

Meeting of:	Healthy Living and Social Care Scrutiny Committee
Date of Meeting:	Tuesday, 08 October 2024
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"> 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.

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:

Applications	
Cardiff & Vale UHB	899
Vale of Glamorgan Council	531
Cardiff Council	1173
Total Received	2860

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:

2017/18	439
2018/19	488
2019/20	329
2020/21	322
2021/22	98
2022/23	72
2023/24	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: 9th October 2023; 4th October 2022; 9th November 2021; 5th October 2019; 11th September 2018.

Power BI

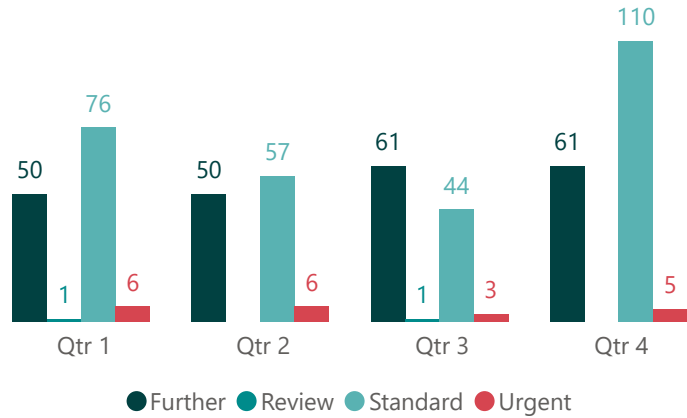
Deprivation of Liberty Safeguards

EOY Report 2023-24

Vale of Glamorgan Council

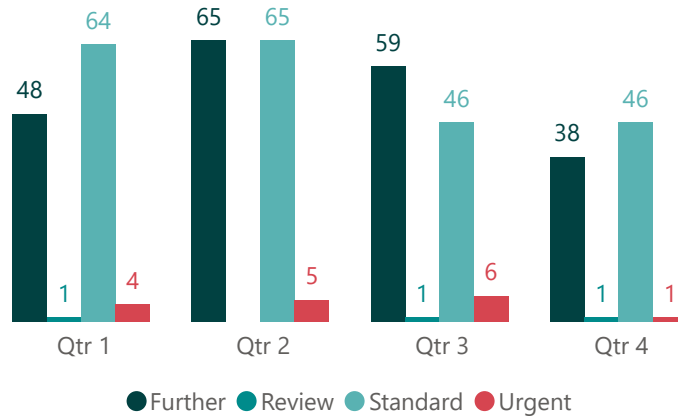
Applications Received

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



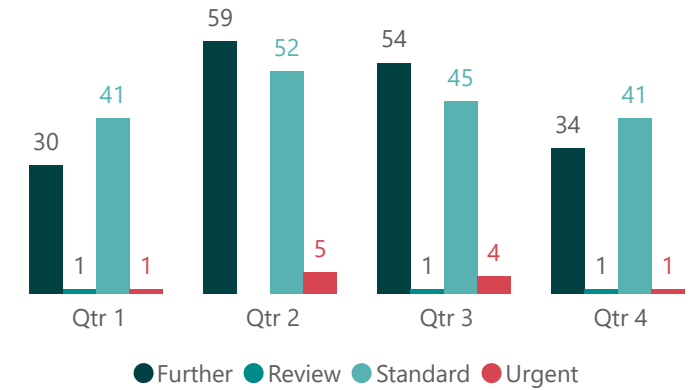
No. Assessment Carried Out

Assessment Date



Authorisations Granted

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



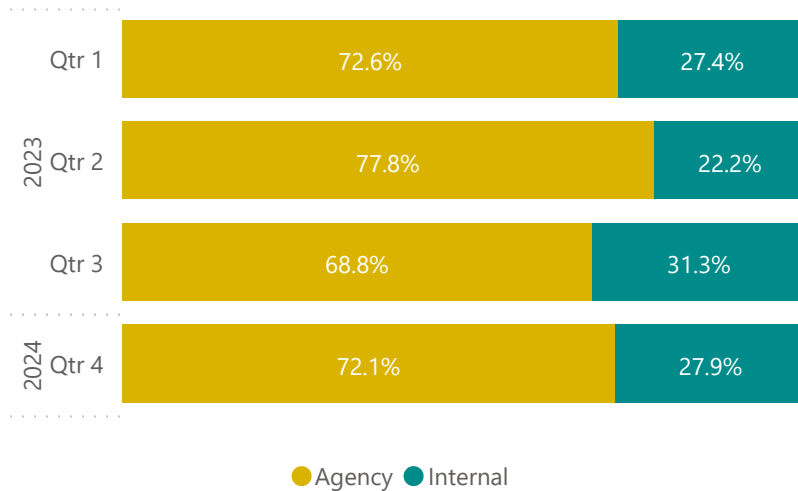
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
133	113	109	176	531

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

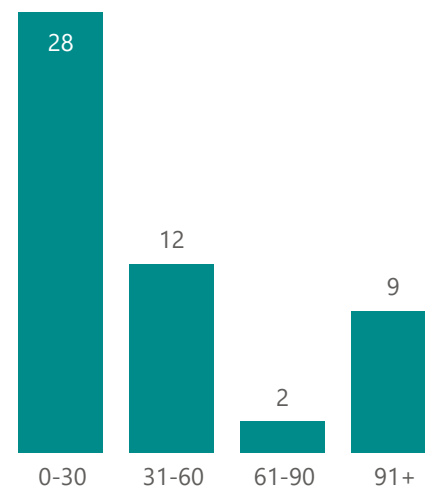
51
No. People Waiting

59
Average No. Days

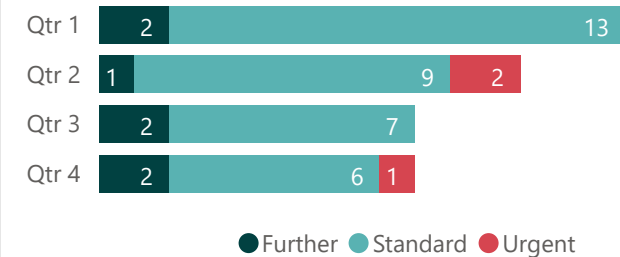
3027
Total No. Days

No. Days on Waiting List

As at 21/05/24



No. Applications Withdrawn



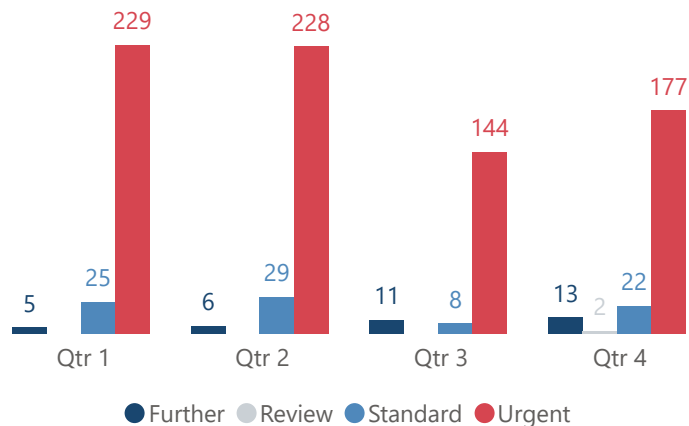
Top 3 Withdraw Reason's

Reason	Total
Deceased	21
Respite	7
No Longer resident	6

Cardiff & Vale University Health Board

Applications Received

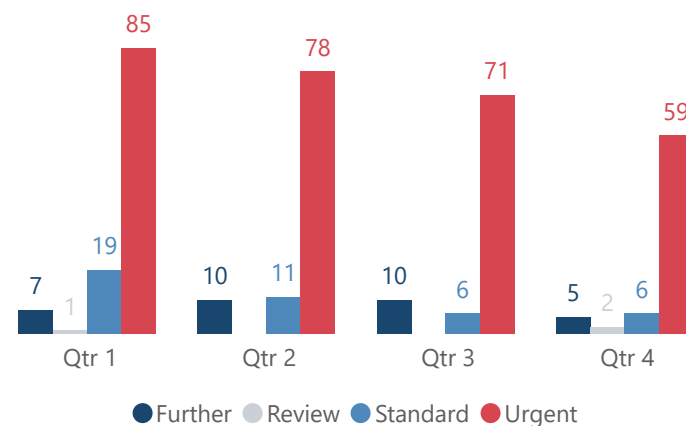
Combination of tables e.g. Outstanding, Allocated, Sent for Authorisation etc.



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	259	263	163	214	899

No. Assessment Carried Out

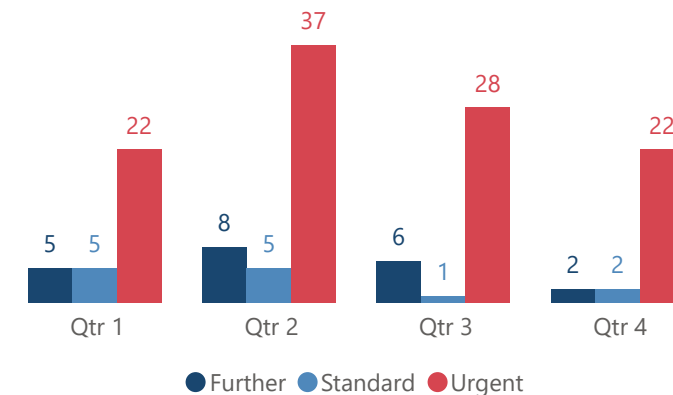
Assessment Date



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

Authorisations Granted

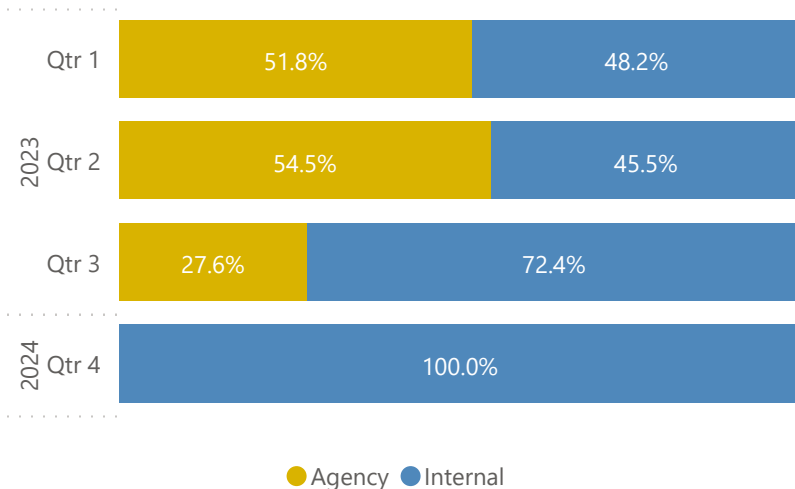
Sent for Authorisation Date (Excludes data with no "Authorisation Start Date")



	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

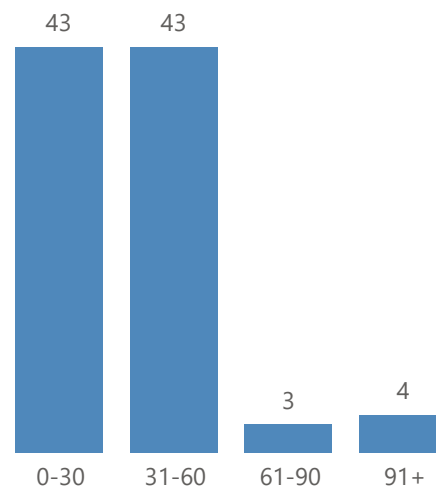
93
No. People Waiting

34
Average No. Days

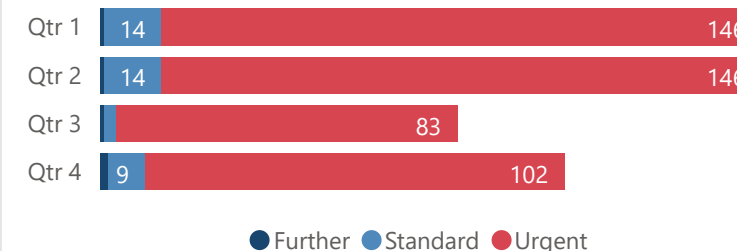
3168
Total No. Days

No. Days on Waiting List

As at 21/05/24



No. Applications Withdrawn



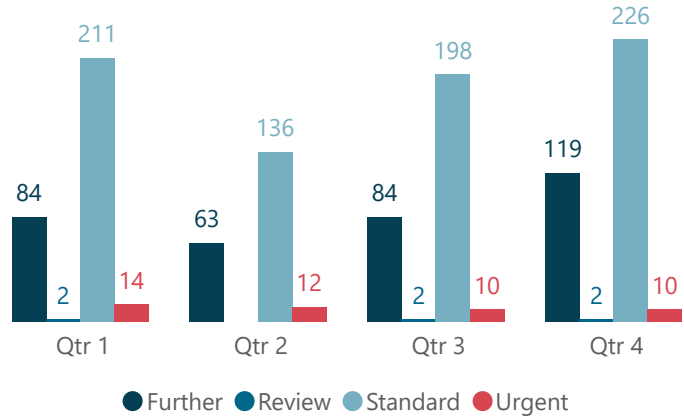
Top 3 Withdraw Reason's

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

Cardiff Council

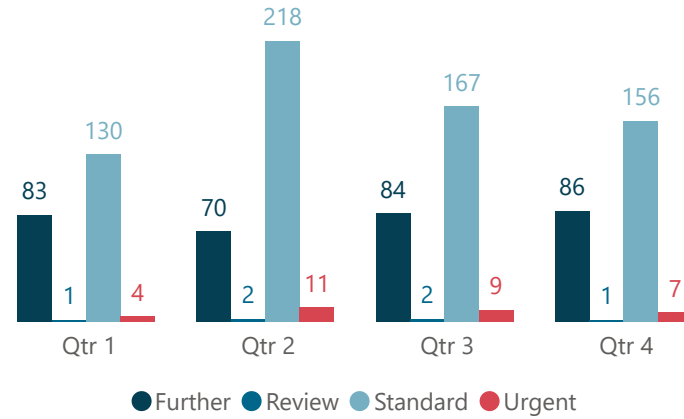
Applications Received

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



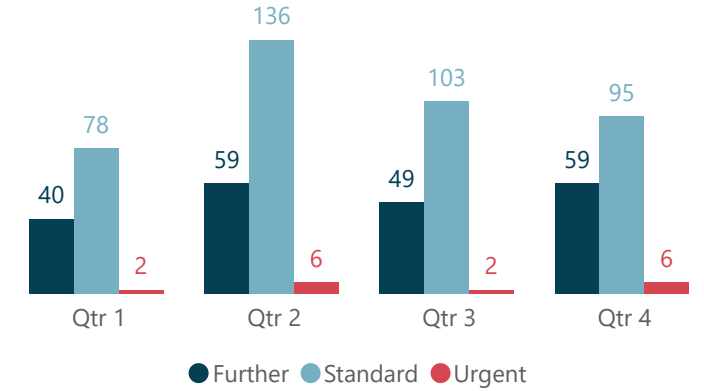
No. Assessment Carried Out

Assessment Date



Authorisations Granted

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



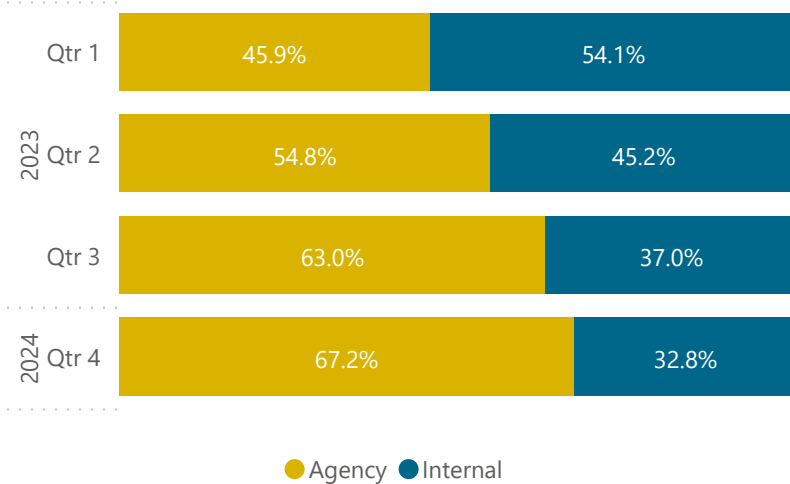
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
311	211	294	357	1173

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

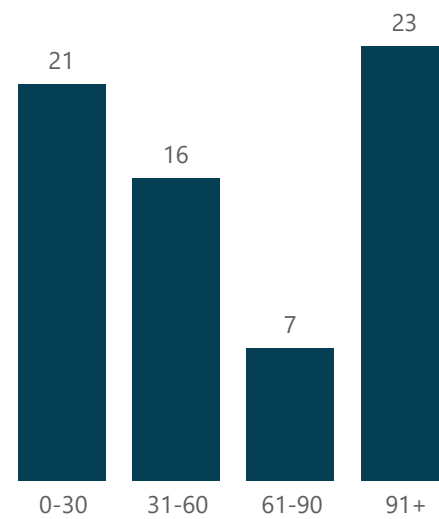
67
No. People Waiting

134
Average No. Days

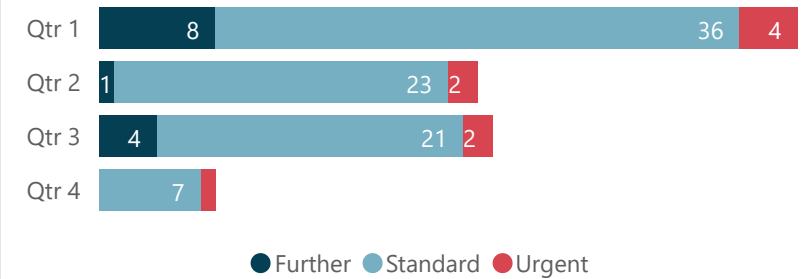
8817
Total No. Days

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