Ms Carol Morgan
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Dear Ms Morgan,

The Judicial Appointments Commission’s consultation on diversity considerations where candidates are of equal merit

The Welsh Language Commissioner welcomes the opportunity to comment on this consultation concerning changes to the judicial appointments process. This comment should be taken as evidence to assist the Judicial Appointments Commission in planning improvements in a field where meeting the needs of individuals, including their languages needs, is integral to the quality and effectiveness of services.

The principal aim of the Commissioner is to promote and facilitate the use of Welsh. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner’s work:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to
inspect statutory Welsh language schemes through the powers inherited under the Welsh Language Act 1993.

The role of the Commissioner was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate failure to implement a language scheme; interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to meet standards.

One of the Commissioner's strategic objectives is to influence the consideration given to the Welsh language in policy developments. Thus the Commissioner's principal role is to provide comments in accordance with this remit, acting as an independent advocate on behalf of Welsh speakers in Wales who might be affected by these proposed changes. This approach is employed to avoid any potential compromise of the Commissioner's regulatory functions and should the Commissioner wish to conduct a formal review of individual bodies' performance or the Commission's performance in accordance with the provisions made in the Measure.

The Commissioner's comments, and the issues which the Commission may wish to address as it embarks on changing the judicial appointments process, may be summarised as follows:-

- Recently, the Commissioner received statistics from the Ministry of Justice (the Ministry) regarding the number of judges and court personnel who are able to preside over court cases in Welsh: seven Circuit Judges; one Deputy Circuit Judge; six Regional Judges (civil and family cases); two Regional Judges (in the Magistrates Courts); seven Recorders; and one Deputy Regional Judge (civil and family cases).

- This consultation states that the Judicial Appointments Commission (the Commission) has a duty, in accordance with the Constitutional Reform Act 2005, to have regard to the need to encourage diversity in the range of persons available for selection. Schedule 13, Part 2, of the Crime and Courts Act 2013 also provides for measures to promote consideration of diversity in the appointments process. In terms of equal merit, it states that Paragraph 9 clarifies that appointing solely on merit does not prevent a candidate being chosen on the basis of improving diversity when there are two candidates of equal merit.

- The Ministry's Welsh Language Scheme states that it has established the principle that, in the conduct of public business and the administration of justice in Wales, the Welsh and English languages shall be treated on a basis of equality. In terms of the subject in question, it states that one of its main duties is to provide support for the Judiciary and judicial appointments via the Commission. Further to that, as noted on the Commission's website, it intends to comply with the terms and spirit of the Welsh Language Scheme 1993 by treating both languages on a basis of equality.
Part 1 of the Welsh Language Measure (Wales) 2011 states that ‘the Welsh language has official status in Wales’. Further to that, Part 3 of the Welsh Language Act 1993 states that ‘in any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it’.

The Government of Wales Act 2006 established a separate legislature in Wales, the National Assembly for Wales, as well as an executive, the Welsh Government. On 5 May 2011, broader legislative powers were vested in the Assembly, which enables it to legislate in the 20 devolved areas. In addition, the Welsh Language Measure (Wales) 2011 provides for the establishment of a Welsh Language Tribunal. The purpose of the Tribunal is to affirm or annul the Commissioner’s ruling on a body’s compliance with any standard relating to the Welsh language.

With regard to the issues above, and considering the low number of Judges available to preside over court cases in Welsh, the appointment of Welsh speaking Judges should be considered when there are two candidates of equal merit. Ensuring the availability of a sufficient number of Welsh speaking Judges would meet the needs of Welsh speakers in Wales with regards to Welsh language court cases or using the Welsh language in a court case.

I would like to thank you once again for the opportunity to comment on this consultation.

Yours sincerely,

Meri Huws
Welsh Language Commissioner