



**TRIBIWNLYS Y GYMRAEG**  
**Rhif yr Achos: TyG/WLT/19/4**

ALED POWELL  
(Ceisydd)

v.

COMISIYNYDD Y GYMRAEG  
(Atebydd)

**PENDERFYNIAD Y TRIBIWNLYS**

Natur y Cais

Cais o dan adran 103 o Fesur y Gymraeg (Cymru) 2011 am ganiatâd i wneud cais i adolygu penderfyniad y Comisiynydd (19 Mehefin 2019) i beidio â chynnal ymchwiliad i gŵyn bod corff wedi methu â chydymffurfio â Safon Iaith Gymraeg berthnasol. Gwrthodwyd y cais gan Lywydd Blaenorol y Tribiwnlys (Keith Bush, QC) ar 12 Gorffennaf 2019. Penderfynodd y Ceisydd, o dan reol 16(8) o Reolau Tribiwnlys y Gymraeg 2015, ofyn am i'r cais gael ei ailystyried gan banel y Tribiwnlys.



**WELSH LANGUAGE TRIBUNAL**  
**Case No: TyG/WLT/19/4**

ALED POWELI  
(Applicant)

v.

WELSH LANGUAGE COMMISSIONER  
(Respondent)

**TRIBUNAL DECISION**

Nature of application

Application under section 103 of the Welsh Language (Wales) Measure 2011 for permission to apply for a review of the decision of the Commissioner (19 June 2019) not to carry out an investigation into a complaint of a failure by a body to comply with a relevant Welsh language Standard. The application had been refused by the Previous President of the Tribunal (Keith Bush QC) on 12 July 2019. The Applicant applied, under rule 16(8) of the Welsh Language Tribunal Rules 2015, for the application to be reconsidered by a Tribunal panel.

### Aelodau'r Panel

Iwan Jenkins (Llywydd y Tribiwnlys)

Isata Kanneh

Sara Williams

### The Panel Members

Iwan Jenkins (President of the Tribunal)

Isata Kanneh

Sara Williams

### Y Gwrandawriad

Cynhaliwyd gwrandawriad yn Prifysgol Glyndŵr, Wrexham ar 24 Medi 2019.

### Hearing

A hearing took place at Glyndwr University, Wrexham on 24 September 2019.

### Penderfyniad y Tribiwnlys

Mae panel y Tribiwnlys yn cytuno gyda phenderfyniad Llywydd y Tribiwnlys i wrthod caniatâd i wneud y cais.

### Decision of the Tribunal

The Tribunal panel agrees with the decision of the President *of the Tribunal to refuse permission to make the application.*

(Er mwyn sicrhau bod gan Geisydd hawl fel y bo'n briodol i apelio yn erbyn penderfyniad i wrthod caniatâd, mae rheol 16(11) o Reolau Tribiwnlys y Gymraeg 2015 yn darparu yn yr achosion hyn y dylai'r Tribiwnlys roi caniatâd i wneud y cais i adolygu'r penderfyniad ond yna i wrthod y cais a dyna'r gorchymyn ffurfiol y mae'r Tribiwnlys yn ei wneud.)

*(In order to ensure that an Applicant has a proper right of appeal against a decision to refuse permission, rule 16(11) of the Welsh Language Tribunal Rules 2015 provides that in such a case the Tribunal should give permission to make the application for a review but to then dismiss that the application and that is the formal order that the Tribunal makes.)*

## RHESYMAU

### Rhagarweiniad

1. Ar 14 Mai 2019 e-bostiodd y Ceisydd y Comisiynydd yn cwyno bod Cyngor Wrecsam wedi methu yn ei ddyletswyddau o dan Safonau'r Gymraeg (safon 61) drwy godi arwydd traffig newydd neu adnewyddol uniaith Saesneg gyda'r geiriau 'Give Way' arno. Y lleoliad oedd wrth gyffordd yr A539 a'r B5097 yn Rhiwabon ger Wrecsam.
2. Ar 19 Mehefin 2019 hysbysodd y Comisiynydd y Ceisydd na fyddai'n ymchwilio i'r gŵyn dan sylw ar y sail bod Cyngor Wrecsam, ar ôl gwneud ymchwiliadau gyda nhw, wedi cadarnhau mai'r polyn a gafodd ei ddifrodi a'i adnewyddu yn y fan a'r lle'n dilyn y ddamwain ffordd. Nid oedd yr arwydd ei hun wedi cael difrod ac felly ni chafodd ei newid na'i adnewyddu. Dywedodd y Comisiynydd nad yw polyn, nac unrhyw strwythur arall sy'n cynnal arwydd, yn arwydd i bwrpas y Safonau ac yng ngoleuni hynny dywedodd y Comisiynydd nad oedd ganddo unrhyw ddyletswydd i ymchwilio o dan adran 71 o Fesur y Gymraeg (Cymru) 2011.
3. Aeth y llythyr ymlaen i gadarnhau bod gan y Ceisydd hawl i wneud cais i'r Tribiwnlys i adolygu'r penderfyniad gan ddweud, pe

## REASONS

### Introduction

1. On the 14 May 2019 the Applicant emailed the Commissioner complaining that Wrexham Council had failed with its duties under the Welsh language Standards (standard 61) by erecting a new or replacement English language only traffic sign stating, "Give Way". The location was at the junction of the A539 and B5097 at Ruabon, near Wrexham.
2. On the 19 June 2019 the Commissioner notified the Applicant that he would not be carrying out an investigation into the complaint in question, on the grounds that, having made enquiries with Wrexham Council they had confirmed that it was the post that had been damaged and replaced at the scene following the road traffic collision. The sign itself was undamaged and consequently had not been changed or replaced. The Commissioner stated that a post or any other equipment that supports a sign is not a sign for the purposes of the standards and consequently the Commissioner stated that he was not obliged to undertake an investigation under section 71 of the Welsh Language (Wales) Measure 2011.
3. The letter went on to confirm the Applicants right to make an application for review to the

byddai ganddo unrhyw gwestiynau am gynnwys y llythyr, y dylai gysylltu â chynrychiolydd y Comisiynydd ar y manylion a roddwyd.

4. Nid oedd y Ceisydd yn cytuno â dehongliad y Comisiynydd. Ar 19 Mehefin 2019 heriodd benderfyniad y Comisiynydd i beidio ag ymchwilio i'w gŵyn drwy gyflwyno Hysbysiad o Gais i'r Tribiwnlys o dan adran 103 o'r Mesur (achos TyG/WLT/19/04).
5. Ystyriwyd y cais gan Lywydd Blaenorol y Tribiwnlys ar 12 Gorffennaf 2019 a phenderfynodd wrthod rhoi caniatâd i wneud y cais o dan adran 103 o'r Mesur.
6. Mae gan y Ceisydd hawl o dan reol 16(8) o Reolau Tribiwnlys y Gymraeg 2015 i ofyn bod y penderfyniad yn cael ei ailystyried gan banel y Tribiwnlys mewn gwrandawriad. Cafodd yr hawl honno ei hymarfer gan y Ceisydd mewn pryd ac yn y ffordd briodol ac mae'r Ceisydd eisiau i'r Tribiwnlys adolygu pa mor gyfreithlon yw penderfyniad y Comisiynydd i beidio ag ymchwilio i'w gŵyn.

Tribunal and stated, that if he had any queries regarding the content of the letter to contact the Commissioners representative on the details given.

4. The Applicant did not agree with the Commissioners interpretation. On the 19 June 2019 he challenged the Commissioners decision not to investigate his complaint by a Notice of Application to the Tribunal under section 103 of the Measure (Case TyG/WLT/19/04).
5. The former President of the Tribunal considered the application on 12 July 2019 and refused consent for permission to make the application under section 103 of the Measure.
6. The Applicant has a right under rule 16(8) of the Welsh Language Tribunal Rules 2015 to require that the decision be reconsidered by a Tribunal panel at a hearing. That right was exercised by the Applicant in time and in the proper manner and the Applicant wishes the Tribunal to review the lawfulness of this decision of the Commissioner not to investigate his complaint.

## Y Seiliau dros Adolygu.

7. Mae'r Ceisydd wedi cyflwyno'r tair sail ganlynol dros herio penderfyniad y Comisiynydd:

- a) Mae'n dadlau bod y penderfyniad ar sail dehongliad y Comisiynydd o adran 61 ar gyfer asesu beth yw arwydd newydd neu adnewyddol yn wahanol i benderfyniad blaenorol y Comisiynydd (CSG 48 a 56) yn 2016 a bod y penderfyniad yn afresymegol, anghywir ac yn methu â chyflawni ei swyddogaeth o dan y Mesur. Y datganiad a wnaed yn achos CSG 48 a 56 oedd bod y Comisiynydd wedi nodi yn y canfyddiadau'n dilyn yr ymchwiliad *'nad yw'r dyddiad pryd y cafodd yr arwydd dros dro ei greu'n berthnasol i Safon 61, yn hytrach yr hyn sy'n berthnasol yw'r weithred o osod yr arwydd. Felly, dylai unrhyw arwydd gan gynnwys arwyddion dros dro a godir neu a osodir ar ôl y dyddiad penodedig ddangos y geiriad yn Gymraeg'*.
- b) Roedd Cyngor Wrecsam wedi derbyn cwyn yn flaenorol am yr arwydd hwn fel rhan o gŵyn gyffredinol am arwyddion uniaith Saesneg ac wedi addo i'r Comisiynydd yn 2015 (Ymchwiliad 2017) y byddai'n newid yr arwyddion hyn ac yn cywiro eu camgymeriad. Drwy fethu â gweithredu i orfodi'r addewid hwnnw mae'r Comisiynydd yn methu ag ymarfer ei swyddogaeth o dan y Mesur.

## Grounds for Review.

7. The Applicant has put forward three separate grounds for challenging the Commissioners decision:

- a) He argues the decision of the Commissioner's interpretation of section 61 in assessing what is a new or replacement sign is different to a previous decision of the Commissioner (CSG 48 and 56) in 2016 and that the decision is illogical, wrong and a failure to undertake his function under the Measure. The statement made in CSG 48 and 56 was that the Commissioner stated in the findings following an investigation that *"the date that the temporary sign was created is not relevant to standard 61, rather the act of placing the sign is that which is pertinent. Therefore, any sign and including temporary signs erected or placed after the date set should display the wording in Welsh"*.
- b) Wrexham Council had previously had a complaint about this sign as part of a general complaint about English only signs and promised the Commissioner in 2015 (Investigation 1917) to change such signs and rectify their error. The Commissioner in failing to take any action to enforce that promise is failing to exercise his function under the Measure.

- c) Bod y Comisiynydd, drwy fethu â chynnal ymchwiliad yn y mater hwn a materion eraill ar sail gwybodaeth a gasglwyd yn anffurfiol cyn ymchwiliad, yn afresymegol ac afresymol ac yn fethiant gan y Comisiynydd i gyflawni ei swyddogaeth o dan y Mesur. Ar ddechrau'r gwrandawriad roedd y Ceisydd wedi dweud y byddai ond yn mynd ar ôl y ddwy sail gyntaf o'r seiliau uchod.

#### Egwyddorion Cyfreithiol.

8. O dan adran 103(4) o'r Mesur, y prawf y mae'n rhaid i'r Tribiwnlys ei gymhwyso wrth benderfynu a ddylid rhoi caniatâd i gais i herio penderfyniad y Comisiynydd yw:
- a) a fyddai gan y cais siawns rhesymol o lwyddo, neu
  - b) a oes unrhyw reswm darbwyllo arall pam y dylid gwrandao'r cais.
9. Rhaid barnu siawns cais o lwyddo yn erbyn yr egwyddor gyffredinol (adran 103(3)) bod yn rhaid i'r Tribiwnlys ddelio gyda chais i adolygu penderfyniad o'r fath fel pe bai'n gais am adolygiad barnwrol i'r Uchel Lys.

#### Ystyriaeth.

10. Mae'r Tribiwnlys yn nodi bod y Comisiynydd, wrth ystyried y gŵyn, wedi cyfeirio ei hun at y safon berthnasol o dan y Mesur ac at eiriad penodol Safon 61. Roedd

- c) That the Commissioner in failing to conduct an investigation in this and other matters on the basis of information gathered informally prior to an investigation is illogical and Unreasonable and a failure by the Commissioner to undertake his function under the Measure.

The Applicant at the start of the hearing indicated he intended to pursue only the first two of those grounds.

#### Legal Principles.

8. Under section 103(4) of the Measure, the test which the Tribunal must apply when deciding whether to give permission for an application to be made to challenge a decision of the Commissioner is whether:
- a) the application would have a reasonable prospect of success, or
  - b) there is some other compelling reason why the application should be heard.
9. The prospects of success of an application must be judged against the general principle (section 103(3)) that the Tribunal must deal with an application for review of such a decision as if it were an application for judicial review made to the High Court.

#### Consideration.

10. The Tribunal notes that the Commissioner, when considering the complaint has directed himself as to the applicable standard under the Measure and to the

yr ymateb i'r Ceisydd (19.6.19) yn cyfeirio at y ffaith bod y Safon yn cyfeirio at godi arwydd newydd neu adnewyddol (gan gynnwys arwyddion dros dro). Roedd yn dweud mai barn y Comisiynydd oedd nad yw'r arwydd yn arwydd newydd neu adnewyddol oherwydd bod y Cyngor wedi dweud bod y polyn wedi cael difrod a'u bod wedi adnewyddu'r polyn ond nid yr arwydd.

11. Cyfeiriodd y Ceisydd at eiriad adroddiad CSG 48 a 56 y Comisiynydd, sef adroddiad a gyhoeddwyd gan y Comisiynydd yn dilyn ymchwilio i achos lle'r oedd Cyngor Dinas Caerdydd wedi codi arwyddion uniaith Saesneg dros dro ar ddau achlysur gwahanol. Ystyriwyd y materion hynny mewn un ymchwiliad.

12. Cyfeiriodd yr adroddiad at Safon 61 a ddaeth i rym ar 30.3.16. Roedd y mater y cwynwyd amdano ac yr ymchwiliwyd iddo'n ymwneud â chodi'r arwydd ar y pryd neu'n syth ar ôl hynny. Dadl Cyngor Dinas Caerdydd oedd bod yr arwyddion wedi cael eu paratoi cyn 30.3.16 gan awgrymu eu bod am barhau i'w defnyddio hyd nes y byddent yn cyrraedd diwedd eu hoes ddefnyddiol.

13. Yn y canfyddiadau i'r Ymchwiliad ym mharagraff 3.2 a 3.7, dywedodd y Comisiynydd:

specific wording of standard 61. The response to the Applicant ((19.6.19) referred to the fact the standard refers to erecting a new or replacement sign (including temporary signs). It stated that the Commissioner's view was that the sign is not a new sign or a replacement sign as the Council stated the post had been damaged and they replaced the post but not the sign.

11. The Applicant referred to the wording of the Commissioners report CSG 48 and 56 which was a report published by the Commissioner following an investigation into Cardiff City Council erecting temporary English language signs on two separate occasions. Those matters were considered in the one investigation.

12. The report referred to Standard 61 which came into force on 30.3.16. The matter complained of and investigated, related to the erection of the sign on or immediately after this time. Cardiff City Council argued that the signs had been prepared prior to the 30.3.16 and suggested that they would continue to use those signs until they came to the end of their useful life.

13. The Commissioner in the findings of the Inquiry at paragraphs 3.2 and 3.7 stated that:

3.2 'O dan Safon 61 mae'n ofynnol dangos y testun Cymraeg ar arwydd newydd neu adnewyddol. Mae hyn yn cynnwys arwyddion newydd dros dro. Nid yw'r dyddiad pryd y crëwyd yr arwydd dros dro'n berthnasol i Safon 61, yr hyn sy'n berthnasol yw'r weithred o osod yr arwydd. Felly, dylai unrhyw arwydd gan gynnwys arwyddion dros dro a godir neu a osodir ar ôl y dyddiad penodedig ddangos y geiriad yn Gymraeg'.

3.7 'Er mwyn cydymffurfio â Safon 61, rhaid i unrhyw destun a ddangosir ar arwyddion a godir ar neu ar ôl y dyddiad penodedig ddangos y testun Cymraeg. Mae'r dyddiad y cafodd yr arwyddion eu prynu neu ddylunio'n amherthnasol, yr hyn sy'n berthnasol yw'r weithred o godi'r arwyddion'.

Mae'r Ceisydd yn dadlau bod y geiriad yn nodi bod yn rhaid i unrhyw arwydd a godir ar ôl y dyddiad hwnnw (30.3.16) fod yn ddwyieithog, bod y Comisiynydd wedi dweud hynny yn yr adroddiad hwn, a thrwy dderbyn esboniad Cyngor Wrecsam mai dim ond y polyn a gafodd ei adnewyddu ac nid yr arwydd mae'n anwybyddu a throi ymaith o'i ganfyddiadau ei hun mewn ymchwiliad blaenorol.

14. Bu'r Tribiwnlys yn ystyried y pwynt hwn yn hir a manwl. Daeth i'r casgliad gyda'r ymchwiliad a'r adroddiad i achosion CSG

3.2 "Standard 61 requires that Welsh text is displayed on a new or replacement sign. This includes new temporary signs. The date that the temporary sign was created is not relevant to standard 61, rather the act of placing the sign is that which is pertinent. Therefore, any signs and including temporary signs erected or placed after the date set should display the wording in Welsh".

3.7 "In order to comply with standard 61, any text displayed on signs placed on or after the date set must display the Welsh wording. The date of purchasing or designing the signs is irrelevant, what is pertinent is the act of erecting the signs".

The Applicant argues that the wording indicates any sign erected after that date (30.3.16) must be bilingual, the Commissioner stated so in this report and that now by accepting the explanation of Wrexham Council that only the post was replaced and not the sign he is ignoring and deviating from his own findings in a previous investigation.

14. The Tribunal considered this point at length and in depth. It concluded that in the investigation and report into cases CSG 46



46 a 56 bod codi'r arwydd dros dro'n gyfystyr â gosod arwydd newydd yn y lleoliad lle'r ydoedd. Nid adnewyddu arwydd blaenorol oedd yno'n barod oedd wedi digwydd. Nid oedd yr un arwydd yn fan honno pan godwyd yr arwydd dros dro. O ganlyniad, roedd y weithredu o godi'r arwydd hwnnw'n un oedd yn dod o dan Safon 61. Mae'r cyfeiriad at y dyddiad y codir yr arwydd yn bwysig oherwydd cafodd ei godi pan gafodd ei osod. Roedd hyn yn wahanol i amgylchiadau'r achos hwn a'r sefyllfa sydd dan sylw yn yr achos presennol hwn. Yn y mater presennol gerbron y Tribiwnlys, roedd arwydd eisoes yn bodoli. Y wybodaeth a roddwyd i'r Comisiynydd oedd bod yr hen arwydd wedi cael ei aildddefnyddio a pholyn newydd wedi cael ei godi. Gellid efallai dadlau a yw adnewyddu hen bolyn ac aildddefnyddio hen arwydd yn gyfystyr ag arwydd adnewyddol. Mae'r Comisiynydd wedi ystyried y pwynt hwnnw a geiriad penodol Safon 61. Mae wedi gwahaniaethu rhwng strwythurau sy'n cynnal arwyddion, a'r arwyddion eu hunain, ac wedi cymhwyso hyn i eiriad Safon 61.

15. Nid yw llythyr y Comisiynydd at y Ceisydd yn cyfeirio o gwbl at y penderfyniad yn CSG 48 a 56. Pe bai casgliadau anghyson wedi eu cyrraedd, ar sail gwahanol resymeg, yng nghyswllt yr un amgylchiadau neu amgylchiadau tebyg, a fyddai'n deilwng o

and 56 the erection of the temporary sign was placing a new sign at the location it was placed. It was not replacing a previous existing sign. No sign existed at that location when the temporary sign was erected. Consequently, the act of erecting that sign was one which fell within standard 61. The reference to the date the sign is erected is important as it was erected when placed. This differed from the circumstances of this case and the situation under consideration in this current case. In this matter before the Tribunal now a sign existed. The information provided to the Commissioner was that the old sign was re used and a new post erected. There is room to debate as to whether an old post being replaced and re using an old sign amounts to a replacement sign. The Commissioner has considered that point and the specific wording of standard 61. He has differentiated between supporting structures and actual signs and related it to the wording of standard 61.

15. No reference is made to the decision in CSG 48 and 56 by the Commissioner in his letter to the Applicant. If there were inconsistent conclusions based on a different rationale to the same or similar circumstances that could merit

ystyried pa mor gyfreithlon a rhesymegol oedd penderfyniad y Comisiynydd. Am y rhesymau a roddir uchod, daeth y Tribiwnlys i'r casgliad y gellir gwahaniaethu rhwng y ffeithiau yn y mater hwn a'r ffeithiau yn achosion CSG 48 a 56 wrth ystyried 'arwyddion newydd neu adnewyddol'. Ni theimlai'r Tribiwnlys fod y Comisiynydd wedi gweithredu'n anghyfreithlon wrth gasglu, o ystyried ffeithiau'r mater a geiriad penodol Safon 61, mai ei ddehongliad ef oedd nad oedd hwn yn arwydd newydd neu adnewyddol. Roedd y Comisiynydd wedi cymhwyso ei feddwl i'r Safon ac wedi gwneud penderfyniad rhesymegol.

Nid swyddogaeth y Tribiwnlys yw gofyn iddo'i hun a yw'n cytuno â'r penderfyniad hwnnw neu beidio, ond a wnaeth y Comisiynydd wneud y penderfyniad hwnnw'n gyfreithlon. Os oedd gan y Comisiynydd hawl i ddod i'w benderfyniad ar sail y wybodaeth a roddwyd ac a ystyriwyd, nid oes unrhyw sail dros ganiatáu i'r Tribiwnlys ymyrryd â'r penderfyniad hwnnw.

16. Cyfeiriodd y Ceisydd at ymchwiliad a wnaed gan y Comisiynydd cyn i'r Safonau gael eu cyflwyno. Cyfeiriwyd ato fel ymchwiliad yn 2015, rhif 1917, ac roedd yn ymwneud â'r ffaith nad oedd arwyddion traffig Cyngor Wrecsam yn rhai dwyieithog. Dywedodd y Ceisydd fod Cyngor Wrecsam yn

consideration as to the lawfulness and logic of the Commissioners decision. For the reasons outlined above the Tribunal concluded that the facts of this matter are capable of being distinguished from those in cases CSG 48 and 56 when considering "new or replacement signs". The Tribunal did not feel that the Commissioner acted unlawfully in concluding that, given the facts of this matter and the specific wording of standard 61 that his interpretation that this was not a new or replacement sign. The Commissioner applied his mind to the Standard and reached a rational decision.

The function of the Tribunal is not to ask itself whether it agrees with that decision or not but whether it has been taken by the Commissioner in accordance with the law. If the Commissioner was entitled to come to his decision based on the information provided and considered, there is no basis on which the Tribunal could interfere with that decision.

16. The Applicant referred to an investigation undertaken by the Commissioner prior to the introduction of the Standards. It was referred to as an investigation in 2015 numbered 1917 and was in relation to the road traffic signs of Wrexham Council not being bilingual. The Applicant stated that

ymwybodol o'r ffaith bod cwyn wedi'i wneud am yr arwydd hwn fel rhan o'r ymchwiliad hwnnw. Dywedodd ei fod wedi derbyn papurau o dan y Ddeddf Rhyddid Gwybodaeth o'r ymchwiliad yn 2015 yn nodi bod Cyngor Wrecsam wedi cytuno i gywiro hyn. Dywedodd fod y Cyngor wedi cytuno i adnewyddu arwyddion pan fyddai angen gwneud hynny am resymau cynnal a chadw ac i newid y rhai y cawsant wybod amdanynt. Cytunodd y Comisiynydd i derfynu'r ymchwiliad ar y sail honno. Dywed y Ceisydd fod Cyngor Wrecsam yn ddiweddar (e-bost 3.8.19 gan y Ceisydd at Gyngor Wrecsam) wedi cadarnhau eu bod yn cofrestru cwynion a chywiro arwyddion ym Mharc Gwledig Gwersyllt. Roedd y mater hwnnw'n ymwneud â chywiro camgymeriad Cymraeg ar arwydd, ac nid ag arwydd uniaith Saesneg. Mae hyn yn arwain i'r Ceisydd deimlo bod y Comisiynydd yn methu yn ei swyddogaeth a'i ddyletswydd i orfodi'r addewid hwn bod y Cyngor yn codi arwyddion dwyieithog lle mae angen gwaith cynnal a chadw neu os tynnir sylw'r Cyngor atynt. Mae'r ymchwiliad hwn yn mynd yn ôl i'r amser cyn cyflwyno'r Safonau o dan y Mesur. Er y gallai'r Comisiynydd fod wedi nodi'r materion hynny cyn cyflwyno'r Safonau (30.3.16), ni all fod yn afresymol, afresymegol na'n anghyfreithlon bod y Comisiynydd a

Wrexham Council were aware of the fact this sign had been complained of as part of that investigation. He stated that he had received papers under the Freedom of Information Act from the investigation in 2015 which stated that Wrexham Council had agreed to correct this. He states the Council agreed to replace signs when maintenance necessitated replacement and that they agreed to undertake changes to those they were informed of. The Commissioner agreed to terminate the investigation on that basis. The Applicant states that recently (Email 3.8.19 Applicant to Wrexham Council) Wrexham Council confirmed they were registering complaints and correcting signs at Gwersyllt Country Park. That matter concerned the correction of an error in the Welsh language on a sign and not an English only sign. This leads the Applicant to feel that the Commissioner is failing in his function and duty to enforce this promise for the Council to erect bilingual signs if maintenance is required to the signs or if they are drawn to their attention. This investigation predates the introduction of the Standards under the Measure. Whilst the Commissioner could take note of those matters prior to the introduction of the Standards (30.3.16) it cannot be unreasonable, illogical or unlawful for the Commissioner and other interested parties to apply the Standards as they exist now.

phartion budd eraill yn cymhwyso'r Safonau fel y maen nhw'n bresennol.

17. O ran yr union eiriad ar yr arwydd, dywed y Ceisydd yn ei e-bost at y Comisiynydd dyddiedig 14.5.19 fod yr arwydd wedi cael ei adnewyddu fel yr oedd yn flaenorol, yn uniaith Saesneg.

18. Yn ei e-bost i'r Tribiwnlys dyddiedig 19.6.19 dywed y Ceisydd fod Cyngor Wrecsam droeon wedi cywiro neu ddiwygio eu harwyddion traffig drwy osod sticeri arnynt yn lle adnewyddu'r arwydd cyfan. Mae'n dweud bod gan yr arwydd sticer arno gyda'r gair 'Ildiwch' a'i fod felly'n ddwyieithog cyn i'r polyn a'r arwydd gael eu tynnu. Yn amlwg yr awgrym yw ei fod yn arwydd dwyieithog ac nid yn arwydd uniaith Saesneg ac y dylai felly fod wedi cael ei adnewyddu er mwyn cydymffurfio â'r Safonau.

19. Yn ystod y gwrandawriad dywedodd y Ceisydd fod y sticeri'n sticeri yr oedd Cymdeithas yr Iaith Gymraeg wedi eu gosod ar arwyddion fel rhan o brotest i dynnu sylw at y ffaith nad oedd yr arwyddion traffig yn ddwyieithog. Casglodd y Tribiwnlys, o ystyried bod y dystiolaeth a roddwyd yn anghyson, nad oedd y dystiolaeth yn cadarnhau bod yr arwydd yn ddwyieithog cyn iddo gael ei daro i lawr. Nid oedd penderfyniad y Comisiynydd, wrth ei

17. In relation to the actual wording on the sign the Applicant in his email to the Commissioner 14.5.19 stated that the sign had been replaced as it was before in the English language only.

18. The Applicant in his email to the Tribunal dated 19.6.19 stated that Wrexham Council had in many instances corrected or amended their road traffic signs by placing stickers on them instead of renewing the whole sign. He states the sign had a sticker on it with the word "Ildiwch" which is Welsh for "Give Way", making it bilingual prior to the post and sign being removed. Clearly the inference being it was a bilingual sign and not an English Language only sign and should have been replaced as such to comply with the Standards.

19. During the hearing the Applicant stated that the stickers were stickers that "Cymdeithas yr Iaith Gymraeg" had placed on signs as part of a protest to draw attention to the fact the road traffic signs were not bilingual. The Tribunal concluded, given the conflicting evidence provided that the evidence did not confirm that the sign was a bilingual sign prior to it being knocked down. The Commissioner in taking his decision on the

seilio ar y ffaith bod yr arwydd yn uniaith Saesneg, yn anghywir.

basis the sign was in the English language only was not an error.

20. O ran bod yr arwydd traffig wedi cael ei dynnu i lawr, dywedodd y Ceisydd ei fod wedi bod yn absennol am 2-3 wythnos neu fwy efallai. Mae'r dyddiad yn aneglur. Ar ôl sylwi bod yr 'arwydd newydd' wedi dychwelyd a'i fod yn arwydd uniaith Saesneg, roedd wedi cwyno i'r Comisiynydd ar 14.5.19. Dywedodd ei fod wedi cael ei dynnu eto gan ehangu ar hyn drwy ddweud ei fod efallai wedi cael ei daro i lawr gan gerbyd eto a'i adnewyddu. Ni wyddai ar adeg y gwrandawriad a oedd yr arwydd wedi dychwelyd. Ni roddwyd unrhyw dystiolaeth bod yr arwydd yn ddim mwy na'r arwydd gwreiddiol yn cael ei aildefnyddio.

20. In relation to the road traffic sign having been removed the Applicant stated that it had been absent for 2-3 weeks or possibly more. The date is unclear. He noticed the return of the "new sign" and noticing it was an English only sign made the complaint to the Commissioner on 14.5.19. He stated that it had been removed again and expanded by stating it has possibly been knocked down by a vehicle again and replaced. He was unaware if the sign had returned at the time of the hearing. There was no evidence provided that the sign was anything other than the original sign being re used.

21. Dywedodd y Ceisydd nad oedd wedi mynd yn ôl at y Comisiynydd ar ôl derbyn y penderfyniad i beidio ag ymchwilio, fel yr oedd wedi'i wneud o'r blaen, oherwydd y 28 diwrnod o amser i ofyn am ganiatâd y Tribiwnlys i wneud cais am adolygiad.

21. The Applicant stated that he had not returned to the Commissioner on receipt of the decision not to investigate as he had done on a previous occasion due to the 28 day limit to seek the Tribunals permission to apply for a review.

22. Pan benderfynodd y Comisiynydd beidio ag ymchwilio, roedd yn ymddangos bod y ddwy ochr wedi dweud bod yr arwydd blaenorol a'r un presennol yn uniaith Saesneg. Rhoddwyd esboniad bod yr hen arwydd wedi'i aildefnyddio, y polyn wedi'i

22. When the Commissioner took the decision not to investigate it appeared that both parties had stated the previous and current sign was in English only. An explanation had been provided that the old sign was

adnewyddu ac felly nad oedd Safon 61 wedi'i thorri.

23. Ar ôl archwilio'r ffeithiau yn y gwrandawriad, ni ddaethpwyd o hyd i unrhyw gamgymeriad gyda'r ystyriaeth honno. Nid oedd unrhyw dystiolaeth i brofi bod yr arwydd yn wahanol i'r un gwreiddiol.

24. Roedd y Ceisydd yn dadlau bod y Comisiynydd wedi camddehongli geiriad Safon 61. Er bod y Tribiwnlys yn derbyn bod yn rhaid cael system gadarn ac effeithiol ar gyfer gorfodi Safonau'r Gymraeg er mwyn cyflawni amcanion y Mesur, rhaid i'r Comisiynydd wrth weithredu'r system hon fod â rhywfaint o ddisgresiwn. Ni ddangoswyd bod y ffordd y defnyddiodd y disgresiwn hwnnw, yn yr achos hwn, y tu allan i'w bwerau.

#### Casgliad.

25. Mae'r Tribiwnlys felly'n cadarnhau penderfyniad y Llywydd blaenorol i wrthod caniatâd i'r Ceisydd gael gwneud cais i adolygu penderfyniad y Comisiynydd i beidio ag ymchwilio i gŵyn y Ceisydd, ar y sail:

- O ran bod y Comisiynydd wedi seilio ei benderfyniad ar asesu a oedd yr arwydd yn un newydd neu adnewyddol, ei fod wedi gwneud hynny ar sail egwyddorion cyfreithiol cywir. O ran ei fod wedi asesu

reused, the post replaced and therefore there was no breach of Standard 61.

23. An examination of the facts at the hearing has not identified any errors in that consideration. There was no evidence to prove that the sign was not the original one.

24. The Applicant argued that the Commissioner had misinterpreted the wording of Standard 61. Whilst the Tribunal accepts that a robust and effective system for enforcing Welsh language standards is essential in order to achieve the aims of the Measure, the Commissioner must, when operating that system, have a measure of discretion. The way in which he has applied that discretion in this case has not been shown to be outside his powers.

#### Conclusions

25. The Tribunal therefore confirms the decision made by the former President to refuse permission to the Applicant to apply for a review of the Commissioner's decision not to investigate the Applicant's complaint, on the grounds that:

- Insofar as the Commissioner based his decision on his assessment of whether the sign was a new or replacement sign, he did so on correct legal principles. He assessed the wording in the Standards and

geiriad y Safonau a gwybodaeth gan y ddwy ochr, a oedd yn ymddangos i fod yn gyson â'r ffaith bod yr arwydd o'r blaen yn uniaith Saesneg, ac ar ôl ystyried y ffactorau perthnasol yn ofalus, ni ellid dweud bod ei benderfyniad yn afresymegol;

- Ni ystyriwyd unrhyw ffactorau gwallus fel rhan o'r penderfyniad;
- Ni fyddai'r cais fod wedi cael siawns rhesymol o lwyddo;
- Nid oes unrhyw reswm darbwyllo arall pam y dylid gwrando'r cais.

**Iwan Jenkins**  
Llywydd y Tribiwnlys  
Hydref 2019

information from both parties, which appeared to be consistent that the sign was previously English only, and after careful consideration of the relevant factors his decision could not be said to be irrational;

- There were no erroneous factors considered as part of the decision;
- The application would not have a reasonable prospect of success;
- There is not some other compelling reason why the application should be heard.

**Iwan Jenkins**  
President of the Tribunal  
October 2019