



**Law**  
**Commission**  
Reforming the law

# The review of the deprivation of liberty safeguards

**Tim Spencer-Lane**

# House of Lords PLS Committee Report

“The level and breath of criticism of the deprivation of liberty safeguards, including from the judiciary, demonstrates that the legislation is not fit for purpose. Better implementation would not be sufficient to address the fundamental problems identified.”

*para.257*

# The “Acid Test”

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

Person lacks capacity to consent

```
graph TD; A[Person lacks capacity to consent] --> B[Continuous supervision and control]; A --> C[Not free to leave];
```

Continuous  
supervision and  
control

Not free to leave

# Timetable for the Review

## Stage 1: Pre consultation

## Stage 2: Public Consultation

7 July 2015

Publication of consultation paper

July to October 2015

4 month public consultation

## Stage 3: Final Report and Draft Bill

Publication by the end of 2016

Legislation introduced in the next session of Parliament?

# Protective Care

# Remit of Protective Care

- ❖ Care homes, supportive living, extra-care housing and shared lives arrangements
- ❖ Hospitals and palliative care
- ❖ Domestic and family settings
- ❖ Mental health care and treatment
- ❖ 16 and 17 year olds

# Summary of Protective Care

- ❖ Early safeguards when a placement or move is being considered
- ❖ Authorisation for “restrictive care”, including deprivation of liberty
- ❖ Authorisation for deprivation of liberty in domestic settings
- ❖ Separate hospital scheme
- ❖ Amendments to MHA to allow admission of incapacitated patients for psychiatric care

# Other key areas

New legal supported decision-making scheme		Reform of the best interests check-list	
	Ability to consent to a future deprivation of liberty		Consolidation of advocacy
Is a new criminal offence needed?		Reform of coroners legislation	
	New codes of practice for the replacement DOLS scheme and MCA		Regulation by CQC, CSSIW and HIW



# Key issues at consultation

- ❖ terminology is extremely important
- ❖ scale of the problem post-*Cheshire West*
- ❖ *Cheshire West* divides opinion
- ❖ lack of awareness of Mental Capacity Act and failure to implement it
- ❖ limited awareness of the UN disability convention
- ❖ devolution is an important consideration

# Key issues at consultation

- ❖ the authorisation of DOL in domestic settings
- ❖ mixed views on the new AMCP role
- ❖ professionalism versus legalism
- ❖ support for tribunals and the proposed MHA interface
- ❖ the position of 16 and 17 year olds



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