



Deprivation of liberty

Special Schools and  
Residential settings



# Housekeeping

Comfort breaks



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graph TD; A[Housekeeping] --> B[Comfort breaks]; B --> C[Respect]; C --> D[Emotions]
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Respect

Emotions



# Introductions

Who am I?

Who are you?

# Order of training

09.30am –  
Introductions

10:00am – What is  
the mental  
capacity act?

10:30am – History  
of the Childrens  
Act

10:45am –  
Wardships and  
Inherent  
jurisdiction

11:00am – The  
court of protection

11:15am –  
Tea/Coffee

11:30am – Current  
Statistics

12:00midday –  
Exploring statistics

12:30pm – Lunch

13:30pm – Case  
Study

14:00pm –  
Children's homes  
view

14:30pm – Case  
Study

14:45pm –  
Tea/Coffee

15:00pm – Case  
study

15:30pm – Core  
paperwork

# Aims of training

To support candidates to understand what the use of inherent jurisdiction to safeguard children means

To provide confidence in managing court orders and information

To know the legal implications and when to ask for further clarification

# Objectives of training

To use a range of data and case studies to determine the current national picture

To exercise curiosity in the management of DoL and MCA

To understand the expectations of information requests

To drive planning for the child and their next step, particularly in regards to the court of protection

# The Mental Capacity Act

The mental capacity act 2005 is a law that protects vulnerable people over the age of 16 around decision making.

- Every adult, whatever their disability, has the right to make their own decisions wherever possible.
- In law – children over the age of 16 are presumed to have capacity.
- The overlap between the children's act and the MCA
- Clarity – an adult is over 18. A young person or child is under 18.
- How old is a child?

# The five principles of the MCA

- Principle 1 - Assume Capacity - A young person must be assumed to have capacity until proved otherwise

- Principle 2: All Practicable Support - A person must not be treated as unable to make a decision/without capacity unless all practicable steps to help them to do so have been taken without success

# The five principles of the MCA

- Principle 3: Unwise Decisions - A person must not be treated as unable to make a decision merely because they have made an unwise one.

- Principle 4: Best Interests - If an act is done, or a decision taken, on behalf of a person who lacks capacity it must be done, or made, in their best interests.

- Principle 5: Least Restrictive - Any act done, or a decision made, in a persons best interests, must be the least restrictive of the person's rights and freedom of action.

# LPS?



- The Liberty Protection Safeguards – where are we up to?

The LPS scheme was introduced through the Mental Capacity (Amendment) Act in 2019 as the planned replacement system for the Deprivation of Liberty Safeguards (DoLS).

The LPS was intended to provide protection for people aged 16 and above who need to be deprived of their liberty in order to receive their care or treatment and who lack mental capacity to consent to their arrangements.

It was designed to provide a more efficient framework for authorising deprivation of liberty that was capable of delivering meaningful protections to citizens under Article 5 of the European Convention on Human Rights (the right to liberty).

DoLS do not apply to under 18 year olds.

# Why is LPS paused?



This is not clear from the government's announcement. Reference is made to this decision being part of the "prioritisation work" on social care which has seen investment in workforce development, technology, and new data and oversight. It is possible that the decision has, at least partially, been taken as a result of the current pressures on NHS services; one of the key reforms under the LPS would have been to give hospital trusts and integrated care boards (ICBs) new responsibility for authorising deprivations of liberty.

It is also possible that the significant pressures on social care budgets have been a factor. Despite promising long-term financial cost savings for local authorities and the NHS, the LPS did come with start up costs of around £86m, which is unlikely to have found favour with the Treasury.

# No DoLS, No LPS?

Restrictions being implemented to support children and young people are commonly being referred to as DoLS

This is not the case – DoLS do not apply to under 18 year olds

However, a child can be deprived of their liberty under inherent jurisdiction

## The history .....

Wardship – prior to the Children’s Act 1989 the courts implemented wardships to support children who required protection and safety. Broadly speaking ‘the power of the state to protect the interests of children by assuming control over their affairs’.

## The History

The introduction of the Children's Act was to reduce the number of these to allow the sections of the act to support children



This in turn led to the introduction of inherent jurisdiction in place of wardships



This initially led to a reduction as the Children's Act was effective in supporting the needs through it's individual sections

# Section 100

Restrictions on the use of Wardship



# Section 100

## **100      Restrictions on use of wardship jurisdiction**

- (1) Section 7 of the [1969 c. 46.] Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.
- (2) No court shall exercise the High Court's inherent jurisdiction with respect to children—
  - (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
  - (b) so as to require a child to be accommodated by or on behalf of a local authority;
  - (c) so as to make a child who is the subject of a care order a ward of court; or
  - (d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
- (3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.
- (4) The court may only grant leave if it is satisfied that—
  - (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and
  - (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.
- (5) This subsection applies to any order—
  - (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
  - (b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

## Section 25 – The Children’s Act 1989

### Section 25 of the Children’s Act – Secure accommodation

Where there is no secure accommodation available, **the Court can sanction the placement of a child in either a regulated or an unregulated placement**, authorising their deprivation of liberty under its inherent jurisdiction as an alternative to secure accommodation authorised under S. 25 of the Children Act 1989.

Lack of secure accommodation for children a scandal, judge says

[Mentally ill girl under four-to-one supervision forced to stay in hospital | The Independent](#)

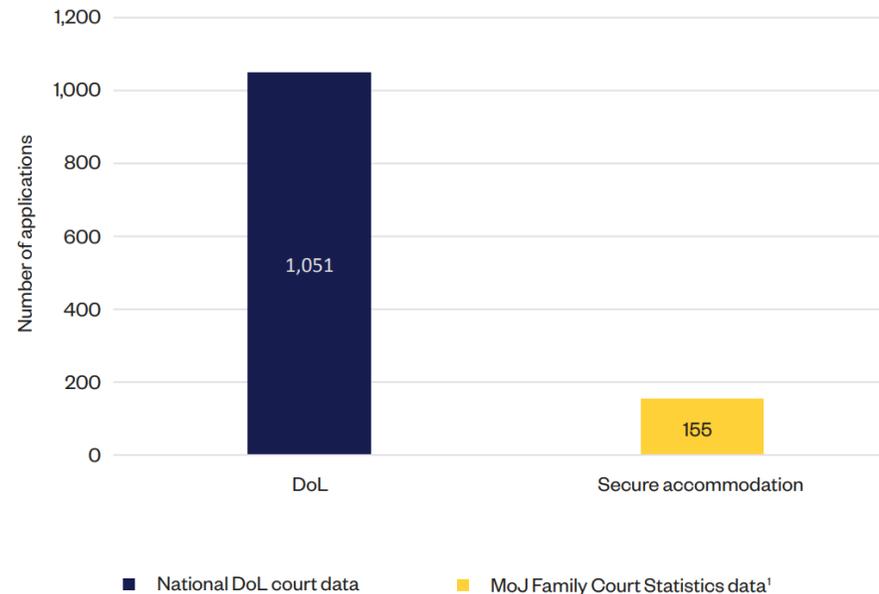
[Lack of secure accommodation for children a scandal, judge says - BBC News](#)

[Lack of secure accommodation – a damning judgment \(yjlc.uk\)](#)

[Children are in 'extreme crisis': top judge berates DfE's six-year failure to tackle 'gross' lack of secure units - Community Care](#)

# Far more children are subject to deprivation of liberty applications than secure accommodation applications

Figure 2: Number of DoL and secure accommodation applications, July 2022 to March 2023



Applications for DoL orders now significantly outnumber applications under the statutory scheme for placing children in specialist secure children's homes. Between July 2022 and March 2023, there were almost 10 times as many applications to deprive children of their liberty under the inherent jurisdiction than there were applications for secure accommodation orders.<sup>2</sup>

While there is undoubtedly a shortage of available places in secure children's homes, it is a more complicated picture than simply increasing the number of beds. Other issues include the complexity of needs of children being cared for in these settings, and staffing issues.

## Further information

1. Ministry of Justice (MoJ). (2023). *Statistics: family court statistics quarterly*. National statistics. Retrieved 18 August 2023 from <https://www.gov.uk/government/collections/family-court-statistics-quarterly>
2. A secure accommodation order authorises the placement of a child in a secure children's home for welfare reasons. Secure children's homes are specially designed to care for vulnerable children whose liberty may need to be temporarily restricted to keep them safe and are inspected by Ofsted.

# What is a deprivation of liberty?

The term 'deprivation of liberty' comes from Article 5 of the European Convention on Human Rights. It provides that everyone, of whatever age, has the right to liberty. A deprivation of liberty (DoL) occurs when restrictions are placed on a child's liberty beyond what would normally be expected for a child of the same age. The United Nations Convention on the Rights of the Child states that the restriction of a child's liberty should be used only as a measure of last resort and for the shortest appropriate period of time.

The high court can authorise the deprivation of a child's liberty under its inherent jurisdiction when none of the other legal mechanisms apply. As an example – no beds in a secure setting.

## Experiences and views

How often do we come across deprivation of liberty in our settings?

Tea/Coffee





# The National Deprivation of Liberty Court

- Introduced in July 2022
- Based at the Royal Courts of Justice
- This has been a twelve-month pilot scheme
- Nuffield Justice Observatory invited to collect the data
- During the pilot period several updates of data were released

# Pilot statistics

Caveats allowing – 1249 children have been subject to DoL application since July 2022

On average 117 applications per month

The highest number recorded was August 2022 – 136 applications

June 2023 – 98 applications

21.2% of all applications were made by local authorities in the North West

16.8% of all applications were made by London local authorities

The gender split is very balanced

## Further statistics

Physical/Verbal aggression recorded in 69.2% cases

Mental health/emotional difficulties recorded in 59.1% cases

Placement breakdown recorded in 55.3% cases

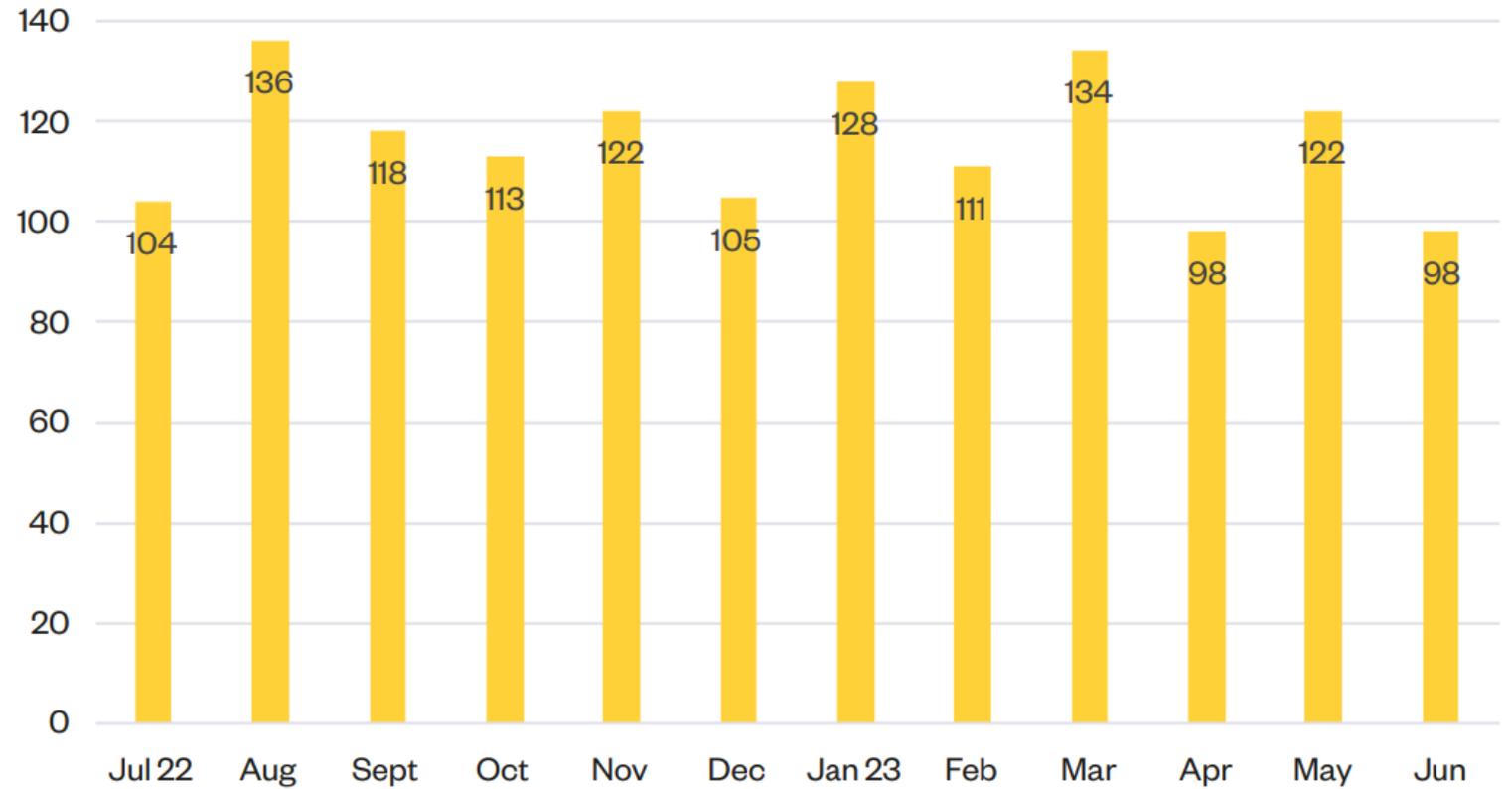
Self-harm/suicide ideation recorded in 52.4% cases

Missing from home concern recorded in 46.6% cases

96.6% of children with applications were already in care

## Monthly Overview

**Figure 1: Monthly applications received by the national DoL court, July 2022 to June 2023**



## Further Detail

The number of applications has remained fairly consistent since those initial months.

That indicates an average of 117 applications per month.

The estimation of 1300 applications in the pilot year has been 1249.

Since 2002, 16 secure units have closed (Roe, 2022)

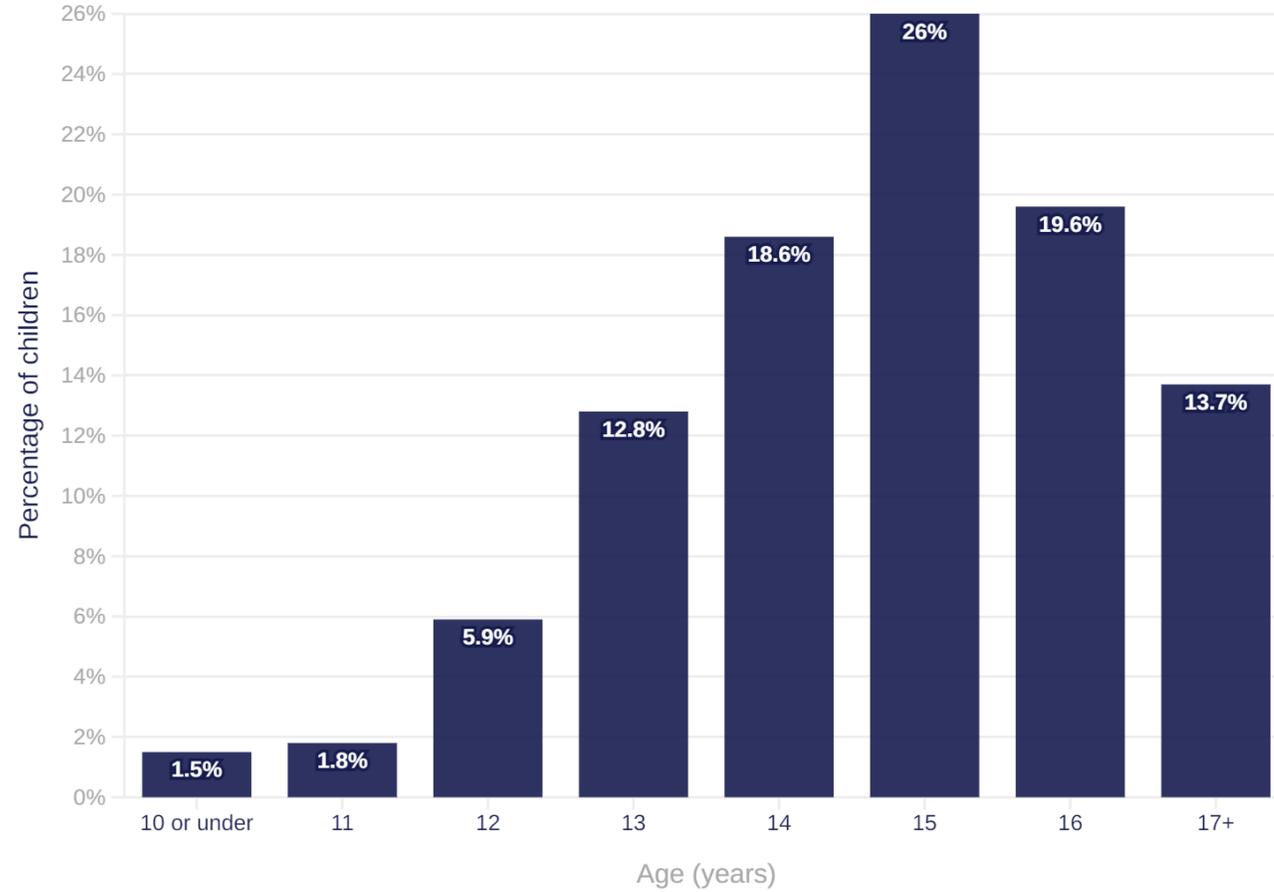
In September 2021, changes in legislation meant children in care under the age of 16 could no longer be placed in unregulated settings. The high court subsequently confirmed that the inherent jurisdiction can still be used to authorise the deprivation of liberty of a child under the age of 16

<https://www.bailii.org/ew/cases/EWHC/Fam/2021/2472.html>

## The restrictions applied for

The restrictions on children's liberty that were requested in the applications were multiple and involved severe constraints on the child, including, in almost all cases, constant daytime supervision (ranging from 1:1 to 4:1 adult to child supervision), as well as: the locking of doors and windows to prevent the child leaving the placement; restrictions on their use of the internet, social media and mobile phone; restrictions on access to belongings and money; and the use of physical restraint.

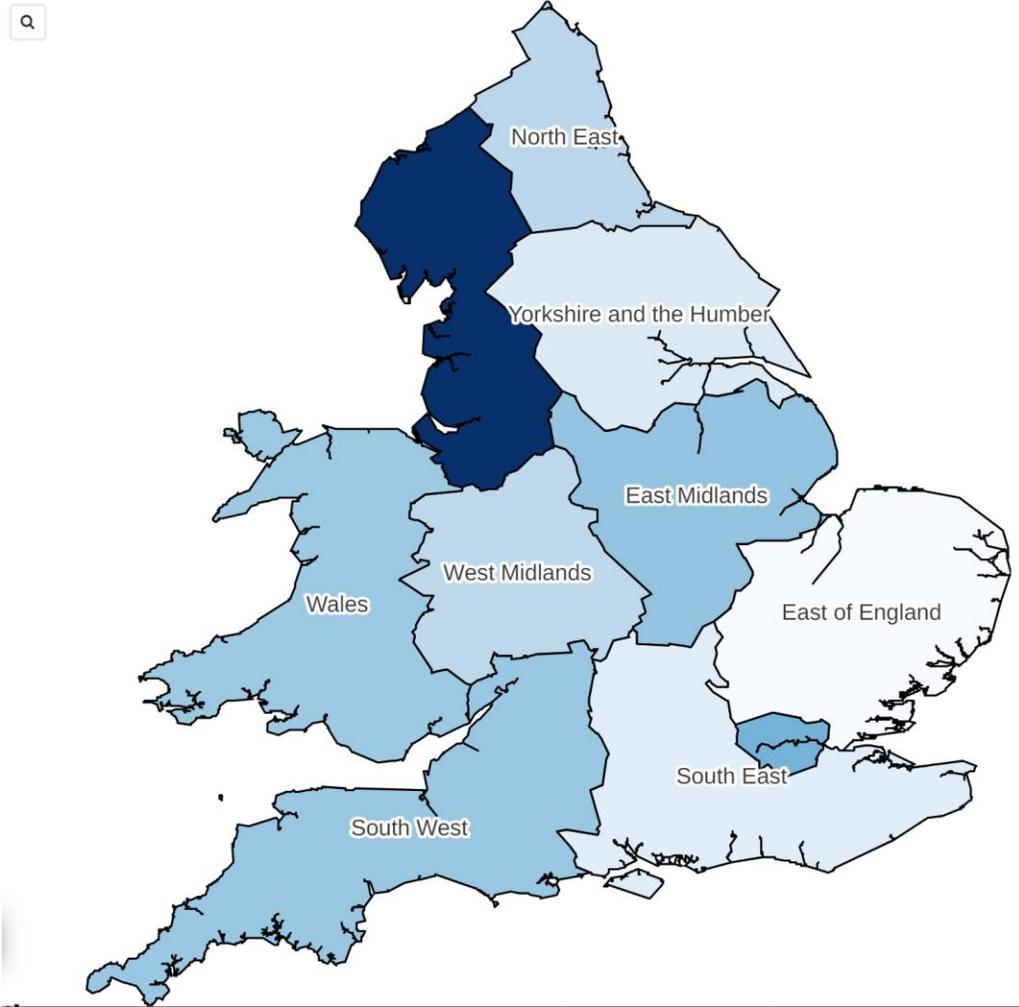
## Age of children subject to applications, July 2022 to June 2023



# Regional impact

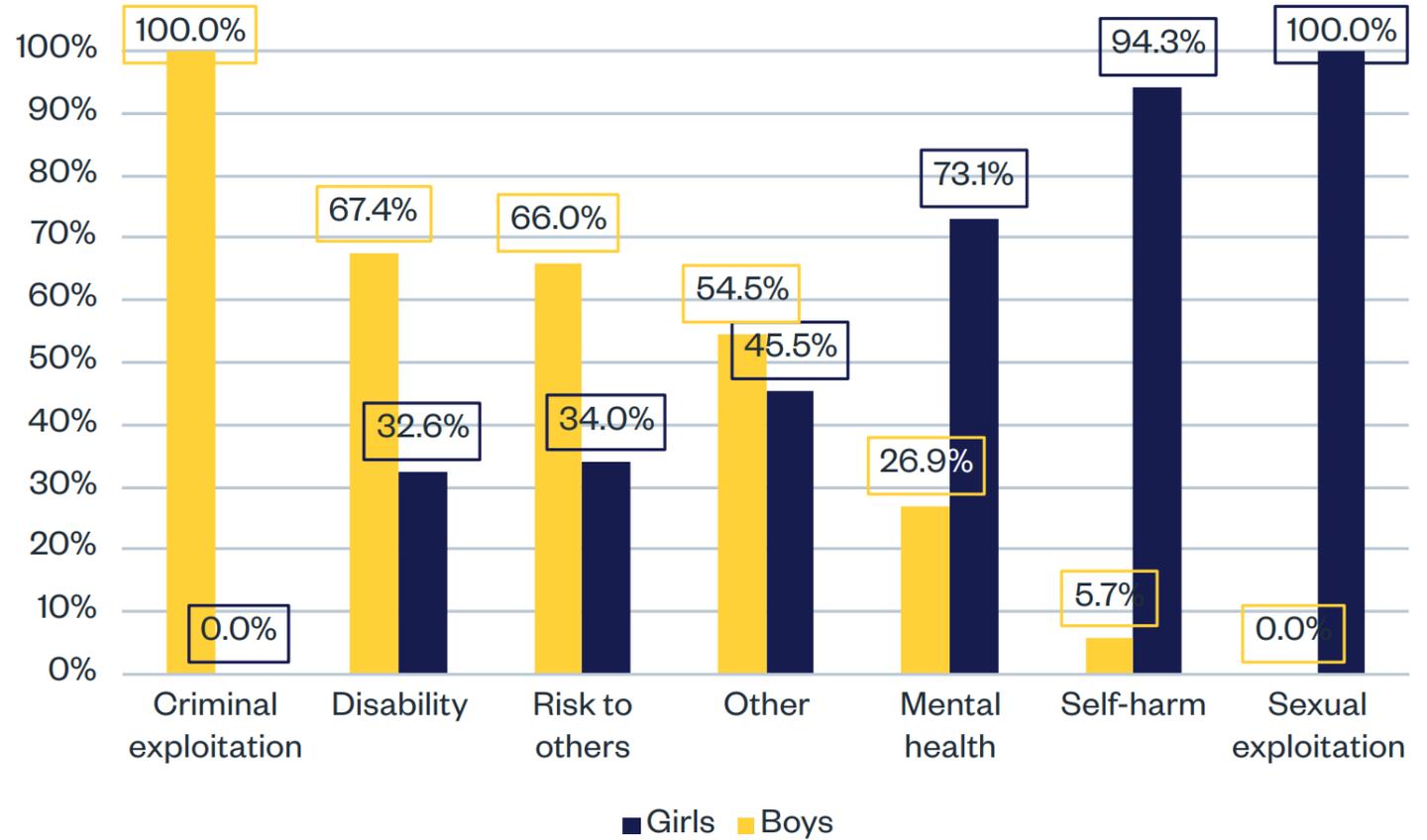
The rate of applications per 100,000 children by region, England and Wales, July 2022 to June 2023

15.26  40.83



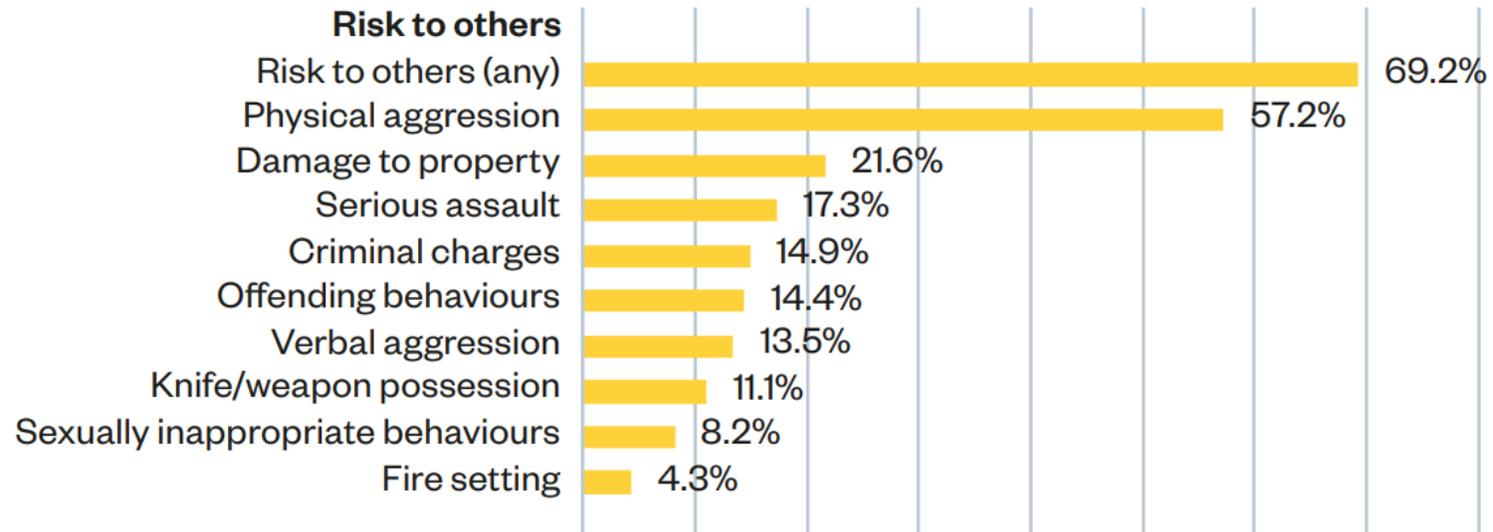
# Statistics

Figure 8: Primary reason for DoL application by gender



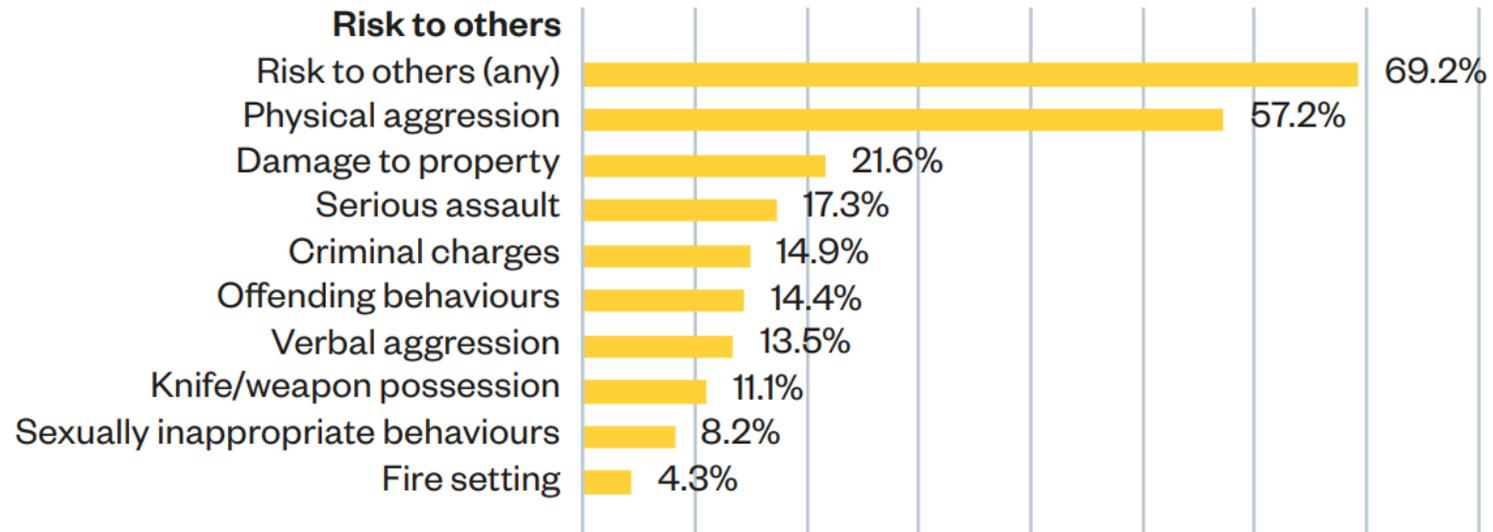
# Exploring statistics

**Figure 10: Prevalence of needs and risk factors**

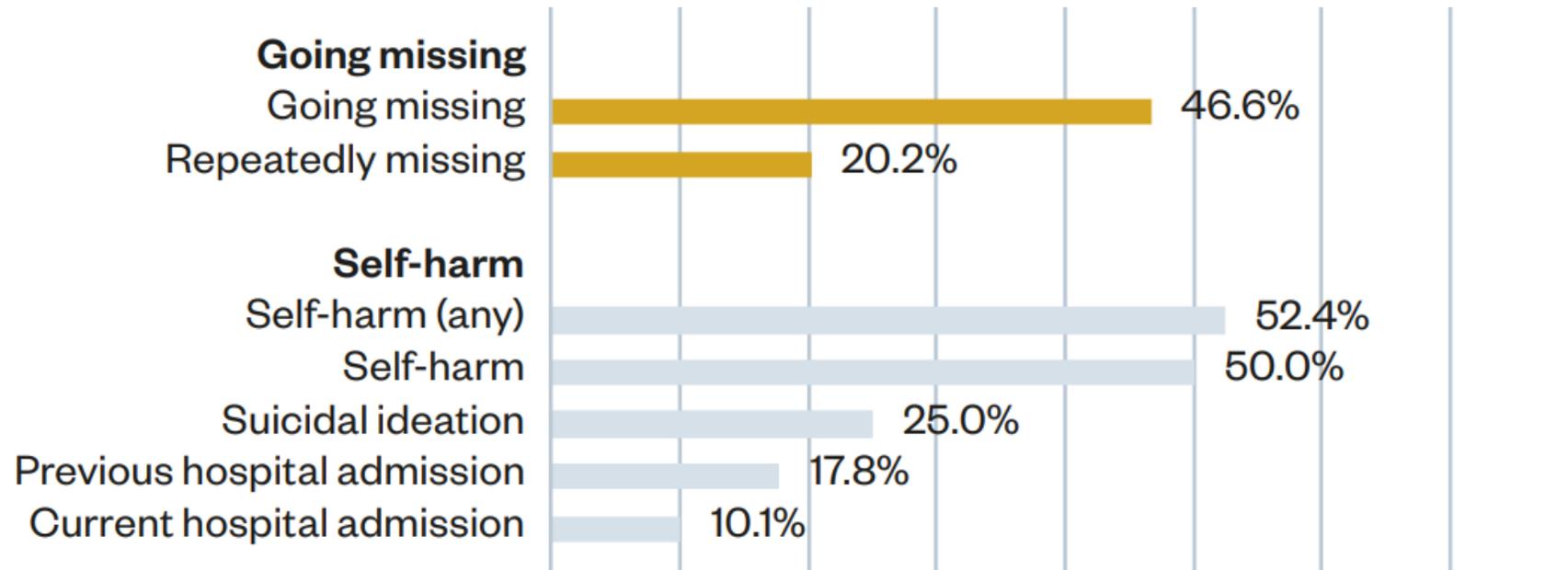


# Exploring statistics

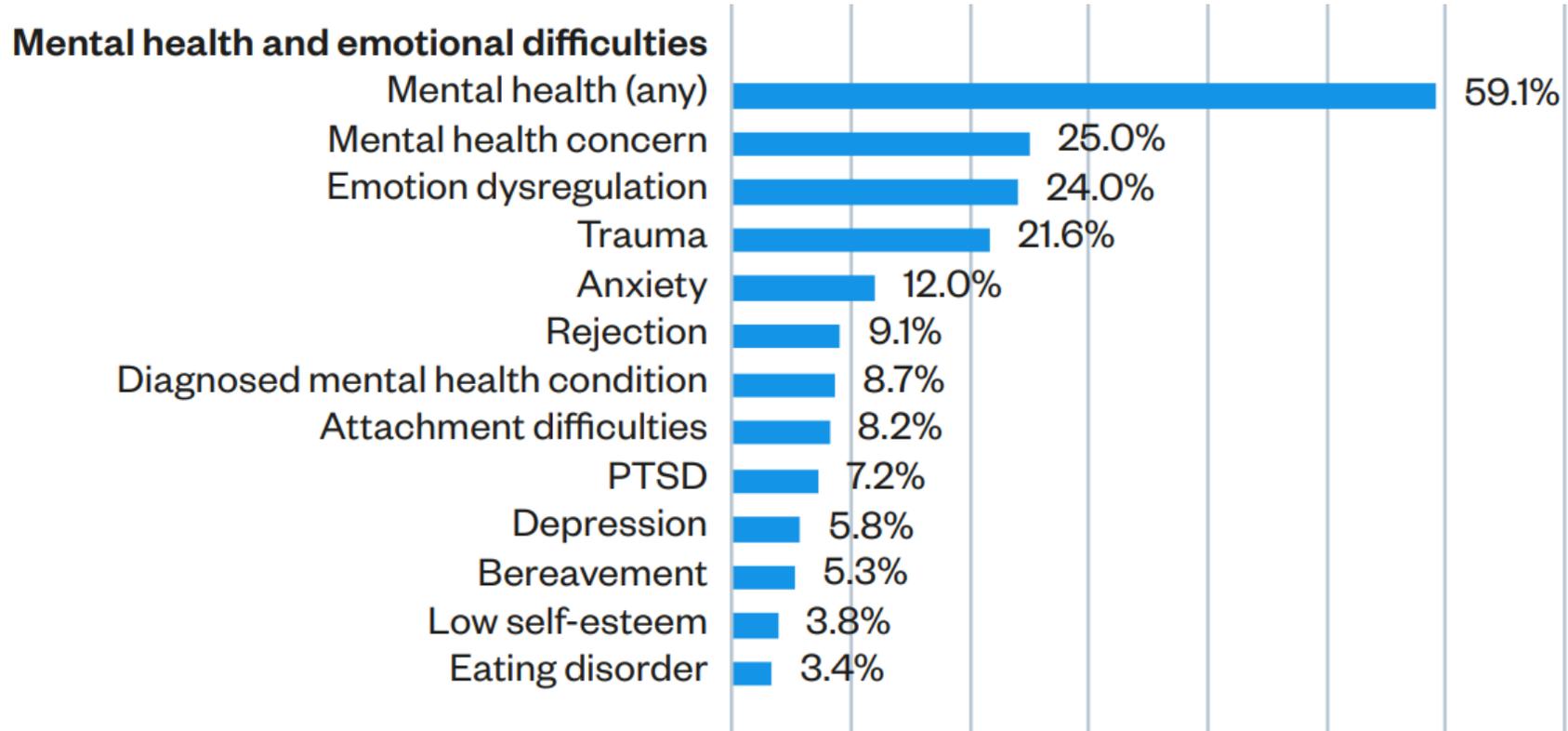
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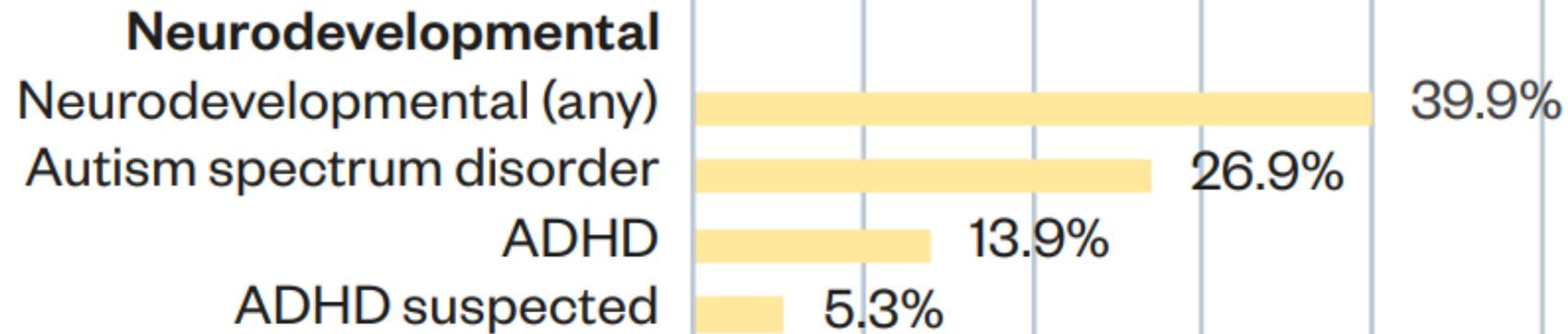


# Exploring statistics



# Exploring statistics





# Exploring statistics

# Additional research



FOCUS



FURTHER EVIDENCE  
REVIEW

# Current management of applications

- Following the conclusion of the pilot study in July 2023 there was extensive consultation with judges and other stakeholders.
- The organisation and listing of DoL orders relating to children under the inherent jurisdiction is being revised.
- All initial applications will be dealt with by the National DoL List ('NDL') and will continue to be overseen by the work of the Family Division.
- As from October 2<sup>nd</sup>, 2023, all C66 applications seeking orders to deprive any child of their liberty shall continue to be issued centrally in the Royal Courts of Justice.

# Latest statistics

October to December  
2023 289 children  
were subject to  
deprivation of liberty  
orders

57% aged between 13  
and 15

31% aged between 16  
and 18

This shows a slight  
decrease from the  
same period the year  
previous which saw  
340

# Continued ..

- The C66 application must state (with brief reasons in support) whether the case needs to be heard in A – 4 hours, B – 24 hours, C – 3 days, or, D – 5 days.
- Every effort must be made to avoid Fridays. First applications **MUST** be made Monday to Thursday.
- Renewals or extensions of existing orders can be made but must be done so in a timely manner.
- Dates for the above are known in advance so must be dealt with appropriately.

# The statement

- 5.8 The local authority's statement must cover –
- a. the child's background;
  - b. whether there are related care proceedings – ongoing, to be issued or completed;
  - c. details of the proposed placement including background to both provider and property, staffing, training and whether regulated or unregulated;
  - d. education plan;
  - e. CAMHS or other NHS involvement and services;
  - f. proposed contact arrangements.

## Current Statistics

October 2023 to December 2023 289 children were subject to DoL orders in England and Wales

January to March 2024 291

April to June 2024 299

# Inter-relationship with the court of protection

If the child or young person is 16 or 17 years old and there is reason to believe they may lack capacity and would be likely to be transferred to the Court of Protection at the age of 18 years, then the court should transfer the case to the Court of Protection in accordance with the guidelines



# The Court of Protection

\* The court of protection is a specialist court designed to deal with decision making on behalf of people who do not have the capacity to make decisions themselves.



# Is the balance accurate?

Are the right children getting the  
right support?



Lunch

# Consideration for settings

Leaders must always question interventions – reasonable? Proportionate?

Isolation or exclusion

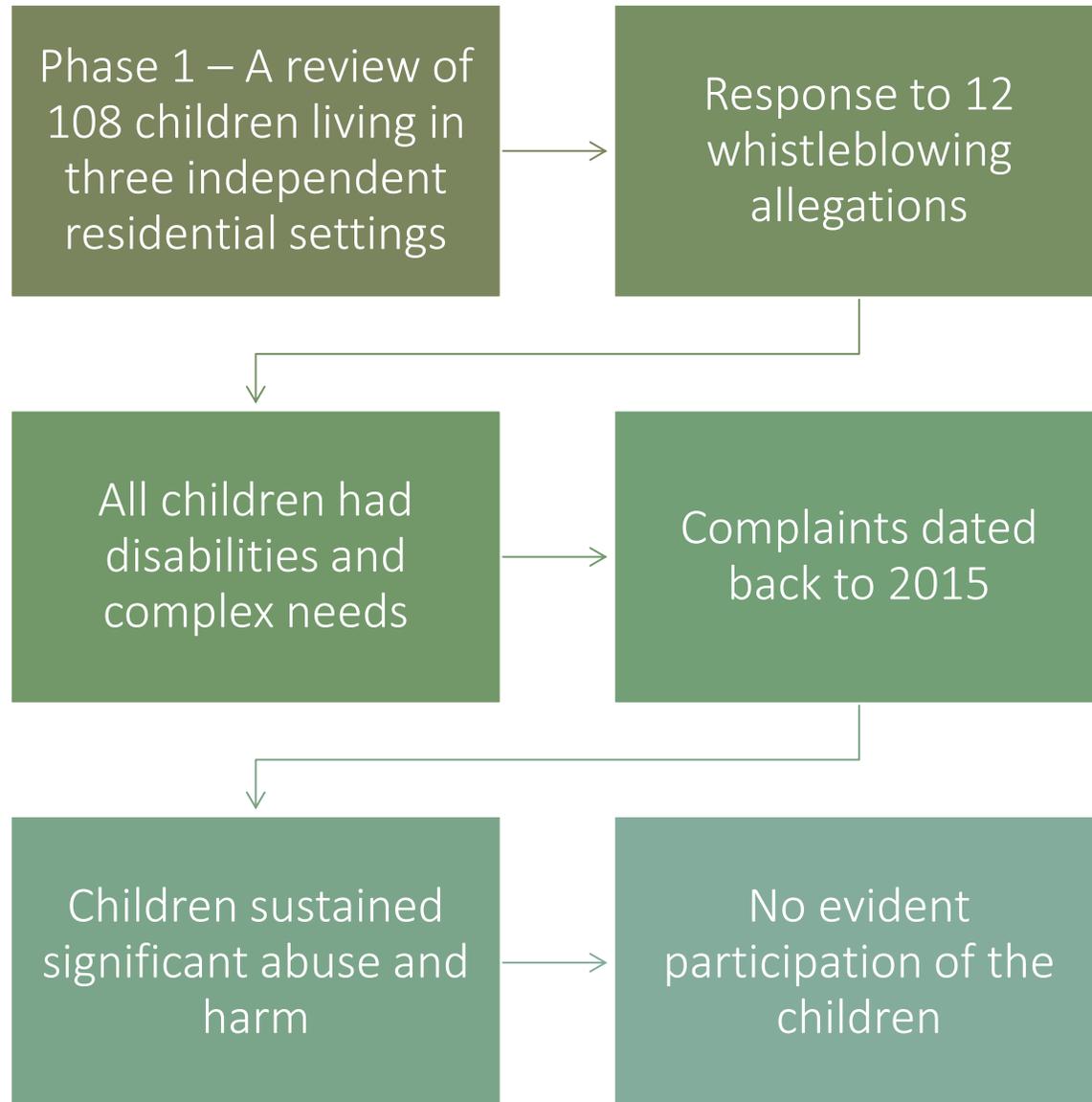
Locking of doors, blocking of exits, prevention of moving, disabled child left alone

Always explore – even if there is a court order

Sensory room, tents, can they leave?

Review plans regularly

Risk assessments



## Child safeguarding practice review – Hesley group settings

## Phase 2 -



### Phase 1 immediate actions

- ensure that placing authorities had an up-to-date view of the progress, care and safety of children with disabilities and complex health needs placed in residential special schools registered as children's homes.
- ensure that any local authority designated officer (LADO) referrals for these children had been appropriately addressed.
- ensure effective liaison between LADOs in 'host' authorities with the 'home authorities'

## Phase 2

To ensure that practitioners understand the requirements for legally compliant practice in relation to Deprivation of Liberty Safeguards local authorities, health services and residential settings should review their current systems, procedures and practice to determine their readiness for meeting the requirements under this framework.

Are liberty protection safeguards in place where needed?

## Phase 2

### Closed Culture

Leadership and management in the three settings were inadequate, with a 'closed culture' in which incidents of neglect, abuse and harm went unreported and were actively concealed.

Inspection evidence stresses the importance of high-quality leadership in residential settings and the risk from the development of a 'closed culture'. To assist the understanding of all staff, statutory guidance about the inherent risks from 'closed cultures' should be included in 'Working Together to Safeguard Children' and 'Keeping Children Safe in Education.'

### Professional curiosity

# Phase 2

Closed culture – risk factors By a closed culture we mean a poor culture that can lead to harm, which can include human rights breaches such as abuse'. The five key risk factors are:

- weak leadership and management.
- children experiencing poor quality of care, support and outcomes.
- poor skills, experience and training of the staff providing care and support
- staff not encouraged to raise safeguarding or wider practice concerns and not supported if they do so.
- lack of external oversight.

# Change

How do we ensure  
safety for these  
children

How do we  
challenge and  
remove harmful  
cultures

# Case Study

Billy is 15 and has a diagnosis of autism. Billy has been living in a residential care home for the past four years. Billy is supported when out in the community. This is supported by two staff. Billy also has a safe harness which can be worn out on the community. This further protects him from harm and risks outside of his home.

The staff who care for Billy have been consistent. They have raised the query of what will happen next for Billy as they feel he will always struggle with his reduced capacity.

What future support do you think Billy will need?



The relationship with  
the court of protection

# Process

01

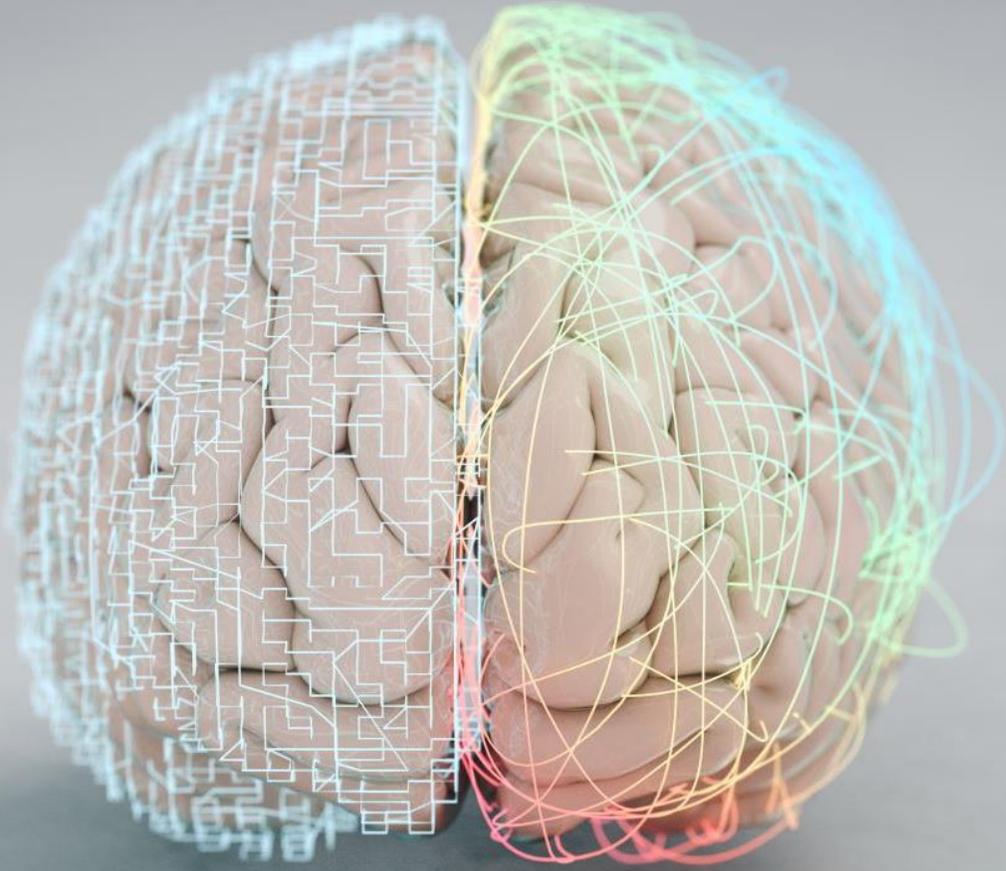
The mental capacity act supports people to make decisions for themselves where possible.

02

It protects individuals

03

It supports longer term planning



# Who lacks capacity?

May be temporary or permanent

Learning

Acquired brain injury

The same principles  
apply in terms of an  
education setting –

Presumed capacity

Making decisions

Unwise decisions

Best interests

Least restrictive option

# Principles



# When?

Capacity may need to be assessed when a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability.

# Assessment



Two stages of assessment



\* Stage 1 – Is there an impairment or disturbance in the functioning of an individual's brain?



\* Does it mean that they lack capacity to make a decision?

# Playing a part

Family, professionals, friends and carers must be part of the assessment

How often is a residential setting or education consulted?

# MCA

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Mental capacity assessor

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Best interests decision –  
Section 4 MCA 2005

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Independent mental  
capacity advocates (IMCA)



Tea/coffee

# MCA Assessor

Who?

Why?

When?

Best interests assessor?

Who?

Why?

When?



# Best Interests

The decision maker must not make the decision merely on the basis of age, appearance, condition of the person, assumptions or view of their behaviour.

They must....

Assess if they will at some point have capacity

Encourage participation

Past, present wishes

Respect privacy



Discuss your  
experiences

# Storck Components

a) The objective element of confinement in a restricted space for a non-negligible period of time

b) The subjective element that the person has not validly consented to that confinement; and

c) The detention being imputable to the state

# Video

Please note this is a useful video to recap what has been covered. The video does refer to the liberty protection safeguards being implemented in 2022. As discussed, this is currently on hold.

[Shedinar – the MCA and 16/17 year olds – Mental Capacity Law and Policy](#)



## Case studies and discussion

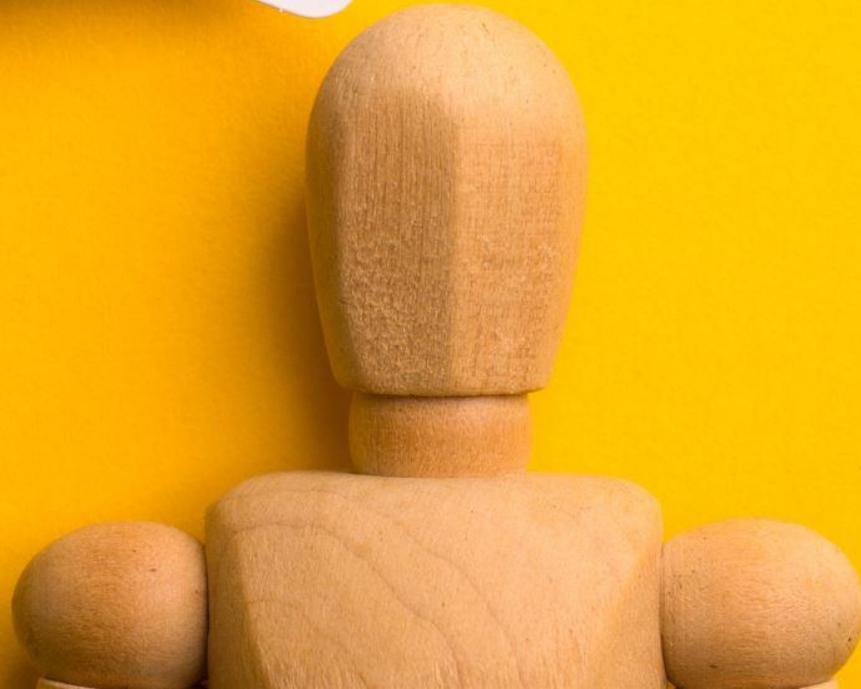
Please refer to case study 1 and 2

These have been split between you so each group has either number 1 or 2

Once you have read the case study we will discuss each one as a group

Please note your thoughts on this in terms of the impact on your setting

Discussion



# Guide and knowledge gaps



# Court of protection

Applications

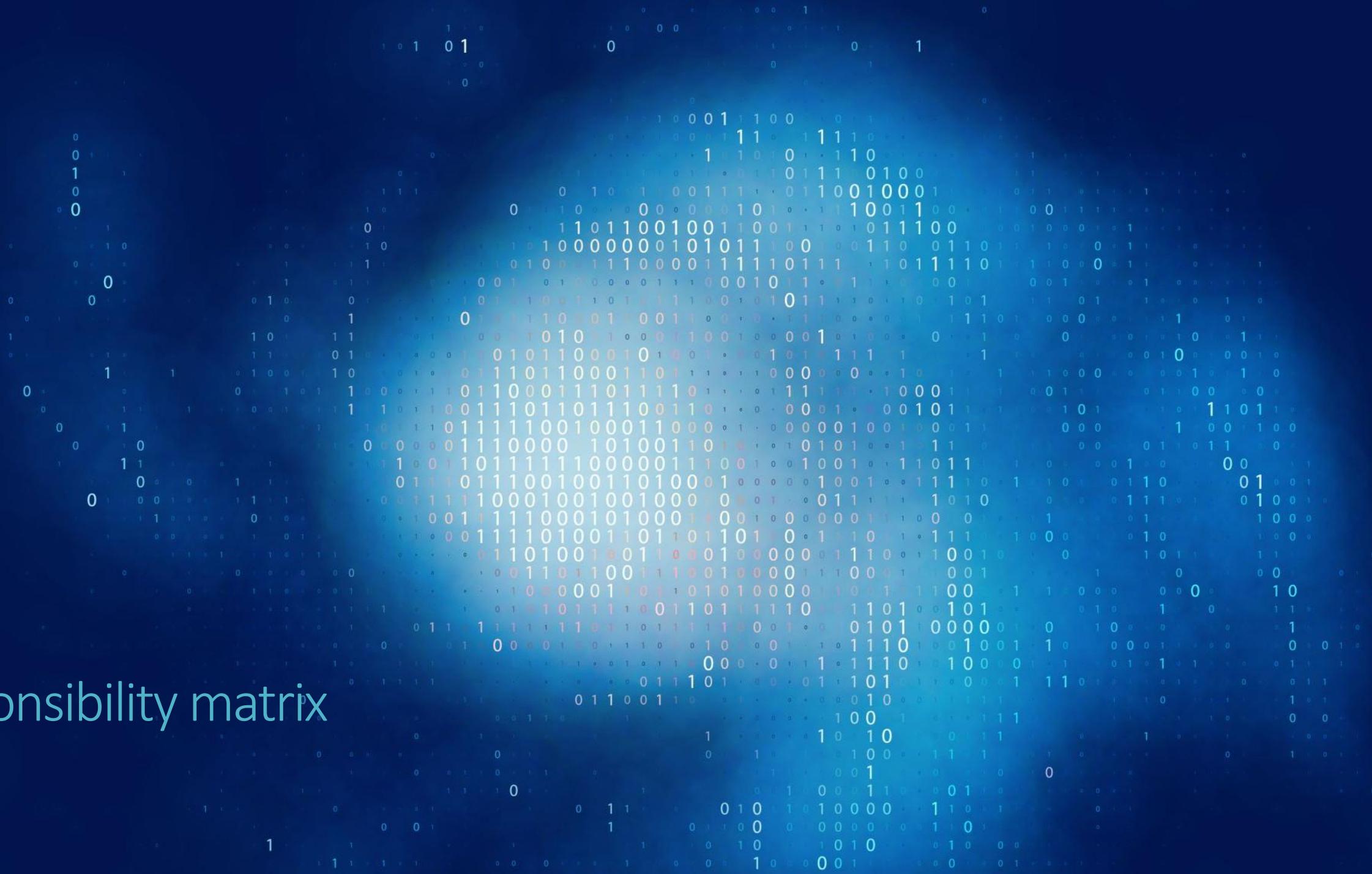
16 plus

Under 16

COP1

COP3

# Responsibility matrix



# RACI

INFORMATION	LOCAL AUTHORITY	REGISTERED MANAGER	REGISTERED PROVIDER	EDUCATION	THERAPY/ ASSESSMENTS
Initial information for the court hearing	<b>A</b>	<b>C</b>	<b>R</b>	<b>I</b>	<b>I</b>
Progress report in well-being and safety areas	<b>A</b>	<b>R</b>	<b>I</b>	<b>C</b>	<b>C</b>
Education report	<b>A</b>	<b>C</b>	<b>I</b>	<b>R</b>	<b>I</b>
Therapeutic report	<b>A</b>	<b>C</b>	<b>I</b>	<b>I</b>	<b>R</b>
Recommendations to the court for step down, extension or removal of DoLS	<b>A/R</b>	<b>C</b>	<b>I</b>	<b>I</b>	<b>C</b>
Exit plans	<b>A/R</b>	<b>C</b>	<b>I</b>	<b>I</b>	<b>C</b>

**R – Responsible**

**A – Accountable**

**C – Consulted**

**I – Informed**

Feedback



## Case study



All groups have the same case study



Please take time to read this and discuss the outcomes



What is the significance of this case

# New precedents

Use of the Children Act as it should be used

Safeguarding overrules

Forefront – Keeping children safe



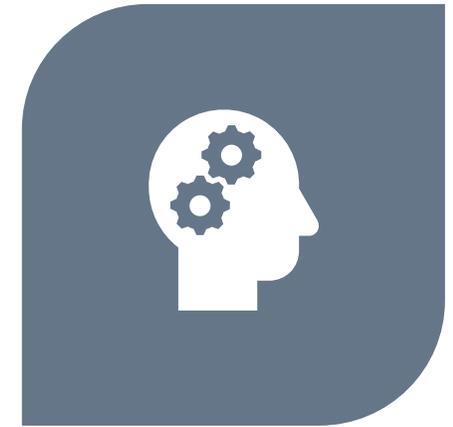
# What to provide?



INFORMATION SHARING



PROVIDING A VOICE



PROFESSIONAL  
CURIOSITY



Have we lost the child's voice?

# Recent Research



# Discussion and feedback



# Contact

[Dialogue – 01803 493030](tel:01803493030)

[www.dialogueltd.co.uk](http://www.dialogueltd.co.uk)

[www.jmcsafeguarding.co.uk](http://www.jmcsafeguarding.co.uk)

[jacqui@jmconsultants.co.uk](mailto:jacqui@jmconsultants.co.uk)

