

Enforcement Policy



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Foreword

As Welsh Language Commissioner, it is a pleasure to present this revised Enforcement Policy, which reflects our approach to co regulation and our increasing focus on regulatory outcomes. These include ensuring that organisations are able to deliver high quality Welsh language services, and that Welsh speakers are aware of the services available to them.

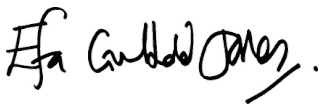
This policy is founded on principles of collaboration and partnership, working closely with organisations not only to increase the opportunities available for people to use Welsh, but also to ensure that the rights of Welsh speakers and Welsh language service users are realised in practice when accessing services.

We have a dual role as a regulator: to educate, support and promote compliance, but also to enforce where necessary. Our preference is to work with organisations through a preventative and collaborative approach, in order to avoid situations where enforcement action is required. However, where there is no assurance or confidence that organisations are meeting their duties, we will act firmly and use all our powers to secure compliance, and in turn to protect the rights of Welsh speakers and Welsh language service users.

In doing so, we are committed to acting in accordance with the principles of good regulation – such as fairness, proportionality, transparency and consistency – ensuring that our actions are appropriate and proportionate to the circumstances.

Our aim is to create an environment in which the Welsh language thrives, acting openly and consistently to build confidence in our approach. We focus on outcomes that make a tangible difference to Welsh speakers, and we call on all organisations to work with us to achieve this aim.

Thank you for your continued cooperation.



Efa Gruffudd Jones

Welsh Language Commissioner

1. Introduction

- 1.1** The Welsh Language (Wales) Measure 2011 (“the Measure”) established a legal framework to place a duty on certain organisations to comply with Welsh Language Standards (“standards”). Standards exist in the following areas:
- service delivery
 - policy making
 - operational
 - promotion
 - record keeping.
- 1.2** The duties arising from the standards require organisations to promote and facilitate the use of the Welsh language, and to treat the Welsh language no less favourably than the English language.
- 1.3** Compliance notices are issued to organisations by the Welsh Language Commissioner (“the Commissioner”), setting out the specific standards they must comply with, and by when. Copies of compliance notices can be found on our [website](#).
- 1.4** This Enforcement Policy is a statutory document produced in accordance with section 108 of the Measure. It provides advice and information on how we will ensure that organisations comply with their duties, and reflects our duties under Part 5 of the Measure (Enforcement of Standards).
- 1.5** It explains how we will deal with non-compliance and what action is most likely to be taken in different circumstances. It also provides information on our principles and our approach to enforcement.
- 1.6** This policy should be read alongside our [Regulatory Framework](#) to ensure a full understanding of our regulatory work. Our [complaints and investigations procedure](#) should also be read, as it provides practical details of our process for handling complaints and investigations.
- 1.7** The primary target audience for the policy is those organisations required to comply with the standards. It is also relevant to the public, and to persons¹ who wish to complain about an organisation’s compliance.
- 1.8** This is the third version of this policy. It will be kept under review and a copy will be available on our [website](#) and in all our offices.

1 A person in this context includes any individual or body of corporate or non-corporate persons.

2. Our Regulatory Approach

- 2.1 We regulate to ensure an increase in the opportunities available for people to use the Welsh language. In doing so, we also contribute to realising our vision of a Wales where people are able to use the Welsh language in their everyday lives.
- 2.2 We are committed to a co-regulatory approach, with a strong focus on promoting self-regulation. The success of a co-regulatory approach is dependent on operating within a climate of openness and honesty.
- 2.3 We encourage organisations to contact us at the earliest opportunity to make us aware of any risk of non-compliance. We also welcome requests from organisations for advice and clarification of compliance related issues.
- 2.4 Our aim is to ensure that regulation does not simply mean carrying out statutory investigations and taking enforcement action. It also means providing advice, raising awareness and understanding, sharing expertise, and supporting organisations in their efforts to comply with the standards.
- 2.5 Quite simply, there are a range of approaches we can use, and we will always choose the one that works best in each circumstance.
- 2.6 Complaints from the public are a vital source of information about the standard and quality of the Welsh language services provided.
- 2.7 In accordance with our duty under section 93 of the Measure, we will consider conducting a statutory investigation into every valid complaint that we receive. If our regulatory support fails, we will use the powers granted to us under Part 5 of the Measure.

Regulatory outcomes

- 2.8 We will regulate with a specific and strategic purpose, being very clear about what we aim to achieve when making regulatory decisions. In accordance with our commitment to a co-regulatory approach, we have set and published regulatory outcomes.
- 2.9 In setting out our regulatory outcomes, our aim is to ensure, amongst other things, that they:
 - place the Welsh language standards and our regulatory work in the context of the national vision to increase the number of Welsh speakers and to increase the use of the Welsh language
 - deliver transparent public statements on what we intend to achieve, and how we will be able to demonstrate when it has been achieved

- ensure that our regulatory activities focus on outcomes for Welsh language users and have the maximum possible impact on opportunities to use the Welsh language
- mitigate the risk that organisations focus on strict compliance rather than good outcomes for Welsh language users.

2.10 Our desire is for these outcomes to represent the common aims and objectives of organisations, Welsh language users, and ourselves as the Welsh Language Commissioner, and for us all to take ownership of them.

2.11 The need to achieve these outcomes will inform our regulatory approach and methods, and we will allocate our resources where the risks to achieving these outcomes are greatest.



Outcome 1: Organisations with the capacity to deliver high-quality Welsh language services at all times



Outcome 2: Welsh language users have an understanding and awareness of the Welsh language services available to them



Outcome 3: Organisations give due regard to the potential impacts of their policy decisions on the Welsh language



Outcome 4: Organisations increase the use of Welsh in their workplace, enabling staff to work in Welsh on a day-to-day basis



Outcome 5: Organisations promote the Welsh language so that people can use the language naturally in their daily lives



Outcome 6: Organisations protect and promote the interests of Welsh language users by having effective governance and complaints arrangements

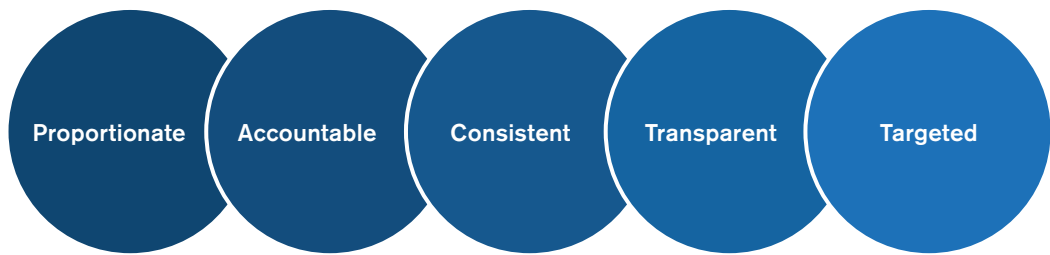


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Our principles

2.12 We will follow the five principles of good regulation set out below:



Proportionate

2.13 We will act proportionately when deciding whether or not to conduct an investigation. We will consider whether conducting an investigation represents a reasonable and proportionate use of our resources, in view of the seriousness of the issue.

2.14 Once an investigation is concluded, and in deciding what further action to take, we will consider what is proportionate to prevent future non-compliance.

Accountable

2.15 The Measure grants organisations and complainants the right to appeal to [the Welsh Language Tribunal](#) (“the Tribunal”) against some of our decisions. Complainants may also request a review of a decision in some cases. Further information about the Tribunal’s work can be found in [section 6](#) of this policy.

2.16 We will be accountable for the decisions we take by welcoming comments and feedback on our work and how we use our powers. We have a complaints procedure in place that can be used to raise concerns about our work and our decisions ([see section 7 of this policy](#)).

Consistent

- 2.17** We will consider the facts of each case individually and consistently when deciding on an appropriate response. In doing so, we will ensure fairness and objectivity in dealing with different parties. Recognising that the circumstances of each case will differ, applying a consistent approach does not mean reaching the same decision.

Transparent

- 2.18** We will be transparent, ensuring that the public and organisations understand the decisions that we have taken, and why.
- 2.19** We will keep a record of the details of all our investigations, including any action that we take. This information will be published in the form of a [Register of Enforcement Action](#).

Targeted

- 2.20** We will target our regulatory work, based on a number of specific measures, including risk assessment. We will use risk to manage the use of our time and resources, focusing on work that will have the greatest impact on compliance and on opportunities for people to use the Welsh language.
- 2.21** We will also consider sharing resources with others, where possible, to avoid any duplication. For example, we may work with ombudsmen and other commissioners when conducting investigations in some cases ([see section 4 of this policy](#)). We will consider the circumstances of each case to determine the most appropriate course of action.

3. Complaints

- 3.1** In accordance with our regulatory outcomes, we expect the people of Wales to receive high quality Welsh language services from organisations and for things to be corrected when they go wrong.
- 3.2** The quality of the service provided by organisations is highly dependent on their awareness and understanding of their own performance. Complaints are a means of learning about users' experiences. Although complaints occur when something has gone wrong, they can be seen as a positive opportunity to better understand performance, and to make improvements.
- 3.3** Under the standards, organisations are expected to have a complaints procedure that outlines how they intend to deal with complaints, and to publish a document on their website setting out that procedure.
- 3.4** We encourage complainants to direct their complaints to the organisation concerned in the first instance, to provide an opportunity for the organisation to respond and offer a resolution. However, it is important to emphasise that complainants are under no obligation to do so before submitting a complaint to us.
- 3.5** When a complainant submits a valid complaint to us, we will write to the organisation to invite them to respond to the complaint and to inform us of the following:
- any relevant circumstances that explain what has happened
 - any action taken to rectify the issue
 - any action to be taken in future to ensure that a similar situation does not arise again.
- 3.6** After receiving the organisation's response, we will consider the steps we can take. In doing so, our main focus will be on achieving the best possible outcome for the complainant and for users of the Welsh language, whether by investigating or by other means, e.g. exercising the powers granted to us under Part 4 of the Measure.

Submitting a valid complaint to the Commissioner

- 3.7** A complainant must be a person who has been directly affected, or a person permitted to act on that person's behalf. Either person will be regarded as the complainant for the purposes of this policy.

3.8 We will receive complaints:

- in writing or electronically
- through our website
- through our social media channels.

3.9 If it is not possible to submit a complaint using the above methods due to specific circumstances, the complainant may contact us by telephone, or any other suitable means, to explain this and to discuss their complaint. We will make reasonable provision to support them to submit a complaint in other ways.

3.10 A complainant must provide sufficient details about their complaint, including:

- the name of the organisation
- the circumstances of the complaint
- how the matter has affected the complainant
- the complainant's name and contact details.

3.11 We may not be able to consider the complaint further if these details have not been provided, or if the exceptions in paragraphs 3.20-3.22 of the policy apply.

3.12 Further details about our complaints procedure can be found on our [website](#).

Deciding whether to investigate or not

3.13 Where a valid complaint has been made, we have a statutory duty to consider conducting an investigation (unless the exceptions outlined below in paragraphs 3.20-3.22 apply).

3.14 Our decision on whether to investigate or not will depend on a number of factors. These factors may differ and/or be weighted differently, depending on the circumstances. We will consider all relevant factors before deciding whether to investigate, and will review whether those factors remain relevant during the investigation.

3.15 These factors include:

- (a) the organisation's response when the matter came to light
- (b) the nature of the non-compliance, and the extent to which it was intentional or unintentional

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- (c) the steps taken by the organisation to address the non-compliance
 - (d) the extent to which this matter has been the subject of previous complaints or investigations
 - (e) the likelihood, in our view, that this matter will arise again
 - (f) the likelihood, in our view, that this matter is likely to have an adverse effect on users of the Welsh language and, if so, how significant this effect could be
 - (g) the likelihood, in our view, that an investigation (and any subsequent action, where applicable) would have a positive impact on achieving our regulatory outcomes
 - (h) the extent to which the organisation was aware of the risks taken
 - (i) whether we have already provided advice in this area, and whether that advice was followed
 - (j) whether it would be possible to respond to the complaint without investigating, on the basis that a legal or statutory remedy exists, which addresses the substance of the complaint
 - (k) whether the complaint was made in circumstances outlined in paragraphs 3.20-3.22.

3.16 Where we decide to investigate, we will do so with the aim of:

- gathering information and establishing facts
- identifying non-compliance and understanding its causes
- determining appropriate interventions, including any enforcement actions.

3.17 It should be noted that a decision not to investigate does not mean taking no action or refraining from proactive steps. Even if an organisation has given a high level of assurance when first contacted that the matter has been resolved and the likelihood of recurrence is low, we may decide to maintain contact with the organisation and to request evidence where appropriate.

3.18 Once a decision has been made, whether to investigate or not, we will inform the relevant parties and explain our reasons in full.

3.19 If the complainant is dissatisfied with the decision, they may, with the Tribunal's permission, apply for a review of the decision. We will inform the complainant of this right ([see section 6 of this policy](#)).

Complaints made more than a year after a complainant became aware of a matter

3.20 If a complaint is made more than a year after a complainant became aware of the matter, we will not consider investigating unless we believe it is appropriate for us to do so. Such situations may include, but are not limited to, the following:

- ongoing non-compliance
- serious non-compliance being revealed
- significant public attention in the case
- the complainant having a valid reason for not submitting the complaint earlier.

Frivolous or vexatious complaints

3.21 If we consider a complaint to be frivolous or vexatious, one that has already been raised numerous times, or if the complaint is withdrawn, we will not investigate, and will close the complaint.

3.22 A number of circumstances may lead us to conclude that a complaint is frivolous or vexatious. These may include circumstances where the complainant:

- submits an unsubstantiated complaint or changes the substance of the complaint
- submits a complaint that has already been made more than once, or relates to the same matter raised in a previous complaint and does not contain any new information
- insists on pursuing a valid complaint in a way that is considered unreasonable
- insists that the complaint be handled in a way that is incompatible with this enforcement policy or with good practice
- makes unreasonable demands
- communicates in a manner that is considered unreasonable.

4. Investigations

Conducting an investigation

4.1 Once we have decided to investigate, following a complaint or on our own initiative, we will seek to avoid unnecessary delays and to reach a decision as soon as possible. We recognise that investigations can cause concern and create uncertainty for the complainant, as well as the organisation concerned.

4.2 To mitigate this, our officers will follow the following principles when investigating:

- We will inform everyone at the earliest possible opportunity that we have opened an investigation, and explain the reasons for doing so
- We will provide regular updates on our investigation and let them know when they can expect the next update
- We will provide the contact details of the officer who will act as the main point of contact during our investigation
- We will give everyone reasonable opportunities to make representations at different stages of the investigation process. This may be done orally or in writing
- We will retain any evidence received in accordance with our publication scheme
- We will give reasonable notice to any organisation if we decide to exercise our power to enter a premises² that is under their control
- We will inform them when a decision has been made about whether to take further action in response to non-compliance
- When we take follow-up action, we will explain the relevant rights to make representations and to appeal the decision.

We will also act in accordance with our duties under Schedule 10, Parts 1-3 of the Measure, and do so promptly and in a timely manner. Further details of our practical arrangements for conducting an investigation can be found in our [complaints and investigation procedure on our website](#).

² This power does not extend to dwellings.

Collaboration with ombudsmen and other commissioners

4.3 If it appears that the subject of an investigation could also be the subject of an investigation by an ombudsman or another commissioner, we will, if it is considered appropriate, do the following:

- inform the relevant ombudsman or commissioner of the investigation
- consult with the relevant ombudsman or commissioner in relation to the investigation.

4.4 Where both parties are investigating the same matter, or where ombudsmen and other commissioners are investigating a related matter, one or more of the following may be done:

- co-operate in relation to the investigation(s)
- conduct a joint investigation
- produce and publish a joint report in relation to the different investigations or the joint investigation.

4.5 If we decide not to investigate, we will provide information on how to refer the related matter to the relevant ombudsman or another commissioner. We will also share that information with any other person who has an interest in the case.

Terminating an investigation

4.6 We may decide to terminate an investigation at any time. The reasons for deciding to terminate an investigation may include, but are not limited to, the following:

- the investigation represents a disproportionate use of our resources
- the investigation quickly shows that the organisation has not failed to comply and therefore there is no justification for continuing to use resources on the investigation
- the investigation quickly shows that the organisation is taking appropriate steps to ensure compliance
- we consider it to be in the public interest to terminate the investigation
- the organisation has been dissolved
- we consider that one or more of the factors set out in paragraph 3.15 above has become relevant during the investigation.

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- 4.7** When we decide to terminate an investigation, we will notify the relevant parties of the decision as soon as practicable, and we will provide our reasons for doing so. If the investigation follows a complaint, we will inform the complainant of their right, with the Tribunal's permission, to apply for a review of our decision ([see section 6 of this policy](#)).

Deciding on an investigation

- 4.8** Following an investigation, we must decide whether the organisation has failed to comply or not, and whether we will take further action. The report will explain the reasons for our decisions. Before making a final decision, we will prepare a draft report on the investigation and give every person with an interest an opportunity to comment on that draft report.

- 4.9** Depending on the decision, a range of actions are available to us. These include:

- taking no further action
- providing advice and/or making recommendations to the organisation or any other relevant person
- seeking a settlement agreement with the organisation
- requiring the organisation to take specific action
- requiring the organisation to produce an action plan
- publicising the organisation's non-compliance
- requiring the organisation to publicise its non-compliance
- imposing a civil penalty.

- 4.10** Where we have decided that an organisation has failed to comply with a standard, we will seek to ensure that the organisation restores compliance voluntarily. Where that is not possible, we will take steps to enforce compliance.

- 4.11** Based on the principles set out in paragraphs 2.12-2.21 of this policy, we will exercise our discretion and professional judgement when deciding on the appropriate response to each individual case. The exact steps that we decide to take will depend on the nature of the non-compliance and the associated circumstances. Those circumstances include, but are not limited to, the following:

- the organisation's cooperation during the investigation
- the organisation's ability and willingness to address the non-compliance effectively
- the steps taken by the organisation to prevent non-compliance and to address the reasons for those failures

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- the organisation's willingness to be transparent about the non-compliance.

No further action

- 4.12** When we decide not to take further action, the organisation will not be expected to take any additional steps. However, the duty to comply with the standard will remain.

Providing advice or making recommendations

- 4.13** When we decide to provide advice or to make recommendations, we will do so with the aim of providing guidance on how to address non-compliance as quickly and effectively as possible.
- 4.14** If we consider it appropriate, a written warning may accompany our advice and guidance.
- 4.15** We are more likely to conclude that providing advice or making recommendations (whether or not accompanied by a written warning) is an appropriate response where one or more of the following factors are considered significant:
- the risk associated with the non-compliance is relatively low
 - the organisation has a good history of compliance
 - the organisation has acted in good faith, demonstrating a commitment to compliance
 - the organisation has shown willingness to rectify the issues
 - where the non-compliance is beyond the organisation's control, but we would welcome the organisation's cooperation to prevent the non-compliance from recurring.
- 4.16** Any advice provided and/or recommendations made will always be confirmed in writing, and will usually specify:
- the nature of the non-compliance
 - the actions to be taken to address the non-compliance
 - a timeframe for submitting relevant evidence
 - where a written warning is issued, the possible consequences of failing to rectify the non-compliance.
- 4.17** Where advice has been provided and/or recommendations have been made, we will take reasonable and practical steps to contact the organisation in order to obtain evidence or confirmation that those steps have been taken. This will enable us to monitor compliance and to ensure that our advice is implemented effectively.

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- 4.18** If the matter in question arises again in future, such advice, recommendations and/or written warnings will be taken into account when considering the most appropriate enforcement action to take.

Settlement agreements

- 4.19** When entering into a settlement agreement, we will agree not to take enforcement action while the organisation agrees to take action or to act in a specified way in order to restore and maintain compliance in future.
- 4.20** We may seek to enter into a settlement agreement in cases where an organisation commits to taking reasonable and effective action within a specified timeframe. We are likely to agree to enter into a settlement agreement in cases where we are satisfied:
- that the organisation has provided sufficient detail on any proposed actions – to enable us to make an informed decision
 - that the proposed timeframe for completing the actions is achievable and appropriate, taking into account the nature, seriousness and circumstances of the case
 - that there is evidence of a positive commitment to the actions and the organisation is likely to fulfil that commitment
 - that the proposed actions appear sufficient to ensure that the non-compliance does not continue.
- 4.21** The Commissioner retains the right for a period of 5 years to apply to a county court for an order requiring the organisation to comply with the settlement agreement.

Requiring organisations to take specific actions or to produce an action plan

- 4.22** Where it is not possible to ensure that an organisation restores compliance voluntarily, we will ensure that this happens by requiring the organisation to take specific actions or to prepare an action plan.
- 4.23** When we decide to require an organisation to take specific actions or produce an action plan, we will set out what is required in our decision notice.

Publicising non-compliance

- 4.24** We may publicise, or require the organisation to publicise the non-compliance where we consider:

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- that this would be an effective response, or part of an effective response, to prevent future non-compliance
 - that there is clear public interest in the investigation.

This may be done through various means, including publishing:

- a statement that the organisation has failed to comply with its duties
- the investigation report
- any other information relating to the case.

4.25 The decision notice will set out the steps to be taken to publicise the non-compliance, and the consequences if the organisation fails to comply with this requirement.

4.26 The requirement to publicise their non-compliance may be in addition to other enforcement actions required of the organisation.

Civil penalty

4.27 In cases where we consider imposing a civil penalty on an organisation we will take account of the following factors:

- the seriousness of the matter
- the circumstances of the organisation
- the need to prevent future non-compliance.

4.28 We may also take account of any other matter that we consider relevant when deciding whether to impose a civil penalty.

4.29 A civil penalty may be any amount up to a maximum of £5,000³. We will determine the appropriate amount based on an assessment of the nature, seriousness and circumstances of the case. Any civil penalty received will be paid into the Welsh Consolidated Fund.

3 However, the Welsh Ministers may, by order, set an amount that differs from this maximum amount.

4.30 The decision notice will include the following details:

- the amount of the civil penalty
- how to pay the civil penalty
- the period within which the civil penalty must be paid (which will be no less than 28 days)
- the consequence if the penalty is not paid
- the organisation's right to appeal.

Failure to comply with enforcement action⁴

4.31 Where we have taken one or more enforcement actions, we will monitor compliance with those requirements.

4.32 We will treat any failure to comply with these requirements seriously, and further enforcement action is likely to follow. Depending on the circumstances of the case, this may include:

- during the relevant period⁵, applying to the county court for an order requiring the organisation to comply, or
- imposing a civil penalty.

4.33 Many of the factors set out in paragraph 3.15 of this policy will be relevant when making such a decision.

⁴ One or more of the actions set out in section 77(3) of the Measure.

⁵ Within a period of 5 years, which begins on the day the decision notice is issued or the action plan comes into effect.

5. Register of Enforcement Action

5.1 The Commissioner must maintain a register of enforcement action, setting out the details of our investigations.

5.2 The register includes the following details:

- a description of each investigation
- the findings of the investigations
- details of decision notices
- a statement indicating whether further action was taken or not
- if further action was taken, a statement about that action
- details of appeals made to the Tribunal under Chapter 4, Part 5 of the Measure, including but not limited to, decisions made by the Tribunal.

5.3 A copy of the current register is available on our [website](#) and in all our offices. We will update the register continuously.

5.4 The information contained in the register is retained in accordance with our Information Retention and Disposal Policy.

6. Appeals to the Welsh Language Tribunal

- 6.1 The Welsh Language Tribunal is an independent tribunal that deals with appeals from organisations and complainants against certain decisions made by the Commissioner.
- 6.2 Organisations may appeal to the Tribunal if the Commissioner, following an investigation, has decided that there was a failure to comply with a standard. They may also appeal against any enforcement action taken.
- 6.3 Complainants may appeal to the Tribunal if the Commissioner, following an investigation, has decided that there was no failure to comply with a standard. They may also apply to the Tribunal for a review of the Commissioner's decision not to investigate a complaint.
- 6.4 Details of how to make an appeal or request a review, along with the Tribunal's Rules, can be found on the [Welsh Language Tribunal's website](#).

7. Complaints about the Commissioner

- 7.1** We have a specific complaints procedure for anyone wishing to make a complaint about the Commissioner.
- 7.2** Further details about this procedure can be found on our [website](#).
- 7.3** You can contact us using the details below:
- Phone: 0345 6033 221
 - Email: post@cyg-wlc.wales
 - Website: welshlanguagecommissioner.wales

8. Reasonable Adjustments

- 8.1** We are committed to ensuring that our procedures and processes for receiving complaints and conducting investigations are fair and accessible to everyone. Where appropriate, we will make reasonable adjustments to our procedures and communication methods to remove barriers and support the needs of individuals with disabilities or specific requirements.

9. Privacy Notice

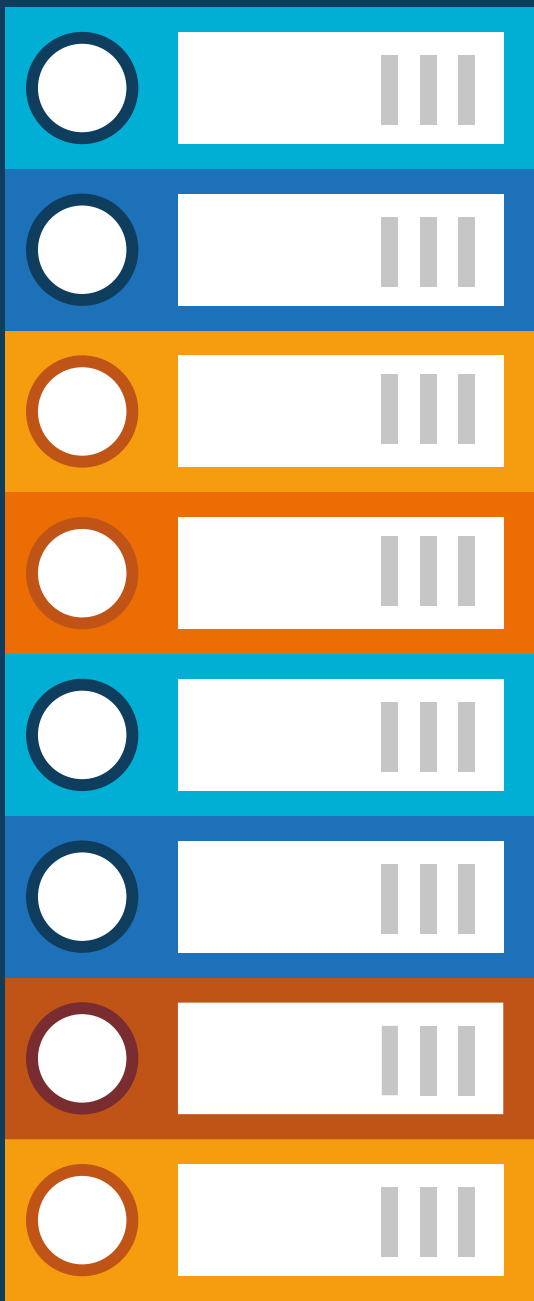
- 9.1** Information about the collection, use and protection of personal data in connection with our regulatory work is set out in our Privacy Notice. We are committed to handling all personal data in accordance with the relevant data protection legislation. For comprehensive details of our data processing practices, including individuals' rights and how to exercise them, please refer to our [Privacy Notice](#).

10. Accessible Formats

- 10.1** On request, we can provide this policy in accessible formats, including Braille, large print, British Sign Language (BSL), audio, and Easy Read format.



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