



Welsh Language Tribunal Annual Report 2021 – 2022



Tribiwnlys y Gymraeg
Welsh Language Tribunal

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Foreword

This year has been a quiet one compared to previous years. As a result of the effects of the virus, the Tribunal had to make use of virtual hearings to carry out its work and training.

I thank everyone, and particularly the Tribunal's administrative staff, for all their work to ensure that it worked well.

I am also very grateful to my fellow Members of the Tribunal and to the administrative staff who have carried out our work, for their excellent contribution.

The discussion on Tribunals in Wales have progressed as the Law Commission has published its report on the devolution of Tribunals in Wales and on the legislative reforms in relation to the Welsh Tribunals. We will now need to keep a close eye on what will happen following further discussions of this report.

As we recover from the impact of Coronavirus, I sincerely hope that we can progress our work effectively, by including some recent developments, such as virtual hearings. It is essential in some cases to conduct face-to-face hearings, and so virtual and face-to-face hearings will be available this year.

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's ('the Commissioner') 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. The first annual report of Sir Wyn Williams, President of the Welsh Tribunals, Sir Wyn Williams, 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 an 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 to the case understands the arguments of the other parties and can respond to them.

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

The Tribunal's Rules outline the following:

- common Rules – which deal with some basic common principles and define the specialist terms used in the Rules;
- provisions dealing 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 will have to manage cases, including the directions the Tribunal will be able to give to parties regarding the actions which they must take before a hearing;
- the process for hearings and formal decisions made by the Tribunal;
- what happens after a decision has been reached, including the 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 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 commenced by submitting a written document (notice of application) to the Tribunal. Rule 12 prescribes the information that must be included in a notice of application or accompany said notice.

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 with the requirements of Rule 12. That form should be used to submit a notice of application.

Nevertheless, it is not a legal requirement to use this form. 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 the English and Welsh languages 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 the Rules should be interpreted and applied in accordance with Rule 6.

In accordance with Rule 4(4), the contents of this Direction are subject to any instructions given to 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 for determining who will usually take decisions in the Tribunal's name. 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 the responsibility 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 evidence notices 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. Prior to a hearing, 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, 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.

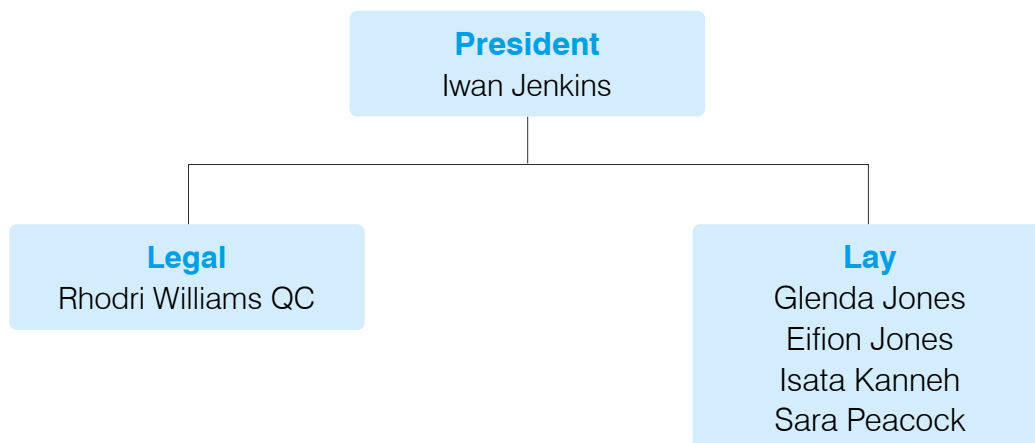
Appointments and reappointments

No appointments or reappointments have been made during this year.

Retirements 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, three digital training sessions were held for Members in September, November and January 2020-2021.

These training sessions were held for all Tribunal Members and staff to discuss the Tribunal's processes – which were conducted through practical exercises using a false application. Consideration was also given to how issues can be dealt with digitally from now on, rather than in person.

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 the English and Welsh languages 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 application notice 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 ensure the necessary steps are taken.

Section 2 – Performance and Progress

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 a standard 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 a standard requirement.
- Schedule 10, paragraphs 9 and 10 – appeals against evidence notices issued by the Commissioner during an investigation.
- Section 95(4) – Enforcement action which the Commissioner has decided to take.
- 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

3 new applications were received during 2021-22, 3 applications were carried over from 2020-21, and 2 applications have carried over to 2022-2023.

Type of application	Number received in 2021-22 (3)	Carried over from 2020-21 (3)	Carried over to 2022-23 (2)	Accepted	Rejected	Withdrawn
Section 58	–	–		–	–	–
Section 95(2)	1*	–	1*	–	–	–
Section 95(4)	1*	–	1*	–	–	–
Section 99(2)	1	–	1	–	–	–
Section 103	1	3	–	–	2	2

* one application identified section 95(2) and 95(4) in the same application

The types of cases brought to the Tribunal during 2021-22 (3 cases):

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* (33.3%)
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* (33.33%)
Appeal against a determination by the Commissioner that there has not been a failure to comply with a standard (Section 99(2) of the Measure)	1 (33.33%)
Applications for a review of the Commissioner's decision to not investigate a complaint (section 103 of the Measure)	1 (33.33%)
Total	3

* one application identified section 95(2) and 95(4) in the same application

How cases were resolved (cases received in 2021-22)

Type of case	Number of cases
Withdrawn	2 (33.33%)
Permission to make an application was refused (cases under section 103)	2 (33.33%)
Appeal rejected	–
Appeal accepted	–
Carried over to 2022-23	2 (33.33%)
Total	6

Time Between Receipt of an Application and Resolution	
Average number of working days between receiving the application and resolution	How the application was resolved
38 days	Permission to make the application was refused – section 103 (2)
–	Permission to make an application was granted – section 103
210 days	Permission to withdraw the application (after permission to make an application under section 103 was originally granted)
–	Permission to make an application was refused under section 103 (including holding a review of the decision to refuse permission to make the application)
–	Permission to extend the period of 28 days for making an application under section 103 was refused (including holding a review of the decision to refuse to extend the period)
–	Application granted to repeal the Commissioner’s decision not to investigate (without a hearing and based on the papers only) – Section 103
124 days	Number of working days between receipt of application and resolution, on average

Hearings

During 2021-2022 the Tribunal held:

- 1 hearing by the panel.

Internal reviews and appeals to the High Court

Internal review of the Tribunal’s decision

A party may apply to the Tribunal to review its decision on the grounds:

- a) that the decision made is incorrect due to a significant error on the part of the Tribunal’s administration,
- b) that a party who had the right to be heard at the hearing, but who failed to appear 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, no applications for an internal review of a decision were received.

Appeals to the High Court

A party, with the permission of the Tribunal or the High Court, may 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.

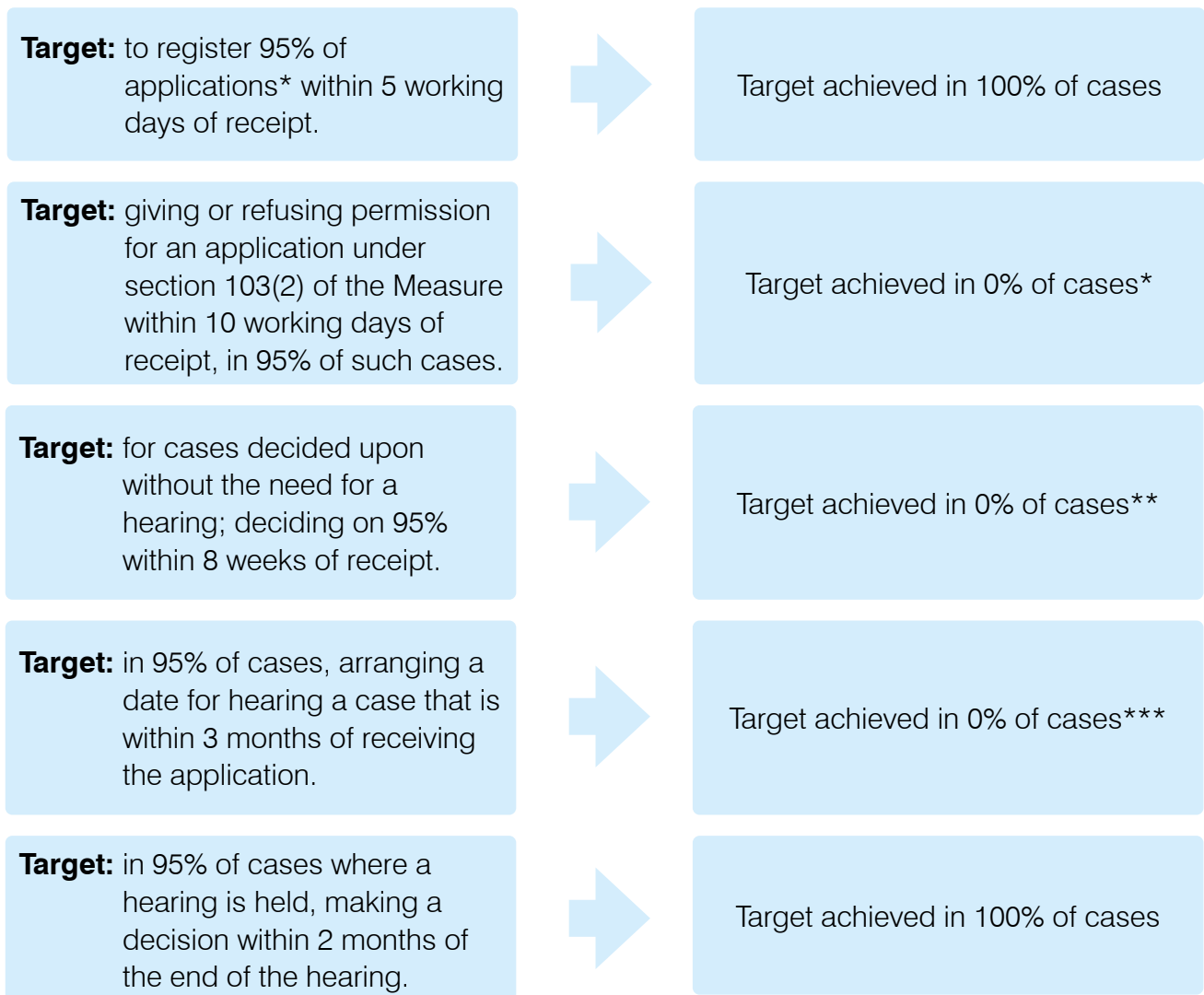
During the period of this report, no applications for permission to appeal were received.

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 efficiency 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 the application 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 relatively complex cases, to proceed 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.
- *** Due to availability, this was not possible this year.

Section 3 – Business Priorities

In this section:

- **Business Priorities for 2021-2022**

It is important that the Tribunal develops in a way which enables us 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 2021-2022:

- 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.
- To continue to hold virtual hearings if doing so is preferable and fair in relation to the case and the parties.
- To develop information to be included as part of the original application form, in order to improve case efficiency.

Section 4 – Expenditure

In this section:

- Expenditure in 2020-2021

Expenditure in 2020-2021

Contents	Expenditure
Members' fees, expenses and training	£7,304
Costs of hearings, translation of casework and for training venues	£196
Total	£7,500