



TRIBIWNLYS Y GYMRAEG
Rhif yr Achos: TyG/19/08 a 19/09

ALED POWELL

(Ceisydd)

v.

COMISIYNYDD Y GYMRAEG

(Atebydd)

PENDERFYNIAD Y TRIBIWNLYS

Natur y Cais

Cais o dan adran 103 o Fesur y Gymraeg (Cymru) 2011 (Y Mesur) am ganiatâd i wneud cais i adolygu penderfyniadau'r Comisiynydd (8.10.19 am TyG 19/8 a 10.10.19 am TyG 19/9) i beidio â chynnal ymchwiliad i gŵyn bod corff wedi methu â chydymffurfio â Safon Iaith Gymraeg perthnasol. Rhoddwyd caniatâd am y cais yn flaenorol. Ymunwyd achos TyG 19/8 a TyG 19/9 ar yr un pryd am wrandawriad ond manylir rhesymau'r penderfyniad ar wahân isod.



WELSH LANGUAGE TRIBUNAL
Case No: TyG/19/08 and 19/09

ALED POWELL

(Applicant)

v.

WELSH LANGUAGE COMMISSIONER

(Respondent)

TRIBUNAL DECISION

Nature of application

Application under section 103 of the Welsh Language (Wales) Measure 2011 (The Measure) for a review of the decisions of the Commissioner (8.10.19 for WLT 19/8 and 10.10.19 for WLT 19/9) not to carry out an investigation into a complaint of a failure by a body to comply with a relevant Welsh language Standard. Permission for the application had been granted previously. The two matters WLT 19/8 and WLT 19/9 were joined at that time but reasons for the decision are noted separately below.

Aelodau'r Panel

Iwan Jenkins (Llywydd y Tribiwnlys)

Isata Kanneh

Sara Peacock

Y Gwrandawriad

Cynhaliwyd gwrandawriad rhith ar y 24 Awst 2020.

Penderfyniad y Tribiwnlys

Mae'r Tribiwnlys wedi penderfynu yn y ddwy achos, TyG 19/8 a TyG 19/9, bod defnydd y Comisiynydd o ddisgresiwn wrth benderfynu dim i gynnal ymchwiliad yn un cyfreithlon a rhesymol.

Egwyddorion cyfreithiol:

Mae Adran 103(3) o'r Mesur yn darparu bod:

“(3) Rhaid i'r Tribiwnlys...Ymdrin â chais am adolygiad o'r fath fel pe bai'n gais i'r Uchel Lys am adolygiad barnwrol”. Yr egwyddorion sy'n ymwneud ag adolygiad barnwrol fel yr eglurir gan yr Arglwydd Diplock yn Council of Civil Service Unions v Minister for the Civil Service [1983] UKHL 6:

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality,” the second “irrationality” and the third “procedural impropriety.”

The Panel Members

Iwan Jenkins (President of the Tribunal)

Isata Kanneh

Sara Peacock

Hearing

A Virtual Hearing took place on 24 August 2020.

Decision of the Tribunal

The Tribunal concludes, that in both matters WLT 19/8 and WLT 19/9, that the Commissioners use of discretion in deciding not to investigate the matter was a lawful and reasonable decision.

Legal Principles:

Section 103(3) of the Measure provides that:

“(3) The Tribunal must...deal with an application for such a review as if it were an application for judicial review made to the High Court” The principles relating to judicial review as explained by Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service [1983] UKHL 6:

“Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call “illegality,” the second “irrationality” and the third “procedural impropriety.”

By “illegality” as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By “irrationality” I mean what can by now be succinctly referred to as “Wednesbury unreasonableness” (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. “Irrationality” by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

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I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the

decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

Mae'r Comisiynydd dan ddyletswydd dan adran 93(1) o'r Mesur i ystyried y mater, mae ganddo ddisgresiwn, ar ôl gwneud hynny, i gynnal ymchwiliad i gŵyn ddilys neu beidio. Yn benderfyniad Tŷ'r Arglwyddi yn Padfield v Minister of Agriculture [1968] UKHL 1 gosodwyd egwyddorion perthnasol mewn achos o'r fath.

Yn ôl yr Arglwydd Reid:

“Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act...In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.”

Ac yn ôl yr Arglwydd Upjohn:

“Unlawful behaviour by the Minister may be stated with sufficient accuracy...

decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”

The Commissioner has a discretion under section 93(1) of the Measure whether or not to conduct an investigation into a valid complaint. In the decision of the House of Lords in Padfield v Minister of Agriculture [1968] UKHL 1 as laying down the relevant principles in such a case.

According to Lord Reid:

“Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act...In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court.”

And according to Lord Upjohn:

“Unlawful behaviour by the Minister may be stated with sufficient accuracy...

(a) by an outright refusal to consider the relevant matter, or

(b) by misdirecting himself in point of law, or

(c) by taking into account some wholly irrelevant or extraneous considerations, or

(d) by wholly omitting to take into account a relevant consideration.

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(c) by taking into account some wholly irrelevant or extraneous considerations, or

(d) by wholly omitting to take into account a relevant consideration.

In practice (these propositions) merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings I have mentioned.”

Mae'r Tribiwnlys felly yn ymdrin â'r her i benderfyniad y Comisiynydd ar y sail ganlynol:

i) Mater i'r Ymgeisydd yw dangos bod y Comisiynydd wedi methu â gweithredu o fewn ei bwerau;

ii) Mae gan y Comisiynydd ddisgresiwn, dan adran 93 o'r Mesur, I gynnal ymchwiliad i gŵyn ddilys neu beidio;

iii) Rhaid i'r disgresiwn hwnnw gael ei ymarfer mewn ffordd sy'n gydnaws â pholisi ac amcanion y Mesur yn gyffredinol;

In practice (these propositions) merge into one another and ultimately it becomes a question whether for one reason or another the Minister has acted unlawfully in the sense of misdirecting himself in law, that is, not merely in respect of some point of law but by failing to observe the other headings I have mentioned.”

The Tribunal therefore approaches the challenge to the Commissioner's decision on the following basis:

i) It is for the Applicant to demonstrate that the Commissioner has failed to act within his powers;

ii) The Commissioner has a discretion, under section 93 of the Measure, whether or not to carry out an investigation of a valid complaint;

iii) That discretion must be exercised in a way that is consistent with the policy and objects of the Measure generally;

- | | |
|--|--|
| <p>iv) Wrth benderfynu sut i ymarfer ei disgresiwn rhaid i'r Comisiynydd roi ystyriaeth i faterion perthnasol a pheidio â rhoi ystyriaeth i rai amherthnasol; bernir yr hyn sy'n berthnasol a'r hyn sy'n amherthnasol drwy gyfeirio at bolisiau ac amcanion y Mesur;</p> | <p>iv) When deciding how to exercise his discretion the Commissioner must take into account relevant considerations and must not take into account irrelevant ones; what is relevant and what is irrelevant is to be judged by reference to the policies and objects of the Measure;</p> |
| <p>v) Er mai mater i'r Comisiynydd yw pwyso a mesur yr ystyriaethau perthnasol er mwyn penderfynu a yw'r cydbwysedd yn ffafrio ymchwiliad ai peidio, rhaid iddi weithredu'n rhesymol wrth wneud hynny;</p> | <p>v) Although it is for the Commissioner to weigh up the relevant considerations in order to decide whether the balance favours an investigation or not, he must act rationally when doing so;</p> |
| <p>vi) Rhaid iddo hefyd weithredu â thegwch gweithdrefnol tuag at y sawl y mae'n rhoi ystyriaeth i'w gŵyn.</p> | <p>vi) He must also act with procedural fairness towards the person whose complaint he is considering.</p> |

Gweithdrefn

O ystyried natur y cais, fe'i hystyriwyd, yn unol ag arfer arferol y Llys Gweinyddol, ar sail datganiadau ysgrifenedig – datganiad yr Ymgeisydd ei hun, a datganiad Mr Aled Roberts Y Comisiynydd.

Cynhaliwyd gwrandawriad ar y 24 Awst 2020 lle cafodd y ddau barti'r cyfle i annerch y Tribiwnlys. Ymddangosodd yr Ymgeisydd yn bersonol. Cynrychiolwyd y Comisiynydd gan MS Anna Senter o Eversheds Sutherlands LLP.

Procedure

In view of the nature of the application, it was considered, in accordance with the normal practice of the Administrative Court, on the basis of written statements – that of the Applicant himself and that of Mr Aled Roberts, the Commissioner.

A hearing took place on the 24 August 2020 at which both parties had the opportunity to address the Tribunal. The Applicant appeared in person. The Commissioner was represented by Ms Anna Senter of Eversheds Sutherlands LLP.

RHESYMAU

TyG 19/08

REASONS

WLT19/08

Rhagarweiniad

1. Ar 3 Medi 2019 e-bostiodd y Ceisydd y Comisiynydd yn cwyno bod Cyngor Wrexham wedi methu yn ei ddyletswyddau o dan Safonau'r Gymraeg drwy godi arwydd traffig newydd neu adnewyddol uniaith Saesneg gyda'r geiriau 'New Road layout Ahead' arno. Y lleoliad oedd wrth gyffordd yr A539 a'r B5605 yn Rhiwabon ger Wrexham.

2. Ar 8 Hydref 2019 hysbysodd y Comisiynydd y Ceisydd na fyddai'n ymchwilio i'r gŵyn dan sylw ar y sail bod Cyngor Wrexham, ar ôl gwneud ymchwiliadau gyda nhw, wedi cadarnhau nad y nhw cododd yr arwydd ond cwmni arall. Nododd y Comisiynydd na allai ymchwilio cwmni nad oedd yn atebol dan Fesur y Gymraeg (Cymru) 2011 ("Y Mesur").

3. Mae'r Ceisydd yn dadlau: -

Bod yr arwydd i wneud a gwaith ar heol gyhoeddus sy'n gysylltiedig â gwaith codi archfarchnad, ac nid heolydd tu fewn i'r safle gwaith. Mae yna sawl arwydd ac nid un yn unig.

Bod yr arwyddion ar bostyn golau sydd yn eiddo i'r Cyngor Lleol ac felly bod rhaid bod caniatâd wedi'i rhoi i godi'r arwydd.

Introduction

1. On the 3 September 2019 the Applicant emailed the Commissioner complaining that Wrexham Council had failed with its duties under the Welsh language Standards by erecting a new or replacement English language only traffic sign stating, "New Road layout Ahead". The location was at the junction of the A539 and B5605 at Ruabon, near Wrexham.

2. On the 8 October 2020 the Commissioner notified the Applicant that he would not be carrying out an investigation into the complaint in question, on the grounds that, having made enquiries with Wrexham Council they had confirmed that it was not erected by them but another company. The Commissioner stated that they could not investigate a company that was not subject to the Welsh Language (Wales) Measure 2011.

3. The Applicant argues: -

That the sign is to do with work on a public road linked to the building of a supermarket and it is not a road within the work site area. That there are several signs not just one.

The signs are on lampposts that the Council is responsible for and that it follows permission has been granted to erect the sign.

Os bod gwaith yn cael ei gwneud ar yr heol, mae rhaid bod caniatâd y Cyngor Lleol yn cael ei rhoi. Felly mae'r cwestiwn pa un ai bod yr asiantaeth sy'n gyfrifol am y gwaith mewn cytundeb gyda'r Cyngor Lleol i gyflawni'r gwaith yn un byw.

Mae'r Cyngor yn gyfrifol am yr heolydd, am ganiatâd cynllunio ac arwyddion ac felly mae hyn yn dangos bod cysylltiad rhwng y cwmni a godwyd yr arwydd a'r Cyngor.

Mae'r Cyngor yn son iddynt gysylltu gyda'r cwmni perthnasol lle na wnaed hyn mewn achosion eraill ble wnaethpwyd cwyn. Mae hwn yn adlewyrchu bod cysylltiad rhwng y Cyngor a'r cwmni.

Bod y Comisiynydd yn ei lythyr yn son nad oedd dystiolaeth o fethiant dan y Mesur wedi'i gyflwyno, cyfrifoldeb y Comisiynydd nid y Ceisydd oedd hel y dystiolaeth.

Mae'r Comisiynydd yn anwybyddu'r ffaith mae'r Cyngor gall fod yn gyfrifol, a bod y cais am wybodaeth ynglŷn â phwy sy'n gyfrifol a derbyn gair y Cyngor yn ddatrysiad buan sy'n anghyfreithlon.

Bod datrysiad cynnar heb ymchwiliad yn fethiant ar ran y Comisiynydd i arfaeth ei swyddogaeth ac felly yn afresymol ac yn afresymegol. Byddai derbyn gwybodaeth o fewn ymchwiliad yn gwneud y wybodaeth yn llawer iawn mwy dibynadwy na

If work is undertaken on a road the permission of the Council is required and consequently the question of whether the agency responsible for the work is contractually linked to the Council is a live one.

The Council is responsible for the roads, for planning permission and signs and this reflects that there must be a link between the company who erected the sign and the Council.

The Council state that they contacted the relevant company where in other complaint cases this has not been the case. This indicates that there is a link between the Council and the company.

The Commissioner in his letter states that no evidence to confirm a failure under the Measure existed; it is the Commissioner's responsibility to gather evidence not the Applicant.

The Commissioner ignores the fact that the Council could be responsible, and that the request for information in relation to who is responsible and accepting the Council's word is an early resolution that is illegal.

That an early resolution without an investigation is a failure by the Commissioner to discharge his statutory function and is therefore unreasonable and irrational. Receiving information as part of an investigation would make the information more

gwybodaeth sydd yn cael ei gyflwyno tu allan i ymchwiliad ffurfiol.

Dan Bolisi Gorfodi'r Comisiynydd bod y Comisiynydd wedi newid y drefn o benderfynu ymchwilio, trwy ofyn am wybodaeth cyn ymchwiliad; bod hyn yn effeithio ar ddisgwyliad dilys y Ceisydd a'r cyhoedd yn gyffredinol.

Bod penderfyniad y Comisiynydd felly yn un anghymesur ac afresymol ar y seiliau yna.

4. Roedd y Comisiynydd yn dadlau nad oedd yn agored iddo gynnal ymchwiliad i'r gwyn gan nad y Cyngor oedd yn gyfrifol am yr arwydd, nac ychwaith berson oedd yn gweithredu ar ei ran.

Nid oedd hawl dan adran 71(2) o'r Mesur i gynnal ymchwiliad statudol.

Nid oedd tystiolaeth mae'r Cyngor oedd yn gyfrifol. Nid rhoi cyfrifoldeb ar y Ceisydd oedd hwn ond datganiad i nodi'r ffaith.

Nid oedd amheuaeth o fethiant I gydymffurfio ac felly dim hawl i gynnal ymchwiliad.

Nid oes hawl ganddo ymchwilio pa un ai bod y Cyngor wedi methu a gwrthod caniatâd i osod arwydd uniaith Saesneg ar eiddo'r Cyngor.

reliable than information presented outside a formal investigation.

That under the Commissioner's Enforcement Policy he has changed the way he decides whether to investigate by asking for information before investigating, that this affects the "reasonable expectation" of the Applicant and the general public.

The Commissioner's decision not to investigate is therefore disproportional and unreasonable on those grounds.

4. The Commissioner argued that it was not open to him to conduct an investigation into the complaint as it was not the Council that was responsible for the sign, nor anyone acting on the Council's behalf.

There was no power under section 71(2) of the Measure to hold a statutory investigation

There was no evidence that the Council was responsible. This was not seeking to pass the responsibility to the Applicant but a statement of fact.

There was no suspicion of a failure to comply and consequently no right to hold an investigation.

There is no power to investigate whether the Council has failed to refuse consent to erect a sign in English only on Council property.

Nid datrysiad buan oedd hwn gan nad y Cyngor oedd yn gyfrifol am godi'r arwydd. Roedd ymchwilio tu hwnt i bwerau'r Comisiynydd ac nid defnydd o ddisgresiwn oedd hwn.

CASGLIAD:

5. Mae'r Tribiwnlys o'r farn nad oedd y dystiolaeth yn dangos bod y Cyngor yn gysylltiedig nac yn gyfrifol am godi'r arwydd. Mae'r Cyngor yn derbyn cyfrifoldeb mewn achosion eraill gan gynnwys TyG 19/9 ac felly nid yw'n afresymol cael hyder ac ymddiriedaeth yng nghyffwrdd fel y Cyngor. Nid yw cysylltu gyda'r Cyngor yn un rhywbeth newydd gan ei fod yn rhywbeth arferol ar ôl derbyn unrhyw gwyn.

Roedd yn rhesymol i'r Comisiynydd penderfynu nad oedd hawl ganddo ymchwilio i'r achos gan nad oedd amheuaeth o fethiant gan y Cyngor i gyfiawnhau ymchwiliad dan adran 71 o'r Mesur.

Nid oedd y Cyngor, na'r Comisiynydd yn y llythyr i'r Ceisydd, wedi manylu enw'r cwmni ac efallai bod hyn yn ystyriaeth am y dyfodol.

This was not an early resolution as the Council was not responsible for erecting the sign. Investigating was beyond the Commissioner's powers and it is not a case of using discretion not to investigate.

CONCLUSION:

5. The Tribunal is of the opinion that the evidence does not confirm the Council was linked to nor responsible for erecting the sign. The Council does accept responsibility in other cases including WLT 19/9 and it is not unreasonable to have confidence and trust in bodies such as the Council. Contacting the Council is not a new feature as it is something that is usual following receipt of a complaint.

It was reasonable for the Commissioner to decide that he had no power to investigate in this matter as there was no suspicion that a failure by the Council under S71 of the Measure had occurred.

The Council, and the Commissioner in his letter, failed to name the company and this may be a consideration for the future.

RHESYMAU

TyG 19/09

REASONS:

WLT 19/9

Rhagarweiniad

1. Ar 3 Medi 2019 e-bostiodd y Ceisydd y Comisiynydd yn cwyno bod Cyngor Wrecsam wedi methu yn ei ddyletswyddau o dan Safonau'r Gymraeg (safon 62) drwy godi arwydd traffig newydd neu adnewyddol. Roedd yr arwydd yn ddwyieithog ond gyda'r Gymraeg islaw'r Saesneg ac yn llythrennau llai o faint. Y lleoliad oedd wrth gyffordd yr A539 a'r B5605 yn Rhiwabon ger Wrecsam.

2. Ar 10 Hydref 2019 hysbysodd y Comisiynydd y Ceisydd na fyddai'n ymchwilio i'r gŵyn dan sylw ar y sail bod: -

- Cyngor Wrecsam, wedi derbyn cyfrifoldeb am yr arwydd codwyd gan drydydd parti ar ei rhan,
- Bod y Cyngor yn ymateb trwy newid yr arwydd ac yn atgoffa'r trydydd parti am ei ddyletswydd am arwyddion ar ran y Cyngor,
- Nad oedd yn ystyried bod y cwyn yn amlygu arfer systemig neu arfer sy'n gyffredin yn y sefydliad,
- Roedd ymchwiliad blaenorol diweddar (cyfeirnod CSG237) wedi arwain at

Introduction:

1. On the 3 September 2019 the Applicant emailed the Commissioner complaining that Wrexham Council had failed with its duties under the Welsh language Standards (standard 61) by erecting a new or replacement sign that was bilingual but had the Welsh below the English and in smaller letters. The location was at the junction of the A539 and B5605 at Ruabon, near Wrexham.

2. On the 10 October 2019 the Commissioner notified the Applicant that he would not be conducting an investigation into the complaint on the grounds that:

- Wrexham Council had accepted responsibility for the sign through a third party that had erected it on their behalf.
- The Council had reacted by changing the sign and reminding the third party of their obligations in relation to signs placed for the Council.
- That he did not consider the complaint reflected a systematic failing that was common in the organisation.
- That a recent previous investigation (Reference CSG237) had led to action to

weithredu i newid agwedd ac ymddygiad y Cyngor.

- Nid oedd ymchwiliad pellach wedi'r cwyn yma yn ddefnydd cymesur o adnoddau i unrhyw fudd fyddai'n deillio i ddefnyddwyr y Gymraeg.

3. Roedd Y Ceisydd yn herio'r penderfyniad ar y seiliau canlynol: -

Roedd y rhesymau a nodwyd gan y Comisiyned yn afresymol ac afresymegol gan roedd wedi ystyried pethau amherthnasol.

Nid oedd ymchwiliad (CSG 237) yn hollol gyfreithiol a chyfeiriwyd at sylwadau'r Tribiwnlys yn achos TyG 18/2 (paragraff 18).

Dan Bolisi Gorfodi'r Comisiynydd bod y Comisiynydd wedi newid trefn o benderfynu ymchwilio, trwy ofyn am wybodaeth cyn ymchwiliad; bod hyn yn effeithio ar ddisgwyliad dilys y Ceisydd a'r cyhoedd yn gyffredinol.

Bod rhesymau a nodir yn natganiad y Comisiynydd i'r achos yma a) – f) yn anghywir ac amherthnasol. (defnyddir y llythrennau a nodir yn y datganiad er nad ydynt yn nhrefn yr wyddor Gymraeg): -

- a) Nodwyd mai un arwydd oedd ond mae un yn ormod.

change the attitude and behaviour of the Council.

- That a further investigation following this complaint would not be a proportional use of resources for any benefit that would be provided to users of the Welsh language.

3. The Applicant challenged the decision on the following grounds: -

The reasons noted by the Commissioner were unreasonable and illogical as he had considered irrelevant factors.

The investigation (CSG 237) was not legally compliant and reference was made to comments in the Tribunals decision WLT 18/2 (paragraph 18).

Under the Commissioner's Enforcement Policy the Commissioner had changed the way decisions were taken whether to investigate by seeking information prior to commencing an investigation; this affected the Applicant's reasonable expectation and that of the general public.

That the reasons noted in the Commissioner's statement in this case marked a) – h) were wrong and irrelevant: -

- a) It noted there was only one sign but one is too many.

- b) Derbyniwyd bod methiant fel petai yn llai o fethiant oherwydd bod Cymraeg yn bresennol.
 - c) Nid oedd yr amser buodd yn bresennol na nifer a welwyd yn berthansol i'r achos ac roedd felly yn afresymol i ystyried y fath beth.
 - d) Nid oedd tystiolaeth bod yr arwydd wedi newid ac felly yn afresymol i ddibynnu ar y wybodaeth.
 - e) Ni ddylai methiant digwydd o gwbl a bod newid arwydd yn gyflym ar ôl cwyn yn adlewyrchu methiant ni ddylid bodloni arno. Mae hyn yn amherthnasol.
 - f) Nid oedd y Cyngor yn rhagweithiol, ymateb ar ol i fethiant oedd hwn, methiant sy'n arferol ac felly yn cyfiawnhau ymchwiliad.
 - g) Ni all y Comisiynydd bod yn sicr mae dyma'r unig fethiant ers ymchwiliad CSG 237 (Mehefin 2018). Nodir mai'r unig gŵyn yw hyn efallai ond mae'n anghywir dweud nad oes methiant eraill gan nad yw o fewn gwybodaeth y Comisiynydd heb iddo fynd o gwmpas y Sir ei hun.
 - h) Mae methiant wedi bod ac mae osgoi ymchwiliad ar sail bod yr arwydd wedi newid ar ol cwyn dim yn cael gwared â'r methiant. Mae datganiad nad oes goblygiadau andwyol trwy fethu ymchwilio yn anghywir.
- b) The fact of the failure was accepted as if the fact Welsh was present meant it was less serious.
 - c) The amount of time it was present and the number who had seen it was not a relevant consideration to the case and it was unreasonable to consider it.
 - d) There was no evidence that the sign had been changed and consequently unreasonable to rely on that information.
 - e) Failures should not happen at all and changing a sign quickly following a complaint should not reflect a situation where a failure is tolerated. This is irrelevant.
 - f) The Council had not been proactive and has only reacted after a failure; failings are frequent and should justify an investigation.
 - g) The Commissioner states but cannot be certain that this is the only failure since investigation CSG 237(June 2018). It may be the only complaint, but it is wrong to state there are no other failures as it is not within his knowledge unless he drove around the county himself.
 - h) There has been a failure and avoiding an investigation on the grounds that the sign has been changed does not eliminate the failure. The statement that there is no harmful implication from a failure to investigate is wrong.

Nododd Y Ceisydd bod y Comisiynydd yn methu dilyn canllawiau ei hun, sydd yn gymwys yn y Polisi gorfodi dan adran 4. Sef bod defnyddwyr Y Gymraeg yn ganolog i'r achosion, bod ymateb cryf yn bwysig, bod rhaid goruchwyllo safonau a sicrhau bod cyrff yn cydymffurfio. Nododd bod derbyn ymateb y Cyngor i gywiro sefyllfa ar ol iddo ddigwydd dim yn dilyn y canllawiau yma.

Nodwyd hefyd bod yr arwydd wedi symud o fewn byr amser ond roedd y gwaith wedi gorffen ac nid oedd tystiolaeth mae ymateb y Cyngor daeth a'r sefyllfa i ben.

Nodwyd bod defnyddio adnoddau fel rhan o'r rhesymau yn groes i amcan y Mesur.

4. Roedd Y Comisiynydd yn dadlau bod ei ddefnydd o ddisgresiwn yn gyfreithiol a'r rhesymau yn rhesymol a rhesymegol.

Nodwyd bod y Tribiwnlys yn achos Tyg 16/8 (paragraff 14) wedi son bod rhaid ystyried pethau perthnasol trwy ystyried polisi a ffeithiau'r achos. Nodwyd manylion datganiad y Comisiynydd a sonnir bod ffactorau a nodwyd a) – h) yn berthnasol a rhesymol.

- Roedd un arwydd yn berthnasol i ddifrifoldeb y cwyn,

The Applicant states that the Commissioner is failing to follow his own guidance that is stated in the Enforcement Policy under section 4 – that Welsh users are central to the matter, that strong actions are important, that there should be monitoring of compliance with Standards by the relevant bodies. He states that accepting the Council's response in correcting their error after the event is not following that guidance.

He stated that the sign was moved quickly but the work had been completed and there was no evidence that it was the Council's actions that led to this.

He stated that using resources as a reason was against the purpose of the Measure.

4. The Commissioner argued that his use of discretion was lawful and the reasons reasonable and logical.

Reference was made to the Tribunal's decision in WLT 16/8 (paragraph 14) where it stated that regards must be had to relevant factors when considering policy and the facts of the case. Reference was made to the Commissioner's statement and that the factors listed a) - h) were relevant and reasonable.

- That the fact it was only one sign was relevant to seriousness.

- Bod absenoldeb cwyn arall ers Mehefin 2018 yn berthnasol oherwydd roedd y Comisiynydd yn ymwybodol o'r camau cymerwyd gan y Cyngor i wella'r sefyllfa ar ol ymchwiliad CSG 237.
- The absence of another complaint since June 2018 was relevant as the Commissioner was aware of the steps taken by the Council to improve the situation following investigation CSG 237.
- Roedd y ffaith bod 13 cwyn arall i wneud ac arwyddion na chodwyd gan y Cyngor yn amherthnasol. Ond fe edrychwyd ar gŵyn arall ble roedd un arwydd trydanol yn methu'r safonau gan fod egwyddor newydd a phwysig yn perthyn i hyn. Roedd manylion yr achos yma yn adlewyrchu mae un methiant oedd hwn nid arfer. Roedd ymchwiliad llawn yn anghymesur felly.
- The existence of 13 other complaints regarding road signs not erected by the Council was irrelevant, but there had been an investigation into an electronic road sign that breached the standards as it raised new and important issues. The details of this case reflected that this was a single failure and not a custom. A full investigation was therefore disproportional.
- Mae goruchwyllo yn digwydd o'r cyrff er nad yw hyn yn amlwg i'r cyhoedd. Yr oedd y dystiolaeth oedd gan y Comisiynydd yn adlewyrchu mae camgymeriad anghyffredin oedd hwn ac effaith israddol.
- Supervision of organisations does take place though this is not obvious to the public. The evidence that the Commissioner had, reflected the fact that, this was an unusual occurrence and the impact was low level.
- Bod ymchwiliad diweddar (Mehefin 2018) wedi newid ymddygiad y Cyngor ac ni fyddai budd ail adrodd yr ymchwiliad yna oherwydd un camgymeriad. Rhaid edrych ar y budd mwyaf dan amgylchiadau'r achos.
- That the recent investigation (June 2018) had changed the behaviour of the Council and there would be no benefit to repeat the investigation as a result of one error. There was a need to look at the overriding benefit in the circumstances of this case.
- Bod difrifoldeb yn berthnasol a bod treigl amser y camgymeriad yn bwysig. Nid oedd dystiolaeth ei fod yn ac am amser hir ac felly rhaid ystyried yng nghydbwysedd ffeithiau eraill yr achos.
- That seriousness was relevant and the amount of time that the sign was present is important. There was no evidence it was there for a long time and that needed to be considered in a balanced way with the other factors of the case.

CASGLIAD:

5. Roedd Y Tribiwnlys yn derbyn bod gan y Comisiynydd hawl i ddefnyddio disgresiwn fel y nodir yn achos TyG 16/8.

Roedd Y Tribiwnlys yn ystyried bod rhaid ystyried rhesymau'r Comisiynydd wrth beidio ymchwilio yn eu cyfanrwydd. Nodwyd hwy yn ei ddatganiad paragraff 29 fel a) - h).

Roedd y Tribiwnlys o'r farn nad oedd rhesymau a), b), c) a h) yn gryf iawn ac ar ben eu hun dim yn rhesymau digonol nac yn berthnasol gan ystyried amcan y Mesur.

Roedd y Tribiwnlys yn ystyried bod y ffaith bod ymchwiliad llawn wedi'i gynnal ym Mehefin 2018 ac wedi arwain at ganllawiau a gorfodwyd ar y Cyngor yn berthnasol. Roedd y ffaith bod y Cyngor medru ymateb yn gyflym i ddatrys sefyllfa yn gyflym (d) & e)), yn berthnasol hefyd. Roedd y ffaith nad oedd hwn yn arferol yn berthnasol hefyd.

Roedd y ffaith bod y Cyngor wedi cysylltu gyda'r cwmni a bod hyn i gyd wedi deilio o gamau gorfodi ymchwiliad blaenorol yn rhesymau perthnasol i ystyried.

Mae'n rhesymol ystyried y byddai ail gynnal ymchwiliad yn gorffen trwy nodi'r un mesurau

CONCLUSIONS:

5. The Tribunal accepts that the Commissioner has a right to exercise discretion as detailed in the case WLT 16/8.

The Tribunal was of a view that the reasons provided by the Commissioner for not conducting an investigation had to be considered as a whole. They were detailed his statement at paragraph 29 points a) - h).

The Tribunal was of the opinion that reasons a), b), c) and h) were not strong reasons and individually not relevant or sufficient when considering the aims of the Measure.

The Tribunal considered that the fact a full investigation was held in June 2018 and had led to enforcement action that had been imposed on the Council was relevant. The fact that the Council was able to act quickly to resolve the situation (d & e) was relevant as well. The fact that this was not a recurring issue was relevant.

The fact the Council had contacted the company and that this had followed enforcement action from the previous investigation were relevant considerations to consider.

It is reasonable to consider that repeating the investigation would conclude by detailing the same

gorfodi a chanllawiau a nodwyd ym Mehefin 2018. Byddai hyn yn ymateb nad oedd yn gymesur i ffeithiau'r achos yma.

Wrth edrych ar y rhesymau yn eu cyfanrwydd felly roedd y Tribiwnlys o'r farn bod y Comisiynydd wedi ystyried rhesymau perthnasol o fewn amgylchiadau'r achos yma, er nad oedd pob rheswm ar ei ben ei hun yn hollol berthnasol fel y nodir uchod. Ystyrid nad oedd prif amcan y Mesur yn cael ei anwybyddu o fewn y penderfyniad yma.

Ni ystyriwyd pa un ai bod ymchwiliad CSG 237 wedi bod yn gyfreithiol ai peidio. Nid cyfrifoldeb y Tribiwnlys yw edrych ar yr achos yna yn awr.

Iwan Jenkins

Llywydd y Tribiwnlys
16 Medi 2020.

Rhestr Dogfennau a ystyriwyd.

1. Llythyr y Ceisydd at y Comisiynydd yn achos 19/8
2. Llythyr y Ceisydd at y Comisiynydd yn achos 19/9
3. Ymateb y Comisiynydd 19/8
4. Ymateb y Comisiynydd 19/9
5. Cais gan y Ceisydd 19/8 ac unrhyw bapurau atodwyd
6. Cais y Ceisydd 19/9 ac unrhyw bapurau atodwyd
7. Penderfyniad 20.12.2019

enforcement actions that were noted in June 2018. This would not be a proportional response to the facts of this matter.

Analysing the reasons as a whole therefore led the Tribunal to a decision that the Commissioner had considered relevant considerations within the circumstances of this case even though not every reason individually was relevant as noted above. It was considered that the principle aim of the Measure was not being ignored by these considerations in this decision.

No consideration was given to the legality of investigation CSG 237. It is not the Tribunal's responsibility to do so in this case.

Iwan Jenkins

President of the Tribunal
16 September 2020

List of Documents Considered

1. Letter from the Applicant to the Commissioner regarding 19/8
2. Letter from the Applicant to the Commissioner regarding 19/8
3. Reply from the Commissioner 19/8
4. Reply from the Commissioner 19/9
5. Application from the applicant 19/8 and other documents included
6. Application from the applicant 19/9 and other documents included
7. Decision 20.12.2019

8. Datganiad y Comisiynydd
9. Datganiad y Ceisydd
10. Polisi gorfodi'r Comisiynydd a'r Gymraeg
11. Penderfyniad TyG18/02

8. Statement from the Commissioner
9. Statement from the applicant
10. Welsh Language Commissioner's Enforcement policy
11. WLT18/02 Decision