Deprivation of Liberty Safeguards

Annual Monitoring Report for Health and Social Care 2013-14

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Care and Social Services Inspectorate Wales

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DRIVING IMPROVEMENT THROUGH INDEPENDENT AND OBJECTIVE REVIEW

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Purpose of this report

1. This report presents the data collated by the Care and Social Services Inspectorate Wales (CSSIW) and Healthcare Inspectorate Wales (HIW) in relation to the operation of the Deprivation of Liberty Safeguards (DoLS).

2. The report examines the key findings for the year 2013-14, providing an analysis of the information and a description of trends, concerns and achievements. It is designed to contribute to the improvement in outcomes for people in need of support from the Deprivation of Liberty Safeguards.

Who should read it?

3. The report should be read by anyone working in, or interested in, the operation of DoLS across health and social care in Wales.

How can I find out more?

4. More information is available from:

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Summary

Background

This is the fifth annual report on the operation of the Deprivation of Liberty Safeguards (DoLS) in Wales. DoLS legislation came into effect in Wales in April 2009. The Safeguards apply to individuals over the age of 18 who lack the ability to consent to treatment or care in either a hospital or care home setting. They can only be provided where detention under the Mental Health Act (1983) is not appropriate. DoLS were developed to ensure that the human rights of such individuals are protected and maintained and that the care they receive is in their best interests and delivered in the least restrictive way. CSSIW and HIW are responsible for monitoring the operation of DoLS, collate pan Wales data annually about their usage and report on this each year.

Main Findings

This report analyses the data collected from Supervisory Bodies in 2013-14. Comparisons have been made with the previous four years data as appropriate.

The awareness of deprivations of liberty and the process for making an application has increased, however, more still needs to be done. There were 631 (526 in 2012-13) applications submitted to Supervisory Bodies. This is an increase of nearly 20% from the previous year and is the highest number of applications received since DoLS was introduced in 2009. Previously the number of applications received each year was very consistent.

There remains a significant variation in how local authorities and Local Health Boards fulfil their role as supervisory bodies. This has remained a common trend since DoLS were introduced in 2009 and was an area we explored in the National Review[1] of DoLS. The National Review identified in some areas that managing authorities were not always aware of their responsibilities in relation to DoLS and often relied on the supervisory bodies to prompt and manage the process. This meant that the quality and quantity of applications was very varied and the approach taken by the supervisory bodies had an influence on this. The National Review highlighted the dedication of the DoLS co-ordinators; but the over reliance on them will be difficult to sustain going forward.

During 2013-14, 295 standard authorisations were granted by Supervisory Bodies in Wales. Local authorities granted 70% of the total (208) and Local Health Boards granted 30% (87). These figures are very similar to the previous two reporting years. In care homes 50% of applications made were authorised, this is down slightly from last year when the figure was 55%. In hospitals the number of applications granted has fallen to 39% which is also down slightly from last years figure of 43%.

The number of reviews of DoLS authorisations across Local Authorities and Health Boards has remained very low. Less than 10% of all DoLS authorisations were reviewed in 2013-14. There were only 25 reviews recorded in the relevant year which is 8% of the total number authorised. Reviews can be requested at any time by the relevant person, the relevant person's representative, the managing authority or an Independent Mental Capacity Advocate (IMCA).

[1] http://cssiw.org.uk/docs/cssiw/report/141103dolsreporten.pdf

There has been a rise in the number of people who received support from IMCAs in 2013-14 compared with the previous year. Despite the increase in their usage in 2013-14, the number of times an IMCA was accessed remains very low. More still needs to be done to raise awareness of the important role IMCAs can have in respect of DoLS. The number of authorisations where the relevant person or their representative accessed advice and support from IMCAs rose to 79 in 2013-14 (from 70 in 2012-13). The increase is offset by the rise in numbers of applications authorised overall and in percentage terms when compared to granted authorisations (295), 27% of cases had an IMCA appointed. In 2012-13 this figure was 28%. This has been raised in previous annual reports and remains an issue in 2013-14. Supervisory Bodies need to promote and raise awareness of IMCAs and the services they provide. This was also a recommendation made in the joint National Review.

Developments in DoLS in 2013-14

In 2013-14 there were a number of landmark developments in relation to DoLS legislation and also in the work carried out by CSSIW and HIW.

CSSIW and HIW undertook a joint National Review of DoLS in Wales. The National Review report is available http://cssiw.org.uk/docs/cssiw/report/141103dolsreporten.pdf. The previous four annual reports produced by CSSIW and HIW have shown a concerning and unexplained variation in the usage and authorisations of DoLS across Wales, this prompted the joint National Review to be undertaken. Two phases of the review were completed in 2013-14. Regional stakeholder awareness sessions were held across Wales in the autumn of 2013. Subsequently a national survey of all Local Authorities and Health Boards was carried out in Wales with results being returned in March 2014. The final phase of the National Review, the fieldwork, was completed in April – May 2014 and involved inspections of all Health Boards in Wales and one Local Authority within each Health Boards geographical footprint.

CSSIW implemented a system to monitor the use of DoLS in May 2013. The new system requires all care homes to notify CSSIW when a DoLS authorisation is requested through their powers under Section 31(1) of the Care Standards Act 2000. This requires a person who manages a care home to provide CSSIW with any information relating to the care home which it considers necessary. CSSIW use this information to monitor DoLS arrangements in care homes and used for sampling of safeguarding arrangements during the ongoing inspection programme.

HIW have incorporated DoLS into the inspection methodologies used during Dignity and Essential Care Inspections (DECI) undertaken in hospital wards across Wales and DoLS is also reviewed during Mental Health inspection visits.

Away from the work of the Inspectorates, there were many other developments relating to DoLS. In March 2014 a House of Lords select committee report on the Mental Capacity Act 2005 found the current way in which DoLS was being operated meant thousands of vulnerable individuals in England and Wales were potentially being deprived of their liberty unlawfully in care settings.

The report of the select committee was published just weeks before the Supreme Court handed down a judgement in respect of Cheshire West and Chester Council v P which gave clarity over the definitions of a deprivation of liberty. The Supreme Court Judgement specified the issues that need to be considered when assessing when DoLS is necessary. This has become known as the acid test.

When giving the judgement in the Supreme Court in March 2014, Baroness Hale stated:

> *"If it would be a deprivation of my liberty to be obliged to live in a particular place, subject to constant monitoring and control, only allowed out with close supervision, and unable to move away without permission even if such an opportunity became available, then it must also be a deprivation of the liberty of a disabled person. The fact that my living arrangements are comfortable, and indeed make my life as enjoyable as it could possibly be, should make no difference. A gilded cage is still a cage"*

This ruling has significant implications for the operation of DoLS.

The pattern of reporting on the Safeguards in 2013-14

Applications

Key Points from 2013-14

- There was a 20% rise in the number of applications when compared with the previous year. This represented the most significant rise in the use of DoLS since they were introduced and was the highest number ever requested in Wales.
- Local Authorities and Health Boards continued to have very different activity levels in the usage of DoLs. Some of this variation could be explained by the difference in numbers of care home and hospital beds in different areas, however, this does not account for all the differences in usage across Wales.
- The use of IMCAs saw a modest rise in 2013-14 , however, it still appeared to be disproportionate when compared to the number of authorisations granted. This was an issue that was highlighted in the joint National Review and is an area that needs improvement by Supervisory Bodies.

Applications for authorisation

Managing authorities made 631 applications for DoLS authorisations from Supervisory Bodies in 2013-14, an increase of 95 from last year (526 applications were made in 2012-13). This represents a 20% rise in the number of applications received by managing authorities.

Local authorities accounted for 411 (65%) of the applications, with health boards receiving 220 (35%). Although there has been an increase in the number of requests for DoLS authorisations, the split between those requested in Local Authorities and Health Boards have remained similar since 2009. Table 1 shows the split between the applications made between Local Authorities and Health Boards.

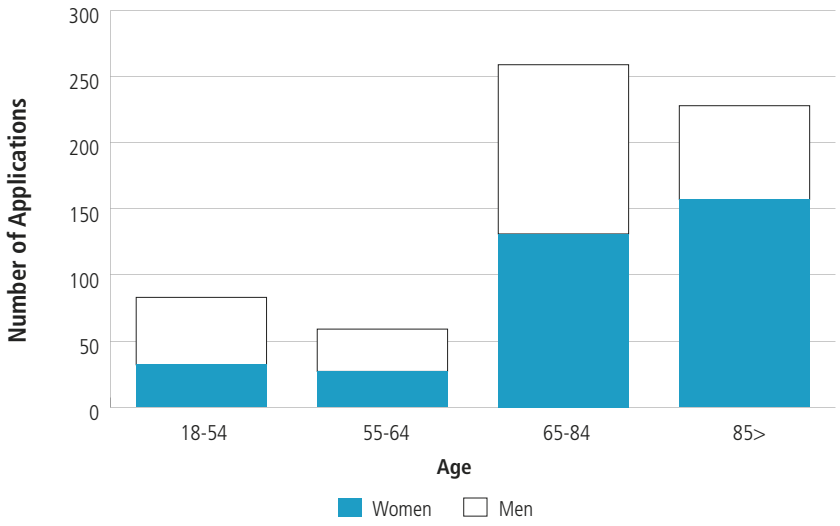
Table 1: Authorisations since 2009-10 by Local Authority and Health Board

	Local Authority Applications	Local Health Board Applications	Total
2009-10	412	135	547
2010-11	346	142	488
2011-12	383	162	545
2012-13	347	179	526
2013-14	411	220	631

The number of applications made in 2013-14 by Managing Authorities was the highest number since DoLS was implemented. It was forecast when DoLS was being developed prior to 2009 that there would be around 630 applications in Wales per annum. Although it would appear the forecast has now been met, the impact of the Supreme Court Judgement may mean that this forecast is no longer applicable with higher numbers of applications predicted.

The age and gender of individuals for all applications in 2013-14 is highlighted below:

Chart 1: Age and gender of individuals – all applications in 2013-14



It is again evident that men make up the largest category of applications for those aged 64 and under (59 female applications were made in this category compared with 83 applications for males).

The charts below demonstrate the number of applications made per 100,000 of the population by Local Authorities and Health Boards.

Chart 2: Applications to local authorities as a proportion per 100,000 population 2013-2014

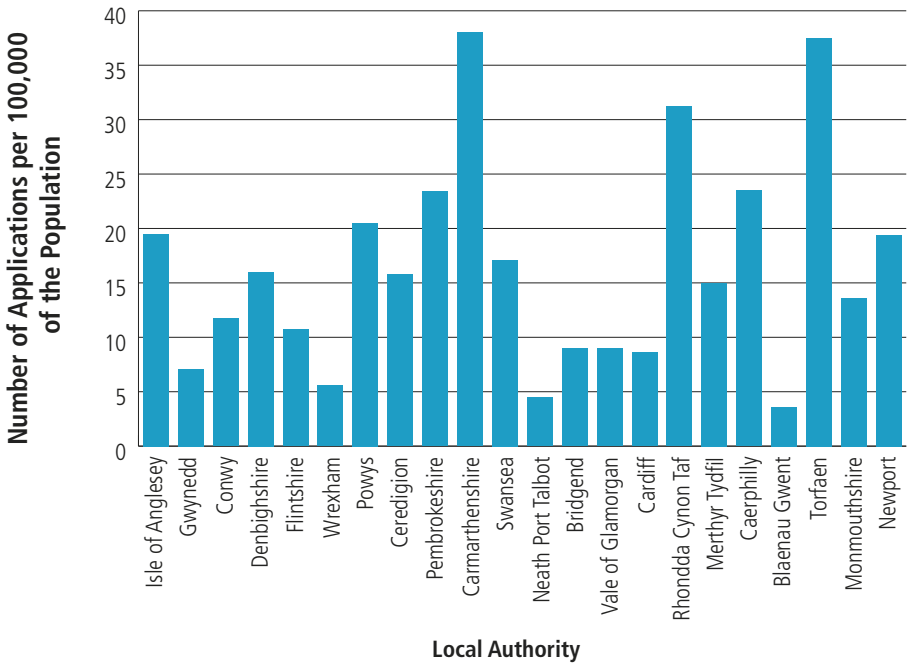
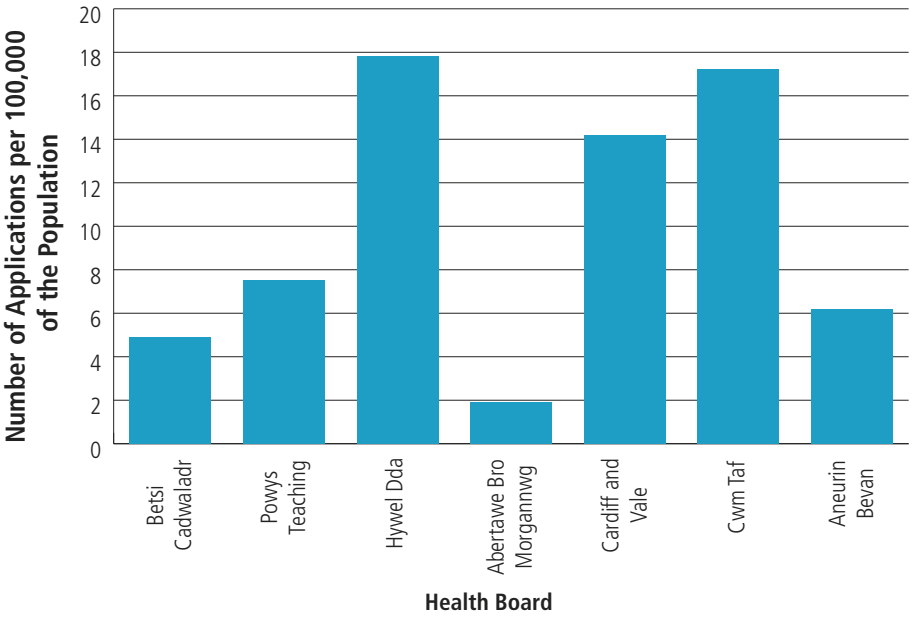


Chart 3: Applications to health boards as a proportion per 100,000 population 2013-14



The two charts below highlight the extent of variations in the numbers of applications between local authorities and between health boards since 2009-10. The charts also demonstrate the variation that exists within the same local authorities and health boards in the five year period since DoLS were introduced. This has been a common trend during the last four years of reporting and continues to be reflected in the data collected each year.

Chart 4: Applications to health boards showing four year trends 2009-2014

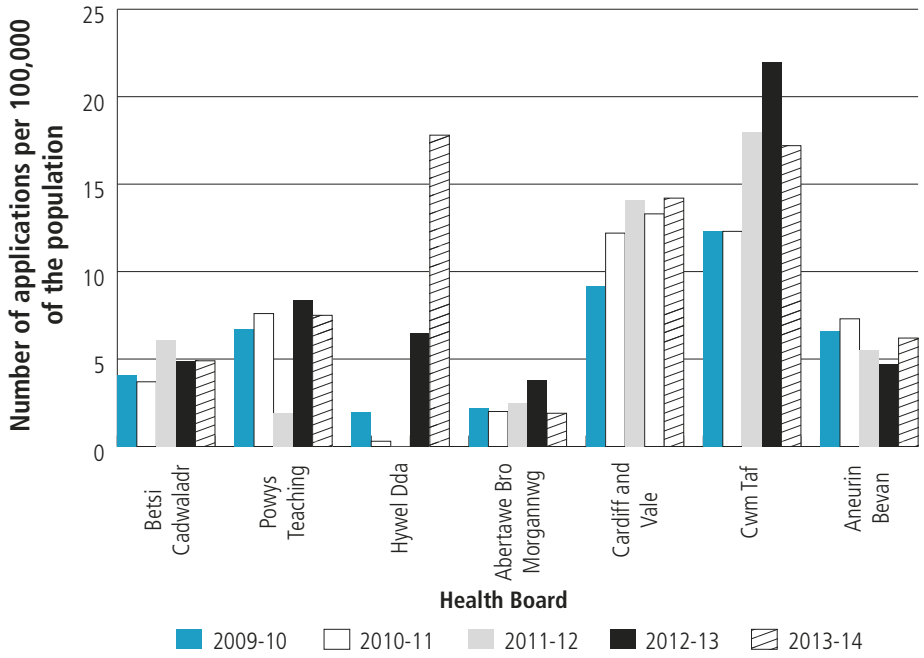
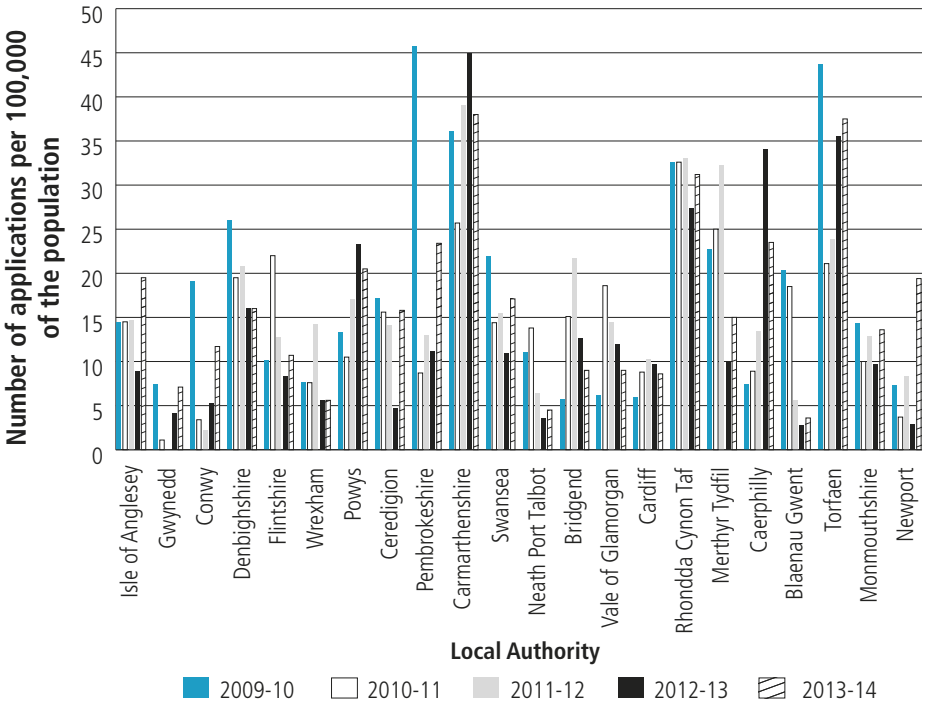


Chart 5: Applications to local authorities showing five year trends 2009-2014



Noticeably the activity levels in Hywel Dda Health Board increased significantly since 2011-12 when no applications were made. This would suggest that awareness within the Health Board about DoLS has increased considerably and the DoLS process is being implemented more systematically. Cwm Taf University Health Board continue to receive high numbers of applications as do the local authorities served in that Health Board area (Rhondda Cynon Taf County Borough Council and Merthyr Tydfil County Borough Council). No Local Authorities or Health Boards received zero applications in 2013 – 14 which supports the view that awareness had increased about DoLS through out Wales even before the Supreme Court judgment.

The monitoring of supervisory bodies

Supervisory bodies are responsible for considering a DoLS application from a managing authority. Supervisory bodies are Local Authority social services or a Local Health Board who respond to applications for individuals in care home or hospital settings respectively. Supervisory Bodies are responsible for commissioning the statutory assessments. If all the assessments are satisfied the Supervisory Body will then authorise a DoLS application.

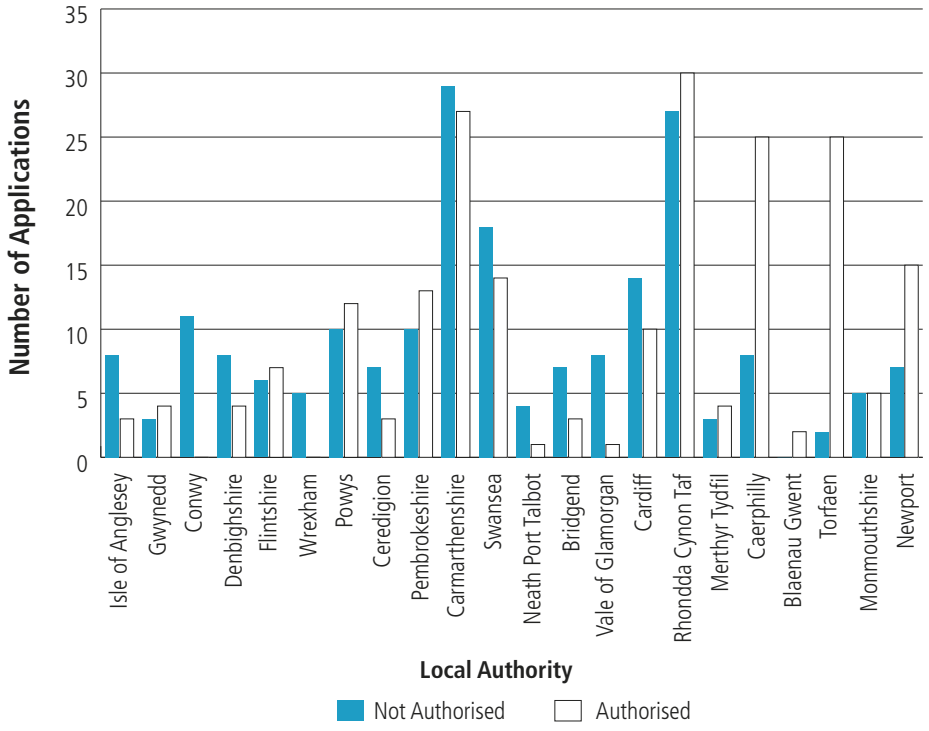
Key points

- There were 295 standard authorisations made in Wales in 2013-14. Out of this number, 208 were authorised by Local Authorities and 87 authorised by Health. The proportion of applications authorised by Local Authorities was 70% and 30% by Health. In 2011-12 and 2012-13 the figures were very similar with 72% authorised by local authorities and 28% authorised by Health Boards in both years.
- The rate of applications authorised by Local Authorities in Wales per 100,000 of the population showed wide variation. Rhondda Cynon Taf County Borough Council, Carmarthenshire County Council , Merthyr Tydfil County Borough Council and Torfaen County Borough Council authorised the highest number of applications as a proportion of the population served. Two local authorities, Conwy County Borough Council and Wrexham County Borough Council, did not grant any standard authorisations. Conwy also did not grant any standard authorisations in 2012-13. Several other local authorities had very low levels of activity.
- The rate of applications authorised in Health Boards in Wales per 100,000 population showed variation. Cardiff and Vale University Health Board authorised the highest number of applications in 2013-14 as a proportion of the population served. Conversely Abertawe Bro Morgannwg University Health Board authorised the lowest number of applications in 2013-14 as a proportion of the population served despite higher population numbers than Cardiff and Vale University Health Board.

Local Authorities and Health Boards who continue to have low levels of DoLS activity should consider methods of awareness raising and training for staff within Managing Authorities so they can be assured deprivations are being identified and considered when they are required. This was also an issue that was identified during the National Review of DoLS and an area that was highlighted as requiring improvement.

The charts below show a comparison of applications authorised and not authorised by Local Authorities and Health Boards.

Chart 6: Numbers of applications authorised and not authorised by local authority supervisory bodies in 2013-14



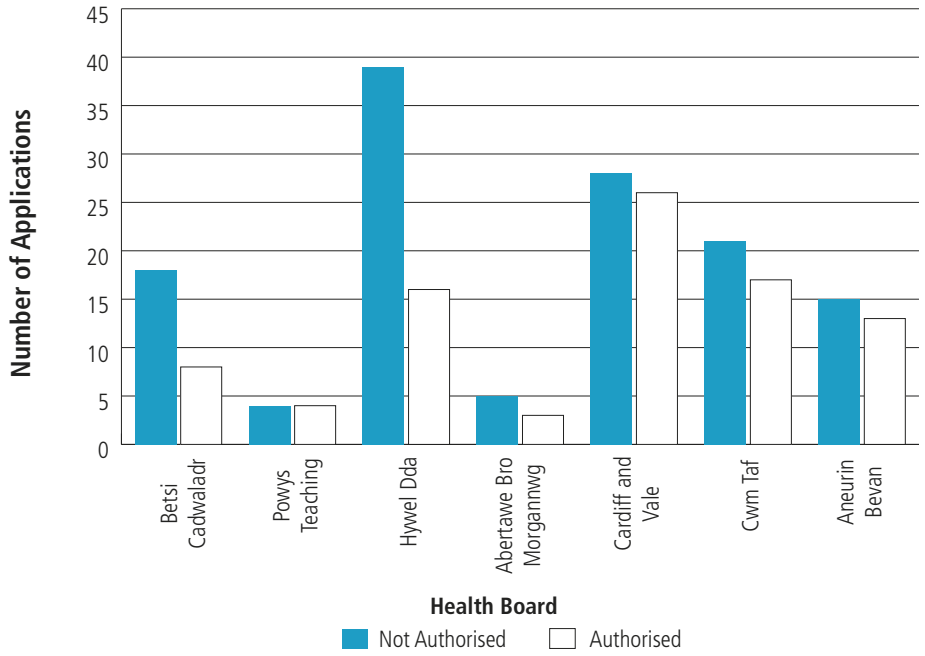
205 (3 recorded as in progress) standard authorisations were granted by Local Authorities. This was an increase of 14% on the previous years' figure of 182. The figures were very similar to the previous two reporting years. In care homes 51% of applications made were authorised, this was down very slightly from the previous year when the figure was 53%. Table 2 below shows the number of applications authorised and not authorised for Local Authorities since 2009.

Table 2: Total Applications authorised and not authorised since 2009-10 by Local Authorities

	Application Authorised	Application Not Authorised	Percentage Authorised
2009-10	177	229	44%
2010-11	203	141	58%
2011-12	216	159	56%
2012-13	182	152	53%
2013-14	208	200	51%

There does not seem to be a clear pattern throughout Wales in the rates of applications being authorised or not. This has been a common trend over the last five years.

Chart 7: Numbers of applications authorised and not authorised by health board supervisory bodies in 2013-14



In the Health Boards 87 applications were authorised (a 20% increase on last years figure of 72) while 130 applications were not authorised (three requests were still in progress at the time of data collection). In hospitals the number of applications granted has fallen to 39% which is also down slightly from last years figure of 43%. With the overall increase in applications considered, it suggests that little had changed from the previous reporting year. However, as demonstrated by Table 3 below, the numbers of applications authorised by Health Boards showed a steady decline since 2009. Six of the seven Health Boards in Wales authorised less applications than they rejected. This could indicate that while awareness of DoLS has increased within hospitals and more applications are now being made, the understanding of when to correctly make a DoLS application is still misunderstood by Managing Authorities.

Table 3: Total Applications authorised and not authorised since 2009-10 by Health Boards

	Applications Authorised	Applications Not Authorised	Percentage Authorised
2009-10	77	58	57%
2010-11	74	64	52%
2011-12	82	78	51%
2012-13	72	105	40%
2013-14 (a)	87	130	39%

(a) three applications were still in progress at the time of data collection

Out of the 220 applications made in 2013-14, 166 were standard following an urgent authorisation being put in place. This figure is in line with previous years for health and is generally expected as urgent authorisations are more common in hospital settings as admissions are very often unplanned.

While 295 applications were granted by Local Authorities and Health Boards, 331 applications were not progressed to a DoLs authorisation (six applications were still in progress at the time of data collection). In 2013-14 the most common reason for an application not being authorised was that the Supervisory Body did not consider the individual to be deprived of their liberty. In 164 of the 331 applications that were not authorised, it was considered that a deprivation was not occurring. For local authorities 126 of the 200 applications were not granted for this reason and in health 38 of the 131 applications were not considered a deprivation. The issue of applications not being considered a deprivation of liberty has been highlighted in previous monitoring reports and the difficulty that can exist in correctly identifying a deprivation. This is linked to a training need for Managing Authorities to be able to recognise when a deprivation is occurring and is discussed further in the National Review of DoLS. However, the fact an individuals circumstances have been referred to the Supervisory Body for consideration is always better than no action being taken so the Managing Authority can be satisfied the individual is being cared for lawfully. The recent ruling by the Supreme Court also extends the definition of what constitutes a deprivation.

In health 38 of the 131 applications not authorised were due to the application being withdrawn. This could be due to individuals being discharged from hospital, moved to a different hospital ward or due to the individual regaining capacity. In care homes the number of applications withdrawn was lower (20 of the 200) and the difference could be explained due to care homes having a more static population where discharge or being moved to a different setting is less likely.

In 2013-14, 65 of the 331 applications that were not authorised across Local Authorities and Health Boards were due to the best interest assessment not being satisfied (41 in Local Authorities and 24 in Health Boards). When an application is not authorised it is still crucial that Managing Authorities monitor the individuals situation so that a new application can be made if their circumstances may meet the threshold for a DoLS authorisation at a later time.

Reviews

- The number of reviews carried out by Local Authorities and Health Boards was low when compared with the number of standard authorisations granted in 2013-14. While there was been a modest increase in the number of reviews, this was not proportionate to the increase in applications and suggests that reviews were not happening in a timely way. Supervisory Bodies need to ensure that that reviews are held as and when required.

Table 4 below demonstrates the low numbers of reviews over the last five years:

Table 4: Total Number of Reviews by Health Board and Local Authority since 2009-10

		2009-10	2010-11	2011-12	2012-13	2013-14
Local Authority	Relevant Person	2	2	5	1	2
	Relevant Person's Representative	2	3	1	0	2
	Managing Authority	19	6	5	7	1
	Supervisory Body	25	10	18	6	14
	Total Local Authority	**48**	**21**	**29**	**14**	**19**
Health Board	Relevant Person	0	0	0	0	0
	Relevant Person's Representative	1	0	0	0	1
	Managing Authority	10	1	1	2	3
	Supervisory Body	6	0	0	1	2
	Total Health Board	**17**	**1**	**1**	**3**	**6**

In 2013-14 there were 25 reviews completed. This is an increase from the previous year when only 17 reviews were completed. However, the rise in reviews is not proportionate when compared against a 16% rise in the number of authorisations granted. The lack of reviews being undertaken has been raised in each of the last four monitoring reports.

There was a small rise in the number of individuals who were subject to DoLS who were supported by Independent Mental Capacity Advocates (IMCAs) in 2013-14 compared with the previous year. IMCAs are trained advocates who can provide support and representation

to an individual who lacks capacity to make decisions or to their representative. IMCAs provide support with understanding the DoLS authorisation and challenging it if required.

IMCA's

Table 5: Number of cases where IMCAs were appointed in social care and health

		2010-11	2011-12	2012-13	2013-14
Local Authority	39A IMCA	22	23	26	26
	39C IMCA	0	2	2	2
	39D IMCA	14	30	22	21
Health Board	39A IMCA	9	11	10	17
	39C IMCA	0	1	1	1
	39D IMCA	6	8	9	12
	Total	**51**	**75**	**70**	**79**

Data on the use of IMCAs was not collected during 2009-10

The actual percentage of IMCAs appointed when compared to the number of standard authorisations granted (295) remains almost the same as in 2012-13 with 29% of authorisations. In 2012-13 the figure was 28%. This demonstrates that the usage of IMCAs still remains relatively low.

Next steps for CSSIW and HIW

CSSIW and HIW will continue to monitor the usage of DoLS across Wales in 2014-15 and are considering ways that this can be improved. This has become increasingly important with the rise in applications following the Supreme Court Judgement and the increased demands this places on the supervisory bodies. CSSIW and HIW will also continue to consider DoLS in the respective inspection programmes and feedback to organisations as appropriate if any concerns are found.

Appendix A

Glossary

Key terms used in the DoLS Monitoring Report

The table below is a list of key terms used in this report. Where necessary it may expand on particularly important tasks carried out by significant people.

Advocacy	Independent help and support with understanding issues and putting forward a person's own views, feelings and ideas.
Assessment for the purpose of the deprivation of liberty safeguards	All six assessments must be positive for an authorisation to be granted.

1.	Age	An assessment of whether the relevant person has reached age 18.
2.	Best interests assessment	An assessment of whether deprivation of liberty is in the relevant person's best interests is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm. This must be decided by a Best Interests Assessor.
3.	Eligibility assessment	An assessment of whether or not a person is rendered ineligible for a standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983.
4.	Mental capacity assessment	An assessment of whether or not a person has capacity to decide if they should be accommodated in a particular hospital or care home for the purpose of being given care or treatment.
5.	Mental health assessment	An assessment of whether or not a person has a mental disorder. This must be decided by a medical practitioner.
6.	No refusals assessment	An assessment of whether there is any other existing authority for decision-making for the relevant person that would prevent the giving of a standard deprivation of liberty authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney.

Best Interest Assessor	A person who carries out a deprivation of liberty safeguards assessment.
Capacity	Short for mental capacity. The ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in section 2 of the Mental Capacity Act 2005.
Care Home	A care facility registered under the Care Standards Act 2000.
CSSIW	Care and Social Services Inspectorate Wales is the body responsible for making professional assessments and judgements about social care, early years and social services and to encourage improvement by the service providers.
Carer	People who provide unpaid care and support to relatives, friends or neighbours who are frail, sick or otherwise in vulnerable situations.
Conditions	Requirements that a supervisory body may impose when giving a standard deprivation of liberty authorisation, after taking account of any recommendations made by the Best Interests Assessor.
Consent	Agreeing to a course of action-specifically in this report to a care plan or treatment regime. For consent to be legally valid, the person giving it must have the capacity to take the decision, have been given sufficient information to make the decision, and not have been under any duress or inappropriate pressure.
Court of Protection	The specialist court for all issues relating to people who lack mental capacity to make specific decisions. It is the ultimate decision maker with the same rights, privileges, powers and authority as the High Court. It can establish case law which gives examples of how the law should be put into practice.

Deprivation of Liberty	Deprivation of liberty is a term used in the European Convention on Human Rights about circumstances when a person's freedom is taken away. Its meaning in practice is being defined through case law.
Deprivation of Liberty Safeguards	The framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interests for care or treatment and who lack the capacity to consent to the arrangements made for their care or treatment.
Health Board	Local Health Boards fulfil the supervisory body function for health care services and work alongside partner local authorities, usually in the same geographical area, in planning long-term strategies for dealing with issues of health and well-being. They separately manage NHS hospitals and in-patient beds, when they are managing authorities.
Independent Hospital	As defined by the Care Standards Act 2000 – a hospital, the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care or any other establishment, not being defined as a health service hospital, in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983.
Independent Mental Capacity Advocate (IMCA)	A trained advocate who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them. The IMCA service was established by the Mental Capacity Act 2005 whose functions are defined within it.

Local Authority/Council	The local council responsible for commissioning social care services in any particular area of the country. Senior managers in social services fulfil the supervisory body function for social care services. Care homes run by the Council with have designated managing authorities.
Managing authority	The person or body with management responsibility for the particular hospital or care home in which a person is, or may become, deprived of their liberty. They are accountable for the direct care given in that setting.
Maximum authorisation period	The maximum period for which a supervisory body may give a standard deprivation of liberty authorisation, which cannot be for more than 12 months. It must not exceed the period recommended by the Best Interests Assessor, and it may end sooner with the agreement of the supervisory body.
Mental Disorder	Any disorder or disability of the mind, apart from dependence on alcohol or drugs. This includes all learning disabilities.
Mental Health Act 1983	Legislation mainly about the compulsory care and treatment of patients with mental health problems. It includes detention in hospital for mental health treatment, supervised community treatment and guardianship.
Qualifying requirement	Any one of the six qualifying requirements (age, mental health, mental capacity, best interests, eligibility and no refusals) that need to be assessed and met in order for a standard deprivation of liberty authorisation to be given.
Relevant hospital or care home	The particular hospital or care home in which the person is, or may become deprived of their liberty.

Relevant person	A person who is, or may become, deprived of their liberty in a hospital or care home.
Relevant person's representative	A person, independent of the particular hospital or care home, appointed to maintain contact with the relevant person and to represent and give support in all matters relating to the operation of the deprivation of liberty safeguards.
Restriction of liberty	An act imposed on a person that is not of such a degree or intensity as to amount to a deprivation of liberty.
Review	A formal, fresh look at a relevant person's situation when there has been, or may have been, a change of circumstances that may necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation.
Standard authorisation	An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in a particular hospital or care home.
Supervisory body	A local authority social services or a local health board that is responsible for considering a deprivation of liberty application received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty.
Unauthorised deprivation of liberty	A situation in which a person is deprived of their liberty in a hospital or care home without the deprivation being authorised by either a standard or urgent deprivation of liberty authorisation.

Urgent authorisation	An authorisation given by a managing authority for a maximum of seven days, which subsequently may be extended by a maximum of a further seven days by a supervisory body. This gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken.