INVESTIGATION UNDER SECTION 17 OF THE WELSH LANGUAGE ACT 1993

Betsi Cadwaladr University Local Health Board
Background

The main aim of the Welsh Language Commissioner, an independent role created in accordance with the Welsh Language Measure (Wales) 2011, is to promote and facilitate use of the Welsh language. This is done by drawing attention to the fact that the Welsh language has official status in Wales and by imposing standards upon organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will form the basis for the work:

- The Welsh language should not be treated less favourably than English in Wales
- Persons in Wales should be able to live their lives through the medium of Welsh if they wish to do so

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Contents

1 Background 3
2 The Investigation 4
3 Findings of the Investigation 6
4 Alleged failures to carry out the Welsh Language Scheme 6
   4.1 New and Revised Policies and Initiatives 7
   4.2 Service Delivery 8
   4.3 Standard of service 12
   4.4 Staff Recruitment 16
   4.5 Implementation and Monitoring of the Scheme 21
5 Conclusions 23
6 Recommendations made under Section 19 (3) of the Welsh Language Act 1993 24
Foreword

This report is published by the Welsh Language Commissioner in accordance with Section 19 of the Welsh Language Act as a result of the transfer of relevant powers under the Welsh Language Act 1993 to the Welsh Language Commissioner by an order dated 29 March 2012.
Part II Section 17 of the Welsh Language Act 1993

Investigations – Compliance with Welsh Language Schemes

An investigation is carried out into the possibility of failure on the part of a public body to implement its Language Scheme, under section 17 of the Welsh Language Act 1993.

‘17.- (1) Where it appears to the Board\(^1\), whether on a complaint made to it under section 18 below or otherwise, that a public body may have failed to carry out a scheme approved by the Board, the Board may conduct an investigation in order to ascertain whether there has been a failure.

(2) The procedure for conducting an investigation under this section shall be such as the Board considers appropriate in the circumstances of the case, and in particular an investigation may be conducted in private …..’

Reporting

A report is produced under section 19 of the Welsh Language Act based on the findings of the investigation.

19. - (1) Where the Board undertakes an investigation under section 17 above, it shall send a report of the results of the investigation to the public body concerned, to the Secretary of State and, where the investigation is conducted on a complaint made under section 18 above, to the complainant....’

‘(2) where the Board considers that it would be appropriate for a report of the results of the investigation to be published, either in the form of a report made under subsection (1) above or in some other form, the Board may arrange for publication in such manner as it thinks fit.

(3) Where on completing the investigation the Board is satisfied that the public body concerned has failed to

carry out the scheme, the Board may include in its report recommendations as to action to be taken by the public body in order to remedy the failure or to avoid future failure’

\(^1\) The Welsh Language Board was abolished on 31 March 2012 and the powers to investigate complaints were transferred to the Welsh Language Commissioner from 1 April 2012 onwards.
1 Background

1.1 The Language Scheme of the Betsi Cadwaladr University Local Health Board was approved by the Welsh Language Board under section 14(1) of the Welsh Language Act 1993 on 13 October 2010. The organizations which merged to form this new organization, namely the North Wales and North West Wales NHS Trusts and the six Local Health Boards in the north, all had language schemes.

1.2 The scheme notes that the Health Board is committed to the principle that the Welsh and English languages should be treated on the basis of equality and that patients, as a matter of good practice, should receive service through the medium of their chosen language. The Health Board employs Welsh Language Officers and Translators located across North Wales to provide a contact point for staff and to co-ordinate, monitor and develop Welsh language initiatives across the Health Board. The Language Scheme describes how the Health Board will move forward with the principle of providing care through the medium of Welsh and English.

1.3 The Betsi Cadwaladr University Local Health Board is a statutory body that was established on 1 October 2009. This is the largest health care organization in Wales and it offers a full provision of services to a population of approximately 676,000 across the six counties of North Wales (Anglesey, Gwynedd, Conwy, Denbighshire, Flintshire and Wrexham). In 2001, 32.8% of the population (3 years of age and over) of those counties could speak Welsh, ranging from 14.4% in Flintshire to 69% in Gwynedd.

1.4 The Health Board employs approximately 18,000 staff and its budget is around £1.1 billion. It is responsible for the administration of three District General Hospitals, namely Ysbyty Gwynedd in Bangor, Ysbyty Glan Clwyd near Rhyl, and Ysbyty Maelor, Wrexham, as well as 22 other acute and community hospitals, and a network of more than 90 health centres, clinics, community health team centres and mental health centres. It also co-ordinates the work of 121 surgeries and NHS services provided by Dentists, Opticians and Pharmacies in north Wales. The Health Board is the main body responsible for commissioning primary care and providing secondary, intermediate and community health care to the population of north Wales.

1.5 This is a report on an investigation into a possible failure by the Betsi Cadwaladr University Health Board to carry out specific sections of the
language scheme. The report does not reach conclusions regarding the general performance of the Betsi Cadwaladr University Health Board in carrying out its language scheme.

1.6 The Welsh Language Commissioner wishes to thank the Health Board for its co-operation in providing information to the investigation.

2 The Investigation

2.1 This investigation was conducted following the decision of the Betsi Cadwaladr University Health Board (BCUHB) to advertise for new Chaplains for the Authority on the www.jobs.nhs.uk website noting that the Welsh language was Desirable even though a part-time Welsh-speaking Chaplain had recently left his post. The Welsh Language Board received a complaint from a member of the public regarding the matter on 17 October 2011.

2.2 It appeared to the Welsh Language Board that the Health Board could have failed to carry out the requirements of its language scheme in implementing some of the Service Planning and Delivery, Face to Face Contact with the Public and Staffing and Recruitment measures.

2.3 The Welsh Language Board decided to conduct an investigation in order to see whether there had been a failure on the part of the Health Board in carrying out relevant clauses in its language scheme.

2.4 In order to check the matter, officers of the Welsh Language Board corresponded with the organization based on the complaint from the member of the public. A letter was sent by an officer of the Board (Appendix 1) to Mary Burrows, Chief Executive of the Health Board, on 19 October 2011 inquiring about the criteria used to decide on the linguistic needs of the post and inquiring what steps they intended to take to ensure that Welsh-speaking patients were able to receive spiritual care in their own language.

2.5 A response was received from the Health Board on 25 October 2011 (Appendix 2). In this letter it is noted that the Health Board has recruited Chaplains who will be able to provide a more regular service. It is also noted that a skills assessment was carried out regarding the post of Chaplains and that it had been established that enough Welsh-speaking Chaplains already served Ysbyty Glan Clwyd and so it was decided to advertise the posts with Welsh being desirable. It was also noted in this letter that they can, in general, support a rota in which a Welsh-speaking Chaplain will be available in the Hospital and that a Welsh-speaking Chaplain will be assigned to care for them.

2.6 As not all the required information had been received, another letter was
sent to the Chief Executive on 8 November 2011 (Appendix 3). In this letter a further explanation was requested on some of the points raised in the response letter, as well as evidence including a copy of the job advertisement and copies of any documents or records associated with the decision to advertise the post with Welsh being desirable.

2.7 A response was received from the Health Board on 2 December 2011 (Appendix 4) and attached was a copy of the job description (Appendix 13), a copy of a paper on reorganizing the Chaplaincy service (Appendix 11) and a copy of the minutes of a meeting held on 22 June 2011 discussing the reorganization paper (Appendix 12).

2.8 Following the letter dated 2 December 2011, the Board was of the opinion that further clarity was required regarding the facts of the case and a final request was made on 6 December 2011 for evidence including the policy on advertising posts, the Health Board’s guidelines to staff regarding when a post should be advertised with the Welsh language being essential or desirable and details regarding the change in the capacity of the Chaplaincy Service in Ysbyty Glan Clwyd in terms of hours (Appendix 5). The evidence including the Health Board’s Recruitment Policy (Appendix 15) was received from the Health Board’s Language Officers at a meeting on 14 December 2011 (Appendix 6) and the letter was responded to on 4 January 2012 outlining the situation regarding the provision in Ysbyty Glan Clwyd (Appendix 7).

2.9 Members of the Welsh Language Board decided to conduct an Investigation under Section 17 of the Welsh Language Act 1993 at a meeting on 27 January 2012. This was done as the result of a lack of evidence of conducting a linguistic assessment of the Chaplaincy service before advertising the post; lack of attention to the need for a bilingual service in the reorganization document and lack of attention to ensuring that Welsh speakers are appointed to the necessary areas in an effective and systematic way within the Health Board’s Recruitment Policy.

2.10 A draft of the investigation report was sent to the Health Board on 25 July 2012 asking them to confirm the factual accuracy of the report. Additional evidence was received with the Health Board’s response dated 24/8/12 (received 18/09/12) namely Recruitment Guidelines to accompany the recruitment policy. In the Recruitment Guidelines, the steps that need to be taken before advertising posts to identify Welsh language requirements are noted (Appendix 18).

2.11 The amended report was approved by the Commissioner’s Complaints and Statutory Investigations Panel on 26 November 2012.

2.12 The main aim of this report is to reach conclusions regarding the suspicions as a result of the evidence received that the Health Board had not complied with some relevant undertakings in:

- Mainstreaming the Welsh language when drawing up new policies and initiatives in accordance with clause 1.2.1
Providing service in the chosen language of patients and aiming to ensure that enough Welsh-speaking staff are available in accordance with clauses 1.3.1; 1.3.2.
Ensuring the same standard of service in both languages in accordance with 1.4.1.
Reflecting the requirements of the Language Scheme in the Health Board’s Recruitment Policy and complying with the advice of the Welsh Language Board document “Recruitment and the Welsh Language” in accordance with clause 3.7.
Providing guidelines on determining whether a post should be advertised as ‘desirable’ or ‘essential’ in accordance with clause 3.7.2.
Ensuring that workplaces which have contact with the public have an adequate number of qualified Welsh speakers in accordance with clause 4.1.1

3 Findings of the Investigation

3.1 This report forms an opinion regarding the Health Board’s compliance with its statutory Welsh Language Scheme based on the evidence found by the Board and the evidence offered by the Health Board.

3.2 This is a final report which submits recommendations to the Health Board under Section 19 (3) of the Welsh Language Act 1993.

3.3 In light of the evidence available there is reason to believe that the Health Board failed to implement clauses 1.2.1, 1.4.1, 3.7, 3.7.2, 4.1.1 of its language scheme in this case.

3.4 Having examined the evidence received it is not possible to conclude that the Health Board failed to comply with the following sections of its language scheme in this case: 1.3.1, 1.3.2

4 Alleged failures to carry out the Welsh Language Scheme

This section of the report reports on alleged failures on the part of the Betsi Cadwaladr University Health Board to implement its Welsh Language Scheme.

The discussion on implementation of the scheme has been organised by quoting from the relevant clause in the Health Board’s Welsh Language Scheme below. This is followed by a description of the findings in all cases and then the conclusions.
4.1 New and Revised Policies and Initiatives

Suspicions arose as a result of the evidence received that the Health Board had not complied with the following clause in the New Policies and Initiatives subsection of its language scheme:

In formulating new and revised policies and initiatives, the Health Board will assess the linguistic effect of any new policies and initiatives to ensure they are consistent with the Welsh Language Scheme.

Clause 1.2.1, Language Scheme, Betsi Cadwaladr University Health Board

4.1.1 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested of the process followed by the Health Board before advertising the Chaplains’ posts.

4.1.2 We were provided with a copy of a discussion paper on reorganization of the Chaplaincy Service in the main hospitals (Appendix 10) as well as the minutes of a meeting held to discuss it (Appendix 11). No reference is made to the provision of a bilingual service in either of the two documents. It is noted in a letter on 25 October 2011 (Appendix 2) that a survey of the existing chaplains’ service had been carried out and that the survey included linguistic skills.

Before advertising the Chaplains’ posts our Chaplaincy Services Manager, .... carried out a survey of the existing Chaplains’ service, and the survey included linguistic skills.

4.1.3 A copy of this survey was requested in the letter dated 6 December 2011 (Appendix 5) but it is understood that it was a verbal discussion that was held on this matter and not a formal assessment on paper.

4.1.4 Conclusion

No written evidence was submitted that either the Welsh language or the Language Scheme were considered in reorganizing the service or in advertising the posts. A verbal discussion with no record does not constitute adequate proof that the Welsh language received appropriate consideration.

It is concluded that the Health Board failed to comply with this clause.
4.2 Service Delivery

Suspicions arose as a result of the evidence received that the Health Board had not complied with the following clause in the Delivery of Service subsection of its language scheme:

*In delivering services in accordance with the contents of this Scheme, the Health Board will offer services in the language of choice without the need for the patient to make a specific request for it.*

Clause 1.3.1, Language Scheme Betsi Cadwaladr University Health Board

4.2.1 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested regarding how the Chaplaincy service organises its work so that patients do not have to make a specific request for a Welsh-language service.

4.2.2 There is inconsistency in the Board’s correspondence regarding how the chaplain discovers a patient’s chosen language. Three letters were received stating three different methods of recording language choice.

4.2.3 In the Board’s letter dated 2 December (Appendix 4) it is noted that chaplains visit wards / departments regularly and by talking to patients they get to know about things such as denomination, language choice etc.

*By talking to patients they get to know about things such as denomination, language choice etc. The Chaplains then make an appropriate referral for a Chaplain who can speak Welsh without the Welsh-speaking patients having to ask.*

4.2.4 This suggests that it is the chaplain who makes the decision regarding the patients’ language choice when speaking to them rather than this information being transferred consistently from the outset in a holistic manner along the care pathway.

4.2.5 However, according to the Chaplains Manager in the letter dated 4 January 2012 the “system for responding to referrals for Welsh-speaking Chaplains seems to be working and there is no evidence of deterioration in the service for Welsh-speaking patients” (Appendix 7).

4.2.6 In another letter dated 25 October 2011 it is noted “when we have Welsh-speaking patients and their language has been recorded as part of their medical notes, a Welsh-speaking Chaplain is assigned to care for them. On occasions when this is not possible, an on-call system is in place and a Welsh-speaking chaplain can be called to the hospital.” (Appendix 2).

4.2.7 In the organization’s language scheme, the following is noted:

“..all systems will give particular attention to:

....1.3.7 arrangements to ensure that other departments are aware of language
choice after referral so that the patient does not have to request a Welsh language service.

The Health Board will monitor each department’s processes to ensure that a suitable Welsh language service is provided.”

4.2.8 In their letter to confirm the factual accuracy of the draft report the officer on behalf of the Health Board confirmed that the three methods of discovering the language choice of patients were used “depending on the conditions and needs of all cases and individual patients” (Appendix 17).

4.2.9 Conclusion

It is concluded that internal inconsistency leads to lack of clarity regarding how language choice is offered to patients and who is responsible for transferring information about the patients’ chosen language to the chaplains. Lack of clarity arises in the evidence from staff and/or chaplains about the system in place. This suggests that a risk exists that the system of offering language choice does not take place in accordance with the language scheme in all cases.

It is not clear whether this clause in the language scheme was breached.
4.2.10 **Suspictions arose as a result of the evidence received that the Health Board had not complied with the following clause in the Delivery of Service subsection of its language scheme:**

*In delivering its services in accordance with the contents of this Scheme, the Health Board will ensure there is sufficient Welsh speaking staff available in all care settings. In some service areas there may be a shortage of Welsh speakers and in such circumstances other arrangements will need to be put in place so that Welsh speaking patients receive a service in their language of choice.*

*Clause 1.3.2, Language Scheme, Betsi Cadwaladr University Health Board*

4.2.11 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested regarding the criteria used to decide on the linguistic needs of the post and why it was decided not to advertise the post with the Welsh language being essential. According to the Health Board’s letter dated 25 October 2011 *(Appendix 2):-

*As part of the skills assessment for the new Chaplains’ posts it was established that there were plenty of Welsh-speaking Chaplains already serving Ysbyty Glan Clwyd and that is why it was decided to advertise the post as Welsh desirable.*

4.2.12 This decision was made despite a bilingual chaplain having just retired and the number of bilingual chaplains’ working hours having fallen from 14 to 7 hours per week during 2011 *(Appendix 8)*. In the Welsh Language Board’s document ‘Recruitment and the Welsh Language’ which the Health Board has undertaken to follow (Health Board’s language scheme 3.7), it is noted that there is a need to map the existing capacity of workplaces and posts and to set it as a baseline. No evidence was provided to indicate that this had taken place in this instance.

4.2.13 The Health Board has noted that they acted proactively in this case to put arrangements in place to ensure that Welsh-speaking patients are to receive service in their chosen language in future by arranging for the new chaplain to attend a Welsh language course. As a condition of appointment to the post the non-Welsh speaking chaplain will register on a Welsh learners’ course.

4.2.14 According to the Welsh Government’s Welsh for Adults Department, the quickest way to learn Welsh is to follow a fast track course namely two to five lessons per week; by doing this individuals usually reach level 3 (namely the level expected by the Health Board) after 3 years. But, by following a leisurely route, namely one lesson per week, it will take 7 years to attain level 3. *(Appendix 14)*. It is difficult to know whether this is adequate in order to carry out the requirements of the post. Another consideration is how fair it is to expect a member of staff who has learnt Welsh to deal with the matters outlined in the job description through the medium of his second language. Neither is it clear what arrangements have been made to meet the needs of Welsh-speaking patients and their families in the meantime.
4.2.15 As a general comment, by noting that Welsh is desirable when advertising the post and then making a condition of appointment that Welsh must be learnt, there is a risk of the Health Board being open to a challenge unless the requirements and the criteria are clear from the outset.

4.2.16 Conclusion

The Health Board is advised to pay attention to the need to fulfil the second part of this clause until the new chaplain is fluent in the Welsh language.

It is concluded that the Health Board has not breached this clause.
4.3 Standard of service

Suspensions arose as a result of the evidence received that the Health Board had not complied with the following clause in the Standard of Service subsection of its language scheme:

The Health Board will ensure the same standard of service is delivered in both languages

Clause 1.4.1, Language Scheme, Betsi Cadwaladr Health Board

4.3.1 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested regarding the way in which the Chaplaincy service, specifically, was provided. In the job description (Appendix 13) the chaplain’s duties are mentioned which include the following, amongst others:

“2. LITURGICAL
   a) To assist in organizing and holding weekly services.
   b) To administer the Church sacraments, in accordance with denominational discipline, in the Hospital Chapel and on the wards.
   c) To assist in organizing special services and an appropriate provision of liturgies in the Chapel or anywhere else in the hospital.
   d) To administer Christening sacraments in clinical emergencies.
   e) To lead services in accordance with the stated religion of individuals in contract funerals undertaken by the hospital.
   f) To contact all Faith groups to provide appropriate services and resources for their members.

3. PASTORAL
   a) To visit patients and staff on the wards and in departments regularly and, on request (in consultation and with the full co-operation of the medical nursing staff) to provide special support to those who are seriously ill and dying.
   b) To take part in staff training, induction sessions and pastoral care.
   c) To be available, whenever possible, for patients’ relatives, especially those who have been bereaved, and to help to provide appropriate care; and to develop ability in assessment and referral skills.”

(a full copy of the Job Description can be found in Appendix 13)

4.3.2 As seen above the Chaplains provide assistance and support to patients and their families when they are vulnerable, concerned or bereaved. The importance of communicating in a first language is acknowledged in the Preface to the Health Board’s language scheme.

“We recognise that members of the public can express their views and needs better in their first language, and that enabling them to use their preferred language is a matter of good practice rather than a concession – a denial of that right or an inability to provide this efficiently could place patients, service users and families at a real disadvantage.”
4.3.3 Further on in section 1.3 of the language scheme, namely the section on service delivery, it is noted “it is of great importance that service users and staff are able to communicate freely with each other” and in 2.1.2 it is noted that the Health Board will “allocate Welsh speaking staff to those departments which have interaction with the public”.

4.3.4 It is noted in the letter dated 2 December 2011 (Appendix 4) “If a Welsh-speaking patient needs the service of a Chaplain, a request is made by referral to a member of the Welsh team to attend within 24 hours”. It is noted in the same letter that “the only time when it will not be possible to provide a Welsh speaker is between 17.00 and 09.00 o’clock, unless the Chaplain on call is a Welsh speaker. In this situation, a referral would be made first thing in the morning to assign a Welsh-speaking Chaplain to their care”. However, it is noted on the poster advertising the Chaplaincy service that “a Chaplain is available 24 hours per day” (Appendix 9). This strongly suggests that the same standard of service is not being delivered in both languages.

4.3.5 In general, it appears that the Chaplaincy service in Ysbyty Glan Clwyd is in the most part more regular and holistic following the reorganization, but there are now fewer Welsh chaplain contact hours with only one bilingual chaplain working 7 hours per week.

“In order to provide a more efficient and effective service we have recruited Chaplains who will be able to provide a more regular service and who will be available to serve our patients for a longer period each week” (Appendix 2)

4.3.6 After informing the Health Board of the decision to conduct an investigation, information was received by e-mail from the Health Board on 8 March 2012 which included detailed information about the number of hours Welsh-speaking and non-Welsh speaking Chaplains worked in Ysbyty Glan Clwyd before the retirements in September 2011 and the number they worked by March 2012 (Appendix 8). These figures are presented in table form below:-

<table>
<thead>
<tr>
<th></th>
<th>Fluent in Welsh</th>
<th>Not fluent</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 2011</td>
<td>14 hours</td>
<td>28 hours</td>
</tr>
<tr>
<td>March 2012</td>
<td>7 hours</td>
<td>48 hours (18.75 Learner 3.5 level 2 and 25.75 non-Welsh speaker)</td>
</tr>
</tbody>
</table>
4.3.7 The change that took place in the period between September 2011 and March 2012 can be seen from the graph below.

4.3.8 The number of working hours of the chaplain who is fluent in Welsh has fallen by 50% and the hours for chaplains not fluent in Welsh have increased by 71% during the same period. It is noted that 3.5 hours of the 48 are hours for a level 2 learner. This means that a speaker has the “confidence to discuss day to day activities” (www.cymraegioedolion.org). The Chaplains Manager noted in the e-mail received on 8 March “Basically we have lost 7 hrs fluent Welsh speaking in the year but gained 22.25 hrs of Chaplaincy actively engaged in learning and using Welsh”. Also received were copies of posters advertising the Chaplaincy Service and leaflets available on the wards. It is noted on the poster (Appendix 9) that a Chaplain is available 24 hours a day and that the service can be contacted via the hospital switchboard. There is no mention of the language of the service in the poster or the leaflet (Appendix 10). A list of the names of the Chaplains in the community hospitals can be found on the leaflet and how they can be contacted. It does not note which of them can speak Welsh.

4.3.9 The need for Welsh-speaking Chaplains is noted in the Wales Consumer Council Report “The Welsh Language in the Health Service” 2000. Two challenges face the health organizations according to the author, namely ensuring that an adequate number of qualified Welsh speakers apply for posts when they fall vacant and ensuring that the health organizations recognise the need for Welsh-speaking chaplains and act on that basis. The need is noted to ensure that the service is offered as the norm and that patients do not have to ask and press for it (Wales Consumer Council, The Welsh Language in the Health Service, 2000 page 45).
4.3.10 Conclusion

With the reduction in the number of Welsh language hours it is concluded that the Welsh service is no longer at the same level as it was previously and on the basis of the evidence and explanation that there are occasions when it is not possible for a patient to receive the services of a Welsh chaplain, only an English one, it is also concluded that the same standard of service is not delivered in both languages. The Chaplaincy service available in English has improved whilst the service through the medium of Welsh has reduced in terms of availability.

It is concluded that the Health Board has failed to comply with this clause.
4.4 Staff Recruitment

Suspensions arose as a result of the evidence received that the Health Board had not complied with the following clause in the Staff Recruitment subsection of its language scheme:

The Health Board’s Recruitment Policy will reflect the requirements of this Scheme. The Health Board will also comply with the advice given in the Welsh Language Board’s publication “Recruitment and the Welsh Language”.

Clause 3.7, Language Scheme, Betsi Cadwaladr University Health Board

4.4.1 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested of the guidelines given to managers regarding when posts should be advertised with Welsh essential or desirable. A copy was received of the Health Board’s Recruitment Policy, namely ‘Safe Recruitment Practices Guidelines’ (Appendix 15) was received in December 2011. After receiving this document, it was inquired in a further letter dated 30 January 2012 whether there were any other guidelines for managers regarding determining the linguistic needs of posts (Appendix 16). All the evidence received was assessed and a draft report was provided for the Health Board on 25 July 2012. In responding to the draft report, the Health Board submitted a document that was not submitted during the evidence collecting period namely guidelines entitled “Welsh Language Requirements for Vacant Posts”. This document is a flow chart for managers to determine whether posts should be advertised with the Welsh language being essential or desirable or without linguistic requirements (Appendix 17). The recruitment policy (Appendix 15) does not refer managers to this flow chart.

In order to decide whether the Health Board complies with the language scheme there is a need to assess whether the Recruitment Policy and Guidelines reflect the clauses regarding recruitment in the language scheme and contribute towards meeting the Health Board’s staffing needs.

4.4.2 It is noted in the language scheme that the Health Board will:

“ensure that workplaces which have contact with the public in Wales have access to sufficient and appropriately skilled Welsh speakers to enable those workplaces to deliver a full service through the medium of Welsh”

Clause 4.1.1, Language Scheme, Betsi Cadwaladr University Health Board

4.4.3 There is no reference to assessing the ability of workplaces to provide a full service through the medium of Welsh in the Recruitment Policy therefore this clause is not reflected in the Recruitment Policy. In the flow chart to help managers decide whether posts should be advertised with the Welsh language being essential, desirable or without linguistic needs, the steps which a manager must take to identify the linguistic needs of posts before
advertising are noted. The criteria for determining the linguistic needs of posts depend on the role of the post and whether there is a need to work with patients and how specialised the post is. It must also be assessed whether the department has an appropriate proportion of Welsh speakers (approximately 30%) to comply with the Language Scheme. In following the chart, the question is asked “Does the post provide a front line services (sic) e.g. a receptionist? No further details are given regarding what is meant by “front line services”. Then it is further inquired “Does the department / team have an appropriate portion of Welsh speakers (approx. 30%) to provide a bilingual service? No details are given regarding the availability of other staff who can speak Welsh on the site, the number of staff available at any one time, or the needs of the post. The assessment requirements in order to comply with clause 1.3.2 are much wider than those included in the flow chart.

4.4.4 There is an undertaking in the language scheme that the Health Board will:-

“identify those workplaces, teams and posts where the ability to speak Welsh is essential and those where it is desirable to assess the level of proficiency required in each case and to formulate job descriptions accordingly.”

Clause 4.1.3, Language Scheme, Betsi Cadwaladr University Health Board

4.4.5 In the Recruitment Policy it is noted in discussing the personal specification (3.3) and the assessment method (3.3.6) that identifying linguistic requirements is important but there are no specific guidelines on how to designate a post with Welsh being essential within the Recruitment Policy. The policy does not refer to further guidelines expanding on which posts should be advertised with Welsh being essential or desirable. No evidence was seen in the Recruitment Policy (Appendix 15) or the flow chart (Appendix 18) that posts and teams where there are Welsh essential or desirable posts have been noted. The Health Board’s Recruitment Policy does not reflect this clause in the language scheme.

4.4.6 The language scheme also states:-

“In areas where it is apparent that there is a shortfall of Welsh speakers, the Health Board will take a pro-active approach in recruitment and training in order to attract Welsh speakers into the relevant areas.”

Clause 4.1.6, Language Scheme, Betsi Cadwaladr University Health Board

4.4.7 It is known that there are some fields within the health service where there is a shortage of Welsh speakers. However, it is questionable whether there is a shortage of Welsh speakers in this particular service field who would be
qualified to carry out the post in question. Had the post been advertised on a wider scale than in NHS Jobs it is likely that it would have reached more of the target audience.

4.4.8 The recruitment policy notes that job adverts need to be bilingual and it notes clearly that they should be advertised on www.jobs.nhs.uk which is free and that other advertising media should only be used in exceptional circumstances. There is no reference to assessing whether there is a shortage of Welsh speakers within in a team or location in the Recruitment Policy. The content of 4.1.6 in the language scheme is not reflected in the Health Board’s Recruitment Policy.

4.4.9 One of the Health Board’s targets in its language scheme is to “ensure an adequate number of staff who can provide a Welsh medium service by assessing each new and vacant post” (Target 5 – Recruitment). The Recruitment Policy includes a general warning against overuse of the ‘essential’ requirement in respect of qualifications and skills.

“When drafting a Person Specification, the characteristics of the person required to do the job should be considered, and care should be taken to avoid identifying too many criteria as “essential”” (3.3 ‘Safe Recruitment Practices Guidelines’)

4.4.10 The Recruitment Policy does not include guidance for managers to know when a post should be advertised with Welsh essential; neither does the policy refer to the flow chart for determining the linguistic needs of a post and so the policy does not reflect Target 5 in the language scheme.

4.4.11 In its language scheme the Health Board undertook to comply with the advice of the Welsh Language Board document ‘Recruitment and the Welsh Language’. It is noted in the ‘Recruitment and the Welsh Language’ document that organizations are duty-bound to plan, develop, implement and invest in a bilingual workforce in accordance with guidelines in 8(i) and 8(ii) of the Statutory Guidelines.

4.4.12 It is noted in the document that the existing capacity of workplaces and posts need to be mapped in the same way, and set down as a baseline (4.2.1). Although a bilingual chaplain had retired and the number of hours of service by bilingual chaplains had fallen substantially, the Health Board did not follow the advice of the “Recruitment and the Welsh Language” document in this case.

4.4.13 It is noted in the document ‘Recruitment and the Welsh Language’ that an objective method should be adopted for determining the language skills needed for posts and there are guidelines for drawing up a job language assessment in 5.1. In designating language needs, it should be ensured that there is justification for using the two categories and recruitment policies should be adjusted accordingly (page 31, ‘Recruitment and the Welsh Language’). Failure to provide guidelines for managers on when to use linguistic conditions could lead to a risk of discrimination. There are no details in the Recruitment Policy regarding how to assess the linguistic
needs of posts, except to note:-

“Identifying Welsh Language Requirements will also be important”

“In accordance with the Welsh Language Scheme, each post must be designated as whether or not Welsh speaking is essential or desirable.”

(3.3 and 3.3.6 ‘Safe Recruitment Practices Guidelines’)

4.4.14 Conclusion

From the evidence submitted it is concluded that the Health Board’s recruitment policy (Appendix 15) does not reflect the requirements of the language scheme and that the Health Board does not comply with the Welsh Language Board document ‘Recruitment and the Welsh Language’ as neither the Recruitment Policy nor the flow chart reflect the guidance included in the document to allow officers to follow a clear process for determining the linguistic requirements of posts. The Recruitment guidelines (Appendix 18) do not reflect the requirements of the language scheme as they do not consider and set as a baseline the present capacity of the Service, and as they do not note the workplaces, teams and posts in which the ability to speak Welsh is essential.

It is concluded that the Health Board failed to comply with this clause.
4.4.15 Suspicion arose from the evidence received that the Health Board had not complied with the following clause which is also in the Staff Recruitment subsection of its language scheme:

*The Health Board will note whether the ability to speak Welsh is desirable or essential. Guidance will be issued to staff on how to determine this* Clause 3.7.2, Language Scheme, Betsi Cadwaladr University Health Board

4.4.16 In order to find out whether the Health Board complied with the above clause in the language scheme evidence of these guidelines was requested. A copy was requested of the Health Board’s guidelines to staff regarding when posts should be advertised with Welsh being essential or desirable in our letter dated 6 December 2011 (Appendix 5). Following receipt of the recruitment policy it was further inquired in a letter dated 30 January 2012 whether there were any further guidelines for managers regarding determining the linguistic needs of posts (Appendix 16). No further details were received until August 2012 when the Health Board responded to our draft report.

4.4.17 The Health Board’s Recruitment Policy namely ‘Safe Recruitment Practices Guidelines’ does not refer to further guidelines for managers regarding the determining the language needs of posts.

The flow chart provides an outline for assessing the linguistic needs of posts, but the assessment requirements are far wider than those included in the flow chart. By depending on the flow chart only, the skills assessment process is not followed to the full as described in the language scheme and the ‘Recruitment and the Welsh Language’ document.

4.4.17 Conclusion

There are guidelines for managers to accompany the recruitment policy with a flowline on how to determine whether the ability to speak Welsh is desirable, essential, or without a linguistic condition. However, the assessment requirements are much wider than what is found in the flow chart and in this case it has not led officers to a robust and correct result in identifying when the Welsh language is an essential element of a post. The Health Board has not implemented this clause in such a way as to carry out the requirements of its language scheme in terms of recruitment.
4.5 Implementation and Monitoring of the Scheme

Suspicions arose as a result of the evidence received that the Health Board had not complied with the following clause in the Implementation and Monitoring of the Scheme subsection of its language scheme:

The Health Board will ensure that workplaces which have contact with the public in Wales have access to sufficient and appropriately skilled Welsh speakers to enable those workplaces to deliver a full service through the medium of Welsh

Clause 4.1.1, Language Scheme, Betsi Cadwaladr University Health Board

4.5.1 In order to find out whether the Health Board complied with the above clause in the language scheme evidence was requested regarding the Chaplaincy’s ability to provide a Welsh-medium service. It is noted in the letter dated 2 December 2011 (Appendix 4) that they took the opportunity in September 2011, following the retirement of 11 chaplains from the Health Board, to modernise and reorganize the chaplaincy service.

“Before reorganizing the service, the 11 chaplains worked a small number of hours per week only, and following the review of service needs, it was considered better to have one person working more hours on the same site to ensure a continuation of service for the patients.”

4.5.2 In reorganizing the Pastoral Care Service, the requirements for the posts were considered and it was recognised that there were bilingual chaplains within the service (Appendix 4). The following is noted in this letter too:

“Although there was full awareness of the Health Board’s Language Scheme, it was considered that skills and abilities for the posts were a priority. Also, in accordance with the Welsh Government’s ‘Spiritual Care Standards – 2010’, there was a need to consider multi-faith provision”

4.5.3 Considering the figures provided in point 4.3.6 (Appendix 8) regarding the change in the number of working hours it appears that the Welsh-medium service has reduced in terms of availability. By changing the chaplains’ service from one that was organized as a team service with a variety of skills to a service more dependent on full-time chaplains, the number of Welsh-speaking chaplains who could be called upon in emergencies, has also fallen.

4.5.4 It is obvious from the personal specification and job description (Appendix 13) that the ability to communicate effectively is a very important skill for the post and that there is obvious interaction between the Chaplains and the public at a very sensitive time. The Chaplaincy Service is one that depends considerably on effective communication on the part of the patients, their families and the chaplain. The nature of the post means that the level of contact with the public is key.
4.5.5 Conclusion

Based on the evidence provided, it is concluded that the Health Board failed to enable the Chaplaincy Service to provide a full service through the medium of Welsh.

It is concluded that the Health Board failed to comply with this clause.
5 Conclusions

The report reaches the conclusion that the Health Board failed to comply with the following clauses in the Language Scheme:

- New Policies and Initiatives - 1.2.1, 1.4.1,
- The Standard of Service – 3.7, 3.7.2
- Staff Recruitment – 3.7, 3.7.2
- Implementation and Monitoring of the Scheme – 4.1.1

The Health Board was not found to have breached clauses involving Service Delivery.
6 Recommendations made under Section 19 (3) of the Welsh Language Act 1993

6.1 Based on the evidence available, the Welsh Language Commissioner is of the opinion that the Betsi Cadwaladr University Health Board should act in accordance with the following recommendations:

Recommendations

Recommendation 1: new and revised policies and initiatives

Clear arrangements must be put in place to ensure that a linguistic impact assessment is carried out and recorded when new or revised policies and initiatives are formulated.

A copy of the completed linguistic impact assessment procedure by the end of March 2013.

Recommendation 2: Standard of service

Arrangements must be put in place to ensure that a Welsh-speaking chaplain is available to the same degree for Welsh speakers as a chaplain is available for non-Welsh speakers,

When doing this you must:

- Conduct a review of the procedure for noting the chosen language of patients and acting accordingly
- ensure that the service of Welsh-speaking chaplains is advertised and promoted
- tackle any gaps in service by means of recruitment and selection processes and/or configuring service.

Evidence that this work has been completed by the end of March 2013.

Recommendation 3: Recruitment

The Recruitment Policy must be adjusted to reflect the requirements of the language scheme in terms of the action to be taken to secure a bilingual workforce.

Evidence that this work has been completed by the end of March 2013.
Recommendation 4: Implementation and monitoring of the Scheme

There should be a review of guidelines for staff on how to determine linguistic requirements in recruitment and selection. The guidelines should include the need to consider and set as a baseline the present capacity of a service, and to note the workplaces, teams and posts where the ability to speak Welsh is essential.

Evidence that this work has been completed by the end of March 2013.

Further advice

The Health Board is advised to tackle the gap in the Welsh-speaking Chaplaincy service whilst the new Chaplain learns to speak Welsh.

Evidence that this work has been completed by the end of March 2013.