

THE VALE OF GLAMORGAN COUNCIL

GOVERNANCE AND AUDIT COMMITTEE: 21<sup>ST</sup> OCTOBER, 2024

REFERENCE FROM HEALTHY LIVING AND SOCIAL CARE SCRUTINY  
COMMITTEE: 8<sup>TH</sup> OCTOBER, 2024

“462 DEPRIVATION OF LIBERTY SAFEGUARDS TEAM ANNUAL UPDATE  
(DSS) –

The Operational Manager for Safeguarding and Service Outcomes presented the report, the purpose of which was to provide members with an overview and summary of the activity within the Deprivation of Liberty Safeguards (DoLS) team and highlighted the resource and capacity issues that had resulted in this area of work being included on the corporate risk register.

The Officer advised that the Liberty Protection Safeguards (LPS) that were due to replace the DoLS legal framework in England and Wales, had been postponed indefinitely. Despite the postponement the suggested changes provided the service with an opportunity to consider the effectiveness of the current procedures and processes. A new team manager was appointed mid-2024 and the new manager had overseen changes in the Council's data and performance processes. Therefore, it was the Council's intention to use recent changes to inform a thematic analysis going forward, with support from its business intelligence team.

The Council continued to see a rise in the number of applications being received year on year. During the planning phases of the intended new framework (LPS), additional annual funding was received from Welsh Government to address the backlog of applications. This had a positive impact on being able to assess applications and backlogs had significantly decreased since. Welsh Government had agreed ongoing funding for 2023/24 and indicated that further funding would be available for 2024/25.

Following the Officer's presentation of the report, Councillor Stallard referred to the delays in the new LPS framework and asked after the impact of this for the Vale of Glamorgan Council. In response, the Officer reiterated that the intended new framework had been postponed indefinitely and that this was not deemed a priority for Welsh Government at the current time. However, there were some elements of the work already undertaken by the Vale of Glamorgan Council in preparation for implementing the new LPS that could be utilised and taken forward. A significant amount of planning had taken place to date and therefore this had not been a wasted effort.

Councillor Lloyd-Selby then noted that it was good to see that the backlog of applications had reduced but queried what potential implications were involved for individuals who were awaiting a response to an application. In response, the

Operational Manager advised that the current status was that an individual would be deprived of their liberty and there was no legal framework in place to support these deprivations. However, the Council maintained very good communication with partners and acted in line with the ADS prioritisation matrix which was a national tool. Also, if circumstances for an individual's care were to change then the individual had the right to review and challenge.

As a supplementary question, Councillor Lloyd-Selby then queried after the implications for the Vale of Glamorgan Council where an individual's rights were illegally deprived and how that process was worked through. In reply, the Operational Manager advised that an individual could challenge the Council via Cardiff Council or the University Health Board, but the Vale of Glamorgan had not received legal challenge via either avenue to date. It had always been a challenge for the team to manage the number of applications being received as these far outstretched the resources available to respond. Individuals who were objecting were dealt with via the relevant legal processes.

Councillor Lloyd-Selby then questioned what independent advocacy was available to individuals where it was determined that they should be deprived of their liberty. As a supplementary point, Councillor Lloyd-Selby also suggested that more detail on the profile of individuals who the report directly related to be included in the next rendition of the report to further support Members with understanding the context for individuals who were directly impacted.

In response, the Operational Manager confirmed that the cohort of individuals that the report related to were those who lacked capacity both under the age of 18 and 18+ and was happy to agree to Councillor Lloyd-Selby's suggestion for changes to future renditions of the report. All individuals have the right to a Relevant Representative (formal term for this type of advocacy) provided for each individual who may be objecting to their care and support in a setting. This point would also be added into the next rendition of the report presented to Committee.

In conclusion, Councillor Godfrey thanked officers for making it clear that no claims had been made against the Vale of Glamorgan Council to date as well as clearly setting out the application process and statistics within the report presented.

With no further comments or questions, the Committee subsequently

#### RECOMMENDED –

(1) T H A T the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their care and accommodation needs be noted.

(2) T H A T the report be referred to the Governance and Audit Committee for its consideration.

### Reasons for recommendations

(1) Having regard to the contents of the report on the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their accommodation and care and support arrangements and the risk to the Council of legal challenge where statutory timescales are not met.

(2) To update Members of the Governance and Audit Committee on the progress made with the backlog of applications and the performance and activity of the DoLS Team during 2023/24.”

Attached as Appendix: Report to Healthy Living and Social Care Scrutiny Committee: 8<sup>th</sup> October, 2024

Meeting of:	<b>Healthy Living and Social Care Scrutiny Committee</b>
Date of Meeting:	<b>Tuesday, 08 October 2024</b>
Relevant Scrutiny Committee:	Healthy Living and Social Care
Report Title:	Deprivation of Liberty Safeguards Team Annual Update
Purpose of Report:	To provide overview and summary of the activity within the DoLS team. To highlight the resource and capacity issues that have resulted in this area of work being included on the corporate risk register.
Report Owner:	Director of Social Services
Responsible Officer:	Operational Manager, Safeguarding & Service Outcomes
Elected Member and Officer Consultation:	Cabinet Member, Social Care & Health; Operational Manager, Legal Services; Operational Manager, Finance.
Policy Framework:	This report is consistent with the Policy Framework and Budget
Executive Summary:	<ul style="list-style-type: none"> <li>This report seeks to ensure effective scrutiny of activity and performance in relation to the Deprivation of Liberty Safeguards (DoLS) arrangements within the Vale of Glamorgan.</li> </ul>

## **Recommendations**

1. That Scrutiny Committee considers the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their care and accommodation needs.
2. That this report is referred to Audit Committee for their consideration.

## **Reasons for Recommendations**

1. That Scrutiny notes the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their accommodation and care and support arrangements and the risk to the Council of legal challenge where statutory timescales are not met.
2. To update members on the progress made with the backlog of applications and the performance and activity of the DoLS Team during 2023/24.

## **1. Background**

- 1.1 The Cheshire West Supreme Court judgement in 2014 introduced a new acid test in deciding whether an incapacitated adult is being deprived of their liberty which comprises of two key questions. Is the person subject to continuous supervision and control? Is the person free to leave? The judgement effectively lowered the threshold for what constitutes deprivation of liberty in care. The ruling expanded human rights safeguarding to a broader vulnerable group of people. Cardiff and the Vale Deprivation of Liberty Safeguards/Mental Capacity Act (DoLS/MCA) Team continues to fulfil the Supervisory Body responsibilities required for DoLS on behalf of Cardiff and Vale Health Board, Cardiff City Council and the Vale of Glamorgan Council. This is overseen by a partnership management board consisting of senior representatives from each Supervisory Body. This partnership board meets on a quarterly basis.
- 1.2 The Team co-ordinates DoLS assessments as requested by Managing Authorities by ensuring that the appropriate criteria requirements are met when depriving an individual of their liberty, in line with the Mental Capacity Act 2005 and associated codes of practice.
- 1.3 The team acts as a 'critical friend' by providing advice and support to health and social care teams across the sector in relation to MCA/DoLS issues.
- 1.4 Provides training for care homes and in-patient hospital sites across Cardiff and the Vale of Glamorgan.
- 1.5 The team is hosted by and based in the Vale of Glamorgan Council and comprises:
  - 1 full time DoLS Team Manager
  - 1 full time administrator

- 8 full time equivalent Best Interest Assessors.

## 2. Key Issues for Consideration

- 2.1** The Liberty Protection Safeguards that were due to replace the DoLS legal framework in England and Wales, have been postponed indefinitely. Despite the postponement the suggested changes provided the service with an opportunity to consider the effectiveness of the current procedures and processes. A new team manager was appointed mid-2024. The new manager has overseen changes in our data and performance processes. It is our future intention to use this to inform a thematic analysis this year, with support from our business intelligence team.
- 2.2** The managing authority can grant itself an urgent authorisation if it is necessary to deprive you of your liberty before standard authorisation can be obtained. They must simultaneously apply for standard authorisation, if not already done. The managing authority must have a reasonable expectation that the requirements for a standard authorisation are likely to be met. The urgent authorisation can allow deprivation to take place while the assessment is carried out. An urgent authorisation can last up to seven days but can be extended once by the supervisory body for another seven days, if the standard authorisation procedure is not completed.
- 2.3** The table below shows the number of instances whereby an urgent authorisation\* was utilised by the Managing Authority during 2023/24:

2023/24	Urgent Applications
Cardiff Council	46
Vale of Glamorgan Council	20
Cardiff & Vale UHB	778

*\*An urgent authorisation is the process whereby the Managing Authority can apply a legal seven-day deprivation of a person's liberty whilst awaiting a standard authorisation.*

You will note that the health board utilises the urgent application process significantly more than the two councils. This is due to the nature of setting and the presenting needs of the individual who may be admitted to hospital and the deprivations that are put in place whilst assessment and treatment is taking place. In a number of instances, individuals will recover capacity during this period.

**2.4** The table below demonstrates the number of applications made to the team for each supervisory body during 2023/24:

<b>Applications</b>	
<b>Cardiff &amp; Vale UHB</b>	899
<b>Vale of Glamorgan Council</b>	531
<b>Cardiff Council</b>	1173
<b>Total Received</b>	<b>2860</b>

The applications are made up of different types of authorisation requests :

**Urgent** – the managing authority can authorise themselves a 7-day period and extend this by a further 7 days if necessary, until a standard authorisation is granted.

**Standard** – following relevant assessments and identification of meeting certain criteria, a standard authorisation can be put in place for a person being deprived of their liberty in a hospital or care home setting. This authorisation can be given for a period of up to 12 months.

There will also be instances where applications are made, and these are subsequently withdrawn due to a range of changes in circumstances for the individual e.g. they regain capacity, that the individual being deprived of their liberty for a range of reasons i.e. changes to the level of supervision, change in type of placement (hospital to community), or the individual dies. (See Appendix 1, End of Year Report).

**2.5** The table below demonstrates backlog of applications for Vale of Glamorgan in previous years:

<b>2017/18</b>	439
<b>2018/19</b>	488
<b>2019/20</b>	329
<b>2020/21</b>	322
<b>2021/22</b>	98
<b>2022/23</b>	72
<b>2023/24</b>	51

**2.6** We continue to see a rise in the number of applications being received year on year. During the planning phases of the intended new framework (LPS) additional annual funding was received from Welsh Government to address backlog of applications. This had a positive impact on being able to assess applications and backlogs have significantly decreased. Welsh Government has agreed ongoing funding for 23/34 and indicated that further funding will be available for 24/25.

- 2.7** The capacity and resource of the team to meet demand had been reviewed previously in response to the planned changes to the new legal framework. Whilst LPS has been indefinitely put on hold, we have refocused and a business planning review of the team and its activity is taking place. We are reviewing the current funding agreements from the three supervisory bodies to identify if this is at a level that reflects the applications being made; the management structure within the DOLS team; the business support functions and developing a new data framework that will enable effective analysis and oversight by the three supervisory bodies. A team manager post was created and appointed during this year. This has further strengthened the team's ability to fulfil the duties and requirements across the partnership.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** Long Term – We continually balance the short term demands of the team with the need to safeguard our ability to meet long term demands.
- 3.2** Prevention – Considering the issues that impact on resources and capacity so that we prioritise our responsibilities and objectives.
- 3.3** Collaboration – The team undertakes the supervisory body responsibilities on behalf of a neighbouring Local Authority and the Local Health Board.

### **4. Climate Change and Nature Implications**

- 4.1** There are no Climate Change and Nature Implications as a direct result of this report.

### **5. Resources and Legal Considerations**

#### **Financial**

- 5.1** The Supervisory Bodies are at risk of legal challenge for not complying with the statutory timescales within the DoLS process. There have been no previous cases where damages have been applied for within the Vale of Glamorgan. However, there have been cases nationally where cases for damages have been brought and awarded.
- 5.2** A review of the current funding agreements and team structure is taking place. The outcome of this review may identify additional resources being identified as being beneficial for the team.

#### **Employment**

- 5.3** The service appointed a new Team Manager at the beginning of 2024. There are no employment consequences as a result of this report.



### **Legal (Including Equalities)**

- 5.4 Article 5 of the European Convention on Human Rights states that 'Everyone has the right to liberty and security of person,' and that 'No one shall be deprived of his liberty', save for criminal proceedings and the Mental Health Act 1983.
- 5.5 The Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards set out the legal framework whereby the local authority can authorise care arrangements that deprive a mentally incapacitated adult of their liberty as long as the care in the person's best interests and action should not otherwise be undertaken under the Mental Health Act 1983.
- 5.6 Unauthorised care that deprives a person who cannot consent to the arrangement is unlawful.

### **6. Background Papers**

Reports to Health Living & Care Scrutiny Committee: 9<sup>th</sup> October 2023; 4<sup>th</sup> October 2022; 9<sup>th</sup> November 2021; 5<sup>th</sup> October 2019; 11<sup>th</sup> September 2018.

# Power BI

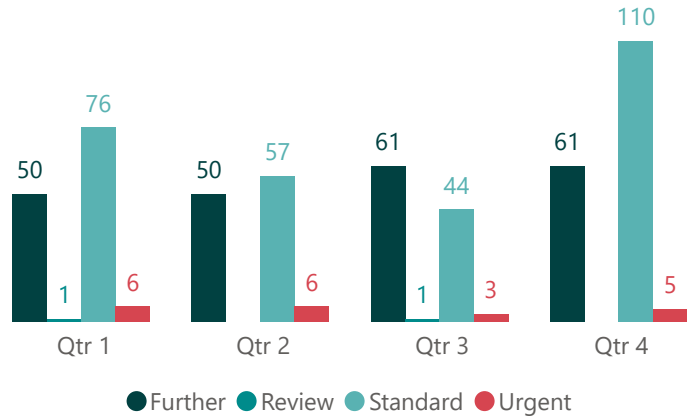
## Deprivation of Liberty Safeguards

### EOY Report 2023-24

# Vale of Glamorgan Council

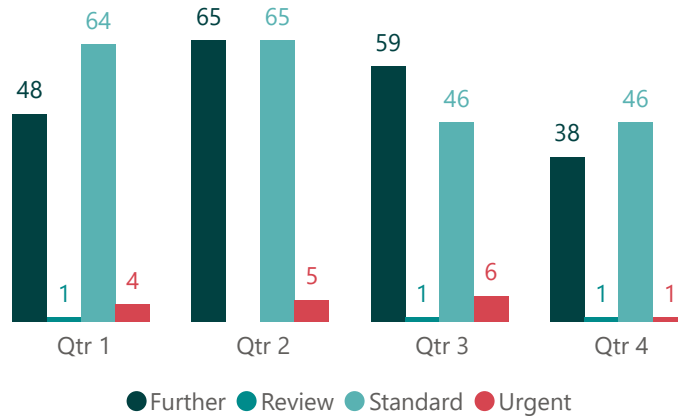
## Applications Received

Combination of tables e.g. Outstanding, Allocated, Sent for Authorisation etc.



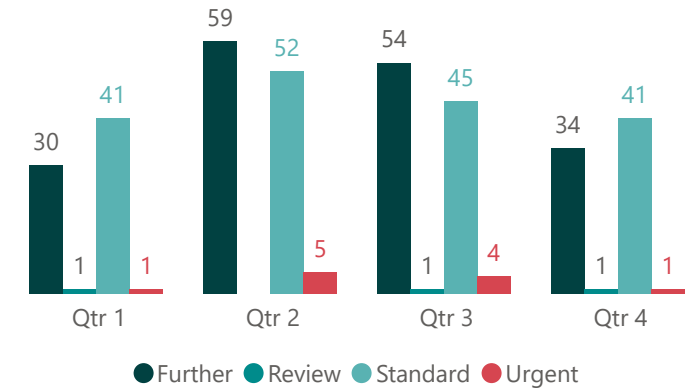
## No. Assessment Carried Out

Assessment Date



## Authorisations Granted

Sent for Authorisation Date (Excludes data with no "Authorisation Start Date")



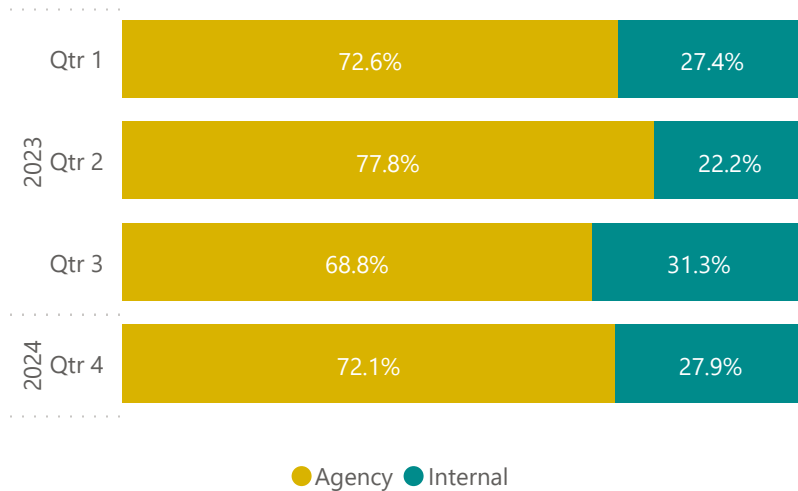
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
133	113	109	176	531

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
117	135	112	86	450

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
73	116	104	77	370

## Best Interest Assessor

Based on Assessments Carried Out



## Waiting List

As at 21/05/24

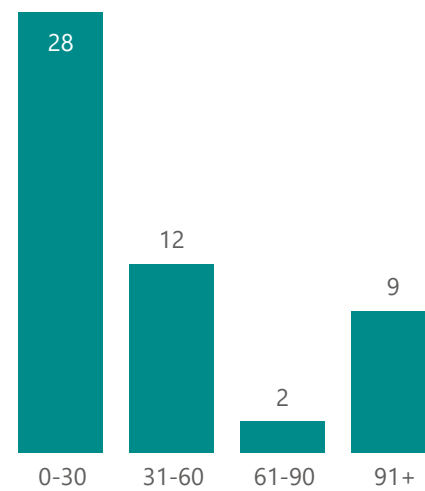
**51**  
No. People Waiting

**59**  
Average No. Days

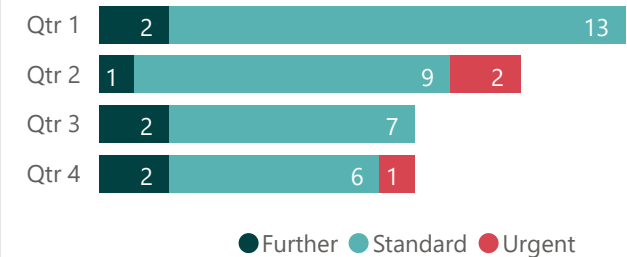
**3027**  
Total No. Days

## No. Days on Waiting List

As at 21/05/24



## No. Applications Withdrawn



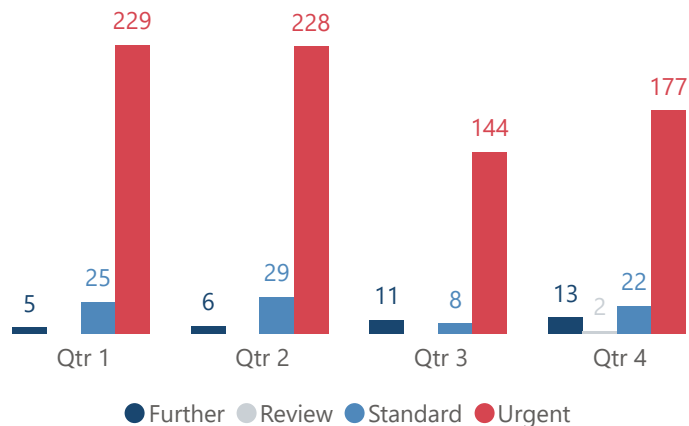
## Top 3 Withdraw Reason's

Reason	Total
Deceased	21
Respite	7
No Longer resident	6

# Cardiff & Vale University Health Board

## Applications Received

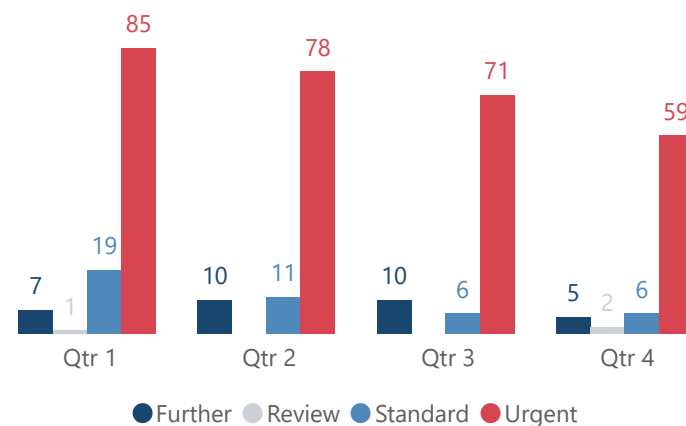
Combination of tables e.g. Outstanding, Allocated, Sent for Authorisation etc.



	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
	259	263	163	214	899

## No. Assessment Carried Out

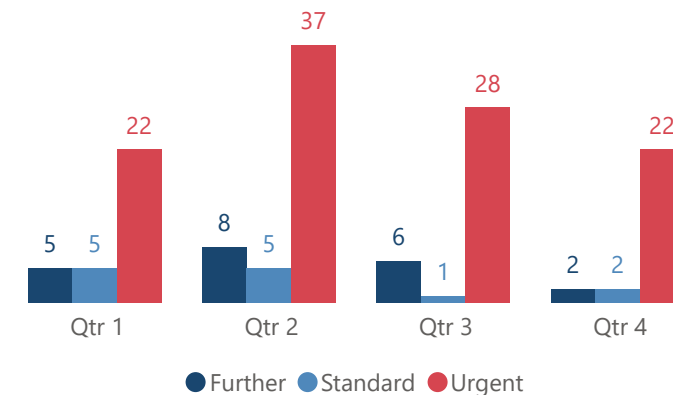
Assessment Date



	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
	112	99	87	72	370

## Authorisations Granted

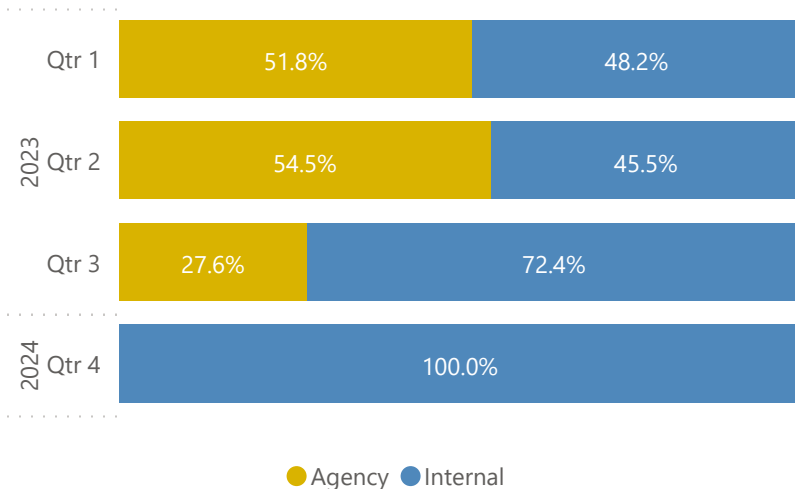
Sent for Authorisation Date (Excludes data with no "Authorisation Start Date")



	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
	32	50	35	26	143

## Best Interest Assessor

Based on Assessments Carried Out



## Waiting List

As at 21/05/24

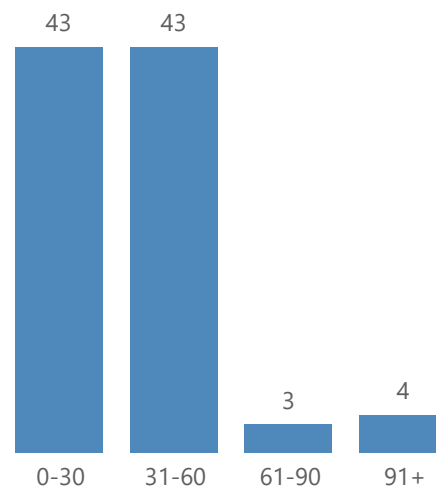
**93**  
No. People Waiting

**34**  
Average No. Days

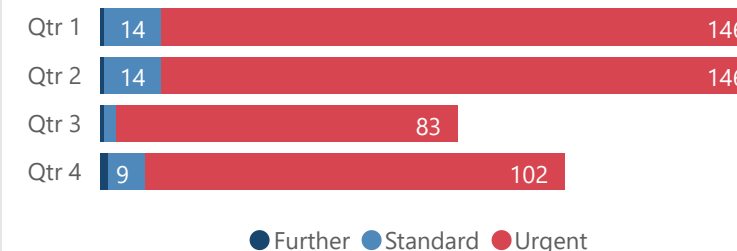
**3168**  
Total No. Days

## No. Days on Waiting List

As at 21/05/24



## No. Applications Withdrawn



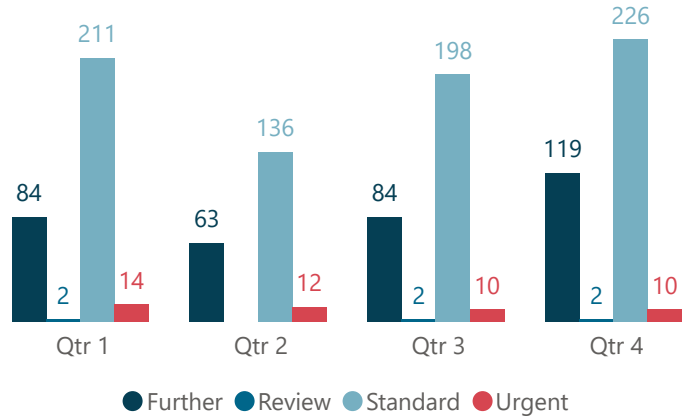
## Top 3 Withdraw Reason's

Reason	Total
No Longer on Ward	349
No Longer There	40
Discharged	31

# Cardiff Council

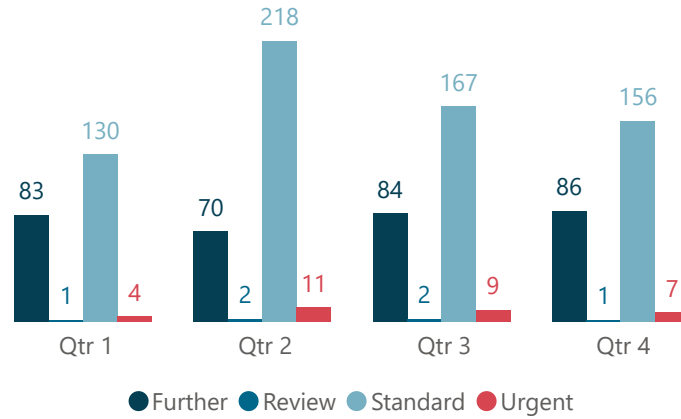
## Applications Received

Combination of tables e.g. Outstanding, Allocated, Sent for Authorisation etc.



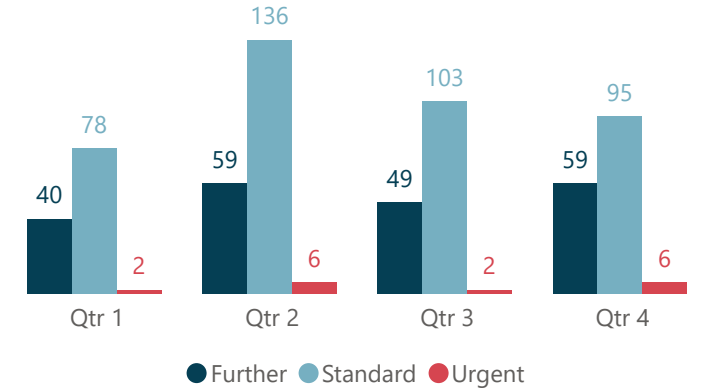
## No. Assessment Carried Out

Assessment Date



## Authorisations Granted

Sent for Authorisation Date (Excludes data with no "Authorisation Start Date")



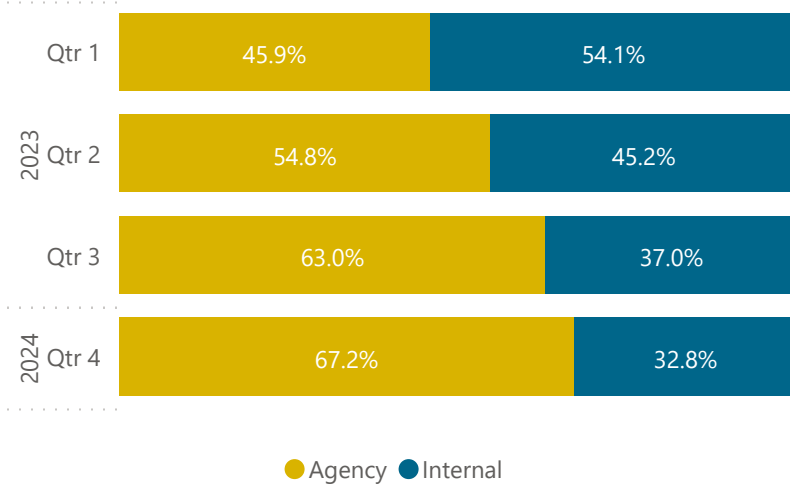
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
311	211	294	357	1173

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
218	301	262	250	1031

Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
120	201	154	160	635

## Best Interest Assessor

Based on Assessments Carried Out



## Waiting List

As at 21/05/24

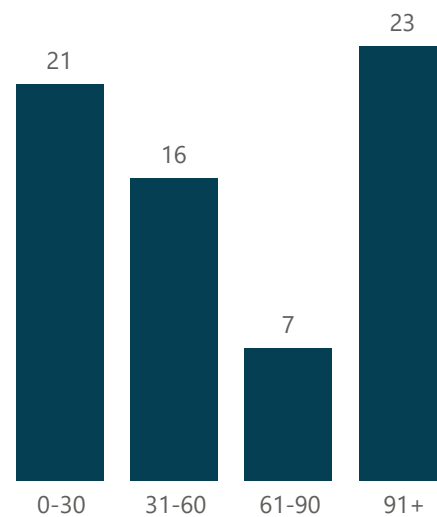
**67**  
No. People Waiting

**134**  
Average No. Days

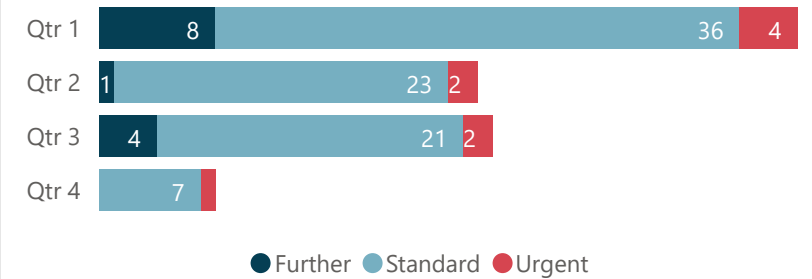
**8817**  
Total No. Days

## No. Days on Waiting List

As at 21/05/24



## No. Applications Withdrawn



## Top 3 Withdraw Reason's

Reason	Total
Deceased	48
No Longer resident	21
Respite	13