

the Liberty Protection Safeguards

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the road to the LPS ...

- 2004 – *Bournewood* judgment: the rejection of legal informality
- 2009 – DoLS introduced
- 2014 – critical House of Lords PLS report
- 2014 – *Cheshire West* judgment: expands meaning of deprivation of liberty

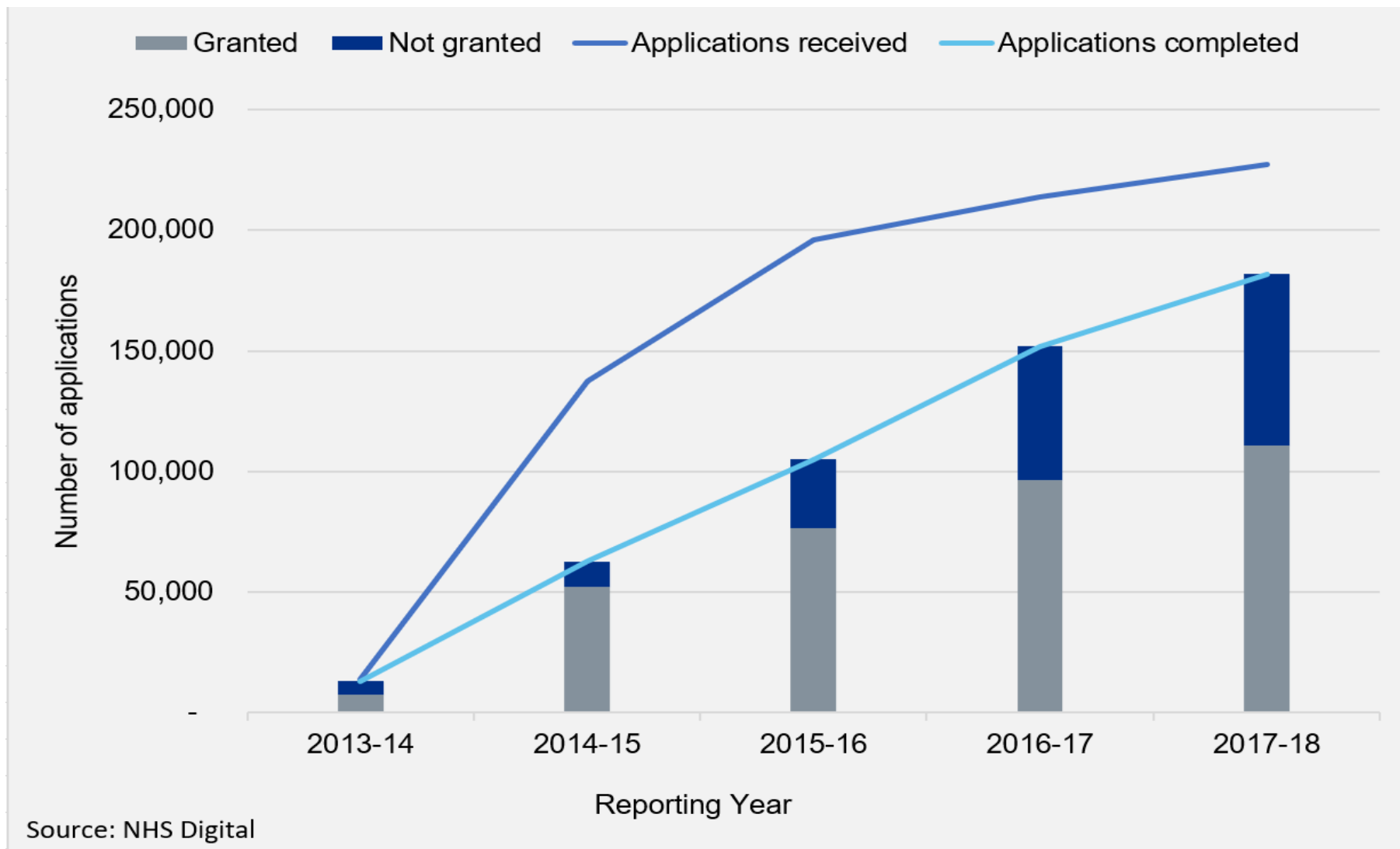
The “Acid Test”

P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19

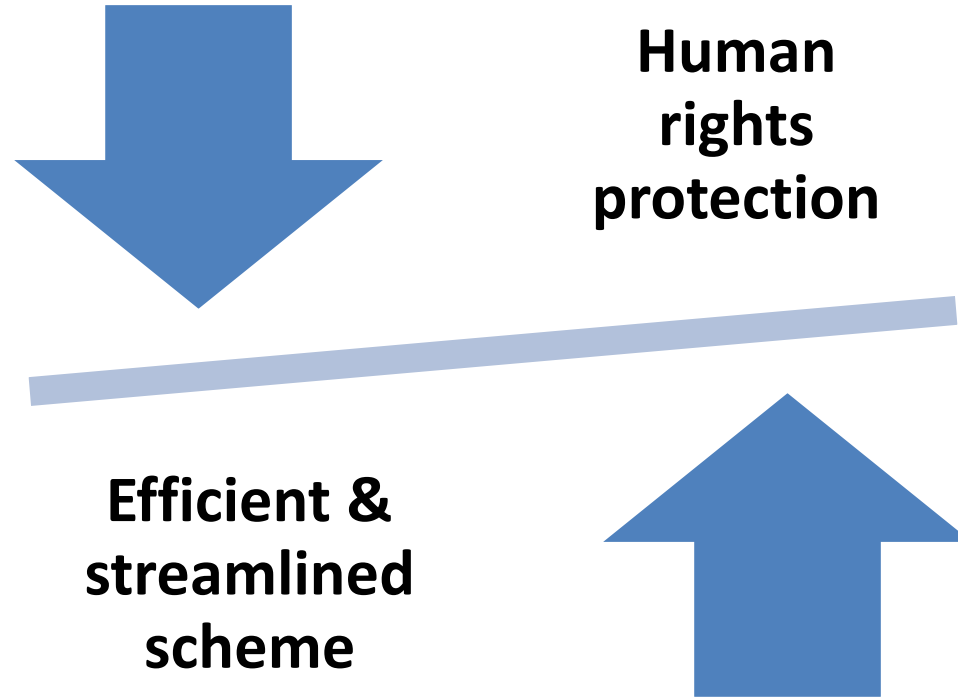
Constant /
continuous
supervision & control

not free
to leave

The impact of Cheshire West



the critical balance





Mental Capacity
(Amendment) Act
2019

CHAPTER 18

Explanatory Notes have been produced to assist in the
understanding of this Act and are available separately

£11.50

Implementation
date:

1st October 2020

Authorising arrangements

arrangements can be authorised for enabling the care or treatment of a person (aged 16+) that give rise to a deprivation of liberty

- can be in any setting & multiple settings
- can include means & manner of transport

Who is the responsible body?

- if arrangements mainly carried out in an NHS hospital, the “**hospital manager**” (eg the NHS trust)
- if arrangements mainly carried out in an independent hospital , the **local authority**
- If arrangements are mainly via CHC, the **CCG**
- otherwise, the **local authority** (ie the council meeting the person’s needs or in whose area the person is ordinarily resident)

The “conditions”

capacity assessment

- person lacks capacity to consent to the arrangements

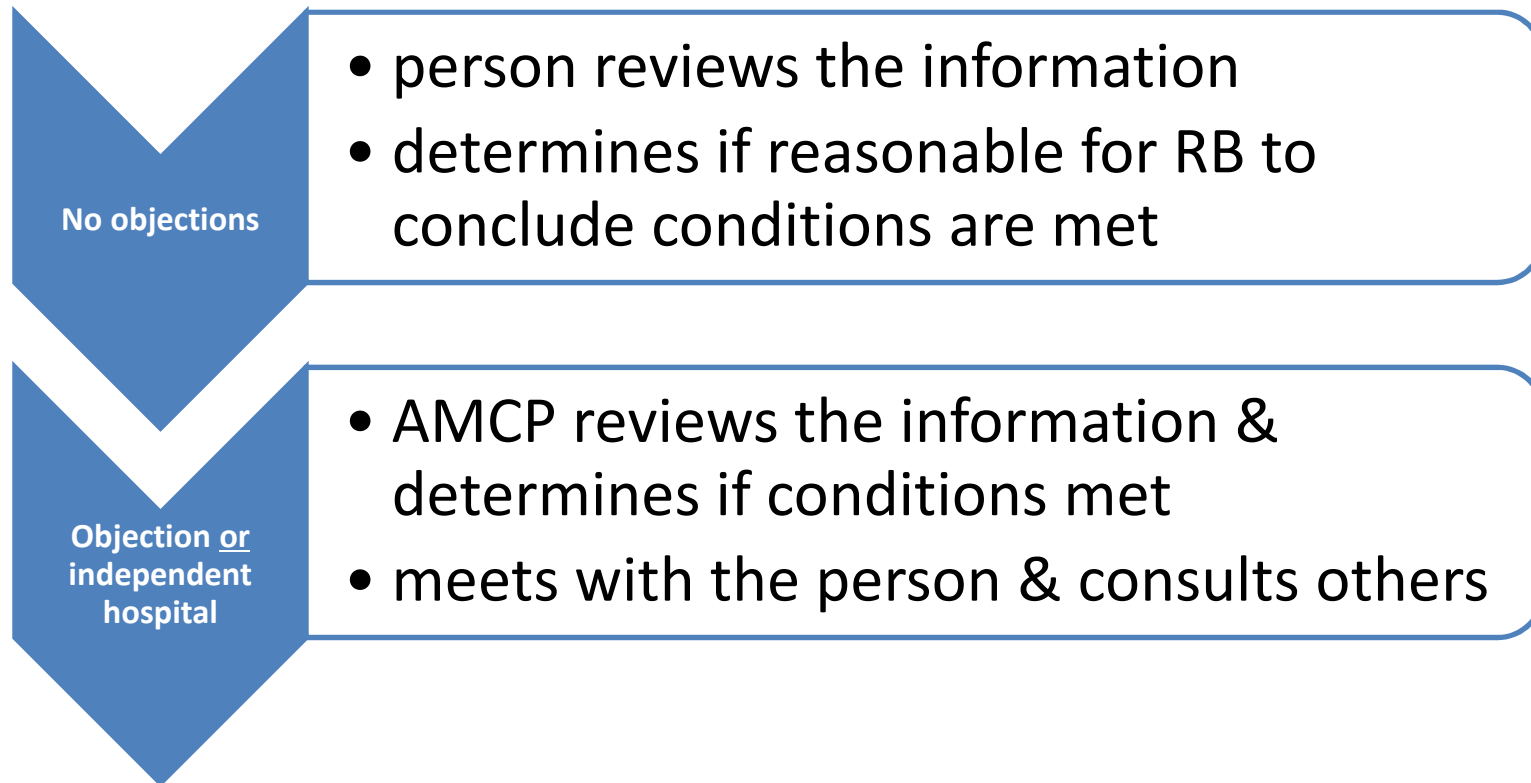
medical assessment

- person has a mental disorder

necessary & proportionate

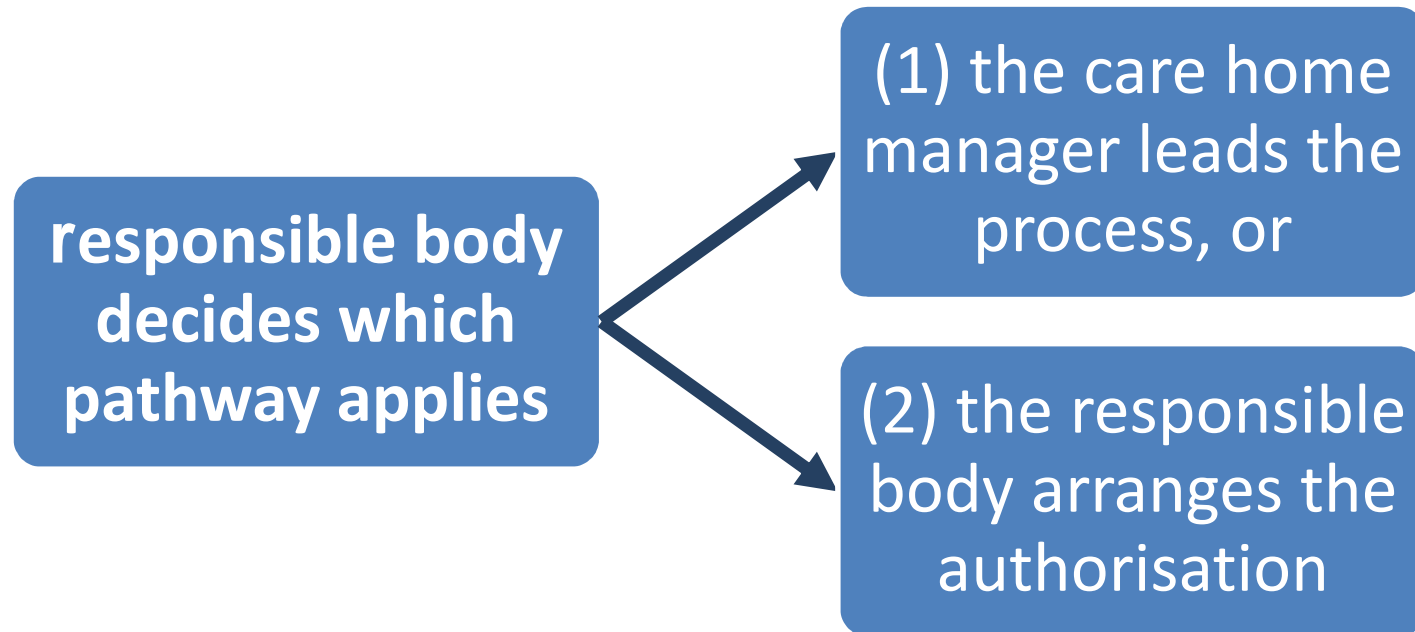
- necessary to prevent harm to person, & proportionate to likelihood & seriousness of such harm
- must have regard to person’s wishes and feelings

Pre-authorisation review



reviewer cannot be involved in day-to-day care or providing any treatment

Care home arrangements



Applies to those aged 18+

Key safeguards

- rights to **information**
- duty to provide **care plan** (authorisation record)
- rights to regular **reviews**
- rights to **IMCA or appropriate person**
- rights of legal challenge to the **Court of Protection**
- duty on **CQC** to monitor & report on the LPS

Interim & emergency DoL

- D can deprive P of liberty in 3 cases:
 - while the court decision being sought
 - pending assessment under LPS, or
 - in an emergency
- must be reasonable belief in lack of capacity & DoL must be necessary to deliver life-sustaining treatment or carry out a vital act

Replaces urgent authorisations

Mental Health Act interface

- LPS cannot be used for psychiatric treatment for a patient detained in hospital under the MHA
- LPS can be used alongside one of the community powers of the MHA (eg CTO or Guardianship)

This largely maintains the existing interface between DoLS and MHA

Next steps

- Start date: 1st October 2020
- Code of Practice & Regulations - consultation later this year, laid in Parliament Spring 2020
- Alongside this - consultation on main Code of Practice
- Training and workforce strategy
- Revised impact assessment
- Transitional arrangements - existing DoLS authorisations to remain in place for up to a year

Thank you for listening

Any questions/comments?

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