



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TYG/21/01

CYNGOR DINAS A SIR ABERTAWE
(Apelydd)
v.
COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Aelodau'r Panel

Iwan Jenkins (Llywydd y Tribiwnlys)
Rhodri Williams CF (Aelod Cyfreithiol o'r Tribiwnlys)
Isata Kanneh (Aelod o'r Tribiwnlys).

Yr hyn mae'r Tribiwnlys wedi ei ystyried

Gweler yr Atodiad

Natur y Cais

Apêl gan yr Apelydd o dan adran 95(2) a (4) Mesur y Gymraeg (Cymru) 2011 (y Mesur) yn erbyn penderfyniad yr Atebydd (dyddiedig 3 Medi 2021), yn dilyn ymchwiliad o dan adran 71 ac Atodlen 10 y Mesur. Dyfarnwyd bod yr Apelydd wedi methu cydymffurfio â Safonau 88, 89 a 90 Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 (Y Safonau) drwy fethu ag ystyried effaith ei benderfyniad polisi newydd o wneud Ysgol Gynradd Gymraeg Felindre (YGG Felindre) yn adeilad preifat. Clywyd yr Apêl ar 7 Mehefin 2022.



WELSH LANGUAGE TRIBUNAL

Case No: WLT/21/01

THE CITY AND COUNTY SWANSEA COUNCIL
(Appellant)
v.
WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

Members of the Panel

Iwan Jenkins (President of the Tribunal)
Rhodri Williams QC (Legal Member of the Tribunal)
Isata Kanneh (Member of the Tribunal).

Material considered by the Tribunal

See the Appendix

Nature of the Application

This is an Appeal by the Appellant under section 95(2) and (4) of the Welsh Language (Wales) Measure 2011 (The Measure) against a determination by the Respondent (dated 3 September 2021), following an investigation under section 71 and Schedule 10 of the Measure. The determination was that the Appellant had failed to comply with Standards 88, 89 and 90 of the Welsh Language Standards (No 1) Regulations 2015 (The Standards) by failing to consider the impact on the Welsh language of its new policy decision of making Ysgol Gynradd Gymraeg Felindre (YGG Felindre) a privately owned building. The Appeal was heard on 7 June 2022.

Penderfyniad y Tribiwnlys

Am y rhesymau a nodir isod: -

Mae panel y Tribiwnlys yn gwrthod yr Apêl ac yn cadarnhau penderfyniad yr Atebydd.

Mae'r Tribiwnlys yn diwygio camau gorfodi'r Atebydd.

Decision of the Tribunal

For the reasons set out below: -

The Tribunal panel dismisses the Appeal and affirms the decision of the Respondent.

The Tribunal amends the enforcement actions of the Respondent.

RHESYMAU

1. Cyflwyniad
2. Cytunwyd ar lawer o ffeithiau'r mater hwn. Ym mis Medi 2018 dechreuodd yr Ymgeiswyr ymgynghoriad mewn perthynas â chynnig i gau YGG Felindre. Roedd yr ymgynghoriad yn destun cwyn ar wahân i ac ymchwiliad a dyfarniad gan yr Atebydd o dan gyfeirnod CSG 470. Ni wnaeth y Cyngor herio'r penderfyniad hwnnw (CSG 470) ac nid oedd yn rhan o'r apêl hon.
3. Penderfynodd yr Apelydd, yn dilyn ei benderfyniad i gau'r ysgol, nad oedd angen yr ysgol a'r safle (yr eiddo) a chymerodd gamau i werthu'r eiddo, a werthwyd dilyn hynny mewn arwerthiant.
4. Yn dilyn cwyn i'r Atebydd, cynhaliodd yr Atebydd ymchwiliad a chyhoeddodd adroddiad dros dro (adroddiad cyntaf) a ddosbarthwyd i'r Achwynydd a'r Apelydd dyddiedig 12 Tachwedd 2020.
Dywedir yn yr adroddiad dros dro:

“Ar ôl ystyried tystiolaeth y cyngor yn ofalus, rwyfo'r farn mai penderfyniad gweithredol oedd y penderfyniad i waredu'r safle ac adeiladau YGG Felindre. Nid oedd yn benderfyniad lefel uchel am y modd mae'r cyngor yn ymdrin â'r busnes o waredu eiddo

REASONS

1. Introduction
2. Many of the facts of this matter were agreed. In September 2018 the Applicants commenced a consultation in relation to a proposal to close YGG Felindre. The consultation was the subject of a separate complaint to and an investigation and determination by the Respondent under reference CSG 470. The Council did not challenge that determination (CSG 470) and it did not form part of this appeal.
3. The Appellant, following its decision to close the school, decided that the school and site (the property) had become surplus to the Appellant's requirements and took steps to sell the property which was subsequently sold at auction.
4. Following a complaint being made to the Respondent, the Respondent undertook an investigation and published a provisional report (first report) which was circulated to the Complainant and Appellant dated 12 November 2020. The provisional report states:

“Having carefully considered the council's evidence, I am of the opinion that the decision to dispose of the site and bookings [sic – read “buildings”] of YGG Felindre was an operations decision. It was not a high level decision about the council's conduct of the business of

ond yn hytrach penderfyniad gweithredol i waredu eiddo nad oedd y cyngor am ei ddefnyddio mwyach. (3.21).

5. Ar sail y farn hon, amlinellodd yr adroddiad drafft ganfyddiad arfaethedig nad oedd y Cyngor wedi methu cydymffurfio â safonau 88,89 a 90.
6. Dywed yr Atebydd i'r achwynydd wedyn gyflwyno sylwadau i'r Atebydd nad oedd yr adroddiad cyntaf wedi delio'n ddigonol â'r gŵyn wreiddiol. Dywedodd yr Achwynydd bod penderfyniad y Cyngor (Apelydd) yn bolisi newydd gan mai trosglwyddo perchnogaeth y safle o'r sector cyhoeddus i fod yn adeilad preifat ydoedd. Dywedodd yr achwynydd bod y Cyngor (Apelydd) wedi gwneud tri phenderfyniad yn y mater sef: -
 - I. Y penderfyniad i gau YGG Felindre.
 - II. Y penderfyniad nad oedd angen yr ysgol bellach at ddibenion gweithredol ac y byddai'n cael ei throsglwyddo o ddefnydd cyhoeddus i berchnogaeth breifat.
 - III. Y penderfyniad i werthu'r ysgol mewn arwerthiant.
7. Teimlai'r achwynydd fod yr adroddiad cyntaf yn ymwneud ag ymchwiliad i'r trydydd penderfyniad yn unig. Roedd y gŵyn yn ymwneud â'r ail benderfyniad hefyd ac ni roddwyd ystyriaeth i'r penderfyniad hwnnw yn yr adroddiad. Dywedodd yr achwynydd bod tystiolaeth y cyngor yn dangos nad oedd asesiad wedi ei wneud ar y pwynt hollbwysig, sef y penderfyniad nad

property disposals but rather an operational decision to dispose of property that was of no further use to the council" (3.21).

5. On the basis of this view, the draft report outlined a proposed finding that the Council had not failed to comply with the Standards 88,89 and 90.
6. The Respondent states that the complainant subsequently made submissions to the Respondent that the first report did not adequately deal with the original complaint. The Complainant stated that the decision of the Council (Appellant) was a new policy as it had been to transfer ownership of the site from the public sector to it being a privately owned building. The complainant stated that the Council (Appellant) had made three decisions in the matter namely: -
 - I. The decision to close YGG Felindre.
 - II. The decision that the school was no longer needed for operational purposes and that it was to be transferred from public use to private ownership.
 - III. The decision to sell the school at auction.
7. The complainant felt the first report concerned an investigation into the third decision alone. The complaint related to the second decision as well and no consideration had been given to that decision in the report. The complainant "claimed that the council's evidence showed that no assessment was made on the crucial point, which was the decision that the

- oedd angen yr ysgol mwyach fel adnodd cyhoeddus. (Adroddiad terfynol y Comisiynydd, 3 Medi 2021, 2.23).
8. Yna, paratôdd yr Atebydd ail adroddiad drafft (ail adroddiad) a gyflwynwyd i'r Achwynydd a'r Apelydd. Dangosodd yr adroddiad hwn fod yr Atebydd yn awr o'r farn bod yr Apelydd wedi torri'r Safonau gan nad oedd y Cyngor (Apelydd) wedi ystyried effaith ei benderfyniad polisi newydd (trosglwyddo YGG Felindre i'r sector preifat) ar yr Iaith Gymraeg. Roedd hyn yn ymwneud â'r ail benderfyniad a nodwyd uchod.
 9. Ymatebodd yr Apelydd gyda sylwadau yn nodi nad penderfyniad polisi oedd yr ail benderfyniad ond yn hytrach penderfyniad gweithredol ydoedd, ac nad oedd yn ddarostyngedig i'r Safonau. Cafodd y penderfyniad ei wneud o fewn terfynau neu ganiatâd ei bolisiâu ysgrifenedig. I ategu'r sylwadau hyn, darparodd yr Apelydd gopïau o ddwy ddogfen i'r Atebydd:
 - i. Trosglwyddo Asedau Cymunedol yn Ninas a Sir Abertawe – Canllawiau i Swyddogion ac Aelodau (y cyfeirir atynt fel y Polisi Trosglwyddo Asedau Cymunedol (CAT))
 - ii. Cynllun Rheoli Asedau Dinas a Sir Abertawe 2017/21
 10. Yna, cyhoeddodd yr Atebydd adroddiad terfynol a hysbysiad penderfynu dyddiedig 3 Medi 2021 yn nodi mai ei ddyfarniad oedd bod yr Apelydd wedi methu cydymffurfio â Safonau 88, 89 a 90 o'r Safonau pan nad oedd wedi ystyried effaith ei benderfyniad polisi newydd ar y school was no longer needed as a public resource.” (Commissioner’s final report, 3 September 2021, 2.23).
 8. The Respondent then prepared a second draft report (second report) which was submitted to the Complainant and the Appellant. This report indicated that the Respondent did not believe the Standards had been breached by the Appellant in that the Council (Appellant) had failed to consider the impact of its new policy decision, to transfer YGG Felindre to the private sector, on the Welsh Language. This was in relation to the second decision noted above.
 9. The Appellant responded with representations stating that the second decision was not a policy decision but rather was an operational decision and was not subject to the Standards. The decision was made within the limits or permission of its written policies. In support of these representations, the Appellant provided the Respondent copies of two documents:
 - i. Community Asset Transfer in the City and County of Swansea – Officer and Member Guidance (referred to as the Community Asset Transfer (CAT) Policy).
 - ii. City and Council of Swansea Asset Management Plan 2017/21
 10. The Respondent then issued a final report and a decision notice dated 3 September 2021 stating that his determination was that the Appellant had failed to comply with Standards 88, 89 and 90 of the Standards when it had failed to consider the impact on the Welsh Language of its new policy

Gymraeg, i drosglwyddo YGG Felindre i'r sector preifat.

11. Penderfynodd yr Atebydd gymryd camau pellach yn unol ag adran 77 y Mesur gan fanylu ar y camau gweithredu hyn a gynhwyswyd yn yr Hysbysiad Penderfyniad.
12. Mae'r Apelydd yn apelio yn erbyn: -
 - I. Y penderfyniad bod y safonau wedi eu torri o dan adran 95 (2) o'r Mesur a
 - II. Chamau gorfodi'r Atebydd o dan adran 95(4) y Mesur.

Penderfyniad yr Atebydd

13. Roedd adroddiad terfynol yr Atebydd, dyddiedig 3 Medi 2021, yn nodi mai ei benderfyniad oedd bod y penderfyniad a wnaed gan yr Apelydd, sef nad oedd angen yr ysgol mwyach ac y byddai'n cael ei throsglwyddo o ddefnydd cyhoeddus i berchnogaeth breifat, yn benderfyniad polisi ac yn ddarostyngedig i'r Safonau.
14. Cyfeiriodd yr adroddiad at y diffiniad yn Rheoliad Safonau'r Gymraeg 2015 o'r hyn a olygir wrth "benderfyniad polisi" (paragraff 3.23). Dywedodd fod y diffiniad yn eang ac yn gynwysedig, ond nad oedd yn gyfyngedig i gynnwys deddfwriaeth, arfer pwerau statudol, cynnwys datganiadau polisi, strategaethau neu gynlluniau strategol, a strwythurau mewnol.
15. Cadarnhaodd nad oedd y Rheoliadau'n sôn am y mathau penodol o benderfyniadau neu amgylchiadau a fyddai'n ddarostyngedig i ofynion y safonau llunio polisi ac yn gwahaniaethu rhwng penderfyniadau polisi a rhai gweithredol. Amlinellodd farn yr Atebydd fod "polisi" yn ymwneud yn fras â datganiad neu ddogfen ysgrifenedig ffurfiol sy'n nodi sut bydd mudiad yn

decision, to transfer YGG Felindre to the private sector.

11. The Respondent decided to take further action in accordance with section 77 of the Measure and detailed these actions which were contained within the Decision Notice.
12. The Appellant appeals against both: -
 - I. The decision that the standards have been breached under section 95 (2) of the Measure and
 - II. The enforcement actions of the Respondent under section 95(4) of the Measure.

The Respondent's determination

13. The Respondent's final report dated 3 September 2021 stated that its determination was that the decision taken by the Appellant, that the school was surplus to their requirements and was to be transferred from public use to private ownership, was a policy decision and was subject to the Standards.
14. The report referred to the definition in the Welsh Language Standards Regulation 2015 of what constitutes a "policy decision" (para.3.23). It stated that the definition was broad and included but was not limited to the content of legislation, the exercise of statutory powers, the content of policy statements, strategic strategies or plans, and internal structures.
15. It confirmed the Regulations were silent about the specific types of decisions or circumstances that would be subject to the requirements of policy making standards and distinguished policy decisions from operational ones. It outlined the Respondent view that "policy" broadly relates to a formal written statement or document which sets out how an organisation will

gweithredu mewn sefyllfa benodol. Dywedodd fod “ymarfer” yn ymwneud yn fras â phenderfyniadau gweithredol sy’n llywodraethu camau gweithredu o ddydd i ddydd a bod penderfyniadau gweithredol yn cael eu gwneud o fewn terfynau neu ganiatadau penderfyniadau polisi ac yn rhoi penderfyniadau polisi’r sefydliad ar waith. Daeth i’r casgliad, fodd bynnag, fod gan bob achos ei amgylchiadau a’i ffeithiau ei hun ac nad yw pob penderfyniad neu strategaeth yn seiliedig ar ddogfennau ysgrifenedig. Gall fod elfen o hyblygrwydd, adolygu ac addasu i gyd-fynd â strategaeth benodol.

16. Roedd yr adroddiad terfynol (3.27 – 3.37) yn cwestiynu sylwadau’r Atebydd bod y penderfyniad i drosglwyddo’r ysgol o berchnogaeth gyhoeddus i berchnogaeth breifat yn un gweithredol yn amodol ar Bolisi CAT a’r Cynllun Rheoli Asedau. Nododd fod Cynllun Rheoli Asedau 2017/21 (AMP) yn sôn am y bwriad i’r broses barhau i esblygu, gyda’r ddogfen yn parhau i fireinio ac addasu - “y broses symleiddio hon”. Dyfynnodd eiriau yn y cynllun yn nodi ei fod yn amlwg ar lefel uchel gan y byddai gweithgarwch a manylion sylweddol yn diffinio’r perfformiad a’r allbynnau dros y 4 blynedd nesaf ac yn anochel yn esblygu yn ystod oes y ddogfen hon. Daeth yr Atebydd i’r casgliad ar sail hynny nad oedd y ddogfen yn cynrychioli polisi sefydlog.
17. Roedd yr adroddiad terfynol hefyd yn cyfeirio at bolisi CAT yr Apelydd a fabwysiadwyd ym mis Chwefror 2016, a dywedodd fod hwn wedi addasu’r Cynllun Rheoli Asedau. Un o amcanion y Cynllun Rheoli Asedau oedd ffurfioli’r broses CAT a’r drafodaeth barhaus am CAT. Cwestiynodd yr Ymatebydd y berthynas rhwng y ddwy

operate in a particular situation. It stated that “practice” relates broadly to operational decisions that govern day to day actions and that operational decisions are made within the limits or permissions of policy decisions and put the organisations policy decisions into action. It concluded, however, that each case has its own circumstances and facts and that not all decisions or strategies are based on written documents. There can be an element of flexibility, revision, and adaptation to suit a particular strategy.

16. The final report (3.27 – 3.37) questioned the Respondent’s representation that the decision to transfer the school from public to private ownership was an operational one subject to the CAT Policy and Asset Management Plan. It noted that the Asset Management Plan 2017/21 (AMP) mentioned the intention for the process to continue to evolve, with the document continuing to refine and adapt - “this streamline process”. It quoted wording within the plan stating that it was “deliberately high level as significant activity and details“ would “determine the performance and outputs over the next 4 years” and “inevitably evolve during the life of this document”. The Respondent concluded from this that the document did not represent a fixed policy.
17. The final report also referred to the Appellant’s CAT policy adopted in February 2016 and stated that this had adapted the AMP. One of the objectives of the AMP was to formalise the CAT process and ongoing discussion about CAT’s. The Respondent questioned the relationship between the two

- ddogfen, gan eu disgrifio fel rhai “nad oedd yn gwbl glir”.
18. Dywedwyd yn yr adroddiad nad oedd gwerthu eiddo dan bolisi CAT yn anochel ac yn dilyn penderfyniad y Gyfarwyddiaeth Addysg nad oedd angen YGG Felindre mwyach fel sefydliad addysgol, nid oedd y penderfyniad i’w werthu yn anochel. Mae’r Cynllun Rheoli Asedau yn cynnig llawer o ddewisiadau, ac roedd y CAT yn caniatáu trosglwyddo mewn rhai amgylchiadau amhenodol a oedd yn golygu na fyddai pob adeilad gwag yn cael ei werthu.
 19. Daeth yr Adroddiad Terfynol i’r casgliad bod y penderfyniad i waredu safle’r ysgol yn ymwneud â chynllunio strategol a defnyddio pwerau statudol, ac fe’i disgrifiwyd fel penderfyniad lefel uchel strategol yn arfer pwerau statudol i werthu eiddo ac, o’r herwydd, penderfyniad a oedd yn dod o fewn diffiniad Rheoliadau Safonau’r Gymraeg o “benderfyniad polisi”.

Achos yr Apelydd.

20. Roedd yr Apelydd wedi cyflwyno dau ddatganiad achos yn y cyfnod cyn y gwrandawriad, ac yn y gwrandawriad roedd wedi darparu dogfen dadl fframwaith a rhestr o awdurdodau.
21. Roedd yr Apelydd yn dadlau nad oedd y penderfyniad dan sylw yn ddarostyngedig i’r Safonau gan mai penderfyniad gweithredol ydoedd ac nid penderfyniad polisi. Roedd y ddadl hon yn gyson â’r rhai a gyflwynwyd ac a nodwyd yn natganiadau achos yr Apelydd a’r ddadl fframwaith.
22. Roedd yn dadlau nad oedd gwerthu’r eiddo (yr hen ysgol) yn benderfyniad polisi nac ychwaith yn llunio, adolygu nac adolygu polisi, ac felly nid oedd y dyletswyddau o dan Safonau 88, 89 a 90 yn codi.

documents describing these as “not entirely clear”.

18. The report stated that the sale of a property under the CAT policy was not inevitable and that following the Education Directorate’s decision that it no longer needed YGG Felindre as an educational institution, the decision to sell it was not inevitable. The AMP provides many options, and the CAT allowed a transfer in some unspecified circumstances which meant not all vacant buildings would be sold.
19. The Final Report concluded that the decision to dispose of the school site involved “strategic planning... and the use of statutory powers...” and described it as “a strategic high-level decision exercising statutory powers of selling property and as such, a decision which fell within the Welsh Language Standards Regulations definition of a “policy decision”.

The Appellant’s case.

20. The Appellant had submitted two case statements in the lead up to the hearing and at the hearing provided a skeleton argument document and a list of authorities.
21. The Appellant argued that the decision in question was not subject to the Standards as it was an operational decision and not a policy decision. This argument was consistent with those put forward and detailed in the Appellant’s case statements and skeleton argument.
22. It argued that the sale of the property (the former school) was not a policy decision nor was it formulating, revising, or reviewing a policy and so the duties under Standards 88, 89 and 90 did not arise.

23. Dywedodd fod newid safbwynt yr Atebydd rhwng yr adroddiad cyntaf a'r ail adroddiad yn dangos anghysondeb yn agwedd yr Atebydd tuag at y mater. Derbyniodd mai'r adroddiad terfynol oedd y penderfyniad ac nid y rhai cynharach, ond tynnodd sylw at ddiffiniad yr Atebydd o benderfyniad polisi yn y drafft cyntaf y cytunwyd arno gyda diffiniad yr Apelydd ei hun a defnyddio'r geiriau a geir yng Nghod Ymarfer y Comisiynydd ar Reoliadau Safonau (Rhif 1) 2015.
24. Dadleuodd yr Apelydd fod penderfyniadau Polisi yn ymwneud â sut caiff pwerau a swyddogaethau eu harfer ac mae penderfyniadau gweithredol yw'r penderfyniadau o ddydd i ddydd a wneir yn unol â pholisi. Dywedodd yr Apelydd fod yr adroddiad cyntaf yn dilyn y canllawiau a geir yn y dogfennau uchod ynghylch pryd y crybwyllir penderfyniadau polisi a bod adroddiad terfynol yr Atebydd yn gwyro oddi wrth y safbwynt hwn ac yn wallus.
25. Cyfeiriodd yr Apelydd hefyd at y Mesur, y Safonau, y Cod Ymarfer ar gyfer Rheoliadau 2015 (Cod) (dyddiedig 19 Chwefror 2020) a dogfen gyngor Arferion Da (Medi 2020) lle cyfeirir at yr hyn y mae 'penderfyniad polisi' yn ei olygu yng nghyd-destun y Mesur a'r Safonau.
26. Dywedodd nad oedd y penderfyniad i werthu'r eiddo yn benderfyniad lefel uchel ynghylch Ymddygiad y Cyngor o ran gwerthu eiddo, ond yn hytrach yn benderfyniad gweithredol i waredu eiddo nad oedd y Cyngor yn ei ddefnyddio mwyach. Ymhellach, mae'n datgan bod y penderfyniad wedi cael ei wneud ar lefel leol gan swyddogion yn
23. It stated that the Respondent's change of position from the first report to the second report showed inconsistency in the Respondent's approach to the matter. It accepted that the final report was the decision and not the earlier ones but highlighted that the Respondent's definition of a policy decision in the first draft agreed with the Appellant's own definition and used the words found in the Commissioner's Code of Practice on the Standards (No 1) Regulations 2015.
24. The Appellant argued that Policy decisions are about how powers and functions are exercised and that operational decisions are the day-to-day decisions taken in accordance with a policy. The Appellant stated that the first report followed the guidance found in the above documents as to when policy decisions are mentioned and that the Respondent's final report deviated from this position and was flawed.
25. The Appellant also referred to the Measure, the Standards, the Code of Practice for the 2015 Regulations (Code) (dated 19 February 2020) and a Good Practice advice document (September 2020) where reference is made to what a "policy decision" means in the context of the Measure and the Standards.
26. It stated that the decision to sell the property was not a high-level decision about the Council's Conduct of the business of property disposals, but rather an operational decision to dispose of property that was no further use to the Council. Further, it states that the decision was taken at a local level by officers in accordance with

- unol â'r Cynllun Rheoli Asedau heb ystyriaeth ehangach.
27. Dywedodd yr Apelydd, pan ddarparodd yr Atebydd yr ail adroddiad i'r Apelydd, mai dim ond wedyn y sylweddolodd fod y mater dan ystyriaeth yn ymwneud â'r penderfyniad i symud safle'r ysgol o berchnogaeth gyhoeddus ac i beidio â'i gadw at ddefnydd y gymuned (ail benderfyniad y tri a nodwyd uchod). Ymatebodd yr Apelydd i gadarnhau bod y penderfyniad i beidio â chadw'r adeilad fel ased cymunedol yn benderfyniad gweithredol a wnaed yn unol â'r Cynllun Trosglwyddo Asedau Cymunedol (CAT).
28. Dywedodd yr Apelydd y dilynwyd y polisi CAT ac mai dyma'r polisi, tra bod unrhyw benderfyniad a wnaed yn unol ag ef yn benderfyniad gweithredol.
29. Er mwyn hyrwyddo ei achos, rhoddodd yr Apelydd i'r Tribiwnlys yr adran o'i gyfansoddiad presennol sy'n ymwneud â Rheolau'r Weithdrefn Trafodiadau Tir, sy'n cynnwys yn Atodiad 2 gopi o Bolisi Trosglwyddo Asedau Cymunedol Dinas a Sir Abertawe 2021. Dogfen bolisi yw hon sy'n nodi dull y cyngor o drosglwyddo asedau cymunedol a fframwaith i ategu hyn, ac sy'n gwahaniaethu'n sylweddol o ran cynnwys o'r Canllawiau i Swyddogion ac Aelodau (a elwir yn bolisi CAT) sydd mewn grym adeg y penderfyniad dan sylw ac y mae'r Apelydd yn dweud ei fod wedi llywio'r penderfyniad i drosglwyddo'r ysgol o berchnogaeth gyhoeddus i berchnogaeth breifat. Holodd y Tribiwnlys yr Apelydd am hyn gan nodi nad yw pennawd y ddogfen a ddarparwyd yn flaenorol yn cyfeirio ato fel polisi ond fel canllaw i swyddogion ac aelodau. Mewn ymateb i ymholiad y Tribiwnlys, nododd yr
- the Asset Management Plan without wider consideration.
27. The Appellant stated that when the Respondent provided the second report to the Appellant, it was only then that it realised that the issue being considered related to the decision to remove the school site from public ownership and not to retain it for community use (the second decision of the three noted above). The Appellant responded to confirm that the decision not to retain the building as a community asset was an operational decision taken pursuant to the Community Asset Transfer (CAT).
28. The Appellant stated that the CAT policy was followed and that this was the policy, whereas any decision taken in pursuance of it was an operational decision.
29. In furtherance of its case, the Appellant provided to the Tribunal the section of its current constitution pertaining to the Land Transaction Procedure Rules, which contain as Appendix 2 a copy of the City and County of Swansea Community Asset Transfer Policy 2021. This is a policy document which sets out the council's approach to community asset transfers and a framework to support this, and which differs significantly in content from the Officers and Member Guidance (referred to as the CAT policy) in force at the time of the decision in question and which the Appellant states guided the decision to transfer the school from public to private ownership. The Tribunal questioned the Appellant about this, noting that the heading of the document previously provided does not refer to it as a policy but as guidance to officers and members. In response to the Tribunal's enquiry, the

- Apelydd nad oedd unrhyw ddogfen arall yn bodoli bryd hynny.
30. Dywedodd yr Apelydd fod y cyfeiriad yn adroddiad terfynol yr Atebydd at y ffaith fod polisi nad oedd ganddo gasgliad anochel yn golygu bod penderfyniadau pellach a wnaed yn benderfyniadau polisi eu hunain yn anghywir. Dywedodd fod gan bob polisi eithriadau perthnasol ac nad yw'r ffaith bod dewisiadau ar gael yn gwneud pob penderfyniad yn bolisi newydd. Os oes polisi'n bodoli a bod penderfyniad yn cael ei wneud o fewn terfynau ac awdurdod y polisi hwnnw, yna mae'n benderfyniad gweithredol. Dywedodd nad yw llawer o benderfyniadau gweithredol yn ganlyniad penodol penderfyniad polisi, a phe bai hynny'n digwydd ni fyddai unrhyw benderfyniad o gwbl, gan mai dim ond un dewis fyddai'n bodoli.
31. Dywedodd yr Apelydd fod yr adroddiad terfynol yn cyfeirio at y Cynllun Rheoli Asedau a'r CAT fel un diffygiol gan nad oedd digon o fanylion ynghylch y ffactorau i'w hystyried wrth benderfynu ar y dewis i'w gymryd. Dadleuwyd nad oedd hyn yn ei annilysu fel polisi. Nid lle'r Atebydd oedd ystyried priodoldeb cynnwys polisi wrth ymchwilio i weld a oedd y Safonau'n berthnasol. Dywedodd yr Apelydd fod y darpariaethau yn y CAT (ar dudalennau 279 a 281 bwndel y gwrandawriad) yn darparu rhywfaint o fanylion ac arweiniad ar sut i wneud y penderfyniad a bod hyn yn nodi'n fanwl pryd gallai Trosglwyddo Asedau Cymunedol ddigwydd.
32. Dadleuodd yr Apelydd fod yr Atebydd yn anghywir i roi pwysau ar y ffaith fod y Cyngor yn arfer pwerau statudol wrth wneud y penderfyniad, i ddod i'r casgliad mai penderfyniad polisi oedd hwn. Mae

Appellant stated that no other document existed at that time.

30. The Appellant stated that the reference in the Respondent's final report to the fact that a policy that did not have an inevitable conclusion meant that further decisions taken were themselves policy decisions, was wrong. It stated that all policies have relevant exceptions and that the fact that options exist does not make each decision taken a new policy. If a policy exists and a decision is taken within the limits and authority of that policy, then it is an operational decision. It stated that many operational decisions are not the only and exclusive outcome of a policy decision and if it were so there would be no decision making at all, as only one option would exist.
31. The Appellant stated that the final report referred to the AMP and CAT as being deficient as there was a lack of detail regarding factors to be considered in deciding the option to be taken. It was argued this did not invalidate it as a policy. It was not for the Respondent to consider the appropriateness of the content of a policy when investigating whether the Standards applied. The Appellant stated that the provisions in the CAT (on pages 279 and 281 of the hearing bundle) did provide some detail and guidance on how to take the decision and that this detailed when a Community Asset Transfer could occur.
32. The Appellant argued that the Respondent was wrong to place weight on the fact the Council was exercising statutory powers in taking the decision, to conclude that this was

pob penderfyniad a wneir gan yr awdurdod lleol yn unol ag arfer pwerau statudol ac nid oedd hyn yn helpu i wahaniaethu rhwng penderfyniadau polisi a phenderfyniadau gweithredol.

33. Mae'r Apelydd yn apelio ymhellach yn erbyn y camau gorfodi a nodir yn adroddiad yr Atebydd. Yn gyntaf, nododd bod yr orfodaeth yn afresymol ac anghymesur gan ei bod yn anodd deall y penderfyniad y dylai "*unrhyw benderfyniad cynllunio strategol sy'n ymwneud â rheoli ei stoc o eiddo cymunedol*" fod yn destun Asesiad o'r Effaith ar yr Iaith Gymraeg gan nad yw'r adroddiad yn diffinio beth yw penderfyniad cynllunio strategol.

34. Yn ail, dadleuodd yr Apelydd ei bod yn afresymol ac anghymesur mynnu bod yr Apelydd "*yn sicrhau bod unrhyw benderfyniad sy'n ymwneud â defnyddio pwerau statudol i werthu eiddo cymunedol yn destun asesiad effaith ar y Gymraeg*. Dywedodd fod pob penderfyniad, gan gynnwys penderfyniadau gweithredol, a wneir gan yr Apelydd, yn ymwneud ag arfer pwerau statudol. I gefnogi hyn, mae'r Apelydd yn cyfeirio at y ffaith bod yr Atebydd yn yr adroddiad terfynol yn derbyn nad oedd y penderfyniad i werthu'r eiddo drwy arwerthiant yn benderfyniad mae'r Safonau llunio polisi yn berthnasol iddo. Mae'n dadlau mai effaith penderfyniad yr Atebydd fyddai ei gwneud yn ofynnol i'r Apelydd gynnal asesiad effaith ar y Gymraeg mewn perthynas â phob penderfyniad sy'n ymwneud ag eiddo.

Achos yr Atebydd

35. Roedd sylwadau'r Atebydd yn unol â'r datganiad achos a ffeiliwyd fel rhan o'r achos hwn. Yn y

a policy decision. All decisions taken by the local authority are pursuant to the exercise of statutory powers and this did not help differentiate between policy and operational decisions.

33. The Appellant further appeals against the enforcement action detailed in the Respondent's report. Firstly, it stated that the enforcement is unreasonable and disproportionate as the determination that "*any strategic planning decision relating to the management of its community property stock*" should be subject to a Welsh Language Impact Assessment is difficult to understand since the report does not define what a "strategic planning decision" is.

34. Secondly, the Appellant argued that it was unreasonable and disproportionate to require the Appellant to "*ensure that any decisions relating to the use of using statutory powers to sell community property are subject to a Welsh language impact assessment*." It stated that all decisions, including operational decisions, which are taken by the Appellant, relate to the exercise of statutory powers. In support of this the Appellant refers to the fact that the Respondent in the final report accepted that the decision to sell the property by auction was not a decision to which the policy making Standards apply. It argues that the effect of the Respondent's decision would be to require the Appellant to undertake a Welsh language impact assessment in relation to every decision concerning property.

The Respondent's case

35. The Respondent's representations were in accordance with the case statement filed as part of these

- gwrandawriad, ychwanegodd yr Atebydd nad oedd y Cynllun Rheoli Asedau a'r polisi CAT yn bolisiau yn yr ystyr cywir. Dywedodd yr Atebydd mai canllawiau lefel uchel yn unig oedd y rhain.
36. Cytunodd mai'r mater allweddol o flaen y Tribiwnlys oedd a oedd y penderfyniad a wnaed yn benderfyniad polisi ai peidio, a dadleuodd mai penderfyniad polisi oedd y penderfyniad.
37. Darparwyd dogfennau newydd i'r Tribiwnlys gan yr Apelydd. Y rhain oedd: -
- I. Cofnod o'r penderfyniad a wnaed mewn cyfarfod ar 1 Ebrill 2019 i drin yr eiddo fel eiddo dros ben.
 - II. Cofnodion wedi eu golygu o gyfarfod y grŵp Rheoli Asedau ar 9 Hydref 2019.
38. Dywedodd yr Atebydd fod y rhain yn bwysig gan nad oeddent yn cyfeirio at bolisiau o gwbl. Trosglwyddwyd y llwybr ar gyfer y penderfyniad o'r Grŵp Addysg i'r Gwasanaethau Diwylliannol (ni ddarparwyd cofnodion o'r cyfarfod hwnnw), yna i'r Grŵp Rheoli Asedau ac yna i'r Adran Ystadau. Golygai hyn nad penderfyniad gweithredol a wnaed gan un o swyddogion yr Apelydd ydoedd ond penderfyniad strategol a wnaed gan swyddogion ac aelodau lefel uchel.
39. Dadleuodd yr Atebydd fod y berthynas rhwng y Cynllun Rheoli Asedau a pholisi CAT yn ymddangos yn aneglur ac nad oedd copi o'r polisi CAT yn bodoli. Yn wir, dim ond arweiniad i swyddogion ac aelodau oedd y ddogfen a ddarparwyd ac y cyfeirir ati fel polisi CAT, a bod y canllawiau ymarferol a oedd ynddi yn nodi nad oedd yn bolisi.
40. Disgrifiodd yr Atebydd y Cynllun Rheoli Asedau fel dogfen a oedd yn
- proceedings. At the hearing, the Respondent added that the Asset Management Plan and CAT policy were not policies in the true sense. The Respondent stated they were merely high-level guidance.
36. It agreed that the key issue before the Tribunal was whether the decision taken amounted to a policy decision or not and it argued that the decision was a policy decision.
37. New documents had been provided to the Tribunal by the Appellant. These were: -
- I. A note of the decision taken at a meeting 1 April 2019 to treat the property as surplus.
 - II. Edited minutes of the Asset Management group meeting 9 October 2019.
38. The Respondent stated these were important as they lacked any reference to policies. The pathway for the decision passed from the Education group to Cultural Services (no minutes of that meeting were provided), then to the Asset Management Group and then to the Estates Department. This meant that it was not an operational decision taken by an officer of the Appellant but rather a strategic decision taken by high level officers and members.
39. The Respondent argued that the relationship between the Asset Management Plan and CAT policy appeared unclear and that no copy of the CAT policy existed. The document provided and referred to as the CAT policy was in fact merely guidance to officers and members and that the practical guidance which it contained indicated that it was not a policy.
40. The Respondent described the Asset Management Plan as a document that

- esblygu ac a fyddai'n cael ei diwygio a'i datblygu wrth i amser fynd rhagddo ac fel rhan o Gynllun Corfforaethol mwy yr Apelydd, a oedd wrthi'n cael ei newid bryd hynny. Nid oedd y Cynllun Rheoli Asedau yn cyfeirio at strategaeth ac nid oedd yn ddogfen bolisi.
41. Dywedodd nad oedd y Cynllun Rheoli Asedau yn ceisio bod yn rhagnodol o ran y penderfyniadau y dylid eu gwneud ynghylch adeiladau gwag sy'n eiddo i'r Apelydd ac nid yw'n rhagnodi'r meini prawf i'w defnyddio wrth benderfynu. O ganlyniad, roedd y Cynllun Rheoli Asedau yn ddogfen lefel uchel a fwriadwyd fel man cychwyn ar gyfer gwneud penderfyniadau ynghylch rheoli asedau. Darparodd ddewisiadau ond roedd y dewis yn gofyn am benderfyniad pellach a oedd yn benderfyniad polisi strategol ac nid yn benderfyniad gweithredol.
42. Nid oedd y CAT yn nodi'r meini prawf na'r ffactorau i'w hystyried ar gyfer penderfyniad ynghylch a ddylid gwaredu eiddo, ac unwaith eto roedd unrhyw benderfyniad a wnaed gan yr Apelydd mewn perthynas â hyn yn benderfyniad pellach a oedd yn benderfyniad polisi ac felly'n ddarostyngedig i'r Safonau.
43. Dywed yr Atebydd mai dim ond drafft terfynol yr adroddiad y dylid ei ystyried. Roedd y drafft cyntaf a'r ail ddrafft yn rhannau a oedd yn datblygu o'r ymchwiliad. Roedd yr adroddiad cyntaf wedi delio'n benodol â'r penderfyniad i werthu'r eiddo mewn arwerthiant. Roedd yr ail adroddiad a'r adroddiadau terfynol yn delio â'r penderfyniad i ryddhau'r eiddo o berchnogaeth gyhoeddus i berchnogaeth breifat. Wrth baratoi'r drafft cyntaf, roedd yr Atebydd yn ystyried yn benodol y penderfyniad i werthu'r eiddo mewn arwerthiant. Roedd y casgliad yn seiliedig ar y penderfyniad
- was evolving and was to be amended and developed as time progressed and as part of the Appellant's bigger Corporate Plan which was in the process of being changed at that time. The AMP did not refer to strategy and it was not a policy document.
41. It stated that the AMP did not seek to be prescriptive with regards to the decisions that should be made regarding vacant buildings belonging to the Appellant and does not prescribe the criteria to be used in deciding. Consequently, the AMP was a high-level document intended as a starting point for making decisions regarding asset management. It provided options but the choice of which option would be pursued required a further decision which was a strategic policy decision and not an operational one.
42. The CAT did not set out criteria or factors to be considered for a decision on whether to dispose of a property and again any decision taken by the Appellant in relation to this was a further decision that was a policy decision and thus subject to the Standards.
43. The Respondent states that only the final draft of the report should be considered. The first and second draft were developing parts of the investigation. The first report had dealt with only the decision to sell the property at auction. The second and final reports dealt with the decision to release the property from public ownership into private ownership. The Respondent in preparing the first draft was only considering the issue of the decision to sell the property at auction. The conclusion reached was based on that decision alone. The second and

- hwnnw'n unig. Ystyriodd yr ail ddrafftiau a'r fersiynau terfynol, ar ôl cael eglurhad gan yr achwynydd, gwestiwn ar wahân – sef y penderfyniad i newid yr eiddo o berchnogaeth gyhoeddus i berchnogaeth breifat. Drwy wneud hynny roedd y cyfeiriad gan yr Apelydd at benderfyniad cyntaf yr adroddiad yn gamarweiniol gan eu bod yn ystyried dwy set wahanol o amgylchiadau a ffeithiau.
44. Dywedodd yr Ymatebydd fod y Cod Ymarfer ar gyfer Rheoliadau 2015 (Cod) (dyddiedig 19 Chwefror 2020) a'r ddogfen gyngor ar Arferion Da (Medi 2020) yn cyfeirio at benderfyniadau sy'n ymwneud â lleoliad eiddo, a chynlluniau adeiladau strategol fel enghreifftiau o benderfyniadau polisi sy'n berthnasol i'r Safonau. Dywedwyd bod hyn yn dangos y bwriedid i'r term gael ei ddehongli'n eang ac nad yw wedi ei gyfyngu i ddogfennau cyhoeddedig a ddisgrifir fel polisiau.
45. Dywedodd yr Ymatebydd pe bai dadl yr Apelydd, sef unwaith y byddai'r penderfyniad i drin yr eiddo fel arian dros ben yn cael ei wneud, ei bod yn anochel y byddai'r eiddo'n cael ei werthu, yn gywir, y gallai is-swyddogion werthu'r holl dir dan reolaeth y Cyngor pan nad oedd bellach yn cael ei ddefnyddio gan adran benodol. Ni allai hyn fod yn gywir.
46. Dadleuodd yr Atebydd fod penderfyniad tîm Gwasanaethau Eiddo'r Apelydd i gael gwared ar yr eiddo yn benderfyniad gwahanol ac ar wahân i benderfyniad blaenorol yr Adran Addysg nad oedd angen yr adeilad mwyach ar gyfer defnydd addysgol. Roedd gwneud penderfyniad ar wahân yn golygu bod angen i'r Apelydd ailystyried ei ddyletswyddau yn unol â'r Safonau. Roedd yr Apelydd wedi derbyn nad oedd y tîm
- final drafts considered, after clarification of the complainant, a separate question - namely the decision to change the property from public to private ownership. In that way the reference by the Appellant to the first report decision was misleading as they were considering two different sets of circumstances and facts.
44. The Respondent stated that the Code of Practice for the 2015 Regulations (Code) (dated 19 February 2020) and the Good Practice advice document (September 2020) refer to decisions relating to property location, and strategic building plans as examples of policy decisions relevant to the Standards. It was submitted that this shows that the term is intended to be interpreted broadly and is not confined to published documents described as policies.
45. The Respondent stated that if the Appellant's argument that once the decision to treat the property as surplus was taken it was inevitable that the property would be sold was correct, then junior officers could sell all land under the Council's control once it was no longer being used by a specific department. This could not be the correct position.
46. The Respondent argued that the decision by the Appellant's Property Services team to dispose of the property was a different and separate decision from the previous decision by the Education Department that the building was no longer required for educational use. Making a separate decision meant that it was necessary for the Appellant to reconsider its duties in accordance with the Standards. The Appellant had accepted that the property services team

gwasanaethau eiddo wedi ystyried effaith ei benderfyniad ar y Gymraeg yn unol â'r Safonau.

47. Dywedodd yr Atebydd fod y diffyg cyfeiriad at unrhyw bolisi yng nghofnodion cyfarfodydd yn ategu'r haerriad nad oedd y penderfyniad hwn yn unol â pholisi. Wrth benderfynu rhyddhau'r eiddo fel un nad oedd ei angen mwyach, penderfyniad polisi oedd penderfyniad yr Apelydd.

Gorfodi:

48. Dywedodd yr Atebydd fod yr Apelydd yn anghywir wrth ddweud bod y cam gorfodi'n cyfeirio at bob penderfyniad cynllunio strategol, gan fod y cam gweithredu'n ymwneud â phenderfyniadau cynllunio strategol sy'n ymwneud â rheoli stoc eiddo cymunedol. Nid oedd hyn yn anghymesur wrth ystyried yr holl ddisgrifiad a ddefnyddiwyd.
49. Dywedodd yr Atebydd hefyd, er mwyn cyfyngu ar gwmpas y cam gweithredu a nodwyd yn y dyfarniad a'r adroddiad terfynol, fod perygl o ddiffyg cydymffurfio â'r Safonau.
50. Yn olaf, pan oedd yr Apelydd yn gwrthwynebu cam gweithredu i gynnal asesiad effaith ar gyfer unrhyw benderfyniad yn ymwneud ag arfer pŵer statudol, roedd yn dyfynnu'n wallus y cam gweithredu a nodwyd. Y cam gweithredu oedd cynnal asesiad ar gyfer "unrhyw benderfyniad sy'n ymwneud â... defnyddio pwerau statudol i werthu eiddo cymunedol". Dywedodd yr Atebydd fod hyn yn adlewyrchu'r hyn a nodir yn y Safonau ac felly nad oedd yn gam gorfodi afresymol nac anghymesur.

did not consider the impact of its decision on the Welsh Language in accordance with the Standards.

47. The Respondent stated that the lack of reference to any policy in the minutes of meetings supported the contention that this decision was not in accordance with a policy. In taking the decision to release the property as surplus, the decision by the Appellant was a policy decision.

Enforcement:

48. The Respondent stated that the Appellant was wrong in stating that the enforcement action referred to all "strategic planning decisions" since the action related to strategic planning decisions relating to the management of community property stock. That this was not disproportionate when considering the whole description used.
49. The Respondent also submitted that to narrow the scope of the action stated in the determination and final report risked non-compliance with the Standards.
50. Finally, it was submitted that when the Appellant objected to an action to undertake an impact assessment for "any decision relating to the exercise of a statutory power" it was erroneously quoting the action specified. The action was for an assessment to be undertaken for "any decision relating to the use of... statutory powers to sell community property". The Respondent stated this reflected what the Standards state and was therefore not an unreasonable or disproportionate enforcement action.

Penderfyniad y Tribiwnlys:

51. Rôl y Tribiwnlys ar apel o dan a95 (2) a (4) Mesur y Gymraeg 2011 yw ystyried y mater o'r newydd ar y dystiolaeth sydd ger ei fron, a gwneud ei benderfyniad ei hun ynghylch a oedd dyfarniad yr Atebydd yn gywir.
52. Dadansoddir y term "penderfyniad polisi" yma yng nghyd-destun Mesur 2011 a Rheoliadau Safonau'r Gymraeg Rhif 1 2015. Y diffiniadau a geir yn y darpariaethau deddfwriaethol hyn sy'n pennu'r dehongliad cywir, a'r dogfennau eraill, fel y Cod a'r Canllawiau Ymarfer Da, nad ydynt yn cario'r un pwysau nac awdurdod o ran dehongli statudol.
53. Yn unol â Rhan 1 o Atodlen 2 i Reoliadau 2015, mae'r safonau perthnasol (rhifau 88, 89 a 90) yn ymwneud ag "ystyried effeithiau penderfyniadau polisi corff ar y Gymraeg" a'u cymhwyso pan fo'r corff yn penderfynu "ffurfio polisi newydd, neu adolygu neu ddiwygio polisi sydd eisoes yn bodoli".

Mae Adran 29(1) o Fesur 2011 yn darparu fel a ganlyn:

"Yn y Mesur hwn ystyr "safon llunio polisi" yw safon—

- a. sy'n ymwneud â phenderfyniad polisi, a*
- b. y bwriedir iddo sicrhau, neu gyfrannu at sicrhau, un neu ragor o'r canlyniadau a ganlyn."*

Mae adran 29(6) yna'n darparu:

Ystyr "penderfyniad polisi" yw penderfyniad gan berson —

- a. ynglŷn ag arfer ei swyddogaethau, neu*

Tribunal's Decision:

51. The role of the Tribunal on an appeal under s95 (2) and (4) of the Welsh Language Measure 2011 is to consider the matter afresh on the evidence before it, and to make its own decision as to whether the Respondent's determination was correct.
52. The term "policy decision" is analysed here in the context of the 2011 Measure and the Welsh Language Standards No. 1 Regulations 2015. It is the definitions found in these legislative provisions that determine the correct interpretation and other documents, such as the Code and the Good Practice Guidance do not carry the same weight or authority, in terms of statutory interpretation.
53. In accordance with Part 1 of Schedule 2 to the 2015 Regulations, the relevant standards (numbers 88, 89 and 90) relate to "*considering the effects of a body's policy decisions on the Welsh language*" and apply when that body decides to "*formulate a new policy, or review or revise an existing policy*".

Section 29(1) of the 2011 Measure provides:

"In this Measure "policy making standard" means a standard that –

- a. Relates to a policy decision and*
- b. Is intended to secure, or to contribute to securing, one or more of the following results."*

Section 29(6) then provides:

"In this section, "policy decision" means a decision by a person about –

- a. the exercise of the person's functions, or*

b. ynglŷn â chynnal ei fusnes neu ymgymeriad arall.”

54. Ymhellach, mae Rhan 2 o Atodlen 2 i Reoliadau 2015 yn darparu:
- “Yn Rhan 1 o’r Atodlen hon, ystyr “penderfyniad polisi” yw unrhyw benderfyniad a wneir gan gorff sy’n ymwneud ag arfer ei swyddogaethau neu gynnal ei fusnes neu ymgymeriad arall, ac mae hynny’n cynnwys, ymysg pethau eraill (ac fel y bo’n briodol i’r corff), penderfyniadau ynghylch—*
- a. cynnwys deddfwriaeth;*
 - b. arfer pwerau statudol;*
 - c. cynnwys datganiadau polisi;*
 - ch. strategaethau neu gynlluniau strategol;*
 - d. strwythurau mewnol.”*

55. Mae’r Tribiwnlys o’r farn bod y term “penderfyniad polisi” o dan Fesur 2011 a Rheoliadau 2015 yn golygu mwy na dogfen bolisi ysgrifenedig, a gall gynnwys penderfyniadau a wneir ynghylch arfer swyddogaethau sefydliad. Mae’r diffiniadau ym Mesur 2011 a Rheoliadau 2015 felly i’w dehongli’n ehangach na’r defnydd cyffredin o’r gair “polisi” a ddefnyddir yn aml mewn trafodaeth gyffredin i olygu dogfen ysgrifenedig.

56. Golyga hyn nad penderfyniad ynghylch sut i wneud penderfyniad yn unig yw penderfyniad polisi ond y gall gynnwys y penderfyniad ei hun sy’n ymwneud â chynnal busnes corff. Gallai hefyd gyfeirio at gynnal ei fusnes e.e. cau ysgol, lleoli adeilad cymunedol, symud, neu ailstrwythuro gwasanaeth, cael gwared ar ased cymunedol. Mae’r lefel y gwneir y penderfyniadau hyn arni, yn strategol yn hytrach nag yn weithredol,

b. the conduct of the person’s business or other undertaking.”

54. Furthermore, Part 2 of Schedule 2 to the 2015 Regulations provides:
- “In Part 1 of this Schedule a “policy decision” means a decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the body) decisions about –*
- a. The content of legislation;*
 - b. The exercise of statutory powers;*
 - c. The content of policy statements;*
 - d. Strategies or strategic plans;*
 - e. Internal structures.”*

55. The Tribunal is of the view that the term “policy decision” both under the 2011 Measure and the 2015 Regulations means more than a written policy document and may include decisions that are made about exercising the functions of an organisation. The definitions within the 2011 Measure and the 2015 Regulations are therefore to be interpreted more widely than the common use of the word “policy” which is frequently taken in common discussion to mean a written document.

56. This means that a policy decision is not merely a decision about how to take a decision but that it can include the decision itself which is about the conduct of a body’s business. It could also be the conduct of its business e.g., closing a school, siting a community building, moving, or restructuring a service, disposing of a community asset. The level at which these decisions are taken, strategic rather

- yn berthnasol. Yn yr achos dan sylw, mae hyn yn golygu penderfynu a ddylid cadw ased cyhoeddus ynteu ryddhau'r ased drwy ei drosglwyddo i'r sector preifat.
57. Fel y nodir uchod, mae Rheoliadau 2015 yn datgan mai “ystyr *“penderfyniad polisi” yw unrhyw benderfyniad a wneir gan gorff sy'n ymwneud ag arfer ei swyddogaethau neu gynnal ei fusnes neu ymgymeriad arall...”*. Roedd y penderfyniad i drosglwyddo YGG Felindre o fod yn ased cyhoeddus sy'n eiddo i'r Apelydd i fod yn eiddo i'r sector preifat yn benderfyniad ynghylch cynnal busnes yr Apelydd.
58. Nid oedd y penderfyniad yn ganlyniad anochel i'r penderfyniad cychwynnol nad oedd angen y safle a'r adeiladau ar y tîm Addysg mwyach. Er nad oedd angen y safle mwyach er mwyn darparu addysg ffurfiol, roedd yn cael ei ddefnyddio gan y gymuned ac yn parhau i fod yn ased cyhoeddus. Yn dilyn y penderfyniad i gau'r ysgol gwnaed nifer o benderfyniadau dilynol gan yr Apelydd ar ffurf Gwasanaethau Diwylliannol, y Grŵp Rheoli Asedau a'r Adran Ystadau. Mae tystiolaeth yn awgrymu bod y rhain, yn hytrach na bod yn benderfyniadau gweithredol yn amodol ar bolisiâu cyfredol, yn cael eu gwneud ar lefel strategol ac felly gellir eu diffinio fel penderfyniadau polisi.
59. Pan rannwyd yr adroddiad drafft cychwynnol, yr unig benderfyniad a ddadansoddwyd gan y Comisiynydd oedd y penderfyniad i werthu mewn arwerthiant. Roedd yr ail adroddiad drafft a'r adroddiadau terfynol yn ystyried y mater ynghylch y penderfyniad i ryddhau'r eiddo o fod yn ased sy'n eiddo i'r Apelydd fel eiddo cymunedol i fod yn eiddo preifat. Roedd y penderfyniad hwn yn cynnwys penderfyniad gan
- than operational, is relevant. In the instant case, this involves a decision on whether or not to retain a public asset or to release the asset by transfer to the private sector.
57. As stated above, the 2015 Regulations state that “*a policy decision means any decision made by a body about the exercise of its functions or about the conduct of its business or other undertakings...”*. The decision to transfer YGG Felindre from being a public asset belonging to the Appellant to being owned as a private sector property was a decision about the conduct of the Appellant's business.
58. The decision was not an inevitable outcome of the initial decision that the Educational team no longer required the site and buildings. Although the site was no longer required for the purpose of providing formal education it was in use by the community and continued to be a publicly owned asset. Following the decision to close the school a number of subsequent decisions were taken by the Appellant in the form of Cultural Services, the Asset Management Group and the Estates Department. Evidence suggests that rather than being operational decisions subject to existing policies these were in fact taken at a strategic level and can therefore be defined as policy decisions.
59. When the initial draft report was shared the only decision analysed by the Commissioner was the decision to sell at auction. The second and final draft reports considered the issue surrounding the decision to release the property from being an asset belonging to the Appellant as Community used property to being privately owned property. This decision involved a determination by

- swyddogion ac aelodau lefel uchel yn sefydliad yr Apelydd, ac nid penderfyniad gweithredol yn unig ydoedd. Nid oedd yn benderfyniad arferol y gallai un o swyddogion sefydliad yr Apelydd ei wneud ar ei ben ei hun. Roedd y penderfyniad dilynol ynghylch sut i'w werthu: h.y. drwy arwerthiant neu hysbyseb, yn benderfyniad cwbl wahanol.
60. Roedd dogfennau'r Cynllun Rheoli Asedau a'r CAT yn bodoli fel canllawiau i helpu i wneud penderfyniadau lefel uchel, ac nid yw eu bodolaeth yn atal y penderfyniad rhag bod yn benderfyniad polisi. Pe bai'r Apelydd yn llunio canllawiau ar y camau i'w cymryd wrth ystyried cau ysgol, ni fyddai hynny'n golygu nad yw'r penderfyniad bellach yn benderfyniad sy'n ddarostyngedig i'r safonau.
61. Mae'r Tribiwnlys felly'n canfod bod y penderfyniad a wnaed gan yr Apelydd i drosglwyddo'r ysgol o berchnogaeth gyhoeddus i berchnogaeth breifat ac i'w gwaredu fel ased cymunedol yn benderfyniad polisi, a bod Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 yn gymwys iddo ac, o ganlyniad, bod y Tribiwnlys yn cadarnhau dyfarniad y Comisiynydd. Gwrthodir apêl yr Apelydd dan adran 95(2) Mesur y Gymraeg (Cymru) 2011 ac fe gadarnheir dyfarniad yr Atebydd, yn unol ag adran 96(1)(a).
62. Apeliodd yr Apelydd ymhellach yn erbyn y cam gorfodi a osodwyd gan yr Atebydd.
63. Nid yw'r Tribiwnlys o'r farn bod amcanion y camau gorfodi yn afresymol nac yn anghymesur o dan yr holl amgylchiadau, gan mai'r unig beth mae'r camau gweithredu yn ei wneud yw ei gwneud yn ofynnol i'r Apelydd sicrhau mewn perthynas â phenderfyniadau yn y high level officers and members in the Appellant's organisation and was not merely an operational decision. It was not a day-to-day decision that an officer of the Appellant's organisation could take alone. The subsequent decision on how to sell it: i.e., by auction or advertisement, was a wholly different decision.
60. The AMP and CAT documents existed as guidance to assist in the making of high-level decisions and their existence does not prevent the decision from being a policy decision. If the Appellant produced guidance on steps to be taken when considering the closure of a school, this would not mean that the decision was no longer a decision subject to the standards.
61. The Tribunal therefore finds that the decision taken by the Appellant to transfer the school from public to private ownership and to dispose of it as a community asset was a policy decision and that the Welsh Standards (No. 1) Regulations 2015 do apply to it and, consequently, the Tribunal upholds the Commissioner's determination. The Appellant's appeal under section 95(2) of the Welsh Language (Wales) Measure 2011 is rejected and the Respondent's determination is affirmed, pursuant to section 96(1)(a).
62. The Appellant further appealed against the enforcement action imposed by the Respondent.
63. The Tribunal does not consider that the aims of the enforcement actions are unreasonable or disproportionate in all the circumstances, since the actions simply require the Appellant to ensure that in relation to future decisions the requirements of the

dyfodol y cydymffurfir â gofynion y Safonau ac i'r Apelydd ddarparu tystiolaeth ei fod wedi cymryd y camau angenrheidiol i wneud hynny. Fodd bynnag, yng ngoleuni'r beirniadaethau a godwyd gan yr Apelydd, mae'r Tribiwnlys o'r farn y gallai fod angen mwy o eglurder arnynt.

64. Cafwyd trafodaeth amrywiol yn y gwrandawriad ynghylch beth y dylid tybio fod penderfyniad cynllunio strategol yn ei gwmpasu a phryd y byddai hyn yn gyfystyr â phenderfyniad polisi perthnasol.

65. Yn yr amgylchiadau, mae'r Tribiwnlys o'r farn y dylid diwygio geiriad y cam gorfodi cyntaf i ddarllen: -

1. Rhaid i'r cyngor sefydlu proses gadarn ar gyfer sicrhau bod unrhyw benderfyniad polisi sy'n ymwneud â rheoli ei stoc o eiddo cymunedol yn destun asesiad effaith ar y Gymraeg fel y rhagnodir gan Safonau 88, 89 a 90.

66. O ran yr ail gam gorfodi yr apelir yn ei erbyn, unwaith eto, nid yw'r Tribiwnlys o'r farn bod nodau'r camau gorfodi yn afresymol nac yn anghymesur, ond mae o'r farn y gallai fod angen mwy o eglurder arnynt.

67. Yn yr amgylchiadau, mae'r Tribiwnlys o'r farn y dylid newid geiriad yr ail gam gorfodi i ddarllen: -

1. Rhaid i'r cyngor sefydlu proses gadarn ar gyfer sicrhau bod unrhyw benderfyniad polisi sy'n ymwneud â defnyddio pwerau statudol i werthu eiddo cymunedol yn destun asesiad effaith ar y Gymraeg fel y rhagnodir gan Safonau 88, 89 a 90.

Standards are complied with and for the Appellant to provide evidence that it has taken the necessary steps to do so. However, in the light of the criticisms raised by the Appellant, the Tribunal does consider that they may require more clarity.

64. There was various discussion at the hearing regarding what a strategic planning decision should be taken to cover and when this would amount to a relevant policy decision.

65. In the circumstances, the Tribunal considers that the wording of the first enforcement action should be amended to read: -

1. The council must establish a robust process for ensuring that any policy decisions taken relating to the management of its community property stock are subject to a Welsh language impact assessment as prescribed by Standards 88, 89 and 90.

66. In relation to the second enforcement action appealed against again the Tribunal does not believe that the aims of the enforcement actions are unreasonable or disproportionate but considers that they may require more clarity.

67. In the circumstances, the Tribunal considers that the wording of the second enforcement action should be amended to read: -

1. The council must establish a robust process for ensuring that any policy decisions taken relating to the use of statutory powers to sell community property are subject to a Welsh language impact assessment as prescribed by Standards 88, 89 and 90.

68. Felly, mewn perthynas ag apêl yr Apelydd o dan adran 95(4), fe'i gwrthodir, ond mae'r Tribiwnlys yn amrywio'r cam gorfodi, fel y nodir uchod, yn unol ag adran 96(2)(b) o Fesur 2011.

Iwan Jenkins (Llywydd Y Tribiwnlys)

Rhodri Williams

Isata Kanneh

27 Gorffennaf 2022

68. Accordingly, in relation to the Appellant's appeal under section 95(4) is rejected but the Tribunal varies the enforcement action, as indicated above, pursuant to section 96(2)(b) of the 2011 Measure.

Iwan Jenkins (President of the Tribunal)

Rhodri Williams

Isata Kanneh

27 July 2022

Atodiad/Appendix

Achos / Case: TyG 21/01

Cais Yr Apelydd / Applicants Case

CSG697 Adroddiad arfaethedig ar ymchwiliad i fethiant honedig i gydymffurfio â safonau'r Gymraeg 12 Tachwedd 2020 fersiwn Cymraeg a Saesneg / CSG697 Proposed report on an investigation of an alleged failure to comply with Welsh language standards 12 November 2020 Welsh and English version

CSG697 Ymchwiliad gorfodi safonau: Adroddiad a hysbysiad penderfynu arfaethedig 5 Gorffennaf 2021 fersiwn Cymraeg a Saesneg / CSG697 yn Saesneg Standards enforcement investigation: Proposed report and decision notice 5 July 2021 Welsh and English version.

CSG697 Ymchwiliad gorfodi safonau: Adroddiad a hysbysiad penderfynu 3 Medi 2021 fersiwn Cymraeg a Saesneg / CSG697 Standards enforcement investigation: Report and decision notice 3 September 2021 Welsh and English version

CSG470 Adroddiad arfaethedig ar ymchwiliad i fethiant i gydymffurfio â safonau'r Gymraeg 9 Mai 2021 fersiwn Cymraeg a Saesneg / CSG470 Proposed report on an investigation into a failure to comply with Welsh Language Standards 9 May 2021 Welsh and English version

Policy Making Standards: Creating opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English Language. Good practice advice document English version.

City and County of Swansea Asset Management Plan 2017/21. Fersiwn Saesneg yn unig / English version only.

Community Asset Transfer in the City and County of Swansea - Officer and Member Guidance. Fersiwn Saesneg yn unig / English version only.

Llythyr dyddiedig 15 Gorffennaf 2021 wrth Tracey Meredith, Cyngor Abertawe (ymateb Saesneg) / Letter dated 15 July 2021 from Tracey Meredith, Swansea Council (English response).

CSG697 31 Mawrth 2020 Hysbysiad tystiolaeth – ymchwiliad i fethiant posib i gydymffurfio â safonau'r Gymraeg fersiwn Cymraeg a Saesneg / CSG697 Evidence notice – an investigation of a possible failure to comply with Welsh language standards 31 March 2020 Welsh and English version.

Llythyr dyddiedig 15 Gorffennaf 2021 wrth Tracey Meredith, Cyngor Abertawe (ymateb Cymraeg) / Letter dated 15 July 2021 from Tracey Meredith, Swansea Council (Welsh response).

Ymholiadau Comisiynydd Y Gymraeg (Ymateb Cymraeg) / Welsh Language Commissioner Queries (Welsh Response).

Ymholiadau Comisiynydd Y Gymraeg (Ymateb Saesneg) / Welsh Language Commissioner Queries (English Response).

Datganiad yr Ymatebydd / Respondents Response.

Llythyr dyddiedig 3 Medi 2021 wrth Aled Roberts, Comisynydd Y Gymraeg (ymateb Cymraeg) / Letter dated 3 September 2021 from Aled Roberts, Welsh Language Commissioner.

Cod Ymarfer i Reoliadau Safonau'r Gymraeg (Rhif 1) 2015 fersiwn Cymraeg a Saesneg / Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015 Welsh and English version.

Safonau Llundain Polisi: Creu cyfleoedd i ddefnyddio'r Gymraeg a pheidio a thrin Y Gymraeg yn llai ffafriol na'r Saesneg. Dogfen gyngor arferion da fersiwn Cymraeg / Welsh version only.

Adroddiad ar ymchwiliad i fethiant i gydymffurfio â safonau'r Gymraeg 16 Ionawr 2020 / Report on an investigation into a failure to comply with Welsh Language Standards 16 January 2020.

Llythyr dyddiedig 26 Chwefror 2020 wrth Sarah Lackenby, Cyngor Abertawe (ymateb Cymraeg) / Letter dated 26 February 2020 from Sarah Lackenby, Swansea Council.

Ymholiadau Comisiynydd Y Gymraeg (Ymateb Cymraeg) / Welsh Language Commissioner Queries (Welsh Response).

City and County of Swansea Asset Management Plan 2017/21 fersiwn Saesneg yn unig / English version only.

Community Asset Transfer in the City and County of Swansea - Officer and Member Guidance fersiwn Saesneg yn unig / English version only.

Datganiad pellach yr Apelydd / Applicants further response.

Dogfenau Ychwanegol / Additional Documents

Crynodeb dadleuon yr Apelydd / Applicants skelton argument 6.6.22.

Cyfansoddiad y Cyngor, Rhan 4.7 - Rheolau dull o weithredu (Rheolau dull gweithredu trafodion Tir) / Council Constitution, Part 4.7 - Rules of Procedure (Land Transaction Procedure Rules).

Nodiadau cyfarfod Adran Addysg yr Apelydd 1.4.19 / Minutes of the Appellants Education Department meeting 1.4.19.

Nodiadau cyfarfod Grŵp Rheoli Eiddo'r Apelydd 9.10.19 / Minutes of the Appellants Asset Management Group meeting 9.10.2019.

Awdurdodau cyfreithiol yr Apelydd / Applicants legal authorities.