

Deprivation of Liberty Safeguards

Annual Monitoring Report
for Health and Social Care
2021-22

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Deprivation of Liberty Safeguards

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Key Findings

- Nearly all supervisory bodies in Wales were unable to assure themselves that people's human rights were not being breached by being deprived of their liberty unlawfully. This is due to the ongoing delays in Deprivation of Liberty Safeguards (DoLS) applications being assessed.
- Overall, there was a slight increase in the number of DoLS applications received by local authorities in 2021-22, though numbers remained lower than before the COVID-19 pandemic.
- The total number of DoLS applications to health boards remained consistent with last year. However, there was variation amongst the health boards.
- The majority of DoLS applications continued to be for older people, with 87% of applications being for people over the age of 65. Most applications for DoLS continued to be from care homes for older adults, and from hospital wards for older adults.
- Compared to the previous years, the proportion of applications received by health boards classed as urgent, has continued to increase since 2019. The proportion of applications received by local authorities classed as urgent has been stable since 2019.
- The length of time taken to process applications remained poor. Supervisory bodies must ensure people's rights are protected and assessments for all applications are undertaken within the stipulated number of days as set out in DoLS Code of Practice.
- Most people are supported and represented in matters relating to their deprivation of liberty. This is a significant improvement on last year's performance. Supervisory bodies must continue to ensure a "relevant person representative" is appointed for all authorisations.
- The proportion of authorisations referred to the Court of Protection has seen year on year increases for the period 2019-2022 for local authority applications, whereas it has remained consistent for health boards.

Introduction

This is the annual monitoring report by Care Inspectorate Wales (CIW) and Healthcare Inspectorate Wales (HIW), on the implementation of Deprivation of Liberty Safeguards (DoLS) in Wales. The report is produced on behalf of Welsh Ministers. The report covers the period April 2021 until the end of March 2022.

The Mental Capacity Act 2005 (MCA) provides the statutory framework for acting and making decisions on behalf of people who lack the capacity to make decisions for themselves. The MCA sets out who can make decisions for a person who lacks capacity, when and how. It ensures decisions are made in the person's best interest and the person is involved in the decision as much as possible.

DoLS were introduced as an amendment to the MCA and came into force in April 2009, providing a legal framework for situations where someone may be deprived of their liberty within the meaning of article 5 of the European Convention on Human Rights (ECHR). A Supreme Court ruling in March 2014¹, known as the Cheshire West judgement, clarified the definition and widened the scope of when someone is being deprived of their liberty. The Safeguards help to ensure the correct process is used to protect people's human rights if they lack the capacity to consent to the arrangements for the care they need; are under continuous supervision and control; and are not free to leave.

The DoLS legislation aims to protect people in care homes and hospitals who may need to be deprived of their liberty. Hospitals and care homes are called managing authorities. The bodies that authorise DoLS applications are called supervisory bodies. Hospitals apply to their local/corresponding health board to authorise any DoLS applications made. Care homes apply to their local authority for such authorisation. In Wales, the authorising local authority is the local authority in which the individual is ordinarily resident before moving to live in the care home.

There are three types of DoLS applications, which are standard, urgent or further.

- Standard applications - If care home or hospital staff complete a standard application, then the assessments required for a standard authorisation must be completed within 21 days from the date the assessors were instructed by the supervisory body.
- Urgent applications – A care home or a hospital can grant itself an urgent authorisation to deprive a person of their liberty if required before a standard authorisation can be obtained. They must simultaneously apply for standard authorisation (if not already done). Where the managing authority has given itself an urgent authorisation and applies for a standard authorisation, the assessors

¹ See

[http://mentalhealthlaw.co.uk/Cheshire West and Chester Council v P \(2014\) UKSC 19, \(2014\) MHLO 16](http://mentalhealthlaw.co.uk/Cheshire_West_and_Chester_Council_v_P_(2014)_UKSC_19_(2014)_MHLO_16)

must complete the assessments within five days of the date of instruction. We report separately on the standard authorisation application, following an urgent authorisation. This is categorised as urgent in the report.

- Further applications - When an existing DoLS authorisation is coming to an end, and the managing authority concludes the authorisation needs to continue, a further authorisation should be requested. This can be requested 28 days in advance.

The 2014 Supreme Court ruling resulted in a very large increase in the number of applications for DoLS authorisations. The House of Lords published a scrutiny report² (2014) of the MCA that concluded DoLS were “not fit for purpose” and recommended they be replaced.

The Liberty Protection Safeguards (LPS) were introduced by the Mental Capacity (Amendment) Act 2019, to replace DoLS as the system to lawfully deprive someone over the age of 16 of their liberty. The LPS is intended to provide a simpler process that will better support the safeguards people need and was due to replace DoLS from October 2020. However, it was delayed due to the impact of the pandemic and associated pressures on the health and social care sectors.

Between March and July 2022, the UK Government consulted on the draft LPS Code of Practice which applies to both England and Wales. At the same time the Welsh Government consulted on the draft regulations supporting the implementation of the LPS in Wales. The draft regulations are focused on:

- the appointment and role of Independent Mental Capacity Advocates;
- who can undertake assessment, make determinations and carry out pre-authorisation reviews;
- the role and appointment of the new Approved Mental Capacity Professional; and
- the monitoring and reporting on the new Safeguards.

In Wales, the function of monitoring the operation of LPS falls to Welsh Ministers, and the monitoring and reporting functions will be performed on their behalf by HIW, CIW and Estyn. The monitoring bodies worked collaboratively with Welsh Government to develop a draft monitoring and reporting strategy for Wales. The strategy describes how the monitoring bodies will discharge their responsibilities for monitoring and reporting on LPS. The monitoring bodies consulted on the draft monitoring and reporting strategy for Wales during Welsh Government’s consultation on the regulations supporting the implementation of LPS in Wales.

At the time of publishing this report, there is still no date for the implementation of LPS. The responses to the consultation on the MCA and LPS code of practice and

² See <https://publications.parliament.uk/pa/ld201314/ldselect/ldmentalcap/139/13902.htm>

relevant regulations continue to be reviewed by UK Government and Welsh Government.

Until these changes are implemented, the DoLS remain, and it is important that local authorities and health boards continue to follow the DoLS process to ensure people's rights are protected and care and support amounting to a deprivation of liberty is appropriately authorised.

During 2021-22 local authorities and health boards received additional funding from Welsh Government to address the number of applications for people waiting to be assessed. Extra funding was also provided to enable local authorities and health boards to arrange additional training, to promote and embed the principles of the Mental Capacity Act 2005 in preparation for the implementation of LPS.

Due to the ongoing delays in DoLS applications being assessed, most health boards and local authorities were still unable to assure themselves during 2021-22 that people's human rights were not being breached, by being deprived of their liberty unlawfully. This is a similar finding to previous years, and an area HIW and CIW will continue to monitor and raise with local authorities and health boards.

Impact of COVID-19 Pandemic

This report covers the second year of the COVID-19 pandemic which resulted in ongoing impact on the DoLS assessment process. Health and social care services had to adjust in unprecedented ways to respond to the challenges presented by the pandemic, and comply with measures implemented nationally and locally to reduce the spread of the virus.

As we transition slowly out of the pandemic into a recovery phase, the increase in demand for care and support has created significant pressures on both health and social care services, at a time when workforce recruitment and retention is at crisis point.

Last year, we highlighted how DoLS notifications had been impacted by the pandemic, with numbers of notifications from adult social care services and hospitals reaching their lowest point in early 2020-21 before starting to recover. As the impact of the pandemic was still apparent during 2020-21, analysis has been taken against last year's DoLS report, but also 2019-20 when COVID-19 was not an influencing factor.

DoLS Data Collection

Data was collected from local authorities and health boards in April - May 2022, and this related to the DoLS applications they received in the 2021-22 financial year. The data provides anonymous details of:

- number of applications;
- demographic profile,
- types of applications;
- new authorisations;
- application timescales; and
- reviews, representatives, independent mental capacity advocates (IMCA) and Court of Protection.

Number of applications

Health boards

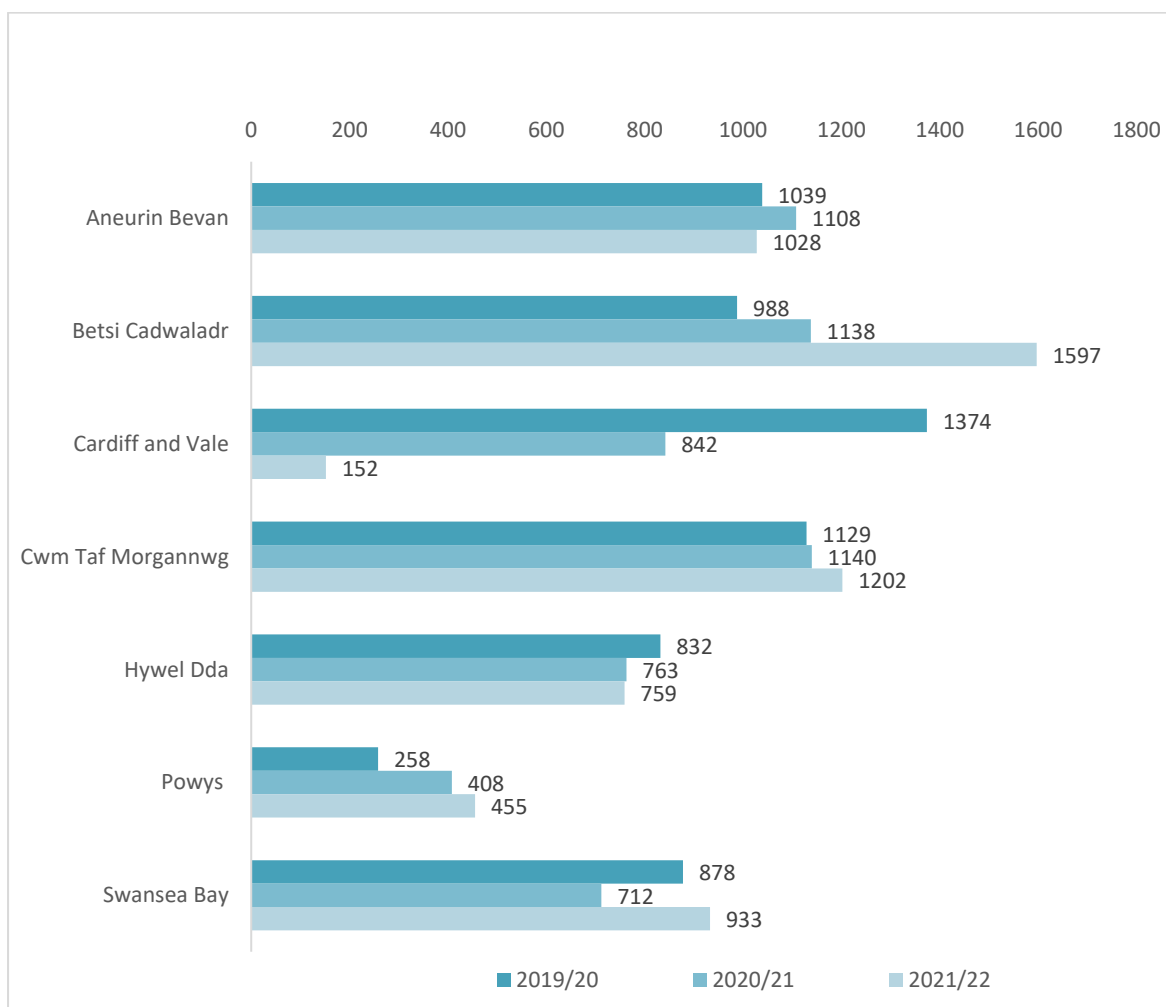
A total of 6,126 new and further DoLS applications were received by health boards in 2021-22. This represents a similar result to 2020-21 (6,111), and a decrease of 6% compared to 2019-20 (6,486).

There was variation in demand across the health boards. A considerable increase was seen in Betsi Cadwaladr University Health Board. The explanation provided by the health board is this was due to additional Best Interest Assessors (BIA) training during 2021-22. An increase in BIA presence on the wards together with additional MCA and DoLS training, could have resulted in the year-on-year increase in DoLS applications.

Increases were also seen in Cwm Taf Morgannwg, Powys Teaching Health Board and Swansea Bay health boards.

However, for the second year in a row, there was a considerable drop in applications to Cardiff and Vale University Health Board.

Figure 1a. The number of DoLS applications received by each health board from 2019 to 2022



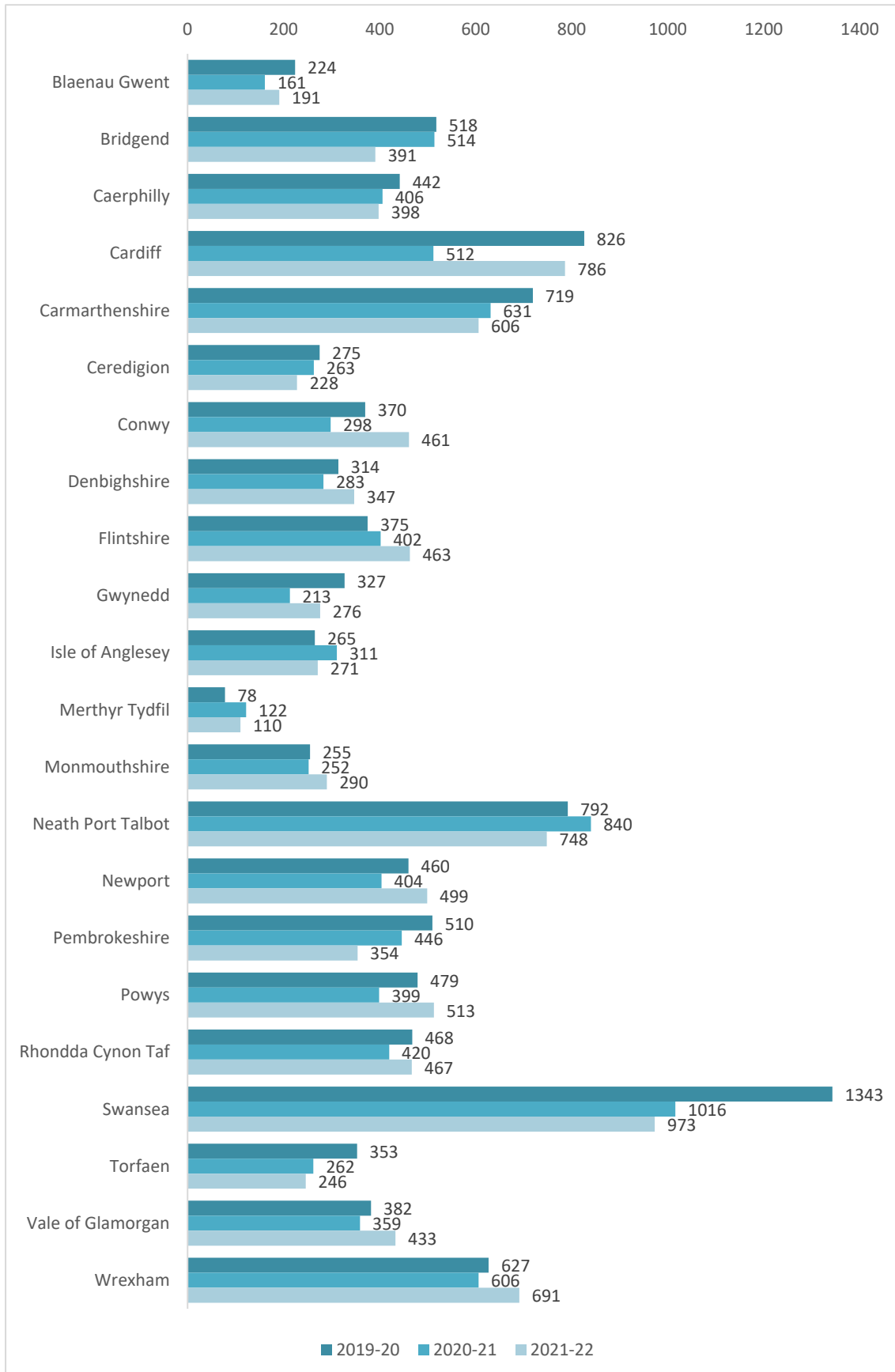
Local authorities

A total of 9,742 DoLS applications were received by local authorities in 2021-22, resulting in a 7% increase in applications when compared to the previous year (9,120) but a 6% decrease when compared to 2019-20 (10,402).

Swansea continues to report the highest number of DoLS applications, but numbers have fallen in 2021-22 when compared to previous years. Overall, ten local authorities have seen an increase in the number of applications received, compared to the pre-pandemic period of 2019-20. There was an increase in the number of applications reported by Merthyr Tydfil, Conwy and Flintshire local authorities. Conwy also reported a significant increase in comparison to the number of applications for 2020-21, whilst Merthyr Tydfil reported a slight reduction for the same period.

Half of local authorities saw a decrease in applications when compared to the pre-pandemic period of 2019-20, notably Torfaen, Swansea, Pembrokeshire and Bridgend. Rhondda Cynon Taf showed no change.

Figure 1b. The number of DoLS applications received by each local authority from 2019 to 2022



Demographics Profile

In 2020 the estimated population of Wales was 3.16 million, within which 2.61 million people were over the age of 18³. This means that on average there were 234 applications to health boards, and 384 applications to local authorities, for every 100,000 adults in Wales (see Figures 2a and 2b).

Health boards

In a similar way to the total numbers, the number of applications relative to the population varied considerably between health boards. This may have been because of differences in local demographics and also the number of managing authorities in that area. For example, some health boards have a higher number of inpatient older adult or learning disability settings within their geographical area, which can generate a higher number of DoLS applications.

Powys Teaching Health Board and Cwm Taf Morgannwg had a high number of applications relative to the population size. The health boards have stated that additional training has increased staff knowledge and skills and therefore has had a direct correlation to increased applications.

Furthermore, Cwm Taf Morgannwg advised the reason for a high number of applications per population is that the health board had one of the highest COVID-19 infection rates in Wales, so patients were transferred to various hospital sites which would sometimes result in multiple applications between managing authorities.

Figures 2a. The total adult population and number of DoLS applications received by each health board and the number of applications per 100,000 adult population in 2021-22

	Total 18+ Population	Number of DoLS applications	DoLS applications per 100,000
Aneurin Bevan	474,525	1,028	216.6
Betsi Cadwaladr	565,013	1,597	282.6
Cardiff and Vale	401,233	152	37.9
Cwm Taf Morgannwg	357,523	1,202	336.2 ⁴
Hywel Dda	316,215	759	240.0
Powys	109,186	455	416.7 ⁵
Swansea Bay	316,019	933	295.2
Total	2,539,714	6,126	241.2

³ See [National level population estimates by year, age and UK country \(gov.wales\)](#)

Local authorities

There was considerable variation in the number of DoLS applications per 100,000 received by local authorities, illustrating a complex picture associated with local demographics and the knowledge and understanding of the DoLS across the sector. On average the DoLS rate of applications per 100,000 adult population was 384 across Wales. The highest rate ranged from 645 in Wrexham and 643 in Neath Port Talbot, to the lowest rate of 231 in Merthyr Tydfil and 244 in Rhondda Cynon Taf. The latter two local authorities continued to report the lowest rate of DoLS applications per 100,000.

Figures 2b. The total adult population and number of DoLS applications received by each local authority and the number of applications per 100,000 adult population in 2021-22

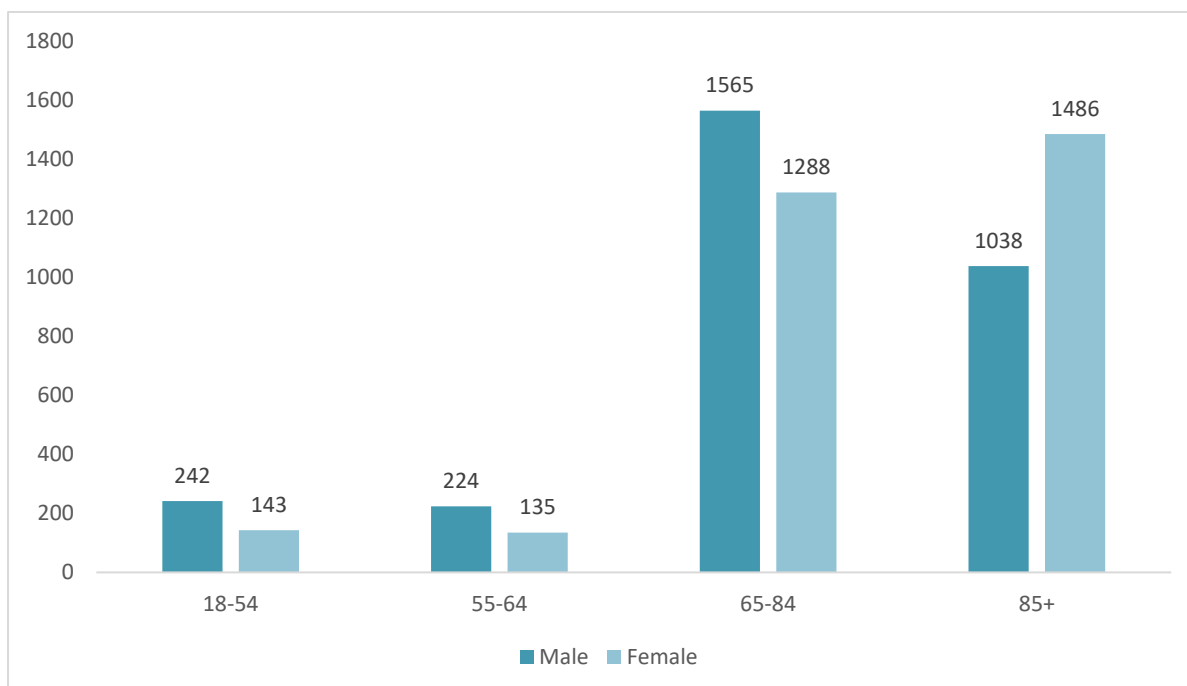
	Total 18+ Population	Number of DoLS applications	DoLS applications per 100,000
Blaenau Gwent	56,401	191	338.6
Bridgend	118,204	391	330.8
Caerphilly	144,061	398	276.3
Cardiff	293,830	786	267.5
Carmarthenshire	152,810	606	396.6
Ceredigion	60,661	228	375.9
Conwy	97,000	461	475.3
Denbighshire	77,165	347	449.7
Flintshire	124,648	463	371.4
Gwynedd	101,957	276	270.7
Isle of Anglesey	57,101	271	474.6
Merthyr Tydfil	47,544	110	231.4
Monmouthshire	77,843	290	372.5
Neath Port Talbot	116,296	748	643.2
Newport	120,851	499	412.9
Pembrokeshire	102,744	354	344.5
Powys	109,186	513	469.8
Rhondda Cynon Taf	191,775	467	243.5
Swansea	199,723	973	487.2
Torfaen	75,369	246	326.4
Vale of Glamorgan	107,403	433	403.2
Wrexham	107,142	691	644.9
Total	2,539,714	9,742	383.6

Health boards

The main group of people with a DoLS application were older adults, with 88% of applications to health boards being for someone over the age of 65 in 2021-22 (see

Figure 3a⁶). There was an even gender split, however this gender balance shifts in the oldest age group, with a higher proportion of those aged 85 or older being women. The differences in demographics between areas largely reflects the populations, and the services provided by the settings in those areas.

Figure 3a. The breakdown of age by gender of health boards for all applications in 2021-22

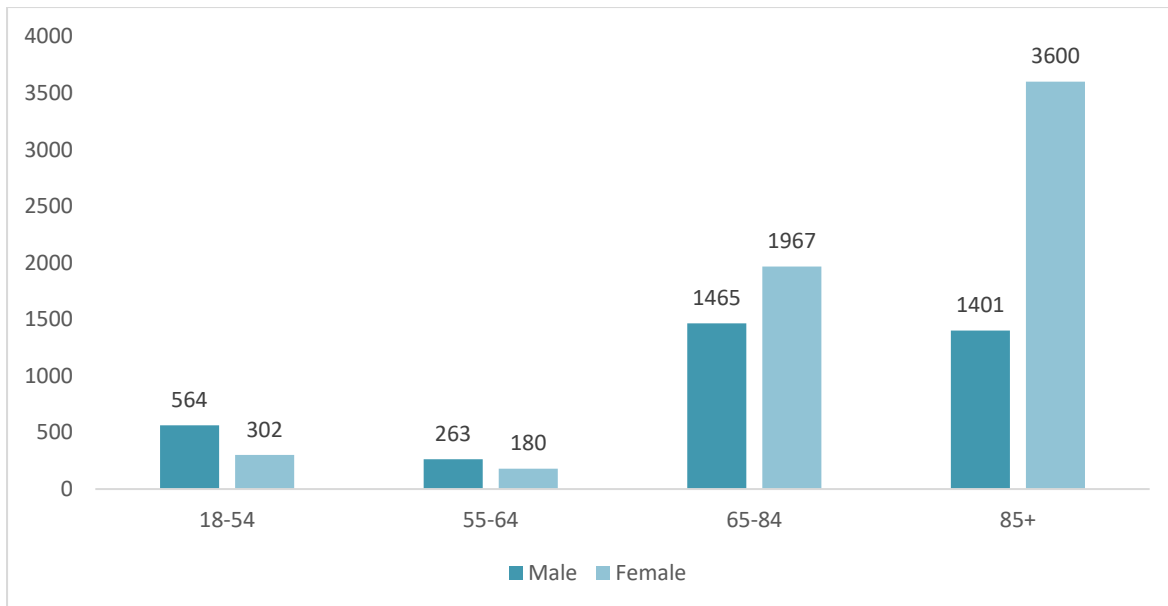


Local authorities

Across Wales, local authorities continued to receive the majority of DoLS applications, with a total of 9,742 applications received in 2021-22. More than 60% of applications were for women. Approximately 87% of applications to local authorities were for someone over the age of 65. As in previous years, the demographic trend for DoLS shows larger numbers of applications made for men up to the age of 64, but after the age of 65 women make up significantly higher numbers of applications.

Figure 3b. The breakdown of age by gender of local authorities for all applications in 2021-22

⁶ Health board DoLS applications totals were 6,126, however not all demographic data was supplied, therefore demographic data totals were 6,121.



Applications made by managing authorities outside of Wales

Some people from Wales receive their care and support or treatment in a care home or hospital outside of Wales. When an application is received from a managing authority outside of Wales but the care and support or treatment has been arranged by a Welsh local authority or health board, then the DoLS assessments remains the responsibility of the Welsh Supervisory Bodies.

Health boards

During 2021-22, 352 DoLS applications (5.7%) were made to three health boards by managing authorities from outside Wales. Powys Teaching Health Board received 68% of the applications made outside of Wales, Betsi Cadwaladr University received 31%, and Aneurin Bevan 1%. Each of these health boards border England.

Local authorities

During the reporting period 2021-22, 224 DoLS applications were made to 19 local authorities by managing authorities from outside Wales. This represented 2% of all applications made to local authorities. Only Blaenau Gwent, Merthyr Tydfil and Torfaen recorded no applications made from outside Wales. Powys recorded the highest number of applications with 76 people receiving care in a care home in England. Almost two-thirds of these applications were made for people aged 65 and over.

Types of applications

Health boards

Most of the 6,126 applications to health boards in 2021-22 were urgent (87% of all applications). This represents a year-on-year increase, from 81% in 2020-21 and 75% in 2019-20. The remaining applications were mostly standard (10% of all applications to health boards) and only 3% were for further authorisation.

There was significant variation between health boards in the proportion of applications received via both the standard and urgent route. Variation occurs because of the types of healthcare settings found in each area. Some areas have more health care settings providing long-term care, while other areas may have a higher proportion of healthcare settings providing acute and short-term care. The variation can also occur over time, with some health boards reporting changes in the ratios at different times in the year.

There was a low number of standard application requests for Hywel Dda and Betsi Cadwaladr University Health Boards. The health boards attribute this to only receiving standard requests from mental health wards for patients who are detained under the MHA and who the Mental Health Team feel no longer meet MHA criteria. Therefore, a DoLS application is more appropriate.

Figure 4a. The percentage of different application types for each health board in 2021-22

	Standard	Urgent	Further
Aneurin Bevan	10%	89%	1%
Betsi Cadwaladr	2%	93%	5%
Cardiff and Vale	20%	72%	7%
Cwm Taf Morgannwg	23%	71%	6%
Hywel Dda	1%	95%	5%
Powys	8%	92%	0%
Swansea Bay	12%	87%	1%
Total	10%	87%	3%

Local authorities

The majority of the 9,742 applications received by local authorities continued to be for a standard authorisation. In 2021-22, 49% [4,808] of all applications were for standard, 20% [1,959] were via the urgent route and the remaining 31% [2,975] were further applications. Although a number of local authorities granted shorter authorisations, we did not see the increase in the number of further applications we would have expected. However, this figure may be affected by three out of 22 local authorities reporting no further applications for this reporting period. This may be a

recording issue; CIW will discuss this with the local authorities as part of ongoing monitoring of local authority performance.

There has been minor change in the proportion of urgent applications which increased to 20% from 17% in comparison with the previous year.

Figure 4b. The percentage of different application types for each local authority in 2021-22

	Standard	Urgent	Further
Blaenau Gwent	18%	43%	38%
Bridgend	57%	3%	40%
Caerphilly	31%	47%	22%
Cardiff	64%	6%	29%
Carmarthenshire	60%	16%	24%
Ceredigion	53%	7%	40%
Conwy	39%	27%	34%
Denbighshire	84%	16%	0%
Flintshire	85%	15%	0%
Gwynedd	79%	20%	0%
Isle of Anglesey	39%	16%	45%
Merthyr Tydfil	77%	8%	15%
Monmouthshire	14%	60%	26%
Neath Port Talbot	34%	4%	62%
Newport	44%	15%	41%
Pembrokeshire	51%	23%	27%
Powys	43%	23%	34%
Rhondda Cynon Taf	66%	20%	14%
Swansea	57%	7%	36%
Torfaen	23%	53%	24%
Vale of Glamorgan	75%	5%	20%
Wrexham	0%	52%	48%
Total	49%	20%	31%

New authorisations

Health boards

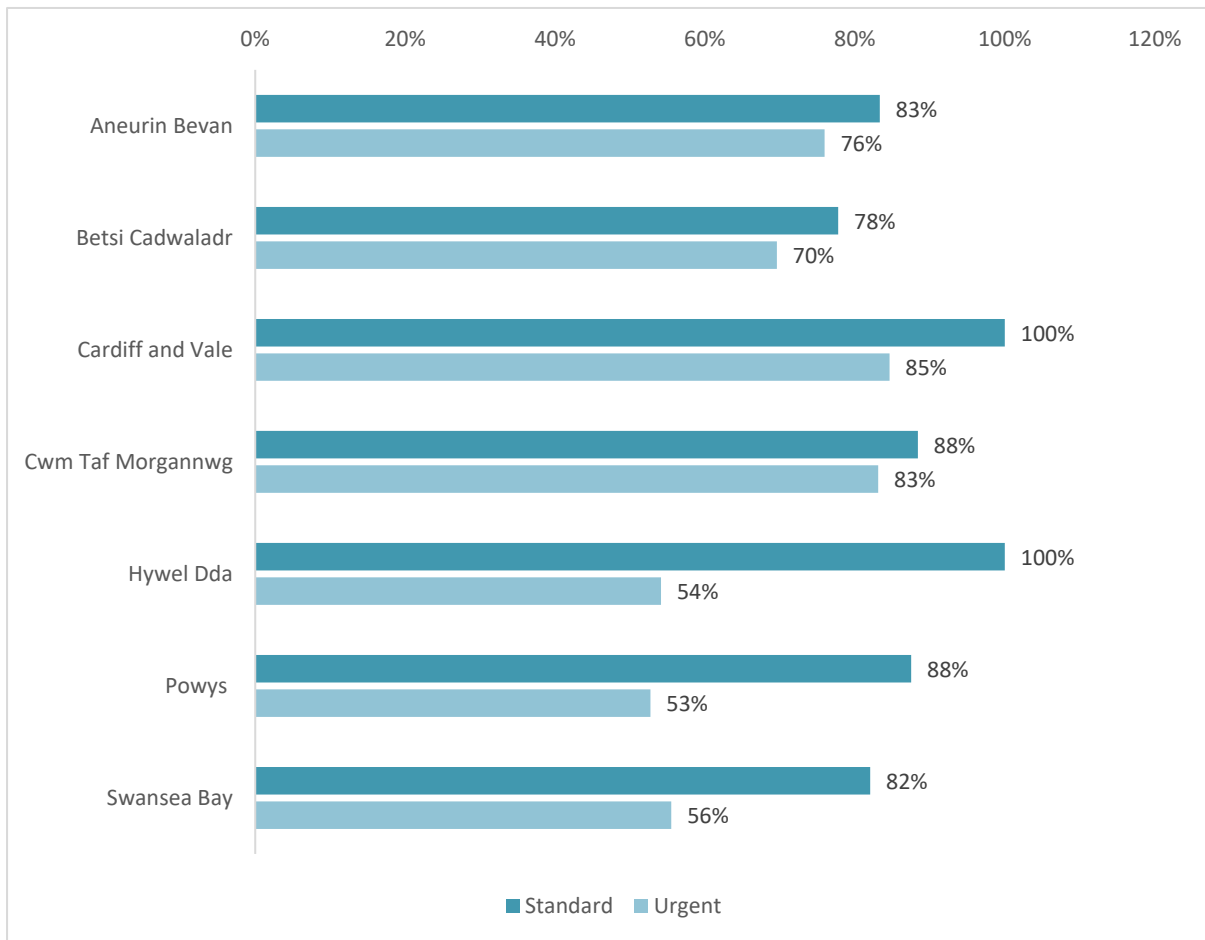
Of the 6,126 DoLS applications received by health boards in 2021-22, 12% were still in progress on 1 April 2022. This is a decrease compared to the last two years' applications, which were still in progress (17%).

This year 64% of applications were withdrawn before they could be assessed. The number of withdrawn applications has increased year on year, from 48% in 2019-20 and 57% in 2020-21. The main reasons given for applications being withdrawn are the person has either been discharged from hospital, regained capacity, transferred to a different site or has died.

Of the remaining 1,454, 74% (1,075) were authorised. This is slightly lower than last year's authorised applications (78%) and equal to 2019-20 (74%).

Across all health boards, there was a higher proportion of standard applications authorised than urgent applications. There was a variation amongst the proportion of applications authorised by each health board. Hywel Dda, Powys and Swansea Bay health boards had a lower number of urgent applications authorised, and these figures have decreased over the last two years.

Figure 5a. The proportion of applications authorised by each health board in 2021-22



Relatively few applications received by health boards were refused. It was more likely that the application was no longer needed before it was assessed, rather than the recommendation being to refuse the application. However, if an application was refused, the most common reason was because the mental capacity condition was not met.

Since 2019, the number of refused applications which were not a deprivation has reduced from 23% to 15% in 2021-22.

Figure 5ai. The proportion of applications not authorised by reason for refusal per health board in 2021-22⁷

	Refused					Withdrawn	In Progress
	Best interest	Eligibility ⁸	Mental Capacity	Mental Health	Not a deprivation		
Aneurin Bevan	4%	4%	89%	4%	0%	52%	35%
Betsi Cadwaladr	0%	18%	72%	5%	4%	71%	6%
Cardiff and Vale	0%	0%	100%	0%	0%	47%	22%
Cwm Taf Morgannwg	0%	3%	58%	39%	0%	54%	12%
Hywel Dda	0%	46%	54%	0%	0%	70%	12%
Powys	0%	0%	89%	11%	0%	79%	7%
Swansea Bay	1%	7%	73%	4%	15%	68%	0%
Total	1%	14%	70%	10%	5%	64%	12%

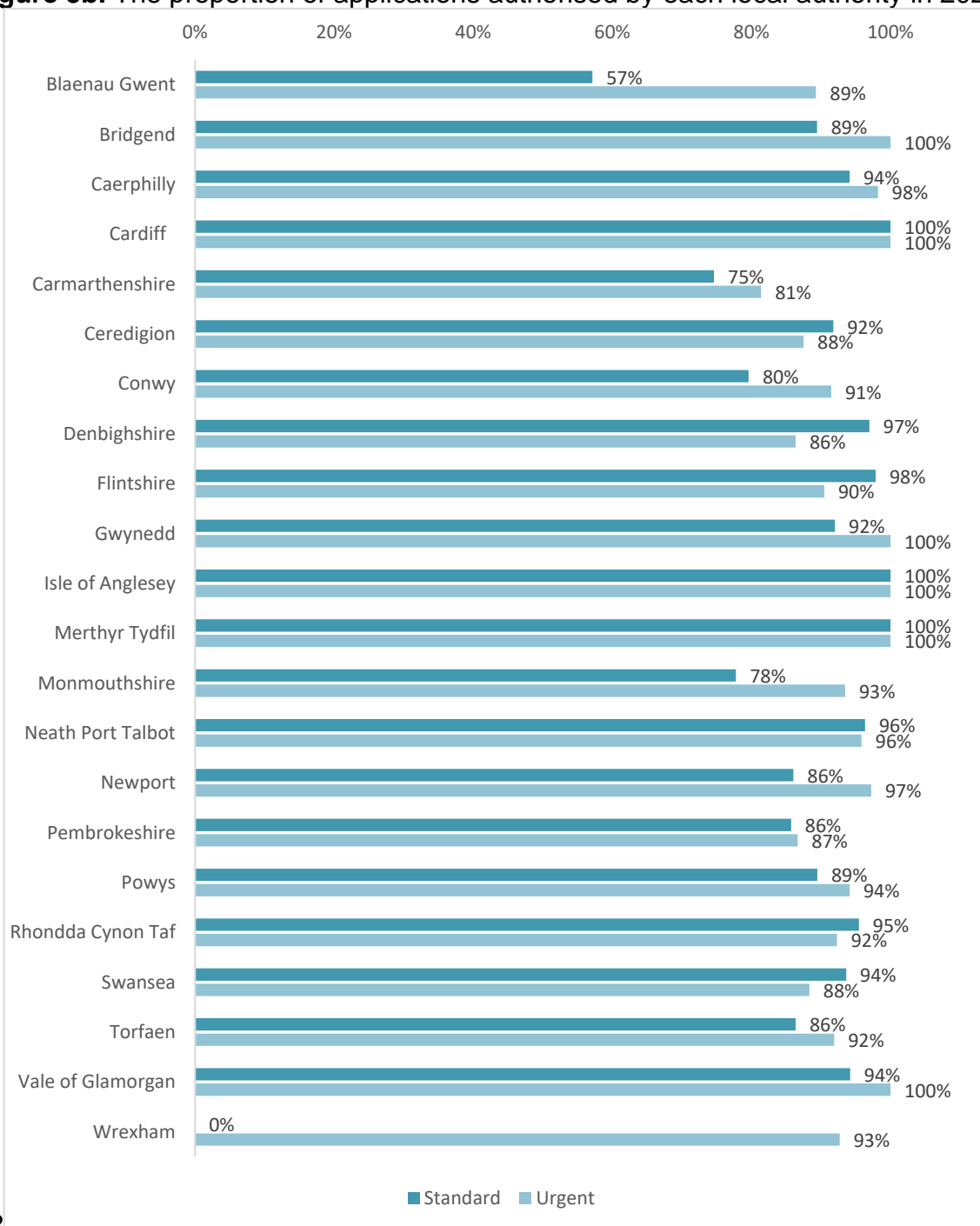
Local authorities

The proportion of applications assessed and authorised varied by local authority. Wrexham continued to be the exception, reporting no standard applications for the reporting period. Most local authorities authorise a high proportion of DoLS applications.

⁷ Details of the different assessments can be found in the Glossary.

⁸ The eligibility criteria is used when the Mental Health Act may apply instead of DoLS. Health boards with a higher use of the eligibility requirement receive a higher number of applications from mental health units, where patients may be ineligible for DoLS due to the MHA.

Figure 5b. The proportion of applications authorised by each local authority in 2021-



22

Of the 9,742 DoLS applications received by local authorities in 2021-22, 3,564 [37%] were still in progress on 1 April 2022. This was a slight increase when compared to the previous year with 3,564 people during 2021-22 waiting too long to have their DoLS application processed which risked infringing their human rights. In addition, 12% of applications were withdrawn before assessment meaning a further 1,128 people may have been deprived of their liberty without the appropriate safeguards during 2021-22. The main reason for withdrawal is the death of the person before a decision is made or the person has left or moved to another care home. When people move to another care home a new application must be made if still required.

Wrexham and Bridgend had no applications in progress as was the case for Swansea in 2020-21. However, in 2021-22 Swansea (the local authority with the highest number of applications in Wales) reported a small proportion of applications in progress. Both Rhondda Cynon Taf and Merthyr Tydfil saw an increase in the proportion of applications in progress, whilst Cardiff, the Vale of Glamorgan and other local authorities saw a decrease compared to the previous year.

Of the 5,050 applications assessed by the local authorities during 2021-22, 95% (4,801) were authorised. This is an increase on the number of DoLS applications authorised the previous year (88%). Similar to health boards, very few applications (less than 5%) to local authorities were refused and the reasons for refusal varied considerably between each local authority. Of the 249 applications refused, 68% (162) of these applications were refused on the grounds that the mental capacity condition was not met – this is an increase compared to the pre-pandemic period (53%), and 20% or 48 applications were refused due to eligibility⁹. Three quarters [35] of applications refused by Carmarthenshire were due to reasons of eligibility. However, some local authorities did not refuse any applications, including Cardiff and Gwynedd.

CIW is aware of the additional funding provided by Welsh Government to support training, especially in embedding the principles of the 2005 Mental Capacity Act. This is an area CIW will continue to monitor and discuss with the local authorities.

Figure 5bi. The proportion of applications not authorised by local authority in 2021-22

	Refused	Withdrawn	In Progress
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⁹ See Glossary for more information

	Best interest	Eligibility	Mental Capacity	Mental Health	Not a deprivation		
Blaenau Gwent	0%	17%	83%	0%	0%	17%	28%
Bridgend	5%	0%	95%	0%	0%	15%	0%
Caerphilly	0%	0%	100%	0%	0%	9%	53%
Cardiff	0%	0%	0%	0%	0%	1%	51%
Carmarthenshire	2%	76%	15%	2%	4%	23%	36%
Ceredigion	0%	0%	40%	0%	60%	15%	19%
Conwy	53%	13%	33%	0%	0%	15%	46%
Denbighshire	0%	0%	100%	0%	0%	7%	58%
Flintshire	0%	0%	100%	0%	0%	21%	34%
Gwynedd	0%	0%	0%	0%	100%	13%	69%
Isle of Anglesey	0%	0%	100%	0%	0%	13%	42%
Merthyr Tydfil	0%	0%	100%	0%	0%	13%	72%
Monmouthshire	0%	0%	100%	0%	0%	7%	50%
Neath Port Talbot	0%	0%	100%	0%	0%	10%	25%
Newport	0%	0%	88%	13%	0%	6%	40%
Pembrokeshire	8%	0%	92%	0%	0%	21%	40%
Powys	0%	36%	64%	0%	0%	15%	55%
Rhondda Cynon Taf	0%	0%	100%	0%	0%	15%	73%
Swansea	0%	0%	100%	0%	0%	12%	6%
Torfaen	14%	0%	86%	0%	0%	10%	44%
Vale of Glamorgan	0%	0%	14%	0%	86%	1%	54%
Wrexham	0%	19%	78%	0%	4%	9%	0%
Total	5%	20%	68%	1%	6%	12%	37%

Application timescales

Once an application is received, it is logged and prioritised before being allocated to an assessor. The guidance¹⁰ states that the assessments should then be completed within five days for urgent authorisations, and 21 days for standard authorisations.

The following data shows the length of time taken to process applications in seven-day timeframes, from making a decision on the same day, up to when a decision takes more than 28 days. The applications withdrawn are not included.

Health boards

The results show that 96% of urgent applications to health boards took more than seven days to process, and 73% of standard applications took more than 28 days to process. For local authorities 93% of urgent applications took more than seven days to process, 88% of standard applications took more than 28 days to process, and 66% of further applications took more than 28 days to process.

¹⁰<http://www.wales.nhs.uk/sites3/Documents/744/Guidance%20for%20Supervisory%20Bodies.pdf>

Health boards have seen an increase year on year in the time taken to process standard applications, 50% in 2019-20, 55% in 2020-21 and this year has seen a significant increase to 73% taking over 28 days.

The same can be seen for urgent applications, where the time taken to process the applications was less than 7 days. The national average decreased from 8% in 2019-20 to 4% in 2021/22. Furthermore, we are also seeing a considerable increase year on year in the length of time to process urgent applications over 28 days, 34% in 2019-20 to nearly double at 64% in 2021-22.

Figure 6a. The length of time taken to process applications for each health board in 2021-22

	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
Standard					
Aneurin Bevan	0%	14%	0%	13%	73%
Betsi Cadwaladr	0%	0%	0%	14%	86%
Cardiff and Vale	0%	7%	13%	33%	47%
Cwm Taf					
Morgannwg	0%	0%	5%	18%	77%
Hywel Dda	0%	0%	50%	50%	0%
Powys	0%	0%	17%	33%	50%
Swansea Bay	0%	3%	0%	13%	84%
Total	0%	3%	5%	19%	73%
Urgent					
Aneurin Bevan	0%	1%	3%	25%	71%
Betsi Cadwaladr	0%	0%	5%	14%	81%
Cardiff and Vale	0%	32%	10%	29%	29%
Cwm Taf					
Morgannwg	0%	7%	16%	33%	44%
Hywel Dda	0%	7%	21%	29%	43%
Powys	0%	0%	10%	38%	52%
Swansea Bay	0%	2%	3%	14%	81%
Total	0%	4%	9%	23%	64%

Local authorities

During 2021-22, 49% of or 4,808 applications received by local authorities were for a standard authorisation and assessments should be completed within 21 days.

Of the assessments undertaken 88% took more than 28 days to complete. Merthyr assessed 55% of their assessments in less than 28 days; however, as reported earlier, Merthyr is one of the local authorities with the highest proportion of applications in progress at the end of the financial year. Bridgend, a local authority with no applications in progress at the end of the financial year, took more than 28 days to assess 98% of the requests received for standard authorisation. Most local

authorities only managed to complete approximately 20% of assessments within 28 days.

Figure 6b. The length of time taken to process standard applications for each local authority in 2021-22

	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
All Local Authorities	0%	1%	2%	8%	88%
Blaenau Gwent	0%	0%	0%	25%	75%
Bridgend	0%	1%	1%	1%	98%
Caerphilly	0%	6%	6%	6%	81%
Cardiff	0%	1%	4%	12%	84%
Carmarthenshire	0%	0%	3%	1%	96%
Ceredigion	0%	1%	0%	1%	97%
Conwy	0%	0%	5%	5%	89%
Denbighshire	0%	0%	0%	7%	93%
Flintshire	1%	2%	3%	10%	85%
Gwynedd	0%	5%	10%	10%	75%
Isle of Anglesey	0%	0%	0%	0%	100%
Merthyr Tydfil	33%	11%	0%	11%	44%
Monmouthshire	0%	0%	0%	0%	100%
Neath Port Talbot	0%	0%	0%	5%	95%
Newport	0%	6%	3%	22%	69%
Pembrokeshire	0%	4%	7%	33%	56%
Powys	0%	0%	0%	4%	96%
Rhondda Cynon Taf	5%	5%	15%	5%	70%
Swansea	0%	0%	0%	7%	93%
Torfaen	0%	0%	5%	5%	89%
Vale of Glamorgan	0%	2%	4%	16%	77%
Wrexham	0%	0%	0%	0%	0%

Of the applications received in 2021-22, 20% or 1,959 were for standard following an urgent authorisation. The number of standard applications following urgent varied across Wales with the highest proportion of urgent applications being in Monmouthshire (60%) followed by Torfaen (53%) and Wrexham (52%). Half of local authorities reported the proportion of urgent applications to be less than 20% of all applications.

Of the applications received in Bridgend, 3% were for standard authorisation following urgent, with 80% of the applications assessed in less than seven days. For Swansea, the local authority with the highest number of applications in Wales, 7% of

their applications were for standard following urgent, with 30% of the applications assessed in less than seven days and 75% in less than 14 days. In the Vale of Glamorgan, 5% of the applications received were for standard following urgent, 33% were assessed in less than seven days and 58% in less than 14 days.

A small number of local authorities reported that all applications for standard following urgent authorisation took more than 28 days to assess. Monmouthshire CC had the highest proportion of requests for standard following urgent and were only able to assess 7% in less than 28 days.

Urgent authorisation is normally for a maximum period of seven days but in exceptional circumstances an urgent authorisation can be extended to a maximum of 14 days by the supervisory body. The number of urgent authorisations extended is not included in the current data. Some supervisory bodies may benefit from reviewing their current procedure for urgent authorisation with the managing authorities.

Figure 6bi. The length of time taken to process urgent applications for each local authority in 2021-22

	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
All Local Authorities	0%	6%	12%	17%	64%
Blaenau Gwent	0%	0%	4%	0%	96%
Bridgend	0%	80%	10%	10%	0%
Caerphilly	0%	0%	4%	4%	93%
Cardiff	0%	3%	17%	24%	55%
Carmarthenshire	0%	11%	37%	29%	23%
Ceredigion	0%	21%	36%	29%	14%
Conwy	0%	12%	7%	2%	79%
Denbighshire	0%	5%	5%	5%	84%
Flintshire	0%	0%	16%	16%	68%
Gwynedd	0%	0%	5%	10%	86%
Isle of Anglesey	0%	0%	0%	0%	100%
Merthyr Tydfil	0%	0%	0%	0%	100%
Monmouthshire	0%	2%	0%	5%	93%
Neath Port Talbot	4%	4%	39%	39%	13%
Newport	0%	3%	11%	20%	66%
Pembrokeshire	0%	12%	32%	8%	48%
Powys	0%	0%	3%	9%	88%
Rhondda Cynon Taf	0%	0%	8%	50%	42%
Swansea	0%	30%	45%	11%	13%
Torfaen	0%	0%	3%	3%	94%

Vale of Glamorgan	0%	33%	25%	8%	33%
Wrexham	1%	2%	5%	25%	68%

Of the applications received in 2021-22, 31% (2,975) were further applications.

Blaenau Gwent were able to assess 80% of their further applications in less than 28 days, Wrexham 71%, and Newport 70%. The other local authorities were unable to complete most of their applications within 28 days.

Figure 6biii. The length of time taken to process applications for each local authority in 2021-22 by further application

	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
All Local Authorities	0%	3%	6%	24%	66%
Blaenau Gwent	1%	13%	19%	46%	20%
Bridgend	0%	0%	2%	2%	96%
Caerphilly	0%	4%	11%	30%	55%
Cardiff	0%	0%	2%	22%	76%
Carmarthenshire	0%	1%	3%	10%	86%
Ceredigion	0%	2%	0%	7%	92%
Conwy	0%	6%	7%	7%	80%
Denbighshire	0%	0%	0%	0%	0%
Flintshire	0%	0%	0%	0%	0%
Gwynedd	0%	0%	0%	0%	0%
Isle of Anglesey	0%	5%	8%	23%	65%
Merthyr Tydfil	0%	20%	20%	0%	60%
Monmouthshire	0%	10%	11%	35%	44%
Neath Port Talbot	0%	0%	1%	12%	88%
Newport	0%	10%	15%	45%	30%
Pembrokeshire	0%	0%	13%	19%	68%
Powys	0%	2%	4%	10%	85%
Rhondda Cynon Taf	4%	9%	9%	17%	61%
Swansea	0%	0%	0%	8%	92%
Torfaen	0%	2%	2%	38%	58%
Vale of Glamorgan	0%	0%	9%	13%	78%
Wrexham	0%	2%	13%	56%	29%

Authorisation durations

The Code of Practice¹¹ states any authorisation should be for the shortest possible duration, and for only as long as the relevant person will meet the required criteria.

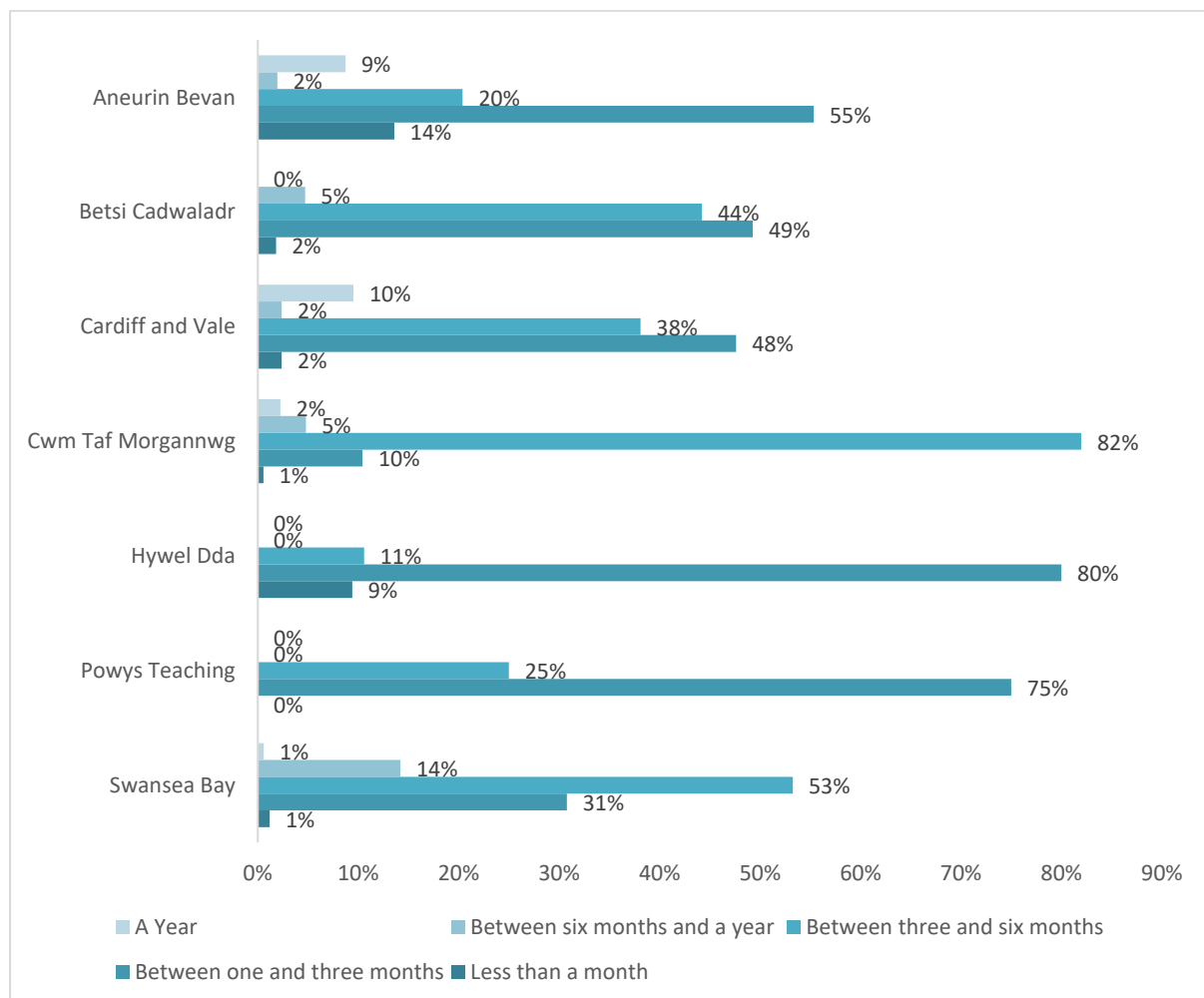
Health boards

93% of authorisations made by health boards were for six months or less, and 40% for three months or less. Only 2% of authorisations were for a whole year.

Aneurin Bevan and Cardiff and Vale are some of the health boards to make year-long authorisations. For these health boards it is due to there being a relatively high number of learning disability units, specialist neurology units and private/independent hospitals providing long-term rehabilitation.

Cwm Taf Morgannwg had only 11% of applications proposed for the duration within three months, followed by Swansea Bay at 32%.

Figure 7a. The proposed duration of authorisations by each health board in 2021-22

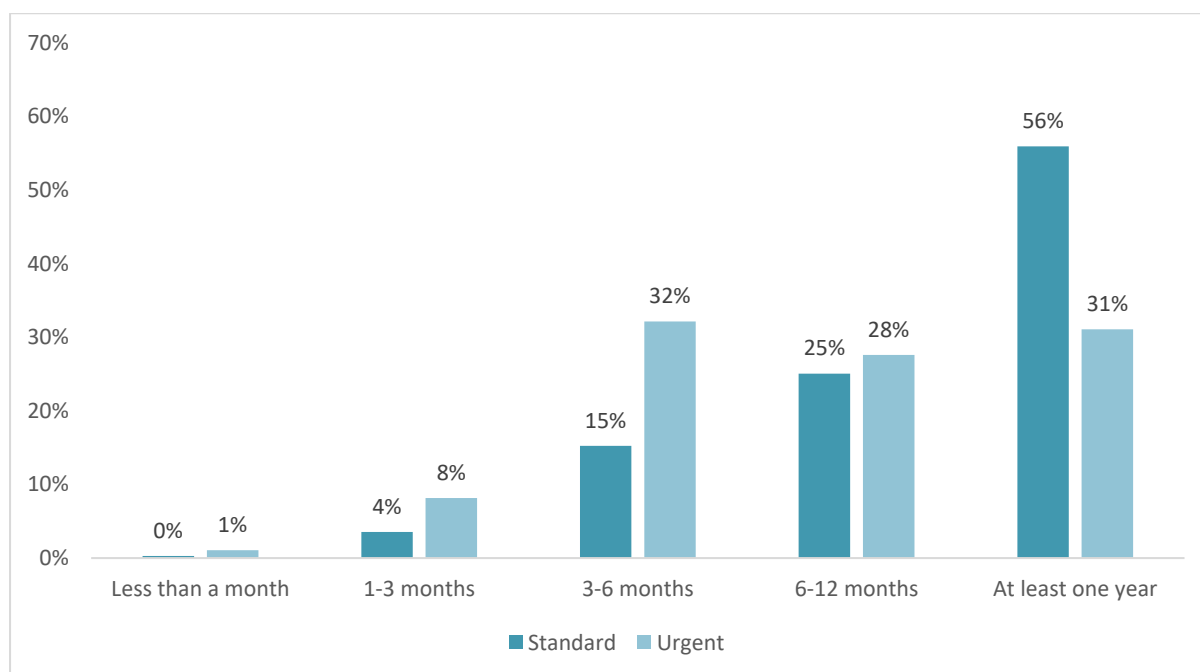


Local authorities

A different picture can be seen for the duration of applications authorised by local authorities where the majority are for six months or more. Compared to the previous year there was a slight increase in the duration of applications being authorised by local authorities for both standard and urgent applications. There is a small increase in standard authorisations proposed within the 1–3-month timeframe, up from 2% in 2020-21 to 4% in 2021-22.

Ceredigion was the only local authority reporting that nearly two thirds of its applications were proposed for less than three months. In comparison, all of Merthyr Tydfil’s applications were proposed for between six months and a year, whilst Gwynedd reported that 80% of its applications were for proposed for at least one year.

Figure 7b. The proposed duration of authorisations by local authorities in 2021-22



¹¹ See

http://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

Reviews, Representatives, Independent Mental Capacity Advocates (IMCA) and Court of Protection

When a person is deprived of their liberty, the managing authority must request a review if it appears one or more of the qualifying requirements is no longer met or may no longer be met.

During 2021-22, 856 authorisations (40 in health boards and 816 in local authorities) underwent a review. This represents 4% of health board authorised applications¹² and 17% of local authority authorised applications¹³.

This was a slight decrease for health boards, compared to last year where 11% of authorised applications were reviewed and 8% in 2019-20. There was a considerable increase in the number of reviews undertaken by local authorities, up from 5% last year and 3% in 2019-20.

Appointment of Relevant Persons Representative

The supervisory bodies must ensure people are supported and represented in matters relating to their deprivation of liberty, and all applications require that the individual has a nominated representative. In 2021-22 60% of applications authorised by a health board, and 58% of applications authorised by a local authority, were represented by a family member, friend or carer.

When there is no one independent of services to represent the person, an IMCA or a paid representative must be instructed. Health boards reported that 35% of authorisations had paid representation compared to 41% reported by local authorities. Around 6% of health board authorisations and 1% of local authorities were not reported as having any form of representation. Whilst this is a significant improvement against the health boards' performance last year (45%), supervisory bodies must always ensure people are supported and represented.

Independent Mental Capacity Advocate

There are three roles for IMCAs in cases of deprivation of liberty as set out in the different sections of the Mental Capacity Act.

- IMCAs are appointed under Section 39A when the individual has no one to consult.
- IMCAs are appointed under Section 39C when the individual's representative is temporarily or suddenly no longer able to represent them.

¹² 11 of these were subject of multiple reviews.

¹³ 4 of these were subject of multiple reviews.

- IMCAs are appointed under Section 39D to support the individual’s representative, if that representative is unpaid (e.g. family member), and it is believed by the supervisory body is in need of support.

Health boards

Of all 1,454 applications authorised by health boards, 21 (1%) made use of an IMCA appointed under Section 39D, 14 (less than 1%) of an IMCA appointed under Section 39A and none made use of an IMCA appointed under Section 39C. This was lower than the previous figures year on year. This varied considerably between health boards, with the majority of the IMCA appointments being made by Betsi Cadwaladr University Health Board.

Local authorities

Of all 4,801 applications authorised by local authorities, 242 (5%) made use of an IMCA appointed under Section 39A, 70 (2%) appointed under Section 39D and one (less than 1%) made use of an IMCA appointed under Section 39C. These figures varied considerably by local authority, the highest number of all IMCA 39A appointments (57%) continues to be reported by Neath Port Talbot, and 44% of all IMCA 39D appointments continues to be reported by the Isle of Anglesey.

Referrals to Court of Protection

Health boards

A total of 32 authorisations from health boards were referred to the Court of Protection in 2021-22. This figure has remained consistent over the last few years (26 in 2020-21 and 34 in 2019-20). This year’s referrals were primarily from Betsi Cadwaladr and Cwm Taf Morgannwg health boards.

Figure 8a. The proportion of referrals made by health boards to the Court of Protection during 2019-22

	2019-20	2020-21	2021-22
Aneurin Bevan	0.0%	1.6%	1.0%
Betsi Cadwaladr	5.6%	3.0%	5.1%
Cardiff and Vale	0.0%	0.0%	0.0%
Cwm Taf	3.7%	3.2%	4.8%
Morgannwg			
Hywel Dda	1.0%	1.9%	0.0%
Powys Teaching	0.0%	0.0%	0.0%
Swansea Bay	0.8%	1.7%	0.0%
Wales Total	1.9%	2.2%	3.0%
Total number of referrals	34	26	32
Total Proportion of Referrals	2.2%	2.1%	2.6%

Local authorities

A total of 105 local authority authorisations were referred to the Court of Protection in 2021-22. The proportion of referrals has remained consistent at 2% of all DoLS authorisations during 2019-2022. For the period 2021-22 local authorities saw a 22% rise in the number of referrals when compared to the previous year, and both Flintshire and Rhondda Cynon Taf reported the highest number. Looking back to the period 2019-22 there were no referrals to Court of Protection by Isle of Anglesey, Neath Port Talbot or Vale of Glamorgan.

Figure 8b. The proportion of referrals made by local authorities to the Court of Protection during 2019-22

	2019-20	2020-21	2021-22
Blaenau Gwent	0%	2%	0%
Bridgend	1%	1%	1%
Caerphilly	4%	3%	0%
Cardiff	0%	1%	0%
Carmarthenshire	16%	6%	10%
Ceredigion	3%	1%	4%
Conwy	1%	0%	0%
Denbighshire	9%	10%	6%
Flintshire	1%	21%	19%
Gwynedd	0%	0%	2%
Isle of Anglesey	0%	0%	0%
Merthyr Tydfil	1%	1%	0%
Monmouthshire	0%	3%	2%
Neath Port Talbot	0%	0%	0%
Newport	1%	2%	6%
Pembrokeshire	9%	1%	0%
Powys	0%	3%	14%
Rhondda Cynon Taf	35%	22%	16%
Swansea	8%	8%	11%
Torfaen	3%	9%	1%
Vale of Glamorgan	0%	0%	0%
Wrexham	8%	2%	8%
Total proportion of referrals	2% (77)	2% (86)	2% (105)

Data Quality

The data in this report is used to monitor the use of the DoLS throughout Wales. It is submitted by local authorities and health boards to CIW, but it is not verified by either CIW or HIW.

The definition of what constitutes a deprivation of liberty changed in 2014, and therefore data collected in the 2013-14 financial year is not directly comparable to that collected for subsequent financial years. More information about the changes introduced can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48512/2/DH_Consolidated_Guidance.pdf

There may be a small number of cases where applications are inappropriately labelled as either Standard or Urgent, and there may be a margin of error in the results.

In some instances, where values have been presented in a figure along with their sum total, the values may be slightly different due to the rounded values.

Feedback on this report

We are keen to hear from people who use our statistics. If you have any comments or queries regarding this publication or its related products, they would very be welcome. Please email CIWInformation@gov.wales or HIW.PIM@gov.wales.

Glossary: Key terms used in the DoLS Monitoring Report

Assessment for the purpose of the Deprivation of Liberty Safeguards	All six assessments must be positive for an authorisation to be granted.
<ul style="list-style-type: none">• Age	An assessment of whether the relevant person has reached age 18.
<ul style="list-style-type: none">• 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 (BIA).
<ul style="list-style-type: none">• 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.
<ul style="list-style-type: none">• 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.
<ul style="list-style-type: none">• Mental health assessment	An assessment of whether or not a person has a mental disorder. This must be decided by a medical practitioner.
<ul style="list-style-type: none">• 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 Regulation and Inspection of Social Care (Wales) Act 2016 or Care Standards Act 2000.
CIW	Care 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.
Further authorisation	When an existing DoLS authorisation is coming to an end and the Managing Authority concludes that the authorisation needs to continue then a further authorisation should be requested. This can be requested 28 days in advance.
HIW	Healthcare Inspectorate Wales (HIW) regulates and inspects NHS services and independent healthcare providers in Wales against a range of standards, policies, guidance and regulations on order to highlight areas requiring improvement.
Liberty Protection Safeguards	The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The Liberty Protection Safeguards will deliver improved outcomes for people who are or who need to be deprived of their liberty. The Liberty Protection Safeguards have been designed to put the rights and wishes of those people at the centre of all decision-making on deprivation of liberty.

Health board	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	<p>The local authority (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.</p> <p>Care homes run by the local authority will have designated managing authorities.</p>
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 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.
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'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 department 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.
