

How the Commissioner decides whether or not to conduct a statutory investigation into a complaint

Here we explain briefly the extent of the Commissioner's duties, rights and powers when receiving complaints about organisations that have a duty to comply with Welsh language standards.

It is based on the Commissioner's interpretation of the Welsh Language Measure, his enforcement policy, and the guidelines and direction issued by the Welsh Language Tribunal following reviews of some of the Commissioner's decisions.

If a person makes a complaint to the Commissioner about an organisation that has a duty to comply with Welsh language standards, the Commissioner must:

- consider and decide whether or not to conduct a statutory investigation into the complaint
- inform the complainant of the reasons for his decision

Before making his decision, the Commissioner has a right to:

- contact the organisations complained about
- invite the organisation complained about to submit comments on the circumstances of the complaint (this right has been confirmed by the Welsh Language Tribunal in case TyG/WLT/20/01)
- contact the complainant for more information
- invite the complainant to submit further comments

In making his decision the Commissioner must:

- decide which factors are relevant and which are not
- consider relevant matters and ignore irrelevant ones
- decide how much weight to give to the relevant factors
- assess where the balance lies between those that support an investigation and those that do not
- decide whether he will seek to persuade the organisations complained about, by other means, to comply with the standards (other than opening an investigation if that is his decision)

- if reconsidering a decision not to conduct an investigation, he has a duty to consider all the relevant matters as they are at that time (considerations are not bound to the circumstances at the time the complaint was made)

The examples below are some of the factors that may be appropriate for the Commissioner to consider when deciding whether or not to conduct a statutory investigation into a complaint. It should be noted that it is not possible to provide a comprehensive list of factors as circumstances change from case to case:

- the relative severity of the alleged failure
- the need for urgent action
- the quality of evidence of failure
- the organisation's previous history of non-compliance with standards
- the proportionality of conducting an investigation in response to the alleged failure
- evidence collected by the Commissioner before receiving the complaint
- evidence, or absence of evidence, that the organisation complained about has changes its behaviour and practices in relation to the matter complained about
- in relation to standards specifically relating to not treating Welsh less favourably than English, the relative positions of both languages