



TRIBIWNLYS Y GYMRAEG
Rhif yr Achos: TyG/WLT/18/5

Y COMISIYNYDD GWYBODAETH
(Ceisydd)
v.
COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD Y TRIBIWNLYS

Aelodau'r Panel

Keith Bush CF (Llywydd y Tribiwnlys)
Sara Williams
Sara Peacock

Yr hyn y mae'r Tribiwnlys wedi'i ystyried
Gweler yr Atodiad

Natur y cais

Apêl gan y Ceisydd o dan adran 95(2) Mesur y Gymraeg (Cymru) 2011 yn erbyn penderfyniad yr Atebydd (dyddiedig 22 Hydref 2018) yn dilyn ymchwiliad o dan adran 71 y Mesur. Y penderfyniad oedd bod y Ceisydd, ar 13 Gorffennaf 2017, wedi methu â chydymffurfio â safon 11, a osodwyd ar y Ceisydd gan hysbysiad



WELSH LANGUAGE TRIBUNAL
Case No: TyG/WLT/18/5

THE INFORMATION COMMISSIONER
(Applicant)
v.
WELSH LANGUAGE COMMISSIONER
(Respondent)

TRIBUNAL DECISION

Members of the Panel

Keith Bush QC (President of the Tribunal)
Sara Williams
Sara Peacock

Material considered by the Tribunal
See the Appendix

Nature of application

Appeal by the Applicant under section 95(2) of the Welsh Language (Wales) Measure 2011 against a determination by the Respondent (dated 22 October 2018), following an investigation under section 71 of the Measure. The determination was that the Applicant had, on 13 July 2017, failed to comply with standard 11

cydymffurfio a roddwyd ar 25 Gorffennaf 2016, ac a ddaeth i rym (yng nghyswllt y safon honno) ar 31 Mawrth 2017. Yn unol â chais yr Atebydd, a chyda chytundeb y Ceisydd, penderfynodd y panel ar yr apêl heb gynnal gwrandawriad. Cyfarfu'r panel ar 13 Mawrth 2019.

Rhoddyd gwybod i'r aelod o'r cyhoedd a wnaeth y gŵyn yr oedd ymchwiliad yr Atebydd yn berthnasol iddi ("yr Achwynydd"), ond nid oedd yn dymuno cymryd rhan yn yr apêl yn uniongyrchol.

Penderfyniad y Tribiwnlys

Am y rhesymau a nodir isod, mae'r Tribiwnlys yn gwrthod yr apêl ac yn cadarnhau penderfyniad yr Atebydd.

RHESYMAU

Cyflwyniad

1. Mae'r safon berthnasol (safon 11) yn darparu:

"Pan fo person yn cysylltu â chi ar eich prif rif ffôn (neu ar un o'ch prif rifau ffôn), neu ar unrhyw rifau llinell gymorth neu rifau canolfan alwadau, rhaid ichi ddelio â'r alwad yn Gymraeg os yw'r person yn dymuno hynny —

(a) hyd nes ei bod yn angenrheidiol trosglwyddo'r alwad i aelod o staff nad yw'n siarad Cymraeg sy'n gallu darparu gwasanaeth ar bwnc penodol; a

(b) hyd nes nad oes aelod o staff sy'n siarad Cymraeg ar gael i ddarparu gwasanaeth ar y pwnc penodol hwnnw."

imposed on the Applicant by a compliance notice given on 25 July 2016 and which took effect (in relation to that standard) on 31 March 2017. In accordance with the request of the Respondent, and with the agreement of the Applicant, the appeal was decided by the panel, which met on 13 March 2019, without a hearing.

The member of the public who made the complaint to which the Respondent's investigation related ("the Complainant"), having been notified of the appeal, did not wish to take part in it directly

Decision of the Tribunal

For the reasons set out below, the Tribunal panel dismisses the appeal and affirms the decision of the Respondent.

REASONS

Introduction

1. The relevant standard (standard 11) provides that:

"When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must deal with the call in Welsh if that is the person's wish until such point as –

(c) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and

(d) no Welsh speaking member of staff is available to provide a service on that specific subject

2. Daeth y safon o dan sylw i rym yng nghyswilt y Ceisydd ar 31 Mawrth 2017.
3. Ar 13 Gorffennaf 2017, derbyniodd yr Atebydd neges e-bost gan aelod o'r cyhoedd ("yr Achwynydd") yn dweud bod yr Achwynydd wedi ffonio swyddfa'r Ceisydd y bore hwnnw ac wedi cael gwybod na fyddai unrhyw un a allai ateb yr alwad yn Gymraeg ar gael tan y prynhawn hwnnw. Nid oedd, y pryd hwnnw, wedi dweud ynghylch beth oedd yr alwad. Yr hyn yr oedd yn ei gofio oedd ei fod wedi, o'r cychwyn, cael ateb Saesneg i bopeth yr oedd yn ei ddweud yn Gymraeg (roedd y swyddog a oedd wedi derbyn yr alwad yn cofio – gweler paragraff 13 isod – cyfarch yr Achwynydd yn Gymraeg gan egluro, yn Gymraeg, nad oedd yn gallu siarad yr iaith).
4. Penderfynodd yr Atebydd gynnal ymchwiliad i'r gŵyn hon o dan adran 71 y Mesur. Ar 22 Hydref 2018, pan ddaeth yr ymchwiliad hwnnw i ben, penderfynodd yr Atebydd nad oedd y Ceisydd wedi cydymffurfio â safon 11 oherwydd nad oedd y Ceisydd wedi cael gwasanaeth ffôn Cymraeg... "ac eithrio cyfarchiad dwyieithog a brawddeg drwy gyfrwng y Gymraeg gan y swyddog a atebodd yr alwad yn nodi nad oedd yn medru siarad Cymraeg."
- matter."
2. The standard in question came into force in relation to the Applicant on 31 March 2017.
3. On 13 July 2017 the Respondent received an email from a member of the public ("the Complainant") stating that the Complainant had telephoned the Applicant's office that morning and had been told that no-one who could answer the call in Welsh would be available until that afternoon. He had not, at that stage, stated to what the call related. His recollection was that, from the beginning, everything he said in Welsh was answered in English (the officer who took the call recalled – see paragraph 13 below – greeting the Complainant in Welsh and also explaining, in Welsh, that the officer could not speak that language).
4. The Respondent decided to undertake an investigation into this complaint under section 71 of the Measure. On 22 October 2018, at the conclusion of that investigation, the Respondent made a determination that the Applicant had failed to comply with standard 11 in that the Applicant "did not receive a Welsh language telephone service ... apart from a bilingual greeting and a sentence in Welsh from the officer who answered the

5. O ran camau gorfodi, mynnodd yr Atebydd bod y Ceisydd yn paratoi cynllun gweithredu yn dangos pa gamau y byddai'r Atebydd yn eu cymryd er mwyn cydymffurfio â safon 11.
6. Mae apêl y Ceisydd yn erbyn penderfyniad yr Atebydd yn ymwneud yn unig â dyfarniad yr Atebydd nad oedd y Ceisydd wedi cydymffurfio â safon 11. Nid oes apêl ar wahân yn erbyn y camau gorfodi.

Awdurdodaeth y Tribiwnlys

7. O dan adran 95(2) y Mesur, os yw'r Atebydd wedi canfod nad yw person wedi cydymffurfio â gofyniad safon berthnasol, yn dilyn ymchwiliad o dan adran 71, caiff y person hwnnw apelio i'r Tribiwnlys ar y sail na fethodd y person dan sylw â chydymffurfio â'r gofyniad hwnnw.
8. Yn ei Datganiad Achos, dadleuodd yr Atebydd bod swyddogaeth y Tribiwnlys, wrth ystyried apêl o dan adran 95(2) wedi'i chyfyngu i adolygu penderfyniad yr Atebydd, ac nad oedd gan y Tribiwnlys unrhyw bŵer i ymyrryd â'i phenderfyniad, oni bai ei fod wedi cael ei ddangos ei bod wedi ymddwyn yn anghyfreithlon neu'n afresymegol neu ei bod wedi bod yn euog o amhriodoldeb gweithdrefnol. Mewn geiriau eraill, rhaid i'r Tribiwnlys ystyried penderfyniad yr Atebydd yn yr un modd ag

call stating that they cannot speak Welsh.”

5. By way of enforcement action, the Respondent required the Applicant to prepare an action plan showing the steps which the Respondent would take in order to comply with standard 11.
6. The Applicant's appeal against the Respondent's determination relates solely to the Respondent's finding that the Applicant failed to comply with standard 11. There is no separate appeal against the enforcement action.

The Tribunal's jurisdiction

7. Under section 95(2) of the Measure, a person who has been found by the Respondent, following an investigation under section 71, to have failed to comply with a requirement of a relevant standard, may appeal to the Tribunal on the grounds that the person in question did not fail to comply with that requirement.
8. The Respondent, in her Case Statement, argued that the function of the Tribunal, when considering an appeal under section 95(2), is restricted to reviewing the Respondent's determination and that the Tribunal has no power to interfere with her decision unless she is shown to have acted illegally or irrationally or have been guilty of procedural impropriety. In other words, the Tribunal must approach the

y byddai'r Uchel Lys yn ystyried cais am adolygiad barnwrol o'r penderfyniad dan sylw.

9. Mae'r Ceisydd yn dadlau, i'r gwrthwyneb, fod gofyn i'r Tribiwnlys ystyried penderfyniad yr Atebydd o'r newydd, gan gynnwys yr holl faterion perthnasol sy'n ymwneud â'r ffeithiau neu'r gyfraith, a bod yn rhaid iddo benderfynu drosto'i hun a oedd y penderfyniad hwnnw'n un cywir.
10. Dadl y Ceisydd, yn amlwg, sy'n gywir. Mae Adran 95(2) y Mesur yn rhoi'r hawl i'r Ceisydd "apelio". Fel y nododd yr Arglwydd Dyson MR yn glir yn *Watch Tower Bible & Tract Society of Britain & Others v Charity Commission* [2016] EWCA Civ 154 (paragraff 35) mae ystyr statudol arferol "apel" yn golygu proses sy'n galluogi penderfyniad i gael ei herio ar sail unrhyw wall ffeithiol neu gyfreithiol ("on the grounds of any error of fact or law").
11. Mae'r ffaith mai dyma yw effaith adran 95(2) yn cael ei hatgyfnerthu gan y geiriau "ar y sail na fethodd D â chydymffurfio â'r gofyniad perthnasol". Mae hyn yn nodi'n glir fod gan y Tribiwnlys awdurdodaeth lwyr i ystyried cywirdeb y penderfyniad, ac nad yw'n cael ei gyfyngu i wallau cyfreithiol neu drefniadol. Pe byddai'r Mesur wedi bwriadu cyfyngu ar awdurdodaeth y Tribiwnlys o dan adran 95(2) i adolygu penderfyniad yr Atebydd ar rai seiliau penodol, yna byddai

Respondent's determination as if it were the High Court considering an application for judicial review of the determination in question.

9. The Applicant argues, on the contrary, that the Tribunal is required to consider the Respondent's determination afresh, including all relevant matters of fact or law, and must make its own decision on the correctness of that determination.
10. The Applicant's argument is clearly correct. Section 95(2) of the Measure gives the Applicant a right to "appeal". As Lord Dyson MR made clear in *Watch Tower Bible & Tract Society of Britain & Others v Charity Commission* [2016] EWCA Civ 154 (at paragraph 35) the normal statutory construction of "appeal" is a process which enables a decision to be challenged "on the grounds of any error of fact or law."
11. The fact that this is the effect of section 95(2) is reinforced by the words "on the grounds that D did not fail to comply with the relevant requirement". This makes it clear that the Tribunal has full jurisdiction to consider the correctness of the determination and is not limited to legal or procedural errors. Had the intention of the Measure been to restrict the Tribunal's jurisdiction under section 95(2) to a review

wedi dweud hynny. Yn achos ceisiadau i'r Tribiwnlys o dan adran 103 y Mesur, cyfeirir yn benodol at her i benderfyniad gan yr Atebydd i beidio ag ymchwilio i gŵyn fel "adolygiad" o'r penderfyniad hwnnw, ac mae gofyn i'r Tribiwnlys ddelio â hynny "fel pe bai'n gais i'r Uchel Lys am adolygiad barnwrol". Mae'r darpariaethau hyn yn cyferbynnu'n amlwg â rhai adran 95(2) ac yn nodi'n fwy eglur fyth y gall y Tribiwnlys, o dan adran 95(2), ystyried pob cwestiwn sy'n ymwneud â'r ffeithiau a'r gyfraith, sy'n codi yng nghyswllt cywirdeb neu beidio penderfyniad yr Atebydd.

12. Y prif wahaniaeth ymarferol rhwng adolygiad ac apêl, mewn achos fel hyn, yw bod apêl yn galluogi'r Tribiwnlys, os yw hynny'n briodol, i ddod i ganfyddiadau ffeithiol gwahanol i'r rhai y mae'r Atebydd wedi'u cyrraedd. Pan fydd penderfyniad yr Atebydd yn seiliedig ar werthusiad arbenigol o'r ffeithiau, dylai'r Tribiwnlys roi pwys ar arbenigedd yr Atebydd yn y maes. Ond, fel y dywedodd yr Arglwydd Simonds yn *Benmax v Austin Motor Co. Ltd.* [1955] 1 AllER 326 (tudalen 328 C-D):

"In a case like that under appeal where ... the sole question is ...the proper inference from (the) facts ...I do not hesitate to say that an appellate court should form an independent opinion, though it will naturally attach importance to the

of the Respondent's determination on certain specific grounds then it would have said so. In the case of applications to the Tribunal under section 103 of the Measure, a challenge to a decision by the Respondent not to carry out an investigation into a complaint is specifically referred to as a "review" of that decision and the Tribunal is required to deal with it "as if it were an application for judicial review made to the High Court". These provisions contrast starkly with those of section 95(2) and make it even clearer that the Tribunal is able, under section 95(2), to consider all questions of fact and law which arise in relation to the correctness or otherwise of the Respondent's determination.

12. The main practical difference between a review and an appeal, in a case such as this, is that an appeal enables the Tribunal, if appropriate, to come to different findings of fact from those made by the Respondent. Where a determination of the Respondent is based on an expert evaluation of the facts, the Tribunal should give weight to the Respondent's expertise in the field but, as Lord Simonds said in *Benmax v Austin Motor Co. Ltd.* [1955] 1 AllER 326 (at page 328 C-D):

"In a case like that under appeal where ... the sole question is ...the proper inference from (the) facts ...I do not hesitate to

judgement of the trial judge.”

Y ffeithiau

13. Fel mae'n digwydd, nid oes unrhyw anghydfod rhwng y Ceisydd a'r Atebydd yng nghyswllt y ffeithiau sylfaenol. Rhoddwyd datganiad y Ceisydd o'r hyn a ddigwyddodd (y gwnaeth yr Atebydd ei phenderfyniad ar ei sail) mewn llythyr, dyddiedig 23 Hydref 2017, gan y Ceisydd at yr Atebydd, fel a ganlyn:

“The officer answered the phone bilingually as per our standard call answering procedure. The caller began to speak in Welsh. The officer explained (in Welsh) that (the officer) could not speak Welsh and (in English) offered the caller the option of either continuing in English or arranging for a call back from a Welsh speaker. The caller responded in Welsh. The officer again explained (being) unable to speak Welsh and asked the caller to confirm that he wished to be called back by a Welsh speaker. The caller confirmed that he did. The officer (in English) asked him for his name and contact number, and he again responded in Welsh. The officer again explained (being unable) to speak Welsh and asked the caller to give the number in English which he did. The officer then asked if the call

say that an appellate court should form an independent opinion, though it will naturally attach importance to the judgement of the trial judge.”

The facts

13. There is, as it happens, no dispute between the Applicant and the Respondent as to the primary facts. The Applicant's account of what happened (on which the Respondent based her determination) was set out in a letter from the Applicant to the Respondent dated 23 October 2017, as follows:

“The officer answered the phone bilingually as per our standard call answering procedure. The caller began to speak in Welsh. The officer explained (in Welsh) that (the officer) could not speak Welsh and (in English) offered the caller the option of either continuing in English or arranging for a call back from a Welsh speaker. The caller responded in Welsh. The officer again explained (being) unable to speak Welsh and asked the caller to confirm that he wished to be called back by a Welsh speaker. The caller confirmed that he did. The officer (in English) asked him for his name and contact number, and he again responded in Welsh. The officer again explained (being

was in relation to Freedom of Information or Data Protection legislation; this is standard telephone procedure when arranging return calls. The caller again responded in Welsh. The officer was fairly confident that his response meant 'data protection' and confirmed this with the caller. The officer explained that the return call would not be until the afternoon when the Welsh speaker returned to the office.”

14. Roedd y ffordd y deliodd swyddog y Ceisydd â galwad ffôn yr Achwynydd yn unol â gweithdrefn safonol y Ceisydd, fel y nodwyd yn yr un llythyr, sef:

- Cyfarch y galwr yn ddwyieithog.
- Os yw'r galwr am barhau yn Gymraeg, delio â'r alwad yn Gymraeg os yw'r swyddog yn gallu gwneud hynny.
- Os nad oes modd parhau â'r alwad yn Gymraeg, esbonio nad yw'n siarad Cymraeg neu esbonio y bydd angen newid i'r Saesneg ar adegau oherwydd natur dechnegol yr alwad.
- Cynnig dewis o barhau â'r alwad yn Saesneg neu dderbyn galwad ffôn yn ôl

unable) to speak Welsh and asked the caller to give the number in English which he did. The officer then asked if the call was in relation to Freedom of Information or Data Protection legislation; this is standard telephone procedure when arranging return calls. The caller again responded in Welsh. The officer was fairly confident that his response meant 'data protection' and confirmed this with the caller. The officer explained that the return call would not be until the afternoon when the Welsh speaker returned to the office.”

14. The way in which the Applicant's officer dealt with the Complainant's call was in accordance with the Applicant's standard procedure, set out in the same letter, namely:

- Greet the caller bilingually.
- If the caller proceeds in Welsh, deal with the call in Welsh if you are able.
- If you are unable to proceed, explain that you do not speak Welsh or that you may need to switch to English at times due to the technical nature of the call.

gan siaradwr Cymraeg.

- Parhau yn ôl dymuniad y galwr.

15. Hefyd, eglurodd y Ceisydd, yn yr un llythyr, beth oedd y trefniadau o ran staff yn ystod y cyfnod dan sylw, yn swyddfa Cymru y Ceisydd yng Nghaerdydd. Mae ei bencadlys yn Wilmslow, Swydd Gaer. Ar y pryd, roedd pedwar aelod o staff yn gweithio yn swyddfa Cymru (ni fyddai pob un yn y swyddfa ar yr un pryd). Hefyd, roedd dau aelod o staff yn weithwyr cartref, ond fe allent weithio yn y swyddfa pan fyddai angen. Roedd y chwe aelod o staff yn cynnwys Rheolwr Rhanbarthol, Swyddog Polisi Arweiniol, Uwch Swyddog Polisi, dau Uwch Swyddog Achos a Swyddog Cymorth. Mater i'r Swyddog Cymorth byddai ateb galwadau ffôn yn bennaf, er y byddai aelodau eraill o'r staff a oedd yn y swyddfa yn ateb y ffôn os nad oedd y Swyddog Cymorth yn gallu gwneud hynny.

16. Roedd gallu'r gwahanol aelodau o staff i siarad Cymraeg yn amrywio. Gallai'r Swyddog Cymorth ddelio â galwadau ffôn yn Gymraeg yn gyffredinol, ond ni allai'r swyddog

- Offer the caller a choice of continuing in English or receiving a call back from a Welsh speaker.

- Continue in accordance with the caller's wishes.

15. The Applicant also explained, in the same letter, the staffing arrangements, at the time in question, within the Applicant's Wales office in Cardiff. (Its head office is located in Wilmslow, Cheshire). The Wales office had, at the time, four office-based staff (not all of whom would be present in the office at all times). There were also two home-workers who could work from the office when required. The six staff consisted of a Regional Manager, a Lead Policy Officer, a Senior Policy Officer, two Senior Case Officers and a Support Officer. The role of answering incoming telephone calls was primarily that of the Support Officer, although other members of staff who were present in the office would answer the telephone if the Support Officer was not in a position to do so.

16. The various members of staff had different levels of ability to speak

hwnnw, ac ni fyddai disgwyl iddo allu, delio ag ymholiadau technegol neu gyfreithiol yn y naill iaith na'r llall, a byddai gofyn i'r swyddog hwnnw drosglwyddo'r galwadau hyn i'r arbenigwr priodol. Gallai'r Swyddog Polisi Arweiniol ddelio â rhai materion technegol neu gyfreithiol yn Gymraeg, ond er mwyn sicrhau bod y cyngor a oedd yn cael ei roi yn fanwl gywir, byddai gofyn newid i'r Saesneg mewn rhai achosion. Roedd gan y Rheolwr Rhanbarthol rywfaint o sgiliau Cymraeg sylfaenol, ond dim ond cyfarch y galwr yn Gymraeg ac egluro nad oeddent yn gallu siarad Cymraeg fyddai'r tri aelod o staff arall yn gallu gwneud, cyn gorfod parhau â'r sgwrs yn Saesneg.

17. Nid oedd y naill aelod dwyieithog o'r staff na'r llall (y Swyddog Cymorth na'r Swyddog Polisi Arweiniol) ar gael pan wnaeth yr Achwynydd ffonio. Dyna pam yr awgrymodd yr Uwch Swyddog Achos y dylai'r Swyddog Polisi Arweiniol ffonio'r Achwynydd yn ôl yn ddiweddarach y diwrnod hwnnw.
18. Mewn llythyr at yr Atebydd, dyddiedig 23 Hydref 2017, awgrymodd y Ceisydd fod y trefniadau a nodir ym mharagraff 14

Welsh. The Support Officer could deal generally with telephone calls in Welsh but that officer could not, and would not be expected to, deal with technical or legal queries in either language, and that officer would need to transfer these to the appropriate specialist. The Lead Policy Officer could deal with some technical or legal matters in Welsh but in some cases would need, in the interests of ensuring that the advice given was precise and accurate, to switch to English. The Regional Manager had some basic Welsh language skills but the other three members of staff could only greet a caller in Welsh and explain that they could not speak Welsh, then having to continue the conversation in English.

17. At the time of the Complainant's call, neither of the bilingual members of staff (Support Officer and Lead Policy Officer) were available, which is why the Senior Case Officer suggested that the Lead Policy Officer should call the Complainant back later that day.
18. In a letter to the Applicant dated 23

uchod wedi'u cymeradwyo gan swyddfa'r Atebydd fel trefniadau a oedd yn cydymffurfio â safon 11. Cyflwynwyd rhagor o fanylion am yr awgrym hwn yn llythyr y Ceisydd at yr Atebydd, dyddiedig 23 Chwefror 2018. Awgrymwyd bod rhywfaint o drafod wedi bod â galwr Cymraeg tua Mawrth / Ebrill ("around March / April") 2017 ynghylch lefel y gwasanaeth Cymraeg yr oedd gofyn ei ddarparu gan y Ceisydd. Yn sgil hyn, dywedwyd fod y Rheolwr Rhanbarthol wedi gofyn am gyngor gan unigolyn nad yw'n cael ei enwi yn un o swyddfeydd lleol yr Atebydd. Dywedwyd fod yr unigolyn hwnnw wedi cadarnhau y byddai aelod o staff nad oedd yn siarad Cymraeg, a oedd wedi cyfarch galwr yn Gymraeg ac wedi bwrw ymlaen yn Saesneg (hyd yn oed pan fyddai'n well gan y galwr siarad Cymraeg) yn cydymffurfio â safon 11. Ni chyflwynodd y Ceisydd unrhyw gofnod o'r drafodaeth hon.

19. Nid oedd yr Atebydd yn derbyn fod y Ceisydd wedi cael y sicrwydd honedig. Yn hytrach, cyflwynodd yr Atebydd gopi o gofnod o ymholiad gan y Ceisydd ynghylch mater gwahanol, sef gofynion safon 11 yng nghyswllt staff oedd yn gweithio

October 2017 the Applicant suggested that the arrangements set out in paragraph 14 above had been approved by the Respondent's office as compliant with standard 11. More detail of this suggestion was set out in the Applicant's letter to the Respondent dated 23 February 2018. It was suggested that in "around March / April" 2017 there had been some discussion with a Welsh language caller about the level of Welsh language service required to be provided by the Applicant. This was said to have led the Regional Manager to seek advice from an unidentified person in one of the Respondent's local offices. That person was said to have confirmed that for a non-Welsh speaking member of staff who had greeted a caller in Welsh to continue in English (even where the caller preferred to speak Welsh) would comply with standard 11. No record of this exchange was produced by the Applicant.

19. The Respondent did not accept that the Applicant had received the alleged assurance. The Respondent

yn swyddfeydd y Ceisydd yn Lloegr. Mae'r Atebydd yn credu mai dyma'r unig drafodaeth a fu rhwng ei swyddfa hi a'r Ceisydd ynghylch gofynion safon 11 yng nghyswllt delio â galwadau ffôn Cymraeg, ac nad oedd hynny'n ymwneud â gweithdrefnau yn y swyddfa yng Nghymru.

20. Pe bai angen penderfynu a oedd yr Atebydd neu ei swyddfa wedi rhoi'r cyngor honedig i Reolwr Rhanbarthol y Ceisydd, ni fyddai'r Tribiwnlys yn petruso rhag derbyn fersiwn yr Atebydd. Pe bai'r Ceisydd wedi cael cyngor mor bwysig, mae'n debyg y byddai wedi cael ei gofnodi ar ryw ffurf. Ond, fel mae'n digwydd, mae'r Ceisydd yn derbyn (gweler paragraff 19 y Datganiad Achos mewn Ymateb) nad yw unrhyw gyngor a roddwyd gan yr Atebydd ynghylch cyfrifoldebau'r Ceisydd o dan safon 11 yn berthnasol bellach. Gan fod yr Atebydd wedi cynnal ymchwiliad a chanfod fod y Ceisydd wedi methu â chydymffurfio a safon 11, rhaid i'r Tribiwnlys benderfynu nid beth oedd y Ceisydd, nac yn wir yr Atebydd, yn credu oedd ystyr safon 11 ond

produced, instead, a copy of a record of a query by the Applicant about a different matter, namely the requirements of standard 11 in relation to staff working in the Applicant's offices in England. The Respondent believes that this is the only exchange which has taken place between her office and the Applicant about the requirements of standard 11 in relation to the handling of Welsh language telephone calls and that it did not relate to procedures within the Wales office.

20. If it were necessary to come to a conclusion as to whether the Respondent or her office gave the Applicant's Regional Manager the alleged advice, the Tribunal would have no hesitation in preferring the Respondent's version. Had the Applicant received such important advice then it would have been likely to have been recorded in some form. But, as it happens, the Applicant accepts (see paragraph 19 of the Case Statement in Reply) that any advice given on behalf of the Respondent as to the Applicant's responsibilities under standard 11 is not relevant at this stage. The Respondent having

yn hytrach beth yw'r ystyr honno
mewn gwirionedd.

Sail apêl y Ceisydd

21. Mae'r apêl yn ceisio codi tri
chwestiwn:

- i) bod yr Atebydd wedi
ymchwilio i gŵyn unigol, ac
wedi gwneud penderfyniad
ynghylch y gŵyn honno, er
gwaethaf y ffaith fod yr
Achwynydd, mewn
gwirionedd, wedi cael cyngor
manwl yn y Gymraeg yn
ddiweddarach ar yr un
diwrnod;
- ii) bod yr Atebydd wedi
dehongli a chymhwyso safon
11 mewn ffordd nad oedd yn
ystyried swyddogaethau
penodol y Ceisydd, yn
arbennig yr angen i staff roi
cyngor manwl gywir i alwyr
ynghylch materion arbenigol
cymhleth; na ddylent gael eu
"gorfodi" i wneud hynny
mewn ail iaith;

carried out an investigation and
found that the Applicant had failed
to comply with standard 11, the
question for the Tribunal to decide
is not what the Applicant or indeed
the Respondent believed to be the
effect of standard 11 but what that
that effect actually is.

The grounds of the Applicant's appeal

21. The appeal seeks to raise three
issues:

- i) that the Respondent has
carried out an investigation
into, and reached a
determination on, a single
complaint, despite the fact
that the Complainant was, in
fact, provided later on the
same day with detailed
advice in Welsh;
- ii) that standard 11 has been
interpreted and applied by
the Respondent in a way that
did not have regard to the
particular functions of the
Applicant, in particular the
need for staff to give
accurate and nuanced advice
to callers on complex
specialist matters; they
should not be "forced" to do

iii) bod gweithdrefn y Ceisydd, lle mae modd gwneud trefniadau i rywun sy'n siarad Cymraeg ffonio galwr Cymraeg yn ôl, yn un na fyddai unrhyw unigolyn rhesymol cyffredin yn ei hystyried yn unrhyw beth ond yn ddarpariaeth gwasanaeth briodol ("no ordinary and reasonable person would consider ... to be anything other than an appropriate service provision").

so in a second language;

iii) that the Applicant's procedure, under which arrangements can be made for someone who can speak Welsh to call back a Welsh-speaking caller, is one which "no ordinary and reasonable person would consider ... to be anything other than an appropriate service provision."

Trafodaeth

22. Wrth benderfynu ynghylch yr apêl, mae swyddogaeth y Tribiwnlys wedi'i chyfyngu i benderfynu a wnaeth y Ceisydd, mewn gwirionedd, fethu â chydymffurfio â safon 11. Nid ydym yn ystyried priodoldeb penderfyniad yr Atebydd pa un i gynnal ymchwiliad ai peidio, dim ond canlyniad yr ymchwiliad hwnnw. Nid ydym yn ystyried pa mor rhesymol na chymesur oedd gosod safon 11 ar y Ceisydd chwaith. Mae'r Mesur yn darparu peirianwaith, yn adran 58, sy'n galluogi corff y mae'r Atebydd wedi gosod safon arno i apelio i'r Tribiwnlys ar y sail fod gwneud hynny'n afresymol neu'n anghymesur. Dewisodd y Ceisydd beidio â defnyddio'r peirianwaith hwnnw pan dderbyniodd yr hysbysiad cydymffurfio a oedd yn cynnwys safon 11.

Discussion

22. In deciding this appeal, the function of the Tribunal is limited to deciding whether or not the Applicant did, in fact, fail to comply with standard 11. We are not concerned the appropriateness of the decision of the Respondent whether or not to carry out an investigation, only with the outcome of that investigation. Neither are we concerned with the reasonableness or proportionality of imposing standard 11 on the Applicant. The Measure provides machinery, in section 58, by which a body on whom a standard is imposed by the Respondent may appeal to the Tribunal on the grounds that to do so is unreasonable or

Mae'r Ceisydd, felly, bellach yn rhwym dan y ddyletswydd i gydymffurfio â'r safon (oni bai, wrth gwrs, bod newid sylweddol mewn amgylchiadau ers i'r safon gael ei gosod yn golygu bod cyfle pellach i apelio yn ei herbyn wedi codi o dan adran 55).

23. Mae'r awgrym nad yw'r safon yn ystyried, yn briodol, yr angen i gael cyngor manwl gywir gwbl amherthnasol. Nid oedd sgwrs yr Achwynydd ag aelod o staff y Ceisydd yn cynnwys materion o'r fath. Roedd yr Achwynydd yn gofyn am gael siarad â rhywun a allai roi cyngor iddo, ar faterion diogelu data yn ôl pob golwg. Ni fyddai, o anghenraid, wedi disgwyl cael y cyngor hwnnw gan y sawl a oedd wedi ateb y ffôn. Nid wnaeth gwyno nad oedd unrhyw un wedi gallu rhoi cyngor technegol manwl iddo dros y ffôn. Yn hytrach, roedd wedi cwyno nad oedd yn medru trafod, yn Gymraeg, yr wybodaeth sylfaenol yr oedd ei hangen er mwyn medru cyfeirio ei ymholiad at yr arbenigwr priodol.

24. Felly, yr unig gwestiwn y mae'n rhaid i'r Tribiwnlys ei ystyried yw a oedd y modd y deliwyd â'r Achwynydd ar yr achlysur penodol hwn, yn cydymffurfio â safon 11 - nid a yw'r safon yn rhesymol nac yn gymesur, na chwaith sut gellid cymhwyso'r safon mewn sefyllfaoedd gwahanol i'r sefyllfa yr oedd yr Achwynydd wedi'i phrofi.

disproportionate. The Applicant chose not to use that machinery when given the compliance notice which contained standard 11. The Claimant is therefore now bound by the duty to comply with the standard (unless, of course, a material change of circumstances since the standard was imposed gives rise to a further opportunity to appeal against it under section 55).

23. The suggestion that the standard does not take proper account of the need for accurate and nuanced advice is doubly irrelevant. The Complainant's conversation with the member of the Applicant's staff did not include such matters. The Complainant was asking to be able speak to someone who could give him advice, apparently on data protection issues. He would not necessarily have expected to be given that advice by the same person who answered the telephone. He did not complain that no-one could provide him with detailed technical advice in Welsh, merely that he was unable to discuss, in Welsh, the basic information needed to enable his query to be directed to the appropriate specialist.

24. The question which the Tribunal must consider is therefore limited to that of whether the actual way in which the Complainant was dealt with on this particular occasion complied with standard 11 - not with the reasonableness and

25. Mae safon 11 yn un o ddwy safon wahanol yr oedd yn agored i'r Atebydd eu gosod ar y Ceisydd, o dan Reoliadau Safonau'r Gymraeg (Rhif 2) 2016. Byddai'r safon arall, sef safon 10, yn ei gwneud yn ofynnol i'r Ceisydd ddelio â galwad ffôn yn Gymraeg "yn ei chyfanrwydd". Penderfyniad yr Atebydd oedd gosod y safon lai llym, sef safon 11, ar y Ceisydd, sef dyletswydd i ddelio â galwad ffôn yn Gymraeg, ond dim ond nes ei bod yn angenrheidiol trosglwyddo'r alwad i aelod o staff nad oedd yn siarad Cymraeg, a allai ddarparu gwasanaeth ar y pwnc penodol. Bwriad y dewis hwn, yn amlwg, oedd cymryd i ystyriaeth y math o ystyriaethau sy'n gysylltiedig â'i swyddogaethau a nodwyd gan Ceisydd. Roedd y dewis yn cydnabod natur arbenigol y pynciau y mae galwadau ffôn i'r Ceisydd yn delio â hwy, a'r anawsterau y byddai'r Ceisydd yn eu hwynebu pe bai angen sicrhau bod ganddo staff a allai roi cyngor technegol arbenigol yn Gymraeg ar bob agwedd ar waith y Ceisydd.
26. Fel y nodwyd uchod, nid oedd y sefyllfa'n ymwneud â rhoi cyngor arbenigol beth bynnag. Ni ddeliwyd â galwad ffôn yr Achwynydd yn Gymraeg o gwbl, ac eithrio i roi gwybod iddo nad oedd y sawl a oedd

proportionality of the standard nor with how the standard might have applied in different situations from that experienced by the Complainant.

25. Standard 11 is one of two alternative standards which it was open to the Respondent, under the Welsh Language Standards (No. 2) Regulations 2016, to impose on the Applicant. The alternative, standard 10, would have required the Applicants to deal with a call in Welsh "in its entirety". The decision of the Respondent was to impose the less stringent requirement of standard 11 on the Applicant, namely to deal with the call in Welsh only until such point as it is necessary to transfer the call to a member of staff who does not speak Welsh but who can provide a service on the required specific subject matter. This choice was clearly intended to take account of the kind of consideration relating to its functions referred to by the Applicant. It recognised the specialist nature of the subject matter with which calls to the Applicant deal and the difficulties which the Applicant would face if required to ensure that it had staff who could give detailed technical advice in Welsh on all aspects of the Applicant's work.

26. As noted above, this was not, in any event, a situation involving the giving of specialist advice. The Complainant's call was not

wedi ateb y ffôn yn gallu siarad Cymraeg. Er bod trefniadau effeithiol wedi'u gwneud i aelod o staff sy'n siarad Cymraeg ffonio'r Achwynydd yn ôl, ar ôl rhywfaint o oedi, ni chynhaliwyd y sgwrs gychwynnol â'r galwr yn Gymraeg, er gwaethaf dymuniad amlwg yr Achwynydd i siarad Cymraeg. Ni wnaeth y Ceisydd ddelio â'r alwad yn Gymraeg, fel sy'n ofynnol gan safon 11.

27. Mae'n debyg y byddai'r cyfnewid gwybodaeth cyntaf rhwng galwr ac aelod o staff y Ceisydd sy'n ateb y ffôn yn gyfyngedig o ran cwmpas - yn aml, dim ond canfod pwy sy'n galw a beth yw natur yr alwad cyn trosglwyddo i'r unigolyn gorau i ddelio â'r mater mae'n siŵr. Ond effaith glir safon 11 yw bod gofyn i hynny gallu cael ei wneud yn Gymraeg os mai dyna yw dymuniad y galwr. Mater i'r Ceisydd, gyda chynghor yr Atebydd os bydd angen, yw sut mae gwneud hynny. Gall olygu darparu sgiliau Cymraeg i'r staff presennol. Gall olygu recriwtio staff sy'n meddu ar y sgiliau hynny'n barod. Gall fod atebion technolegol. Mae'n bosibl y bydd gofyn cael cyfuniad o fwy nag un o'r uchod. Ond, cyhyd ag y mae safon 11 yn gymwys i'r Ceisydd, mae dyletswydd gyfreithiol ar y Ceisydd i gydymffurfio â'r safon honno, trwy ddefnyddio pa bynnag ddulliau sydd eu hangen.

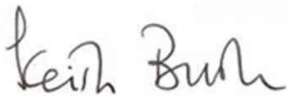
dealt with in Welsh at all, other than to inform him that the person taking the call could not speak Welsh. Whilst effective arrangements were made for the call to be dealt with, after a short delay, by a Welsh speaking member of staff who called the Complainant back, the initial conversation with the caller was not conducted in Welsh, despite the obvious wish of the Complainant that it should be. The Applicant did not deal with the call in Welsh as required by standard 11.

27. The initial exchange of information between a caller and the member of the Applicant's staff who answers the telephone may be limited in scope – often no doubt limited to identifying the caller and the subject matter of the call before transferring it to the person best able to deal with it. But the clear effect of standard 11 is that this must be capable of being done in Welsh if that is the caller's choice. How this is achieved is a matter for the Applicant, with the advice of the Respondent if necessary. It may involve the equipping of existing staff with Welsh language skills. It may involve the recruitment of staff who already have those skills. There may be technological solutions. A combination of more than one of these means may be needed. But as long as standard 11 applies to the Applicant there is a legal duty on the

28. Nid oes modd osgoi'r ffaith fod y Ceisydd wedi methu â chydymffurfio â safon 11 ar yr achlysur dan sylw, ac y bu penderfyniad yr Atebydd ynghylch yr achos hwn yn anochel. Nid oes bai, wrth gwrs, ar y swyddog a ddeliodd â'r alwad. Roedd y swyddog hwnnw'n dilyn gweithdrefn yr Apelydd ar gyfer delio â galwyr Cymraeg, fel y nodir ym mharagraff 14 uchod. Ond nid oedd y weithdrefn ei hun yn cyd-fynd â gofynion y safon.

Casgliad

29. Mae'r Tribiwnlys yn dod i'r casgliad fod y Ceisydd wedi methu â chydymffurfio â safon 11 trwy fethu, ar 13 Gorffennaf 2017, â delio â galwad ffôn yr Achwynydd yn Gymraeg ac mae'n cadarnhau penderfyniad yr Atebydd i'r perwyl hwnnw.




Keith Bush CF
Llywydd y Tribiwnlys
29 Mawrth 2019

Applicant to comply with it, by whatever means are necessary.

28. The inescapable fact is that on the occasion in question the Applicant failed to comply with standard 11 and that the Respondent's determination that this was the case was inevitable. No blame attaches, of course, to the officer who dealt with the call. That officer was following the Appellant's procedure for dealing with Welsh-speaking callers, as set out in paragraph 14 above. But the procedure itself failed to accord with the requirements of the standard.

Conclusion

29. The Tribunal comes to the conclusion that by failing, on the 13 July 2017, to deal with the Complainant's telephone call in Welsh, the Applicant failed to comply with standard 11 and it affirms the Respondent's determination to that effect.



Keith Bush QC
President of the Tribunal
29 March 2019

ATODIAD

(Yr hyn y mae'r Tribiwnlys wedi'i ystyried)

1. Hysbysiad Cais y Ceisydd, dyddiedig 19 Tachwedd 2018;
2. Gohebiaeth berthnasol, sef:
 - i) E-bost gan yr Achwynydd at yr Atebydd, 13 Gorffennaf 2017;
 - ii) Llythyr gan yr Atebydd at y Ceisydd, 26 Medi 2017;
 - iii) Llythyr gan y Ceisydd at yr Atebydd, 23 Hydref 2017;
 - iv) Llythyr gan y Ceisydd at yr Atebydd, 23 Chwefror 2018;
 - v) Adroddiad a Phenderfyniad yr Atebydd, 22 Hydref 2018.
3. Datganiad Achos yr Atebydd, 19 Rhagfyr 2018 (gan gynnwys nodyn ffeil sy'n ymwneud â chyngor i'r Ceisydd yng nghyswllt safon 11);
4. Datganiad Achos y Ceisydd mewn Ymateb, 30 Ionawr 2019;
5. Datganiad Achos pellach yr Atebydd, 1 Mawrth 2019.
6. *Watch Tower Bible & Tract Society of Britain & Others v Charity Commission* [2016] EWCA Civ 154;
7. *Benmax v Austin Motor Co. Ltd.* [1955] 1 AllER 326

APPENDIX

(Material considered by the Tribunal)

1. Applicant's Notice of Application dated 19 November 2018;
2. Relevant correspondence, namely:
 - i) Complainant's email to the Respondent 13 July 2017;
 - ii) Letter from Respondent to Applicant 26 September 2017;
 - iii) Letter from Applicant to Respondent 23 October 2017;
 - iv) Letter from Applicant to Respondent 23 February 2018;
 - v) Respondent's Report and Determination 22 October 2018.
3. Respondent's Case Statement 19 December 2018 (including file note relating to advice to Applicant in relation to standard 11);
4. Applicant's Case Statement in Reply 30 January 2019;
5. Respondent's further Case Statement 1 March 2019
6. *Watch Tower Bible & Tract Society of Britain & Others v Charity Commission*

[2016] EWCA Civ 154;

7. *Benmax v Austin Motor Co. Ltd.* [1955] 1 AllER 326