No additional resources have been made available to local authorities to meet this increase. In such circumstances, very large backlogs of assessments mounted, and in Birmingham this was the case as in all other areas. Since these assessments can only be undertaken by specially qualified Best Interests Assessors and Consultant Psychiatrists, there has been a national shortage of these, of the professional advocates routinely required, and of the other resources needed to increase assessment activity. It is in this context therefore that your finding "...applications should be processed more quickly" has to be seen.

In Birmingham great efforts and resources have been invested to address the problem, which is now delivering significant results, with the waiting list for assessment considerably reduced. Plans are therefore already in place to ensure that in future applications will be processed more quickly.

In relation to the case of Mr Harris, his application for a DOLS had been prioritised for action on receipt in February 2016, but by the time the lengthy assessment process had been completed, he had been admitted to hospital. Since a DOLS assessment is specific to each care setting, this could not then be authorised. It was therefore the duty of the hospital to judge if his new circumstances also constituted a deprivation of liberty and request the process be started afresh. Indeed, had the DOLS been in place in the care home, this would have had no legal power or application once Mr Harris was admitted to hospital.

On a separate but related point, it may be helpful to note that the presence or otherwise of an authorisation of a deprivation of liberty under the Mental Capacity Act for a person who lacks capacity to make decisions (the process referred to above) has no bearing whatsoever on the duty of care providers (be it a care home or a hospital) to provide the level of care and supervision necessary to ensure the person who lacks capacity is safe. Therefore whether or not a DOLS had been in place at the care home, the duty of the home to ensure adequate supervision was in place there (and to share the nature of his care and supervision needs with the hospital) would be unchanged.

Yours faithfully


Head of Adult Safeguarding