



## **TRIBIWNLYS Y GYMRAEG**

### **Achos TyG/WLT/16/5**

CYNGOR SIR PENFRO  
(Ceisydd)

v.

COMISIYNYDD Y GYMRAEG  
(Atebydd)



## **WELSH LANGUAGE TRIBUNAL**

### **Case TyG/WLT/16/5**

PEMBROKESIRE COUNTY COUNCIL  
(Applicant)

v.

WELSH LANGUAGE COMMISSIONER  
(Respondent)

### **PENDERFYNIAD Y TRIBIWNLYS**

Yn unol â chais y partïon, penderfynwyd y cais heb wrandawiad, o dan reol 37(1) o Reolau Tribiwnlys y Gymraeg 2015

#### Aelodau'r Panel:

Keith Bush CF (Llywydd)  
Nicola Jones  
Sara Williams

#### Deunydd a ystyriwyd gan y Tribiwnlys

Gweler yr Atodiad

#### Natur y cais

Apêl, o dan adran 58 o Fesur y Gymraeg (Cymru) 2011, yn erbyn dyfarniad y Comisiynydd nad yw'r gofyniad i'r Ceisydd gydymffurfio â safonau 26, 26A, 29 a 29A, yn yr hysbysiad cydymffurfio a roddwyd i'r Ceisydd gan y Comisiynydd ar 30 Medi 2015, yn afresymol nac yn anghymesur.

#### Penderfyniad y Tribiwnlys

Gwrthodir yr apêl.

### **THE DECISION OF THE TRIBUNAL**

In accordance with the parties' request, the application was decided, under rule 37(1) of the Welsh Language Tribunal Rules 2015, without a hearing.

#### Members of the Panel:

Keith Bush QC (President)  
Nicola Jones  
Sara Williams

#### Material considered by the Tribunal

See the Appendix

#### Nature of the appeal

An appeal, under section 58 of the Welsh Language (Wales) Measure 2011, against the Commissioner's determination that the requirement for the Applicant to comply with standards 26, 26A, a 29 29A, in the compliance notice given to the Applicant by the Commissioner on 30 September 2015, was not unreasonable or disproportionate.

#### The Tribunal's decision

The appeal is dismissed.

## RHESYMAU

### Cyflwyniad

1. Mae Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 yn pennu safonau mewn perthynas â'r Gymraeg y gall y Comisiynydd gynnwys mewn hysbysiadau cydymffurfio a roddir ganddi i gynghorau sir a chynghorau bwrdeistref sirol (ac i awdurdodau Parciau Cenedlaethol a Gweinidogion Cymru) o dan adran 45 o'r Mesur.
2. Mewn rhai achosion, mae'r Rheoliadau yn rhoi disgrisiwn i'r Comisiynydd i ddewis rhwng gwahanol safonau sy'n ymwneud â'r un maes er mwyn, er enghraifft, adlewyrchu proffil ieithyddol ardal yr awdurdod o dan sylw. Mae safonau 25, 26, 26A, 26B, 28, 29, 29A a 29B yn enghraifft o hyn. Maent i gyd yn ymwneud â'r defnydd o'r Gymraeg pan fydd yr awdurdod wedi gwahodd unigolyn (safonau 25, 26, 26A a 26B) neu mwy nag un person (safonau 28, 29, 29A a 29B) i gyfarfod, a'r cyfarfod hwnnw'n un sy'n ymwneud â llesiant yr unigolyn a wahoddiwyd neu un neu ragor o'r rhai a wahoddiwyd.
3. Mae safonau eraill, sydd heb fod o dan sylw yn yr achos hwn, yn ymwneud â chyfarfodydd (a sefyllfaoedd eraill) nad ydynt yn ymwneud â llesiant unigolion.
4. Nid oes rhaid ystyried hyd a lled llawn y term "llesiant" yn yr achos hwn. Mae'r Ceisydd a'r Comisiynydd, fel ei gilydd, yn derbyn bod cyfarfodydd sy'n cael eu galw gan gyngor sir i drafod llesiant unigolyn yn debyg o ymwneud (o leiaf yn y mwyafrif llethol o achosion) â pherson bregus – er enghraifft plentyn, person oedrannus iawn neu rywun sy'n dioddef anawsterau personol - sy'n gofyn am gymorth adran berthnasol o'r cyngor.

## REASONS

### Introduction

1. The Welsh Language Standards (No. 1) Regulations 2015 set standards in relation to the Welsh language which the Commissioner may include in compliance notices given by her to county and county borough councils (and to National Park authorities and to the Welsh Ministers) under section 45 of the Measure.
2. In some cases, the Regulations give the Commissioner discretion to choose between different standards which relate to the same field in order, for example, to reflect the linguistic profile of the area of the authority in question. Standards 25, 26, 26A, 26B, 28, 29, 29A and 29B are an example of this. They all relate to the use of Welsh in meetings when the authority has invited an individual (standards 25, 26, 26A and 26B) or more than one person (standards 28, 29, 29A and 29B) to a meeting, if that meeting is one which relates to the well-being of the individual invited or of one or more of the individuals invited.
3. Other standards, not under consideration in this case, relate to meetings (and other situations) which do not relate to the well-being of individuals.
4. It is not necessary, in this case, to consider the full extent of the term "well-being". The Applicant and the Commissioner both accept that meetings called by a county council to discuss the well-being of an individual are likely to relate (at least in the great majority of cases) to a vulnerable person – for example a child, a very elderly person or someone suffering some personal difficulty – seeking the assistance of a relevant department of the council.

5. Mewn achosion felly, mae'r Rheoliadau'n rhoi pŵer i'r Comisiynydd i osod ar yr awdurdod perthnasol ddyletswydd, wrth wahodd i'r cyfarfod y person y mae ei lesiant o dan sylw, i wneud ymholiad am ei ddymuniad mewn perthynas â'r iaith a ddefnyddir yn y cyfarfod. Mae'r dewis a roddir i'r person hwnnw'n amrywio, gan ddibynnu ar y safonau a osodir. Yn achos safon 25 gall yr unigolyn ofyn bod y cyfarfod yn cael ei gynnal yn Gymraeg (hynny yw, heb orfod dibynnu ar unrhyw ddarpariaeth cyfieithu). Os dyna ei ddewis, rhaid i'r awdurdod sicrhau hynny. Mae safon 28 yn gwneud darpariaeth debyg mewn perthynas â chyfarfod i drafod llesiant mwy nag un person. Os bydd unrhyw un ohonynt yn dymuno i'r cyfarfod gael ei gynnal yn Gymraeg, rhaid i'r awdurdod sicrhau hynny.
5. In such cases, the Regulations empower the Commissioner to impose on the relevant authority a duty, when inviting to a meeting a person whose well-being is under consideration, to enquire as to that person's wishes in relation to the language to be used in the meeting. The choice given to that person varies, depending on the standards imposed. In the case of standard 25 the individual can ask that the meeting be conducted in Welsh (that is, without having to depend on any provision of translation). If that is the person's choice, the authority must ensure that it is complied with. Standard 28 makes similar provision in relation to a meeting to discuss the well-being of more than one person. If any one of those persons wishes the meeting to be conducted in Welsh the authority must ensure that this is done.
6. Mae'n amlwg bod gallu cyngor sir i weithredu safonau 25 a 28 yn dibynnu ar sgiliau ieithyddol ei staff, ffactor a fydd yn amrywio o gyngor i gyngor, gan adlewyrchu, i raddau, proffil ieithyddol yr ardal. Mae'r Rheoliadau'n darparu, felly, y gall y Comisiynydd osod ar gyngor, yn lle safonau 25 a 28, safonau amgen. O dan safon 26, y dewis sy'n cael ei roi i'r unigolyn yw dewis a yw am ddefnyddio Cymraeg ei hunan yn y cyfarfod. Wrth ofyn am ei ddewis, rhaid i'r cyngor ei hysbysu y bydd y cyngor yn darparu gwasanaeth cyfieithu o'r Gymraeg i'r Saesneg ac o'r Saesneg i'r Gymraeg os oes angen. Mae'n glir oddi wrth y cyd-destun (ac yn arbennig oddi wrth ddarpariaethau safonau 26A a 26B) mai ystyr "os oes angen" yw "os yw'r unigolyn yn dweud ei fod am ddefnyddio'r Gymraeg ac os na fydd yr holl gyfarfod yn cael ei gynnal yn Gymraeg". Os yw'r unigolyn wedi dewis defnyddio'r Gymraeg, ac os na fydd y cyfarfod yn cael ei gynnal yn gyfan gwbl yn Gymraeg, mae'r safonau cysylltiedig (26A neu 26B) yn gosod
6. It is obvious that the ability of a county council to operate standards 25 and 28 depends on the linguistic skills of its staff, a factor which will vary from council to council, reflecting, to some extent, the linguistic profile of the area. The Regulations provide, therefore, that the Commissioner may impose on a council, instead of standards 25 and 28, alternative standards. Under standard 26, the choice given to the individual is to choose whether to use Welsh, himself or herself, in the meeting. When asking for a person's choice, the council must inform that person that the council will provide a simultaneous translation service, from Welsh to English and from English to Welsh, if necessary. It is clear from the context (and in particular from the provisions of standards 26A and 26B) that the meaning of "if necessary" is "if the individual says that he or she wishes to use Welsh and if the entire meeting is not to be conducted in Welsh." If the individual has chosen to use Welsh, and if the meeting is not conducted entirely in Welsh, the

dyletswydd glir ar y cyngor i ddarparu system gyfieithu (o'r Gymraeg i'r Saesneg ac o'r Saesneg i'r Gymraeg) ar gyfer y cyfarfod - naill ai cyfieithu ar y pryd (safon 26A) neu gyfieithu olynol (safon 26B). Mae safonau 29, 29A a 29B yn gwneud darpariaeth debyg ar gyfer cyfarfodydd lle bydd llesiant mwy nag un person i'w gael ei drafod.

connected standards (26A or 26B) impose a clear duty on the council to provide a translation service (from Welsh to English and from English to Welsh) for the meeting – either simultaneous translation (standard 26A) or consecutive translation (standard 26B). Standards 29, 29A 29B make similar provision in relation to meetings where the well-being of more than one person is to be discussed.

7. Yn ôl y Comisiynydd, mae hi wedi rhoi hysbysiadau cydymffurfio sy'n cynnwys safonau 25 a 28 i dri awdurdod yn unig allan o'r 26 y mae'r Rheoliadau'n gymwys iddynt. Mae'r 23 arall i gyd wedi derbyn hysbysiadau cydymffurfio sy'n cynnwys safonau 26 a 26A a 29 a 29A, sy'n caniatáu defnydd o gyfieithu ar y pryd yn y cyfarfod. Ni ddewisodd y Comisiynydd osod safonau 26B na 29B (cyfieithu olynol) ar unrhyw gyngor. Mae safonau 26 a 26A eisoes yn weithredol yn achos 18 o awdurdodau a safonau 29 a 29A yn weithredol yn achos 17 o awdurdodau.

7. According to the Commissioner, she has given compliance notices which include standards 25 and 28 to three authorities only out of the 26 to which the Regulations apply. The other 23 have all received compliance notices which include standards 26 and 26A and 29 and 29A, which permit the use of simultaneous translation in the meeting. The Commissioner has not chosen to impose standards 26B or 29B (consecutive translation) on any council. Standards 26 a 26A are already operating in the case of 18 authorities and standards 29 and 29A are operating in the case of 17 authorities.

8. Er bod y Ceisydd yn un o'r cynghorau sir y bwriedir iddynt ddod o dan safonau 26 a 26A a 29 a 29A (yn hytrach na'r rhai mwy beichus, sef safonau 25 a 28) mae'r Ceisydd wedi herio rhesymoldeb a chymesuredd y safonau hynny. Cyfyngir ei ddadl i un agwedd o'r safonau yn unig, sef y gofyniad fod unrhyw gyfieithu ar y pryd a fydd yn cael ei ddarparu yn cynnwys cyfieithu o'r Saesneg i'r Gymraeg yn ogystal ag o'r Gymraeg i'r Saesneg.

8. Although the Applicant is one of the councils intended to be subject to standards 26 and 26A and 29 and 29A (instead of the more onerous standards 25 and 28) the Applicant has challenged the reasonableness and proportionality of those standards. Its argument is confined to one aspect only of the standards, namely the requirement that any simultaneous translation provided is to include translation from English to Welsh as well as from Welsh to English.

9. Mae'r gofyniad hwnnw'n rhan annatod o'r safonau fel eu pennwyd gan y Rheoliadau. Yr unig ddewis a oedd gan y Comisiynydd i amrywio effaith safon unigol, wrth ei chynnwys mewn hysbysiad cydymffurfio, oedd hwnnw a geir o dan adran 44 o'r Mesur. Gallai fod wedi cyfyngu'r ddyletswydd o dan

9. That requirement is an integral part of the standards as set by the Regulations. The only choice which the Commissioner had to vary the effect of an individual standard, when including it in a compliance notice, was that which arises under section 44 of the Measure. She could have confined the duty under

safon fel ei bod yn gymwys “mewn rhai amgylchiadau, ond nid mewn amgylchiadau eraill” neu “mewn rhyw ardal neu ardaloedd, ond nid mewn ardaloedd eraill”. Wrth wneud cais i'r Comisiynydd o dan adran 54 am iddi ail-ystyried gosod y safonau o dan sylw, ceisiodd y Ceisydd gyfyngu'r her i'r rhannau o'r safonau sy'n mynnu bod y cyfieithu ar y pryd yn cynnwys cyfieithu o'r Saesneg i'r Gymraeg. Dyna, hefyd, sail apêl y Ceisydd i'r Tribiwnlys. Wrth ymateb i ddadleuon y Ceisydd, mae'r Comisiynydd, hithau, wedi canolbwyntio ar feirniadaeth y Ceisydd o'r ddyletswydd i ddarparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg.

a standard so that it applied “in some circumstances, but not in other circumstances” or “in some area or areas, but not in other areas”. When applying under section 54 for the Commissioner to reconsider imposing the standards under consideration, the Applicant sought to confine the challenge to the parts of the standards which require the simultaneous translation to include translation from English to Welsh. That is also the basis of the Applicant's appeal to the Tribunal. When responding to the Applicant's arguments the Commissioner has also, herself, concentrated on the Applicant's criticism of the duty to provide simultaneous translation from English to Welsh.

10. Mae'n wir fod adran 55(2) yn caniatáu i awdurdod herio rhesymoldeb a chymesuredd gofyniad yr hysbysiad cydymffurfio i gydymffurfio â safon *mewn modd penodol* (gweler hefyd is-baragraff (1)(b)(ii)). Nid oes rhaid i awdurdod herio pob agwedd o'r safon dan sylw. Ond os bydd y Comisiynydd (neu'r Tribiwnlys ar apêl) yn derbyn bod un agwedd benodol o safon yn afresymol neu'n anghymesur, mae opsiynau'r Comisiynydd (neu'r Tribiwnlys) yn gyfyngedig. Cânt eu rhestru yn adran 57(6). Nid yw'r naill barti na'r llall wedi ceisio ymrafael â'r cwestiwn sut y gall yr opsiynau hynny (yn benodol yr opsiynau o roi hysbysiad cydymffurfio newydd neu o amrywio'r hysbysiad cydymffurfio presennol) fod yn gymwys i benderfyniad a fyddai, mewn gwirionedd, yn awgrymu'r angen i amrywio'r safon. Ni thrafodwyd y cwestiwn a fyddai gan y Comisiynydd (neu'r Tribiwnlys wrth ystyried apêl) y gallu i amrywio'r ddyletswydd i gydymffurfio gyda'r safonau dan sylw trwy ddileu'r angen i ddarparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg ond heb ymyrryd â'r ddyletswydd i ddarparu

10. It is true that section 55(2) permits an authority to challenge the reasonableness and the proportionality of a requirement of the compliance notice to comply with a standard in a particular respect (see also subparagraph (1)(b)(iii)). An authority does not need to challenge all aspects of the standard in question. But if the Commissioner (or the Tribunal on appeal) accepts that a particular aspect of a standard is unreasonable or disproportionate, the Commissioner's options (or those of the Tribunal) are limited. They are listed in section 57(6). Neither party has attempted to get to grips with the question of how those options (in particular the options of giving a new compliance notice or of varying the existing one) apply to a decision which implied the need, in practice, for a variation of the standard, practical consequences of a decision that that specific duty is unreasonable or disproportionate. There has been no discussion of whether the Commissioner (or the Tribunal when considering an appeal) has the ability to vary the duty to comply with the standard by deleting the need to provide simultaneous translation

cyfieithu ar y pryd o'r Gymraeg i'r Saesneg.

from English to Welsh but without interfering with the duty to provide simultaneous translation from Welsh to English.

11. Gan gofio bod pŵer y Comisiynydd o dan adran 44(2) o'r Mesur, i amrywio safon, wrth ei gosod ar awdurdod, yn gyfyngedig i gymhwyso'r safon "mewn rhai amgylchiadau, ond nid mewn amgylchiadau eraill" ceir o leiaf cryn amheuaeth a oes gan y Tribiwnlys y gallu i wneud yr hyn y mae'r Ceisydd yn gofyn amdano, sef amrywio'r safonau (fel y maent yn effeithio ar y Ceisydd) trwy gael gwared ar gyfeiriadau at gyfieithu o'r Saesneg i'r Gymraeg. Os yw'r gofyniad i ddarparu cyfieithu o'r Saesneg i'r Gymraeg yn afresymol neu'n anghymesur, ac os nad oes modd dileu'r gofyniad hwnnw yn unig (heb ymyrryd â'r ddyletswydd i ddarparu cyfieithu ar y pryd o'r Gymraeg i'r Saesneg) byddai'n rhaid dileu'r gofyniad i gydymffurfio â'r safonau perthnasol yn ei gynswth.

11. Bearing in mind the fact that the Commissioner's power, under section 44(2) of the Measure, is confined to applying the standard "in some circumstances, but not in other circumstances" there is, at least, considerable doubt as to whether the Tribunal has the power to do that which the Applicant is asking for, namely to vary the standards (as they affect the Claimant) by eliminating references to translating from English to Welsh. If the requirement to provide translation from English to Welsh is unreasonable or disproportionate and if it is not possible to delete that requirement only (without interfering with the duty to provide simultaneous translation from Welsh to English) it would be necessary to delete the requirement to comply with the relevant standards in its entirety.

#### Egwyddorion cyfreithiol

12. Yn ôl adran 57(2) o'r Mesur, sy'n ymwneud â herio safonau trwy wneud cais i'r Comisiynydd: "Mater i P (sef y sawl sy'n gwneud y cais) yw dangos bod y gofyniad am i P gydymffurfio â safon, neu gydymffurfio â hi mewn modd penodol, yn afresymol neu'n anghymesur". Er nad yw'r un geiriau'n cael eu hail-adrodd yn y Mesur mewn perthynas ag apêl i'r Tribiwnlys yn erbyn dyfarniad y Comisiynydd, mae'n fater o synnwyr cyffredin bod yr un baich yn syrthio ar Geisydd wrth apelio i'r Tribiwnlys. Rhaid i'r Ceisydd ddangos bod y gofyniad yn afresymol neu'n anghymesur. Nid oes rhaid i'r Comisiynydd ddangos ei fod yn rhesymol ac yn gymesur.

#### Legal principles

12. According to section 57(2) of the Measure, which relates to challenging standards by making an application to the Commissioner: "It is for P (the person making the application) to show that the requirement for P to comply with the standard, or to comply with it in the particular respect, is unreasonable or disproportionate" Although the same words are not repeated in the Measure in relation to an appeal to the Tribunal against the Commissioner's decision, common sense suggests that the same burden falls on the Applicant when seeking to appeal to the Tribunal. The Applicant must show that the requirement is unreasonable or disproportionate. The Commissioner does not have to show that it reasonable and proportionate.

13. Tasg y Tribiwnlys, yn ôl adran 589(2) yw i “ddyfarnu a yw’r gofyniad yn afresymol neu’n anghymesur neu beidio.” Rhaid i’r Tribiwnlys ystyried y cwestiwn o’r newydd, ar sail y deunydd a gyflwynir i’r Tribiwnlys mewn perthynas â’r apêl. Nid yw’r Tribiwnlys wedi ei rwymo, mewn unrhyw ffordd, gan benderfyniad y Comisiynydd.
14. Llunnir safonau gan Weinidogion Cymru, gyda chymeradwyaeth y Cynulliad Cenedlaethol. Maent yn fath o is-ddeddfwriaeth. Ond er hynny, mae’r Mesur yn rhoi i’r sawl sy’n derbyn hysbysiad cydymffurfio’r hawl i herio rhesymoldeb a chymesuredd safon unigol, fel y byddai’n effeithio ar y person hwnnw. Gall hynny godi cwestiynau ynghylch rhesymoldeb a chymesuredd cyffredinol safon penodol. Dyna yw’r sefyllfa yn yr achos hwn. Gan fod y mwyafrif o gynghorau sir yng Nghymru eisoes o dan ddyletswydd i gydymffurfio â’r un safonau ag sy’n cael eu herio gan y Ceisydd gallai penderfyniad y Tribiwnlys arwain at anghysondeb rhwng gwahanol rannau o Gymru. Ond os yw’r Tribiwnlys i weithredu’n unol â gofynion y Mesur rhaid iddo benderfynu pob achos unigol ar sail y deunydd a gyflwynir iddo yn yr achos hwnnw. Ni all y Tribiwnlys drin y ffaith fod awdurdodau eraill wedi peidio â herio’r union safonau fel prawf o resymoldeb a chymesuredd y safonau hynny.
15. Wrth gymhwyso’r meini prawf a osodir gan y Mesur – rhesymoldeb a chymesuredd - rhaid cadw mewn cof pwrpas y safonau sydd dan sylw, sy’n “safonau cyflenwi gwasanaeth”. Pwrpas statudol safonau felly, yn ôl adran 28(1)(b) o’r Mesur, yw:
- “hybu neu hwyluso defnyddio’r Gymraeg”, neu
  - “weithio tuag at sicrhau nad yw’r Gymraeg yn cael ei thrin yn llai
13. The task of the Tribunal, according to section 58(2) is to "determine whether or not that requirement is unreasonable or disproportionate." The Tribunal must consider that question afresh, on the basis of the material presented to the Tribunal in relation to the appeal. The Tribunal is not bound in any way by the Commissioner’s decision.
14. Standards are set by the Welsh Ministers, with the approval of the National Assembly. They are a form of subordinate legislation. But the Measure nevertheless confers on a person who receives a compliance notice the right to challenge the reasonableness and proportionality of an individual standard, as it would affect that person. That can raise issues to do with the general reasonableness and proportionality of a particular standard. That is the situation in this case. Since the majority of councils in Wales are already under a duty to comply with the same standards as are being challenged by the Applicant, the Tribunal’s decision could lead to inconsistency between different parts of Wales. But if the Tribunal is to act in accordance with the requirements of the Measure it must decide each individual case on the basis of the material presented to it in that case. The Tribunal cannot treat the fact that other authorities have failed to challenge the self-same standards as proof of the reasonableness and proportionality of those standards.
15. When applying the tests imposed by the Measure – reasonableness and proportionality – one must bear in mind the purpose of the standards under consideration, which are “service delivery standards”. The statutory purpose of such standards, according to section 28(1)(b) of the Measure, is:
- “to promote or facilitate the use of the Welsh language”, or
  - “to work towards ensuring that the

ffafriol na'r Saesneg pan gyflwynir y gweithgaredd..."

Welsh language is treated no less favourably than the English language, when that activity is carried out."

16. Nid yw'n bosibl i ddiffinio beth sy'n "rhesymol" - rhaid i aelodau'r Tribiwnlys, sy'n cynrychioli cymdeithas yn gyffredinol, gymhwyso'r maen prawf hwnnw i bob achos unigol, gan dynnu ar eu profiad eu hunain a'u dealltwriaeth o'r hyn y byddai pobl Cymru'n ei farnu'n rhesymol neu beidio. Rhaid cofio mai'r cwestiwn y mae'n rhaid iddynt ateb yw "a yw gosod y safon ar y Ceisydd yn afresymol?" Os nad yw'n glir a yw gosod y safon yn afresymol neu beidio, nid oes gan y Tribiwnlys yr hawl i ymyrryd.

16. It is impossible to define that which is "reasonable" – the members of the Tribunal, who represent society generally, must apply that judgement to each individual case, drawing on their experience and their understanding of that which the people of Wales would or would not regard as reasonable. One must remember that the question which they must answer is "is imposing the standard unreasonable?" If it is unclear whether imposing the standard is unreasonable or not, the Tribunal has no right to intervene.

17. Mae ystyr "cymesuredd", cysyniad a ddaeth yn rhan o gyfraith Cymru a Lloegr trwy ddylanwad Llys Hawliau Dynol Ewrop a Llys Cyfiawnder yr Undeb Ewropeaidd, wedi cael ei ystyried gan y llysoedd sawl tro yn ystod y blynyddoedd diwethaf. Cyfeiriwyd y Tribiwnlys gan y Ceisydd at benderfyniad Tŷ'r Arglwyddi yn achos *R(Daly) v Secretary of State for the Home Department* [2001] UKHL 26 ac yn enwedig at ddadansoddiad yr Arglwydd Steyn o natur "cymesuredd". Ceir datganiad mwy diweddar o ystyr y cysyniad yn *Bank Mellat v HM Treasury (No. 2)* [2013] UKSC 39. Yn ôl yr Arglwydd Sumption, wrth farnu a yw ymyrraeth â hawliau person yn gymesur rhaid ystyried:

17. The meaning of "proportionality", a concept which entered the law of England and Wales through the influence of the European Court of Human Rights and the Court of Justice of the European Community, has been considered by the courts a number of times in recent years. The Tribunal was referred by the Applicant to the decision of the House of Lords in the case of *R(Daly) v Secretary of State for the Home Department* [2001] UKHL 26 and in particular to Lord Steyn's analysis of the nature of "proportionality". A more recent statement of the meaning of the concept is found in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39. According to Lord Sumption, one must, when judging whether an interference with a person's rights is proportionate, consider:

- i. "whether its objective is sufficiently important to justify the limitation of a fundamental right;
- ii. whether it is rationally connected to the objective;
- iii. whether a less intrusive measure could have been used; and
- iv. whether, having regard to these

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- iii. whether a less intrusive measure could have been used; and
- iv. whether, having regard to these



matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.”

matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.”

18. Cyd-destun y disgrifiad uchod o sut i gymhwyso cysyniad “cymesuredd” oedd ymyrraeth â hawliau'r Hawlydd o dan y Confensiwn Ewropeaidd ar Hawliau Dynol. Nid yw'n dilyn, o angenrheidrwydd, bod y Mesur, wrth ddefnyddio'r term “anghymesur” yn bwriadu cyfleu'r union ystyr ag a fu'n berthnasol yn *Bank Mellat*. Ond ceir digon o debygrwydd rhwng y ddwy sefyllfa i'w gwneud hi'n briodol i ddefnyddio'r ymdriniaeth uchod o leiaf fel man cychwyn.

18. The context of the above description of how to apply the concept of “proportionality” was an interference with the Claimant's rights under the European Convention on Human Rights. It does not necessarily follow that the Measure, when using the term “disproportionate”, intended to convey exactly the same meaning as that which was relevant in *Bank Mellat*. But there is enough similarity between the two situations to make it appropriate to use the above approach at least as a starting point.

19. Wrth asesu cymesuredd safon, mewn sefyllfa benodol, rhaid ystyried, felly:

- i) a yw'r hyn y mae'r safon yn ceisio cyflawni yn ddigon pwysig i gyfiawnhau ymyrryd â'r ffordd y byddai awdurdod wedi dewis, ffordd arall, i drefnu ei wasanaethau?;
- ii) a oes cysylltiad rhesymegol rhwng effaith y safon a'i bwrrpas (sef y pwrpas o hybu a hwyluso defnydd o'r Gymraeg neu sicrhau nad yw'r Gymraeg yn cael ei thrin yn llai ffafriol na'r Saesneg)?;
- iii) a allai dull llai mewnwithiol fod wedi cael ei ddarganfod o sicrhau'r un effaith?;
- iv) a yw'r safon yn sicrhau cydbwysedd teg rhwng buddiannau'r rhai sydd am ddefnyddio'r Gymraeg a buddiannau cymdeithas yn gyffredinol?.

19. When assessing the proportionality of a standard, in a particular situation, one must therefore consider:

- i) is that which the standard is seeking to achieve sufficiently important to justify intervening in the way in which an authority would otherwise have decided to arrange its services?;
- ii) is there a logical connection between the effect of the standard and its purpose (namely the purpose of promoting and facilitating use of the Welsh language or of ensuring that the Welsh language is treated no less favourably than the English language)?;
- iii) could a less intrusive means have been found of achieving the same effect?;
- iv) does the standard ensure a fair balance between the interests of those who wish to use Welsh and the interests of society generally?

## Gweithdrefn

20. Derbyniodd y Tribiwnlys gais gan Gymdeithas yr Iaith Gymraeg i gael ei hychwanegu fel parti i'r achos o dan reol 35 o Reolau Tribiwnlys y Gymraeg 2015. Ni fu unrhyw wrthwynebiad i hynny gan y Ceisydd na chan y Comisiynydd. Ond cyn i'r Tribiwnlys fedru dod i benderfyniad ar gais y Gymdeithas, derbyniwyd cais gan y parti, o dan reol 37, am i'r apêl gael ei benderfynu heb wrandawriad. O dan yr amgylchiadau, penderfynodd y Tribiwnlys mai'r ffordd briodol o ddelio gyda'r sefyllfa byddai:

- a) i ganiatáu'r cais y dylai'r apêl gael ei benderfynu heb wrandawriad;
- b) i wrthod cais Cymdeithas yr Iaith Gymraeg i gael eu hychwanegu fel parti, ond
- c) i drin rhesymau ysgrifenedig y Gymdeithas dros gael ei hychwanegu fel parti yn fel cyflwyniad ysgrifenedig a fyddai'n cael eu hystyried gan y Tribiwnlys fel gwrthwynebiad i'r apêl.

21. Wrth gymryd cyflwyniad Cymdeithas yr Iaith Gymraeg i ystyriaeth, ni fu'n bosibl ystyried un o'i phrif ddadleuon, sef mai'r safonau priodol yn achos y Ceisydd oedd safonau 25 a 28. Dyna'r rhai a fyddai wedi hawlio bod cyfarfodydd i gael eu cynnal yn Gymraeg, heb gyfieithu ar y pryd, petai'r person yr oedd ei lesiant yn cael ei drafod yn dymuno hynny. Y rheswm dros beidio ag ystyried y ddadl honno yw mai unig swyddogaeth y Tribiwnlys, o dan y Mesur, yw ystyried a yw'r safonau a gynhwyswyd yn yr hysbysiad cydymffurfio yn afresymol neu'n anghymesur. Nid oes gan y Tribiwnlys unrhyw bŵer i fewnosod safonau amgen yn lle'r rhai a gynhwyswyd nac i ddatgan unrhyw farn ar briodoldeb penderfyniad y Comisiynydd i gynnwys safonau 26, 26A, 29 a 29A yn hytrach

## Procedure

20. The Tribunal received an application by Cymdeithas yr Iaith Gymraeg to be added as a party to the case under rule 35 of the Welsh Language Tribunal Rules 2015. There was no objection from the Applicant or from the Commissioner. But before the Tribunal could come to a decision on the application by the Cymdeithas an application was received from the parties, under rule 37, for the appeal to be decided without a hearing. Under the circumstances, the Tribunal decided that the appropriate way of dealing with the situation would be:

- a) to allow the application for the appeal to be decided without a hearing;
- b) to refuse the application by Cymdeithas yr Iaith Gymraeg to be added as a party, but
- c) to treat the written reasons put forward by the Cymdeithas for being added as a party as a written submission which would be considered by the Tribunal in opposition to the appeal.

21. In taking the submission of Cymdeithas yr Iaith Gymraeg into account, it was not possible to consider one of its main arguments, namely that the appropriate standards in the case of the Applicant were standards 25 and 28. Those are the ones that would have required meetings to be conducted in Welsh, without simultaneous translation, if the person whose well-being was being considered so wished. The reason for not taking that argument into account is that the only function of the Tribunal, under the Measure, is to consider whether the standards included in the compliance notice were unreasonable or disproportionate. The Tribunal has no power to express any view on the appropriateness of the Commissioner's decision to include standards 26, 26A, 29 and 29A instead of 25 and 28.

na 25 a 28.

### Dadleuon y Ceisydd

22. Gellid crynhoi'r dadleuon a gyflwynwyd gan y Ceisydd i'r Tribiwnlys fel a ganlyn:

- i) Mae cyfieithu ar y pryd yn wasanaeth ar gyfer siaradwyr di-Gymraeg ac nid i'r Cymry Cymraeg (ac felly nid oes angen cyfieithu o'r Saesneg i'r Gymraeg);
- ii) Ychydig iawn o alw sydd am gyfieithu ar y pryd o'r Saesneg i'r Gymraeg;
- iii) Nid yw cyfieithwyr arferol y Ceisydd yn darparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg;
- iv) Byddai darparu cyfieithu ar y pryd y ddwy ffordd yn gofyn am ddau gyfieithydd, gan ychwanegu at gost a lleihau ansawdd ac effeithlonrwydd y cyfieithu;
- v) Byddai cael cyfieithydd ychwanegol yn effeithio'n andwyol ar gyfarfodydd sensitif;
- vi) Byddai'r angen i gael dau gyfieithydd yn achosi oedi;
- vii) Gallai'r hawl i gael cyfieithu y ddwy ffordd (a fyddai'n golygu gorfod cael dau gyfieithydd) gael ei chamddefnyddio;
- viii) Gallai arlliwiau geiriau gael eu colli.

### Mae cyfieithu ar y pryd yn wasanaeth i'r di-Gymraeg ac nid i'r Cymry Cymraeg

23. Yn ôl datganiad achos y Ceisydd mae'r ddadl hon yn seiliedig ar farn a fynegwyd gan Gymdeithas Cyfieithwyr Cymru (CCC). Oherwydd natur eithaf ysgubol y farn honno, fel ei dyfynnwyd, mynnodd y Tribiwnlys gael weld

### The Applicant's Arguments

22. The arguments presented to the Tribunal by the Applicant can be summarised as follows:

- i) Simultaneous translation is a service for non Welsh speakers and not for Welsh speakers (and there is therefore no need for translation from English to Welsh);
- ii) There is little demand for simultaneous translation from English to Welsh;
- iii) The Applicant's usual translators do not provide simultaneous translation from English to Welsh;
- iv) Providing simultaneous translation in both directions would require two translators, adding to the cost and reducing the quality and effectiveness of the translation;
- v) Having an additional translator would adversely affect sensitive meetings;
- vi) The need to have two translators would cause delay;
- vii) The right to have translation both ways (which would mean the need to have two translators) could be abused;
- viii) The nuances of words could be lost.

### Simultaneous translation is a service for non Welsh speakers and not for Welsh speakers

23. According to the Applicant's case statement this argument is based on a view expressed by Cymdeithas Cyfieithwyr Cymru (CCC) (the Association of Welsh Translators and Interpreters). Because of the rather

datganiad CCC yn ei gyd-destun. Darparodd y Comisiynydd gopi o'r dyfyniad llawn, a ymddangosodd mewn sylwadau a wnaed gan CCC mewn ymateb i ymgynghoriad ar safonau a gynhaliwyd gan y Comisiynydd yn 2013 neu 2014. Ar ôl ystyried y sylwadau llawn, mae'n ymddangos i'r Tribiwnlys mai pwrpas sylwadau CCC oedd tanlinellu i'r Comisiynydd y drefn arferol a oedd yn bodoli mewn perthynas â chyfieithu ar y pryd yng Nghymru sef bod cyfieithu'n digwydd o'r Gymraeg i'r Saesneg ond nid o'r Saesneg i'r Gymraeg. Er nad oedd CCC yn cyfeirio'n uniongyrchol at y rheswm dros hynny, mae'n amlwg yn deillio o'r ffaith fod siaradwyr Cymraeg, bron yn ddieithriad, yn medru Saesneg ac nad oes arnynt angen ymarferol, felly, am gyfieithiad o'r Saesneg.

sweeping character of this opinion, as quoted, the Tribunal asked to see CCC's statement in context. The Commissioner provided a copy of the full quotation, which appeared in comments made by CCC in response to a consultation on standards carried out by the Commissioner in 2013 or 2014. Having considered the comments in full it appears to the Tribunal that the purpose of CCC's remarks was to underline to the Commissioner the usual arrangement which existed in relation to simultaneous translation in Wales, namely that translation took place from Welsh to English but not from English to Welsh. Although CCC did not refer directly to the reason for this, it obviously follows from the fact that Welsh speakers, almost without exception, understand English and that they do not in practice, therefore, need a translation from English.

24. Roedd CCC yn awyddus i sicrhau bod y Comisiynydd yn ymwybodol o oblygiadau ymarferol darparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg. Roeddent yn bendant eu barn fod cyfieithu'r ddwy ffordd yn golygu darparu dau gyfieithydd, ac felly'n ychwanegu'n sylweddol at y gost.

24. CCC were anxious to ensure that the Commissioner was aware of the practical implications of providing simultaneous translation from English to Welsh. They were firmly of the view that providing translation both ways meant providing two translators, and would therefore add substantially to the cost.

25. Nid yw'n deg, ym marn y Tribiwnlys, i ddehongli sylwadau CCC, sylwadau a wnaed tair neu bedair blynedd yn ôl, fel barn broffesiynol bod cyfieithu ar y pryd o'r Saesneg i'r Gymraeg yn amhriodol nac yn anymarferol mewn pob sefyllfa. Yn wir, mae eu sylwadau llawn yn ei gwneud hi'n glir eu bod yn derbyn bod cyfieithu'r ddwy ffordd yn hollol briodol mewn rhai sefyllfaoedd: "awgrymwn y dylai'r rheoliadau nodi ym mha sefyllfaoedd y dylid darparu gwasanaeth CAP i'r Gymraeg a chynnig arweiniad clir, e.e. cyfweliad ag unigolyn bregus neu blentyn,..."

25. It is unfair, in the view of the Tribunal, to interpret the comments of CCC, made three or four years ago, as a professional opinion that simultaneous translation from English to Welsh is inappropriate or impracticable in all situations. Indeed, their full remarks make it clear that they accept that simultaneous translation both ways is wholly appropriate in some situations: "we suggest that the regulations should note in which situations simultaneous translation into Welsh should be provided, giving clear guidance, e.g. an interview with a vulnerable individual or a child,..."

26. Yn hytrach na chefnogi gwrthwynebiad y Ceisydd i'r safonau o dan sylw, mae barn CCC yn hollol gyson a'r drefn a fabwysiadwyd gan y Rheoliadau, ac a chynhwyswyd yn yr hysbysiad cydymffurfio, sef i gyfyngu'r defnydd o gyfieithu ar y pryd o'r Saesneg i'r Gymraeg i rai sefyllfaoedd penodol – cyfarfodydd i drafod llesiant unigolyn neu unigolion – sef sefyllfaoedd a fyddai'n debyg o ymwneud â phobl fregus lle bo'r person o dan sylw wedi gofyn am gael siarad Cymraeg.
26. Rather than supporting the Applicant's opposition to the standards under consideration, the view of CCC is entirely consistent with the pattern adopted by the Regulations, and incorporated into the compliance notice, namely to confine the use of simultaneous translation to some specific situations – meetings to discuss the well-being of an individual or individuals – namely the situations likely to relate to vulnerable people where the person in question had asked to be able to speak Welsh.
27. Wrth ymateb i ddadl y Ceisydd mae'r Comisiynydd a Chymdeithas yr Iaith Gymraeg yn pwysleisio'r egwyddor o beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg a hefyd anghenion ieithyddol arbennig pobl fregus sydd â'r Gymraeg yn iaith gyntaf iddynt. Nid yw'r safonau hyn (yn wahanol i safonau 25 a 28) yn trin y ddwy iaith yn gyfartal wrth gwrs. Ym marn y Tribiwnlys mae'r ail ddadl yn fwy perthnasol felly, sef bod angen, er mwyn hwylyso defnydd o'r Gymraeg gan bobl fregus sy'n dymuno defnyddio'r iaith honno, ddarparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg. Nid yw'n deg i drin eu sgiliau ieithyddol yn eu hail iaith a'u hangen i fedru cyfathrebu, mewn sefyllfaoedd sensitif, trwy gyfrwng eu hiaith naturiol, yn yr un ffordd ac y trinnir aelodau eraill o gymdeithas sydd, er enghraifft, am gyfranogi yn Gymraeg i gyfarfod cyhoeddus ar fater cynllunio.
27. In responding to the Applicant's argument, the Commissioner and Cymdeithas yr Iaith Gymraeg stress the principle of not treating the Welsh language less favourably than the English language as well as the special linguistic needs of vulnerable people. These standards (unlike standards 25 and 28) do not, of course, treat the two languages equally. In the view of the Tribunal the more relevant argument is therefore the second, namely that there is a need, in order to facilitate the use of Welsh by vulnerable people who wish to use that language, to provide simultaneous translation from English to Welsh. It is not fair to treat their linguistic skills in their second language and their need to be able, in sensitive situations, to communicate through the medium of their natural language, in the same way as one treats other members of society who wish, for example, to use Welsh to participate in a public meeting on a planning matter.
28. Yn ôl Cymdeithas yr Iaith Gymraeg: "Dadleuwn fod cymryd yn ganiataol bod pawb yn deall Saesneg yn ddigon rhugl pan ddaw hi i faterion llesiant yn gam gwag. Nid mater o wneud yn siŵr fod pawb arall yn deall cyfraniad Cymraeg yw cyfieithu ar y pryd yn y cyd-destun hwn ond sicrhau bod claf neu unigolyn bregus yn deall yr hyn
28. According to Cymdeithas yr Iaith Gymraeg (tr.): "We argue that it is a mistake to take it for granted that everyone understands English sufficiently fluently when it comes to matters of well-being. In this context, simultaneous translation is not a matter of ensuring that everyone else can understand a contribution in Welsh but

sy'n cael ei ddweud." Mae'r Tribiwnlys yn cytuno.

ensuring that a sick or vulnerable person understands what is being said." The Tribunal agrees.

29. Hyd yn oed petai barn honedig CCC wedi cael ei chrynhoi'n gywir gan y datganiad "Mae cyfieithu ar y pryd yn wasanaeth ar gyfer y di-Gymraeg" ni fyddai'r Tribiwnlys wedi'i ystyried yn berthnasol iawn i her y Ceisydd. Swyddogaeth y Comisiynydd (a swyddogaeth y Tribiwnlys ar apêl) yw ystyried yr hyn sy'n rhesymol ac yn gymesur ar gyfer y dyfodol, nid dilyn yn slafiaidd arferion y gorffennol. Ond fel mae'n digwydd, mae barn CCC, yn hytrach na gwrthwynebu cyfieithu o'r Saesneg i'r Gymraeg, yn derbyn yr angen i amdano mewn sefyllfaoedd penodol (er enghraifft cyfarfodydd gyda phobl fregus sydd am ddefnyddio Cymraeg).

29. Even if the alleged view of CCC had been summarised correctly by the proposition "Simultaneous translation is a service for the non Welsh speakers" the Tribunal would not have regarded it as having much relevance to the Applicant's challenge. The function of the Commissioner (and the function of the Tribunal on appeal) is to consider that which will, in future, be reasonable and proportionate, not to follow slavishly the practices of the past. But as it happens the view of CCC, rather than opposing simultaneous translation from English to Welsh, accepts the need for it in specific situations (for example in meetings with vulnerable people who wish to use Welsh).

30. Nid yw'r Tribiwnlys, felly, yn gweld unrhyw sail resymol i ddadl y Ceisydd.

30. The Tribunal therefore cannot see any rational basis for the Applicant's argument.

Ychydig iawn o alw sydd am gyfieithu ar y pryd o'r Saesneg i'r Gymraeg

There is little demand for simultaneous translation from English to Welsh

31. Nid yw'r Tribiwnlys yn amau cywirdeb y gosodiad hwn, sy'n cael ei ategu gan y sylwadau gan CCC y cyfeirir atynt uchod. Ond nid yw perthnasedd y gosodiad yn glir. Nid yw'r safonau sydd o dan sylw yn adlewyrchu, o angenrheidrwydd, y galw a fu yn y gorffennol ond yn gosod safonau ar gyfer y dyfodol, a hynny ar sail *angen*. Byddai sefydlu'r drefn newydd yn arwain, wrth gwrs, at greu galw am y gwasanaeth.

31. The Tribunal does not doubt the accuracy of this proposition, which is reinforced by the comments of CCC referred to above. But the relevance of the proposition is unclear. The standards under consideration do not reflect, necessarily, the demand which there has been in the past but set standards for the future, and that on the basis of need. The establishment of the new arrangement would lead, of course, to the creation of demand for the service.

32. Mae'r ffaith fod y diwydiant cyfieithu eisoes wedi ymateb i'r cynnydd yn y galw am gyfieithu ar y pryd o'r Saesneg i'r Gymraeg (o dan amgylchiadau priodol) yn amlwg o dystiolaeth y Comisiynydd. Mewn llythyr at Gyfarwyddwr Cydymffurfio a Gorfodi'r

32. The fact that the translation industry has already responded to the increasing demand for simultaneous translation from English to Welsh (under appropriate circumstances) is obvious from the Commissioner's evidence. In a letter to the Commissioner's Director of

Comisiynydd (dyddiedig 28 Chwefror 2017) mae Mr Hywel Hughes, Pennaeth Gwasanaeth Cymraeg y Gwasanaeth Llysoedd a Thriwilysoedd yn sôn am gamau a gymerwyd gan CCC (ers 2014) i sefydlu prawf hyfedredd ar gyfer cyfieithu o'r Saesneg i'r Gymraeg, yn bennaf er mwyn ateb gofynion y llysoedd. Yn ôl Mr Hughes mae 14 o gyfieithwyr eisoes wedi pasio'r prawf.

Compliance and Enforcement (dated 28 February 2017) Mr Hywel Hughes, Head of the Courts and Tribunals Service Welsh Language Service refers to steps taken by CCC (since 2014) to establish a proficiency test for translating from English to Welsh, primarily in order to meet the needs of the courts. According to Mr Hughes 14 translators have already passed the test.

33. Er nad yw'r Tribiwnlys yn derbyn bod lefel y galw am gyfieithu ar y pryd i'r Gymraeg yn y gorffennol yn berthnasol iawn i'r hyn a ddylai digwydd yn y dyfodol, mae'n ymddangos i'r Tribiwnlys fod y galw am gyfieithu ar y pryd o'r Saesneg i'r Gymraeg, a gallu'r proffesiwn cyfieithu yng Nghymru i'w ddiwallu, eisoes ar gynydd.

33. Although the Tribunal does not accept that the level of demand for simultaneous translation into Welsh in the past has much relevance to what should happen in the future, it appears to the Tribunal that the demand for simultaneous translation from English to Welsh, and the ability of the translation profession in Wales to satisfy it, are already on the increase.

Nid yw cyfieithwyr arferol y Ceisydd yn darparu cyfieithu ar y pryd o'r Saesneg i'r Gymraeg

The Applicant's usual translators do not provide simultaneous translation from English to Welsh

34. Cyflwynwyd tystiolaeth gan y Ceisydd nad oedd ei gyfieithwyr arferol, mor ddiweddar â Mehefin 2016, yn cynnig gwasanaeth cyfieithu ar y pryd o'r Saesneg i'r Gymraeg. Ond cyfaddefodd y Ceisydd, yn y datganiad achos a gyflwynwyd ganddynt ym mis Chwefror 2017, fod y sefyllfa'n newid. Erbyn hynny roedd dau allan o dri o ddarparwyr arferol y Ceisydd yn ystyried cynnig cyfieithu ar y pryd o'r Saesneg i'r Gymraeg, a hynny oherwydd dylanwad safonau'r Gymraeg. Fel y nodwyd uchod, mae safonau sy'n mynnu darpariaeth cyfieithu ar y pryd o'r Saesneg i'r Gymraeg eisoes yn weithredol yn achos 18 o awdurdodau a chyfeiriwyd at dystiolaeth Mr Hywel Hughes bod darpariaeth eisoes ar gael i ateb gofynion llysoedd a thriwilysoedd. Nid oes unrhyw le i gredu, felly, na fydd y Ceisydd yn medru caffael

34. Evidence was submitted by the Applicant that their usual translators did not, as recently as June 2016, offer a simultaneous translation service from English to Welsh. But the Applicant admitted, in a case statement submitted by it in February 2017, that the situation is changing. By then, two out of three of the Applicant's normal suppliers were considering offering simultaneous translation from English to Welsh, and that because of the impact of Welsh language standards. As noted above, standards which require simultaneous translation from English to Welsh are already in operation in the case of 18 authorities and reference has been made to the evidence of Mr Hywel Hughes that provision is already available to meet the demands of courts and tribunals. There is no reason to believe, therefore, that the Applicant will not be able to procure professional

gwasanaeth cyfieithu ar y pryd proffesiynol o'r Saesneg i'r Gymraeg.

Byddai darparu cyfieithu ar y pryd y ddwy ffordd yn gofyn am ddau gyfieithydd, gan ychwanegu at gost a lleihau ansawdd ac effeithlonrwydd y cyfieithu

35. Mae'r Tribiwnlys yn derbyn bod darparu cyfieithu ar y pryd y ddwy ffordd yn golygu, yn gyffredinol, defnyddio dau gyfieithydd. Mae'r Ceisydd yn cyfeirio at farn CCC fod hynny'n deillio o'r "dreth sylweddol ar stamina corfforol a meddyliol cyfieithydd" o orfodi un cyfieithydd i gyfieithu pob gair sy'n cael ei lefaru, yn y naill iaith a'r llall, yn ystod cyfarfod. Mae'r Tribiwnlys yn derbyn y farn honno ac yn credu, hefyd, y byddai ceisio defnyddio un cyfieithydd yn creu rhai anawsterau ymarferol i'r gwrandawyr, trwy eu gorfodi i dynnu ac ail-wisgo'u clustffonau yn barhaus trwy gydol y sgwrs. Byddai angen gwneud hynny er mwyn osgoi clywed cyfieithiad eu geiriau eu hunain neu eiriau y rhai eraill a oedd yn defnyddio'r un iaith â hwy. Nid oes amheuaeth, felly, bod darparu cyfieithu ar y pryd y ddwy ffordd yn golygu cyflogi dau gyfieithydd ac felly'n costio mwy na darparu cyfieithu ar y pryd o'r Gymraeg i'r Saesneg yn unig.

36. Ni chyflwynwyd unrhyw dystiolaeth gan y Ceisydd i brofi y byddai cyfieithu'r ddwy ffordd, petai dau gyfieithydd yn cael eu defnyddio, yn llai effeithiol, fel proses, na chyfieithu o'r Gymraeg i'r Saesneg yn unig. Nid yw'r Tribiwnlys yn gweld unrhyw reswm amlwg pam y byddai.

37. Mae'r Ceisydd yn honni nad yw'n bosibl, ar hyn o bryd, i gyflwyno unrhyw dystiolaeth uniongyrchol o effaith ymarferol gweithredu'r safonau o dan sylw. Nid yw'r Tribiwnlys yn derbyn hynny. Mae'r Ceisydd eisoes yn arfer y swyddogaethau sy'n ymwneud â

simultaneous translation from English to Welsh.

Providing simultaneous translation both ways would require two translators, thereby adding to the cost and reducing the quality and effectiveness of the translation

35. The Tribunal accepts that providing simultaneous translation both ways means, in general, using two translators. The Applicant refers to the view of CCC that this is because of the (tr.) "substantial toll on the physical and mental stamina of the translator" of compelling one translator to translate every word spoken, in either language, in the course of a meeting. The Tribunal also accepts that trying to use one translator would create some practical difficulties for the listeners, by requiring them to remove and replace their earphones continually throughout the discussion. That would have to be done in order for them to avoid hearing their own words, or those of others using the same language as they were, being translated. There is no doubt, therefore, that providing simultaneous translation both ways means employing two translators and would therefore cost more than providing simultaneous translation only from Welsh to English.

36. No evidence was presented by the Applicant to prove that translating both ways, if two translators were used, would be less effective, as a process, than translating from Welsh to English only. The Tribunal cannot see any obvious reason why it would,

37. The Applicant claims that it is not possible, at present, to submit any direct evidence of the practical effect of operating the standards under consideration. The Tribunal does not accept this. The Applicant is already exercising the functions that relate to the



llesiant unigolion yn ei ardal ac, wrth reswm, yn gwneud hynny mewn perthynas â phobl fregus sydd â'r Gymraeg yn iaith gyntaf iddynt. Byddai'r Tribiwnlys wedi disgwyl y byddai gan y Ceisydd gryn dipyn o wybodaeth, o brofiad y Ceisydd ei hun, am yr angen tebygol am y ddarpariaeth arfaethedig. Byddai wedi bod yn bosibl, hefyd, i'r Ceisydd gasglu gwybodaeth am brofiad cynghorau sir eraill sydd eisoes yn gweithredu safonau 26, 26A, 29 a 29A. Tasg weddol hawdd, mae'n ymddangos, byddai cyflwyno o leiaf amcangyfrif o'r gost ychwanegol, ac o unrhyw anawsterau ymarferol, cyfieithu ar y pryd o'r Saesneg i'r Gymraeg yn yr achosion hynny lle byddai angen gwneud hynny yn unol â'r safonau o dan sylw.

38. Yn yr un modd, byddai'r Tribiwnlys wedi disgwyl gweld tystiolaeth o'r effaith andwyol honedig ar ansawdd ac effeithlonrwydd y cyfieithu. Mae'r safonau sydd o dan sylw eisoes mewn grym yn y rhan fwyaf o Gymru, a hynny ers diwrnod gosod yr hysbysiadau cydymffurfio perthnasol – 30 Mawrth 2016. Dylai fod cryn dipyn o dystiolaeth ymarferol ar gael, erbyn hyn, o oblygiadau ymarferol gweithredu'r safonau hynny. Ond ar ben hynny, mae'r Tribiwnlys yn ymwybodol o'r ffaith fod y safonau perthnasol wedi cael eu trafod ers rhai blynnyddoedd. Gwnaed Rheoliadau Safonau'r Gymraeg (Rhif 1) ar 24 Mawrth 2015, a hynny ar ôl proses o ymchwilio ac ymgynghori mewn perthynas a'u cynnwys. Mae'r posibilrwydd y byddai angen, yn y pen draw, i weithredu safonau 26, 26A, 29 a 29A wedi bod yn hysbys i'r Ceisydd am dros ddwy flynedd. Wrth ymateb, yn haf 2015, i ymgynghoriad gan y Comisiynydd mewn perthynas â chynnwys yr hysbysiad cydymffurfio arfaethedig yr oedd hi'n bwriadu rhoi iddynt, dangosodd y Ceisydd ei fod wedi

well-being of individuals in their area and inevitably do so in relation to vulnerable people whose first language is Welsh. The Tribunal would have expected that the Applicant would have considerable information, based on its own experience, of the likely need for the proposed provision. It would also have been possible for the Applicant to collect information about the experience of other county councils who are already operating standards 26, 26A, 29 and 29A. It would appear to be a relatively simple task to present at least an estimate of the additional cost, and of any practical difficulties, of simultaneous translation from English to Welsh in those cases where this would be necessary in accordance with the standards under consideration.

38. In the same way, the Tribunal would have expected to see evidence of the alleged damaging effect on the quality and effectiveness of the translation. The standards under consideration are already in force in the greater part of Wales, and that since the imposition date of the relevant compliance notices – 30 March 2016. There should be considerable practical evidence available, by now, of the practical implications of operating those standards. But the Tribunal is aware, in addition, of the fact that the relevant standards have been discussed for some years. The Welsh Language Standards (No. 1) Regulations were made on 24 March 2015, and that after a process of inquiry and consultation in relation to their content. The possibility that it would be necessary, eventually, to operate standards 26, 26A, 29 and 29A would have been evident to the Applicant for over two years. When responding, in the summer of 2015, to the Commissioner's consultation in relation to the content of the proposed compliance notice which she intended to give them, the Applicant demonstrated

ystyried oblygiadau ymarferol gwahanol ddyletswyddau a allai syrthio ar y Ceisydd. O'r herwydd, mynegodd y Ceisydd wrthwynebiad i safonau 25 a 28, ond gan awgrymu y dylid cynnwys safonau 26, 29 a 29A yn eu lle (nid oes esboniad am fethiant y Ceisydd i gyfeirio at safon 26A fel y byddai rhywun wedi disgwyl).

that it had considered the practical implications of the different duties that might fall on the Applicant. As a result, the Applicant expressed its opposition to standards 25 and 28, but suggested that standards 26, 29 and 29A should be substituted (there is no explanation for the Applicant's failure to refer to standard 26A as one would have expected).

39. Byddai'r Tribiwnlys wedi disgwyl y byddai'r Ceisydd, gyda chymaint o rybudd o'r angen i ddarparu cyfieithu ar y pryd mewn rhai cyfarfodydd yn ymwneud â llesiant unigolion, gan gynnwys, o bosibl, cyfieithu o'r Saesneg i'r Gymraeg, wedi gwneud y paratodau angenrheidiol, gan gynnwys amcangyfrif unrhyw gost ychwanegol, caffael unrhyw ddarpariaeth cyfieithu ychwanegol, creu protocolau ar gyfer gweithredu'r drefn newydd, hyfforddi staff, casglu gwybodaeth am ymarfer da oddi wrth gynghorau eraill ac, o bosibl, cynnal cynlluniau peilot.

39. The Tribunal would have expected that the Applicant, with so much notice of the need to provide simultaneous translation in some meetings relating to the well-being of individuals including, possibly, translation from English to Welsh, would have made the necessary preparations, including estimating any additional cost, procuring any additional translation provision, creating protocols for operating the new arrangement, training staff, collecting information about good practice from other councils and, possibly, conducting pilot schemes.

40. Gallai paratodau felly fod wedi ildio cyfoeth o dystiolaeth werthfawr ar oblygiadau ymarferol gweithredu'r safonau dan sylw. Ond am ba bynnag reswm ni chyflwynodd y Ceisydd unrhyw dystiolaeth felly i'r Tribiwnlys. Yn absenoldeb unrhyw dystiolaeth ar oblygiadau ariannol ac ymarferol gweithredu'r safonau nid oes gan y Tribiwnlys unrhyw sail i asesu maint a phwysigrwydd unrhyw faich ychwanegol a fydd yn disgyn ar y Ceisydd yn sgil gweithredu'r safonau dan sylw.

40. Such preparations could have yielded a wealth of valuable evidence about the practical implications of operating the standards under consideration. But for whatever reason the Applicant submitted no evidence of that kind to the Tribunal. In the absence of any evidence on the financial and practical implications of operating the standards the Tribunal has no basis on which to assess the scale and importance of any additional burden which will fall on the Applicant as a consequence of operating the standards in question.

Byddai cael cyfieithydd ychwanegol yn effeithio'n andwyol ar gyfarfodydd sensitif

Having an additional translator would adversely affect sensitive meetings

41. Mae'r Tribiwnlys yn derbyn y gallai fod yn bwysig, yn achos rhai cyfarfodydd sy'n ymwneud â llesiant unigolion, i gadw'r nifer sy'n cymryd rhan yn y

41. The Tribunal accepts that it could be important, in the case of some meetings which relate to the well-being of individuals, to keep the number who

cyfarfod i'r lleiaf posibl. Ar y llaw arall, mae'r Ceisydd yn derbyn (gweler isod) pwysigrwydd medru cyfathrebu'n effeithiol gyda'r unigolion hynny, sy'n golygu cyfathrebu trwy gyfrwng yr iaith mae'r unigolion hynny'n teimlo'n fwyaf cyffyrddus yn ei defnyddio. Oni bai fod y cyfarfod yn cael ei gynnal yn Gymraeg, mae hynny'n golygu darparu gwasanaeth cyfieithu ar y pryd. Byddai'r Tribiwnlys wedi croesawu derbyn tystiolaeth ar sut y bwriada'r Ceisydd drefnu i gadw'r effaith ar gyfarfod o bresenoldeb cyfieithydd neu gyfieithwyr, i'r lleiaf posibl (er enghraifft trwy'r trefniadau ar gyfer eu lleoli) gan gofio nad yw'r Ceisydd yn herio'r angen i gael o leiaf un cyfieithydd yn y cyfarfod. Ond fel yr esboniwyd uchod, ni chyflwynodd y Ceisydd unrhyw dystiolaeth goncrit o effaith ymarferol debygol darparu cyfieithu ar y pryd, heb sôn am effaith ychwanegol defnyddio dau gyfieithydd yn hytrach nag un.

42. Mae safonau 26A a 29A yn gosod llawr i safon y gwasanaeth a ddarperir gan gyngor, nid nenfwd. Heb unrhyw dystiolaeth o'r math o sefyllfaoedd a all godi, ac o faint mor aml y byddant yn codi, nid yw'n glir pa mor aml y byddai presenoldeb cyfieithwyr mewn cyfarfod perthnasol fod yn faen tramgwydd. Ond pan fyddai sefyllfaoedd o anhawster eithriadol yn codi byddai'r opsiwn ar gael o gynnal y cyfarfod yn Gymraeg, os bydd yr angen yn ddigon mawr ac os bydd y Ceisydd wedi gwneud paratodau effeithiol i'w ateb. Gan bydd y cyfarfodydd o dan sylw yn rhai gyda phobl fregus er mwyn trafod eu llesiant unigol mae'n amlwg mai'r trefniant gorau, o ran buddiannau'r unigolion hynny, byddai trafod y materion hynny gyda hwy yn eu hiaith naturiol. Wrth ddewis peidio â gosod safonau 25 a 28 ar y Ceisydd mae'r Comisiynydd wedi derbyn dadleuon y

takes part in the meeting to the minimum possible. On the other hand, the Applicant accepts (see below) the importance of being able to communicate effectively with these individuals, which means communicating through the medium of the language which these individuals feel most comfortable using. Unless the meeting is conducted in Welsh, this means providing simultaneous translation. The Tribunal would have welcomed receiving evidence of how the Applicant intends to arrange to keep the impact on a meeting of the presence of a translator or translators to a minimum (for example through the arrangements for their location) bearing in mind that the Applicant does not challenge the need for at least one translator in the meeting. But as explained above, the Applicant did not present any concrete evidence of the likely practical impact providing simultaneous translation, let alone of the additional impact of using two translators instead of one.

42. Standards 26A and 29A set a floor for the standard of service provided by a council, not a ceiling. Without any evidence of the kind of situations that can arise, and of the frequency with which they will arise, it is not clear how often the presence of translators in a relevant meeting would be an obstacle. But when situations of exceptional difficulty arose the option would be available of conducting the meeting in Welsh, if the need were great enough and if the Applicant had made effective preparations to meet it. Since the meetings in question will be with vulnerable people in order to discuss their individual well-being it is evident that the best arrangement, in the interests of that individual, would be to discuss those details with them in their natural language. In choosing not to impose standards 25 and 28 on the Applicant the Commissioner has

Ceisydd nad yw proffil ieithyddol ei staff, yn eu galluogi, ar hyn o bryd, i gydymffurfio â'r safonau hynny. Ond nid yw hynny'n golygu na ellid disgwyl i'r Ceisydd, o ran ei ddyletswydd i'w trigolion bregus, ddarparu gwasanaeth drwyadl Gymraeg, mewn achosion eithriadol, i berson bregus sy'n dymuno defnyddio'r Gymraeg. Mater i'r Ceisydd yw penderfynu pa adnoddau i ddarparu a sut i'w defnyddio. Mae'n bosibl y byddai ganddynt staff cymwys a fyddai'n medru trin, yn Gymraeg, achosion eithriadol. Posibilrwydd arall byddai dod i drefniadau gydag awdurdodau eraill er mwyn rhannu adnoddau mewn achosion arbennig. Os oedd y Ceisydd am berswadio'r Tribiwnlys bod gofynion safonau 26A a 29A yn rhy feichus, am na fyddai'n bosibl i'r Ceisydd gydymffurfio â hwy mewn ffordd a fyddai'n cyd-fynd â chyfrifoldebau eraill y Ceisydd tuag at bobl fregus, dylent fod wedi bod mewn sefyllfa i drafod yr anawsterau yn agored ac yn fanwl, ar sail tystiolaeth, yn hytrach na dibynnu ar ddatganiadau cyffredinol ysgubol.

accepted the Applicant's arguments that the linguistic profile of its staff does not enable it, at present, to comply with those standards. But that does not mean that one cannot expect the Applicant, based on its duties to its vulnerable residents, to provide a thoroughly Welsh service in exceptional cases. It is a matter for the Applicant to decide what resources to provide and how to make use of them. It is possible that they would have qualified staff who could deal, in Welsh, with exceptional cases. Another possibility would be to make arrangements with other authorities to share resources in special cases. If the Applicant wished to persuade the Tribunal that the requirements of standards 26A and 29A are too onerous, because it would not be possible for the Applicant to conform to them in a way that would coincide with the Applicant's other responsibilities towards vulnerable people, they should have been in a position to discuss the difficulties openly and in detail, on the basis of evidence, instead of relying on sweeping generalisations.

Byddai'r angen i gael dau gyfieithydd yn achosi oedi

The need for two translators would cause delay

43. Ni chyflwynwyd unrhyw dystiolaeth i ddangos cywirdeb y gosodiad hwn. Nid yw'r Tribiwnlys yn gwrthod y posibilrwydd y gallai oedi ychwanegol ddigwydd mewn rhai achosion, yn enwedig os nad yw'r Ceisydd wedi rhoi trefniadau dibynadwy mewn lle i ymateb i sefyllfaoedd o frys. Ond mater i'r Ceisydd oedd dangos bodolaeth a maint y broblem honedig ac nid yw wedi gwneud hynny. Mae'n amhosibl, felly, i'r Tribiwnlys fesur pa bwysau, os o gwbl, y dylid rhoi ar y ffactor hwn.

43. No evidence was presented to demonstrate the correctness of this proposition. The Tribunal does not dismiss the possibility that added delay might be caused in some cases, particularly if the Applicant has failed to put reliable arrangements in place in order to respond to urgent situations. But it was for the Applicant to demonstrate the existence and scale of the alleged problem and it has not done so. It is impossible, therefore, for the Tribunal to measure what weight, if any, should be placed on this factor.

Gallai'r hawl i gael cyfieithu y ddwy ffordd (a fyddai'n golygu gorfod cael dau gyfieithydd) gael ei chamddefnyddio

The right to have translation both ways (which would mean the need to have two translators) could be abused

44. Nid yw'r Tribiwnlys yn medru deall sail y ddadl hon. Yr unig berson sydd, o dan safonau 26 a 29, â'r gallu i wneud cyfieithu ar y pryd yn ofynnol yw'r unigolyn y *bwriedir cynnal cyfarfod ynglŷn â'i lesiant*. Ni roddodd y Ceisydd unrhyw enghraifft o sefyllfa lle byddai gan berson cymhelliad i geisio oedi cynnal cyfarfod oedd yn ymwneud â llesiant ei hun, heb sôn am gyflwyno tystiolaeth o ba mor aml y gallai sefyllfa felly godi. Nodwyd eisoes absenoldeb unrhyw dystiolaeth y byddai'r angen am ddau gyfieithydd yn hytrach nag un yn achosi oedi, petai gan y person dan sylw cymhelliad i greu oedi.

#### Gallai arlliwiau geiriau gael eu colli

45. Mae'r risg o gam-gyfieithu, neu o gollu union ystyr geiriau ac ymadroddion y siaradwr wrth gyfieithu ei eiriau i iaith arall yn un na ellir ei ddileu'n gyfan gwbl. Ond nid yw'n amlwg bod cyfieithu o'r Saesneg i'r Gymraeg yn ychwanegu'n sylweddol at y risg sydd ynghlwm wrth gyfieithu o'r Gymraeg i'r Saesneg. Ni chyflwynwyd unrhyw dystiolaeth i ddangos hynny.

46. Gan dderbyn bod risg o ddiffyg dealltwriaeth llawn yn rhan o unrhyw system sy'n dibynnu ar gyfathrebu trwy gymorth cyfieithydd, rhaid hefyd ystyried y risg o ddiffyg dealltwriaeth sy'n codi pan fydd person bregus yn cael ei orfodi i gyfathrebu trwy ail iaith. Mae dadl y Ceisydd yn anwybyddu'r risg honno'n gyfan gwbl.

#### Rhesymoldeb a chymesuredd

47. Mae'n gyfleus i ystyried, yn gyntaf, a yw'r Ceisydd wedi dangos bod gosod y safonau dan sylw arnynt yn anghymesur, yn unol â'r ffactorau a nodir ym mharagraff 19 uchod.

44. The Tribunal cannot understand the basis for this argument. The only person who, under standards 26 and 29, has the ability to make simultaneous translation obligatory is the individual *about whose well-being it is intended to conduct a meeting*. The Applicant gave no example of a situation where such a person would have a motive to delay the holding of a meeting about that person's own well-being, let alone provide evidence of how often such a situation might arise. There has already been noted the absence of any evidence that the need for two translators instead of one would cause delay, were the person in question to have a motive for causing delay.

#### The nuances of words might be lost

45. The risk of mis-translation or of losing the exact meaning of the speaker's words and phrases when translating his or her words to another language is one which cannot be entirely eliminated. But it is not obvious that translating from English to Welsh adds significantly to the risk inherent in translating from Welsh to English. No evidence to demonstrate this was presented.

46. Accepting that a risk of some lack of full understanding is part of any system which depends on communicating through the assistance of a translator, one must also consider the risk of a lack of understanding arising when a vulnerable person is forced to communicate through his or her second language. The Applicant's argument ignores that risk altogether.

#### Reasonableness and proportionality

47. It is convenient to consider, firstly, whether the Applicant has demonstrated that imposing on them the standards in question is disproportionate, in accordance with the factors noted in

paragraph 19 above:

- i) A yw'r hyn y mae'r safon yn ceisio cyflawni yn ddigon pwysig i gyfiawnhau ymyrryd â'r ffordd y byddai awdurdod wedi dewis, ffordd arall, i drefnu ei wasanaethau?
- a) Nid yw'r Tribiwnlys yn gweld unrhyw anghysondeb na gwrthdaro rhwng amcanion y safonau dan sylw (sef hybu a hwyluso defnydd o'r Gymraeg a sicrhau nad yw'r Gymraeg yn cael ei thrin yn llai ffafriol na'r Saesneg) a dyletswyddau eraill y Ceisydd. I'r gwrthwyneb, mae'r safonau hyn, sy'n trin yn benodol sefyllfaoedd sy'n ymwneud â llesiant unigolion, ac felly, ar y cyfan, ag anghenion pobl fregus, yn atgyfnerthu gofynion darpariaeth effeithiol ar gyfer pobl felly. Fel mae'r Ceisydd ei hun yn cyfaddef, mae'n hollbwysig fod pobl felly'n medru cyfleu eu hanghenion a'u teimladau yn rhwydd ac yn gywir, gan deimlo eu bod yn cael eu trin gyda pharch a sensitifrwydd. Mae sicrhau eu bod yn medru gwneud hynny trwy gyfrwng yr iaith sydd yn fwyaf cyfarwydd iddynt yn amlwg yn cynnal buddiannau pobl felly, yn hytrach nag ymyrryd â hwy.
- b) Ateb y cwestiwn cyntaf, felly, yw nad yw'r safonau dan sylw yn ymyrryd ag anghenion gwasanaethau perthnasol y Ceisydd o gwbl ac nad oes angen pwysu a mesur amcan y safonau yn erbyn amcanion eraill y Ceisydd wrth gyflenwi gwasanaethau i bobl fregus.
- ii) A oes cysylltiad rhesymegol rhwng effaith y safon a'i bwrpas (sef y pwrpas o hybu a hwyluso defnydd o'r Gymraeg neu sicrhau nad yw'r Gymraeg yn cael
- i) Is that which the standard is seeking to achieve sufficiently important to justify intervening in the way in which an authority would otherwise have decided to arrange its services?
- a) The Tribunal sees no inconsistency or conflict between the aims of the standards under consideration (to promote and facilitate use of the Welsh language and ensuring that the Welsh language is not treated less favourably than the English language) and the other duties of the Applicant. On the contrary, these standards, which deal specifically with particular situations involving the well-being of individuals and therefore, on the whole, with the needs of vulnerable people, reinforce the requirements of effective provision for such people. As the Applicant itself admits, it is all-important that such people can express their needs and feelings freely and accurately, feeling that they are being treated with respect and sensitivity. Ensuring that they can do so through the medium of the language with which they are most familiar obviously supports the interests of such people rather than interfering with them.
- b) The answer to the first question, therefore, is that the standards in question do not interfere with the needs of the Applicant's relevant services at all and there is therefore no need to weigh the aim of the standards against the Applicant's other aims when supplying services to vulnerable people.
- ii) Is there a logical connection between the effect of the standard and its purpose (namely the purpose of promoting and facilitating use of the Welsh language or of ensuring that the Welsh language is

ei thrin yn llai ffafriol na'r Saesneg)?

a) Effaith y safonau dan sylw yw galluogi unigolion (sy'n debyg o fod yn unigolion bregus) sydd am siarad Cymraeg mewn cyfarfodydd perthnasol i wneud hynny'n fwy hwylus na phe baent yn cael eu gorfodi i gynnal sgysiau yn rhannol yn Saesneg, gan gael eu holi, er enghraifft, yn Saesneg a gorfod wedyn ymateb yn Gymraeg. Fel mae llythyr Mr Hywel Hughes yn nodi, mae profiad yn y llysoedd yn dangos yn glir yr anhawster sy'n cael ei achosi hyd yn oed i berson nad yw'n cael ei gyfrif fel un bregus wrth geisio symud yn ôl ac ymlaen o un iaith i'r llall. Gall person yn y sefyllfa honno lithro'n hawdd i ymateb yn Saesneg gan wyrdroi, yn ymarferol, ei ddewis i ddefnyddio Cymraeg.

b) Ateb y cwestiwn hwn, felly, yw "Oes".

iii) A allai dull llai mewnwthiol fod wedi cael ei ddarganfod o sicrhau'r un effaith

a) Yr unig drefn amgen a awgrymwyd gan y Ceisydd oedd cyfyngu cyfieithu ar y pryd trwy hepgor cyfieithu i'r Gymraeg. Gan dderbyn y gellid, mewn un ffordd, disgrifio hynny fel mesur llai mewnwthiol, gan y byddai'n defnyddio un cyfieithydd yn lle dau, ni fyddai, am y rhesymau a drafodwyd yn yr is-baragraff blaenorol, yn sicrhau'r un effaith. Ni fyddai'n ymateb i anghenion pobl fregus i'r un graddau â chyfieithu ar y pryd o'r Saesneg i'r Gymraeg yn ogystal ag o'r Gymraeg i'r Saesneg.

b) Ateb y cwestiwn yw "Na allai".

iv) A yw'r safon yn sicrhau cydbwysedd teg rhwng buddiannau'r rhai sydd am ddefnyddio'r Gymraeg a buddiannau

treated no less favourably than the English language)?

a) The effect of the standards under consideration is to enable individuals (who are likely to be vulnerable individuals) who wish to speak Welsh in relevant meetings to do so more easily than if they were required to conduct discussions partly in English, so that, for example, they would be asked questions in English and then had to respond in Welsh. As Mr Hywel Hughes's letter notes, the experience of the courts clearly demonstrates the difficulty caused even to a person not regarded as vulnerable when attempting to move backwards and forwards from one language to another. A person in that situation can easily slip into responding in English thereby overturning, in practice, his or her choice to use Welsh.

b) The answer to the question, therefore, is "There is".

iii) Could a less intrusive means have been found of achieving the same effect?

a) The only alternative arrangement suggested by the Applicant was to confine simultaneous translation by eliminating translation into Welsh. Accepting that one could, in a way, describe this as a less intrusive measure, since it would use one translator instead of two, it would not, for the reasons discussed in the previous sub-paragraph, ensure the same effect. It would not respond to the needs of vulnerable people to the same extent as simultaneous translation from English to Welsh as well as from Welsh to English.

b) The answer to the question is "No".

iv) Does the standard ensure a fair balance between the interests of those who wish to use Welsh and the interests of society

### cymdeithas yn gyffredinol?

- a) Cyn belled â bod buddiannau cymdeithas mewn perthynas, yn benodol, â llesiant unigolion yn y cwestiwn, nid oes unrhyw wrthdaro rhyngddynt â buddiannau unigolion bregus sydd am ddefnyddio'r Gymraeg. Am y rhesymau a drafodwyd eisoes, mae'r Tribiwnlys yn gweld cryfhau gallu pobl fregus i ddefnyddio Cymraeg mewn cyfarfodydd gyda'r Ceisydd yn gyfystyr â chynyddu effeithiolrwydd gwasanaethau'r Ceisydd mewn perthynas â'r unigolion hynny.
- b) Mae'n ymddangos, fodd bynnag, bod darparu cyfieithu ar y pryd y ddwy ffordd yn debyg o osod rhai beichiau ariannol a gweinyddol ychwanegol ar y Ceisydd. Ond fel yr esboniwyd, mae'r Ceisydd wedi methu cyflwyno i'r Tribiwnlys unrhyw dystiolaeth a fyddai wedi galluogi'r Tribiwnlys i bwysu a mesur y beichiau hynny ac i'w cloriannu yn erbyn cyfraniad y safonau tuag at hybu a hwyluso defnydd o'r Gymraeg a sicrhau nad yw'r Gymraeg yn cael ei thrin yn llai ffafriol na'r Saesneg.
- c) Nid yw hyn yn golygu y byddai tystiolaeth felly wedi darbwylllo'r Tribiwnlys nad oedd y safonau'n adlewyrchu gwrthbwysed teg gyda'r galwadau eraill ar adnoddau'r Ceisydd. Nid yw'r deunydd cyfyngedig a gyflwynwyd i'r Tribiwnlys gan y Ceisydd yn awgrymu bod y baich ychwanegol a fydd yn syrthio ar y Ceisydd o ganlyniad i'r angen i ddarparu cyfieithu ar y pryd y ddwy ffordd yn un sylweddol iawn. Ond heb unrhyw dystiolaeth o faint y baich nid yw'n bosibl i hyd yn oed dechrau ei gloriannu yn erbyn cyfraniad

### generally?

- a) As far as the interests of society specifically in relation to the well-being of individuals are in question, there is no conflict between those interests and the interests of vulnerable individuals who wish to use Welsh. For the reasons already discussed, the Tribunal sees the strengthening of the ability of vulnerable people to use Welsh in meetings with the Applicant as synonymous with increasing the effectiveness of the Applicant's services in relation to those individuals.
- b) It appears, however, that providing simultaneous translation both ways is likely to impose some financial and administrative burdens on the Applicant. But as already explained, the Applicant has failed to present the Tribunal with any evidence which would enable the Tribunal to evaluate those burdens and to weigh them against the contribution of the standards to promoting and facilitating use of the Welsh language and ensuring that the Welsh language is not treated less favourably than the English language.
- c) This does not mean that such evidence would have convinced the Tribunal that the standards did not reflect a fair balance with other calls on the Applicant's resources. The limited material presented by the Applicant to the Tribunal does not suggest that the additional burden which will fall on the Applicant as a result of the need to arrange simultaneous translation both ways would be very substantial. But without any evidence of the scale of the burden it is impossible to even begin to weigh it against the positive contribution of the standards in



cadarnhaol y safonau dan sylw.

d) Nid yw'n bosibl i'r Tribiwnlys, ar sail y dystiolaeth a gyflwynwyd iddo, gasglu nad yw'r safonau dan sylw'n sicrhau'r cydbwysedd angenrheidiol. O'r ychydig dystiolaeth berthnasol sydd o flaen y Tribiwnlys mae'n ymddangos yn fwy tebyg eu bod.

48. Yn ôl y dadansoddiad uchod (neu, yn wir, unrhyw ddadansoddiad arall o gysyniad cymesuredd sy'n hysbys i'r Tribiwnlys) ni ddangosodd y Ceisydd, felly, fod gosod safonau 26, 26A, 29 a 29A arnynt yn anghymesur. Yn sgil y casgliad hwnnw, nid yw'r Tribiwnlys yn gweld unrhyw sail dros farnu fod gosod y safonau hynny'n afresymol ychwaith.

49. Fel y nodwyd eisoes (paragraff 38), mynegodd y Ceisydd, wrth ymateb i ymgynghoriad gyda hwy o dan adran 47 o'r Mesur (hynny yw, ymgynghoriad a oedd yn ymwneud yn benodol â'r hysbysiad cydymffurfio a oedd yn y broses o'i baratoi), farn ynglŷn â'r union faterion hyn. Gofynnwyd i'r Ceisydd am ei adwaith i fwriad y Comisiynydd i gynnwys safonau 25 a 28, gan hefyd rhoi cyfle iddynt nodi unrhyw safon amgen gysylltiedig a oedd yn ymwneud â'r un gweithgarwch yr oedd y Ceisydd "yn ystyried yn rhesymol a/neu gymesur". Mewn ymateb, cyfeiriodd y Ceisydd at safonau 26, 29 a 29A. (Nid oes esboniad am y methiant i gyfeirio at safon 26A sydd, wrth gwrs, yn cyfateb i safon 29A). Yr unig esboniad a gynhigiwyd gan y Ceisydd am ei benderfyniad i newid, ar gyfer yr apêl, ei safiad oedd nad oedd wedi sylweddoli, wrth ymateb i'r ymgynghoriad, faint oedd yr anawsterau y byddai'r safonau dan sylw'n achosi. Os dyna'r esboniad am ei newid safiad, sef darganfyddiad gan y Ceisydd o wir faint anawsterau gweithredu safonau 26, 26A, 29 a 29A,

question.

d) It is not possible, on the basis of the evidence presented to it, to conclude that the standards in question do not ensure the necessary balance. From the limited relevant evidence before the Tribunal it appears more likely that they do.

48. Applying the above analysis (or indeed any other approach to the concept of proportionality of which the Tribunal is aware) the Applicant has not demonstrated, therefore, that imposing standards 26, 26A, 29 and 29A on them is disproportionate. As a consequence of that finding, the Tribunal does not see any basis for concluding that those standards are unreasonable either.

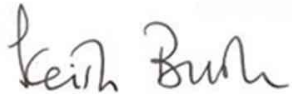
49. As already noted (paragraph 38), the Applicant expressed a view, when responding to the consultation with it under section 47 of the Measure (that is, a consultation which specifically related to the compliance notice which was in the process of being prepared) in relation to these very issues. The Applicant was asked for its reaction to the Commissioner's intention to include standards 25 and 28, and was also given the opportunity to note any alternative connected standard relating to the same activity which the Applicant "considered reasonable and/or proportionate". In response, the Applicant referred to standards 26, 29 and 29A. (There is no explanation for the failure to refer to standard 26A which corresponds, of course, to standard 29A.) The only explanation offered by the Applicant for its decision, for this appeal, to change its stance was that it had not realised, when responding to the consultation, the scale of the difficulties which the standards in question would cause. If that is the explanation for its change of stance, namely a realisation by the Applicant of the true scale of the

mae'n ei gwneud yn anoddach byth i ddeall pam nad ydynt, ar ôl gwneud y darganfyddiad hwnnw, wedi llwyddo i roi at ei gilydd unrhyw dystiolaeth o werth i brofi'r anawsterau hynny.

difficulties of operating standards 26, 26A, 29 and 29A, it makes it all the more difficult to understand why it has not, having reached that conclusion, succeeded in putting together any evidence of any value to prove those difficulties.

### Casgliad

50. Am y rhesymau a roddwyd uchod mae'r Tribiwnlys wedi penderfynu na ddangoswyd bod y gofyniad, o dan yr hysbysiad cydymffurfio a roddwyd i'r Ceisydd gan y Comisiynydd ar 30 Medi 2015, i gydymffurfio â safonau 26, 26A, 29 a 29A yn afresymol nac yn anghymesur. O'r herwydd, gwrthodir yr apêl.



Keith Bush CF  
Cadeirydd y Panel  
26.4.2017

### Conclusion

50. For the reasons given above the Tribunal has decided that it has not been demonstrated that the requirement, under the compliance notice given to the Applicant by the Commissioner on 30 September 2015, to comply with standards 26, 26A, 29 and 29A, is unreasonable or disproportionate. As a result, the appeal is dismissed.



Keith Bush QC  
Chair of the Panel  
26.4.2017

## ATODIAD

(Deunydd a ystyriwyd gan y Tribiwnlys)

- a) Yr hysbysiad cydymffurfio a roddwyd i'r Ceisydd (30.9.15);
- b) Llythyr yr Atebydd at y Ceisydd (22.9.16) yn hysbysu'r Ceisydd o benderfyniad yr Atebydd mewn perthynas â chais y Ceisydd o dan adran 54 o'r Mesur;
- c) Hysbysiad cais y Ceisydd (20.10.16);
- d) Datganiad achos y Ceisydd (18.11.16);
- e) Datganiad achos yr Atebydd (19.12.16) ynghyd â:
  - i) copi o sylwadau'r Atebydd (6.6.16) wrth ymgynghori â'r Ceisydd ar heriau i'r hysbysiad cydymffurfio a
  - ii) copi o sylwadau a wnaed gan y Ceisydd mewn ymateb i ymgynghoriad ar gynnwys yr hysbysiad cydymffurfio arfaethedig;
- f) Llythyr cyfreithwyr yr Atebydd (23.1.17) ynghyd â:
  - i) copi o ymateb Gweinidogion Cymru (Gorffennaf 2014) i adroddiadau safonau a nodyn cyngor yr Atebydd;
  - ii) copi o gyngor ysgrifenedig (30.5.14) a roddwyd gan yr Atebydd i Weinidogion Cymru gan gynnwys cyngor ar sylwadau Cymdeithas Cyfieithwyr Cymru;
- g) Datganiad achos y Ceisydd mewn ymateb (6.2.17) (ynghyd â'r atodiadau);
- h) Datganiad achos ychwanegol yr Atebydd (8.3.17) (ynghyd â chopi o lythyr at yr Atebydd oddi wrth Mr. Hywel Hughes (Gwasanaeth Llysoedd a Thribiwnlysoedd Ei Mawrhydi – 28.2.17);
- i) Sylwadau ysgrifenedig Cymdeithas yr Iaith Gymraeg (18.11.16).

## APPENDIX

(Material considered by the Tribunal)

- a) The compliance notice given to the Applicant (30.9.15);
- b) The letter from the Respondent to the Applicant (22.9.16) notifying the Applicant of the Respondent's determination in relation to the Applicant's application under section 54 of the Measure;
- c) The Applicant's Notice of Application (20.10.16);
- d) The Applicant's case statement (18.11.16);
- e) The Respondent's case statement (19.12.16) together with:
  - i) a copy of the Respondent's comments (6.6.16) when consulting the Applicant on the challenges to the compliance notice;
  - ii) a copy of the comments made by the Applicant in response to the consultation on the contents of the proposed compliance notice;
- f) The Respondent's solicitors' letter (23.1.17) together with:
  - i) a copy of the response of the Welsh Ministers (July 2014) to the Respondent's report on standards and note of advice;
  - ii) a copy of the written advice (30.5.14) given by the Respondent to the Welsh Ministers including advice on comments by the Association of Welsh Translators and Interpreters;
- g) The Applicant's case statement in reply (6.2.17) (together with appendices);
- h) The Respondent's additional case statement (8.3.17) (together with a copy of a letter to the Respondent from Mr Hywel Hughes (Her Majesty's Courts and Tribunals Service – 28.2.17);
- i) Written submissions by Cymdeithas yr Iaith Gymraeg (18.11.17).