# Deprivation of Liberty Safeguards

## Annual Monitoring Report for Health and Social Care 2019-20

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# Deprivation of Liberty Safeguards

## Annual Monitoring Report for Health and Social Care 2019-2020

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## Key Findings

- Since many applications for DoLS were from care homes or older adult wards, the majority of applications continued to be for older adults, with more than 85% of applications for people over the age of 65.
- More DoLS authorisations were made for males up to the age of 64, but after the age of 85, a significantly higher number of authorisations were in relation to females.
- There has continued to be a year on year increase in the number of applications received by supervisory bodies, with a 28% increase received by health boards in 2019-20.
- Nearly half of all applications were withdrawn due to the individual either moving to a different care setting, being discharged from hospital or dying before the application is reviewed.
- Across Wales, fewer than half of applications were completed within the statutory timeframes.
- Of those applications refused by supervisory bodies, approximately half were because the mental capacity condition was not met.
- Health boards and local authorities continued to propose very different durations for their authorisations, with health boards proposing considerably shorter durations than local authorities.
- Over half of applications had not been assessed within 28 days, suggesting supervisory bodies were unable to assure themselves that people's human rights were not being breached by being deprived of their liberty unlawfully.
- Whilst most people were represented by family and friends, the number of people referred to Independent Mental Capacity Advocates (IMCAs) increased compared to 2018-19.
- The proportion of authorisations referred to Court of Protection also increased compared to 2018-19.

## 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, on behalf of Welsh Ministers. The report covers the period of April 2019 until the end of March 2020.

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. Therefore, the definition of DoLS includes when a person is not free to leave and is under continuous supervision and control.

DoLS are used only for people in hospitals and care homes. These 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 there are 21 days for the DoLS assessments to be completed.
- Urgent applications - An Urgent application is made when the requirement for a deprivation is immediate. An Urgent application provides lawful authorisation for the deprivation of liberty for seven days whilst assessments are undertaken.
- Further applications - A Further application is used for a review or a refresh of an existing authorisation.

The 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. The UK Government has announced a commencement date of 1st April 2022 for LPS. Although LPS is a reserved subject matter, the Mental Capacity (Amendment) Act 2019 contains regulation-making powers for the Welsh Ministers to implement LPS in Wales. The Welsh Government is currently drafting four sets of regulations to support implementation, focusing on: monitoring and reporting; who can undertake assessments and determinations; the

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

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

role of the new Approved Mental Capacity Professional (AMCPs); and Independent Mental Capacity Advocates. The UK Government is currently producing the draft LPS code of practice for England and Wales and regulations for England.[3] To support the future monitoring and reporting of LPS in Wales, a National Minimum Data Set for LPS is also being developed, which will form the basis of future monitoring reports.

## Results

Data was collected from local authorities and health boards[4] in late 2020 in regards to the DoLS applications they received in the 2019-20 financial year. The data collection was delayed due to the pause in statutory data collection as a result of the COVID-19 pandemic. This may also lead to a reduction in the data quality, as some of the data may have been updated between 1st April 2020 and the point of collection and therefore, may not represent an accurate picture of the state of the application at 1st April 2020.

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 2019-20, both Healthcare Inspectorate Wales (HIW) and Care Inspectorate Wales (CIW) continued to monitor the use of the Deprivation of Liberty Safeguards across Wales. Many health boards and local authorities in Wales were unable to assure themselves that people's human rights were not being breached by being deprived of their liberty unlawfully, because of delays in applications being assessed. This is an area both HIW and CIW will continue to monitor with partner agencies.

### 1. Demographic Profiles

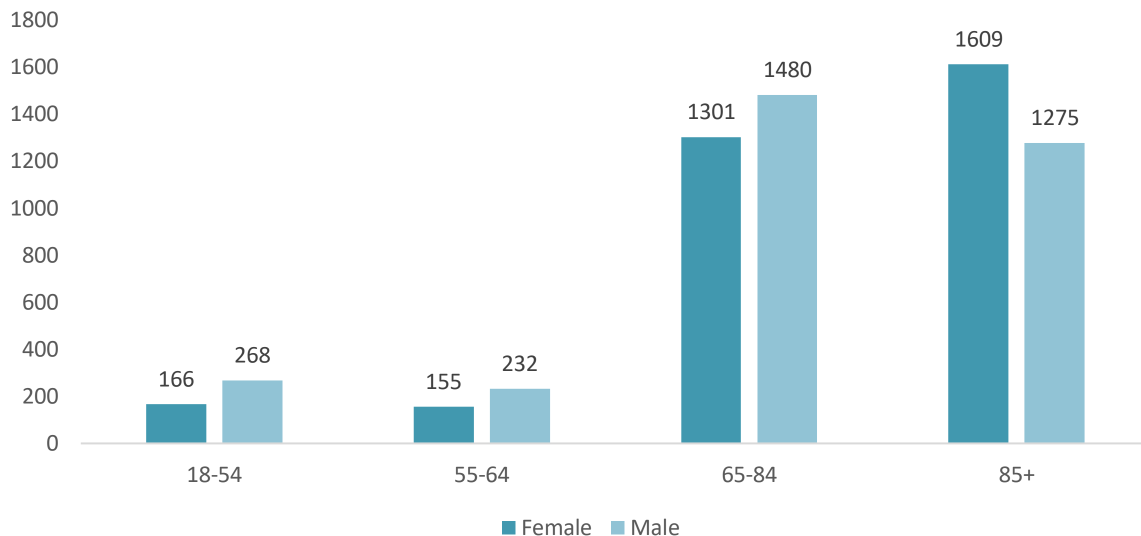
The main group of individuals with a DoLS application were older people, with 87% of applications to health boards being for someone over the age of 65 in 2019-20 (see Figure 1a). There was a relatively even gender split, with 50% of applications being for females. However, this gender balance shifts over different age groups, with a higher proportion of those aged 85 or older being female. The differences in

[3] See https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-07-16/HCWS377/

[4] The boundaries of Abertawe Bro Morgannwg and Cwm Taf University Health Boards changed in April 2019. This means this report refers to the boundaries used in 2018-19, rather than the health boards of Swansea Bay and Cwm Taf Morgannwg.

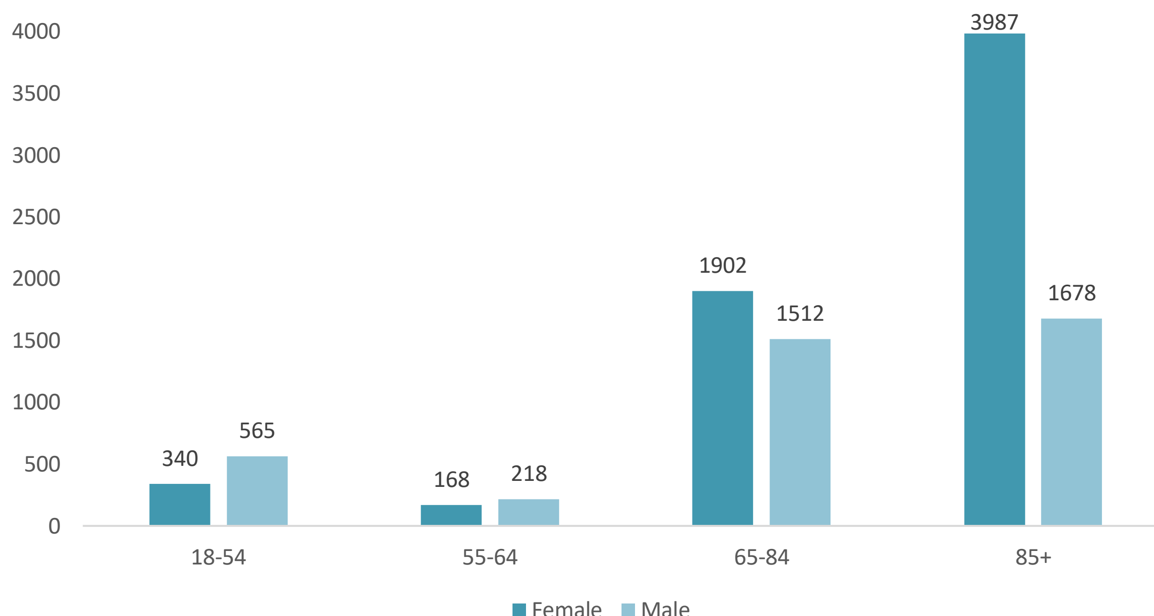
demographics between areas is largely reflective of the populations and the services provided by the settings in those areas.

**Figure 1a.** The breakdown of all applications to health boards in 2019-20 by age and gender




Across Wales, local authorities continued to receive the majority of applications. As in previous years, the majority of applications for DoLS authorisations were for older adults, with more than 85% over the age of 65. The demographic trends show that larger numbers of DoLS authorisations were made for males up to the age of 64, but after the age of 65, females had significantly higher numbers of DoLS authorisations.

**Figure 1b.** The breakdown of all applications to local authorities in 2019-20 by age and gender




## 2. Number of applications

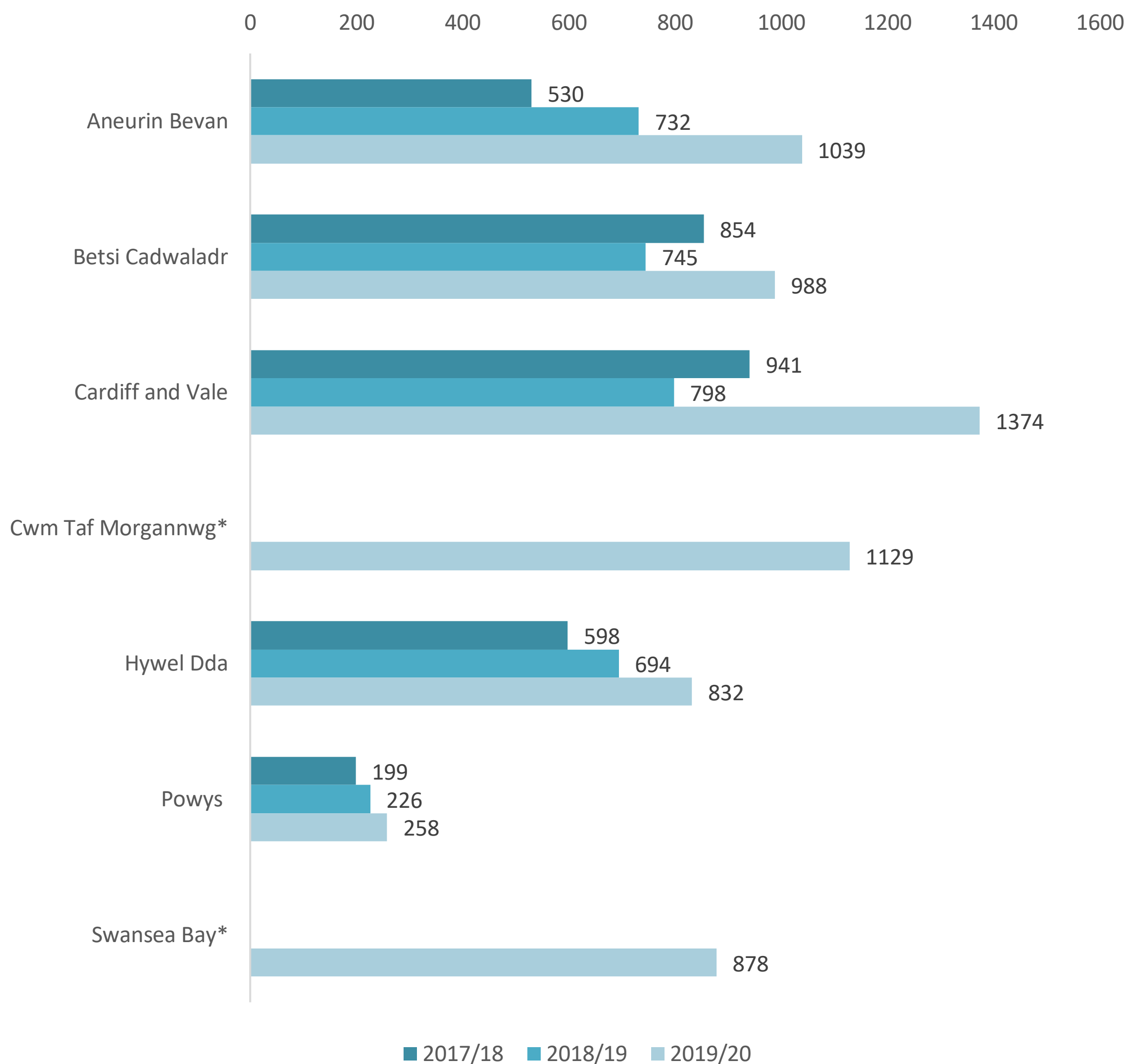
A total of 6,486 new and Further DoLS applications were received by health boards in 2019-20. This means the number of applications to health boards increased by 28%, from 5,070 in the previous year (see Figure 2a). This was a substantial increase in demand on health boards. This increase was seen across all health boards, but was most pronounced in Aneurin Bevan and Cardiff and Vale University Health Boards. Aneurin Bevan reported that many of the new applications were due to individuals moving to different hospitals or wards within the health board.

Despite the high number of applications received, Cardiff and Vale reported that many of these applications were either still in progress or not taken forward, as the applications were either withdrawn (see Table 3a); individuals had experienced a temporary impairment of capacity whilst acutely unwell and had subsequently regained capacity; or individuals had been discharged back to nursing homes[5].

In April 2019, Bridgend County Borough Council moved from being part of Abertawe Bro Morgannwg University Health Board and into Cwm Taf Health Board. This boundary change resulted in Abertawe Bro Morgannwg becoming Swansea Bay University Health Board and Cwm Taf 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.

[5] See 4. New Authorisations

**Figure 2a.** The number of DoLS applications received by each health board from 2017 to 2020

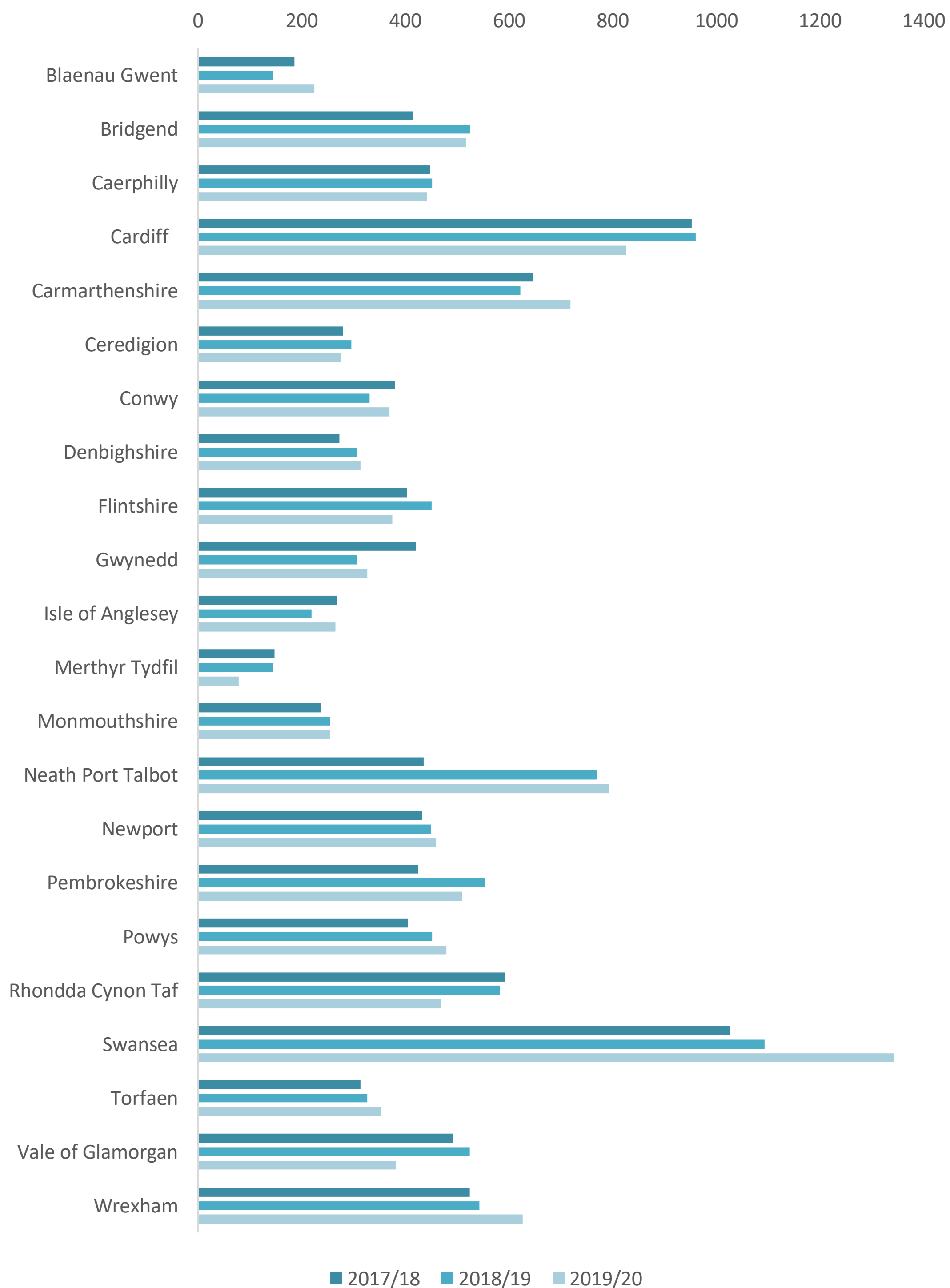



* The change of health board boundaries means there is no time series for Cwm Taf Morgannwg or Swansea Bay. The total number of applications received for the two health boards in 19/20 was 2,007, which is 6.5% higher than the total received in the previous year, lower than the national average increase.

At the end of the 2019-20 financial year, a total of 10,402 DoLS applications were received by local authorities across Wales. Due to the pandemic, many local authorities did not receive the same number of applications from managing authorities during March 2020. However, in the preceding months the volume of applications continued to increase and was up 1% from 10,311 in the previous year (see Figure 2b). This increase was seen across 12 of the 22 local authorities, and was most evident in Blaenau Gwent and Swansea.

Nine local authorities received fewer applications during 2019-20 than in the previous year, and this was most evident for Merthyr Tydfil, the Vale of Glamorgan and Rhondda Cynon Taf. Monmouthshire was the only local authority to see no change in DoLS numbers when compared to the previous year.

**Figure 2b.** The number of DoLS applications received by each local authority from 2017 to 2020



In 2019 the estimated population of Wales was 3.15 million, within which 2.52 million people were over the age of 18[6]. This means that on average there were 257 applications to health boards, and 412 applications to local authorities, for every 100,000 adults in Wales[7] (see Tables 1a and 1b).

Similar 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 processes, 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 applications. However, the figures for health boards were considerably higher than previous years, with approximately twice as many applications relative to the population for some health boards, when compared to the previous year[8].

**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 2019-20

| | Total 18+ Population | Number of DoLS applications | DoLS applications per 100,000 |
|---|---|---|---|
| **Aneurin Bevan** | 470,481 | 1,039 | 220.8 |
| **Betsi Cadwaladr** | 560,731 | 988 | 176.2 |
| **Cardiff and Vale** | 397,948 | 1,374 | 345.3 |
| **Cwm Taf Morgannwg** | 356,309 | 1,129 | 316.9 |
| **Hywel Dda** | 313,704 | 832 | 265.2 |
| **Powys** | 108,508 | 258 | 237.8 |
| **Swansea Bay** | 315,259 | 878 | 278.5 |
| **Total** | **2,522,940** | **6,498** | **257.6** |

There was considerable variation in the number of DoLS applications per 100,000 across the local authorities, with the highest rate ranging from 687 in Neath Port Talbot and the lowest rate of 164 in Merthyr Tydfil. This is an area that CIW will be analysing and reporting further on over the next 12 months.

[6] See https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates/nationallevelpopulationestimates-by-year-gender-ukcountry
[7] https://statswales.gov.wales/Catalogue/Population-and-Migration/Population/Estimates
[8] The 2019-20 DoLs applications per 100,000 rates are calculated using the over 18 population data groups only. In the previous DoLs 2018-19 report the calculated rates included population data for the under 18 group.

**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 2019-20

| | Total 18+ Population | Number of DoLS applications | DoLS applications per 100,000 |
|---|---|---|---|
| **Blaenau Gwent** | 56,285 | 224 | 398.0 |
| **Bridgend** | 117,680 | 518 | 440.2 |
| **Caerphilly** | 143,125 | 442 | 308.8 |
| **Cardiff** | 292,013 | 826 | 282.9 |
| **Carmarthenshire** | 151,377 | 719 | 475.0 |
| **Ceredigion** | 60,456 | 275 | 454.9 |
| **Conwy** | 95,925 | 370 | 385.7 |
| **Denbighshire** | 76,246 | 314 | 411.8 |
| **Flintshire** | 123,785 | 375 | 302.9 |
| **Gwynedd** | 101,246 | 327 | 323.0 |
| **Isle of Anglesey** | 56,637 | 265 | 467.9 |
| **Merthyr Tydfil** | 47,469 | 78 | 164.3 |
| **Monmouthshire** | 77,230 | 255 | 330.2 |
| **Neath Port Talbot** | 115,254 | 792 | 687.2 |
| **Newport** | 119,331 | 460 | 385.5 |
| **Pembrokeshire** | 101,871 | 510 | 500.6 |
| **Powys** | 108,508 | 479 | 441.4 |
| **Rhondda Cynon Taf** | 191,160 | 468 | 244.8 |
| **Swansea** | 200,005 | 1343 | 671.5 |
| **Torfaen** | 74,510 | 353 | 473.8 |
| **Vale of Glamorgan** | 105,935 | 382 | 360.6 |
| **Wrexham** | 106,892 | 627 | 586.6 |
| **Total** | **2,522,940** | **10,402** | **412.3** |

## 3. Types of applications

The majority of applications to health boards in 2019-20 were Urgent (75% of all applications). The remaining applications were mostly Standard (20% of all applications to health boards) and only 6% were for a Further authorisation.

There was a high level of variation between health boards in the proportion of applications that were Urgent or Standard (see Table 2a). This was largely due to local processes and instructions given to managing authorities by the supervisory bodies. For example, some supervisory bodies ask that all applications are submitted as Standard, and that they will be reassessed and prioritised once received. While this may be common across multiple areas, some may record the applications as Standard, and some may record as the newly-prioritised category.

Variation also occurs as a result of the types of settings found in each area. Some areas have more care settings providing long-term care, while other areas may have a higher proportion of care 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 2019-20

| | Standard | Urgent | Further |
|---|---|---|---|
| **Aneurin Bevan** | 11% | 88% | 1% |
| **Betsi Cadwaladr**[9] | 4% | 86% | 10% |
| **Cardiff and Vale** | 26% | 67% | 7% |
| **Cwm Taf Morgannwg** | 40% | 55% | 5% |
| **Hywel Dda** | 6% | 85% | 9% |
| **Powys** | 11% | 86% | 3% |
| **Swansea Bay** | 27% | 71% | 3% |
| **Total** | **20%** | **75%** | **6%** |

The majority of applications received by local authorities were for a Standard authorisation. In 2019-20, 55% of all applications were for Standard, 21% were for Urgent, and the remaining 24% were for Further applications (see Table 2b).

In terms of the proportions of Standard and Urgent requests authorised, there appears to be a clear difference of authorisations between the local authorities. For example, only 1% of the requests sent to Wrexham County Borough Council were Standard, whereas over 90% of requests to Swansea Council were Standard. Feedback from local authorities suggested this was due to the guidance issued to managing authorities[10] and also the local data processes used in each area[11].

Of all the Standard authorisations received by local authorities in 2019-20, 90% were for those over the age of 65, and 10% were for the under 65s. The same demographic trend can be seen for all Urgent authorisations received, where a significantly higher number were for the over 65 age group.

Applications received for Further authorisation and assessment show that 20% were for the under 65 age group in comparison to 80% for the over 65s.

[9] Betsi Cadwaladr University Health Board reports that they only receive Standard requests from the mental health wards for patients who are currently detained on MHA, who the MH Team feel no longer meet the criteria for the MHA and that a DoLS is more appropriate.
[10] For example, one local authority may request that all care homes submit as Standard, regardless of situation, and they will assess and prioritise according to their own criteria.
[11] For example, one local authority may record the type as what is received, whereas another may clarify with the managing authority and record the revised type.

**Table 2b.** The percentage of different application types for each local authority in 2019-20

| | Standard | Urgent | Further |
|---|---|---|---|
| **Blaenau Gwent** | 29% | 46% | 25% |
| **Bridgend** | 54% | 5% | 41% |
| **Caerphilly** | 28% | 44% | 28% |
| **Cardiff** | 71% | 13% | 16% |
| **Carmarthenshire** | 64% | 14% | 22% |
| **Ceredigion** | 51% | 7% | 42% |
| **Conwy** | 42% | 27% | 31% |
| **Denbighshire** | 58% | 23% | 19% |
| **Flintshire** | 86% | 14% | 0% |
| **Gwynedd** | 55% | 29% | 16% |
| **Isle of Anglesey** | 31% | 20% | 49% |
| **Merthyr Tydfil** | 63% | 8% | 29% |
| **Monmouthshire** | 20% | 61% | 19% |
| **Neath Port Talbot** | 39% | 5% | 56% |
| **Newport** | 49% | 24% | 27% |
| **Pembrokeshire** | 53% | 34% | 13% |
| **Powys** | 49% | 20% | 30% |
| **Rhondda Cynon Taf** | 72% | 12% | 16% |
| **Swansea** | 94% | 6% | 0% |
| **Torfaen** | 23% | 56% | 21% |
| **Vale of Glamorgan** | 76% | 6% | 18% |
| **Wrexham** | 1% | 55% | 44% |
| **Total** | **55%** | **21%** | **24%** |

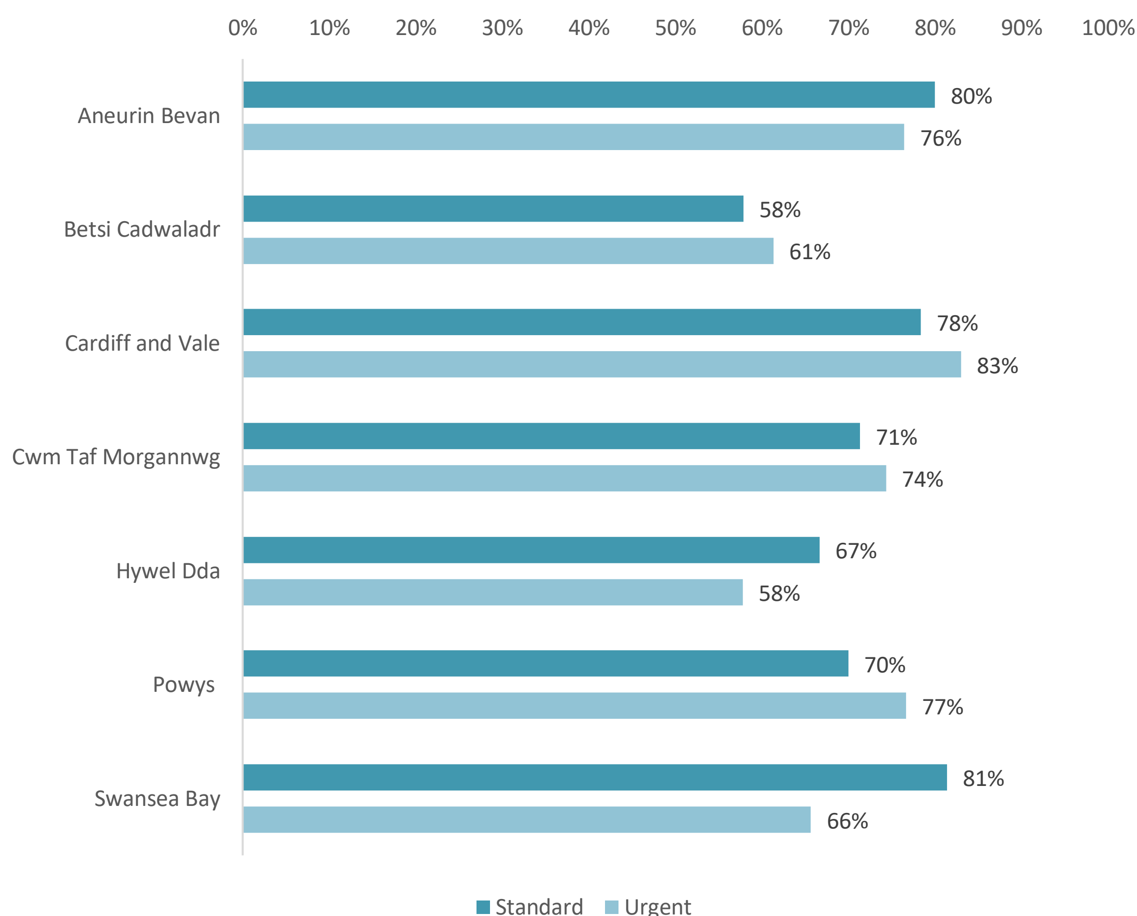
## 4. New authorisations

Of all the DoLS applications received by health boards in 2019-20 (6,486), 17% were still in progress on 1st April 2020 and 48% were withdrawn[12] before they could be assessed. Of the remaining 2,174, 74% (1,615) were authorised (see Figure 3a).

Nearly all (94%) Further applications were approved in every health board. However, this was not the case for Swansea Bay and Aneurin Bevan University Health Boards, which authorised only 71% and 78% of Further applications respectively.

[12] The main reasons given for applications being withdrawn are that the individual has either been discharged from hospital or the individual has died.

**Figure 3a.** The proportion of applications that were authorised by each health board in 2019-20

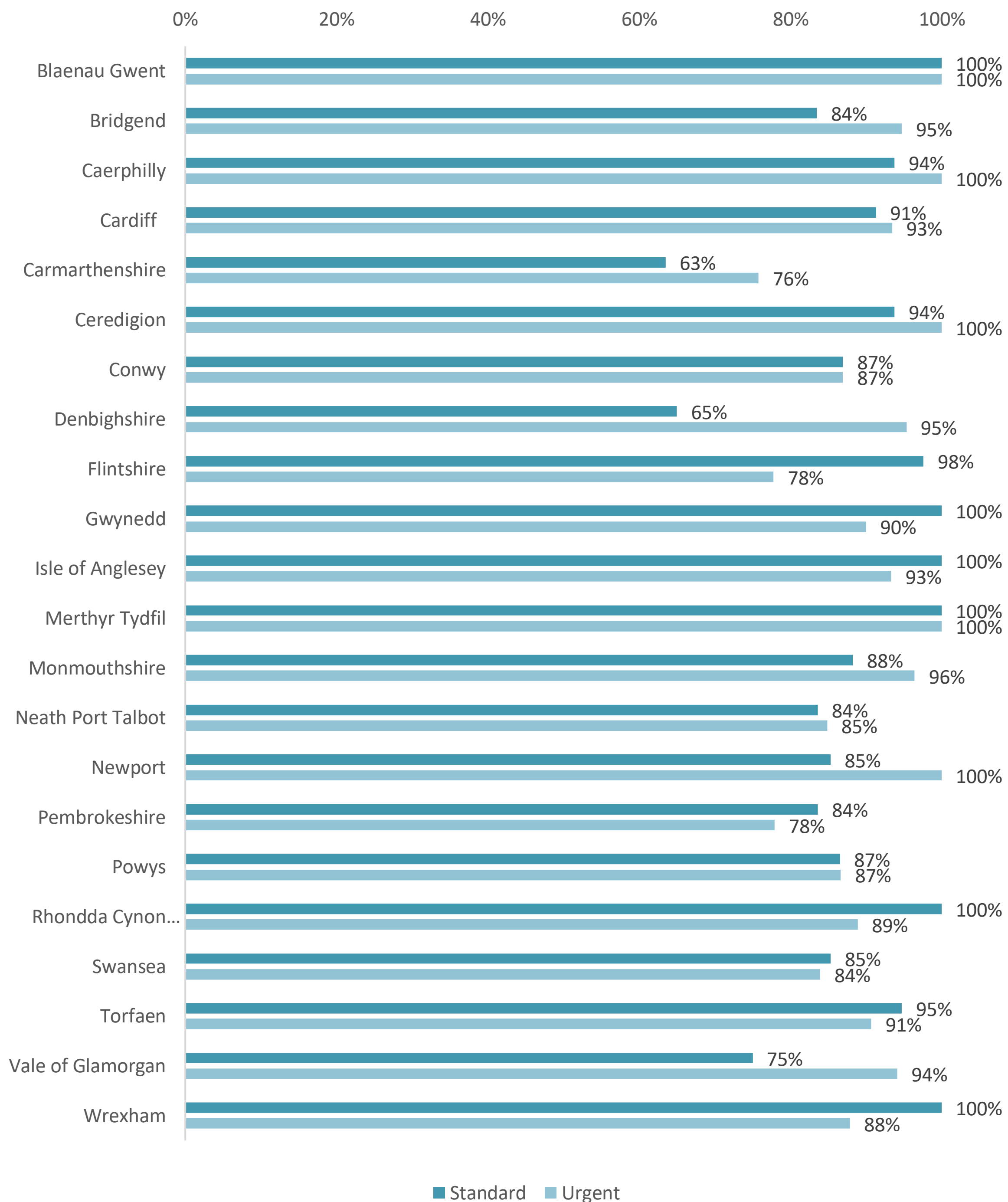



During 2019-20 local authorities authorised 47% (4,910) of all DoLS applications (10,402). As of 1st April 2020, 30% of DoLS applications were still in progress (3,075) and 18% (1,852) were withdrawn during the year[13]. Relatively few applications were refused and made up only 5% (565) of all DoLS applications.

Of those applications authorised it can be seen that on average between 85% and 90% of Standard and Urgent applications were authorised by local authorities across Wales (see Figure 3b).

[13] The main reasons given for applications being withdrawn are that the individual had moved home or died before a decision had been made.

**Figure 3b.** The proportion of applications that were authorised by each local authority in 2019-20




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.

The reasons for refusing applications highlighted the differences in both recording processes and local provisions. For example, Powys Teaching Health Board recorded applications where an individual regained capacity prior to review as being refused, whereas Cardiff and Vale University Health Board recorded such applications as withdrawn. Similarly, Powys Teaching Health Board had many smaller hospitals, which resulted in patients more frequently moving hospitals and applications being withdrawn.

**Table 3a.** The proportion of applications that weren't authorised health boards by reason for refusal in 2018-19[14]

| | Refused | | | | | Withdrawn | In Progress |
|---|---|---|---|---|---|---|---|
| | Best interest | Eligibility | Mental Capacity | Mental Health | Not a deprivation | | |
| **Aneurin Bevan** | 5% | 10% | 65% | 15% | 5% | 41% | 51%[15] |
| **Betsi Cadwaladr** | 0% | 36% | 53% | 0% | 11% | 65% | 6% |
| **Cardiff and Vale** | 0% | 39% | 59% | 0% | 2% | 38% | 31% |
| **Cwm Taf Morgannwg** | 5% | 3% | 56% | 36% | 0% | 47% | 6% |
| **Hywel Dda** | 1% | 34% | 64% | 1% | 0% | 65% | 0% |
| **Powys** | 0% | 12% | 88% | 0% | 0% | 60% | 12% |
| **Swansea Bay** | 1% | 0% | 17% | 7% | 74%[16] | 36% | 0% |
| **Total** | **2%** | **18%** | **48%** | **9%** | **23%** | **48%** | **17%** |

Similarly to health boards, very few applications (5%) to local authorities were refused and the reasons for refusal varied considerably between each local authority. Of the applications refused, 53% were rejected on the grounds that the mental capacity condition was not met and 20% due to eligibility[17].

A modest number of DoLS applications to local authorities were withdrawn (18%) during the 2019-20 reporting timeframe. The main reasons for withdrawal was when the individual had died before a decision was made, or had either moved care home or returned home – which means a new application must be made if required (see Table 3b).

[14] Details of the different assessments can be found in the Glossary.
[15] The high proportion of 'In progress' applications is due to many hospital moves not resulting in the application being recorded as withdrawn.
[16] Many applications recorded as 'Not a Deprivation' are actually withdrawn, but recorded as 'Not a Deprivation'.
[17] See Glossary for more information.

**Table 3b.** The proportion of applications that weren't authorised by each local authority in 2019-20

| | Refused | | | | | Withdrawn | In Progress |
|---|---|---|---|---|---|---|---|
| | Best interest | Eligibility | Mental Capacity | Mental Health | Not a deprivation | | |
| **Blaenau Gwent** | 0% | 0% | 100% | 0% | 0% | 15% | 46% |
| **Bridgend** | 67% | 0% | 33% | 0% | 0% | 19% | 2% |
| **Caerphilly** | 33% | 0% | 67% | 0% | 0% | 10% | 40% |
| **Cardiff** | 0% | 10% | 30% | 20% | 0% | 10% | 71% |
| **Carmarthenshire** | 2% | 69% | 22% | 2% | 6% | 29% | 27% |
| **Ceredigion** | 0% | 0% | 100% | 0% | 0% | 18% | 35% |
| **Conwy** | 0% | 0% | 100% | 0% | 0% | 21% | 8% |
| **Denbighshire** | 0% | 63% | 38% | 0% | 0% | 12% | 27% |
| **Flintshire** | 0% | 0% | 100% | 0% | 0% | 34% | 28% |
| **Gwynedd** | 0% | 0% | 75% | 0% | 25% | 17% | 46% |
| **Isle of Anglesey** | 0% | 0% | 100% | 0% | 0% | 18% | 21% |
| **Merthyr Tydfil** | 0% | 0% | 0% | 0% | 0% | 10% | 64% |
| **Monmouthshire** | 0% | 0% | 100% | 0% | 0% | 11% | 42% |
| **Neath Port Talbot** | 0% | 2% | 81% | 0% | 17% | 13% | 8% |
| **Newport** | 0% | 0% | 63% | 13% | 0% | 14% | 41% |
| **Pembrokeshire** | 0% | 4% | 85% | 0% | 11% | 26% | 39% |
| **Powys** | 0% | 0% | 100% | 0% | 0% | 19% | 48% |
| **Rhondda Cynon Taf** | 0% | 0% | 100% | 0% | 0% | 36% | 46% |
| **Swansea** | 0% | 0% | 44% | 0% | 0% | 17% | 0% |
| **Torfaen** | 0% | 0% | 86% | 14% | 0% | 14% | 48% |
| **Vale of Glamorgan** | 0% | 58% | 42% | 0% | 0% | 10% | 69% |
| **Wrexham** | 0% | 15% | 83% | 0% | 2% | 14% | 0% |
| **Total** | **5%** | **20%** | **53%** | **1%** | **3%** | **18%** | **30%** |

## 5. Application Timescales

Once an application is received, it is logged and prioritised before being allocated to the relevant assessors for their recommendation about whether or not to authorise. Whilst guidance[18] says Standard applications should have been received and a decision made within the 28 days required, 50% of applications to health boards took more than 28 days to process. 92% of Urgent applications took more than seven days (see Table 4a). For local authorities, 92% of Standard and 65% of Urgent applications took longer than stated in the guidance (see Table 4b).

[18] https://gov.wales/mental-capacity-act-deprivation-liberty-guidance-and-forms

**Table 4a.** The length of time taken to process Standard and Urgent applications for each health board in 2019-20

| | Same day | 1-7 days | 8-14 days | 15-28 days | Over 28 days |
|---|---|---|---|---|---|
| | | | **Standard** | | |
| **Aneurin Bevan** | 0% | 13% | 0% | 25% | 63% |
| **Betsi Cadwaladr** | 0% | 9% | 36% | 9% | 45% |
| **Cardiff and Vale** | 4% | 15% | 7% | 30% | 44% |
| **Cwm Taf Morgannwg** | 1% | 1% | 11% | 36% | 52% |
| **Hywel Dda** | 0% | 0% | 38% | 50% | 12% |
| **Powys** | 0% | 0% | 0% | 57% | 43% |
| **Swansea Bay** | 0% | 1% | 6% | 37% | 56% |
| **Total** | **1%** | **2%** | **11%** | **36%** | **50%** |
| | | | **Urgent** | | |
| **Aneurin Bevan** | 0% | 2% | 10% | 17% | 71%[19] |
| **Betsi Cadwaladr** | 0% | 2% | 3% | 26% | 69% |
| **Cardiff and Vale** | 1% | 12% | 43% | 42% | 2% |
| **Cwm Taf Morgannwg** | 0% | 19% | 23% | 31% | 26% |
| **Hywel Dda** | 0% | 2% | 21% | 41% | 36% |
| **Powys** | 0% | 2% | 7% | 41% | 50% |
| **Swansea Bay** | 0% | 0% | 8% | 40% | 52% |
| **Total** | **0%** | **8%** | **21%** | **36%** | **34%** |

**Table 4b.** The length of time taken to process Standard and Urgent applications for each local authority in 2019-20

| | Same day | 1-7 days | 8-14 days | 15-28 days | Over 28 days |
|---|---|---|---|---|---|
| | | | **Standard** | | |
| **All Local Authorities** | 0% | 1% | 1% | 6% | 92% |
| | | | **Urgent** | | |
| **All Local Authorities** | 0% | 4% | 13% | 17% | 65% |

[19] Aneurin Bevan reported that many of the longer delays are due to a lack of information from the hospitals about when patients are discharged (and so applications should have been withdrawn).

## 6. Authorisation durations

The Code of Practice[20] states any authorisation should be for the shortest possible duration and for only as long as the relevant person will meet the required criteria. 89% of authorisations made by health boards were for six months or less, and 53% for three months or less (see Figure 4a). Only a small number of authorisations were for a whole year.

Cwm Taf Morgannwg and Swansea Bay University Health Boards reported the longest durations of authorisations. This is related to the services provided by the health boards and a higher number of patients receiving long term care, typically in older adult mental health or learning disability care settings. It was also reported that 12 month authorisations may be used to provide respite care, where an individual may have several short term places with the same arrangements over the 12 month period.

A completely different picture can be seen for the duration of applications authorised by local authorities. Most were for six months or more, with 60% of all Standard authorisations and 36% of Urgent authorisations for 12 months. Only 14% of Standard authorisations and 42% of Urgent authorisations were for six months or less (see Table 4b).

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

**Figure 4a.** The proposed duration of applications that were authorised by each health board in 2019-20

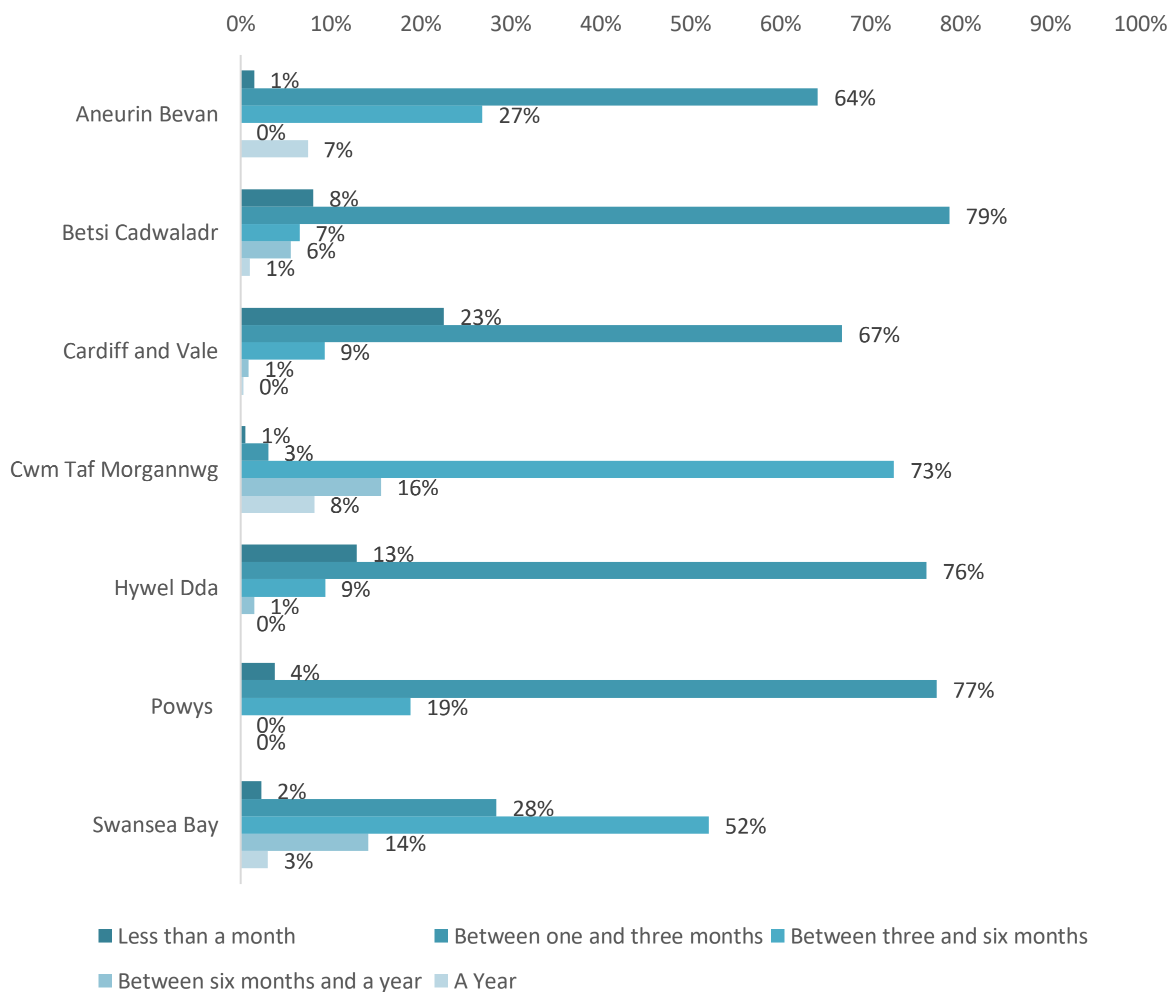
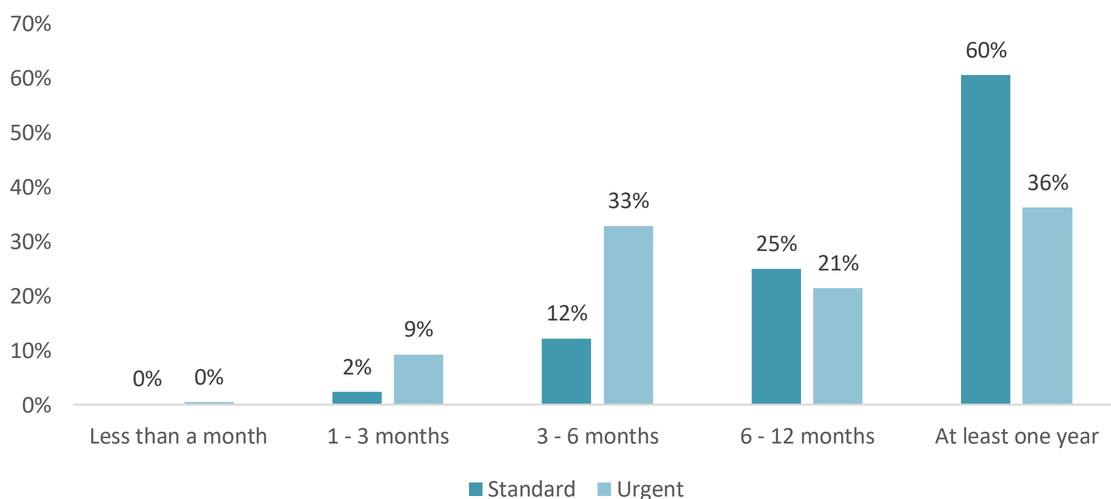



**Figure 4b.** The proposed duration of applications that were authorised by each local authority in 2019-20



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

Any authorised deprivation of liberty can undergo a review. However, 295 authorisations (126 in health boards and 169 in local authorities) underwent a review in 2019-20, 7.8% of health board authorised applications[21] and 3.4% of local authority authorised applications[22]. This is a considerable increase for health boards, where only 2.6% of authorised applications were reviewed in 2018-19.

All applications require that the individual has a nominated representative. The majority of these are a family member or friend. However, when there is no one independent of services, such as a family member or friend, to represent the person, an IMCA or a paid representative is instructed. The IMCA or paid representative role is to support and represent the person in the decision-making process and make sure that the Mental Capacity Act 2005 is being followed.

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, 60 made use of an IMCA appointed under Section 39A, 155 an IMCA appointed under Section 39D and 8 made use of an IMCA appointed under Section 39C. This was again considerably higher than the previous year, with over three times as many IMCA 39A appointments[23]. This varied considerably between health boards, with some two thirds of all IMCA 39D appointments being in Swansea Bay[24] and none appointed in Cardiff and Vale[25].

Of all local authority authorised applications, 285 made use of an IMCA appointed under Section 39A, 112 appointed under Section 39D and none made use of an IMCA appointed under Section 39C. These figures varied considerably by local authority, the highest number of all IMCA 39A appointments were by Neath Port

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[21] 42 of these were the subject of multiple reviews.
[22] 65 of these were the subject of multiple reviews.
[23] The increased use of IMCAs in 2019-20 is related to the health board boundary changes. IMCA providers are commissioned by, or operate within, health boards. The change in health board boundaries required a change in IMCA provider arrangements and resulted in more IMCA referrals.
[24] The health board suggested that may be due to an awareness campaign run by the team and to the type of patients who are unable to be discharged due to lack of facilities in the community, and who have no family/friend to assist.
[25] Cardiff and Vale was one of the few health boards to not make use of any IMCA 39A, which they reported was due to making sure to track down neighbours or friends when there is no family available.

Talbot (40%) and more than half of all IMCA 39D appointments were made by the Isle of Anglesey.

A total of 34 health board authorisations and 77 local authority authorisations were referred to the Court of Protection in 2019-20.

### 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 so 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.

### 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

| Term | Definition |
|---|---|
| **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. |

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| • **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. |

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| **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. |

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| **Gwent consortium** | The Gwent consortium is the Deprivation of Liberty Safeguards Team commissioned by the following organisations who, under the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards (2009) are known as 'supervisory bodies' in relation to their functions under the Act:<br><br>• Aneurin Bevan University Health Board<br>• Blaenau Gwent County Borough Council<br>• Caerphilly County Borough Council<br>• Monmouthshire County Borough Council<br>• Newport City Council<br>• 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**<br><br>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. |

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| **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.<br><br>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. |

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| **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:<br><br>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.<br>2. A person must be given all practicable help before anyone treats them as not being able to make their own decisions.<br>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.<br>4. Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.<br>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. |

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| **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 |

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| **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. |