



Welsh Language Tribunal Annual Report 2019 – 2020

July 2020



Tribiwnlys y Gymraeg
Welsh Language Tribunal

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Foreword

This is the sixth Tribunal report and the first for me as President. The year has been one full of changes. As the former President Keith Bush QC retires, it's important to recognise Keith's far-reaching and valuable contribution to the establishment and development of the Tribunal. He was an innovator in the way he accomplished this and we thank him. It was a pleasure to have his guidance on the members' training day this year.

Nicola Jones and Sara Williams' term as legal and lay members also came to an end and we thank them for their valuable and conscientious contribution.

Rhodri Williams QC was appointed to be the new legal Member and we welcome him warmly. He has already started to contribute to our work and it's good to have his legal experience on the Tribunal. We are about to appoint two lay members and it will be good to have their help with our work, which has expanded over the past year. I would like to thank my fellow members, and the administrative staff who have supported our work, for their excellent contribution.

The number of cases heard increased this year and given that the changes mentioned above affected the Tribunal's efficiency to some extent, their impact was seen on the Tribunal's performance against targets. The coming year will see an emphasis on improving efficiency.

It's clear that the appointment of Sir Wyn Williams as President of Welsh Tribunals has tightened up the way Tribunals operate in Wales. This work will continue. With the publication of the Commission on Justice in Wales' report, these are exciting times for the law in Wales. This will be the topic of many discussions and, in addition, the Law Commission of England and Wales is about to commence a project to consider the need for legislative amendments in connection with Welsh Tribunals. This is an opportunity to consider amending some of the Measure's provisions and to give further consideration to the limits of the Tribunal's functions to ensure it has a more all-embracing jurisdiction in relation to the linguistic rights of Welsh Language users in Wales.

I am confident that the Welsh Language Tribunal will go from strength to strength and evolve, in tandem with the other devolved Tribunals, in ways which will respond positively and flexibly to the needs of Welsh citizens

I am confident that the Welsh Language Tribunal will not only go from strength to strength under my successor but that it will also evolve, in tandem with the other devolved Tribunals, in ways which will respond positively and flexibly to the needs of Welsh citizens. It has been a privilege and a pleasure to be able to contribute to the work setting solid foundations for future developments.

Iwan Jenkins

President of the Welsh Language Tribunal

Section 1: About Us

In this section:

- Background
- The Tribunal's Functions
- The Tribunal's Rules
- Practice Directions
- The Tribunal's Members
- Training
- Contacting the Tribunal
- The Tribunal's Accessibility

Background

The Welsh Language Tribunal is a statutory tribunal established under section 120 of the Welsh Language (Wales) Measure 2011 ('the Measure'). The Tribunal's function is to decide on appeals against the Welsh Language Commissioner ('the Commissioner')'s decisions in relation to Welsh Language Standards.

The tribunal is one of the seven "Welsh Tribunals" listed in Section 59 of the Wales Act 2017. It therefore comes under the authority of the President of the Welsh Tribunals, Sir Wyn Williams. The first annual report of Sir Wyn Williams, President of the Welsh Tribunals, can be found at: www.assembly.wales/laid%20documents/gen-ld12494/gen-ld12494-e.pdf.

The Tribunal's Functions

The Measure enables the Tribunal to hear the following:

1. Appeals against the Commissioner's decisions in terms of imposing Standards on bodies and officers exercising functions or providing public services in Wales.
2. Appeals by a person, against whom a complaint has been made, against determinations by the Commissioner, at the end of an investigation, regarding failure to comply with the requirement of a Standard.
3. Appeals by a complainant against a determination by the Commissioner, at the end of an investigation, that a person, against whom a complaint had been made, had not failed to comply with a Standard.
4. Appeals against enforcement actions taken by the Commissioner.
5. Appeals against evidence notices issued by the Commissioner during the investigation.
6. Reviews of decisions on behalf of the Commissioner not to investigate a complaint (or to discontinue an investigation without reaching a decision).

The Tribunal's Rules

The Tribunal operates according to its procedural rules – **The Welsh Language Tribunal Rules 2015**. The purpose of these Rules is to ensure that all cases heard by the Tribunal are treated fairly, consistently and promptly. They ensure that everyone who comes before the Tribunal understands precisely the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the Tribunal. They also ensure

that every party in the case understands the arguments of the other parties and can respond to them.

According to section 123 of the Measure, there is a duty on the President to produce Tribunal Rules on the practices and procedures to be followed in the Tribunal.

The Tribunal's Rules outline the following:

- overarching rules – which deal with some basic overarching principles and define the specialist terms used in the Rules
- provisions in connection with selecting the Tribunal Members who will hear individual cases
- how to commence an application to the Tribunal
- the practical actions that must be taken to prepare a case for a hearing
- the powers which the Tribunal has to manage cases, including the directions the Tribunal may give to parties on the actions which they must take before a hearing
- the process followed for hearings and formal decisions made by the Tribunal
- what happens after a decision has been reached, including arrangements for reviewing the Tribunal's decisions or appealing to the High Court
- various other provisions, including: administrative rules regarding the recording of decisions, submission of documents and considering and setting deadlines.

Practice Directions

The President is authorised, under section 124 of the Measure and Rule 4 of the Rules, to issue Practice Directions to provide practical advice on how to interpret and implement the Rules.

Practice Direction 1 – Commencing a Case

Rule 10 of the Rules provides that an application to the Tribunal must be started by submitting to the Tribunal a written document (notice of application). Rule 12 prescribes the information that must be included in, and with, a notice of application.

The purpose of this Practice Direction is to publish a form which, when used by an applicant, will assist the applicant (or the applicant's representative) to conform to the requirements of Rule 12. That form should be used to submit a notice of application.

It is not a legal requirement to use this. An applicant may supply the information prescribed under Rule 12 by some other means. However, the use of this form will:

- ensure that all the required information is given;
- assist the Tribunal to consider that information in the most consistent and effective way possible.

Practice Direction 2 – The use of the Tribunal's languages

Rule 6 of the Rules provides:

- that Welsh and English shall be the languages of the Tribunal;
- that each party or witness shall have the right to use either language in the proceedings of the Tribunal.

The purpose of this Practice Direction is to provide practical advice on how to interpret the Rules and give effect to the Tribunal's procedures in accordance with Rule 6.

In accordance with Rule 4(4), the contents of this Direction are subject to any instructions given by the Tribunal in relation to a specific case.

This Practice Direction deals only with communications which form part of the Tribunal transactions, in relation to a specific case, and which are governed by the provisions of the Rules.

Practice Direction 3 – Exercising the functions of the Tribunal

This Practice Direction describes the arrangements as to fixing who is normally to take decisions in the name of the Tribunal. It provides, for example, that the President of the Tribunal (or another legally-qualified member of the Tribunal) will deal with preparatory questions, before a case reaches a hearing, whilst the hearing, and the final decision on the case, will be in the hands of a panel of three Tribunal members.

Practice Direction 4 – Applications to the Tribunal to cancel an evidence notice

This Practice Direction applies the Tribunal's procedures to a particular class of appeals which can arise out of an investigation by the Commissioner into a complaint, namely appeals to the Tribunal against an evidence notice given by the Commissioner under paragraph 5 of Schedule 10 to the Measure.

The Tribunal's Members

The Welsh Ministers are responsible for appointing and reappointing the Tribunal's President, Legal Members and Lay Members. The Members were appointed after the vacancies were advertised and following a competitive interview before a panel convened by the Welsh Government. The President and the Tribunal's other Members were appointed for a 5-year term.

President

The President has judicial responsibility over the Tribunal and its Members.

Legal Members

The legal members are Lawyers (Barristers or Solicitors) and they are responsible for presiding over hearings and for exercising functions in relation to preliminary steps – e.g. issuing directions in relation to the evidence presented by parties.

Lay Members

Lay members have a wide range of knowledge and experience relevant to the Tribunal's work. They play a full part, with an equal voice to that of the other Members (including Legal Members) in the decision-making of the Tribunal.

Secretariat

The day-to-day administration of the Tribunal is delegated to the Tribunal's secretariat, which deals with the preliminary work and the work of processing applications to the Tribunal. The secretariat will consult with the President and/or the Legal Member who will be chairing a particular hearing on any legal matters which may arise in the preliminary stages of cases before the hearing, and will send any written rulings or directions to the parties in question. The secretariat is a contact point for the Tribunal's members and customers. The administration is provided, under section 127 of the Measure, by the Welsh Government.

Appointments and reappointments

Iwan Jenkins was appointed as President in July 2019.

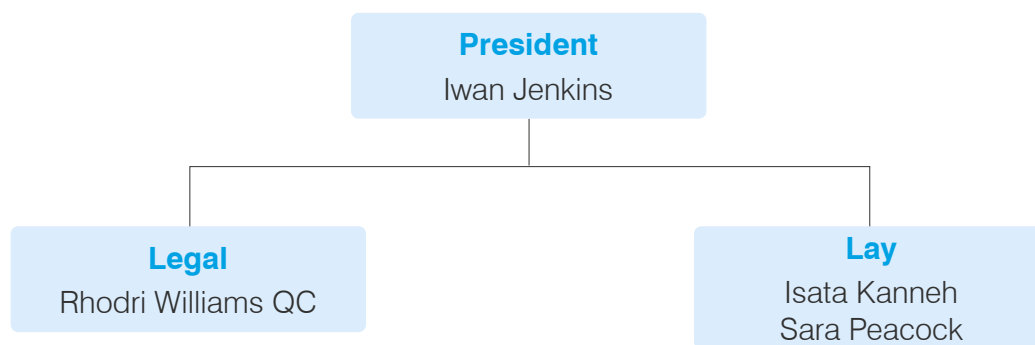
Rhodri Williams QC was appointed as a Legal Mmember in October 2019.

Isata Kanneh and Sara Peacock were reappointed for another 5 year term in March 2020.

Retirement and disclaimers

Keith Bush QC's term as the Tribunal's first president came to an end on 31 July 2019.

The terms of Nicola Jones, a legal member, and Sara Williams, a lay member came to an end on 31 March 2020.



Training

The President of the Welsh Language Tribunal has a statutory duty under section 133 of the Welsh Language (Wales) Measure 2011 to maintain appropriate arrangements for the training of Tribunal Members. As part of those arrangements, a training day was held for Members in February 2020 in Cardiff.

A training session for all the Tribunal members and staff was held in February 2020, with the help of Keith Bush (Former President of The Welsh Language Tribunal). Practical exercises were completed and a discussion held on the work of the Tribunal to date..

Contacting the Tribunal

Here are the Welsh Language Tribunal's contact details:

Address:	Welsh Language Tribunal Oak House Cleppa Park Newport NP10 8BD
Tribunal Helpline:	03000 256702
Tribunal E-mail:	tyg@gov.wales
Tribunal Website:	welshlanguagetribunal.gov.wales

The Tribunal's Accessibility

You are welcome to communicate with the Tribunal in Welsh or English. Rule 6 of the Rules provides:

- that Welsh and English shall be the languages of the Tribunal
- that each party or witness shall have the right to use either language in the proceedings of the Tribunal.

[Practice Direction 2](#) provides practical advice on how to interpret and apply the Rules in accordance with Rule 6.

Please make sure that you give details of any additional needs you, or your representative, have when you send your notice of application to us. For instance, if you need a signer or interpreter during the hearing, or if you require any additional arrangements to be made for the hearing, we will take the necessary steps.

Section 2 – Performance and Development

This section discusses:

- Numbers and statistics
- Internal reviews and appeals to the High Court
- Complaints
- Effectiveness of our service

Numbers and statistics

The Measure enables an individual or an organisation to appeal to the Tribunal on the following matters:

- Section 58 – Determination by the Commissioner that the requirement to comply with a standard (or to comply with it in a particular respect) is not unreasonable or disproportionate.
- Section 95(2) – Determination by the Commissioner that there has been a failure to comply with the requirement of a standard.
- Schedule 10, paragraphs 9 and 10 – appeals against evidence notices issued by the Commissioner during an investigation.
- Section 95(4) – Enforcement action taken by the Commissioner.
- Section 99(2) – Determination by the Commissioner that there has not been a failure to comply with a standard.
- Section 103 – Determination by the Commissioner not to carry out an investigation into a complaint (or to discontinue an investigation).

Applications

16 new applications were received during 2019-20, and 0 cases were carried over from 2018-19.

(*The number of applications received in 2018-19 was 3 and it was 4 in 2017-18.)

Type of application	Number received in 2018-19	Carried over from 2017-18	Carried over to 2019-20	Accepted	Rejected	Withdrawn
Section 58	0	0	0	0	0	0
Section 95(2)	1	0	1	0	0	0
Section 95(4)	1	0	1	0	0	0
Section 99(2)	0	0	0	0	0	0
Section 103	14	0	3	1	9	1

The types of the cases brought to the Tribunal during 2019/20:

Type of case	Number of cases
Appeal against a determination by the Commissioner that there has been a failure to comply with the requirement of a standard (Section 95(2) of the Measure)	1 (6%)
Appeal against a determination by the Commissioner that there has been a failure to comply with the requirement of a standard (Section 95(4) of the Measure)	1 (6%)
Applications for a review of the Commissioner's decision to not investigate a complaint (section 103 of the Measure)	14 (88%)
Total	16

How cases were resolved (cases received in 2019/20):

Nature of the resolution	Number
Withdrawn (due to no longer being within the jurisdiction of the Tribunal)	1 (6%)
Permission to make an application was refused (cases under section 103)	9 (57%)
Appeal rejected	0
Appeal accepted	1 (6%)
Carried over to 2020-21	5 (31%)
Total	16

Time Between Receipt of an Application and Resolution	
Number of working days between receiving the application and resolution	How the application was resolved
17	Permission to make an application was refused – Section 103
40	Permission to make an application was granted – Section 103
169	Permission to withdraw the application (after permission to make an application under Section 103 was originally given).
98	Permission to make an application was refused under Section 103 (including holding a review of the decision to refuse permission to make the application)
1	Permission to extend the period of 28 days for making an application under Section 103 (including holding a review of the decision to refuse permission to make the application)
157	Application granted to repeal the Commissioner's decision not to investigate (without a hearing and based on the papers only) – Section 103
101	Number of working days between receipt of application and resolution, on average

Hearings

During 2019 – 2020, the Tribunal held:

- 1 hearing by the panel to reconsider the Tribunal's decision to refuse permission to make an application under Section 103.

Internal reviews and appeals to the High Court

Internal review of the Tribunal's determination

A party can apply to the Tribunal to review its decision on the basis:

- a. that the decision made is incorrect due to a significant error by the Tribunal's administration
- b. that a party who had the right to be heard in the hearing, but who failed to attend or be represented, had a good and sufficient reason for not attending, or
- c. that there is an obvious and important error in the decision.

An application for a review of the Tribunal's determination must be made in writing, stating the grounds, no later than 28 days after the date that the decision was sent to the parties.

During the period of this report, 2 applications for a review were received. They were both rejected.

Appeals to the High Court

A party, with the permission of the Tribunal or the High Court, can appeal to the High Court on a legal point arising from a determination of the Tribunal.

We must receive your application for permission to appeal to the High Court within 28 calendar days from the date you were notified of the Tribunal's decision. It is up to the person considering an appeal to take their own legal advice.

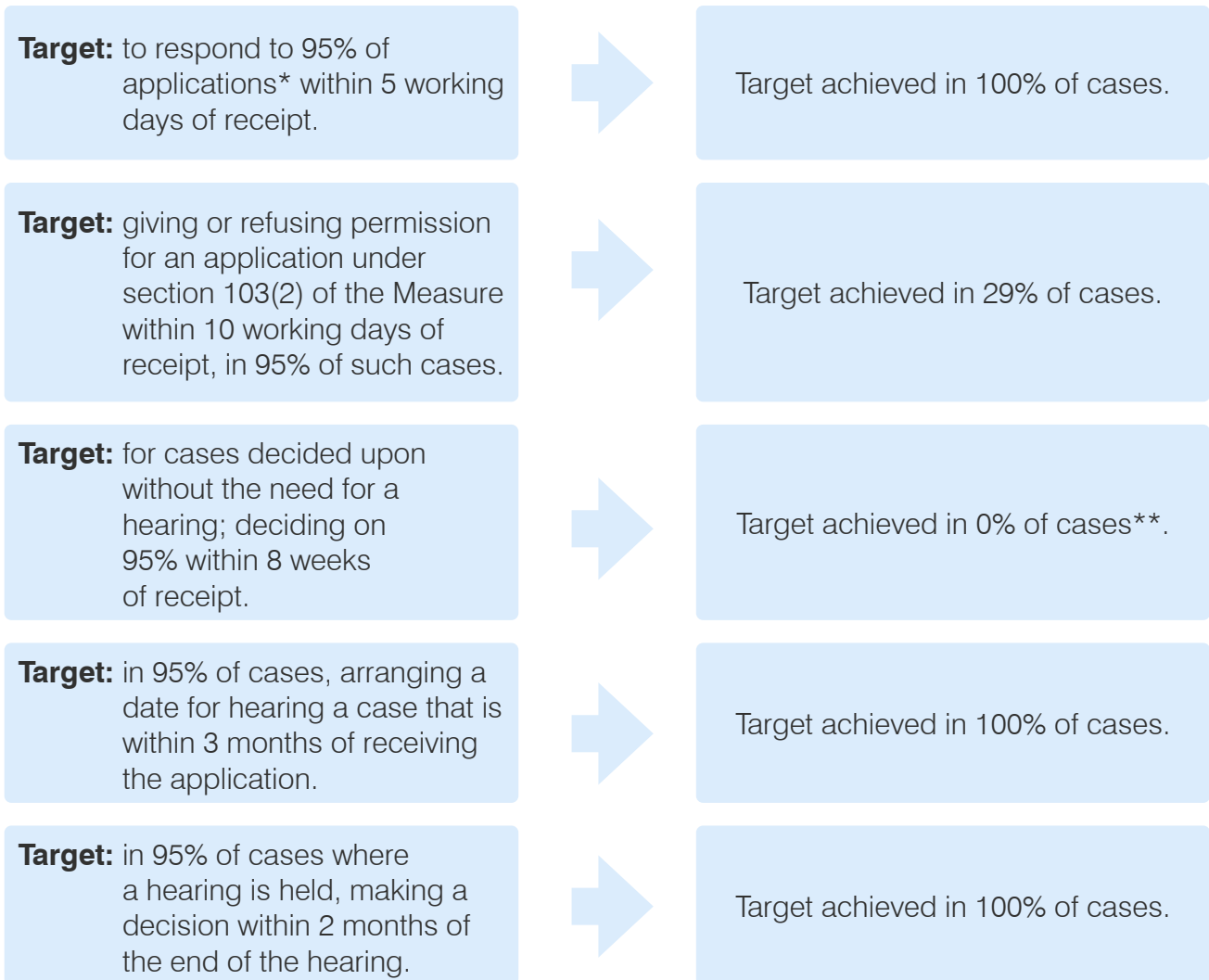
During the period of this report, no applications for permission to appeal were received.

Complaints

No formal complaints were received by the Tribunal during the period of this report.

Effectiveness of our service

In order to monitor the effectiveness of our services, we will aim to have key performance indicators in place to measure customer satisfaction with two key aspects of our work: the effectiveness of our service, and its quality.



* Excluding those who need permission under section 103(2) of the Measure and those where further information is required from the applicant before they can be registered.

** It was shown that the time the parties needed, in some cases, to define their formal positions by exchanging case statements was longer than anticipated, making it impossible, in those fairly complex cases, to move on to arrange a hearing (or a decision by a Tribunal panel without a hearing) as early as anticipated. In the Tribunal's experience it takes around 6 months to resolve such a case (see above) including 5 months between receiving the case and holding a hearing and an extra month to prepare and issue the decision.

Section 3 – Tribunal’s Decisions: Highlights

Looking at this year’s cases, it is clear that details on websites or social media very often become the subjects of complaints. As society develops, the use of Welsh also develops, and it is good that the Measure is appropriate to those situations. This enables the Tribunal to ensure that the rights of Welsh citizens are considered objectively and fairly in these contemporary circumstances.

Section 4 – Business Priorities

In this section:

- Business Priorities for 2019-2020

It is important that the Tribunal develops in order to provide our customers with the best possible service. This section deals with how the Tribunal will build on its achievements by focusing on business priorities and our commitment to our users.

Business Priorities for 2020-2021:

- Cross-assignment of 2 x lay members to the Tribunal
- To plan and provide training for all members.
- To continue to monitor and update the Welsh Language Tribunal's website.
- To provide a high quality service
- To fine-tune how the Tribunal works, based on the experiences of dealing with cases, in order to ensure work of the highest quality when considering and deciding on cases.

Section 5 – Expenditure

In this section:

- Our Expenditure in 2019-2020

Expenditure in 2019-2020

Content	Expenditure*
Members’ fees, expenses and training	£24,932
Recruitment	£11,766
Translation costs for casework, the costs of hearings and for a training venue	£5,081
Total	£41,779