Arolygiaeth Gofal Cymru
Care Inspectorate Wales

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Healthcare Inspectorate Wales

Deprivation of Liberty Safeguards

Annual Monitoring Report for Health and Social Care 2020-21

Contents

Key Findings

- Overall, there was a decrease in the number of Deprivation of Liberty Safeguards (DoLS) applications received by supervisory bodies in 2020-21.
- Compared to the previous year, the total number of DoLS applications to health boards decreased by 6%. Three of the seven health boards reported a decrease.
- Compared to the previous year, the total number of DoLS applications to local authorities decreased by 12%. 18 of the 22 local authorities reported a decrease.
- The majority of DoLS applications continue to be for older people, with 87% of applications being for people over the age of 65. Most applications for DoLS continue to be from care homes for older adults, and from hospital wards for older adults.
- As in previous years there were significantly more DoLS authorisations for men compared with women, up to the age of 64. However, after the age of 85 a significantly higher number of authorisations related to women.
- Compared to the previous year, the proportion of applications received by health boards classed as urgent increased from 75% to 81%. Conversely, the figures for local authorities decreased from 21% to 17%.
- The length of time taken to process applications remains poor. This suggests supervisory bodies were unable to assure themselves that people's human rights were not being breached by being deprived of their liberty unlawfully.
- The proportion of standard applications processed that took over 28 days in health boards and local authorities, were 55% and 85% respectively.
- The proportion of applications processed via the urgent route that took over 7days in health boards and local authorities, were 94% and 93% respectively.
- Over the last three years there has been an increase in both the number of DoLS reviews undertaken, and representations made by Independent Mental Capacity Advocates (IMCAs).
- The proportion of authorisations referred to the Court of Protection has seen year on year increases for the period 2018-21.

Introduction

This is the annual monitoring report of 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 2020 until the end of March 2021. It is important to highlight that the data in this report will have been significantly affected by the Covid-19 pandemic. This is described in the following section, on the impact of Covid-19 pandemic.

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.

The Deprivation of Liberty Safeguards 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 of Human Rights (ECHR). A Supreme Court ruling in March 2014[1], 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 that 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 (HB) to authorise any DoLS applications made. Care homes apply to their local authority (LA) 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 standard

[1] See http://mentalhealthlaw.co.uk/Cheshire_West_and_Chester_Council_v_P_(2014)_UKSC_19,_(2014)_MHLO_16

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 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 that 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 report[2] (2014) of the MCA that concluded that DoLS were "not fit for purpose" and recommended they be replaced. In July 2018, the UK Government published a Mental Capacity (Amendment) Bill, which became law in May 2019.

The Liberty Protection Safeguards (LPS) were introduced by the Mental Capacity (Amendment) Act 2019, and will replace DoLS as the system to lawfully deprive someone over the age of 16 of their liberty. Specifically, LPS will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements, in England and Wales.

On 17 December 2021 the UK Government announced that the original planned implementation date of April 2022 for LPS cannot be met. This is due to significant challenges, and system wide workforce pressures associated with the ongoing response to the pandemic. A new implementation date has not yet been confirmed. Although LPS is a reserved subject matter[3], the Mental Capacity (Amendment) Act 2019 contains regulation-making powers for the Welsh Ministers to implement LPS in Wales.

In Wales, the functions of monitoring the operation of LPS falls to Welsh Ministers, and functions will be performed on their behalf by HIW, CIW and in respect of education settings the function is performed by Estyn.

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

[3] Reserved matters are decisions that are still taken by the UK Parliament at Westminster even though they have effect in Scotland, Wales, Northern Ireland or the regions of England

Results

Data was collected from local authorities and health boards in May 2021, and this related to the DoLS applications they received in the 2020-21 financial year. The data provides anonymous details of:

- demographic profiles;
- number of applications;
- types of application;
- new authorisation;
- application timescales; and
- Reviews, Representatives, Independent Mental capacity Advocates (IMCA) and Court of Protection.

In 2020-21 delays in DoLS applications being assessed means many health boards and local authorities, were unable to assure themselves 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 with partner agencies.

1. Impact of Covid-19 Pandemic

Health and Social Care Services had to adjust in unprecedented ways to respond to the challenges presented by the pandemic, and also comply with measures implemented nationally and locally to reduce the spread of the virus. Providers faced a significant challenge in balancing the need to adhere to government guidelines on infection prevention and control, whilst ensuring that they identified when the DoLS should be used to deprive someone of their liberty. This included identifying whether to use the DoLS or the powers provided under the Coronavirus Act to restrict people's behaviour in order to control the virus.

This report covers the 2020-21 financial year, which means the health boards and local authorities were receiving applications and working during the height of the Covid-19 pandemic. To support social distancing and reduce the risk of infection, many staff in health boards and local authorities worked from home, which meant many of the DoLS assessments were undertaken remotely. This has been beneficial for some people, who preferred not having professionals coming to visit them during the pandemic. However, some people did request face-to-face assessments, and this was essential for others, especially people with communication difficulties.

A shortage of staff in hospitals and care homes meant there were difficulties in properly facilitating virtual assessments. Not all care homes were initially equipped to support remote access, and this impacted on their ability to provide sufficient information to conduct assessments. Also, some staff in the health boards and local

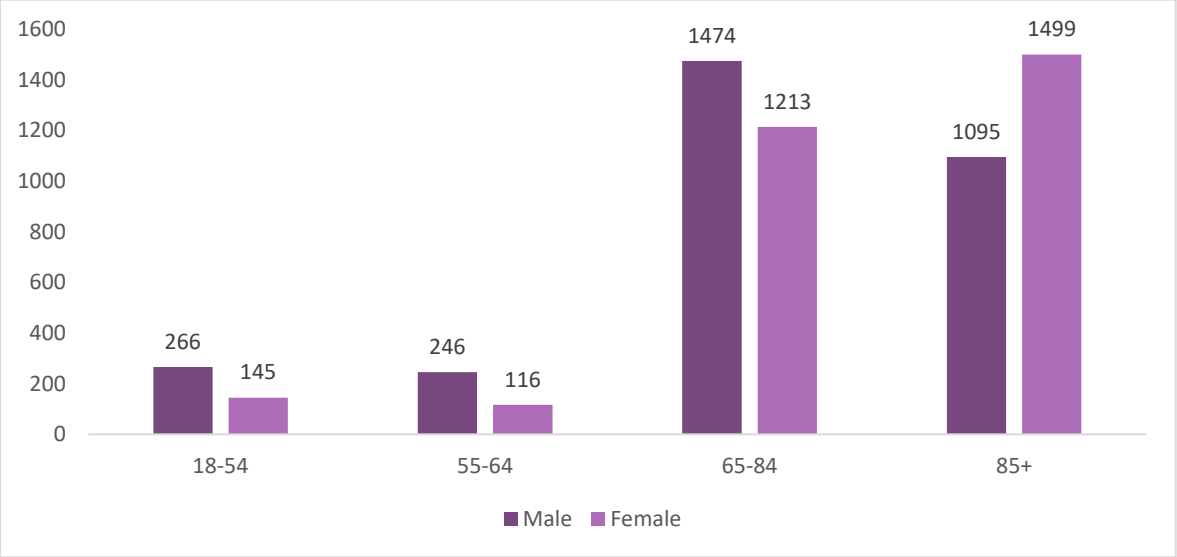
authorities were redeployed, and sickness rates significantly increased, which led to many assessments being delayed. To address this, some local authorities and health boards used additional funding received from Welsh Government in August 2020, to increase the number of DoLS assessors in order to help reduce the backlog of assessments.

Finally, the impact of Covid-19 resulted in many individuals in hospitals being discharged, moved or transferred more rapidly. As a consequence, many DoLS applications were withdrawn before they could be assessed.

2. Demographic Profiles

The main group of individuals with a DoLS application were older people, with 87% of applications to health boards being for someone over the age of 65 in 2020-21 (see Figure 1a). There was a relatively even gender split, with 49% of applications being for females. However, this gender balance shifts over different age groups, with a higher proportion of those aged 85 or older being female. The differences in demographics between areas is largely reflective of the populations, and the services provided by the settings in those areas.

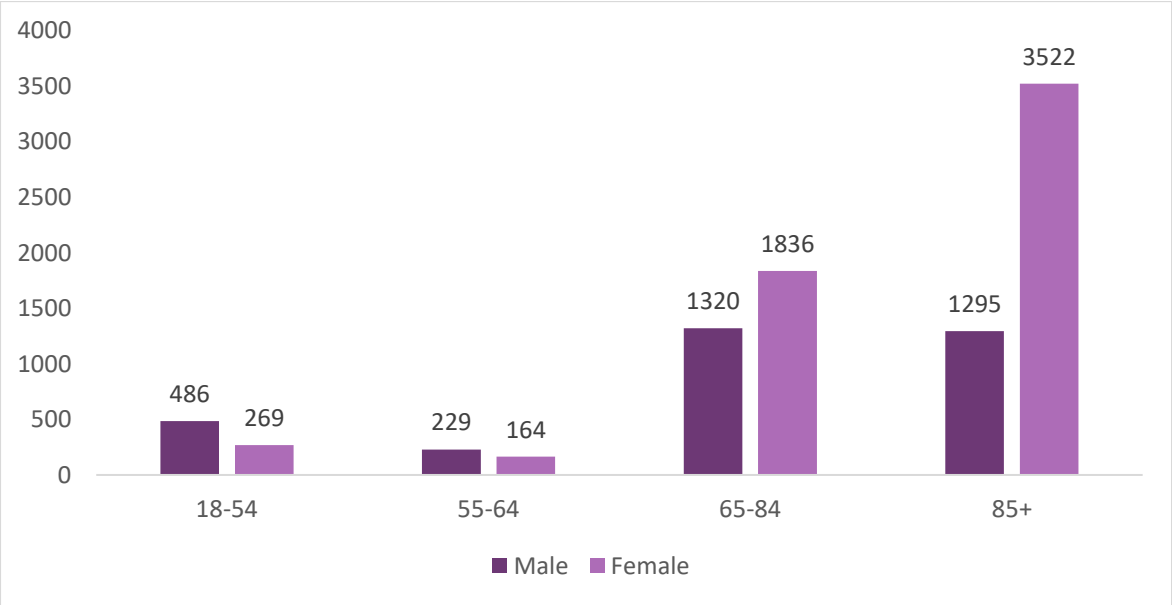
Figure 1a. The breakdown of age by gender of health boards for all applications in 2020-21



Across Wales local authorities continue to receive the majority of DoLS applications, with more than 60% of applications being for females in 2020-21. As in previous years, the demographic trend for DoLS shows that larger numbers of applications are being made for males up to the age of 64, but after the age of 65 females make up significantly higher numbers of applications. Approximately 87% of applications to

local authorities were for someone over the age of 65, a figure similar to applications made by health boards (see Figure 1b).

Figure 1b. The breakdown of age by gender of local authorities for all applications in 2020-21



3. Number of applications

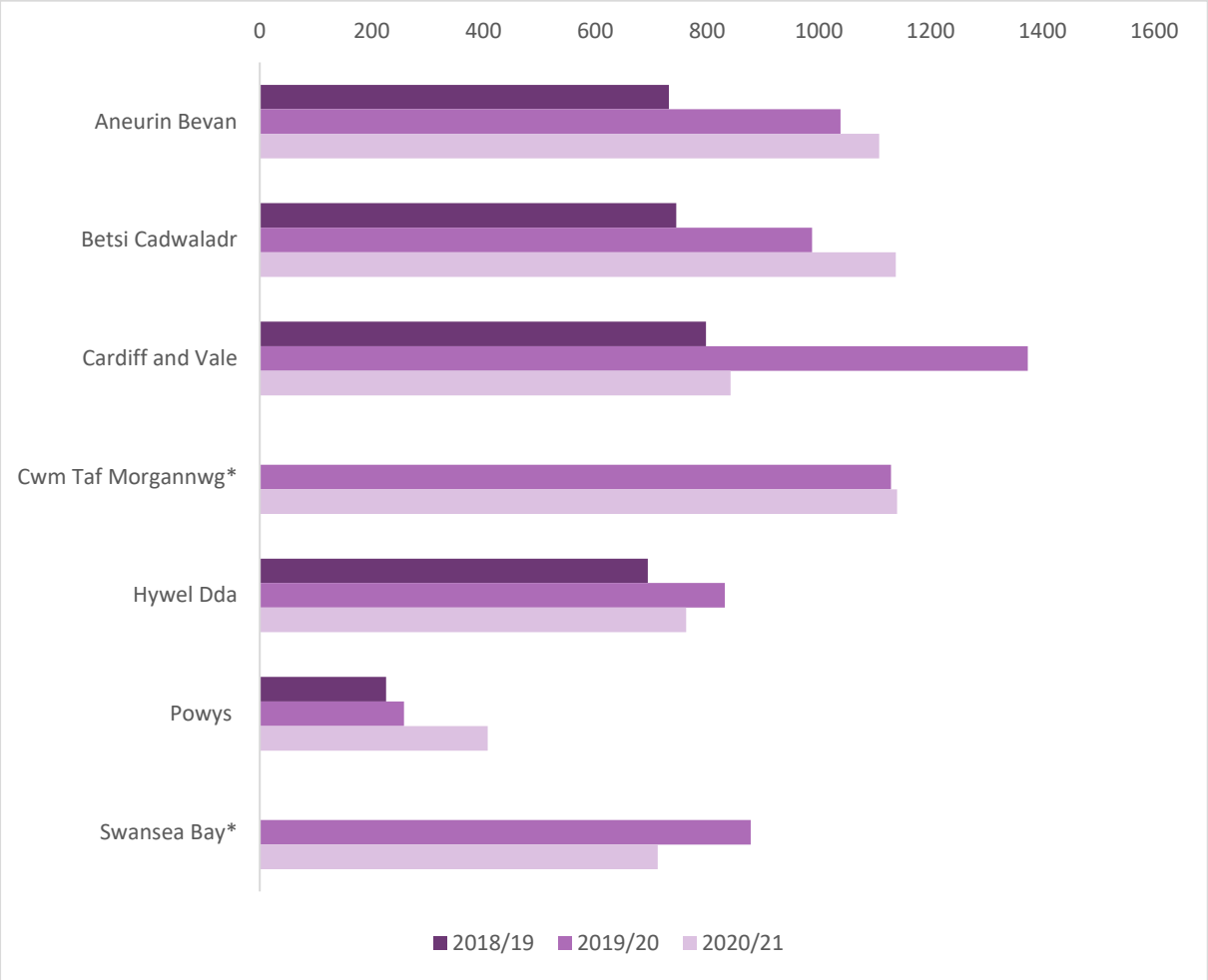
A total of 6,111 new and further DoLS applications were received by health boards in 2020-21. This means the number of applications to health boards decreased by approximately 6%, from 6,498 in the previous year (see Figure 2a). There was variation in demand across the health boards. An increase was seen in Aneurin Bevan University Health Board, Betsi Cadwaladr University Health Board and Powys Teaching Health Board. However, there was a considerable drop in applications to Cardiff and Vale University Health Board[4].

The graph in figure 2a below includes data from 2019 to 2021. Therefore, it is important to highlight that in April 2019, healthcare services in the Bridgend County Borough Council area transferred to Cwm Taf University Health Board from Abertawe Bro Morgannwg University Health Board, moving the health board boundary accordingly.

This boundary change resulted in Abertawe Bro Morgannwg University Health Board becoming Swansea Bay University Health Board, and Cwm Taf University Health Board becoming Cwm Taf Morgannwg University Health Board. This change meant all applications from healthcare settings located in Bridgend, went to Cwm Taf Morgannwg University Health Board.

[4] Cardiff and Vale reported the decrease was due to guidance being given that patients in hospital with Covid-19 were not subject to DoLS.

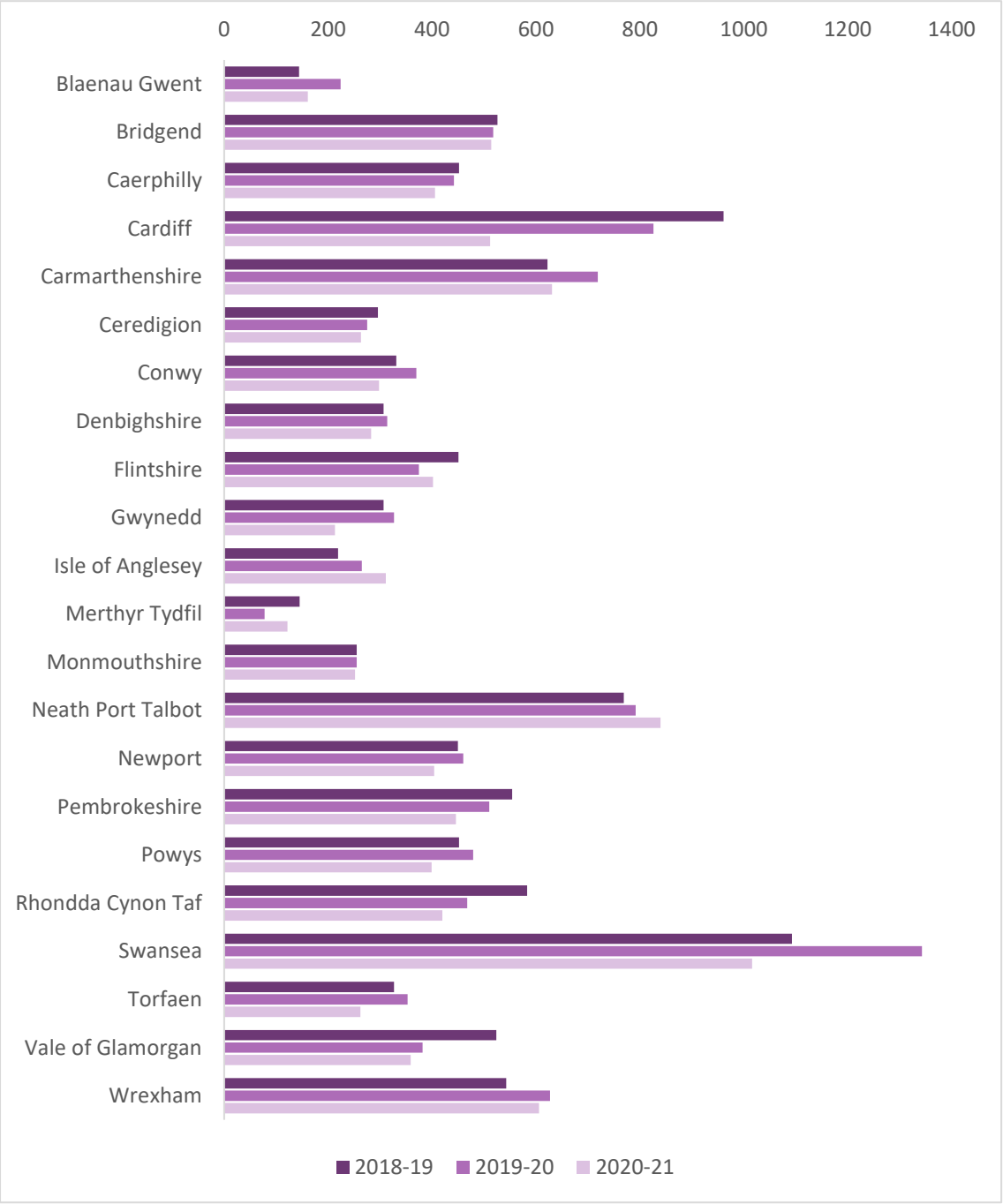
Figure 2a. The number of DoLS applications received by each health board from 2018 to 2021



* The change of health board boundaries means there is no 2018/19 entry for Cwm Taf Morgannwg or Swansea Bay.

A total of 9,120 DoLS applications were received by local authorities in 2020-21, resulting in a 12% decrease in applications when compared to the previous year (10,402). Due to the Covid-19 pandemic, many local authorities saw a decrease in the number of applications from managing authorities during this period. This was also reflected in the notifications to CIW especially in the initial stage of the pandemic. A significant drop in applications was reported by the local authorities of Cardiff, Gwynedd and Swansea. An increase was seen in Merthyr Tydfil when compared to the previous year, and during the period 2018-21, yearly increases were reported by Anglesey and Neath Port Talbot (See Figure 2b).

Figure 2b. The number of DoLS applications received by each Local Authority from 2018 to 2021



In 2020 the estimated population of Wales was 3.15 million, within which 2.61 million people were over the age of 18[5]. This means that on average there were 234 applications to health boards, and 350 applications to local authorities, for every 100,000 adults in Wales[6] (see Tables 1a and 1b).

[5] See https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates/nationallevelpopulationestimates-by-year-gender-ukcountry
[6] https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates

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 residential older adult or learning disability settings, which can generate a higher number of DoLS applications.

Table 1a. 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 2020-21

	Total 18+ Population	Number of DoLS applications	DoLS applications per 100,000
Aneurin Bevan	487,729	1,108	227.2
Betsi Cadwaladr	579,711	1,138	196.3
Cardiff and Vale	411,585	842	204.6
Cwm Taf Morgannwg	367,187	1,140	310.5
Hywel Dda	324,426	763	235.2
Powys	111,961	408	364.4
Swansea Bay	324,257	712	219.6
Total	**2,606,856**	**6,111**	**234.4**

There is considerable variation in the number of DoLS applications per 100,000 received by the local authorities, illustrating a complex picture associated with local demographics and differences in application processes. The highest DoLS rate of applications per 100,000 adult population ranges from 704 in Neath Port Talbot, to the lowest rate of 170 in Cardiff.

Table 1b. 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 2020-21

	Total 18+ Population	Number of DoLS applications	DoLS applications per 100,000
Blaenau Gwent	57,814	161	278.5
Bridgend	121,354	514	423.6
Caerphilly	148,255	406	273.9
Cardiff	301,207	512	170.0
Carmarthenshire	156,917	631	402.1
Ceredigion	62,121	263	423.4
Conwy	99,329	298	300.0
Denbighshire	79,265	283	357.0
Flintshire	128,050	402	313.9
Gwynedd	104,419	213	204.0
Isle of Anglesey	58,519	311	531.5
Merthyr Tydfil	48,847	122	249.8
Monmouthshire	79,969	252	315.1
Neath Port Talbot	119,265	840	704.3
Newport	124,397	404	324.8
Pembrokeshire	105,388	446	423.2
Powys	111,961	399	356.4
Rhondda Cynon Taf	196,986	420	213.2
Swansea	204,992	1,016	495.6
Torfaen	77,294	262	339.0
Vale of Glamorgan	110,378	359	325.2
Wrexham	110,129	606	550.3
Total	**2,606,856**	**9,120**	**349.8**

4. Types of applications

The majority of applications to health boards in 2020-21 were urgent (81% of all applications). The remaining applications were mostly standard (15% of all applications to health boards) and only 4% were for a further authorisation.

There was a high level of variation between health boards in the proportion of applications that were received via both the standard and urgent route (see Table 2a). Variation occurs as a result 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.

Table 2a. The percentage of different application types for each health board in 2020-21

	Standard	Urgent	Further
Aneurin Bevan	10%	88%	1%
Betsi Cadwaladr[7]	2%	92%	6%
Cardiff and Vale	20%	75%	5%
Cwm Taf Morgannwg	31%	65%	4%
Hywel Dda[8]	4%	89%	7%
Powys	11%	86%	3%
Swansea Bay	23%	74%	2%
Total	**15%**	**81%**	**4%**

The majority of applications received by local authorities continue to be for a standard authorisation. In 2020-21, 51% of all applications were for standard, 17% were via urgent route and the remaining 32% were for further applications (see Table 2b).

There has been an increase in the number of further DoLS applications in comparison to last year, when 24% of applications were categorised as further. A number of local authorities granted shorter authorisations particularly where they were unable to see the individual face to face due to the pandemic.

Large variation can be seen in the types of applications received by each local authority. For example, Wrexham reported no standard applications, whilst Flintshire and Swansea reported no further applications.

[7] Betsi Cadwaladr health board reports that they only receive standard requests from the mental health wards for patients who are currently detained on MHA who, the Mental Health Team feel no longer meet the criteria for the MHA and that a DoLS is more appropriate.
[8] Hywel Dda reported a very low number of standard applications as the majority of requests come from mental health units, where the person is detained under the MHA.

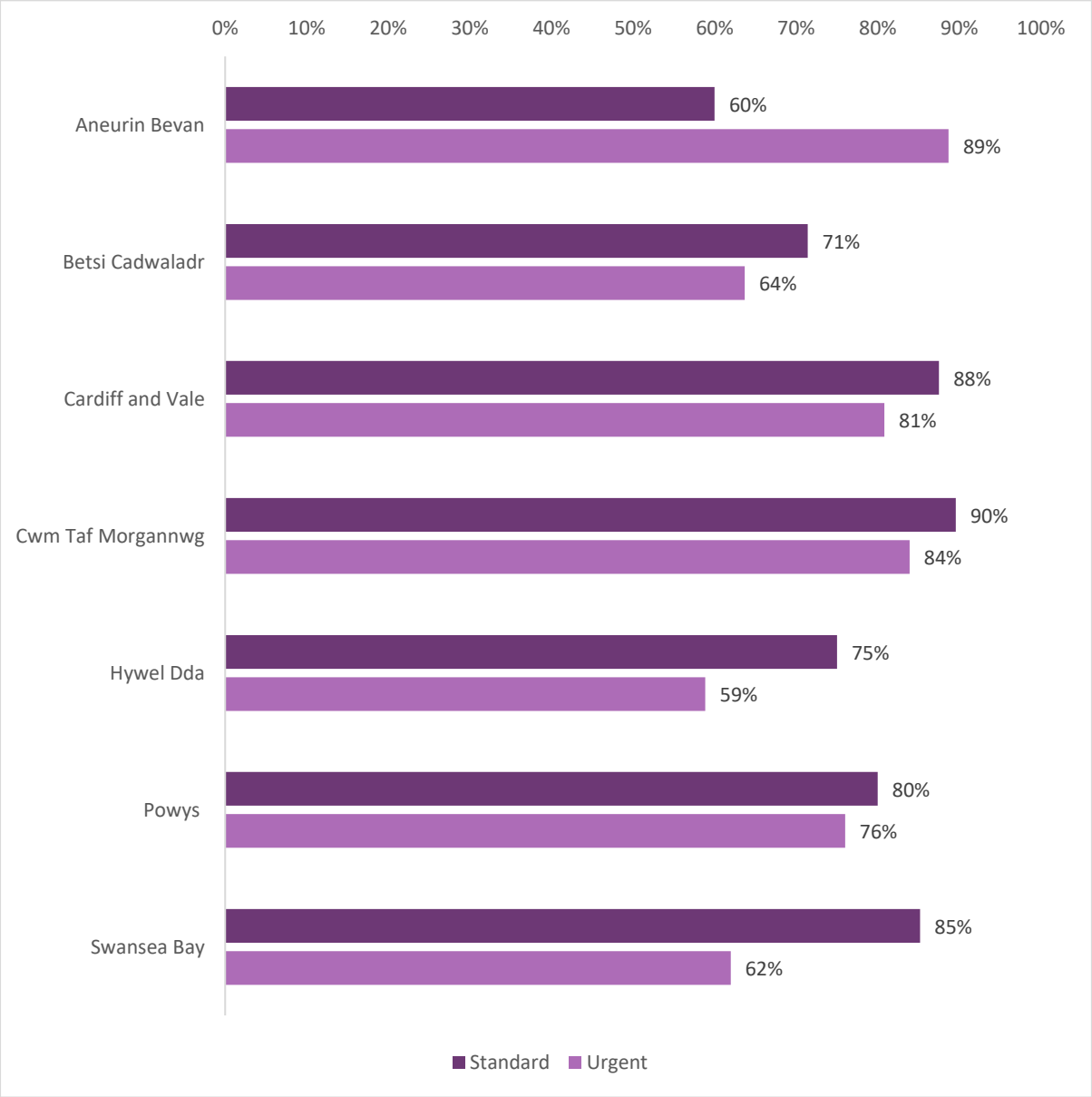
Table 2b. The percentage of different application types for each local authority in 2020-21

	Standard	Urgent	Further
Blaenau Gwent	24%	33%	43%
Bridgend	45%	3%	52%
Caerphilly	37%	34%	29%
Cardiff	64%	9%	27%
Carmarthenshire	53%	9%	38%
Ceredigion	58%	4%	38%
Conwy	39%	17%	44%
Denbighshire	85%	14%	1%
Flintshire	89%	11%	0%
Gwynedd	94%	1%	5%
Isle of Anglesey	28%	4%	68%
Merthyr Tydfil	71%	9%	20%
Monmouthshire	17%	56%	27%
Neath Port Talbot	30%	4%	66%
Newport	26%	32%	42%
Pembrokeshire	49%	18%	33%
Powys	50%	17%	33%
Rhondda Cynon Taf	70%	16%	14%
Swansea	93%	7%	0%
Torfaen	25%	51%	24%
Vale of Glamorgan	63%	6%	31%
Wrexham	0%	47%	53%
Total	**51%**	**17%**	**32%**

5. New authorisations

Of all the DoLS applications received by health boards in 2020-21 (6,111), 17% were still in progress on 1 April 2021 and 57% were withdrawn[9] before they could be assessed. Of the remaining 1,543, 78% (1,202) were authorised (see Figure 3a).

Figure 3a. The proportion of applications that were authorised by each health board in 2020-21

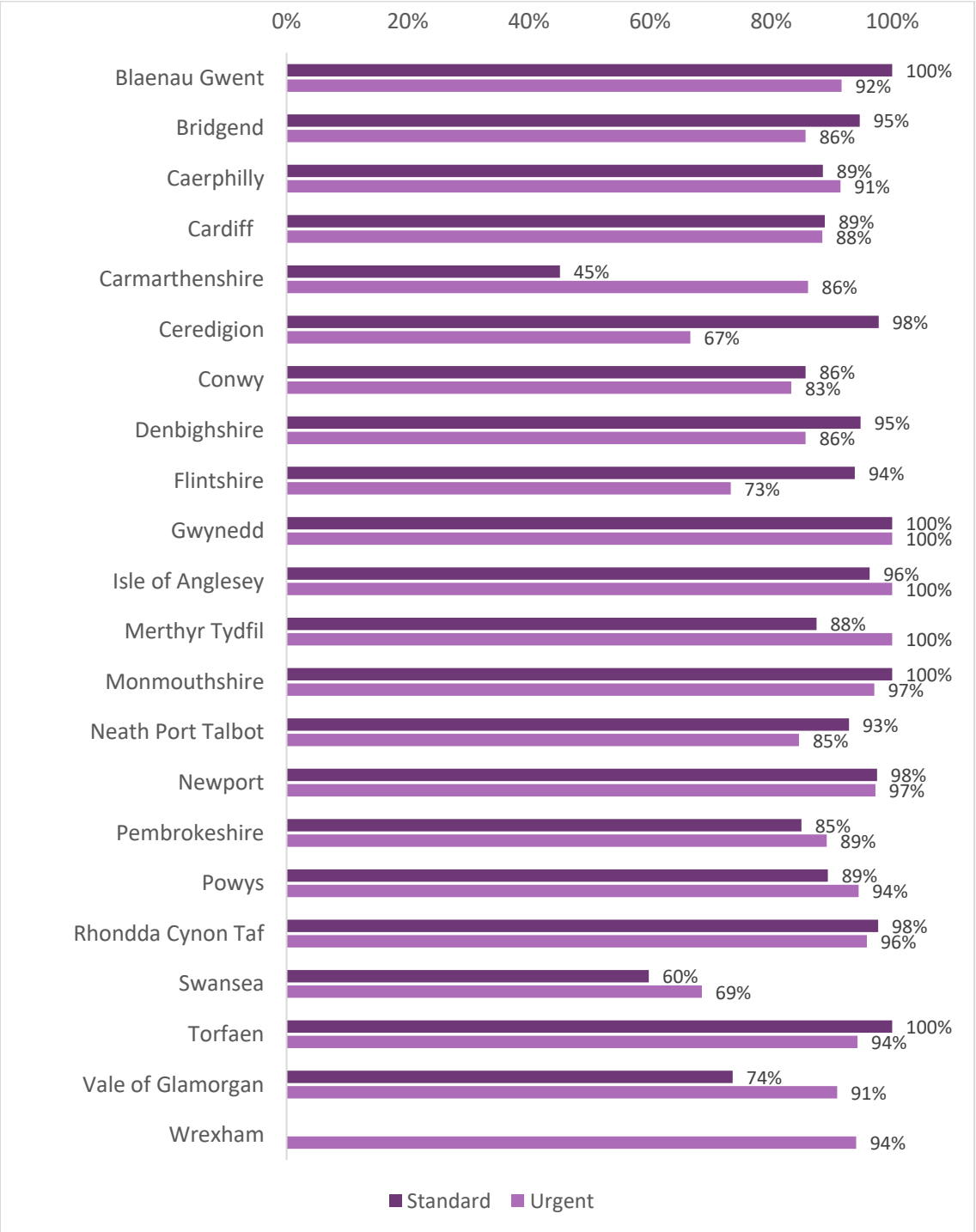


[9] The main reasons given for applications being withdrawn are that the individual has either been discharged from hospital, transferred to a different site or the individual has died.

Of all the DoLS applications received by local authorities in 2020-21 (9,120), 32% were still in progress on 1st April 2021 and 11% were withdrawn before assessment. Of the remaining 5,122, 88% (4,510) were authorised and this is comparable to the number of DoLS applications authorised the previous year.

The proportion of applications assessed and authorised varies by local authority, but on average it can be seen that 76% of standard and 89% of applications following urgent route were authorised across Wales. Wrexham is the exception at reporting no standard applications for the reporting period (see Figure 3b and Table 3b).

Figure 3b. The proportion of applications that were authorised by each Local Authority in 2020-21



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 (see Table 3a). However, if an application was refused, the most common reason was because the mental capacity condition was not met.

Table 3a. The proportion of applications per health board that were not authorised by reason for refusal in 2020-21[10]

	Refused					Withdrawn	In Progress
	Best interest	Eligibility[11]	Mental Capacity	Mental Health	Not a deprivation		
Aneurin Bevan	0%	40%	30%	30%	0%	66%	27%
Betsi Cadwaladr	0%	29%	56%	0%	14%	66%	9%
Cardiff and Vale	0%	45%	55%	0%	0%	25%	56%[12]
Cwm Taf Morgannwg	0%	3%	55%	38%	0%	51%	9%
Hywel Dda	0%	34%	59%	3%	3%	64%	7%
Powys	0%	0%	75%	25%	0%	67%	11%
Swansea Bay	1%	1%	93%	4%	0%	64%	0%
Total	**0%**	**18%**	**65%**	**11%**	**4%**	**57%**	**17%**

Similar to health boards, very few applications (less than 10%) to local authorities were refused and the reasons for refusal varied considerably between each local authority. Of the 612 applications refused, 68% were rejected on the grounds that the mental capacity condition was not met and 23% due to eligibility[13]. Nearly three quarters of applications refused by Carmarthenshire were due to reasons of eligibility. However, some local authorities did not refuse any applications, including Gwynedd, Monmouthshire and Vale of Glamorgan.

A modest number of DoLS applications to local authorities were withdrawn (11%) during the 2020-21 reporting period. The main reasons for withdrawal are the death of the person before a decision is made, or that they have left or moved to another care home. When people move to another care home a new application must be made if still required (see Table 3b).

[10] Details of the different assessments can be found in the Glossary
[11] 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.
[12] Cardiff and Vale have since received additional funding to address the backlog.
[13] See Glossary for more information

Table 3b. The proportion of applications that were not authorised by each local authority in 2020-21

	Refused					Withdrawn	In Progress
	Best interest	Eligibility	Mental Capacity	Mental Health	Not a deprivation		
Blaenau Gwent	0%	0%	100%	0%	0%	7%	30%
Bridgend	0%	0%	100%	0%	0%	21%	17%
Caerphilly	0%	11%	89%	0%	0%	14%	39%
Cardiff	0%	0%	100%	0%	0%	0%	73%
Carmarthenshire	8%	74%	13%	2%	4%	17%	37%
Ceredigion	0%	0%	100%	0%	0%	14%	36%
Conwy	15%	0%	85%	0%	0%	11%	31%
Denbighshire	0%	0%	100%	0%	0%	16%	37%
Flintshire	0%	23%	77%	0%	0%	21%	39%
Gwynedd	0%	0%	0%	0%	0	10%	67%
Isle of Anglesey	0%	0%	100%	0%	0%	8%	14%
Merthyr Tydfil	0%	0%	100%	0%	0%	19%	64%
Monmouthshire	0%	0%	0%	0%	0	13%	43%
Neath Port Talbot	6%	0%	94%	0%	0%	13%	10%
Newport	0%	0%	100%	0%	0%	8%	31%
Pembrokeshire	8%	0%	83%	8%	0%	17%	50%
Powys	0%	50%	50%	0%	0%	14%	38%
Rhondda Cynon Taf	0%	0%	100%	0%	0%	17%	59%
Swansea	0%	0%	95%	0%	5%	0%	0%
Torfaen	0%	0%	100%	0%	0%	15%	42%
Vale of Glamorgan	0%	0%	0%	0%	0	0%	79%
Wrexham	11%	11%	56%	0%	22%	12%	0%
Total	**5%**	**23%**	**68%**	**1%**	**4%**	**11%**	**32%**

6. Application Timescales

Once an application is received, it is logged and prioritised before being allocated to an assessor. The guidance[14] states that the assessments should then be completed within five days for urgent authorisations, and 21 days for standard authorisations.

The data in the following tables 4a and 4b, shows the length of time to process applications in seven day timeframes, from making a decision on the same day, up to when a decision takes over 28 days.

[14] http://www.wales.nhs.uk/sites3/Documents/744/Guidance%20for%20Supervisory%20Bodies.pdf

Table 4a. The length of time taken to process applications for each Health Board in 2020-21

	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
			Standard		
Aneurin Bevan	0%	0%	0%	33%	67%
Betsi Cadwaladr	0%	0%	0%	100%	0%
Cardiff and Vale	0%	21%	6%	21%	53%
Cwm Taf Morgannwg	0%	13%	11%	21%	55%
Hywel Dda	0%	17%	22%	50%	11%
Powys	0%	0%	0%	50%	50%
Swansea Bay	0%	3%	9%	15%	74%
Total	**0%**	**11%**	**10%**	**24%**	**55%**
			Urgent		
Aneurin Bevan	0%	2%	9%	17%	72%
Betsi Cadwaladr	0%	3%	6%	34%	57%
Cardiff and Vale	0%	24%	14%	23%	38%
Cwm Taf Morgannwg	2%	6%	13%	31%	49%
Hywel Dda	0%	5%	27%	43%	25%
Powys	0%	5%	16%	46%	33%
Swansea Bay	0%	1%	3%	20%	76%
Total	**0%**	**6%**	**12%**	**31%**	**51%**

Table 4b. The length of time taken to process applications for each local authority in 2020-21

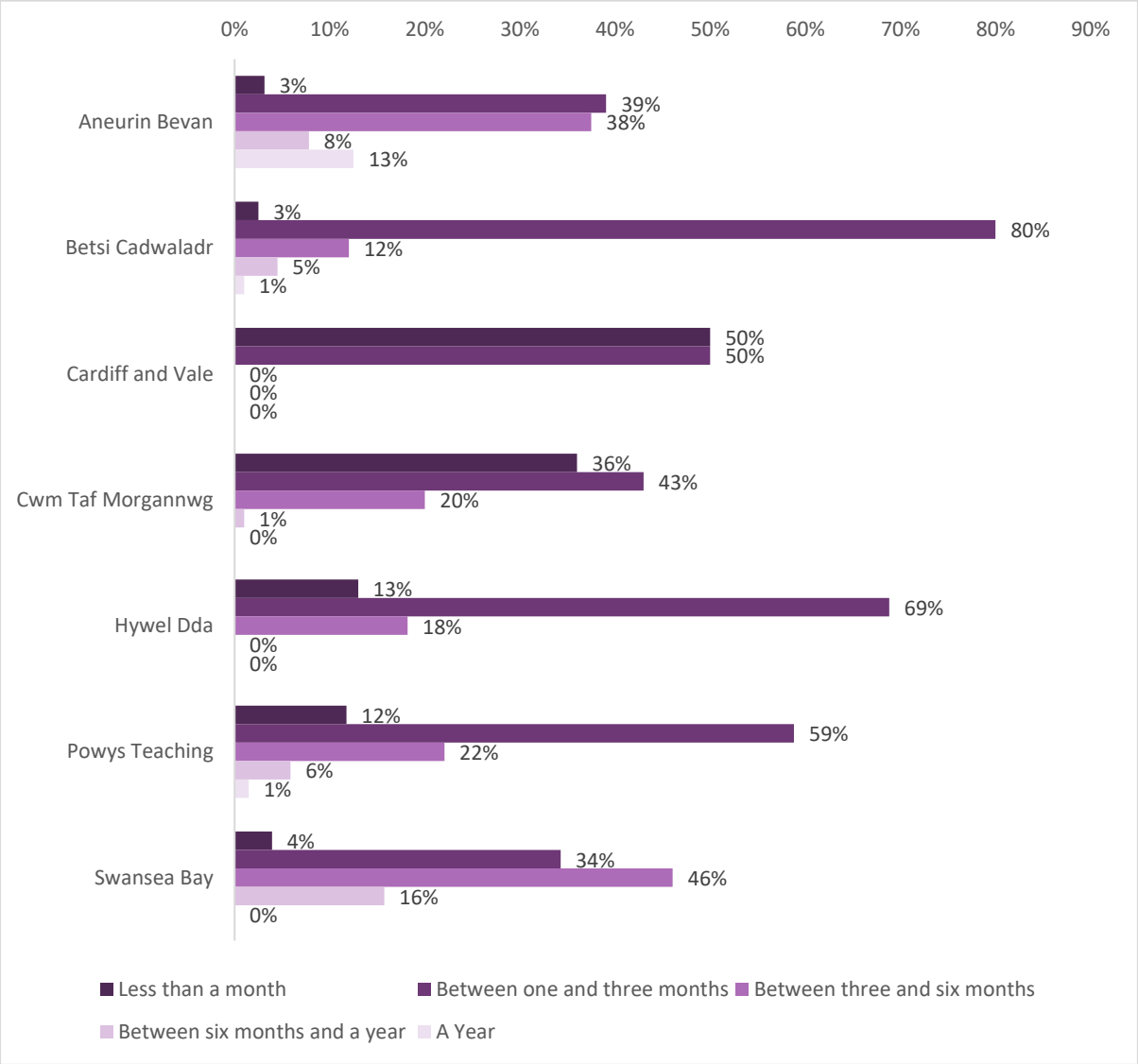
	Same day	1-7 days	8-14 days	15-28 days	Over 28 days
			Standard		
All Local Authorities	0%	2%	2%	11%	85%
			Urgent		
All Local Authorities	0%	7%	15%	14%	64%

The results show that 94% of urgent applications to health boards took more than seven days to process, and 55% of standard applications took more than 28 days to process. For local authorities 93% of urgent applications took more than seven days to process, and 85% of standard applications took more than 28 days to process.

7. Authorisation durations

The Code of Practice[15] states any authorisation should be for the shortest possible duration, and for only as long as the relevant person will meet the required criteria. 92% of authorisations made by health boards were for six months or less, and 67% for three months or less (see Figure 4a). Only a small number of authorisations were for a whole year[16].

Figure 4a. The proposed duration of applications that were authorised by each Health Board in 2020-21

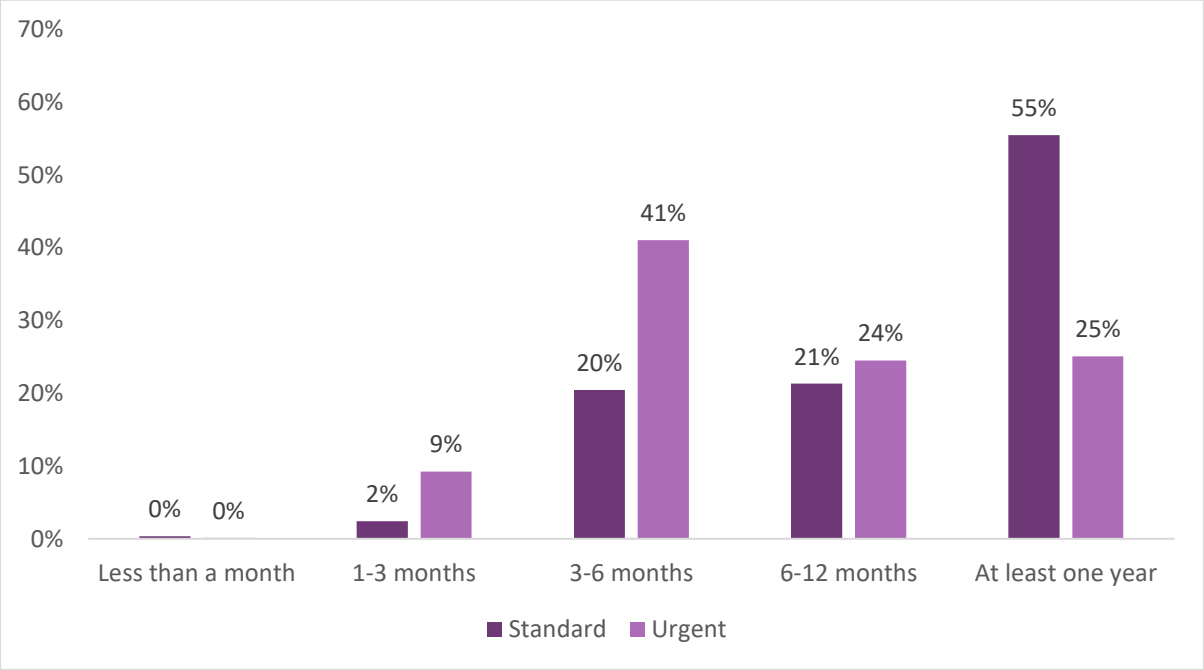


A different picture can be seen for the duration of applications authorised by local authorities were the majority of authorisations were for six months or more. Compared to the previous year there is a difference in the duration of applications

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

authorised by local authorities, as already mentioned a number of local authorities granted the authorisation for shorter periods of time. Overall, a higher proportion of applications were authorised for the three to six month period, where this figure increased from 12% in 2019-20 to 20% in 2020-21 for standard applications, and increased from 33% to 41% for applications via the urgent route. (See Table 4b). The Vale of Glamorgan was the only local authority to authorise all applications for six months or less. In comparison, Gwynedd reported that all of its authorised applications were for 12 months.

Figure 4b. The proposed duration of applications that were authorised by each local authority in 2020-21



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

Any authorised Deprivation of Liberty can undergo a review. However, 338 authorisations (107 in health boards and 231 in local authorities) underwent a review in 2020-21, 11.3% of health board authorised applications[17] and 5% of local authority authorised applications[18]. This is a considerable increase for health boards, where only 7.8% and 2.6% of authorised applications were reviewed in 2019-20 and 2018-

[16] Aneurin Bevan is one of the few health boards to make year long authorisations. This is due to there being a relatively high number of learning disability units and private / independent hospitals providing long term rehabilitation.
[17] 29 of these were subject of multiple reviews.
[18] 65 of these were subject of multiple reviews.

19 respectively. There is also an increase in the number of reviews undertaken by local authorities, up from 3.4% in 2019-20 and 1.7% in 2018-19.

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 2020-21 35% of health board authorised applications and 62% of local authority authorised applications 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 20% of authorisations had paid representation and local authorities reported that 37% of authorisations had paid representation. The results show there is an under-reporting of information from health boards around this theme, as 45% of health board authorisations were not reported as having any form of representation.

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
- 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

Of all health board authorised applications, 46 made use of an IMCA appointed under Section 39A, 68 an IMCA appointed under Section 39D and two made use of an IMCA appointed under Section 39C. This was considerably lower than the previous year. This varied considerably between health boards, with nearly all IMCA appointments being made by Swansea Bay or Betsi Cadwaladr University Health Boards

Of all local authority authorised applications, 244 made use of an IMCA appointed under Section 39A, 125 appointed under Section 39D and one 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 70% of all IMCA 39D appointments continues to be reported by the Isle of Anglesey.

A total of 26 health board authorisations and 86 local authority authorisations were referred to the Court of Protection in 2020-21. Local authorities saw a 12% rise in the number of referrals when compared to the previous year, and both Rhondda Cynon Taf and Flintshire reported the highest number of referrals in 2020-21.

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 was 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/485122/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.

9. Feedback on this report

We are keen to hear from the users of 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

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 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.

Gwent consortium	The Gwent consortium is the Deprivation of Liberty Safeguards Team commissioned by the following Organisations who, under the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (2009) are known as 'Supervisory Bodies' in relation to their functions under the Act: • Aneurin Bevan University Health Board • Blaenau Gwent County Borough Council • Caerphilly County Borough Council • Monmouthshire County Borough Council • Newport City Council • Torfaen County Borough Council
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 **https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets**	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.

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. 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	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. Care homes run by the local authority 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 necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation.
Section 12 Doctors	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.

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