

The Liberty Protection Safeguards - An overview of the changes for 2020

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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”

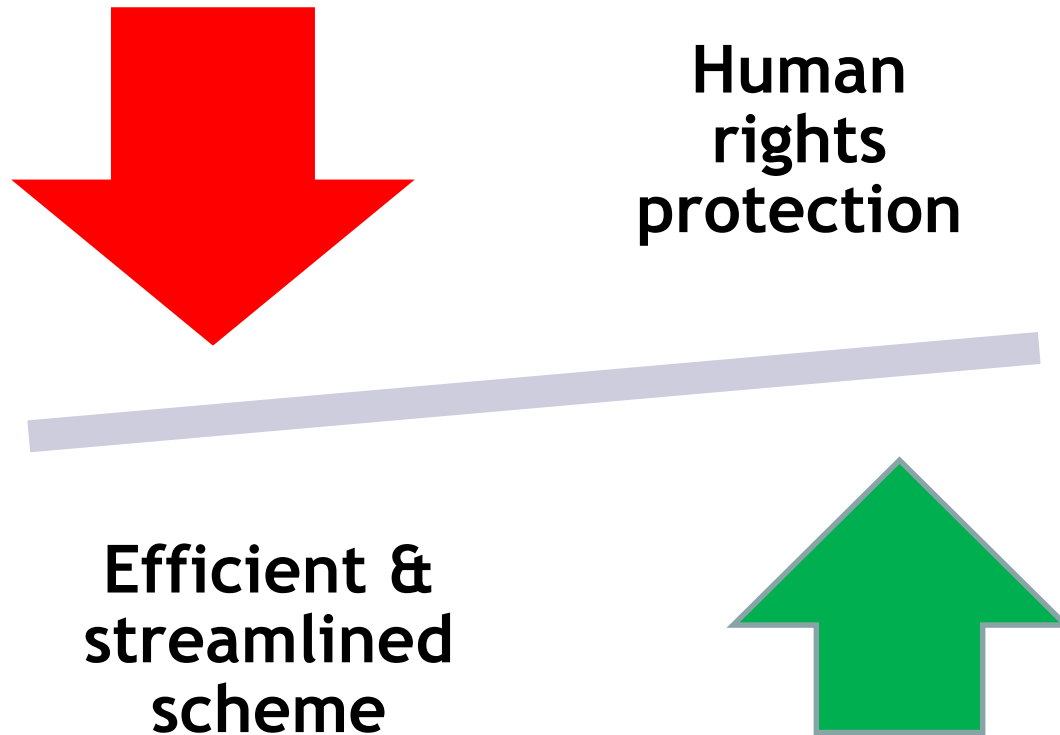
P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC19

Constant /
continuous
supervision &
control

Not free to
leave



The critical balance



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
- Cannot be used to authorise restricted contact with friends/family or the delivery of care or treatment



Meaning of “deprivation of liberty”

- No statutory definition
- Deprivation of liberty will continue to have the same meaning as Article 5(1) ECHR
- Code of practice must include guidance on meaning of deprivation of liberty
- LPS code must be reviewed after 3 years & reviewed every 5 years



Who is the Responsible Body?

- If arrangements are mainly carried out in an NHS hospital, the “**hospital manager**” (eg the NHS trust)
- If arrangements are mainly carried out in an independent hospital, **the local authority or LHB**
- If arrangements are mainly via CHC, **the LHB**
- Otherwise, the **local authority** (the authority 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 assessment

- 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

No objections

- person reviews the information
- determines if reasonable for RB to conclude conditions are met

Objection or
independent
hospital

- AMCP reviews the information & determines if conditions met
- meets with the person & consults others

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



Rights to an IMCA

- Responsible body must appoint IMCA if:
 - there is no “appropriate person”, and
 - person has capacity to consent to appointment & makes a request, or
 - person lacks capacity to consent, unless being represented and supported by an IMCA would not be in the person’s best interests
- Duty applies when arrangements are being proposed, and lasts throughout the assessment period and any authorisation
- Appropriate person:
 - must be “suitable” & consent to the role
 - must not be providing care or treatment in a professional capacity
 - is not suitable unless P consents or in P’s best interest
 - has right to support from an IMCA



Key issues going forward

- Start date: 1st October 2020
- Code of Practice and 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



Thankyou for listening

Any final questions/comments?

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