

Deprivation of Liberty Safeguards

Annual Monitoring Report
for Health and Social Care
2014-15

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Foreword

This report summarises the key findings and an analysis of the 2014-15 data on the use of Deprivation of Liberty Safeguards (DoLS) in Wales. The data is collected from the supervisory bodies, made up of 22 local authorities and 7 local health boards in Wales. Information is also taken from notifications received from care homes in their role as managing authorities.

This is the sixth annual report on the operation of DoLS and covers a period that saw a significant increase in the number of applications, following a ruling by the Supreme Court which has become known as the Cheshire West case.¹

Additionally, in March 2014, the House of Lords published a post-legislative scrutiny report of the Mental Capacity Act 2005. The report concluded that DoLS were “not fit for purpose” and recommended that they be replaced.

As a consequence of the scrutiny report and the likely increased demand, and expectations of supervisory bodies and managing authorities following the Supreme Court ruling, an action plan was drawn up by Welsh Government to support health boards and local authorities to fulfil their legal obligations. Funding was made also available by Welsh Government to support Best Interest Assessor training. A leadership group was established to take forward the action plan, providing regular updates for the health and social care sector in Wales, which included:

- The development of a set of DoLS forms for use across Wales which were piloted in the summer of 2015. Guidance for supervisory bodies and managing authorities has also been developed and will be available via the Social Services Improvement Agency (SSIA) website.
- A conference in October 2015 which focused on raising the profile of the Mental Capacity Act.

The Law Commission has been asked to undertake a wholesale review of the DoLS. A consultation document was issued in July 2015 and closed in November 2015 with a view to having a draft bill in place in 2016.

¹ https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf

Key Findings

- **The number of applications** for the Safeguards saw a 16-fold increase on the previous year, from 631 applications in 2013-14, to 10,679 applications being made during the period April 2014 to March 2015. This increase varied considerably across supervisory bodies, including local health boards (LHBs), but each organisation experienced at least a six-fold increase. (*Charts 1a, 1b, 1c & 2*)
- In respect of the **rate per 100,000 population**, regional and local variations still remain with Wrexham County Council having the lowest rate of 35.5, and Carmarthenshire Council and Swansea City Council the highest rates of 561.4 and 556.6 respectively. The overall variation has increased in line with the marked increase in applications. This increase is attributable to the impact of the Cheshire West Supreme Court judgment which extended the definition of deprivation of liberty.
- **Urgent authorisations** - Of the 10,679 applications, 74% were urgent authorisations and 26% were standard. Of applications processed, 66% of applications in hospital settings were not authorised compared to 31% in care home settings. (*Charts 3, 4 & 5*)
- 21 days is allowed for the standard authorisation assessment process. In looking at the **21 day target**, of those applications where the process was completed, 56% (3,057) of applications were not completed within 21 days of submission. 43% (4,613) of applications received during 2014-15 remained outstanding at the end of March 2015. The local authority/local health board split for those outstanding was 4,392 / 221 which equates to 49% / 13% of applications respectively. (*Charts 6 & 7*)
- **Assessments processed** - The significant increase in volume appears to have led to a delay in the processing of assessments; the number of applications being processed within 21 days has increased almost 10-fold from 562 in 2013-4 to 5,424 in 2014-5.
- The **length of time that authorisations are in place** has increased in general, with 55% of authorisations being valid for a year in 2014-15, compared with only 1% in 2013-14. This increase is mainly accounted for in social care where 63% of authorisations were valid for a year, compared with 1% in the previous year. Additionally, 8% of authorisations in healthcare were valid for a year, while there were no healthcare authorisations granted for a year in 2013-14. (*Chart 9*).
- **Reviews** – the number of reviews remain low with only 1% of DoLS authorisations having a completed review in 2014-15, compared to 8% in 2013-14. In general, authorisations lapse before a review is undertaken and if necessary a new application is made.
 - The number of applications to the Court of Protection rose from 2 in 2013–14 to 10 in 2014–15.

Analysis

This report reflects an unprecedented level of DoLS activity following the Cheshire West Supreme Court ruling. Whilst the increase in activity is not surprising, the scale of the increase is significant. The volume of activity described in this report and the apparent consequences for DoLS application processing times may have real consequences for people. It is important that key stakeholders take the opportunity to consider these figures in the context of work being led by Welsh Government. This has included the issuing of revised guidance and tools aimed at streamlining processes. Stakeholders should consider the following questions:

- Is there sufficient staff capacity across Wales to support the demand for DoLS applications?
- Is the apparent move towards longer lengths of time for which authorisations are valid in the best interests of patients/residents?
- Is poor performance against the 21 day time period for an application decision impacting on the lives of individual patients/residents?
- Does the large proportion of withdrawn or rejected DoLS applications in hospital settings indicate the need for further staff training? Does this also suggest that hospitals are relying too heavily on DoLS processes where alternative and less restrictive approaches can be used?²

² This document was amended on 27/01/2016 for clarity, on pages 3 and 7.

Deprivation of Liberty Applications

The following charts show the number of applications made per 100,000 of the population by local authorities and health boards. The dramatic increase in applications in 2014-15, due to the Supreme Court ruling, is clearly demonstrated.

Applications to Local Authorities

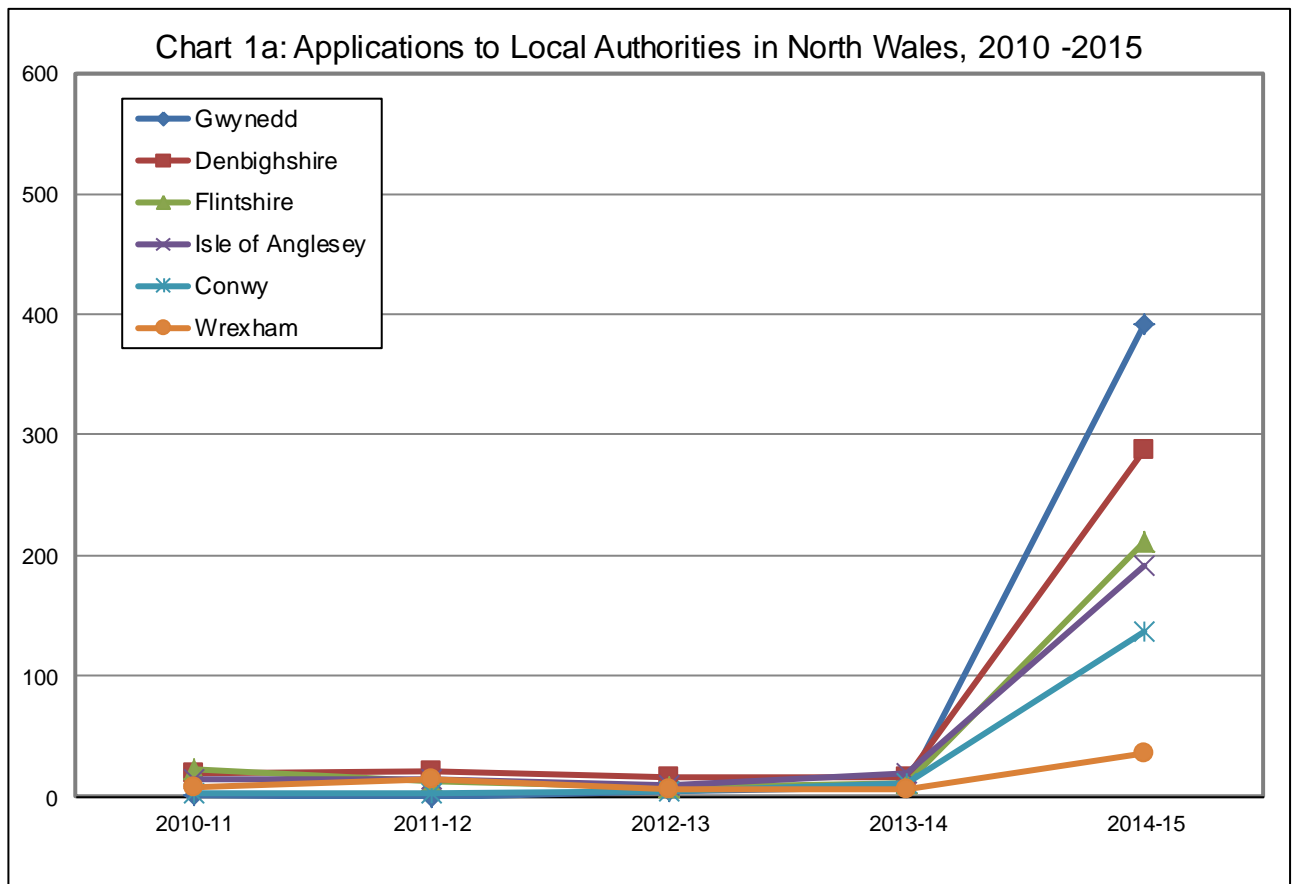


Chart 1b: Applications to Local Authorities in South East Wales, 2010 - 2015

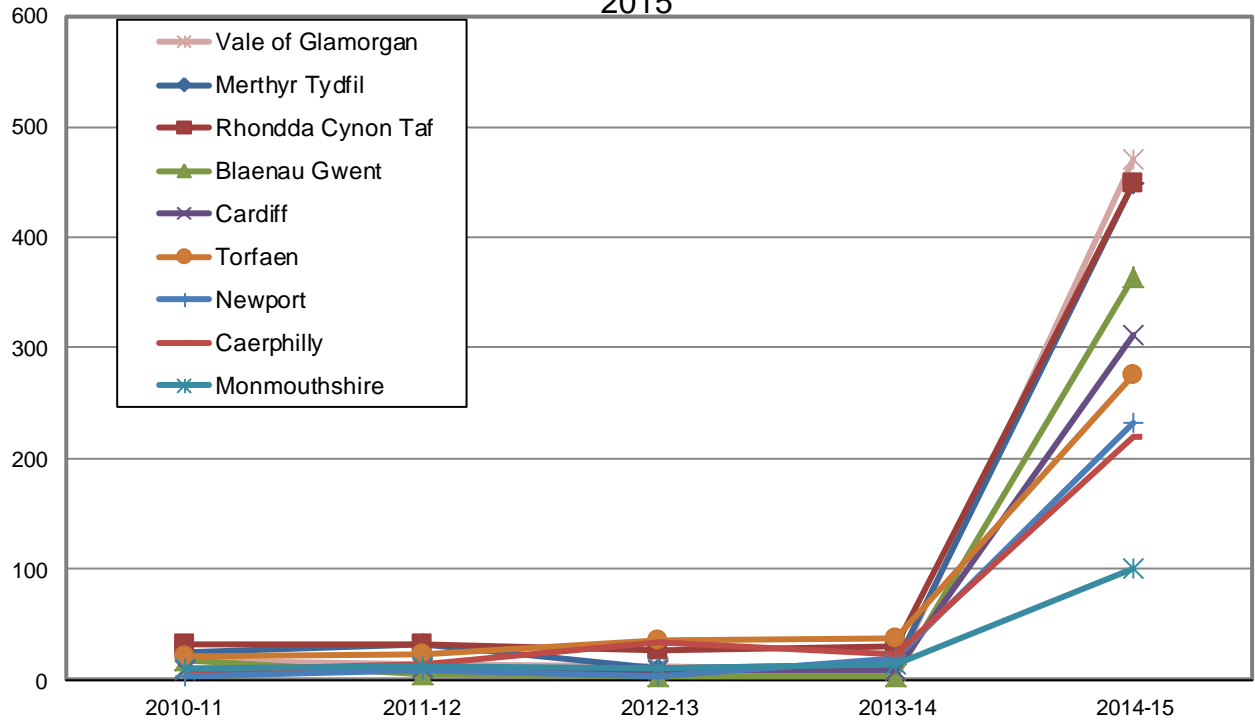
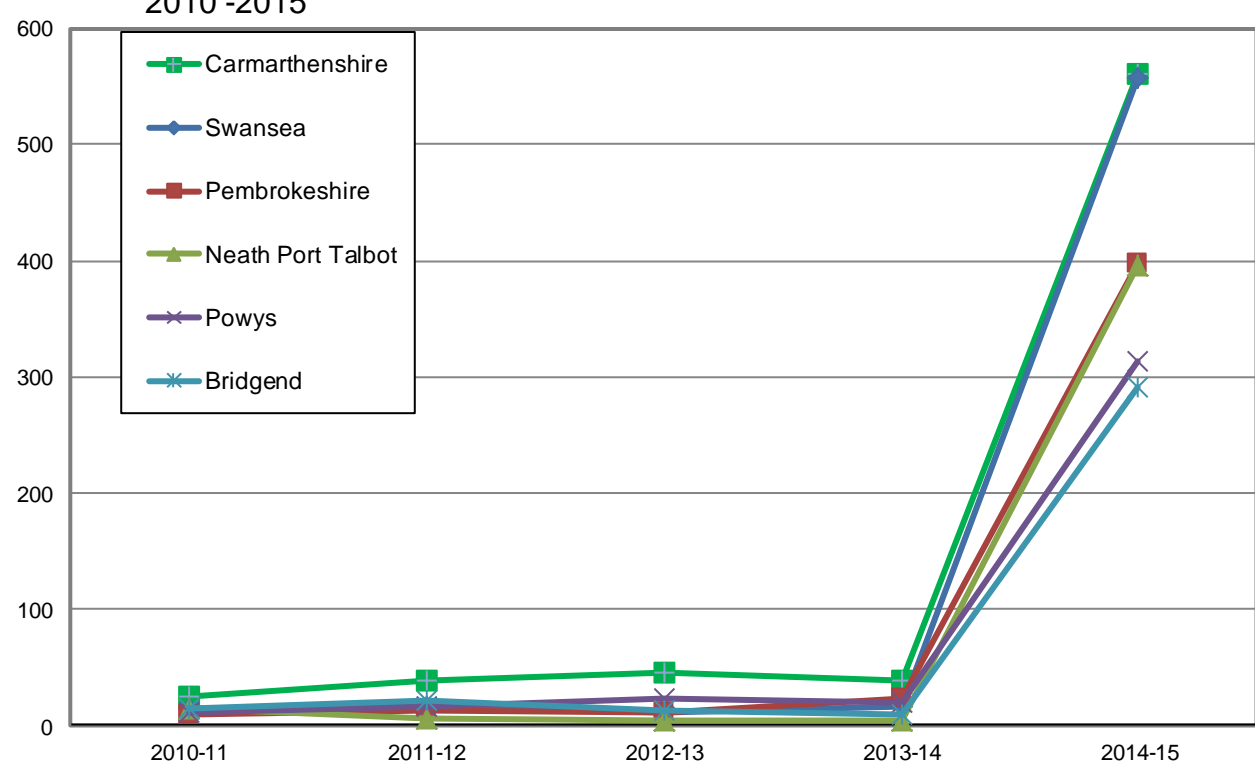
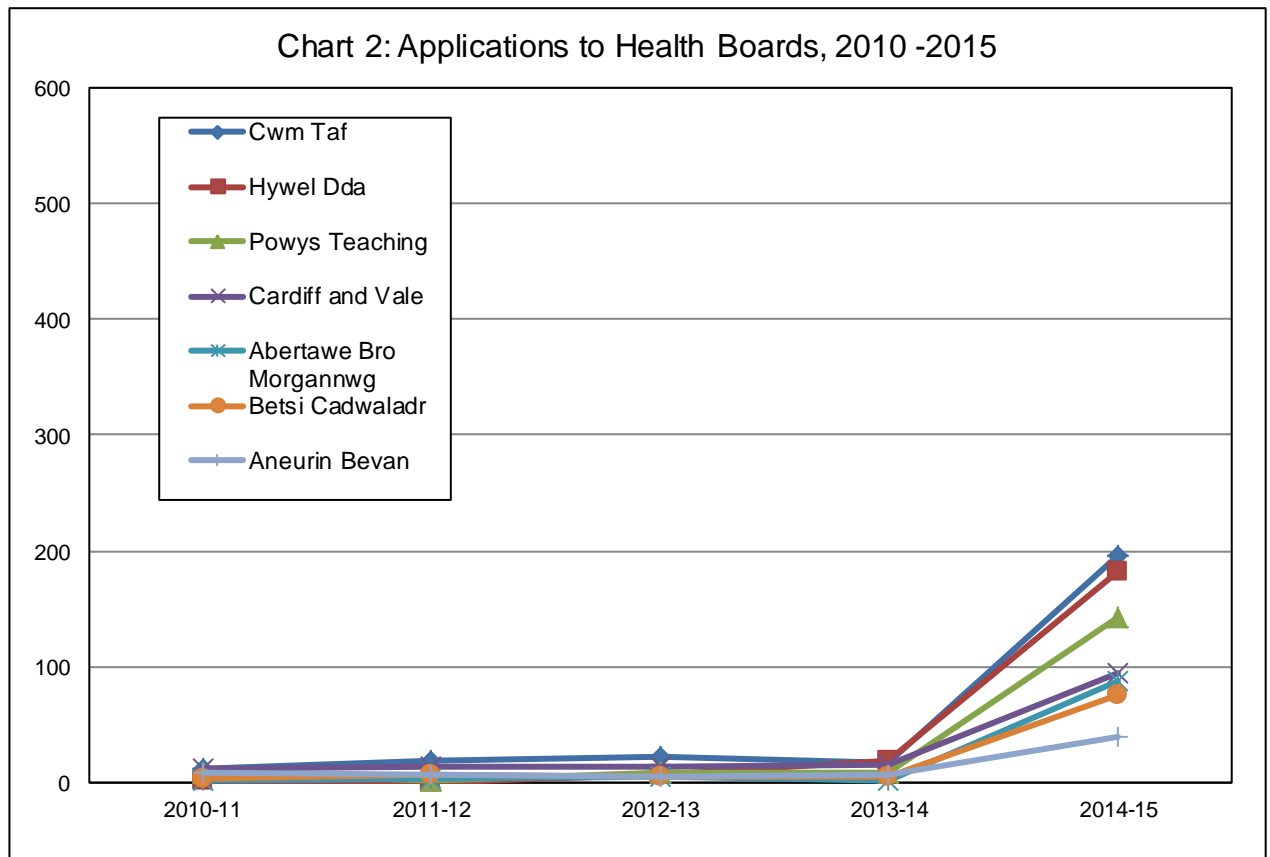


Chart 1c: Applications to Local Authorities in South West & Mid Wales, 2010 -2015

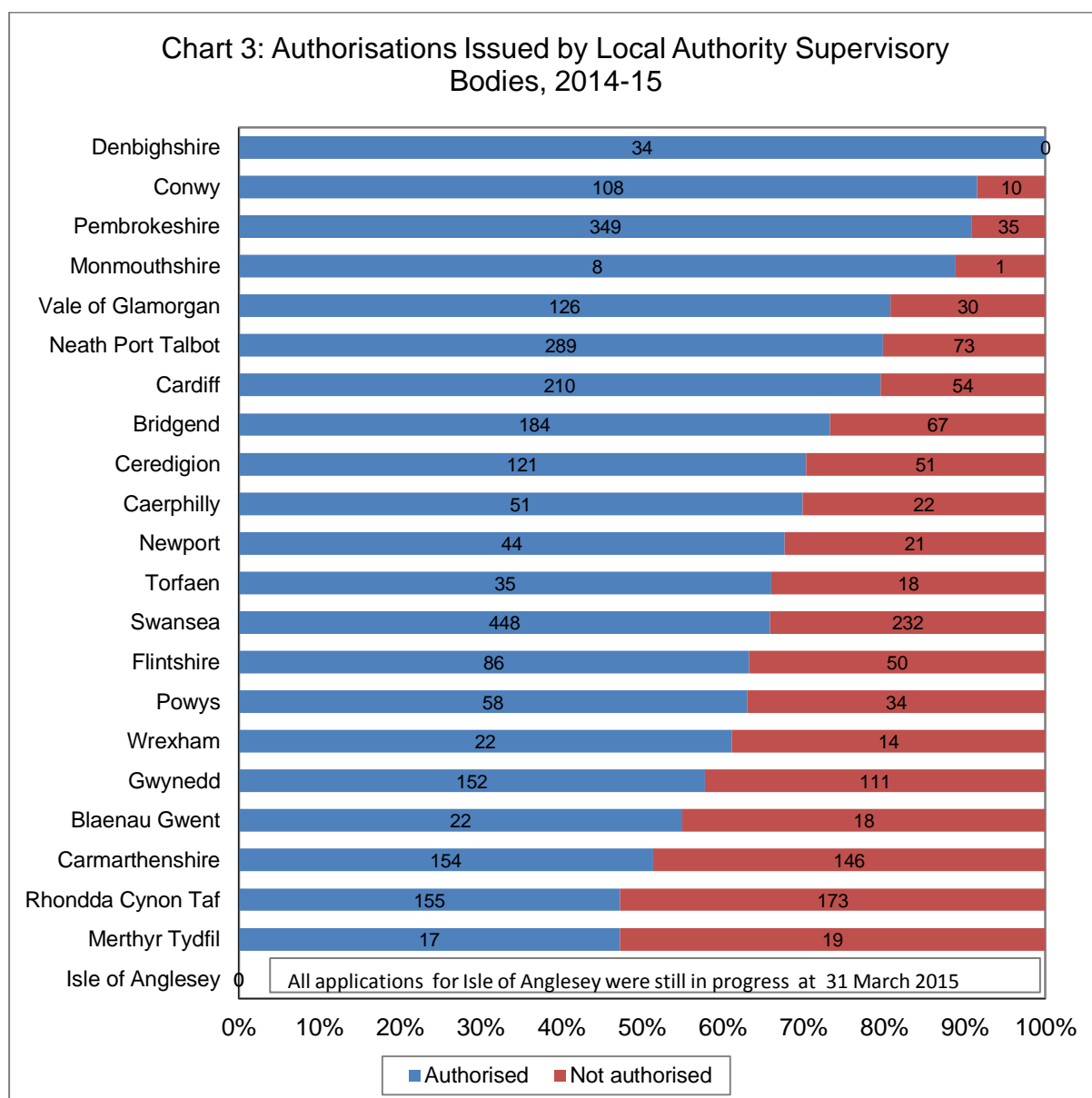


Applications to Health Boards



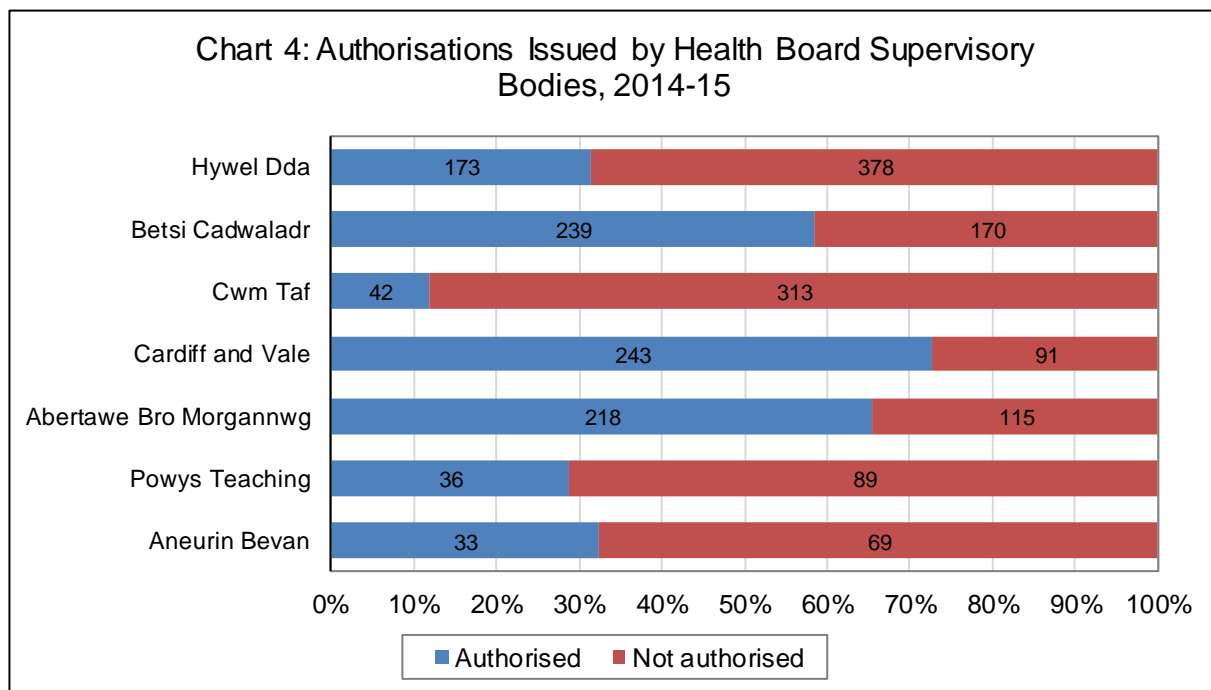
The charts below show a comparison of applications authorised and not authorised by local authorities and health boards. Applications that were not authorised include those that were withdrawn before being determined, or where the relevant individual died before a decision was made. They show that there is no clear pattern throughout Wales in the percentage of applications being authorised or not. This has been a consistent finding since the introduction of the Deprivation of Liberty Safeguards.³

Percentage of applications authorised/not authorised by Local Authorities



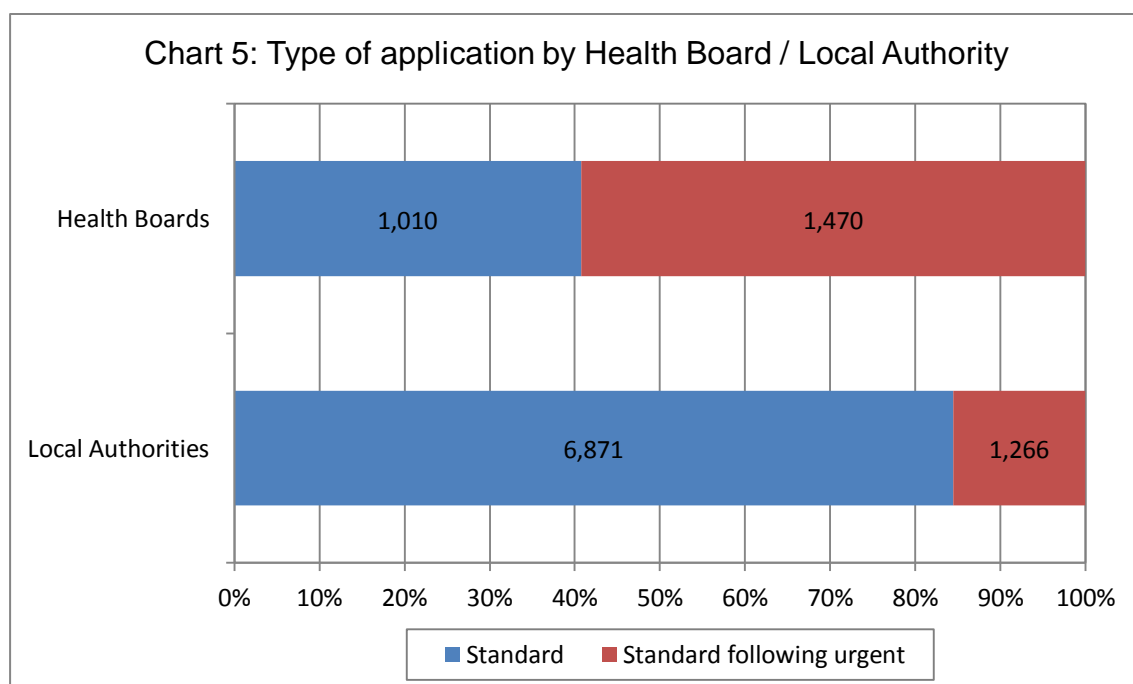
³ This document was amended on 27/01/2016 for clarity, on pages 3 and 7.

Percentage of applications authorised/not authorised by Health Boards



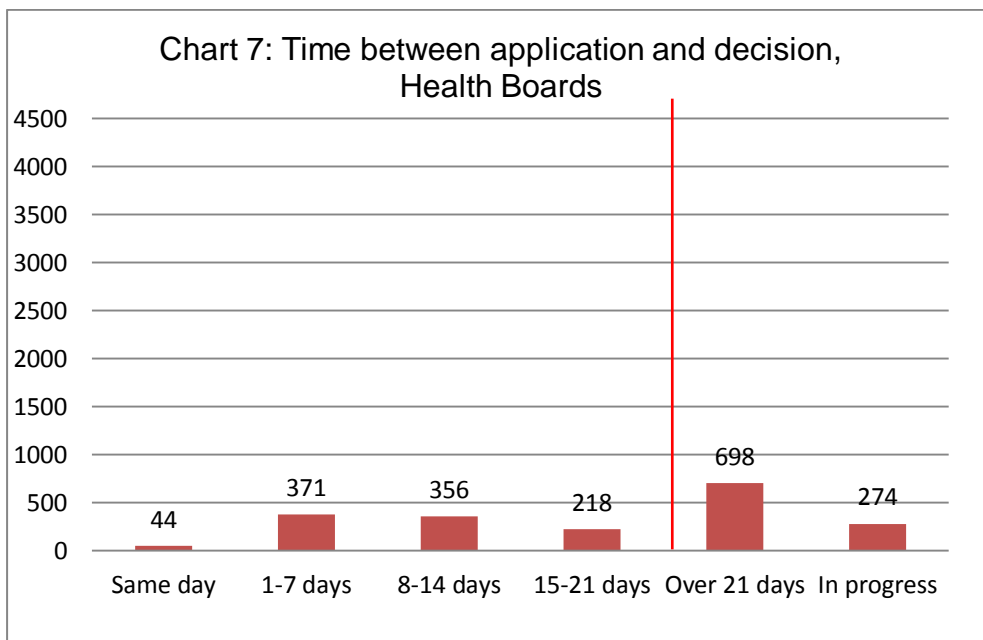
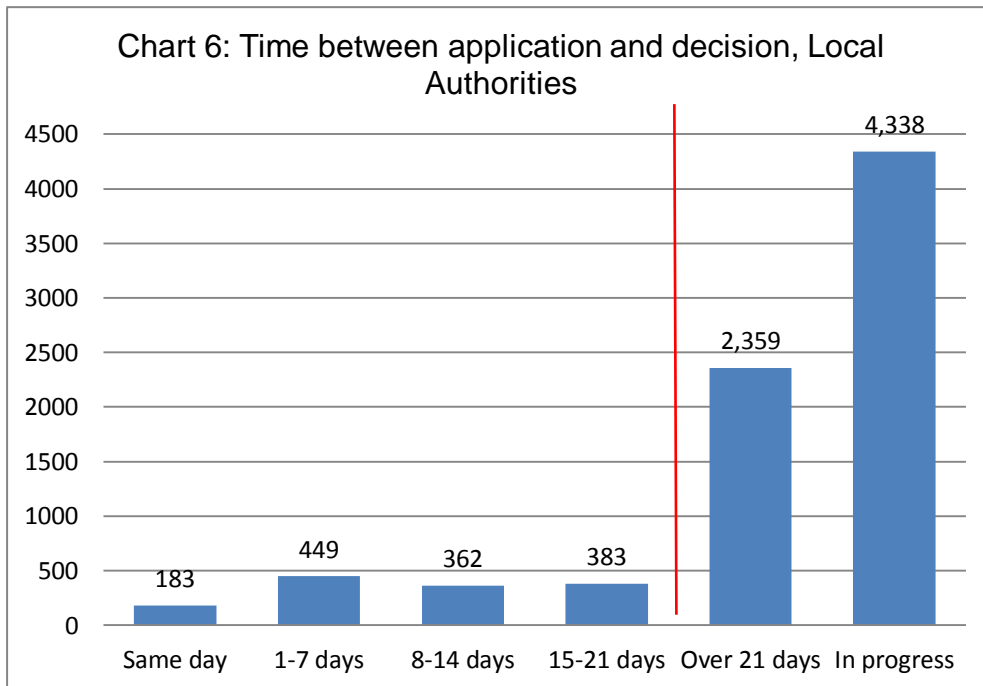
Third party referrals remain low at less than 1% of the total referrals.

Type of application by local authority and health board



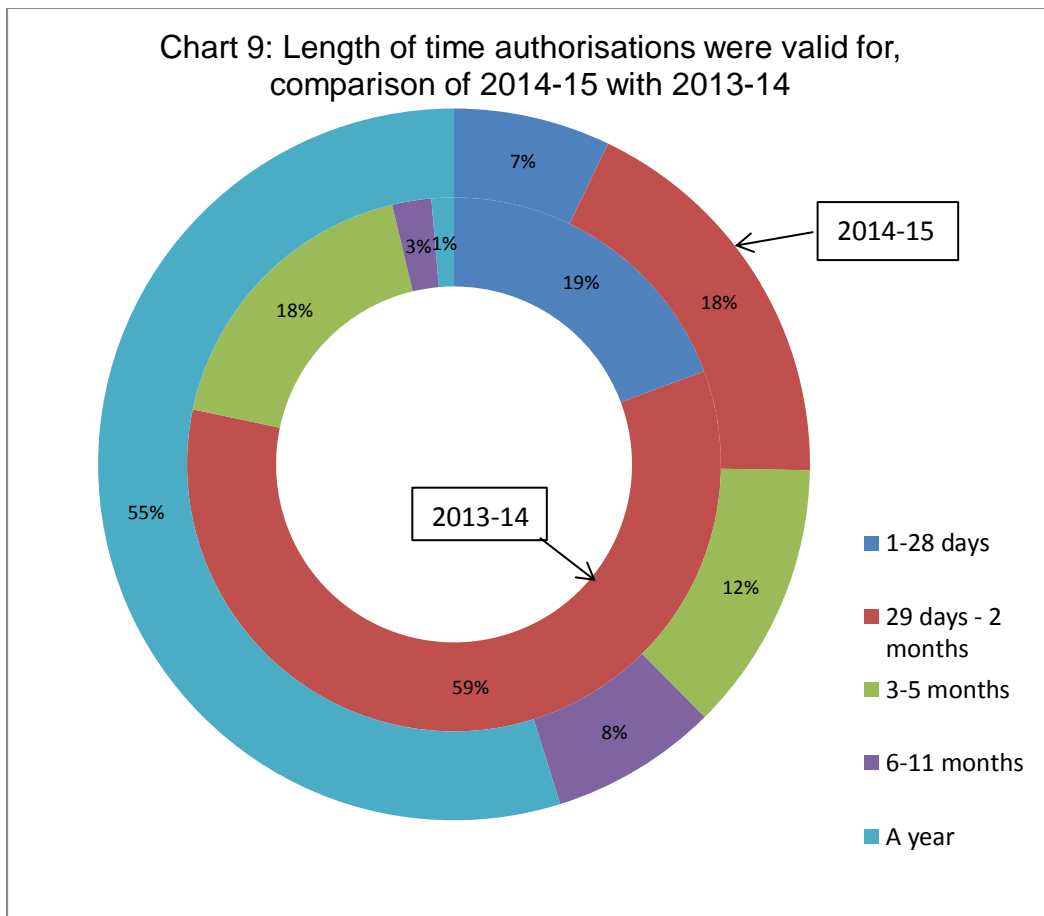
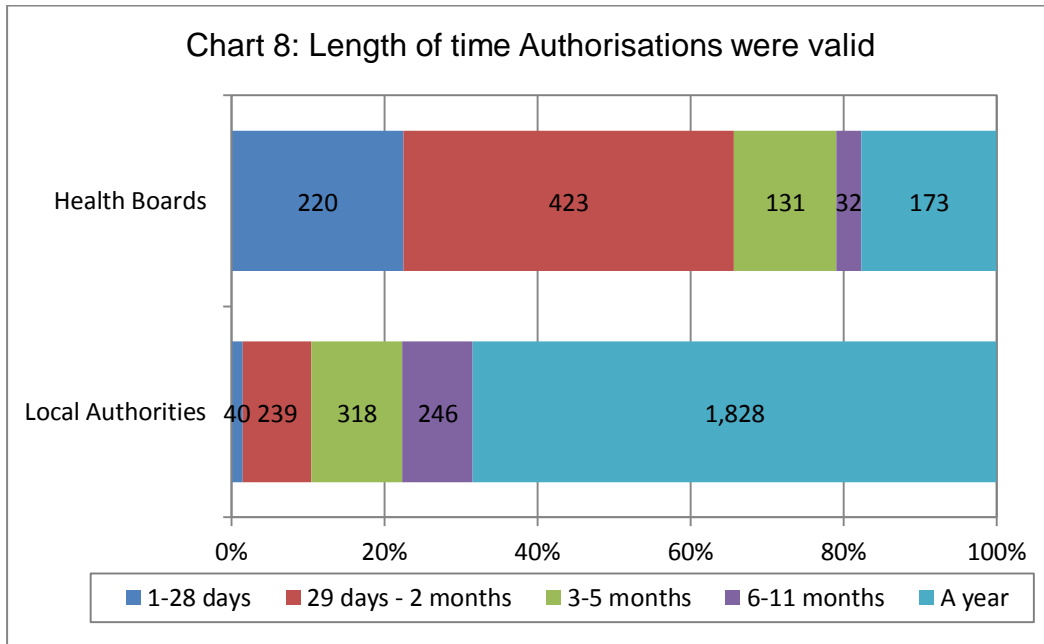
Time between application and decision

56% of applications that were processed exceeded the 21 day time period within which the supervisory bodies have to carry out the assessments.

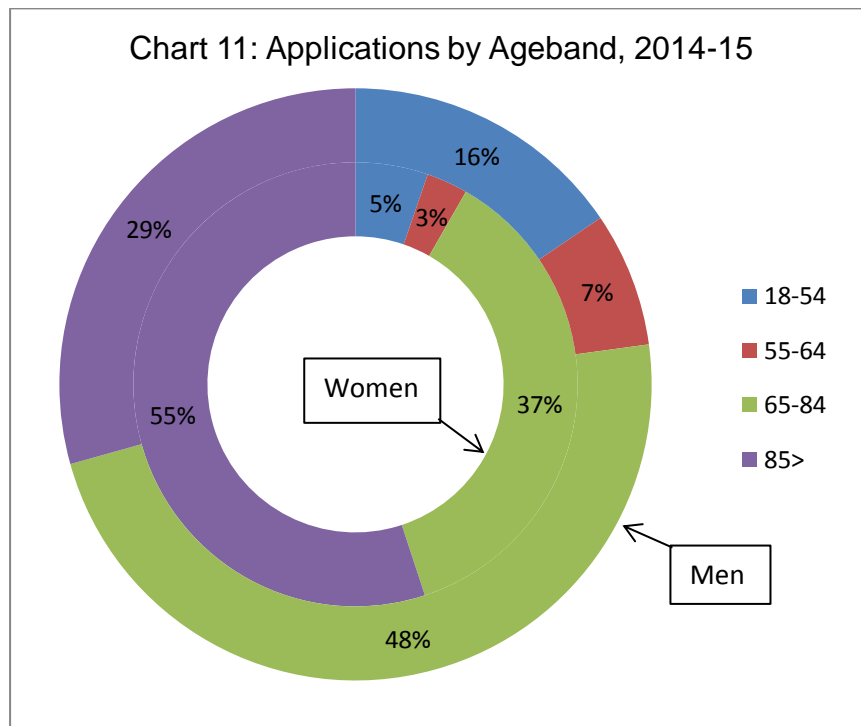
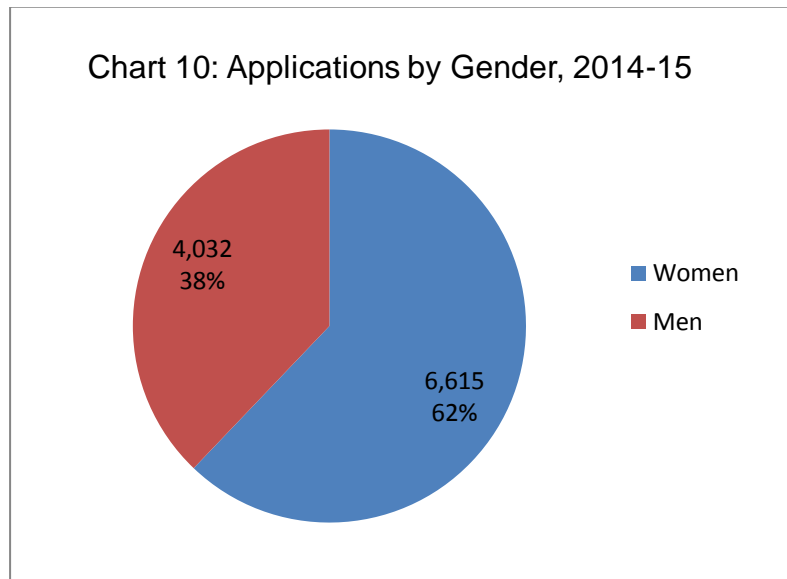


There were 528 applications that were withdrawn or where the relevant person died before a decision was made. This accounts for 5% of the total applications.

Length of time authorisations were valid

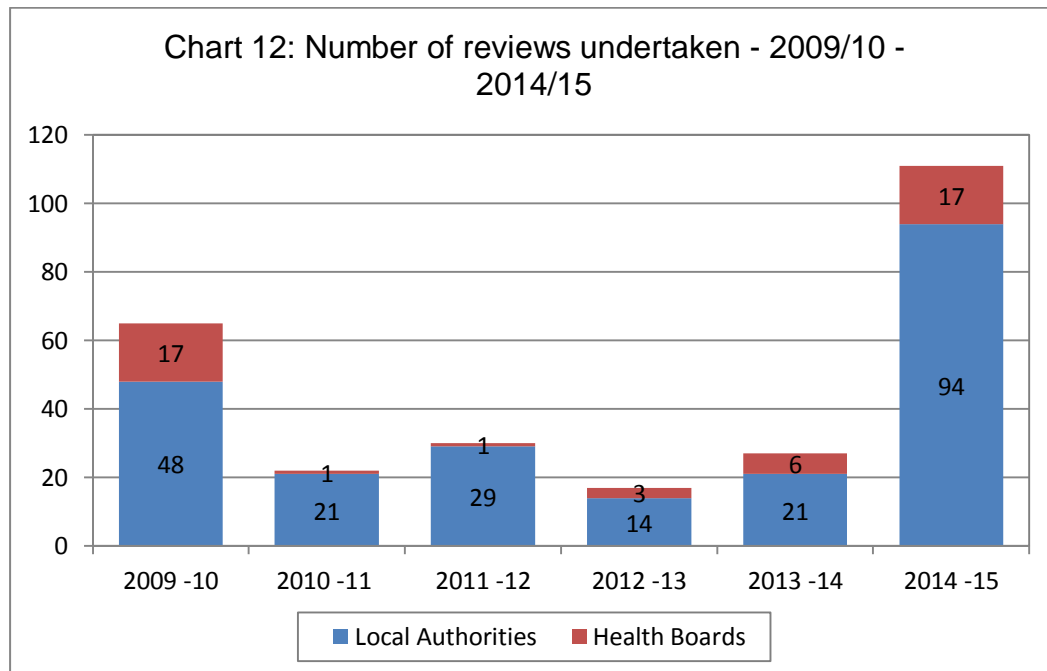


Gender Split in 2014/15



Reviews

The number of DoLS authorisations where a review was carried out during the period remains low and during 2014/15 has further decreased to only 1% of authorisations, from 8% in the previous year. The Code of Practice supports the use of short authorisations and although the length of authorisations has increased, overall the vast majority lapse before a review is undertaken.



Independent Mental Capacity Advocates (IMCA)

The number of cases where an IMCA was appointed has increased from 79 in 2013-14 to over 500. However, this is only 5% of the total number of authorisations due to the sharp increase in 2014-15.

GLOSSARY: Key terms used in the DoLS Monitoring Reports

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.
• Age	An assessment of whether the relevant person has reached age 18.
• 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.
• 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.
• 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.
• Mental health assessment	An assessment of whether or not a person has a mental disorder. This must be decided by a medical practitioner.
• 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 done 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.
Local 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.

Independent Hospital

They separately manage NHS hospitals and in-patient beds, when they are managing authorities.

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 will 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 Capacity Act 2005

The Mental Capacity Act 2005 provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. The five key principles in the Act are:

1. Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.
2. A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
3. Just because an individual makes what

might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.

4. Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
5. Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Mental Capacity Act Code of Practice

The Code of Practice supports the MCA and provides guidance to all those who care for and/or make decisions on behalf of adults who lack capacity. The Code includes case studies and clearly explains in more detail the key features of the MCA

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

Section 12 Doctors	necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation. Doctors approved under Section 12(2) of the Mental Health Act 1983
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.
Supreme Court	The Supreme Court is the final court of appeal in the UK for civil cases, and for criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population
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.