



***POLICY AND RESOURCES CABINET BOARD
(SPECIAL)***

***Immediately Following Scrutiny Committee on
THURSDAY, 14 JULY 2016***

COUNCIL CHAMBER - PORT TALBOT CIVIC CENTRE

PART 1

1. To agree the Chairman for this Meeting.
2. To receive any declarations of interest from Members.

To receive the Report of The Head of Corporate Strategy and Democratic Services.

3. Welsh Language Standards (*Pages 3 - 126*)
4. Any urgent items (whether public or exempt) at the discretion of the Chairman pursuant to Statutory Instrument 2001 No 2290 (as amended).

**S.Phillips
Chief Executive**

**Civic Centre
Port Talbot**

Thursday, 7 July 2016

Cabinet Board Members:

Councillors: A.H.Thomas and A.N.Woolcock

Notes:

- (1) *If any Cabinet Board Member is unable to attend, any other Cabinet Member may substitute as a voting Member on the Committee. Members are asked to make these arrangements direct and then to advise the committee Section.*
- (2) *The views of the earlier Scrutiny Committee are to be taken into account in arriving at decisions (pre decision scrutiny process).*

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

POLICY AND RESOURCES CABINET BOARD

14 JULY 2016

REPORT OF THE HEAD OF CORPORATE STRATEGY AND DEMOCRATIC SERVICES – K.JONES

SECTION A- MATTER FOR DECISION

WARDS AFFECTED-ALL

WELSH LANGUAGE STANDARDS

Purpose of Report

1. To update Members on the status of the Council's Challenge to the Welsh Language Commissioner regarding a number of standards that the Council is unable to comply with and to seek Members authorisation to submit additional evidence and proposals to the Welsh Language Commissioner prior to the Commissioner coming to a final determination on the Council's Challenge.

Background

2. The Council received correspondence from the Welsh Language Commissioner on 6th June 2016 which details the Commissioner's initial consideration of the Challenge to 54 standards that were included in the Council's Compliance Notice. The Commissioner is presently considering make one minor modification to one of the standards but has offered the Council an opportunity to make further representations to her in relation to the other standards that we have challenged.
3. It is important that the Council takes the opportunity to make further representations as the Council is unable to fully comply with most of the 54 standards subject of the Challenge however, if the Commissioner is minded to agree, the Council could partially comply with 22 of the standards subject of the Challenge.

4. Attached at Appendix 1 is a proposed response for Members to consider. The document identifies the standards subject of the Challenge, re-produces for Members information the Commissioner's initial considerations, and then sets out further evidence and arguments to support the Council's Challenge. At the end of each section of the report, a proposal is made as to whether the Council now accepts the Challenge, asks the Commissioner to modify the standard to enable the Council to partially comply, or in the remainder of cases the Council maintains that the standard should not be applied at this time.
5. A proposed covering letter to accompany the evidence document referred to above is also included for Members' consideration, Appendix 2. There are a number of key issues set out in the letter which Members are asked to endorse. In particular, the continued reliance on communication by correspondence, rather than meeting to ensure there is shared understanding of what is possible and what is not; and the degree of "evidence" being required which has consumed significant officer time.
6. We hope that the further evidence and proposals provided will enable the Commissioner to reach an agreement with the Council that will bring this phase of work to a conclusion. Should the Challenge not be successful, it is open to the Council to make further representations to the Welsh Language Tribunal but we would very much hope that this can be avoided.

Recommendations

7. That Members note the update provided on the status of the Council's Challenge to the Welsh Language Commissioner.
8. That the Chief Executive is given delegated authority to make any further minor presentational changes in addition to any change suggested at Scrutiny Committee and agreed by the Cabinet Board prior to submission of the final response to the Welsh Language Commissioner.

Reason for Proposed Decision

9. To authorise additional information to be provided to the Welsh Language Commissioner, together with the Council's proposals for

the Final Compliance Notice to be modified in order that the Welsh Language Standards to be applied to the Council in the first instance are reasonable and proportionate.

Implementation of Decision

10. The decision is an urgent one for immediate implementation, subject to the consent of the relevant Scrutiny Chair (and is therefore not subject to the call in procedure).

Financial Impact

11. There are a number of standards that the Council is challenging on the basis that there is a cost to achieving the standards that cannot be met within the existing budgets of the Council. No additional financial resources have been made available by the Welsh Government to implement the Welsh Language Standards however, the Welsh Language Commissioner has been provided with discretion to identify which standards should be applied in the Council's local circumstance.

Equality Impact Assessment

12. The introduction of the Welsh Language Standards is intended to ensure that Welsh is dealt with on an equal basis as the English language.
13. People affected by the standards may also share other protected characteristics but there is presently no data to provide further analysis.

Workforce Impacts

14. There are a number of standards that are subject of Challenge because the Council does not have the linguistic capability to deliver a bilingual service as required by the standards in the way that the standards require. The Council's ability to impact on the linguistic profile is limited in the short term as there is a moratorium on external recruitment unless essential in order protect existing staff members from compulsory redundancy.
15. There are also standards that relate to the use of Welsh in the workplace that are subject of Challenge. These standards are

challenged because there is a cost associated with compliance which cannot be met within existing budgets, or whether it is considered the consequences of meeting the standards would disproportionately affect other staff members.

Legal Impacts

16. The Welsh Language Standards have been introduced by the Welsh Government by virtue of the Welsh Language (Wales) Measure 2011.

Risk Management

17. If the Council's Challenge is unsuccessful there is a risk of non-compliance with standards which could attract complaints from members of the public with a consequential adverse impact on the Council's reputation and the potential for fines of £5,000 per standard not complied with.

Consultation

18. There is no requirement under the Constitution for external consultation on this item.

Appendices

Appendix 1 - Response to Welsh Language Commissioner's initial considerations

Appendix 2 – Letter to Welsh Language Commissioner July 2016

List of Background Papers

19. Policy and Resources Cabinet Board 23rd July 2015 – Welsh Language Standards draft Compliance Notice Consultation Response
20. Letter dated 24th July 2015 to Welsh Language Commissioner responding to the consultation on the draft Compliance Notice
21. Welsh Language Commissioner – Challenge and Appeals Procedure: Compliance Notices

22. Welsh Government – Explanatory Memorandum to Welsh Language Standards (no. 1) Regulations 2015
23. Welsh Government Consultation Document – Welsh Language Standards: Regulations and response from NPT Council dated 3rd December 2015
24. Welsh Government – Welsh Ministers’ response to the Welsh Language Commissioner’s standards reports and advice note
25. Letter from Deputy Leader to First Minister – Welsh Language Commissioner’s Response to Standards Investigation
26. Letter to WLGA Chief Executive from Chief Executive of NPT Council regarding Welsh Language Commissioner’s Response to Standards Investigation
27. Welsh Language Commissioner – Standards relating to the Welsh Language
28. Welsh Language Commissioner – Standards Report: County councils and county borough councils in Wales
29. Letter from Leader of Council to Welsh Language Commissioner – Standards Investigation
30. Welsh Government – Regulatory Impact Assessment of the proposed standards relating to the Welsh Language
31. NPT Council response to the Welsh Language Commissioner’s Standards Investigation
32. Policy and Resources Cabinet Board, October 2015, Welsh Language Standards Compliance Notice

Officer Contact:

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**Additional information provided in support of the Council's
Challenge to the Welsh Language Commissioner regarding the
Compliance Notice 30th September 2015**

Standard 22

Any automated telephone system that you have must provide the automated service in Welsh-

Imposition day: 30/09/16

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.3.1 *The standard exists to ensure that those citizens who wish to use the Welsh language when telephoning Neath Port Talbot County Borough Council are able do so. The standard expects the Council to ensure that any automated telephone system can provide the complete automated service in Welsh.*
- 2.3.2 *The Council's first argument is that there is no demand for the service and it would be disproportionate to introduce the standard because of the low percentage of calls received in Welsh. Statistics for the number of telephone calls received in Welsh during 2014-15 and during the period between April and November 2015 are provided. The Council notes that the expected audience for this service is very low. According to the Council's evidence, 15.3% of the population are able to speak Welsh in Neath Port Talbot. According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh, which is a significant number. In research prepared by Beaufort Research, on behalf of the Welsh Language Commissioner, 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services.*

- 2.3.3 *In relation to the second argument, the Council notes that its telephony systems are not able to accommodate the standard at present and that it would be impractical to provide bilingual answer phone messages for every member of staff. The Council notes that no new funding has been provided to resource this additional requirement and that if a Welsh message is left on the phone of someone who does not speak Welsh there could be delay in providing the service response. The Council notes that it can ensure a bilingual service in its main contact centre but no details are given nor does it provide any clear evidence of those situations where this is not possible. It does not appear that the Council has considered other service provision models which would facilitate its ability to comply with this standard.*
- 2.3.4 *It must be remembered that the Council is not starting from scratch in this regard. The Welsh Language Scheme which preceded the duties of the Welsh Language Standards made a commitment as follows: ‘A dedicated Welsh Language Telephone Line has been established for those who wish to conduct their business in Welsh, which is advertised in the BT Phone Book and in the Council’s A-Z of Public Services booklet that is distributed to all of the County Borough’s residents. The telephone number is 01639 763329’ and ‘All answer phone greeting messages will be bilingual. In the case of lengthy messages or those where the content is varied frequently then an agreed standard bilingual message will be used’.⁸ In March 1996, guidelines to organizations implementing Welsh Language Schemes were issued and in those guidelines on page 19, advice was given on the possible arrangements for introducing services bilingually. For example, setting up a discrete team to support services, that one office supports another etc.*
- 2.3.5 *The Council had until 30 September 2016 to comply with the standard under consideration.*
- 2.4 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate and that the requirement to comply with standard 22 by 30/09/2016 is unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 22

1. Demand – the Commissioner notes that according to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh and that in research prepared by Beaufort Research 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services. The Commissioner also quotes from the Council's Welsh Language Scheme, that predates the introduction of the Welsh Language Standards "a dedicated Welsh Language Telephone has been established for those who wish to conduct their business in Welsh, which is advertised in the BT Phone Book and the Council's A-Z of Public Services booklet that is distributed to all of the County Borough's residents..."
2. The Council submitted evidence to the Commissioner demonstrating that, in practice, the Council experiences a very low demand for telephone enquiries to be dealt with through the medium of Welsh. In 2014-15 there were 284 calls recorded (0.12% of total calls) and for the period April-November 2015 there were 67 calls (0.06% of total calls). More recent data gathered at the Council's Corporate Call Centre demonstrates that demand continues to be very low with 0.6% of calls received in April and May.
3. The Commissioner appears to have preferred to rely on statistical estimates of *potential* demand, rather than giving proper weight to the experience of the Council in meeting the needs of residents as is currently presented. No explanation for this is provided and we consider that the Commissioner should reflect again on her initial consideration and give due regard to the actual demand being experienced. The Council is of the view that the actual demand is a significant factor to take into consideration when deciding whether the standard is reasonable and proportionate as the demand for service needs to be weighed against the investment the Council would be required to make to ensure full compliance at this point in time.
4. Other automated telephone arrangements - The Commissioner has noted the Council's argument that some of the Council's existing

telephony systems do not provide for bilingual greetings, that no additional resource has been made available by Welsh Government to fund standards that impose additional cost on councils and that there is a risk of delay if a Welsh message is left on the voice mail of a member of staff who does not speak Welsh. The Commissioner states that the Council has not provided clear evidence of where it is not possible to meet the standard and suggests that the Council has not given consideration to alternative ways of meeting the standard.

5. The Council is clear that it should comply with the requirement to provide a fully bilingual service at its Corporate Contact Centre. The Corporate Contact Centre handles in excess of 200,000 calls a year and is the main corporate interface with the community. Even though demand for Welsh medium service received at the Corporate Contact Centre has consistently been very low, the Council has already removed its dedicated Welsh Language Line and modified its automated messaging to comply with the Welsh Language Standards.
6. At the present time, the Council's automated facilities are limited at the Corporate Contact Centre and the current system has reached the end of its useful life. The Council is in the process of putting together a specification for a replacement of that system and the need to address the Welsh Language Standards has been included in that specification. This would cover the Corporate Contact Centre and voice mail attached to the internal telephone network. The intention moving forwards would be to offer a fully automated switchboard facility, available in both Welsh and English. To operate such a system effectively will require an estimated six months lead in time from the date of contract award, as the staff directory that underpins such technology would need to be developed bilingually, unlike the existing staff directory which is in English only. This means, for example, every post would need to be translated and recorded in Welsh and English and each service would need to be described in both languages.
7. Although there will be a significant initial cost in establishing this service, the Council will be able to realise cashable savings from the introduction of such a service and consequently this is therefore affordable as there is a clear financial payback within 12 months of the system being fully operational. Thus, whilst demand is very low at the Corporate Contact

Centre, the Council accepts it would be reasonable to introduce this service as there is a clear financial case that underpins the proposal. The Council *has* given proper consideration to meeting this standard and can meet the Standard in part with plans to improve service when the Council replaces the current system in the medium term.

8. It is disproportionate and unreasonable to comply with this standard in relation to automated systems that sit outside of the Corporate Contact Centre, in particular the social services “first point of contact arrangements”, Council-issued mobile phones and direct line extensions. The principal role of the “first point of contact” in Social Services is to deal with new referrals to Children’s Social Services and Adult Social Services. Those services operate the same ICT telephony as the Corporate Contact Centre, however, the context within which they operate are very different.
9. Calls received into the two “single points of contact” are from “other professionals” and members of the public. Data of services requested through the medium of Welsh are not recorded, although anecdotal evidence gathered from operators within these service identifies that a request for service through the medium of Welsh is very rare (this would appear to be backed up by the data recorded at the Corporate Contact Centre (see paragraph2)).
10. Most of the calls received in these services involve initial assessments of safeguarding concerns related to children, young people and vulnerable adults. The nature of the activities dealt with at the first point of contact is such that the Council cannot put in place arrangements that would lead to any delay in safeguarding concerns being assessed and responded to. The linguistic profile of the teams is highly significant in this regard. At this present time, there are 10 FTE staff responsible for handling calls in these two single points of contact with just one member of staff with a basic understanding of Welsh within one of the areas
11. Therefore the service would be reliant on external translation services. It is a common feature of service operations that voice mail messages are left when lines are busy. The Council established a joint translation service with the City and County of Swansea some years ago. However, no additional funds have been made available by Welsh Government to

increase the capacity and capability of that service, or to procure/develop alternative arrangements.

12. A simultaneous translation service is available from the Unit, however from Welsh into English only. 24+ hours notice of translation is required by the Unit and its present capacity is limited to two translators.
13. The current service is inadequate to meet the translation needs presented by implementing the standard as presently drafted.
14. The Council's position is that, as far as the two social services teams are concerned, the need to safeguard children, young people and vulnerable adults must take precedence and until such time as the Council has sufficient numbers of Welsh speaking staff employed in these services, it will not be able to fully comply with the standard.
15. In addition to other automated telephone arrangements, the Council has issued 1,100 mobile phones to its workforce. The voice mail messaging services that is included with the mobile phone service is available in English only from the service provider. Additionally, 450 individual telephone extensions have a voice mail service which is also only offered by the service provider in English.
16. As the voice mail systems are available in English only it is not possible for the Council to comply with the standard if it is applied to mobile phone and voice messaging services attached to individual telephone extensions.
17. The Council *has* considered whether it is possible to overcome the very real barriers that exist to meeting the standard in both the social services contact centres and the voice mail services available to staff through telephone extensions or mobile phones.
18. The Council has some control over the use of bilingual messages used on the automated service that supports the two social services contact centres, however, due to the nature of calls received and because of restrictions on current linguistic skills within both of these services, we have concluded that we would need to have recruited sufficient numbers of suitably skilled staff to provide a safe service.

19. The Council has previously advised the Commissioner that there continues to be a moratorium on external recruitment as the Council is experiencing significant downsizing of its workforce due to funding cuts imposed by Welsh Government. Over 1,500 staff left the Council's employment on voluntary redundancy terms in recent years and additionally, over 600 staff have been redeployed within the Council to alternative employment as part of the Council's commitment to avoid compulsory redundancy to the maximum extent possible. Consequently, opportunities to recruit additional staff from outside the Council are very limited indeed.
20. Until the Council is able to recruit to new vacancies in sufficient numbers to these services, it is the case we are unable to comply with the standard in social services.
21. The Council has operated a Scheme, as promoted in the Welsh Language Schemes: their preparation and approval in accordance with the Welsh Language Act 1993,; page 19 for many years which identifies staff across the Council who are prepared to provide assistance outside of their own service area to aid the delivery of a bilingual service. These arrangements have been updated as part of the Council's preparations for the introduction of the standards, however, as the availability of these staff cannot be guaranteed, this arrangement does not provide adequately for the provision of a bilingual automated service in the two social services first point of contact.
22. In so far as offering bilingual voice mail services for mobile phones and telephone extensions, the current providers do not offer a bilingual service and consequently it is not presently practically possible for the Council to meet the standard in those instances.

Welsh Language Scheme

23. The Commissioner makes reference to the Welsh Language Scheme and states that the Council is not starting from scratch in this regard.
24. In examining the impact and implications of the Welsh Language Standards, the Council has taken the view that where Standards are identical to or very similar to those which were set out in the Council's Welsh Language Scheme then the presumption would be to maintain a

commitment to those standards, even though, in the current climate of austerity, complying with existing commitments is proving to be a challenge. We have therefore taken the existing Welsh Language Scheme as a starting point, rather than seeing this as a completely new exercise/set of requirements.

25. In so far as the Council's main point of telephone contact is concerned, the Council has already taken action to ensure that operations in the Corporate Contact Centre have been adjusted to reflect the fact that the commitments made under the Welsh Language Scheme have been replaced by the Welsh Language Standards. Continuing with the Welsh Language Scheme commitments would not have enabled the Council to comply with the standards as they now apply.
26. The arrangements in relation to other automated telephone services are more complex than they were when the Welsh Language Scheme was established and agreed and the reasons for this have been explained earlier at paragraphs 5-11.
27. Additionally, the Council has made it abundantly clear in all of its communications with the Welsh Language Commissioner that the Council will continue to promote and support the Welsh Language and culture, but this is clearly limited by the resources – both human and financial that are available. The Council is disappointed that the Commissioner is not giving sufficient weight to this argument as there are significant and enduring impacts arising from the budget cuts being applied to local government across Wales.
28. The Council wishes to make clear that the Challenge we have made to the standards is based on what we can reasonably do within difficult circumstances and should not be construed in any other way.
29. Furthermore, the Council notes that it is open to the Commissioner to review the standards that have been applied to the relevant bodies from time to time. We contend that it is incumbent upon the Commissioner to take these material factors properly into account. If, with the passage of time, it becomes possible for the Council (along with other public bodies) to embrace a wider range of standards, then the Council has no difficulty whatsoever with the Commissioner reviewing the initial set of Standards

she imposes with a view to amending the Compliance Notice to take account of changed circumstances.

Proposal

30. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

31. The Council could work towards offering a bilingual service in the two Social Services Contact Centres but over a much longer period of time that has been suggested by the Commissioner. The timetable would be significantly affected by any further budget cuts that Welsh Government continues to impose on local government as the present financial climate has resulted in external recruitment to vacancies being severely constrained. As the Council does not know what revenue settlements the Welsh Government intends to make, it is not possible for the Council to offer a specific timetable for achieving compliance in these two service areas.
32. The Council is not able to offer a bilingual automated service for mobile phones or individual telephone extensions under its current contractual arrangements and the Council suggests that these should be exempted from the Standard in the first instance. The Council is in a position to include a requirement for the replacement telephony system to be bilingual but the ability of the Council to take up any bilingual option that may be available will very much depend on the additional cost of such service. This will not be known for eighteen months. It is only when costs are available that the Council will be able to take a considered view as to

whether costs can be regarded as reasonable and proportionate given the very low volume of demand.

33. The Council notes and would wish the Commissioner to acknowledge that the Welsh Government has not provided any additional funds to resource additional burdens on the Council that flow from any standards that the Commissioner considers should be applied. Should the Commissioner impose Standards that the Council has identified that it not able to meet then the Council faces the potential of reputational and financial damage if non-compliance were to be challenged.
34. The Council has produced additional evidence to support its argument that Standard 22 is unreasonable and disproportionate. The Council argued in its submission to the Commissioner on 15th January 2016 and in its response to the draft Compliance Notice, that if the standard were amended to require the Council to meet the standard at its Corporate Contact Centre only then it could comply immediately.
35. **We propose that the standard should be confined to the Corporate Contact Centre alone in the first instance.**

Standards 26 and 26A

Note: Standard 26 relates to two other standards, namely 26A and 26B. The Welsh Language Commissioner must impose standards 26A and/or B on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title ‘Standards that are reliant on other standards – special conditions’ if the Commissioner has also imposed standard 26.

Standard 26

If you invite an individual (‘A’) to a meeting, and the meeting relates to the well-being of A, you must ask A whether A wishes to use the Welsh language at the meeting, and inform A that you will, if necessary, provide a translation service from Welsh to English and from English to Welsh for that purpose.

Standard 26A

You must arrange for a simultaneous translation service from Welsh to English and from English to Welsh to be available at a meeting—

(a) if the meeting relates to the well-being of an invited individual (‘A’), and

(b) if A has informed you that A wishes to use the Welsh language at the meeting; unless you conduct the meeting in Welsh without the assistance of a translation service.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.7.1 *“Standards 26 and 26A exist to ensure the right of those citizens who wish to use Welsh in a meeting relating to their personal well-being to do so.*
- 2.7.2 *Firstly, standard 26 establishes the language choice of citizens and a commitment to offering the provision of a simultaneous translation service (if necessary) in a personal meeting relating to the well-being of the individual invited by the Council to a meeting.*

- 2.7.3 *If the individual responds in the affirmative, standard 26A expects the Council to meet the need established in standard 26 by the provision of a simultaneous translation service, if necessary.*
- 2.7.4 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.7.5 *The standard relates to well-being. This can include the needs of vulnerable people – children, elderly or frail people or those in difficult circumstances, including people who are more comfortable using Welsh and even in some cases people who are monolingual or almost monolingual. In such situations, people can often be reluctant to request the use of Welsh, especially in a context where the authorities have not usually offered the service. In research prepared by Beaufort Research, on behalf of the Welsh Language Commissioner, 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services. This is a basic need which in itself relates to the well-being of the individual. The Commissioner does not believe that it is fair, appropriate or practical to set a needs test or validity test for an individual asking to exercise this right. The Commissioner does not believe that the arguments regarding translation costs submitted by the Council are sufficient to demonstrate that the requirement is unreasonable or disproportionate in this context.*
- 2.7.6 *The Council notes that arranging translation could lead to delays in important service areas, such as social services, that involve vulnerable people who need services to be delivered in a prompt manner. However, no evidence is given in support of the contention that arranging translation could lead to delays, nor any evidence of any subjective assessment of the likelihood there would in fact be delays leading to the situation it fears, nor how that risk could be mitigated and managed. Conwy County Borough Council works with others to ensure that it can provide a translation service for a number of councils and the Welsh Language Commissioner's assurance report explains how the joint working has led to improvements and savings¹¹. There is no evidence either of the circumstances where the Council would be able to meet the standard without relying on translators. Furthermore, the Council has not considered the type of arrangements the Council would currently use in such circumstances where the individual is unable to speak English, and*

extending those measures to a person who wishes to use Welsh, i.e. the Council has not considered measures for managing the risks it has identified.

2.7.7 Standard 25 was imposed in Neath Port Talbot County Borough Council's draft compliance notice sent to the Council for consultation, before the statutory compliance notice was issued. Standard 25 relates to the same circumstances as standard 26, but the requirements are greater as it requires that the meetings must be conducted in Welsh without the assistance of translation services. The consultation form included the following questions:

2.7.8 Would varying the requirement to comply with the standard make it reasonable and/or proportionate? For example, introducing the requirement at a different time, under different circumstances or in different areas.

Is there any other accompanying standard relating to the same activity or issue which you consider to be reasonable and/or proportionate.

2.7.8 The purpose of these questions was to provide the relevant persons with an opportunity to indicate any other standards relating to the same activity, or offer particular ways of varying the standard, that they would consider reasonable and proportionate in view of their circumstances."

Further information presented by the Council in support of the Challenge to Standards 26 and 26A

1. The Council acknowledges the modification made by the Commissioner, replacing standard 25 with less onerous standards.
2. The Council made clear in its submission that it would continue to seek to match a Welsh speaking suitable member of staff with a person/persons who would wish to discuss their well-being through the medium of Welsh. Maintaining its commitment to this level of service is not without difficulty given the enduring financial pressures which we have referred to elsewhere in this document and previously.

3. The Council's central concern in relation to this standard relates to the practicality and cost of translation where the Council would need to rely on such services to meet need. The Council has repeatedly pointed out to the Commissioner the impact of austerity budgets on the Council's available financial and human resources and is disappointed that the Commissioner is not giving due weight to this argument in coming to her determinations.
4. The Council wishes to make clear that the Challenge we have made to the standards is based on what we can reasonably do within difficult circumstances and should not be construed in any other way.
5. Whilst the Council is committed to developing a linguistic strategy as part of the former Welsh Language Scheme, in practice, the Council's ability to develop the linguistic capacity of its workforce has and continues to be severely constrained by the cuts that have been made to the Council's budgets over a number of years.
6. Reducing budgets have resulted in a downsizing of the Council's workforce, with over 1,500 people leaving the Council's employment on grounds of voluntary redundancy. Additionally, over 600 members of staff have been redeployed into alternative employment. There has been a moratorium on external recruitment as part of a range of measures that the Council has agreed with trade union representatives as being necessary to protect employment to the maximum extent possible.
7. The combination of staff turnover and the limits placed on external recruitment have delayed the development of a linguistic strategy, making the Council more reliant on translation services than would normally be the case.
8. The current linguistic profile of Social Services is out of 1260 staff 124 are Welsh speakers with only 9 staff currently willing to use their linguistic skills.
9. The Council established a joint translation service with the City and County of Swansea some years ago. However, no additional funds have been made available by Welsh Government to increase the capacity and capability of that service, or to procure/develop alternative arrangements.

10. A simultaneous translation service is available from the Unit, however from Welsh into English only. 24+ hours notice of translation is required by the Unit and its present capacity is limited to two translators.
11. The current service is inadequate to meet the translation needs presented by the application of the standard as presently drafted
12. The Council has calculated that the average cost of providing simultaneous translation for Welsh speaking social service users (both children and adults) to potentially receive a service through the medium of Welsh where no Welsh language service is presently provided would amount to £6060 (plus translation of written materials)
13. The Council maintains records of those service users who have expressed a wish to receive a service in Welsh as was required under its former Welsh Language Scheme. The Council has always made best endeavours to meet this requirement through its directly employed workforce. Where the Council has been unable to meet this need, the Council's Welsh Language Scheme committed to offering a translation services where that was possible and the Council notes there have been no requests for a translation service to be provided in instances where the Council has been unable to provide a Welsh speaker to conduct meetings about a person's wellbeing. Accordingly the standard as presently drafted imposes a requirement where there is no demand.
14. The Commissioner has made reference to arrangements that are in place in Conwy Council. We have made enquiries about those arrangements and are advised that they have established a joint translation unit with three other authorities, similar to that arrangement we have established with the City and County of Swansea. However, the translation capacity within the Conwy Unit is materially different with the Unit employing 17 translation staff. We do not consider it reasonable for the Commissioner to seek to impose a standard based on what is/is not feasible in other local authorities. We have presented evidence to the Commissioner to support arguments as to standards that are problematic in our local circumstances and it is that evidence that should inform the Commissioner's deliberations.
15. The Commissioner has stated that the Council has not considered the type of arrangements that the Council would currently use in

circumstances where the individual is unable to speak English and extending those measures to those who speak Welsh. This statement is incorrect.

16. The Council has recently resettled five Syrian families into its area. None of the family members spoke/speak English. However, the Home Office has made available a grant of £16,000 to pay for translators to be employed and for family members to acquire English language skills. This is in contrast to the arrangements that have accompanied the introduction of the Welsh Language Standards where no additional resources have been made available.
17. The Council believes that it is incumbent on the Welsh Language Commissioner to take account of the fact that no new resources were made available by the Welsh Government to introduce the standards when she determines what is reasonable and proportionate.
18. The Council does not consider that this situation is irreversible. Rather, these are constraints that will apply for a period of time, after which, it is very much hoped that the Council will be in a better position to build linguistic capacity. The Council is not, however, in a position to identify the timeframe for moving beyond its current commitment as this very much depends on Welsh Government's decisions concerning the financial settlements that it will apply to local government over the short to medium term which are not yet known.

Proposal

19. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter

and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

- 20. That the standards are applied except in circumstances where the Council can show that reliance on translation services would prejudice the safety or well-being of the individual.**

Standards 29 and 29A

Note: Standard 29 relates to two other standards, namely 29A and 29B. The Welsh Language Commissioner must impose standards 29A and/or B on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 29.

Standard 29

If you invite more than one person to a meeting, and that meeting relates to the well being of one or more of the individuals invited, you must –

- (a) ask that individual or each of those individuals whether he or she wishes to use the Welsh language at the meeting, and
- (b) inform that individual (or those individuals) that, if necessary, you will provide a translation service from Welsh to English and from English to Welsh for that purpose.

Standard 29A

You must provide a simultaneous translation service from Welsh to English and from English to Welsh at a meeting –

- (a) if you have invited more than one person to the meeting,
 - (b) if the meeting relates to the well-being of one or more of the individuals invited, and,
 - (c) if at least one of those individuals has informed you that he or she wishes to use the Welsh language at the meeting;
- unless you conduct the meeting in Welsh without the assistance of a translation service.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.11.1 *“Standards 29 and 29A exist to ensure the right of those citizens who wish to use Welsh in a meeting relating to their personal well-being, and where other persons have been invited to the meeting, are able to do so.*

- 2.11.2 *Firstly, standard 29 establishes the language choice of citizens and a commitment to offering the provision of a simultaneous translation service (if necessary).*
- 2.11.3 *If one or more of the individuals responds in the affirmative, standard 29A expects the Council to meet the need established in standard 29 by providing a simultaneous translation service, if necessary.*
- 2.11.4 *Standard 28 was imposed in Neath Port Talbot County Borough Council's draft compliance notice sent to the Council for consultation, before the statutory compliance notice was issued. Standard 28 relates to the same circumstances as standard 29, but the requirements are greater as it requires that the meetings must be conducted in Welsh without the assistance of translation services. The consultation form included the following questions:*
- Would varying the requirement to comply with the standard make it reasonable and/or proportionate? For example, introducing the requirement at a different time, under different circumstances or in different areas.*
- Is there any other accompanying standard relating to the same activity or issue which you consider to be reasonable and/or proportionate.*
- 2.11.5 *The purpose of these questions was to provide the relevant persons with an opportunity to indicate any other standards relating to the same activity, or offer particular ways of varying the standard, that they would consider reasonable and proportionate in view of their circumstances.*
- 2.11.6 *Neath Port Talbot County Borough Council responded by providing evidence to demonstrate that it would not be possible for it to comply with the standard on all occasions at present.*
- 2.11.7 *Following receipt of Neath Port Talbot County Borough Council's response, it was decided to impose standards 29 and 29A instead of standard 28 in the final compliance notice, as the evidence submitted by the Council showed that it could not comply on all occasions at present. It was therefore determined that these standards are more appropriate in offering the option of providing a simultaneous translation service where no Welsh speaking staff are available.*

- 2.11.8 *Consideration is now given to the Council's substantive point that the requirement on it to comply with these standards is unreasonable and disproportionate.*
- 2.11.9 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.11.10 *In this regard, the viewpoint presented by the Council is the same as presented in the Council's response to standards 26 and 26A. The Commissioner believes that this in itself is a mistake as standards 26 and 26A relates to the well-being of one individual.*
- 2.11.11 *The standard relates to well-being. This can include the needs of vulnerable people – children, elderly or frail people or those in difficult circumstances, including people who are more comfortable using Welsh and even in some cases people who are monolingual or almost monolingual. In such situations, people can often be reluctant to request the use of Welsh, especially in a context where the authorities have not usually offered the service. In research prepared by Beaufort Research, on behalf of the Welsh Language Commissioner, 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services. This is a basic need which in itself relates to the well-being of the individual. The Commissioner does not believe that it is fair, appropriate or practical to set a needs test or validity test for an individual asking to exercise this right. The Commissioner does not believe that the arguments regarding translation costs submitted by the Council are sufficient to demonstrate that the requirement is unreasonable or disproportionate in this context.*
- 2.11.12 *The Council notes that arranging translation could lead to delays in important service areas, such as social services, that involve vulnerable people who need services to be delivered in a prompt manner. However, no evidence is given in support of the contention that arranging translation could lead to delays, nor any evidence of any subjective assessment of the likelihood there would in fact be delays leading to the situation it fears, nor how that risk could be mitigated and managed. Conwy County Borough Council works with others to ensure that it can provide a translation service for a number of councils and the Welsh*

Language Commissioner's assurance report explains how the joint working has led to improvements and savings.

2.11.13 *Neither is there evidence of the circumstances where the Council would be able to meet the standard without relying on translators. Furthermore, the Council has not considered the type of arrangements the Council would currently use in such circumstances where the individual is unable to speak English, and extending those measures to a person who wishes to use Welsh, i.e. the Council has not considered measures for managing the risks it has identified.*

2.12 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate. Consequently the requirement to comply with standards 29 and 29A is not unreasonable or disproportionate”.*

Further information presented by the Council in support of the Challenge to Standards 29 and 29A

1. The Council acknowledges the modification made by the Commissioner, replacing standard 28 with less onerous standards.
2. The Council made clear in its submission that it would continue to seek to match Welsh speaking suitable members of staff with a person/persons who would wish to discuss their well-being through the medium of Welsh. Maintaining its commitment to this level of service is not without difficulty.
3. The Council's central concern in relation to this standard relates to the practicality and cost of translation where the Council would need to rely on such services to meet need. The Council has repeatedly pointed out to the Commissioner the impact of austerity budgets on the Council's available financial and human resources and is disappointed that the Commissioner is not giving due weight to this argument in coming to her determinations.
4. The Council wishes to make clear that the Challenge we have made to the standards is based on what we can reasonably do within difficult circumstances and should not be construed in any other way.

5. We do not understand the point the Commissioner is making in paragraph 2.11.11 and seek further clarification on this point.
6. The Council is committed to developing a linguistic strategy as part of the former Welsh Language Scheme, however, in practice, the Council's ability to develop the linguistic capacity of its workforce has and continues to be severely constrained by the cuts that have been made to the Council's budgets over a number of years.
7. Reducing budgets have resulted in a downsizing of the Council's workforce, with over 1,500 people leaving the Council's employment on grounds of voluntary redundancy. Additionally, over 600 members of staff have been redeployed into alternative employment. There has been a moratorium on external recruitment as part of a range of measures that the Council has agreed with trade union representatives as being necessary to protect employment to the maximum extent possible.
8. The combination of staff turnover and the limits placed on external recruitment have delayed the development of a linguistic strategy, making the Council more reliant on translation services than would normally be the case.
9. The Council established a joint translation service with the City and County of Swansea some years ago. However, no additional funds have been made available by Welsh Government to increase the capacity and capability of that service, or to procure/develop alternative arrangements.
10. A simultaneous translation service is available from the Unit, however from Welsh into English only. 24+ hours notice of translation is required by the Unit and its present capacity is limited to two translators.
11. The current service is inadequate to meet the translation needs created by the implementation of the standard as presently drafted.
12. The Council has calculated that the average cost of providing simultaneous translation for Welsh speaking social service users (both children and adults) to potentially receive a service through the medium of Welsh where no Welsh language service is presently provided would amount to £6060 (plus translation of written materials)

13. The current linguistic profile of Social Services is out of 1260 staff 124 are Welsh speakers with only 9 staff currently willing to use their linguistic skills
14. The Council maintains records of those service users who have expressed a wish to receive a service in Welsh as was required under its former Welsh Language Scheme. The Council has always made best endeavours to meet this requirement through its directly employed workforce. Where the Council has been unable to meet this need, the Council's Welsh Language Scheme committed to offering a translation services where that was possible and the Council notes there have been no requests for a translation service to be provided in instances where the Council has been unable to provide a Welsh speaker to conduct meetings about a person's wellbeing. Accordingly the standard as presently drafted imposes a requirement where there is no demand.
15. The Commissioner has made reference to arrangements that are in place in Conwy Council. We have made enquiries about those arrangements and are advised that they have established a joint translation unit, similar to that arrangement we have established with the City and County of Swansea. However, the translation capacity within the Conwy Unit is materially different with the Unit employing 17 translation staff. We do not consider it reasonable for the Commissioner to seek to impose a standard based on what is/is not feasible in other local authorities. We have presented evidence to the Commissioner to support arguments as to standards that are problematic in our local circumstances and it is that evidence that should inform the Commissioner's deliberations.
16. The Commissioner has stated that the Council has not considered the type of arrangements that the Council would currently use in circumstances where the individual is unable to speak English and extending those measures to those who speak Welsh. This statement is incorrect. The Council has recently resettled five Syrian families into its area. None of the family members spoke/speak English. However, the Home Office has made available a grant of £16,000 to pay for translators to be employed and for family members to acquire English language skills. This is in contrast to the arrangements that have accompanied the introduction of the Welsh Language Standards. The

Council believes that it is incumbent on the Welsh Language Commissioner to take account of the fact that no new resources were made available by the Welsh Government to introduce the standards when she determines what is reasonable and proportionate.

17. The Council does not consider that this situation is irreversible. Rather, these are constraints that will apply for a period of time, after which, it is very much hoped that the Council will be in a better position to build linguistic capacity. The Council is not, however, in a position to identify the timeframe for moving beyond its current commitment as this very much depends on Welsh Government's decisions concerning the financial settlements that it will apply to local government over the short to medium term which are not yet known.

Proposal

18. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

19. **That the standards are applied except in circumstances where the Council can show that reliance on translation services would prejudice the safety or well-being of the individual(s).**

Standards 30 and 33

Note: Standard 30 relates to one other standard, namely standard 33. The Welsh Language Commissioner must impose standard 33 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 30.

Standard 30

If you arrange a meeting that is open to the public you must state on any material advertising it, and on any invitation to it, that anyone attending is welcome to use the Welsh language at the meeting.

Standard 33

If you arrange a meeting that is open to the public you must ensure that a simultaneous translation service from Welsh to English is available at the meeting and you must orally inform those present in Welsh

- a) that they are welcome to use the Welsh language and
- b) that a simultaneous translation service is available

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 33 in every circumstances, except:

- where an invitation or material advertising the meeting has asked persons to inform you whether they wish to use the Welsh language, and that no person has informed you that he or she wishes to use the Welsh language at the meeting

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

2.15.1 *“Standards 30 and 33 exist to ensure the right of those citizens who wish to use Welsh in a meeting arranged by Neath Port Talbot County Borough Council which is open to the public, are able to do so. Standard 30 expects the Council to state on any advertisement or invitation that Welsh may be used in the meeting. Standard 33 expects the Council to ensure that a simultaneous translation service is available and that those present must be informed orally in Welsh that they are welcome to use the Welsh language and that a simultaneous translation service is available.*

2.15.2 *The two standards were imposed in Neath Port Talbot County Borough Council’s draft compliance notice sent to the Council for consultation, before the statutory compliance notice was issued. The consultation form included the following questions:*

Would varying the requirement to comply with the standard make it reasonable and/or proportionate? For example, introducing the requirement at a different time, under different circumstances or in different areas.

Is there are any other accompanying standard relating to the same activity or issue which you consider to be reasonable and/or proportionate.

2.15.3 *The purpose of these questions was to provide the relevant persons with an opportunity to indicate any other standards relating to the same activity, or offer particular ways of varying the standard, that they would consider reasonable and proportionate in view of their circumstances.*

2.15.4 *Neath Port Talbot County Borough Council responded by providing evidence to show that it would not be possible for it to comply fully with this standard due to financial restraints and noting that it would be more reasonable to vary the standard to apply to areas with a high percentage of Welsh speakers only.*

2.15.5 *Following receipt of the Council’s response, the Commissioner made no changes in relation to standard 30. If the standard was not imposed members of the public would be prevented from being able to use the Welsh language in a meeting and the Welsh language would be treated*

less favourably than the English language. It was decided to impose standard 33 and vary the standard by the addition of wording to alleviate the required duty in recognition of the Council's challenge.

2.15.6 Consideration is now given to the Council's substantive point that the requirement on it to comply with these standards is unreasonable and disproportionate.

2.15.7 According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.

2.15.8 The Council states that these standards commit it to new spending which is currently unfunded and that costs would be incurred in putting the notices into materials in the first instance and translating that material. However, no evidence is given to support the contention that there would be new spending or evidence of any subjective assessment of how much this new spending would be. It must be remembered that the Council is not starting from scratch in this regard. The Welsh Language Scheme which preceded the duties of the Welsh Language Standards made a commitment as follows: 'At all official meetings of this kind organised by the Council, members of the public will be welcome to speak Welsh or English. In order to facilitate this the Council will take the following measures: When notices of such meetings are issued they will state clearly that the right of those attending to use the language of their choice, whether Welsh or English, will be respected and this choice will be offered to them.' (Section 3.5, page 17 of the Welsh Language Scheme which preceded the duties of the Welsh Language Standards)

2.15.9 The Council considers it would be reasonable and proportionate to comply with the standard in Welsh speaking areas only and states that this would be compatible with other strategies. The Council has not provided evidence to support why it can meet these standards in the Welsh speaking areas only but not across the entire county borough.

2.15.10 The standard involves ensuring that the public can use the Welsh language in meetings and that if it is not imposed the Welsh language would be treated less favourably than the English language. Standard 30 was imposed in the draft compliance notice and standard 33 was imposed with a variation with the addition of wording to modify the required duty.

- 2.16. *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate. Consequently, the requirement to comply with standards 30 and 33 are not unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standards 30 and 33

1. The Council acknowledges the modification made by the Commissioner to Standard 33.
2. The Commissioner makes reference to the Welsh Language Scheme and states that the Council is not starting from scratch in this regard.
3. In examining the impact and implications of the Welsh Language Standards, the Council has taken the view that where Standards are identical to or very similar to those which were set out in the Council's Welsh Language Scheme then the presumption would be to maintain a commitment to those standards, even though, in the current climate of austerity, even complying with existing commitments is proving to be a challenge. We have therefore taken the existing Welsh Language Scheme as a starting point, rather than seeing this as a completely new exercise/set of requirements.
4. The Council has received few requests for translation to be made available at public meetings when operating the former Welsh Language Scheme and at a time when the Council's financial position was in a much stronger position.
5. The Council is expressing a legitimate concern that, should there be a demand for translation services related to this standard, there is no identified budget to fund such activity and that failure to meet the standard raises a risk that failure to comply will be challenged, potentially resulting in reputational and financial damage. The Council's view is that the implementation of this standard should be delayed until the funding position improves.
6. The Council has no further evidence to adduce in support of its Challenge to these standards.

Standard 41

Note: Standards 40, 41, 42, 43, 44, 45 or 47 relate to two other standards, namely 48 and 49. The Welsh Language Commissioner must impose standards 40, 41, 42, 43, 44, 45 or 47 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standards 48 and 49.

If you produce the following documents, you must produce them in Welsh –

- (a) agendas, minutes and other papers that are available to the public, which relate to management board or cabinet meetings;
- (b) agendas, minutes and other papers for meetings, conferences or seminars that are open to the public.

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 41(a) in every circumstance, except:

- other papers that are available to the public, which relate to management board or cabinet meetings.

You must comply with standard 41(b) in every circumstance, except:

- other papers for meetings that are open to the public.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.19.1 *“The purpose of the standard is to ensure that the Welsh language is treated no less favourably than the English language in the conduct of the Council’s business, and is also fundamentally relevant to the official*

status of the Welsh language in Wales and what that means in practical terms. It also ensures that citizens who wish to use the Welsh language have access to information regarding how they are governed.

- 2.19.2 The original standard extends to three categories of documents for board meetings and meetings open to the public, namely agendas, minutes and other papers. In recognition that this can be onerous, 'other papers' were exempted in the compliance notice. That means that the standard only operates in relation to agendas and minutes of meetings. The purpose of the standard as varied is to ensure that this core in terms of democratic governance is available in Welsh as in English.*
- 2.19.3 Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given. Examples are available of councils providing agendas and minutes in Welsh regularly and without any difficulty, e.g. Denbighshire County Council.*
- 2.19.4 The Council notes that the standard would be impractical without adequate direct staff capacity and any non compliance with the 3 day rule for publishing meeting papers would place the Council at risk of judicial review or challenge. The Council has not explained why it cannot put in place procedures that ensure that it is possible for things to happen in both languages in time as already happens in other authorities. It is possible to use templates for standard documents to be published in both languages such as agendas and minutes but it does not appear that consideration has been given to that.*
- 2.19.5 According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.19.6 The Council also refers to demand. It is not clear from the evidence that this has been measured. Even if that has been done the standard does not relate to demand but to the basic principle of giving the Welsh language its due place in democratic governance.*
- 2.20 In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate. Consequently, the requirement to comply with standard 41 is not unreasonable or disproportionate.*

Further information presented by the Council in support of the Challenge to Standard 41

1. The Council acknowledges the modification made by the Welsh Language Commissioner to exclude “other papers” from the requirement.
2. The Council maintains that the imposition of this standard is not workable in practice as meeting agendas and minutes are subject of change up to the deadline for meeting papers to be published. There is a separate set of legal rules governing the production of papers for formal meetings of the Council and the basis of the Council’s challenge is to avoid a situation where it would be seeking to satisfy conflicting legal requirements. If the Council’s Democratic Services Team were of a different linguistic profile then this problem would not arise. However, as pointed out in the earlier submission, there is only one member of the team who speaks Welsh and who does not have sufficient competence to read or write in Welsh. Therefore the teams is unable to operate bilingually and will be reliant on external translation services.
3. If the standard were modified so that there is a relaxation of the requirement for meeting papers to be produced simultaneously in Welsh and English the standard becomes more achievable but only if additional funds are provided to cover the additional costs of translation.
4. The Commissioner referred in her initial determination to Denbigh Council. We have made enquiries with that Council and are advised that 30% of their Democratic Services Team are Welsh speakers and they are therefore in a different position to this Council in terms of meeting this standard. It is not reasonable for the Commissioner to seek to impose standards on the basis of what other councils are able to achieve, as, in the case of Denbigh that Council is clearly in a very different position. It is our view that the Commissioner should take account of the evidence we have submitted in support of our local circumstances and it is that evidence that should be informing the Commissioner’s deliberations.
5. Turning next to cost, there is no budget available to support the increased costs associated with the translation of agendas and minutes. The Commissioner’s statement that no details of costs have been

provided is incorrect. The Council provided an example of the type of cost that would arise, with reference to the production of the Council Minute Book - £24,480 per annum. That information was intended to convey to the Commissioner that there is a real, additional financial cost associated with this standard which is unfunded. The Council is working with the Translation Unit it has established jointly with the City and County of Swansea and has identified a number of actions that can be taken to reduce the overall cost of translation, for example, by using templates and a dictionary of common phrases/languages. But, even with these measures introduced, it is the case that translation of agendas and minutes as a standard working practice represents a new activity which will introduce new, significant cost.

6. Given that the Commissioner has indicated that she is not content to rely on the example of the Minute Book previously provided to support the argument, we have undertaken a further exercise to estimate the likely cost that would be incurred. There are 218 scheduled meetings of committees and other meetings in the 2016-17 civic year. The cost of translating agendas and minutes for this set of arrangements is estimated to be £52,856 per annum.
7. We maintain our argument that this additional cost is not justified given that there have been no requests for Welsh agendas and minutes to date and there have been no complaints received about the provision of agendas and minutes in English only.
8. We note the Commissioner's argument that irrespective of cost and demand the Welsh language must have its due place in democratic governance. However, the Commissioner has been given discretion to determine whether and when standards should be imposed. The consequence of imposing this standard at this time would either be to require democratically elected councillors to make cuts in other services where citizens also have rights and entitlements, or to face the risk that non-compliance would be challenged, with potential consequential reputational and financial damage. The introduction of the Welsh Language Standards has been debated over a number of years by local, democratically elected Members and their judgement is that this standard should be delayed until such time as the Council's financial

position improves. We would therefore propose that the Commissioner reconsiders the timing of the imposition of this Standard.

Proposal

9. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

*“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”*The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice.

10. **The Council’s proposal is that this standard is not imposed at the present time.**

Standard 42

Note: Standards 40, 41, 42, 43, 44, 45 or 47 relate to two other standards, namely 48 and 49. The Welsh Language Commissioner must impose standards 40, 41, 42, 43, 44, 45 or 47 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standards 48 and 49.

Any licence or certificate you produce must be produced in Welsh.

Imposition day: 30/09/2016

Initial Consideration by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points

- 2.23.1 *“The purpose of the standard is to ensure that the Welsh language is treated no less favourably than the English language in the conduct of the Council’s business, and is also fundamentally relevant to the official status of the Welsh language in Wales and what that means in practical terms. It also ensures that citizens who wish to use the Welsh language have access to information regarding how they are governed.*
- 2.23.2 *The Council notes that a straight translation of a licence might not be sufficient to preserve the intended meaning in the Welsh language and contends that due to their legal standing, it would not be sufficient to simply arrange for their translation through a translation service. However, there is no evidence in support of the contention that a translation service would be unable to produce documents that are legally correct.*
- 2.23.3 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.23.4 *The Council notes that the cost of complying with the standard would be very significant and that it is not justified by the current level of demand.*

Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given. The Council also refers to demand. It is not clear from the evidence that this has been measured. Even if that has been done the standard does not relate to demand but to the basic principle of giving the Welsh language its due place in democratic governance.

2.23.5 The Council states that the standard is unreasonable as there is inadequate linguistic capability in the technical departments to ensure the production of licences and certificates is legally accurate. The Council has not explained why it cannot put in place procedures that ensure that it is possible for things to happen in both languages in time as already happens in other authorities. It is possible to use templates for standard documents to be published in both languages such as agendas and minutes but it does not appear that consideration has been given to that.

2.23.6 The Council had until 30 September 2016 to comply with these standards.

2.24 In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate and the requirement to comply with standard 42 by 30/09/2016 is unreasonable or disproportionate.”

Further information presented by the Council in support of the Challenge to Standard 42

1. There are 25 solicitors and barristers employed within the Council’s Legal Services, two of whom feel competent enough to use their Welsh language skills for business purposes but only in their own areas of specialism. There are no Welsh speakers in the Council’s Licensing Section.
2. Legal services do not generally provide services directly to the public. The provision of advice and legal services is to our internal departments.

3. When we deal with solicitors who act on behalf of the public, businesses and other organisation some of those are within the local area however many are solicitors from outside the area and indeed from outside Wales itself.
4. To date, we have never been asked to conduct a transaction through the medium of Welsh. Nor have we received any correspondence from solicitors through the medium of Welsh.
5. We have received correspondence from members of the public on general issues through the medium of Welsh and have dealt with this on a case by case basis. However it has been rare and we have been able to deal with such cases due to the general nature of the queries raised.
6. Mere translation by a translator who does not hold a legal qualification is obviously prone to lead to error and only translations provided by specialists in the particular area of law can be relied upon. Even if a translation was provided by a solicitor it would be insufficient unless the solicitor practised in the particular field.
7. To comply with the standard gives rise to issues regarding legal terminology, the form of bilingual documents, bilingual drafting and the interpretation of bilingual documents all of which indicate that the standard is unreasonable and disproportionate.
8. The Law Commission Consultation Paper No 223 Form and Accessibility of the Law Applicable in Wales in relation to legal terminology and drafting discusses the process of standardising Welsh legal terminology and highlights the need for further work in developing standardised legal terminology (para 11.6).
9. The Law Commission Paper further notes the difficulty of “legal Welsh” and the accessibility of legal documents in Welsh (paras 11.8 and 11.9).
10. The standard applies to legal documents which by their nature contain technical legal terminology. As The Law Commission has identified the above issues regarding Welsh legal terminology therefore it seems sensible to wait, at the very least, until the outcome of the consultation and ideally until the further work identified can be undertaken before the Council can reasonably be expected to comply with the standard.

11. The production of legal documents in Welsh gives rise to the question of whether they can be produced bilingually or be translated. Each approach has issues associated with it.
12. A fully bilingual approach requires bilingual lawyers with sufficient command of both languages to be able to understand what can and cannot be expressed easily and naturally in each language. In terms of availability in the general market of solicitors who are Welsh spoken or sufficiently skilled in Welsh, it is only recently that the Welsh language has been used for legal education and then only in a limited form. Welsh speaking lawyers are not available in sufficient numbers or in sufficient areas in order to provide a full range of services through the medium of Welsh. The Law Commission Paper identifies the demands on legal education and training (para 12.64) caused by bilingual legislation. It highlights and queries the future needs of legal education and training. It is clearly not a case of simply recruiting from a pool of available suitably skilled candidates. There is no such a pool in existence. It will take several years for suitably skilled candidates to come through a revised system of legal education and training or for present lawyers or linguists to upskill respectively.
13. It is notable that the Welsh Government has a centralised drafting service, the Office of the Legislative Counsel, which is responsible for ensuring that the Welsh and English texts are legally equivalent. This obviously requires enough suitably qualified personnel with both the technical and language skills.
14. English is the common working language within legal services. The work undertaken is within a larger legal framework, for example the Licensing Act 2003, which is in English. The wording of the relevant legal documents must be consistent with the terminology used within the existing law. This then constrains the possible wording that may be used in the Welsh version and compels choices to be made regarded the intended meaning. Therefore a simple translation would not suffice either for technical accuracy or for achieving the aim of equality for both languages.
15. Legal documents such as licences and certificates are regularly referred to and their interpretation has legal consequences and implications. An

approach to the interpretation of bilingual legal documents in required in the event that each different language texts bear different meanings. The Law Commission Paper identifies the lack of approach for the interpretation of bilingual legislation (at para 12.60) the principle of which can be equally applied to the interpretation of any bilingual legal documentation. It also highlights the risks regarding conflict in language and translation errors, given that the starting point must be that bilingual texts have equal standing and are intended to bear a single meaning. The Law Commission Paper suggests this requires a body of rules concerning the approach to the identification of that meaning. The standard is unreasonable in the absence of further work in this area.

16. The use of bilingual legal documentation, which is equally authoritative in each language, inevitably requires linguistic proficiency on the parts of those professions and occupations which are required to understand and work with the documents. This again requires suitably qualified and skilled personnel.
17. In terms of local demand for Welsh legal services, the Welsh Language Impact Test looked at the effect on the Welsh Language of the closure proposals of local courts and included analysis on a court by court basis of court closures. In relation to the closure of Neath and Port Talbot Civil and Family Court it identifies that “According to the 2011 census, the number of Welsh speakers in Neath Port Talbot local authority area was 15.3%. There are currently two Welsh learners at Foundation level at the court. There have been no cases in 2013/14 or 2014/15 with a Welsh language requirement in this court”.
18. Additionally, there is a significant cost attached to the imposition of this standard. To illustrate just two of many activities that the standard would be applied to:
 19. 1,591 performance licences were issued in the last three years and additionally 95 exemption certificates were issued. There have been no requests made for this service in Welsh. Had these licences been issued bilingually, the cost is estimated to be £34,192
 20. 1,377 other licences were issued in 2015-16. There has been no request ever received for a licence in Welsh. Had these licences been issued bilingually, the direct translation costs are estimated to be £7,717.06 in

the first year with £7,115.56 ongoing annual cost. There will be additional implementation and system upgrade costs involved.

Proposal

21. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

*“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”*The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice.

22. **The Council’s proposal is that this standard is not applied at this time.**

Standard 52

Note: Standard 52, 53 or 54 relate to one other standard, namely standard 55. The Welsh Language Commissioner must impose standards 52, 53 or 54 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 55

You must ensure that—

- (a) the text of each page of your website is available in Welsh,
- (b) every Welsh language page on your website is fully functional, and
- (c) the Welsh language is not treated less favourably than the English language on your website.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

- 2.27.1 *“The standard exists to ensure the right of those citizens who wish to use Welsh in accessing Neath Port Talbot County Borough Council’s website are able to do so.*
- 2.27.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.27.3 *The Council notes that the cost of complying with the standard is very significant as it appears also to apply to third party systems accessed via the website or linked to back office systems. Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given.*
- 2.27.4 *The Council refers to the need to introduce new systems which will take a long lead in time to their introduction. However, there is no evidence in*

support of the contention that these systems are either not available bilingually, or are available at a significant cost nor is there any evidence of the timetable for the introduction of these new systems. It must be remembered that the Council is not starting from scratch in this regard. The Welsh Language Scheme which preceded the duties of the Welsh Language Standards made a commitment as follows: ‘The Council will ensure that its website will be available in both English and Welsh in accordance with the provisions of this Scheme and that users can easily access their preferred language. At times there can be an unavoidable short delay in acquiring a Welsh translation of information that urgently needs to be made available on the website. However, every effort is made to ensure that English and Welsh versions of information are simultaneously made available on the website (Section 3.3, page 16 of the Welsh Language Scheme which preceded the duties of the Welsh Language Standards). In addition to this, in the Corporate Implementation Plan attached to the 2014/15 Annual Monitoring Report, the Council committed to establishing a fully bilingual website by the end of the 2016 financial year.

2.27.5 The Council states that the delivery of bilingual webpages on the Council’s main website where these are completely in its control is a reasonable standard. The Council provided no evidence of the systems referred to as either not being available bilingually, or are only available at a substantial cost, or the reasons for having to change the current systems.

2.27.6 Paragraph 34 of Part 3, Interpreting the Standards in the Welsh Language Standards (No. 1) Regulations 2015 states the following:

Standards 52 to 56 (websites) do not apply to—

- (a) documents to which a link is provided on a website, advertising material on a website, or to video and audio clips on a website (see standards 40 to 49 for specific provision in relation to documents, and standard 37 in relation to advertising material produced by a body);*
- (b) information presented by persons (other than the body) on an interactive page published on a body’s website (for example on a section for comments or on a discussion forum).*

Information which corresponds with (a) or (b) above is exempt from that required to comply with the standard”.

2.28 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with standard 52 is unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 52

1. The Council is clear that the web pages that are under its control should be bilingual. The Council completed a full review of all of the pages on its corporate website earlier this year. As part of this review, obsolescent pages were removed, outdated information was updated and content was made bilingual. At the time of submitting this additional information 91.3% (951 pages of 1,042) of the Council’s corporate webpages were fully bilingual. The pages that are not bilingual are with the Translation Unit and will be uploaded on receipt.
2. Analysis of website usage shows that there were 1,670,128 hits to the Council’s website in the 2015-16 financial year and of those there were 12,676 hits to the Welsh language versions of the pages (0.75%).
3. The Council received the Welsh Language Commissioner’s guidance “Technology, Websites and Software” earlier this year. It is currently examining those guidelines and will incorporate any enhancements necessary to the website design and content as part of its continuous improvement activities.
4. The arguments made by the Council in relation to this standard relate to interfaces between the webpages and third party systems.
5. The Welsh Language Commissioner has quoted from the Council’s former Welsh Language Scheme which was last updated in 2007. At that time, the corporate website was a repository of largely static public information. The website now plays a far more central role in the delivery of the Council’s services. It is no longer simply a repository of static public information, rather, as part of a strategic shift to digital services, the website is becoming the Council’s core system for accessing a wide range of transactional as well as informational services.

6. The clarification sought by the Council is best illustrated with an example:
7. The Council has designed a digital service to enable citizens to book, schedule and pay for bulky waste collections. The service is initially accessed through the corporate website which is bilingual, however, at the point where the citizen is required to pay for the service, a digital link takes the customer outside of the Council's website to a third party payment service which is presently available in English only.
8. The Council notes that the standard refers to the Council's pages on its website and is seeking clarification that the standard should explicitly exclude those elements of transactional services that are provided through third party systems and which are presently available in English only.
9. The Commissioner states that the Council has provided no details of the costs of making third party systems bilingual, if indeed, they fall within the standard. However, this statement is a mistake as the Council has clearly identified to the Commissioner that the estimated cost is several £'millions and due to the nature of the changes that would be involved, there would be lead in times involving years of planning and implementation. The Council believes that this is sufficient information to inform the Commissioner and does not believe that expending significant effort in costing service changes that may not be required and/or are not affordable in the current climate represents a good use of its resources.

Proposal

10. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

"If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing

information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice.

- 11. The Council seeks clarification that this standard does not include third party systems that interface with the Council’s own website pages and asks that it is made explicit that these systems are exempted from the standard.**

Standards 61 and 62

Note: Standard 61 or 62 relates to one other standard, namely standard 63. The Welsh Language Commissioner must impose standards 61 or 62 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 63.

Standard 61

When you erect a new sign or renew a sign (including temporary signs), any text displayed on the sign must be displayed in Welsh (whether on the same sign as you display corresponding English language text or on a separate sign); and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

Standard 62

When you erect a new sign or renew a sign (including temporary signs) which conveys the same information in Welsh and in English, the Welsh language text must be positioned so that it is likely to be read first.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

- 2.31.1 *“Although the Council stated that both these standards are unreasonable as they do not exclude those signs where other legislation needs to take precedence on safety or other legitimate grounds, no further evidence was provided or examples given of the legislation identified by the Council. No specific examples were given of those signs the Council believes should be exempt.*

2.31.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*

2.31.3 *In its response to the draft compliance notice, the Council referred to matters relating to Health and Safety. It must be remembered that the Council is not starting from scratch in this regard. The Welsh Language Scheme which preceded the duties of the Welsh Language Standard made a commitment as follows: ‘The Council has operated a bilingual policy for all signs since its inception as a unitary authority. This policy will apply wherever and whenever signs need to be replaced or renewed. Fully bilingual information signs will be provided within the curtilage of the Council’s property, including internal areas to which the public has access.’¹⁷*

2.32 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply standards 61 and 62 is unreasonable or disproportionate. The requirement to comply with standards 61 and 62 is not unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standards 61 and 62

1. The Commissioner makes reference to the Welsh Language Scheme and states that the Council is not starting from scratch in this regard.
2. In examining the impact and implications of the Welsh Language Standards, the Council has taken the view that where Standards are identical to or very similar to those which were set out in the Council’s Welsh Language Scheme then the presumption would be to maintain a commitment to those standards, even though, in the current climate of austerity, complying with existing commitments is proving to be a challenge. We have therefore taken the existing Welsh Language Scheme as a starting point, rather than seeing this as a completely new exercise/set of requirements.
3. The Council is not seeking to materially alter its well-established policy for erecting bilingual signs, whether permanent or temporary. It is merely pointing out, that there are circumstances, mostly on grounds of health

and safety, where it is not possible to fully comply with the standard as drafted.

4. The former Welsh Language Scheme was last updated in 2007. Since then the Council has significant experience of delivering against a bilingual signage policy and is also subject of significantly more and different regulation.
5. We do not think it reasonable, or a good use of public resources, for the Council to list all of the circumstances where it would need, for public safety reasons to depart from the standard. However, we do offer two examples to illustrate the points we are making which we believe to be sufficient evidence to substantiate our arguments:
6. Example one: potentially where a location is too narrow or a sign is too large both pedestrians and road users will experience problems; restricted access on the walkway and/or forcing pedestrians into the road and signs dangerously over hanging the highway.
7. Example two: a mixture of both English and Welsh first bilingual signs positioned at busy road junctions could lead to confusion and could impact on the health and safety of road users/pedestrians.

Proposal

8. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the

requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice.

9. **The Council proposes that the standards are amended to exempt signage which, if the standard were to be fully applied, would prejudice public safety.**

Standard 64

Note: Standard 64 relates to two other standards, namely 67 and 68. The Welsh Language Commissioner must impose standard 64 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 67 or 68.

Any reception service you make available in English must also be available in Welsh, and any person who requires a Welsh language reception service must not be treated less favourably than a person who requires an English language reception service.

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 64 in relation to the following by 30 March 2016:

- The body's main reception service.

You must comply with standard 64 in relation to the following by 30 September 2016:

- Every other reception service.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

- 2.35.1 *"The purpose of the standard is to ensure that any person wishing to receive a Welsh language reception service is dealt with no less favourably than a person who wishes to receive an English language reception service.*
- 2.35.2 *The Council notes that only 349 members of staff are able to speak Welsh and that it does not have the capability at present to provide all reception services bilingually. No further information is provided and the*

Council has not looked at its staff to consider how to plan the workforce in order to comply with the standard.

- 2.35.3 *The Council also refers to demand. It is not clear from the evidence that this has been measured. In research prepared by Beaufort Research, on behalf of the Welsh Language Commissioner, 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services. According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.35.4 *The final compliance notice was varied so that the Council had until 30 March 2016 to comply with standard 64 in relation to the body's main reception service, and until 30 September 2016 to comply with the relevant standard relating to every other reception service.*
- 2.36 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate in relation to the body's main reception service by 30 March 2016."*

Further information presented by the Council in support of the Challenge to Standard 64

1. The Council is clear that it will continue to offer a bilingual service at its main civic offices – Neath, Port Talbot and Pontardawe. The Council maintains detailed records of callers to the reception points at these offices and has done so for a number of years. The number of people visiting the three offices in 2015-16 was 70,800 and of these 255 (0.36%) requested a service through the medium of Welsh. In the first three months of this financial year (April-June 2016) 13,550 customers visited our reception services in the three main civic centres and none requested a service through the medium of Welsh.
2. The Commissioner notes that according to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh and that in research prepared by Beaufort Research 75% of those surveyed indicated that they would choose to use Welsh at all times if they knew they could do so when using their local authority services.

However, in practice, only very small numbers of people are actually choosing to request a service at our main receptions through the medium of Welsh.

3. The Commissioner appears to have preferred to rely on statistical estimates of potential demand, rather than giving proper weight to the experience of the Council in meeting the needs of residents as is currently presented. No explanation for this is provided and we consider that the Commissioner should reflect again on her initial consideration and give due regard to the actual demand being experienced. The Council is of the view that the actual demand is a significant factor to take into consideration when deciding whether the standard is reasonable and proportionate as the demand for service needs to be weighed against the investment the Council would be required to make to ensure full compliance at this point in time
4. The Council currently operates 17 buildings where there is a reception service available to members of the public. None of the staff who work outside the three civic buildings who provide a reception service have Welsh skills.
5. The Commissioner states that the Council has not looked at its staff to consider how to plan the workforce. This is incorrect. The Council has taken the opportunity recently to introduce Modern Apprentices into the Customer Services Team and advertised the appointments “Welsh essential”. There were 8 applications but only one was able to evidence the essential criteria of fluency in the Welsh Language. That experience was also repeated when recently recruiting for the telephone related Contact Centre whereby from 51 applicants, only 4 met the essential criteria of fluency in the Welsh language and only one of those shortlisted was acceptable.
6. The Council *has* considered other ways in which it might meet the standard in reception areas where a Welsh speaker is not available. Measures include drawing on a list of Welsh speaking staff who are prepared to help deliver services through the medium of Welsh outside of their service area; piloting use of Skype technology to connect a caller remotely to a Welsh speaker in another part of the Council. Neither of these arrangements is sufficiently robust to ensure that the Council

could meet a demand for a service through the medium of Welsh in the reception services outside of the three main civic centres at all times. Welsh speaking staff working in other areas of the Council may not be readily available when service request is made which would result in a lesser service to the customer; the take up of Skype by customers who are predominantly from an older age group has been very small to date, despite heavy promotion (12 people in 6 months).

7. The Council committed to developing a linguistic strategy as part of the former Welsh Language Scheme, however, in practice, the Council's ability to develop the linguistic capacity of its workforce has and continues to be severely constrained by the cuts that have been made to the Council's budgets over a number of years.
8. Reducing budgets have resulted in a downsizing of the Council's workforce, with over 1,500 people leaving the Council's employment on grounds of voluntary redundancy. Additionally, over 600 members of staff have been redeployed into alternative employment. There has been a moratorium on external recruitment as part of a range of measures that the Council has agreed with trade union representatives as being necessary to protect employment to the maximum extent possible.
9. The combination of staff turnover and the limits placed on external recruitment have delayed the development of a linguistic strategy that would enable the Council to extend a bilingual reception services to all of the 17 buildings where such a service is provided to the public.
10. The Council has offered a Language Line service for many years. This continues to be available at the 17 reception points, however, this service is not the same as the service that would be offered by a bilingual member of staff and consequently could be challenged on the grounds that the service would be a less favourable service than the English language service.

Proposal

11. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice”.

- 12. The Council proposes that the standard applies immediately at the three civic offices of Neath, Port Talbot and Pontardawe, but is modified to reflect the fact that a bilingual service might only be available at the remaining 14 public reception areas through a third party service, such as Language Line.**

Standard 76

Any invitations to tender for a contract that you publish must be published in Welsh, and you must not treat a Welsh language version of any invitation less favourably than an English language version.

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 76 in the following circumstances:

(a) If the subject matter of the tender for a contract suggests that it should be produced in Welsh, or

(b) If the anticipated audience, and their expectations, suggests that the document should be produced in Welsh.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

2.39.1 *“Firstly, the Commissioner wishes to address the Council’s contention that the Commissioner did not consult before imposing standard 76 on the Council in a compliance notice.*

2.39.2 *Standard 76 was imposed in Neath Port Talbot County Borough Council’s draft compliance notice sent to the Council for consultation, before the statutory compliance notice was issued. The Council was given until 30 September 2016 to comply with this standard. The consultation form included the following questions:*

Would varying the requirement to comply with the standard make it reasonable and/or proportionate? For example, introducing the requirement at a different time, under different circumstances or in different areas.

Is there any other accompanying standard relating to the same activity or issue which you consider to be reasonable and/or proportionate.

- 2.39.3 *The purpose of these questions was to provide the relevant persons with an opportunity to indicate any other standards relating to the same activity, or offer particular ways of varying the standard, that they would consider reasonable and proportionate in view of their circumstances.*
- 2.39.4 *The Council responded by stating that compliance with standard 76 would be difficult in some circumstances because of technical and legal requirements. Following receipt of the Council's response, it was decided to continue with the imposition of standard 76 with an imposition day of six months but with a condition to reduce the burden of the standard.*
- 2.39.5 *Even if the Council is correct, and that what took place did not constitute a consultation on the standard, this failure has not disadvantaged the Council in any way, as it had been given every opportunity by the Commissioner to express its opinion and provide information in respect of this standard. Therefore, this alleged failure should not affect the Commissioner's decision in determining the Council's application in respect of this standard.*
- 2.39.6 *Consideration is now given to the Council's substantive point that the requirement on it to comply with these standards is disproportionate.*
- 2.39.7 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.39.8 *The Council states that the imposition of this standard in all tendering is disproportionate. The Council notes that it is unclear how the provision required by the standard will facilitate the provision of the Welsh language as substantial numbers of procurement exercises are conducted on a UK and European wide basis.*
- 2.39.9 *Standard 76 is interpreted in the 2015 Welsh Language Standards Regulations¹⁹, whereby it is noted that a body is not required to publish an invitation to tender in Welsh in the Official Journal of the European Union (OJEU). Furthermore, there is a specific meaning to the term 'invitation to tender' and it should include information required by the supplier to enable them to tender for the work. Therefore, the Commissioner's interpretation of the standard is that it applies to*

whatever documents are included in the invitation to tender pack by the organization with the exception of invitations in the OJEU.

2.39.10 *In the final notice the standard was varied by adding the wording that modified the required duty of the standard, namely that the Council was expected to comply with standard 76 in the following circumstances:*

(a) If the subject matter of the tender for a contract suggests that it should be produced in Welsh, or

(b) If the anticipated audience, and its expectations, suggests that the document should be produced in Welsh.”

2.40 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate and the requirement to comply with standard 76 by 30/03/2016 is unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 76

1. The Council has re-checked the draft Compliance Notice that it received from the Commissioner in June 2015 and confirms that the requirement to comply with standard 76 by 30 March 2016 was not included in that correspondence. A copy is supplied for reference.
2. It is notable that on some occasions even where the Council advertises in OJEU it will also advertise in trade journals and/or in the local media.
3. The Council wishes to acknowledge the changes the Commissioner has made to the standard to restrict its application by reference to the subject matter of the tender or the anticipated audience. Whilst the Council welcomes the degree of discretion this affords it in considering the application of the standard, the wording of the circumstances in which the standard must be complied with is not clear cut and lacks legal certainty in an arena in which the Council is open to challenge. Clear guidance is required on the factors which should be taken in to account when considering the specified circumstances.

4. In any event, the Council does not consider that the limitations on the standard's application addresses the Council's fundamental concerns about the standard in the circumstances in which the Council would be required to comply with it.
5. The Council employs 25 solicitors and barristers, two of whom feel competent enough to use their Welsh language skills for business purposes, but only in their own areas of speciality. There are no Welsh speaking contract lawyers and precedents are available in the English language only. No Welsh language precedents for contracts are available commercially.
6. No member of staff employed in the procurement team has Welsh language skills. The Council's i-procurement system is not able to support bilingual procurement services and there are no plans to replace this system.
7. Legal services do not generally provide services directly to the public. The provision of advice and legal services is to our internal departments.
8. When we deal with solicitors who act on behalf of the public, businesses and other organisation some of those are within the local area however many are solicitors from outside the area and indeed from outside Wales itself.
9. To date, we have never been asked to conduct a transaction through the medium of Welsh. Nor have we received any correspondence from solicitors through the medium of Welsh.
10. We have received correspondence from members of the public on general issues through the medium of Welsh and have dealt with this on a case by case basis. However it has been rare and we have been able to deal with such cases due to the general nature of the queries raised.
11. Mere translation of a tender document by a translator who does not hold a legal qualification is obviously prone to lead to error and only translations provided by specialists in the particular area of law can be relied upon. Even if a translation was provided by a solicitor it would be insufficient unless the solicitor practised in the particular field.

12. To comply with the standard gives rise to issues regarding legal terminology, the form of bilingual documents, bilingual drafting and the interpretation of bilingual documents all of which indicate that the standard is unreasonable and disproportionate.
13. The Law Commission Consultation Paper No 223 Form and Accessibility of the Law Applicable in Wales in relation to Welsh as a legal language discusses the process of standardising Welsh legal terminology and highlights the need for further work in developing standardised legal terminology (para 11.6).
14. The Law Commission Paper further notes the difficulty of “legal Welsh” and the accessibility of legal documents in Welsh (paras 11.8 and 11.9).
15. The standard applies to tender documents which by their nature contain technical legal terminology. They comprise the invitation to tender pack which, amongst other things, will contain the specifications for the contract for example, a waste contract or a construction contract. The Law Commission has identified the above issues regarding Welsh legal terminology and it seems sensible to await, at the very least, until the outcome of the Law Commission consultation and ideally until the further work identified can be undertaken before the Council can reasonably be expected to comply with the standard.
16. The production of legal documents such as tender documentation in Welsh gives rise to the question of whether they can be produced bilingually or be translated. Each approach has issues associated with it.
17. A fully bilingual approach requires bilingual lawyers with sufficient command of both languages to be able to understand what can and cannot be expressed easily and naturally in each language. In terms of availability in the general market of solicitors who are welsh spoken or sufficiently skilled in welsh, it is only recently that the Welsh language has been used for legal education and then only in a limited form. Welsh speaking lawyers are not available in sufficient numbers or in sufficient areas in order to provide a full range of services through the medium of Welsh. The Law Commission Paper identifies the demands on legal education and training (para 12.64) caused by bilingual legislation. It highlights and queries the future needs of legal education and training. It is clearly not a case of simply recruiting from a pool of available suitably

skilled candidates. There is no such a pool in existence. It will take several years for suitably skilled candidates to come through a revised system of legal education and training or for present lawyers or linguists to upskill respectively.

18. It is notable that the Welsh Government has a centralised drafting service, the Office of the Legislative Counsel, which is responsible for ensuring that the Welsh and English texts are legally equivalent. This obviously requires enough suitably qualified personnel with both the technical and language skills.
19. English is the common working language within legal services. The work undertaken is within a larger legal framework, for example the Public Contract Regulations 2015, which are in English. It is notable that under these Regulations public bodies have discretion whether to advertise on OJEU where the contract value is below the threshold. The Council would generally seek to advertise as widely as possible to secure the best value. The wording of the relevant legal documents must be consistent with the terminology used within the existing law. This then constrains the possible wording that may be used in the Welsh version and compels choices to be made regarding the intended meaning. Therefore a simple translation would not suffice either for technical accuracy or for achieving the aim of equality for both languages.
20. Tender documentation is regularly referred to and its interpretation has legal consequences and implications. An approach to the interpretation of bilingual legal documents is required in the event that each different language texts bear different meanings. The Law Commission Paper identifies the lack of approach for the interpretation of bilingual legislation (at para 12.60) the principle of which can be equally applied to the interpretation of any bilingual legal documentation. It also highlights the risks regarding conflict in language and translation errors, given that the starting point must be that bilingual texts have equal standing and are intended to bear a single meaning. The Law Commission Paper suggests this requires a body of rules concerning the approach to the identification of that meaning. The standard is unreasonable in the absence of further work in this area.

21. The use of bilingual legal documentation, which is equally authoritative in each language, requires linguistic proficiency on the parts of those professions and occupations which are required to understand and work with the documents. This again requires suitably qualified and skilled personnel.
22. In terms of local demand for Welsh legal services, the Welsh Language Impact Test looked at the effect on the Welsh Language of the closure proposals of local courts and included analysis on a court by court basis of court closures. In relation to the closure of Neath and Port Talbot Civil and Family Court it identifies that "According to the 2011 census, the number of Welsh speakers in Neath Port Talbot local authority area was 15.3%. There are currently two Welsh learners at Foundation level at the court. There have been no cases in 2013/14 or 2014/15 with a Welsh language requirement in this court".

Proposal

23. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

*"If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all)."*The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice".

24. The Council is not able to provide a competent bilingual legal service to enable this standard to be met and consequently the Council's proposal is that this standard is not applied at this time.

Standards 77, 77A, 79 and 80

Note: Standard 77 relates to two other standards, namely 77A and 80. The Welsh Language Commissioner must impose standard 77 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 77A or 78.

Standard 79 relates to two other standards, namely 77 and 77A. The Welsh Language Commissioner must impose standard 79 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 3: Interpreting the Standards, clause 42 in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 77 or 77A.

Standard 77

When you publish invitations to tender for a contract, you must state in the invitation that tenders may be submitted in Welsh, and that a tender submitted in Welsh will be treated no less favourably than a tender submitted in English.

Standard 77A

You must not treat a tender for a contract submitted in Welsh less favourably than a tender submitted in English (including, amongst other matters, in relation to the closing date for receiving tenders, and in relation to the time-scale for informing tenderers of decisions).

Standard 79

If you receive a tender in Welsh and it is necessary to interview the tenderer as part of your assessment of the tender you must–

(a) offer to provide a translation service from Welsh to English to enable the tenderer to use the Welsh language at the interview, and

(b) if the tenderer wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

Standard 80

When you inform a tenderer of your decision in relation to a tender, you must do so in Welsh if the tender was submitted in Welsh.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

- 2.43.1 *“The purpose of these standards is to allow an individual to tender in Welsh as well as ensuring that they can have an interview in Welsh and receive a decision in relation to the tender in Welsh.*
- 2.43.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.43.3 *Firstly, the Council notes that it would be at risk of legal challenge if there is technical difference between the Welsh and English versions of documentation that form part of the agreement. However there is no evidence in support of the contention that a translation service would be unable to produce documents that are legally correct. It is contended that it does not have the linguistic capability in its technical services to competently procure through the medium of Welsh. No further details regarding the contention of this lack of linguistic capability to provide the service in Welsh are given and it does not explain how it could organize staff in order to comply with the standard.*
- 2.43.4 *The Council notes that it has been moving to an i-procurement model where the underpinning ICT systems are not offered bilingually. It is contended that the cost and timescales for developing bilingual systems would be very considerable at a time when councils are facing significant budget cuts. Although the Council complains that the implementation of the standard is costly, no details of costs are given, nor an indication of timescales for the work.*
- 2.43.5 *The Council states that the imposition of this standard in all tendering is disproportionate. The Council notes that is unclear how the provision required by the standard will facilitate the provision of the Welsh language as substantial numbers of procurement exercises are conducted on a UK and European wide basis.*
- 2.44 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with standards 77, 77A, 79 and 80 is unreasonable or disproportionate”.*

Further information presented by the Council in support of the Challenge to Standards 77, 77A, 79 and 80

1. The Council has fundamental concerns about the imposition of these standards.
2. Everything which is submitted in response to an invitation to tender forms part of the contract.
3. Standard 79 refers to interviews, however as part of the tender process these are regarded as clarification meetings and all information provided in these meetings would form part of the contract.
4. Therefore the information referred to in standards 77, 77A, 79 and 80 would constitute contractual documentation.
5. The Council employs 25 solicitors and barristers, two of whom feel competent enough to use their Welsh language skills for business purposes, but only in their own areas of speciality. There are no Welsh speaking contract lawyers and precedents are available in the English language only. No Welsh language precedents for contracts are available commercially.
6. There are no staff within the Procurement Team who have Welsh Language skills
7. Legal services do not generally provide services directly to the public. The provision of advice and legal services is to our internal departments.
8. When we deal with solicitors who act on behalf of the public, businesses and other organisation some of those are within the local area however many are solicitors from outside the area and indeed from outside Wales itself.
9. To date, we have never been asked to conduct a transaction through the medium of Welsh. Nor have we received any correspondence from solicitors through the medium of Welsh.
10. We have received correspondence from members of the public on general issues through the medium of Welsh and have dealt with this on a case by case basis. However it has been rare and we have been able to deal with such cases due to the general nature of the queries raised.

11. Mere translation of tender and contractual documentation by a translator who does not hold a legal qualification is obviously prone to lead to error and only translations provided by specialists in the particular area of law can be relied upon. Even if a translation was provided by a solicitor would be insufficient unless the solicitor practised in the particular field.
12. To comply with the standard gives rise to issues regarding legal terminology, the form of bilingual documents, bilingual drafting and the interpretation of bilingual documents all of which indicate that the standard is unreasonable and disproportionate.
13. The Law Commission Consultation Paper No 223 Form and Accessibility of the Law Applicable in Wales in relation to Welsh a legal language discusses the process of standardising Welsh legal terminology and highlights the need for further work in developing standardised legal terminology (para 11.6).
14. The Law Commission Paper further notes the difficulty of “legal Welsh” and the accessibility of legal documents in Welsh (paras 11.8 and 11.9).
15. The standard applies to tender and contractual documentation which by their nature contain technical legal terminology and detailed contract specification. All bids received are evaluated and all bids considered are entitled to feedback. The Law Commission has identified the above issues regarding Welsh legal terminology and it therefore seems sensible to wait, at the very least, until the outcome of the consultation and ideally until the further work identified can be undertaken before the Council can reasonably be expected to comply with the standard.
16. The production of legal documents in Welsh gives rise to the question of whether they can be produced bilingually or be translated. Each approach has issues associated with it.
17. A fully bilingual approach requires bilingual lawyers with sufficient command of both languages to be able to understand what can and cannot be expressed easily and naturally in each language. In terms of availability in the general market of solicitors who are welsh spoken or sufficiently skilled in welsh, it is only recently that the Welsh language has been used for legal education and then only in a limited form. Welsh speaking lawyers are not available in sufficient numbers or in sufficient

areas in order to provide a full range of services through the medium of Welsh. The Law Commission Paper identifies the demands on legal education and training (para 12.64) caused by bilingual legislation. It highlights and queries the future needs of legal education and training. It is clearly not a case of simply recruiting from a pool of available suitably skilled candidates. There is no such a pool in existence. It will take several years for suitably skilled candidates to come through a revised system of legal education and training or for present lawyers or linguists to upskill respectively.

18. It is notable that the Welsh Government has a centralised drafting service, the Office of the Legislative Counsel, which is responsible for ensuring that the Welsh and English texts are legally equivalent. This obviously requires enough suitably qualified personnel with both the technical and language skills.
19. English is the common working language within legal services. The work undertaken is within a larger legal framework, for example the Public Contracts Regulation 2015 which is in English. The wording of the relevant legal documents must be consistent with the terminology used within the existing law and contract specifications. This then constrains the possible wording that may be used in the Welsh version and compels choices to be made regarding the intended meaning. Therefore as the Law Commission Paper suggests a simple translation would not suffice either for technical accuracy or for achieving the aim of equality for both languages.
20. Furthermore, the aim of the procurement rules is to treat all potential bidders equally. Rule 18 of the Regulations specifies that bidders must be treated equally. Translation into Welsh could be seen to be giving some advantage to certain bidders and an argument could be made that we are not treating all bidders equally. For example we have previously turned down a request for tender documentation to be translated into Norwegian for this reason.
21. Moreover arranging translation on a demand basis would necessarily take time and would consequently lead to delays within the procurement process which could be perceived as preferential treatment or delay the commencement of the contract itself.

22. The tender documentation produced is regularly referred to and its interpretation has contractual consequences and implications. An approach to the interpretation of bilingual legal documents is required in the event that each different language text bears different meanings. The Law Commission Paper identifies the lack of approach for the interpretation of bilingual legislation (at para 12.60) the principle of which can be equally applied to the interpretation of any bilingual legal documentation. It also highlights the risks regarding conflict in language and translation errors, given that the starting point must be that bilingual texts have equal standing and are intended to bear a single meaning. The Law Commission Paper suggests this requires a body of rules concerning the approach to the identification of that meaning. The standard is unreasonable due to the potential risk the Council could be incurring in an arena in which it is open to challenge in the absence of further work in this area.
23. The use of bilingual legal documentation, which is equally authoritative in each language, requires linguistic proficiency on the parts of those professions and occupations which are required to understand and work with the documents. This again requires suitably qualified and skilled personnel.
24. In terms of local demand for Welsh legal services, the Welsh Language Impact Test looked at the effect on the Welsh Language of the closure proposals of local courts and included analysis on a court by court basis of court closures. In relation to the closure of Neath and Port Talbot Civil and Family Court it identifies that "According to the 2011 census, the number of Welsh speakers in Neath Port Talbot local authority area was 15.3%. There are currently two Welsh learners at Foundation level at the court. There have been no cases in 2013/14 or 2014/15 with a Welsh language requirement in this court".

Proposal

25. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

"If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a

standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice”.

- 26. The Council is not able to provide a competent bilingual service in either the procurement or legal team to enable these standards to be met and consequently the Council’s proposal is that this standard is not applied at this time.**

Standards 84 and 86

Standard 84

If you offer an education course that is open to the public, you must offer it in Welsh.

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 84 in every circumstance, except:

- when an assessment carried out in accordance with standard 86 comes to the conclusion that there is no need for that course to be offered in Welsh.

Standard 86

If you develop an education course that is to be offered to the public, you must assess the need for that course to be offered in Welsh; and you must ensure that the assessment is published on your website.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points:

- 2.47.1 *“The standard exists to ensure the right of those citizens who wish to use Welsh when following an education course with Neath Port Talbot County Borough Council are able to do so.*
- 2.47.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.47.3 *The Council argues that there is no demand for such a service at present and that it does not have the linguistic capability to provide the service in Welsh. It is not clear from the evidence that demand has been measured. The Council has not elaborated further on its lack of linguistic capability to provide the service in Welsh and it does not explain how it could organize staff in order to comply with the standard.*

2.47.4 *The Council repeats the paragraph regarding the identification of 'Language Sensitive Areas' set out in previous arguments. It is not clear within this context how the evidence relates to the standard in question. If the Council could comply with these standards in those areas with a higher number of Welsh speakers but not across the entire area of the county borough, it does not provide evidence to support this.*

2.48 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate. Consequently, the requirement to comply with standards 84 and 86 are not unreasonable or disproportionate”*

Further information presented by the Council in support of the Challenge to Standards 84 and 86

1. The Council offers a number of education courses to the public. The Council repeats its argument that the standard should not be applied on grounds of demand and linguistic capacity.
2. It is not possible to critique the arrangements for every course but we provide detailed examples to illustrate the practical difficulties that this standard raises for the Council:
3. Communities First
This Service runs over 700 individual learning sessions with members of the public each year. The courses are delivered in a variety of formats and none of the course materials are presently available in Welsh. There have been no requests for learning to be delivered through the medium of Welsh in the last three years and consequently Welsh medium learning opportunities do not feature in current plans. Were requests to be made the Service would make every effort to secure the learning opportunity sought through alternative providers. The feasibility of running the Welsh medium course would need to take into account the number of residents indicating that they would wish to receive the training through the medium of Welsh as, for value for money reasons, there are minimum participant numbers required. In the event that insufficient numbers to run a course were reached, the Service would seek to signpost the individual to Welsh tutors. The additional administrative burden created by this standard in terms of the

assessment and publication of assessment has been estimated at £7,500 per annum which is unfunded.

4. Road Safety

The Service offers ten individual school/education establishment based courses; thirteen individual licence acquisition/driving at work courses; five individual driver/rider based courses.

5. School/education establishment courses – all ten courses are supported with bilingual paperwork and can be delivered through the medium of Welsh. 18% of total pupil numbers are based in Welsh medium education schools/establishments. In the early years of delivering these courses, translators were used but schools asked for this service to be discontinued. It is of note that 2,722 bilingual consent forms were issued to pupils but only 19 were completed in Welsh.
6. Licence acquisition/driving at work courses – these courses are accredited by Driver Vehicle Licensing Agency in terms of registered trainers and course content. The Council is not able to alter the course content or accredit trainers. Likewise, the Council is accredited by the Joint Approvals Unit of Periodic Training (JAUPT) for our certificate of Professional Competence licence acquisition training and are bound by their conditions. Licence accreditation training provided to the DVLA is legally binding and not within the Council's gift to amend. We are not able to provide this training through the medium of Welsh as we have no Welsh speaking accredited trainers.
7. Driver/Rider training courses – these courses are governed by the Driver Vehicle Standards Agency. There are thirteen registered trainers within South West Wales and none of them are able to deliver training through the medium of Welsh.
8. The additional administrative burden associated with the assessment and publication requirements of this standard are estimated at £22,000 per annum which is unfunded.
9. Outside of the courses delivered for schools, there have been no requests for a service in Welsh and no complaints that courses are not offered in Welsh.

10. The linguistic profile of the Road Safety Team – 1 Road Safety Officer of 6; School Crossing Patrol 1 of 20; Volunteers 4 of 29 and Driver Vehicle Standards Agency 0 of 13.
11. The application of this standard to the Council is unreasonable and disproportionate. The Council maintains it is unreasonable to require assessments and publication of assessments as this would incur additional administrative costs which are unfunded. Examples of costs have been provided for two examples of courses available to the public. These are illustrative and the total costs would be considerably higher. To fund the additional administrative burden would require a reduction in the overall learning opportunities provided and the Council considers that this would disadvantage the citizens of the borough. The Commissioner is encouraged to give proper weight to the benefits of imposing the standard and its associated administrative costs set against the impact of the standard which will reduce overall learning opportunities for all citizens.
12. Furthermore, the standard is unreasonable as even if learners wished to receive some training through the medium of Welsh the Council is technically and legally unable to deliver some courses that are externally accredited through the medium of Welsh for the reasons given.
13. The standard is disproportionate as there is little/no demand for many courses through the medium of Welsh. The Council will continue to make every effort to signpost and support learners who wish to learn through the medium of Welsh and has good and developing relationships with local partners such as Menter Iaith.

Proposal

14. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to

comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice”.

15. The Council’s proposal is that these standards are not imposed.

Standards 99, 100, 101, 102, 103 and 104

Standard 99

When you offer a new post to an individual, you must ask that individual whether he or she wishes for the contract of employment or contract for services to be provided in Welsh; and if that is the individual's wish you must provide the contract in Welsh.

Standard 100

You must—

(a) ask each employee whether he or she wishes to receive any paper correspondence that relates to his or her employment, and which is addressed to him or her personally, in Welsh, and

(b) if an employee so wishes, provide any such correspondence to that employee in Welsh.

Standard 101

You must ask each employee whether he or she wishes to receive any documents that outline his or her training needs or requirements in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 102

You must ask each employee whether he or she wishes to receive any documents that outline his or her performance objectives in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 103

You must ask each employee whether he or she wishes to receive any documents that outline or record his or her career plan in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 104

You must ask each employee whether he or she wishes to receive any forms that record and authorise—

(a) annual leave,

(b) absences from work, and

(c) flexible working hours,

in Welsh; and if that is an employee's wish, you must provide any such forms to him or to her in Welsh.

Imposition day: 30/09/2016

Initial Considerations by the Welsh Language Commissioner

In her initial considerations, the Welsh Language Commissioner has made the following points

- 2.51.1 *“The purpose of these standards is to allow current or future employees to use Welsh with their employer.*
- 2.51.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.51.3 *The Council starts by repeating a paragraph, set out in previous arguments, referring to ‘Language Sensitive Areas’ within the council’s area. It is not clear from this context how the evidence relates to the standard in question. If the Council could comply with these standards in those areas with a higher number of Welsh speakers but not across the entire area of the county borough, it does not provide evidence to support this.*
- 2.51.4 *The Council states that the standards are unreasonable given the number of Welsh speaking staff and that it would require all employment documentation to be translated at a new cost and that translation services would need to be procured at cost. No evidence regarding the likely cost is provided. Nor is there any evidence provided on those circumstances where the Council would be able to meet the standard without relying on translators, for example, there is no description of the language skills within the Council’s Personnel Department.*
- 2.51.5 *The Council refers to the translation of documents referred to in the standards and the possibility that a straight translation of the documents would not be sufficient as they are legal documents. No evidence is given in the support of the contention that the translation of contractual and legal documents presents a problem.*
- 2.51.6 *The Council had until 30 September 2016 to comply with these standards.*
- 2.52 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate and that the*

requirement to comply with standards 99, 100, 101, 102, 103 and 104 by 30/09/2016 is unreasonable or disproportionate.

Further information presented by the Council in support of the Challenge to Standards 99, 100, 101, 102, 103 and 104

1. The Human Resources Service employs two members of staff at basic administrative level who are Welsh speakers. No other members of staff have Welsh language skills, including professional human resources officers. Consequently, the Human Resources Service would need to rely on buying in translation services to meet this standard and no budget is identified to support the additional cost. Consequently, this standard is unreasonable.
2. An average employee file contains 3,831 words. The cost of translating an employee file would amount to £230 per file. If this standard were to be met, then the human resources service would need to be cut elsewhere meaning that other staff members would receive a lesser service. Consequently, the standard is disproportionate.
3. The Human Resources Service has reduced in size - 30% reduction in the last 5 years with a 50% reduction in the employment administration team. It is unreasonable to impose unfunded additional workloads upon the team.
4. We surveyed members of staff who are Welsh speakers to establish how many of those staff would take up the option of Welsh if this standard were imposed. 25% of those responding said they would access the service in Welsh. Given that the translation costs of each file is £230 and if this sample were typical of all Welsh speakers in the workforce, an additional cost of £20,000 would arise. This expenditure is unfunded and would result in a situation where the benefits gained by less than 100 staff deliver a detrimental service to the remainder of the staff. For these reasons the standard is disproportionate and unreasonable.
5. There are no contract lawyers or professional Human Resource officers employed by the Council who have Welsh language skills. For all of the reasons we have set out in our challenge to the procurement standards, we are not in a position where we have the capacity and capability to

deal with matters involving employment law bilingually and consequently the standard is unreasonable.

6. The reference made to Welsh language sensitive areas in our earlier correspondence is an error and it is withdrawn.

Proposal

7. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

*“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”*The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice”.

8. **The Council’s proposal is that these standards are not imposed other than for Welsh medium education settings.**

Standards 112, 112A, 114, 115, 116, 116A, 118, 119

Note: Standard 112 relates to one other standard, namely 112A. The Welsh Language Commissioner must impose standard 112 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 112A.

Standard 116 relates to one other standard, namely 116A. The Welsh Language Commissioner must impose standard 116 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 116A.

Standard 112

You must allow each member of staff—

- (a) to make complaints to you in Welsh, and
- (b) to respond in Welsh to any complaint made about him or about her.

Standard 112A

You must state in any document that you have that sets out your procedures for making complaints that each member of staff may—

- (a) make a complaint to you in Welsh, and
- (b) respond to a complaint made about him or about her in Welsh; and you must also inform each member of staff of that right.

Standard 114

If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must—

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting;
- (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required;

and if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without translation services).

Standard 115

When you inform a member of staff of a decision you have reached in relation to a complaint made by him or by her, or in relation to a complaint made about him or about her, you must do so in Welsh if that member of staff—

- (a) made the complaint in Welsh,
- (b) responded in Welsh to a complaint about him or about her,
- (c) asked for a meeting about the complaint to be conducted in Welsh, or
- (ch) asked to use the Welsh language at a meeting about the complaint.

Standard 116

You must allow all members of staff to respond in Welsh to allegations made against them in any internal disciplinary process.

Standard 116A

You must—

- (a) state in any document that you have which sets out your arrangements for disciplining staff that any member of staff may respond in Welsh to any allegations made against him or against her, and
- (b) if you commence a disciplinary procedure in relation to a member of staff, inform that member of staff of that right

Standard 118

If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or her conduct you must—

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting, and
- (b) explain that you will provide a translation service for that purpose if it is required;

and, if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without a translation service).

Standard 119

When you inform a member of staff of a decision you have reached following a disciplinary process, you must do so in Welsh if that member of staff—

- (a) responded to allegations made against him or her in Welsh,
- (b) asked for a meeting regarding the disciplinary process to be conducted in Welsh, or
- (c) asked to use the Welsh language at a meeting regarding the disciplinary process.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.55.1 *“The purpose of these standards is to enable employees to use Welsh with their employer is that is their wish in situations relating to the conduct of others or their own conduct in the workplace. This reflects the status of Welsh as an official language in Wales but more importantly it ensures that people who wish to use Welsh in these difficult situations can do so at the same level as those who wish to use English without being discriminated against. As such, the standard reflects the statutory right to use Welsh in other adversarial and difficult situations such as courts and tribunals where sensitive and confidential matters are dealt with regularly.*
- 2.55.2 *Standards 112, 112A, 114 and 115 relate to complaints made by a member of staff, and standards 116, 116A, 118 and 119 relate to staff discipline. The same arguments were presented for all these standards.*

- 2.55.3 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.55.4 *The Council argues that it does not have the linguistic profile to comply with the requirements across the entire workforce but that it would be able to comply with these standards for staff in Welsh medium schools. The Council has not provided evidence to support why it can meet these standards for staff in Welsh medium schools but not for the rest of the Council's staff.*
- 2.55.5 *The Council states that these standards are unreasonable as they would require the Council to incur additional expenditure by procuring translation services. No evidence regarding the likely cost in such a case is provided. Nor is an evidence provided in support of the contention that the procurement of translation services would interfere with the timescales set down in the Council's and statutory procedures and that it is likely to cause delay, and no evidence is provided of any subjective assessment of the likelihood that any delays would in fact lead to the realisation of the Council's fears, and how that risk could be mitigated and managed.*
- 2.56 *In light of the above factors, the Council has not explained how the cost and burden is disproportionate in view of the rights given to employees by these standards. The requirement to comply with standards 112, 112A, 114, 115, 116, 116A, 118 and 119 is not unreasonable or disproportionate."*

Further information presented by the Council in support of the Challenge to Standards 112, 112A, 114, 115, 116, 116A, 118, 119

1. The Council has recorded 53 cases that would fall within this standard in the last financial year.
2. On average cases can involve at least one working day for meetings to discuss the relevant issues and case files typically include evidence of around 75,000 words.
3. There are no Human Resource or Contract Legal Officers employed by the Council with Welsh language skills. Consequently, if employees

were to exercise a right to conduct such employment processes through the medium of Welsh the Council would need to purchase translation services. This would be on average £5,000 per case.

4. The Council surveyed Welsh speaking staff to establish how many would take up this survey. 25% of Welsh speaking staff indicated that they would access the service. Consequently, the Council estimates that if this standard were imposed it would incur additional, unfunded expenditure of £5,000 per annum which is unreasonable.
5. If the standard were imposed, the cost of meeting the standard would require a reduced service for other members of staff which means the standard is disproportionate.
6. There are 2 trade union representatives locally who can speak Welsh. Consequently, there is a risk that a Welsh speaking member of staff would be delayed in obtaining representation if one of those two members are not available. In some employment processes e.g. disciplinary or grievance, there is an expectation that matters will be dealt with in a timely manner and failure to meet timescales could prejudice the handling of the case.

Proposal

7. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the

requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice”.

- 8. The Council’s proposal is that these standards are not imposed other than for Welsh medium education settings.**

Standards 122, 124 and 126

Note: Standard 121, 122 or 123 relate to one other standard, namely standard 124. The Welsh Language Commissioner must impose standards 121, 122 or 123 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 124.

Standard 122

You must ensure that—

- (a) the text of the homepage of your intranet is available in Welsh,
- (b) any Welsh language text on your intranet's home-page (or, where relevant, your Welsh language intranet homepage) is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the homepage of your intranet.

Standard 124

If you have a Welsh language page on your intranet that corresponds to an English language page, you must state clearly on the English language page that the page is also available in Welsh, and you must provide a direct link to the Welsh page on the corresponding English language page.

Imposition day: 30/03/2016

Standard 126

You must provide the interface and menus on your intranet pages in Welsh.

Imposition day: 30/09/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.59.1 *“The purpose of these standards is to ensure that a relatively small proportion of an organization’s intranet appears in Welsh including the homepage, interface and menus and, where pages are already available in Welsh, to ensure that this is made clear on the corresponding English pages. This confirms the Council’s commitment to the language rights of its workforce, and to ensuring some parity of respect for members of the workforce who are Welsh speakers or learners.*
- 2.59.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.59.3 *In relation to standard 122, the homepage comprises one page of the website. According to the Council’s figures it may be seen that translating the homepage would only incur a small cost. These are one-off costs.*
- 2.59.4 *In terms of standards 124 and 126, the Council has not elaborated on the number of pages that would be affected by the requirement in question. The Council provides only estimates. It is also contended that there would be additional costs associated with doubling the size of the system and maintaining the content but again no evidence is given of the likely cost.*
- 2.59.5 *More generally, the Commissioner has advice providing guidance on how to use the Welsh language when preparing websites and an intranet. The advice document Technology, Websites and Software: Welsh Language Considerations²⁰ sets out how to undertake the tasks referred to under standards 124 and 126. They are not burdensome matters.*
- 2.59.6 *It should also be noted that standard 126 does not come into force until 30 September 2016.*
- 2.60 *The requirement to comply with standards 122, 124 and 126 is not unreasonable or disproportionate.*

Further information presented by the Council in support of the Challenge to Standards 122, 124 and 126

1. The Commissioner states that 20,500 people were identified in the 2011 Census as able to speak Welsh. However, a more relevant statistic for this standard is the number of staff employed by the Council who can speak Welsh. The Commissioner has previously been advised that there are 359 staff members out of approximately 7,000 who have indicated some Welsh language skills.
2. The Council welcomes the clarification that this standard only applies to the intranet home page and not to the remainder of the intranet content.
3. However, the Commissioner appears to have assumed that the content on the intranet home page is static. This is incorrect. The content is dynamic and changes daily. There are no Welsh speaking staff in the website management team consequently, the team are reliant on translation services. The outstanding corporate Internet pages referred to earlier in this report, have been with the Translation Unit for three months. In order for the intranet home page to be up to date and relevant for our business purposes we would need to be able to draw on a translation service that can respond within hours and this is currently not available. Consequently, it is unreasonable for the Commissioner to impose this standard.
4. Even if the translation service were to improve its performance, there is an additional financial cost associated with this standard which is unfunded. The Council has examined the number of changes made to the intranet in a typical week and estimates that the imposition of this standard would amount to £3,900 per annum. This would also increase the workload of the website management team and we estimate this cost to be £3,350 per annum. To fund these additional expenditures, the Council would need to reduce costs elsewhere which would in all probability impact negatively on staffing levels or services to staff as well as changing the work priorities of our small website management team. The Council contends that this standard is therefore also disproportionate as the benefits of the standard would be experienced by a small number of staff as compared with the impact of reducing expenditure elsewhere to fund the standard. We do not consider that the Commissioner has properly weighed the benefits of imposing this

standard in the local context of the Council where its complement of Welsh speaking staff outside of school settings (and who are the primary customers of the intranet) is very small and in an organisation whose business language is English.

5. We note the Commissioner's comments in relation to her advice document "Technology, Websites and Software: Welsh Language Considerations" which we received earlier this year. We are in the process of assimilating the guidance and will introduce actions into our continuous improvement programme as necessary. However, we are unable to locate content within that publication which addresses the specific concerns which underpin our challenge that this standard should not be applied in our local circumstances as it is both unreasonable and disproportionate. Furthermore, given that the document has only been received recently it is unreasonable to expect the Council to implement the guidance within the timetable that is associated with this standard.

Proposal

6. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

"If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all)." The standard is not imposed until such time as financial resources are made available to cover the additional costs that will be incurred and that consideration is given at that time to relaxing the requirement for simultaneous production of documents in Welsh and English if the linguistic capacity of the Council is insufficient to enable this requirement to be workable in practice".

7. **The Council's proposal is that these standards are not imposed**

Standard 128

You must provide training in Welsh in the following areas, if you provide such training in English—

- (a) recruitment and interviewing;
- (b) performance management;
- (c) complaints and disciplinary procedures;
- (ch) induction;
- (d) dealing with the public; and
- (dd) health and safety.

Standard 129

You must provide training (in Welsh) on using Welsh effectively in—

- (a) meetings;
- (b) interviews; and
- (c) complaints and disciplinary procedures.

Imposition day: 30/09/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.63.1 *“The standards exist to ensure that staff have the right to use Welsh when receiving training with Neath Port Talbot County Borough Council.*
- 2.63.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.63.3 *The Council states that given the number of staff, the costs involved in providing this training would be disproportionate and unreasonable. No evidence regarding the likely cost in such a case is provided.*

2.64 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with standards 128 and 129 is unreasonable or disproportionate, and the requirement to comply with these standards by 30/09/2016 is not unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standards 128 and 129

1. The Commissioner has quoted the total number of people who indicated that they were able to speak Welsh to justify the imposition of this standard. The Council believes that workforce data is a more relevant consideration.
2. In our earlier submission we made the Commissioner aware that only 7 of the workforce complement of managers can speak Welsh - managers being the primary audience for most of the training listed in this standard. We have since undertaken further analysis which identifies that only 3 of the 7 managers who can speak Welsh are prepared to use Welsh in their management role. None of these managers have indicated that they wish to receive training in Welsh. For this reason we believe the standard to be unreasonable.
3. This training, if delivered, would be delivered by the Council's internal training team and there are insufficient numbers of Welsh speaking training staff to deliver this course internally – 1.5 FTE trainers out of 19 staff speak Welsh. We therefore contend that this standard is unreasonable as it will require the Council to procure training that it does not currently need to procure at additional cost.
4. The Council's budget for all training is £20,000. Procuring Welsh medium training at cost would disproportionately benefit the very small numbers who would benefit from it to the detriment of other staff. For this reason the standard is disproportionate. Even if the courses were procured it is not good value for money to run a training course for three people and the Commissioner needs to properly weigh the benefits of imposing this standard to benefit three managers against the wider duties upon the Council to secure best value for money.

5. The Council notes that the National Procurement Service have been instructed by Welsh Government to develop a National Welsh Language Training Framework but the dates for completing this work is unknown. This could make the delivery of training through Welsh more affordable and accessible at a future date.

Proposal

6. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

7. **The Council’s proposal is that these standards are not imposed.**

Standard 130

You must provide opportunities during working hours -

- (a) for your employees to receive basic Welsh language lessons, and
- (b) for employees who manage others to receive training on using the Welsh language in their role as managers.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.67.1 *“This standard exists to ensure that Neath Port Talbot County Borough Council provides training in Welsh to those employees who wish to receive it in Welsh.*
- 2.67.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.67.3 *The Council states that it is able to comply with part (a) of the standard but that given the number of staff, the costs associated with providing the training for part (b) would be disproportionate and unreasonable. No evidence regarding the likely cost in such a case is provided.*
- 2.67.4 *It should be noted that part (b) of the standard is associated with the standards relating to complaints and discipline and therefore it is essential to impose it in order to ensure the implementation of those standards.*
- 2.68 *The requirement to comply with standards 130 is not unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standards 130

1. The Commissioner has quoted the total number of people who indicated that they were able to speak Welsh to justify the imposition of this standard. The Council believes that workforce data is a more relevant consideration.
2. In our earlier submission we made the Commissioner aware that only 7 of the workforce complement of managers can speak Welsh. We have since undertaken further analysis which identifies that only 3 of the 7 managers who can speak Welsh are prepared to use Welsh in their management role. None of these managers have indicated that they wish to receive training in Welsh. Put staff survey results in here. For this reason we believe the standard to be unreasonable.
3. The Council's internal training team is not able to deliver this training internally— 1.5 FTE trainers out of 19 staff speak Welsh. We therefore contend that this standard is unreasonable as it will require the Council to procure training that it does not currently need to procure at additional cost.
4. The Council's budget for all training is £20,000. Procuring the training at cost would disproportionately benefit the very small numbers who would benefit from it to the detriment of other staff. For this reason the standard is disproportionate. Even if the courses were procured it is not good value for money to run a training course for three people and the Commissioner needs to properly weigh the benefits of imposing this standard to benefit three managers against the wider duties upon the Council to secure best value for money.
5. The Council notes that the National Procurement Service have been instructed by Welsh Government to develop a National Welsh Language Training Framework but the dates for completing this work is unknown. This could make the delivery of training through Welsh more affordable and accessible at a future date.
6. The Council notes that this standard is linked to standards related to complaints and discipline but the Council has challenges the imposition of those standards as also being unreasonable and disproportionate.

Proposal

7. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

8. **The Council’s proposal is that standard 130(b) is not imposed.**

Standard 131

You must provide opportunities for employees who have completed basic Welsh language training to receive further training free of charge, to develop their language skills.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.71.1 *“The purpose of this standard is to develop the language skills of the Neath Port Talbot County Borough Council workforce.*
- 2.71.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.71.3 *The Council states that the standard is unreasonable as it will create additional cost at a time when the Council is cutting training expenditure due to severe budget constraints. No evidence regarding the likely cost in such a case is provided.*
- 2.72 *“The requirement to comply with standards 131 is not unreasonable or disproportionate”*

Further information presented by the Council in support of the Challenge to Standard 131

1. Since the Council made its challenge to the Commissioner, the Council has identified a no-cost model to support employees who wish to develop their Welsh speaking skills and to encourage its use in the workplace.
2. **Consequently, the Council is able to withdraw this challenge and accepts the standard should apply.**

Standard 132

You must provide training courses so that your employees can develop -

(a) awareness of the Welsh language (including awareness of its history and its role in Welsh culture);

(b) an understanding of the duty to operate in accordance with the Welsh language standards;

(c) an understanding of how the Welsh language can be used in the workplace.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.75.1 *“The purpose of this standard is to develop the awareness and understanding of the Neath Port Talbot County Borough Council workforce of the Welsh language and the Welsh language standards.*
- 2.75.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.75.3 *The Council states that the standard is unreasonable at a time when the Council is cutting training expenditure due to severe budget constraints. No evidence regarding the likely cost in such a case is provided.*
- 2.76 *The requirement to comply with standards 132 is not unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 132

1. The Council maintains that it is unreasonable to provide training courses for all of its employees as required by this standard.

2. The Council has targeted training to all of its senior managers and service managers and has ensured the requirements of this standard have been fully addressed in that training. The nature of the Welsh Language Standards implementation is complex and training sessions have typically taken 2 hours on average. The total estimated time of delivering the training for all senior managers and service managers is 30 hours which equates to £1,555 in salary related costs.
3. Our central concern with this standard is that it applies to all employees. We do not think that this is reasonable, given the amount of time that training would consume and pressure of other workloads. There is significant downsizing and change taking place across our organisation which we have referenced in previous correspondence with the Commissioner and elsewhere in this correspondence. Should the Commissioner wish to access additional evidence in support of this argument the Council would direct the Commissioner to the Council's budget reports which are available on our public website.
4. Additionally, standards affect different parts of the Council in different ways. A more proportionate and appropriate approach is to enable the service managers to identify what needs to change in their specific area of service and then to brief staff as they see fit. As far as the requirement to develop people's awareness of the history and role of the Welsh language in Welsh culture and how Welsh can be used in the workplace is concerned, a more proportionate approach would be for some body at national level to develop a suitable e learning resource that could be used and deployed across Wales, including making that generally available to citizens. We do not think it reasonable or proportionate for individual public bodies to be asked to develop such training and resources and would suggest that the Commissioner weighs up the appropriateness of the approach currently being taken and instead consider applying this particular standard in a particular way that would achieve the outcome we have suggested.

Proposal

5. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

- 6. The Council’s proposal is that this standard is applied to senior managers and service managers only and the remainder of employees are exempted.**

Standards 137, 137A, 137B, 139 and 140

Note: Standard 137 relates to three other standards, namely 137A, 138 and 140. The Welsh Language Commissioner must impose standard 137 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 137A, 138 or 140.

Standard 137

When you advertise a post, you must state that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English.

Standard 137A

If you publish—

- (a) application forms for posts;
- (b) material that explains your procedure for applying for posts;
- (c) information about your interview process, or about other assessment methods when applying for posts;
- (ch) job descriptions;

you must publish them in Welsh; and you must ensure that the Welsh language versions of the documents are treated no less favourably than any English language versions of those documents.

Varied matters in the standard as imposed in the final notice: -

You must comply with standard 137A in every circumstance, except:

- job descriptions where a post has been categorised as one where Welsh language skills are not necessary.

Standard 137B

You must not treat an application for a post made in Welsh less favourably than you treat an application made in English (including, amongst other matters, in relation to the closing date you set for receiving applications and in relation to any time-scale for informing individuals of decisions).

Standard 139

You must ensure that your application forms for posts -

(a) provide a space for individuals to indicate that they wish to use the Welsh language at an interview or at any other method of assessment, and

(b) explain that you will provide a translation service from Welsh to English for that purpose if it is required; and, if the individual wishes to use the Welsh language at the interview or assessment, you must provide a simultaneous translation service at the interview or assessment (unless you conduct the interview or assessment in Welsh without that translation service).

Standard 140

When you inform an individual of your decision in relation to an application for a post, you must do so in Welsh if the application was made in Welsh

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.79.1 *“The purpose of these standards is to ensure the rights of individuals during Neath Port Talbot County Borough Council, recruitment and appointment processes.*
- 2.79.2 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.79.3 *The Council’s first argument is that these standards could increase demand for applications to be treated through the medium of Welsh which would create additional cost as the HR and managers’ linguistic profile is inadequate. Consequently additional translation services would need to be procured at a time of severe budget constraints. No evidence regarding the likely cost is provided. The Council has also not explained*
- 2.79.4 *Secondly, the Council states that the existing HR database and internal records are not currently bilingual and that it would incur a cost to*

procure similar Welsh systems. Once again, no evidence of the likely cost is provided.

2.79.5 *Finally, the Council states that it would be able to provide a bilingual service if the standards were restricted to Welsh essential posts. The Council provides no evidence to support why it can meet these standards for Welsh essential posts but not for all Council posts.*

2.79.6 *Following receipt of Neath Port Talbot County Borough Council's response to the draft compliance notice, the Commissioner made no changes in relation to standards 137, 137B, 139 and 140. It was determined to impose standard 137A and vary the standard by the addition of wording to modify the required duty.*

2.80 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with these standards is unreasonable or disproportionate."*

Further information presented by the Council in support of the Challenge to Standards 137, 137A, 137B, 139 and 140

1. The Council presently has in place a bilingual application form and materials explaining the procedure for applying for posts bilingually. It does not produce bilingual job descriptions and person specifications for any post.
2. At the present time, for reasons we have explained previously, the Council has severely limited the number of posts it fills externally. However, even in these times of very limited external recruitment there are typically 500 posts advertised in a year. The estimated cost of translating all job descriptions and person specifications for posts, other than those where Welsh is not required is £23,625.
3. The cost of meeting additional translation requirements would mean that other activity in the Council would need to be stopped or reduced. For these reasons we consider the imposition of the Standard to be unreasonable as no consideration has been given by the Commissioner to the detrimental affect such action would have on existing staff and service users who would be affected by cuts that would need to be made.

4. Only 3 managers within the Council are prepared to use Welsh in the course of business. Consequently, any applicant who wished to rely on this standard to complete the recruitment process through the medium of Welsh would create workload that is not currently funded and the Council considers this to be unreasonable. The reason why the Council has suggested that this standard be applied to Welsh essential posts should be obvious. There are far fewer Welsh essential posts than there are Welsh desirable. Furthermore, if this standard is imposed without modification, there is a risk that no posts will be identified as Welsh desirable and that they will be reclassified as Welsh not required which creates the opposite impact to what the standards should be about.
5. The Council has an on-line recruitment module which is used by applicants seeking employment. This is one of the third party systems that we have referred to in commenting on website standards. That site is presently not available in Welsh and there are no current plans to change this position. A replacement bilingual system would cost £20,000 and there are no identified budgets to support this expenditure.

Proposal

6. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

7. **The Council’s proposal is that these standards are applied to Welsh essential posts only and excludes the recruitment microsite until such time as the Council is in a position to replace it.**

Standards 141, 142, 143 and 144

Note: Standard 141 relates to one other standard, namely standard 143. The Welsh Language Commissioner must impose standard 141 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 143.

Standard 141

When you erect a new sign or renew a sign in your workplace (including temporary signs), any text displayed on the sign must be displayed in Welsh whether on the same sign as the corresponding English language text or on a separate sign), and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

Standard 142

When you erect a new sign or renew a sign in your workplace (including temporary signs) which conveys the same information in Welsh and in English, the Welsh language text must be positioned so that it is likely to be read first.

Standard 143

You must ensure that the Welsh language text on signs displayed in your workplace is accurate in terms of meaning and expression.

Standard 144

When you make announcements in the workplace using audio equipment, that announcement must be made in Welsh, and if the announcement is made in Welsh and in English, the announcement must be made in Welsh first.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.83.1 *“According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*
- 2.83.2 *In connection with standards 141, 142 and 143, consideration must be given to whether it is unreasonable or disproportionate to place the Welsh language first on a sign if the predominant language of the workforce is English.*
- 2.83.3 *The Commissioner believes that this in itself is not sufficient for stating that the requirement is unreasonable. In terms of disproportionality, the Council argues that proportionality should be based on the percentages of Welsh and English speakers within the workforce. The Commissioner does not accept that balancing the number of Welsh speakers against the number of English speakers is a valid way of establishing proportionality within the meaning and intention of the Welsh Language Measure. Even if the Commissioner’s assessment is incorrect, however, that is not the end of the matter. Within the Council offices, there may be workforces where the majority speak Welsh. The Council has not considered such situations.*
- 2.83.4 *Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given.*
- 2.83.5 *With regard to standard 144, the Council notes that it does not have sufficient Welsh speaking staff available to make announcements in Welsh. The Council states that the majority of the Council’s workforce are not Welsh speaking and would not understand announcements in Welsh.*
- 2.83.6 *It appears that Neath Port Talbot County Borough Council accepts this principle to some degree in relation to announcements over sound equipment as it has not challenged standard 87 which relates to announcing a message over a public address system. It appears therefore that the Council is expressing concerns over announcements made in emergencies.*

- 2.83.7 *In view of the concern raised by the Council, the Commissioner has given serious consideration to the extent to which there is a reasonable connection between the standard's aim and the Council's argument.*
- 2.83.8 *The Commissioner is aware that local authorities are affected by the Civil Contingencies Act 2004.*
- 2.83.9 *The Commissioner is satisfied that the requirement to comply with standard 144 in a specific manner is unreasonable and disproportionate and that the standard should be varied. The Commissioner will introduce a restriction on the standard in this case this will be set out by a variation of the standard. The following wording is suggested:*

You must comply with standard 144 in all circumstances, except:

- making the announcement first in Welsh during a crisis or emergency*

- 2.83.10 *The Council is invited to discuss the wording immediately with a view to agreeing it so that no further consultation would be required on the standard in question (see section 57(7)(b) of the Welsh Language Measure).*

The requirement to comply with standards 141, 142 and 143 is not unreasonable or disproportionate.”

Further information presented by the Council in support of the Challenge to Standards 141, 142, 143 and 144

12. The number of signs within each workplace can vary significantly depending on the size of the workplace. However an initial audit of current signage within a single workplace identified over 700 signs which would require translation at an estimated cost of over £4000. The cost of providing current signage across the Council's main workplaces is estimated at £12000.
13. As health and safety signage is purchased from external suppliers, provision of Welsh language versions, where available, would incur additional significant cost.
14. **The Council remains of the view that these standards are unreasonable and disproportionate.**

Standard 145

Note: Standard 145 relates to one other standard, namely standard 146. The Welsh Language Commissioner must impose standard 145 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as set out in Part 2 under the title ‘Standards that are reliant on other standards – special conditions’ if the Commissioner has also imposed standard 146.

You must produce, and publish on your website, a 5-year strategy that sets out how you propose to promote the Welsh language and to facilitate the use of the Welsh language more widely in your area; and the strategy must include (amongst other matters)—

- (a) a target (in terms of the percentage of speakers in your area) for increasing or maintaining the number of Welsh speakers in your area by the end of the 5 year period concerned, and
- (b) a statement setting out how you intend to reach that target;

and you must review the strategy and publish a revised version on your website within 5 years of publishing a strategy (or of publishing a revised strategy).

Imposition day: 30/09/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.87.1 *“The standard exists to ensure that robust plans are in place for ensuring that councils plan how they will promote the Welsh language and facilitate the use of Welsh in their areas. The standard requires a body to produce, and publish on its website, a five year strategy setting out how it will undertake to do this. The standard also includes a target for increasing or maintaining the number of Welsh speakers by the end of the five year period.*
- 2.87.2 *Various duties are placed on local authorities in connection to a number of areas.*

- 2.87.3 *The Council states that it cannot in itself be responsible for maintaining or increasing the number of Welsh language speakers in the area. According to the Welsh Language Measure ‘promotion standard’ means a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely. The Council already has a duty to produce strategies in relation to children and young people and health and well-being. These strategies mean joint working with a number of external agencies and partnerships.*
- 2.87.4 *The results of the 2011 Census include data on the numbers and percentages of Welsh speakers by county, and census results over a period of some decades are compared. According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh. Between 1981 – 2011 there was a decrease of just over 5,000 Welsh speakers in Neath Port Talbot which represents a percentage point reduction of 3.8%. The Welsh Language Use Survey21 provides information on a county basis on the levels of proficiency of Welsh speakers and the use of the Welsh language. Table 2 of the report states that there was a loss of 2,500 fluent Welsh speakers in Neath Port Talbot between 2004-06 and 2013-15, and an increase of 5,200 Welsh speakers who are not fluent. Table 3 shows how many speak Welsh every day in each county, and there had been no change in Neath Port Talbot between 2004-06 and 2013-15.*
- 2.87.5 *The Council’s second argument is that no new funds have been made available to support the standard and in the current financial climate commitment to this would be impossible. Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given.*
- 2.87.6 *It does not appear that the Council has considered any ideas on how it can comply with this standard.*
- 2.87.7 *The Council had until 30 September 2016 to comply with these standards.*
- 2.87 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 145

1. The Council has made it clear in all of its responses to the Commissioner that the Council is committed to promoting the Welsh language and culture.
2. The Council does this in many ways, for example, through the provision of Welsh medium education schools for children and young people and through its former Welsh Language Scheme. However, there are many other factors that influence the number of Welsh speakers in an area, not least population change – birth, death and migration rates – and which are not within the Council’s control. For this reason the standard is unreasonable. It is also not correct to assume that the Council has given no consideration to how this standard can be met.
3. The Council has repeatedly drawn the Commissioner’s attention to the cuts being made to local authority budgets. The impact of those cuts is clearly set out in the Council’s budget reports which are available on the Council’s website for the Commissioner to reference if additional evidence is required. On the basis that the Council does not control all of the factors that impact on the number of Welsh speakers in its area, and there is no funding to invest in measures to promote the Welsh Language and Culture beyond what already features in the Council’s plans this standard is unreasonable.
4. The Commissioner makes reference to requirements placed upon the Council to produce strategies in relation to children and young people and health and wellbeing. However, those duties have been repealed by the Wellbeing of Future Generations Act.
5. The Wellbeing of Future Generations Act place a responsibility on Public Services Boards to plan to improve the economic, social, cultural and environmental wellbeing of an area and in so doing to demonstrate how these contribute to the Wellbeing Goals that the Welsh Government has established, whilst also embracing the sustainable development principle.
6. The Council notes that the Wellbeing Goal associated with the Welsh Language and Culture does not require the Public Services Board to set

targets for increasing or maintaining the number of Welsh speakers in the area. The Goal is “A Wales of vibrant culture and thriving Welsh language” and is further described as “A society that promotes and protects culture, heritage and the Welsh language, and which encourages people to participate in the arts, and sports and recreation”. The standard is therefore disproportionate as it seeks to place responsibility on the Council alone when the Wellbeing of Future Generations Act clearly places the responsibility for contributing to the Wellbeing Goal that relates to Welsh Language and Culture on the Public Services Board.

7. The Council does not consider that the production of a strategy which will simply list all of the existing plans that it has in place to promote the Welsh Language and Culture but in itself drive no change is reasonable.

Proposal

8. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

9. **The Council’s proposal is that this standard excludes the requirements for targets to be set to increase the number of Welsh speakers in its area.**

Standard 146

Note: Standard 145 relates to one other standard, namely standard 146. The Welsh Language Commissioner must impose standard 145 on an organization in accordance with the requirements of the Welsh Language Standards (No. 1) Regulations 2015 as Welsh language use in Wales 2013-15, page 32 and 42 set out in Part 2 under the title 'Standards that are reliant on other standards – special conditions' if the Commissioner has also imposed standard 146.

Five years after publishing a strategy in accordance with standard 145 you must -

- (a) assess to what extent you have followed that strategy and have reached the target set by it, and
- (b) publish that assessment on your website, ensuring that it contains the following information -
 - (i) the number of Welsh speakers in your area, and the age of those speakers;
 - (ii) a list of the activities that you have arranged or funded during the previous 5 years in order to promote the use of the Welsh language.

Imposition day: 30/09/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points

- 2.91.1 *“The standard exists to ensure that robust plans are in place in order to assess the five year strategy set out in standard 145. The standard requires the body to assess to what extent it has reached the targets set. The standard also requires it to publish the assessment on its website including the specific information set out in part (b).”*
- 2.91.2 *The Council presents the same arguments for standard 146 as it does for standard 145 and additionally notes that as it is challenging the reasonableness of Standard 145, accepting Standard 146 would therefore not be reasonable or proportionate.*

- 2.91.3 *The Council states that it cannot in itself be responsible for maintaining or increasing the number of Welsh language speakers in the area. According to the Welsh Language Measure ‘promotion standard’ means a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely. The Council already has a duty to produce strategies in relation to children and young people and health and well-being. These strategies mean joint working with a number of external agencies and partnerships.*
- 2.91.4 *The results of the 2011 Census include data on the numbers and percentages of Welsh speakers by county, and census results over a period of some decades are compared. According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh. Between 1981 – 2011 there was a decrease of just over 5,000 Welsh speakers in Neath Port Talbot which represents a percentage point reduction of 3.8%. The Welsh Language Use Survey provides information on a county basis on the levels of proficiency of Welsh speakers and the use of the Welsh language. Table 2 of the report states that there was a loss of 2,500 fluent Welsh speakers in Neath Port Talbot between 2004-06 and 2013-15, and an increase of 5,200 Welsh speakers who are not fluent. Table 3 shows how many speak Welsh every day in each county, and there had been no change in Neath Port Talbot between 2004-06 and 2013-15.*
- 2.91.5 *The Council’s second argument is that no new funds have been made available to support the standard and in the current financial climate commitment to this would be impossible. Although the Council complains that the implementation of the standard as varied is costly, no details of the cost are given.*
- 2.91.6 *It does not appear that the Council has considered ideas how it can comply with this standard.*
- 2.91.7 *The Council had until 30 September 2016 to comply with these standards.*
- 2.91 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with this standard is unreasonable or disproportionate.”*

Further information presented by the Council in support of the Challenge to Standard 146

1. The Council has argued that it is not reasonable or proportionate for the Council to set targets to increase the number of Welsh speakers in its area and consequently the requirement to report on a target we have made clear is not reasonable is in itself also unreasonable.

Proposal

2. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

3. **The Council’s proposal is that this standard excludes the requirements for the Council to report on targets.**

Standard 154

You must keep a record, in relation to each financial year of the number of new and vacant posts which were categorised (in accordance with standard 136) as posts where -

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

Imposition day: 30/03/2016

Initial Considerations by the Welsh Language Commissioner

In her initial consideration, the Welsh Language Commissioner has made the following points:

- 2.95.1 *It is important to note that the Council is seeking an extension to the imposition date of the standard in this regard and has not requested a complete departure from the standard.*
- 2.95.2 *Neath Port Talbot County Borough Council responded to the consultation on the draft compliance notice by stating that it could not comply with standard 154 within six months and therefore requested an extension of 12 months to the imposition date. Following receipt of the Council's response, it was decided to continue with the imposition of standard 154, with an imposition day of 6 months.*
- 2.95.3 *The Council states that due to other demands on HR's duties it requests an extension to the imposition date. Despite this, no evidence or further information is provided with regard to the workload of the HR department within the next months in support of this.*
- 2.95.4 *According to the 2011 Census, over 20,500 of the population of Neath Port Talbot are able to speak Welsh.*

2.95 *In light of the above, the Commissioner is not satisfied that the requirement on Neath Port Talbot County Borough Council to comply with standard 154 by 30/03/2016 is unreasonable or disproportionate”*

Further information presented by the Council in support of the Challenge to Standard 146

1. The Commissioner acknowledges that the Council’s challenge focuses on the timescales for implementing this standard but offers no explanation why the Commissioner dismissed the Council’s alternative proposal.
2. The Council considers it unreasonable for the Commissioner to require evidence that the workload of the HR Department does not enable the standard to be met within the timescale the Commissioner has proposed, especially when the Council has repeatedly outlined the impact of reducing budgets on its operations.
3. The HR department is 30% smaller than it was before cuts were imposed. Its priority is to support the Council in delivering the changes needed to secure its budget and service objectives within a policy framework that seeks to avoid compulsory redundancies to the maximum extent possible. The department has administered over 1,500 voluntary redundancy packages and over 600 redeployments in the recent years which has been an absolute priority for the department. It is unreasonable of the Commissioner to expect the workload associated with this standard to be prioritised over this other work.

Proposal

4. The Commissioner has invited the Council to make further representations on the type of changes the Council would like to make to the Compliance Notice:

“If the initial consideration is that the Commissioner does not agree with the Council that the requirement for the Council to comply with a standard, or comply with a standard in a particular way, is unreasonable or disproportionate, the Council is asked, if it still believes that a standard is unreasonable and disproportionate, and if it so wishes, to comment on the initial considerations attached to this letter and inform

the Commissioner of what subsequent steps it seeks, providing information on what type of changes (if any) the Council would like to make to the compliance notice and/or the nature of any variation sought (if at all).”

- 5. The Council’s proposal is that the imposition date is extended by 12 months.**

Dear Commissioner,

Challenging future duties: Consultation in determining an application by Neath Port Talbot County Borough Council [section 57(4) of the Welsh Language (Wales) Measure 2011]

I write in response to your letter dated 6 June 2016.

First, I thank you for agreeing to extend the deadline for submitting a response to your correspondence. For the reasons explained to your staff, it would have not been possible to provide a response within the initial timetable of ten working days. The extended timetable has enabled elected Members to formally consider your correspondence and to properly scrutinise the Council's response, respecting their democratic mandate.

However, the Council very much regrets that you have not been prepared to remove the "confidential" status attached to your correspondence. We consider these matters to be very much in the public interest and we have placed all of the responses to the various consultations in the public domain. Additionally, we have been free to share our considerations and proposals with other bodies subject to the standards (and they with us) enabling us to identify options for meeting the standards that we had not considered, as well as enabling standards that pose a difficulty in a number of organisations to be highlighted. I urge you to reconsider your position on this point. However, as per the email correspondence sent to your office (dated 6th July 2016), the Authority has determined that it is not able to present the report containing the draft response to the Policy & Resources Cabinet Board (14th July 2016) as an "exempt report" for the statutory reasons outlined in that correspondence.

In your letter, you make reference to the Council's initial Challenge sent to you on 15 January 2016 and comment on an opportunity given on 3 February to provide further information in support of our Challenge. You point out that we did not provide additional information; but there was no indication at the time that you were intending to set such a high evidential threshold to inform your consideration of the Challenge. Had there been clear guidance on this point, then we would have responded

differently. When we sent our Challenge to you, we considered that we had set out the main arguments as to why the standards, subject of the Challenge, were problematic. Consequently, there cannot be adverse inference drawn of the fact that the Council did not submit additional evidence following your correspondence of 3 February 2016.

However, I welcome your invitation to make suggestions as to where the standards could be varied to make the standards reasonable and proportionate. You will see in the attached document that we have identified 21 standards where we could comply if you were minded to adopt the variations that we have proposed. We also note and welcome the additional clarification and/or changes to a further three standards which, if the standards remain as now drafted, would be acceptable to the Council. I hope you will appreciate that we have invested considerable time in identifying such variations and I hope that you will respond positively to our proposals.

Whilst we have been able to see ways to embrace the 24 standards referred to above, provided the variations are agreed, there are 30 standards which the Council is proposing are not applied at this time. There are a range of reasons for arriving at this position, not least the additional cost in times of severe budgetary constraints; deficits in the linguistic capability of our current workforce and in some particular instances, because the Council does not have the practical means to comply with the requirements. We maintain that the evidence that we have provided previously and now demonstrates that the 30 standards are unreasonable and disproportionate at this time. However, I also want to make it clear that the Council is open to revisiting these standards in the future when circumstances change.

I would like to draw your attention to the following sentence on page 26 of your initial findings:

2.36 You must also comply with standards 65 and 65A from the day your rights of appeal are exhausted.

We have presumed in our response this has been included in error as these standards have not been applied to this Council. I would be grateful for clarification on this.

I am sure you will know that local authorities have many statutory duties to discharge. Adherence to the Welsh Language Standards is one of very many requirements that we must try to respond to. It is essential that your work also reflects this reality and that there is a proportionate and reasonable approach to identifying what is possible in our local circumstances at this point in time, balancing the aims behind the Welsh Language (Wales) Measure 2011 with other rights and duties that arise from other legislation. Indeed, the Welsh Language Standards (No.1) Regulations 2015 requires this of you. I believe that the position we are now proposing to you enables an appropriate balance to be given to the introduction of the Welsh Language Standards set against the other significant duties and responsibilities that we have to shoulder.

I also believe that the process that has been followed would benefit from review. This is a point I have also made to the Welsh Government and is one that I believe they accept. I am sure we all accept that there are improvements that can be identified and which should inform future practice. In particular, if Councils had been asked to identify standards to you that could be met in the first instance, rather than councils being required to respond to a set you had decided should apply, we could have moved forward much more quickly together and with considerably less effort. This could have been accompanied by an agreed continuous improvement plan that identified how other standards could be achieved within a given period to bring all councils to a more consistent position but at a pace that reflected their own starting points. I offer this to you as a suggestion that has merit and in recognition of the way in which the standards will be gradually introduced to more organisations in the coming years.

This brings me to my final point. I do not think that relying on a written exchange of views is conducive to developing a shared understanding of what is possible in our local circumstances and I would therefore request that you agree to a meeting to discuss our submission, prior to you coming to your final determination. I make the point that I wrote to you twice last year on 24 July 2015 and 15 October 2015 in an attempt to initiate a dialogue on these matters; but did not receive a response on either occasion. I understand that there have been meetings between council officers and your officials in some parts of Wales and we would seek the same opportunity.

It is not in the public interest for there to be further Challenge between two public bodies and we would certainly wish to avoid the necessity to resort to the Welsh Language Tribunal to resolve our genuine concerns. I look forward to your response.

Yours sincerely,

Steven Phillips
Chief Executive