

the Liberty Protection Safeguards

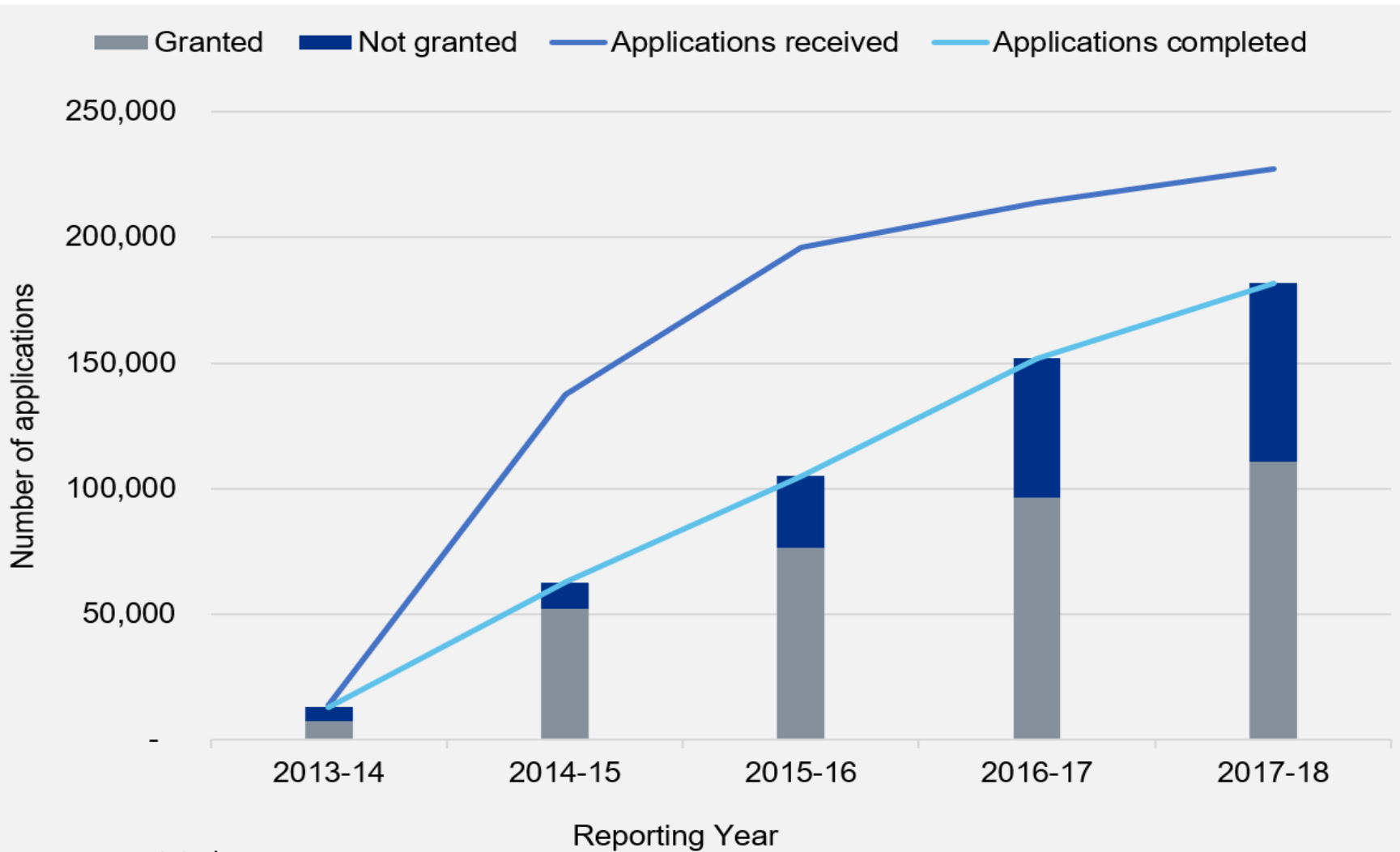
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the road to the LPS ...

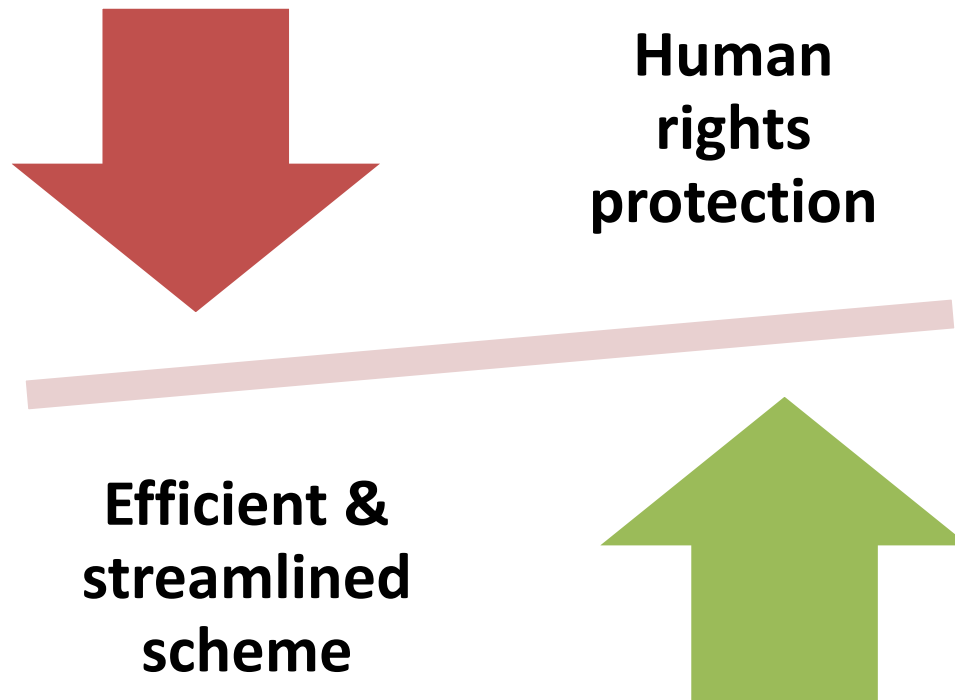
- 2004 – *Bournewood* judgment: the rejection of legal informality
- 2009 – DoLS introduced
- 2014 – critical House of Lords PLS report
- 2014 – *Cheshire West* judgment: expands meaning of deprivation of liberty

The impact of Cheshire West



Source: NHS Digital

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

the sequence of decision-making



No court authorisation needed

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** (that is 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

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

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**
- Prescribed body 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 if a patient is detained in hospital under the MHA
- LPS cannot be used if the person is objection to admission to hospital for psychiatric treatment
- 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

Guidance on CC Inform Adults

- [Quick guide to the Liberty Protection Safeguards](#)
- [Legislation guide to the Mental Capacity \(Amendment\) Act 2019](#)

Available to anyone with a licence for Community Care Inform Adults, currently purchased as a corporate subscription through your employer . For more information contact ccinformhelpdesk@markallengroup.com

Thank you for listening

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