



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TYG/22/01

CYNGOR BWRDEISTREF SIROL
CASTELL NEDD PORT TALBOT
(Apelydd)

v.

COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Aelodau'r Panel

Rhodri Williams CB (Aelod Cyfreithiol y Tribiwnlys)
Isata Kanneh (Aelod y Tribiwnlys)
Glenda Jones (Aelod y Tribiwnlys)

Yr hyn y mae'r Tribiwnlys wedi'i ystyried

Gweler yr Atodiad

Natur y Cais

Apêl yw hwn o dan adran 95(2) a (4) Mesur y Gymraeg (Cymru) 2011 (Y Mesur) yn erbyn penderfyniad yr Atebydd (dyddiedig 21 Rhagfyr 2022), yn dilyn ymchwiliad o dan adran 71 ac Atodlen 10 y Mesur. Dyfarnwyd bod yr Apelydd wedi methu cydymffurfio â Safonau 91, 92 a 93 Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 (Y Safonau) drwy fethu ag ystyried effaith ei benderfyniad i ad-drefnu tair ysgol gynradd yn ei ardal ar yr Iaith Gymraeg.

Clywyd yr Apêl ar 20 Gorffennaf 2023.



WELSH LANGUAGE TRIBUNAL

Case No: WLT/22/01

NEATH PORT TALBOT
COUNTY BOROUGH COUNCIL
(Appellant)

v.

WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

Members of the Panel

Rhodri Williams KC (Legal Member of the Tribunal)
Isata Kanneh (Member of the Tribunal)
Glenda Jones (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 21 December 2022), following an investigation under section 71 and Schedule 10 of the Measure. It was determined that the Appellant had failed to comply with Standards 91, 92 and 93 of the Welsh Language Standards (No 1) Regulations 2015 (The Standards) by failing to consider the impact on the Welsh language of its decision to reorganise three primary schools in its area.

The Appeal was heard on 20 July 2023.

Penderfyniad y Tribiwnlys

Am y rhesymau a nodir isod:

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

Rhesymau

Cyflwyniad

1. Ar 21^{ain} Hydref 2020, cychwynnodd yr Apelydd (Cyngor Bwrdeistref Sirol Castell-nedd Port Talbot) (“y Cyngor”) ymarfer ymgynghori, drwy gyhoeddi Dogfen Ymgynghori, yn unol â’i ddyletswyddau o dan adran 48(2) o’r Ddeddf Safonau a Threfniadaeth Ysgolion (Cymru) 2013 ac adran 3 o’r Cod Trefniadaeth Ysgolion (2018), mewn perthynas â’i gynnig i sefydlu ysgol gynradd cyfrwng Saesneg newydd yn lle tair ysgol gynradd bresennol, sef Ysgol Gynradd Alltwen, Ysgol Gynradd Godre’r-Graig ac Ysgol Gynradd Llangiwg, a fyddai oll yn cau. Roedd y broses ymgynghori i fod i redeg rhwng 3^{ydd} Tachwedd 2020 a 19^{eg} Ionawr 2021.
2. Heriwyd y broses ad-drefnu yn ddiweddarach yn yr Uchel Lys drwy hawliad am adolygiad barnwrol ar y sail, ymhlith pethau eraill, nad oedd yr Ymgynghoriad yn cynnwys Asesiad o’r Effaith ar y Gymraeg fel sy’n ofynnol gan y Cod Trefniadaeth Ysgolion a’i fod yn destun dyfarniad a roddwyd yn *R (Rhieni Dros Addysg Gymraeg)-v-Cyngor Bwrdeistref Sirol Castell-nedd Port Talbot [2022] EWHC 2674 (Gweinyddol)* (dyfarniad ar 24^{ain} Hydref 2022).
3. Ar wahân, ar 8^{fed} Rhagfyr 2021, derbyniwyd cwyn (cyfeirnod CS114) gan yr Atebydd (Comisiynydd y Gymraeg) (“y Comisiynydd”) nad oedd y Cyngor wedi rhoi ystyriaeth briodol i’r Gymraeg yn ystod y broses

Decision of the Tribunal

For the reasons set out below: -

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

Reasons

Introduction

1. On 21st October 2020, the Appellant (Neath Port Talbot County Borough Council) (“the Council”) commenced a consultation exercise, by the publication of a Consultation Document, pursuant to its duties under section 48(2) of the School Standards and Organisation (Wales) Act 2013 and section 3 of the School Organisation Code (2018), in relation to its proposal to establish a new English medium primary school to replace three existing primary schools, Alltwen Primary, Godre’r Graig Primary and Llangiwg Primary, all of which would close. The Consultation process was due to run from 3rd November 2020 to 19th January 2021.
2. The reorganisation process was later challenged in the High Court by way of a claim for judicial review on the grounds, inter alia, that the Consultation did not contain a Welsh Language Impact Assessment as required by the School Organisation Code and was the subject of a judgment given in *R (Rhieni Dros Addysg Gymraeg)-v-Neath Port Talbot County Borough Council [2022] EWHC 2674 (Admin)* (judgment on 24th October 2022).
3. Separately, on 8th December 2021, a complaint (reference CS114) was received by the Respondent (the Welsh Language Commissioner) (“the Commissioner”) that the Council had not given proper consideration to the Welsh

ymgyngori. Rhoddodd yr Atebydd hysbysiad o hyn ac o'i dyletswydd i ymchwilio i'r gŵyn, trwy lythyr dyddiedig 10^{fed} Ionawr 2022.

4. Yna rhoddodd yr Atebydd hysbysiad ffurfiol o'r ymchwiliad o dan adran 71 o Fesur y Gymraeg (Cymru) 2011 ("Mesur y Gymraeg") ac o gylch gorchwyl arfaethedig yr Ymchwiliad i Orfodi Safonau, yn ymwneud â methiant i gydymffurfio â Safonau 91, 92 a 93 o Reoliadau Safonau'r Gymraeg (Rhif 1) 2015 ("Rheoliadau'r Gymraeg"), drwy lythyr pellach dyddiedig 1^{af} Chwefror 2022.
5. Mae'r Safonau hyn yn darparu fel a ganlyn:

"Safon 91

Pan fyddwch yn cyhoeddi dogfen ymgynghori sy'n ymwneud â phenderfyniad polisi, rhaid i'r ddogfen honno ystyried, a cheisio barn ynghylch yr effeithiau (pa un ai yw'r rhieni'n bositif neu'n andwyol) y byddai'r penderfyniadau polisi o dan ystyriaeth yn eu cael ar—
(a) cyfleoedd i bersonau ddefnyddio'r Gymraeg, a
(b) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Safon 92

Pan fyddwch yn cyhoeddi dogfen ymgynghori sy'n ymwneud â phenderfyniad polisi, rhaid i'r ddogfen honno ystyried a cheisio barn ynghylch sut y gellid llunio neu addasu'r polisi o dan ystyriaeth fel y byddai'n cael effeithiau positif, neu effeithiau mwy positif, ar—
(a) cyfleoedd i bersonau ddefnyddio'r Gymraeg, a

Language during the consultation process. The Respondent gave notice of this and of her duty to investigate the complaint, by letter dated 10th January 2022.

4. The Respondent then gave formal notice of the investigation under section 71 of the Welsh Language (Wales) Measure 2011 ("the Welsh Language Measure") and of proposed terms of reference of the Standards Enforcement Investigation, involving a failure to comply with Standards 91, 92 and 93 of the Welsh Language Standards (No. 1) Regulations 2015 ("the Welsh Language Regulations"), by further letter dated 1st February 2022.
5. These Standards provide as follows:

"Standard 91

When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—
(a) opportunities for persons to use the Welsh language, and
(b) treating the Welsh language no less favourably than the English language.

Standard 92

When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would have positive effects, or increased positive effects, on—
(a) opportunities for persons to use the Welsh language, and

(b) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

Safon 93

Pan fyddwch yn cyhoeddi dogfen ymgynghori sy'n ymwneud â phenderfyniad polisi, rhaid i'r ddogfen honno ystyried a cheisio barn ynghylch sut y gellid llunio neu addasu'r polisi o dan ystyriaeth fel na fyddai'n cael effeithiau andwyol, neu fel y byddai'n cael effeithiau llai andwyol, ar –

(a) cyfleoedd i bersonau ddefnyddio'r Gymraeg, a

(b) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.”

(b) treating the Welsh language no less favourably than the English language.

Standard 93

When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would not have adverse effects, or so that it would have decreased adverse effects, on – (a) opportunities for persons to use the Welsh language, and

(b) treating the Welsh language no less favourably than the English language.”

6. Yn dilyn cadarnhad o'r cylch gorchwyl, cyflwyno Hysbysiad Tystiolaeth ar 14^{eg} Mawrth 2022, a darparu tystiolaeth gan y Cyngor ar 29^{ain} Ebrill 2022, gan gynnwys copi o'r Ddogfen Ymgynghori, cyflwynodd y Comisiynydd Adroddiad Arfaethedig a Hysbysiad o Benderfyniad ar 11^{eg} Gorffennaf 2022.
7. Anfonwyd ymateb manwl i'r Adroddiad Arfaethedig gan y Cyngor ar 3^{ydd} Awst 2022, ynghyd â chopi o Ganllawiau Asesu Effaith Integredig y Cyngor. Wedi hynny, cyhoeddodd y Comisiynydd Adroddiad Arfaethedig diwygiedig a Hysbysiad o Benderfyniad ar 21^{ain} Hydref 2022.
8. Yn dilyn ymateb pellach gan y Cyngor dyddiedig 15^{fed} Tachwedd 2022, cyhoeddodd y Comisiynydd ei Hadroddiad Terfynol a Hysbysiad o Benderfyniad ar 21^{ain} Rhagfyr 2022 (“yr Hysbysiad o Benderfyniad”). Roedd hwn yn pennu bod y Cyngor wedi methu â chydymffurfio â phob un o'r tair Safon Iaith Gymraeg (Rhifau 91, 92 a 93) ac yn ei gwneud yn ofynnol i'r Cyngor gymryd camau

6. Following confirmation of the terms of reference, service of an Evidence Notice on 14th March 2022, and provision of evidence by the Council on 29th April 2022, including a copy of the Consultation Document, the Commissioner served a Proposed Report and Decision Notice on 11th July 2022.
7. A detailed response to the Proposed Report was sent by the Council on 3rd August 2022, together with a copy of the Council's Integrated Impact Assessment Guidance. Thereafter the Commissioner issued a revised Proposed Report and Decision Notice on 21st October 2022.
8. Following a further response from the Council dated 15th November 2022, the Commissioner issued her Final Report and Decision Notice on 21st December 2022 (“the Decision Notice”). This determined that the Council had failed to comply with each of the three Welsh Language Standards (Nos 91, 92 and 93) and required the Council to take enforcement action in accordance with section 77 of the Welsh Language

gorfodi yn unol ag adran 77 Mesur y Gymraeg, o fewn tri mis i'r dyddiad o'r penderfyniad terfynol.

9. Ffeiliodd y Cyngor Hysbysiad o Gais dyddiedig 17^{eg} Ionawr 2023, yn apelio yn erbyn y penderfyniad o ddiffyg cydymffurfio â'r safonau perthnasol ac yn erbyn gosod y mesurau gorfodi, yn unol ag adran 95(2) a (4) Mesur y Gymraeg.

Penderfyniad y Comisiynydd

10. Penderfynodd y Comisiynydd, er mwyn i'r ddogfen ymgynghori gydymffurfio â'r Safonau perthnasol, fod yn rhaid bodloni dau ofyniad penodol yn y safonau. Yn gyntaf oll, rhaid 'ystyried' yr effeithiau posibl; ac yn ail, rhaid i'r Cyngor 'geisio barn' ar unrhyw effeithiau posibl. Roedd y rhain yn ddau beth ar wahân.
11. Roedd y Cyngor wedi dadlau "*O ganfod bod y ddogfen yn ceisio barn ar y materion hyn, mae'n rhaid dilyn bod y ddogfen yn eu hystyried, oherwydd fel arall ni fyddai deunydd wedi bod i geisio barn arno.*" Nid oedd y Comisiynydd yn cytuno â'r dehongliad hwn o'r Safonau dan sylw.
12. Yn hytrach roedd angen i'r ddogfen wneud mwy na cheisio barn yn unig er mwyn cydymffurfio â nhw. Roedd angen i'r ddogfen ystyried y materion hefyd. Fel arall, penderfynodd y Comisiynydd y byddai'r gair '*ystyried*' yn afraid
13. Wedi cytuno bod y Cyngor wedi gwneud digon i gydymffurfio â'r elfen o geisio barn o dan y tair safon, gan fod cwestiynau penodol wedi'u gofyn am effaith y cynnig ar gyfleoedd i ddefnyddio'r Gymraeg a pheidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg, aeth y Comisiynydd ymlaen i benderfynu a oedd y Cyngor wedi

Measure, within three months of the date of the final determination.

9. The Council filed a Notice of Application dated 17th January 2023, appealing against the determination of non-compliance with the relevant standards and against the imposition of the enforcement measures, pursuant to section 95(2) & (4) of the Welsh Language Measure.

The Commissioner's Determination

10. The Commissioner determined that, in order for the consultation document to comply with the relevant Standards, two specific requirements of the standards had to be met. First of all, the potential effects must be 'considered'; and secondly, the Council must 'seek views' on any potential effects. These were two separate things.
11. The Council had argued that "*By finding that the document sought views on these matters, it must follow that the document considered them, as otherwise there would not have been material to seek views on.*" The Commissioner did not agree with this interpretation of the Standards in question.
12. Rather the document needed to do more than just seek views in order to comply with them. The document also needed to consider the issues. Otherwise, the Commissioner determined, the word '*consider*' would be made redundant
13. Having agreed that the Council had done enough to comply with the element of seeking opinions under all three standards, as specific questions had been asked about the effect of the proposal on opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language, the Commissioner went on to determine whether the Council had considered the

ystyried yr effeithiau ar y Gymraeg yn y Ddogfen Ymgynghori.

effects on the Welsh language in the Consultation Document.

14. Dehonglwyd y gofyniad hwn gan y Comisiynydd i olygu bod yn rhaid i'r Ddogfen Ymgynghori nodi, amlinellu ac ystyried effeithiau posibl y cynnig dan sylw ar y Gymraeg (safon 91), ystyried yr opsiynau sydd ar gael a fyddai'n ei alluogi i wneud y penderfyniad mewn ffordd a fyddai'n cael effeithiau mwy cadarnhaol (safon 92) ac effeithiau llai andwyol (safon 93) ar y Gymraeg a heb driniaeth lai ffafriol na'r Saesneg.

14. The Commissioner interpreted this requirement to mean that the Consultation Document had to identify, outline and consider the potential effects of the proposal in question on the Welsh language (standard 91), consider the options available that would enable it to make the decision in a way that would have more positive effects (standard 92) and less adverse effects (standard 93) on the Welsh language and with no less favourable treatment than English.

15. Roedd yn rhaid i'r Cyngor felly gynnwys gwybodaeth o fewn y Ddogfen Ymgynghori ynglŷn â sut y byddai'r penderfyniad polisi yn effeithio ar y ddwy elfen a nodir yn y safonau, sef (i) cyfleoedd i'r cyhoedd ddefnyddio'r Gymraeg a (ii) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

15. The Council therefore had to include information within the Consultation Document regarding how the policy decision would affect the two elements noted in the standards, namely (i) opportunities for the public to use the Welsh language and (ii) treating the Welsh language no less favourably than the English language.

16. Er mwyn cydymffurfio â'r Safonau, roedd y Comisiynydd o'r farn bod angen ystyried yr effaith ar y ddau beth hyn (a sut y gellir llunio neu addasu'r polisi dan sylw), yng nghyd-destun cyflwr y Gymraeg yn yr ardaloedd neu'r cymunedau yr effeithir arnynt gan y penderfyniad polisi.

16. In order to comply with the Standards, the Commissioner was of the opinion that consideration needed to be given to the effect on these two things (and how the policy under consideration could be drawn up or modified), in the context of the state of the Welsh language in the areas or communities affected by the policy decision.

17. Yn arwyddocaol, penderfynodd y Comisiynydd, yn achos ad-drefnu ysgolion, fod hyn felly yn cynnwys ystyried nid yn unig yr effaith ar yr ysgolion dan sylw, ond hefyd yr effaith ar yr ardal leol a'r gymuned. Canfu'r Comisiynydd y byddai cyfyngu'r ystyriaeth i'r ysgolion dan sylw yn unig yn gosod ffiniau artiffisial ar y Safonau ac yn groes i fwriad Mesur y Gymraeg.

17. Significantly, the Commissioner determined that, in the case of school reorganisation, this therefore included considering not only the effect on the schools in question, but also the effect on the local area and the community. The Commissioner found that limiting the consideration to just the schools in question would set artificial boundaries on the Standards and would be contrary to the intention of the Welsh Language Measure.

18. Er mwyn cydymffurfio â safon 91, bu'n rhaid i'r Cyngor ystyried a cheisio barn yn y ddogfen ymgynghori ar effeithiau posibl y cynnig ar y Gymraeg. Roedd y Cyngor wedi dadlau ei fod yn cydymffurfio â safon 91 oherwydd:

- Roedd adran o'r enw '*Beth yw'r effaith ar y Gymraeg*' a oedd yn amlinellu'r effeithiau cadarnhaol disgwylidig ar ddisgyblion yr ysgol newydd drwy gynyddu nifer y staff sy'n siarad Cymraeg. Dadleuodd y Cyngor fod cysylltiad clir â'r targed yn ei Gynllun Strategol Cymraeg mewn Addysg (WESP).
- Roedd yr ardal dan sylw o arwyddocâd ieithyddol ac roedd Dogfen Ymgynghori'r Cyngor yn rhoi crynodeb o'r gwaith a gwblhawyd yn yr ysgolion cyfrwng Cymraeg lleol i gynyddu capasiti a gwella'r ddarpariaeth.
- Roedd yr adran hon yn datgan yn glir na fyddai gostyngiad yn y ddarpariaeth Gymraeg yn yr ardal.
- Roedd y ddogfen ymgynghori hefyd yn cynnwys adran o'r enw '*Aseiad Effaith Integredig*' a oedd yn nodi y gallai fod effeithiau ar gyfleoedd pobl i ddefnyddio'r Gymraeg.

19. Felly, credai'r Cyngor ei bod yn amlwg bod ystyriaeth wedi'i rhoi o fewn y Ddogfen Ymgynghori i'r effeithiau posibl ar gyfleoedd pobl i ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

18. In order to comply with standard 91, the Council had to consider and seek views in the consultation document on the proposal's potential effects on the Welsh language. The Council had argued that it complied with standard 91 because:

- There was a section entitled '*What is the impact on the Welsh language*' that outlined the expected positive impacts on the pupils at the new school by increasing the number of Welsh speaking staff. The Council argued that there was a clear link to the target within its Welsh in Education Strategic Plan (WESP).
- The area in question was of linguistic significance and the Council's Consultation Document provided a summary of the work completed in the local Welsh medium schools to increase capacity and improve provision.
- This section clearly stated that there would not be a reduction in Welsh language provision in the area.
- The consultation document also included a section entitled '*Integrated Impact Assessment*' that stated that there may be impacts on people's opportunities to use the Welsh language.

19. Therefore, the Council believed that it was clear that consideration had been given within the Consultation Document to the potential effects on people's opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.

20. Cydnabu'r Comisiynydd fod cyfeiriad at un effaith gadarnhaol bosibl y gallai'r cynnig ei chael ar y Gymraeg, sef yr effaith ar ddisgyblion yr ysgol newydd.
20. The Commissioner acknowledged that there was reference to one possible positive effect the proposal might have on the Welsh language, namely the effect on the pupils at the new school.
21. Fodd bynnag, er bod y Cyngor yn derbyn bod hwn yn ardal ieithyddol sensitif, ni nododd na thrafod unrhyw effeithiau andwyol neu gadarnhaol posibl y gallai'r cynnig eu cael ar y Gymraeg y tu hwnt i'r ysgolion dan sylw.
21. However, although the Council accepted that this was a linguistically sensitive area, it did not identify or discuss any possible adverse or positive effects that the proposal may have on the Welsh language beyond the schools under consideration.
22. Nid oedd y Cyngor wedi ystyried effaith bosibl y cynnig (i) ar y defnydd o'r Gymraeg yn ysgolion cynradd Cymraeg yr ardal; (ii) ar y defnydd o'r Gymraeg yn y gymuned leol ehangach yn y tymor byr a'r tymor hir; (iii) ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg (e.e. o ran safon cyfleusterau addysgol).
22. The Council did not consider the possible effect of the proposal (i) on the use of the Welsh language in the Welsh primary schools in the area; (ii) on the use of the Welsh language in the wider local community in the short and long term; (iii) on not treating the Welsh language less favourably than the English language (e.g. in terms of the standard of educational facilities).
23. Roedd y Comisiynydd yn anghytuno bod y Cyngor wedi gwneud cysylltiad clir â'r targedau yn y Cynlluniau Strategol Cymraeg mewn Addysg yn y Ddogfen Ymgynghori. Dim ond un frawddeg oedd yn y ddogfen ymgynghorol yn nodi bod Cynllun Strategol y Gymraeg mewn Addysg y Cyngor "*yn manylu ar sut y mae'n bwriadu cefnogi a datblygu addysg Gymraeg ymhellach mewn ysgolion*". Ni wnaed unrhyw gysylltiad ag unrhyw un o'r targedau, ac ni roddwyd ystyriaeth bellach i effaith bosibl y cynnig ar y targedau hynny.
23. The Commissioner disagreed that the Council had made a clear link to the targets in the WESPs in the Consultation Document. The consultation document only included one sentence stating that the Council's WESP "*details how it intends to support and further develop Welsh language education in schools*". No link was made to any of the targets, and there was no further consideration on the proposal's potential effect on those targets.
24. Er bod brawddeg yn yr adran '*Asesiad Effaith Integredig*' o'r Ddogfen Ymgynghori yn nodi, "*gallai'r cynnig hefyd effeithio ar gyfleoedd i ddefnyddio'r Gymraeg*", nid oedd esboniad pellach o'r effeithiau posibl hyn, boed yn gadarnhaol neu'n andwyol.
24. Though there was a sentence in the '*Integrated Impact Assessment*' section of the Consultation Document stating, "*the proposal may also impact on opportunities to use the Welsh language*", there was no further explanation of these potential effects, whether positive or adverse.

25. Penderfynodd y Comisiynydd, er mwyn cydymffurfio â safon 91, fod yn rhaid i'r Cyngor ystyried a cheisio barn yn y ddogfen ymgynghori ar effeithiau posibl y cynnig (boed yn gadarnhaol neu'n andwyol) ar gyfleoedd i ddefnyddio'r Gymraeg ac ar drin y Gymraeg dim llai ffafriol na'r Saesneg.
26. Roedd y Ddogfen Ymgynghori yn gofyn am farn ar yr effeithiau posibl ar y Gymraeg o ran cyfleoedd i'w defnyddio ac o ran peidio â'i thrin yn llai ffafriol na'r Saesneg, ond cyfyngodd unrhyw ystyriaeth o'r effeithiau hynny i'r effaith ar gyfleoedd i'w defnyddio o fewn y ysgolion a gymerodd ran yn yr ymgynghoriad. Ni roddwyd ystyriaeth felly i effaith bosibl y cynnig ar gyfleoedd i ddefnyddio'r Gymraeg yn y gymuned ehangach nac o gwbl ar beidio â'i thrin yn llai ffafriol na'r Saesneg. Roedd hyn yn fethiant i gydymffurfio â Safon 91.
27. Mewn perthynas â chydymffurfio â Safon 92, roedd yn rhaid i'r Cyngor ystyried a cheisio barn yn y Ddogfen Ymgynghori ar sut y gellid llunio neu adolygu'r polisi fel y byddai'n cael effeithiau cadarnhaol, neu fwy cadarnhaol, ar gyfleoedd i ddefnyddio'r Gymraeg ac ar peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.
28. Nododd y Comisiynydd eto mai dim ond y Ddogfen Ymgynghori ei hun oedd yn berthnasol i'r ymchwiliad, ac felly nad oedd deunydd mewn dogfennau eraill y tu allan i hynny, ac na chyfeiriwyd atynt yn y Ddogfen Ymgynghori, yn effeithio ar gydymffurfiaeth y Cyngor â'r Safonau dan sylw.
29. Penderfynodd y Comisiynydd, er mwyn cydymffurfio â'r safon hon, fod angen ystyried sut y gellir llunio neu ddiwygio'r polisi dan sylw, yng
25. The Commissioner determined that in order to comply with standard 91, the Council had to consider and seek views in the consultation document on the potential effects of the proposal (whether positive or adverse) on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
26. The Consultation Document sought views on the possible effects on the Welsh language in terms of opportunities to use it and in terms of not treating it less favourably than English, but it limited any consideration of those effects to the effect on opportunities to use it within the schools involved in the consultation. There was therefore no consideration of the possible effect of the proposal on opportunities to use the Welsh language in the wider community or at all on not treating it less favourably than English. This was a failure to comply with Standard 91.
27. In relation to compliance with Standard 92, the Council had to consider and seek views in the Consultation Document on how the policy could be formulated or revised so that it would have positive, or more positive, effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
28. The Commissioner noted again that only the Consultation Document itself was relevant to the investigation, and that therefore material in other documents outside of that and which were not referred to in the Consultation Document did not affect the Council's compliance with the Standards in question.
29. The Commissioner determined that in order to comply with this standard, consideration needed to be given to how the policy in question could be

nghyd-destun cyflwr y Gymraeg yn yr ardaloedd neu'r cymunedau yr effeithir arnynt gan y penderfyniad polisi.

30. Yn achos ad-drefnu ysgolion, roedd hynny'n cynnwys ystyried nid yn unig sut i gael effeithiau cadarnhaol, neu fwy cadarnhaol yn yr ysgol(ion) dan sylw, ond hefyd gwneud hynny yn yr ardal leol a'r gymuned.

31. Roedd y Cyngor wedi dadlau ei fod yn cydymffurfio â safon 92 oherwydd

- Cyfeiriodd eto yn ei dystiolaeth at effeithiau cadarnhaol dod ag athrawon Cymraeg eu hiaith o'r tri safle at ei gilydd i un ysgol, a'r datblygiad ieithyddol a fyddai'n deillio o hynny i'r disgyblion a'r plant.
- Roedd yr adroddiad ymgynghori wedi ystyried yr holl safbwyntiau a ddarparwyd ar y cynnig, gan ystyried yr effeithiau posibl ar gyfleoedd i ddefnyddio'r Gymraeg. Roedd yr asesiad effaith hefyd yn cynnwys mwy o fanylion am effeithiau cadarnhaol posibl, a rhoddwyd cyfle i'r cyhoedd wneud sylwadau unwaith eto.

32. Penderfynodd y Comisiynydd, er bod un effaith gadarnhaol wedi'i chrybwyll yn y ddogfen ymgynghori, nad oedd unrhyw ystyriaeth i sut y gellid llunio neu addasu'r polisi fel ei fod yn cael effeithiau cadarnhaol, neu fwy cadarnhaol.

33. Yn ogystal â hynny, nid oedd sôn o gwbl am effeithiau cadarnhaol y tu hwnt i'r ysgolion dan sylw nac o ran peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Tra bod nifer o opsiynau yn cael eu hystyried o ran effeithiau posib y polisi ar faterion eraill, ni wnaethpwyd hyn o ran yr effeithiau posib ar y Gymraeg.

formulated or revised, in the context of the state of the Welsh language in the areas or communities affected by the policy decision.

30. In the case of school reorganisation, that included considering not only how to have positive, or more positive effects in the school(s) in question, but also doing so in the local area and the community.

31. The Council had argued that it complied with standard 92 because

- It referred again in its evidence to the positive effects of bringing together Welsh-speaking teachers from the three sites into one school, and the linguistic development that would result from that for the pupils and the children.
- The consultation report had considered all the views provided on the proposal, taking into account the potential impacts on opportunities to use the Welsh language. The impact assessment also included more detail on potential positive impacts, and the public was given the opportunity to comment once again.

32. The Commissioner determined that, although one positive effect had been mentioned in the consultation document, there was no consideration of how the policy could be formulated or modified so that it has positive, or more positive effects.

33. In addition to that, there was no mention at all of positive effects beyond the schools in question or in terms of not treating the Welsh language less favourably than English. While a number of options were being considered in terms of the possible effects of the policy on other issues, this was not done in terms of the possible effects on the Welsh language.

34. Er mwyn cydymffurfio â safon 92, roedd yn rhaid i'r Cyngor ystyried a cheisio barn yn y Ddogfen Ymgynghori ar sut y gellid llunio'r polisi er mwyn cael effeithiau cadarnhaol, neu fwy cadarnhaol, ar gyfleoedd i ddefnyddio'r Gymraeg ac ar peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.
35. Roedd y ddogfen ymgynghori yn ceisio barn ar yr effeithiau posibl ar y Gymraeg, ond nid oedd wedi ystyried sut y gellid llunio'r polisi er mwyn cael effeithiau mwy cadarnhaol ar y Gymraeg. Roedd hyn yn fethiant i gydymffurfio â Safon 92.
36. Yn olaf, mewn perthynas â Safon 93, penderfynodd y Comisiynydd, er mwyn cydymffurfio, bod yn rhaid i'r Cyngor ystyried a cheisio barn yn y ddogfen ymgynghori ar sut y gellid llunio neu adolygu'r polisi er mwyn osgoi effeithiau andwyol, neu gael effeithiau llai andwyol, ar gyfleoedd i ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.
37. Nododd y Comisiynydd eto mai dim ond y Ddogfen Ymgynghori ei hun oedd yn berthnasol i'r ymchwiliad, ac felly nad oedd deunydd mewn dogfennau eraill y tu allan i hynny, ac na chyfeirir atynt yn y Ddogfen Ymgynghori, yn effeithio ar gydymffurfiaeth y Cyngor â'r Safonau dan sylw.
38. Er mwyn cydymffurfio â'r Safon hon, roedd angen ystyried sut y gellir llunio neu ddiwygio'r polisi dan sylw, yng nghyd-destun safle'r Gymraeg yn yr ardaloedd neu'r cymunedau yr effeithir arnynt gan y penderfyniad polisi. Yn achos ad-drefnu ysgolion, roedd hynny'n cynnwys ystyried nid yn unig sut i beidio â chael unrhyw effeithiau andwyol, neu leihau effeithiau andwyol, yn yr ysgol(ion)
34. In order to comply with standard 92, the Council had to consider and seek views in the Consultation Document on how the policy could be formulated in order to have positive, or more positive, effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
35. The consultation document sought views on the potential effects on the Welsh language, but failed to consider how the policy could be formulated in order to have more positive effects on the Welsh language. This was a failure to comply with of Standard 92.
36. Finally, in relation to Standard 93, the Commissioner determined that in order to comply, the Council had to consider and seek views in the consultation document on how the policy could be formulated or revised in order to avoid adverse effects, or have less adverse effects, on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
37. The Commissioner noted again that only the Consultation Document itself was relevant to the investigation, and that therefore material in other documents outside of that and which are not referred to in the Consultation Document did not affect the Council's compliance with the Standards in question.
38. In order to comply with this Standard, consideration needed to be given to how the policy in question could be formulated or revised, in the context of the position of the Welsh language in the areas or communities affected by the policy decision. In the case of school reorganisation, that included considering not only how to have no adverse, or decreased adverse, effects in the

dan sylw, ond hefyd gwneud hynny yn yr ardal leol a'r gymuned.

39. Roedd y Cyngor wedi dadlau ei fod yn cydymffurfio â safon 93 oherwydd

- Cyfeiriodd eto at yr adran '*Beth yw'r effaith ar y Gymraeg*' a oedd, yn ôl y Cyngor, yn nodi ei fod wedi ystyried effeithiau andwyol y cynnig ar y Gymraeg. Cyfeiriodd at y datganiad bod yr ardal dan sylw o arwyddocâd ieithyddol. Credai'r Cyngor ei fod wedi nodi camau a gymerwyd er mwyn cynyddu maint yr ysgolion cyfrwng Cymraeg cyfagos a gwella'r ddarpariaeth addysg cyfrwng Cymraeg yn yr ysgolion hynny.
- Roedd y ddogfen yn datgan nad oedd yn disgwyl gweld gostyngiad yn natblygiad y Gymraeg yn yr ardal, ac y byddai AEIG yn cael ei gwblhau yn dilyn yr ymgynghoriad.
- Yn dilyn yr ymgynghoriad, cyhoeddwyd adroddiad ymgynghori a oedd yn ystyried yr effeithiau andwyol ar gyfleoedd i ddefnyddio'r Gymraeg. Cyfeiriodd yr adroddiad at opsiynau lliniaru i leihau effeithiau andwyol ar y Gymraeg ac argymhellodd y dylid gweithredu'r rhain.

40. Cydnabu'r Comisiynydd fod y Cyngor wedi datgan faint sydd wedi'i wario ar ysgolion cyfrwng Cymraeg lleol, ond nid oedd hyn yn ystyriaeth o sut i lunio neu ddiwygio'r polisi fel ei fod yn atal neu'n cael effeithiau llai andwyol ar gyfleoedd i ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

41. Nid oedd unrhyw ystyriaeth o'r fath yn y Ddogfen Ymgynghori. Er y crybwyllwyd nifer o opsiynau o ran

school(s) in question, but also doing so in the local area and the community.

39. The Council had argued that it complied with standard 93 because

- It again referred to the section '*What is the impact on the Welsh language*' which, according to the Council, indicated it has given consideration to the adverse effects of the proposal on the Welsh Language. It referred to the statement that the area in question is of linguistic significance. The Council believed that it had identified actions that had been taken in order to increase the size of the nearby Welsh medium schools and to improve the provision of Welsh medium education in those schools.
- The document stated that it did not expect to see a reduction in the development of the Welsh language in the area, and that a WLIA would be completed following the consultation.
- Following the consultation, a consultation report was published which considered the adverse effects on opportunities to use the Welsh language. The report referred to mitigation options to reduce adverse effects on the Welsh language and recommended that these be implemented.

40. The Commissioner acknowledged that the Council stated how much had been spent in local Welsh medium schools, but this did not constitute a consideration of how to formulate or revise the policy so that it prevents or has less adverse effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

41. There was no such consideration in the Consultation Document. While a number of options were mentioned in terms of the

effeithiau posibl y polisi ar faterion eraill, ni wnaethpwyd hyn o ran yr effeithiau posibl ar y Gymraeg.

42. Nododd y Comisiynydd ymhellach, er bod y ddogfen ymgynghori yn datgan nad oedd disgwyl i'r cynnig leihau'r ddarpariaeth Gymraeg (h.y. addysgol) yn yr ardal, nid oedd yn nodi na fyddai'r cynnig yn *'lleihau datblygiad y Gymraeg yn yr ardal'*.
43. Er mwyn cydymffurfio â safon 93, bu'n rhaid i'r Cyngor ystyried a cheisio barn yn y ddogfen ymgynghori sut y gellir llunio'r polisi er mwyn osgoi effeithiau andwyol neu gael effeithiau llai andwyol ar gyfleoedd i ddefnyddio'r Gymraeg ac ar beidio trin y Gymraeg yn llai ffafriol na'r Saesneg.
44. Roedd y Ddogfen Ymgynghori yn gofyn am farn ar yr effeithiau posibl ar y Gymraeg, ond methodd ag ystyried sut y gellid llunio neu ddiwygio'r polisi fel na fyddai'n cael effeithiau andwyol, neu fel y byddai'n cael effeithiau llai andwyol ar gyfleoedd i ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Roedd hyn yn fethiant i gydymffurfio â Safon 93.
45. I gloi, dywedodd y Comisiynydd, er mwyn cydymffurfio â'r Safonau hyn, bod angen ymdrech gydwbybodol i ystyried yr effeithiau posibl ar y Gymraeg. Yn lle hynny, roedd y Ddogfen Ymgynghori yn cynnwys trafodaeth arwynebol ar y Gymraeg. Ymddengys mai'r hyn a gyflwynwyd oedd nifer o ddatganiadau ffeithiol am y Gymraeg.
46. O ystyried bod y polisi arfaethedig mewn maes a adnabuwyd yn y ddogfen ymgynghori fel ardal *'arwyddocaol yn ieithyddol'*, byddai'r Comisiynydd wedi disgwyl gweld trafodaeth wirioneddol ar effaith y

potential effects of the policy on other issues, this was not done in terms of the potential effects on the Welsh language.

42. The Commissioner further noted, that while the consultation document stated that the proposal was not expected to reduce Welsh (i.e. educational) provision in the area, it did not state that the proposal would not *'reduce Welsh language development in the area'*.
43. In order to comply with standard 93, the Council had to consider and seek views in the consultation document regarding how the policy could be formulated in order to avoid adverse effects or have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
44. The Consultation Document sought views on the potential effects on the Welsh language, but it failed to consider how the policy could be formulated or revised so that it would not have adverse effects, or so that it would have less adverse effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than the English. This was a failure to comply with Standard 93.
45. In conclusion, the Commissioner stated that in order to comply with these Standards, a conscientious effort was needed to consider the potential effects on the Welsh language. Instead, the Consultation Document contained a superficial discussion of the Welsh language. It seemed that what was presented was a number of factual statements about the Welsh language.
46. Considering that the proposed policy was in an area identified in the consultation document as being a *'linguistically significant'* area, the Commissioner would have expected to see a real discussion of the effect of the proposal on

cynnig ar y Gymraeg y tu hwnt i ffiniau'r ysgol newydd arfaethedig.

47. Gallai penderfyniadau polisi sy'n ymwneud â darpariaeth addysg gael effeithiau cymhleth ar y defnydd o'r Gymraeg mewn cymuned; ar benderfyniadau a wneir mewn perthynas ag addysg cyfrwng Cymraeg; ac ar agweddau tuag at y Gymraeg yn lleol. Gallai'r rhain fod yn gymysgedd o effeithiau cadarnhaol, andwyol a niwtral.
48. Nid oedd y Comisiynydd yn fodlon bod y Cyngor wedi gwneud digon o ymdrech yn yr achos hwn i nodi yn y Ddogfen Ymgynghori y cymysgedd o effeithiau posibl y gallai'r cynnig ei gael ar y Gymraeg.
49. Yn ei dystiolaeth, cynhwysodd y Cyngor y canllawiau mewnol a ddefnyddiwyd ganddo wrth ddatblygu dogfennau ymgynghori.
50. Ym marn y Comisiynydd, rhestrodd y canllawiau hyn y Safonau yn unig. Nid oedd eglurhad pellach ynglŷn â sut i gydymffurfio â hwy, a byddai cryfhau'r canllaw mewnol hwn yn gymorth i sicrhau cydymffurfiaeth lawn yn y dyfodol.
51. Nododd y Comisiynydd fod Adroddiad Ymgynghori dilynol y Cyngor a AEIG yn ystyried y Gymraeg yn ehangach na'r Ddogfen Ymgynghori, a bod ystyriaethau pellach i'r effeithiau posibl. Fodd bynnag, nid oedd hyn yn berthnasol i'r ymchwiliad hwn. Roedd yn bwysig bod y Cyngor ei hun yn nodi prif effeithiau posibl y cynnig ar yr iaith Gymraeg ac yn eu hystyried yn y Ddogfen Ymgynghori ynghyd ag opsiynau lliniaru fel bod y cyhoedd yn gallu gwneud sylwadau gwybodus arnynt. Nid cyfrifoldeb y cyhoedd oedd cyflwyno effeithiau posib y cynnig i'r Cyngor mewn ymateb i'r ymgynghoriad, gan y dylai'r Cyngor

the Welsh language beyond the boundaries of the proposed new school.

47. Policy decisions relating to education provision could have complex effects on the use of the Welsh language in a community; on decisions made in relation to Welsh medium education; and on attitudes towards the Welsh language locally. These could be a mixture of positive, adverse and neutral effects.
48. The Commissioner was not satisfied that the Council had made sufficient efforts in this case to identify in the Consultation Document the mix of potential effects the proposal may have on the Welsh language.
49. In its evidence, the Council included the internal guidance it used when developing consultation documents.
50. In the Commissioner's view, this guidance merely listed the Standards. There was no further explanation regarding how to comply with them, and strengthening this internal guidance would assist in ensuring full compliance in future.
51. The Commissioner noted that the Council's subsequent Consultation Report and WLIA considered the Welsh language more widely than the Consultation Document, and that there were further considerations of the potential effects. However, this was not relevant to this investigation. It was important that the Council itself identified the main possible effects of the proposal on the Welsh language and considered them in the Consultation Document along with mitigating options so that the public could make informed comments on them. It was not the public's responsibility to present the potential effects of the proposal to the Council in response to the consultation,

ei hun fod wedi eu hadnabod yn y Ddogfen Ymgynghori, er mwyn i'r cyhoedd allu gwneud sylwadau arnynt.

52. Os nad oedd Dogfen Ymgynghori yn mynd i'r afael ag effeithiau posib y cynnig ar y Gymraeg yn lleol, yna nid oedd yn bosibl cael sgwrs a thrafodaeth wirioneddol agored gyda'r cyhoedd ynglŷn â'r cynnig. Hyd yn oed pe byddai'r Cyngor yn gofyn cwestiynau penodol ynglŷn â'r Gymraeg yn y ddogfen ymgynghori, os nad oedd y wybodaeth berthnasol ar gael i'r cyhoedd yn y ddogfen, ni allai'r cyhoedd wneud sylw llawn ar y cynnig.

53. Yng ngoleuni ei chanfyddiadau, penderfynodd y Comisiynydd y dylai'r Cyngor gymryd camau pellach i'r diben o atal y methiant i gydymffurfio rhag parhau, yn unol ag adran 77 o Fesur y Gymraeg 2011, a oedd i'w gwblhau o fewn tri mis o ddyddiad cyhoeddi'r penderfyniad terfynol.

54. Roedd y weithred hon yn cynnwys: (i) cynnal adolygiad o'i ganllawiau mewnol; (ii) datgan yn yr adroddiad fod angen ystyried yr effeithiau ar y Gymraeg; (iii) darparu hyfforddiant i'r staff perthnasol; (iv) darparu tystiolaeth o gydymffurfio ag (i) – (iii) i'r Comisiynydd; (v) rhoi cyhoeddusrwydd i'r methiant i gydymffurfio â'r tair Safon ar wefan y Cyngor a mewn rwyd staff; a (vi) darparu tystiolaeth o gydymffurfio â'r gofyniad hwn (v) i'r Comisiynydd.

Achos yr Apelydd.

55. Roedd Rhesymau gwreiddiol y Cyngor dros wneud y cais, a ffeiliwyd gyda'i Hysbysiad o Gais dyddiedig 17^{eg} Ionawr 2023 a'i Ddatganiad Achos a "*Seiliau'r Apêl Diwygiedig*" dyddiedig 10^{fed} Mawrth 2023 yn honni

as the Council itself should have identified them in the Consultation Document, so that the public could comment on them.

52. If a Consultation Document did not address the potential effects of the proposal on the Welsh language locally, then it was not possible to have a truly open conversation and discussion with the public regarding the proposal. Even if the Council asked specific questions regarding the Welsh language in the consultation document, if the relevant information was not available to the public in the document, the public could not comment fully on the proposal.

53. In the light of her findings, the Commissioner decided that the Council should take further action for the purpose of preventing the continuation of the failure to comply, in accordance with section 77 of the Welsh Language Measure 2011, which was to be completed within three months of the date of issue of the final determination.

54. This action comprised: (i) conducting a review of its internal guidance; (ii) stating therein the need to consider the effects on the Welsh language; (iii) providing training to the relevant staff; (iv) providing evidence of compliance with (i) – (iii) to the Commissioner; (v) publicising the failure to comply with the three Standards on the Council's website and staff intranet; and (vi) providing evidence of compliance with this requirement (v) to the Commissioner.

The Appellant's case.

55. The Council's original Reasons for making the application, filed with its Notice of Application dated 17th January 2023 and its Case Statement and "*Appeal Grounds Amended*" dated 10th March 2023 alleged various internal

bod anghysondebau mewnol amrywiol yn y dogfennau gwneud penderfyniadau a gyhoeddwyd gan y Comisiynydd yn ogystal â beirniadaeth o safbwynt cyfansoddiadol y Comisiynydd ar ymchwiliad o dan adran 71 o Fesur 2011.

56. Roedd Braslun o Ddadl y Cyngor dyddiedig 11^{eg} Gorffennaf 2023 a'i gyflwyniadau llafar a wnaed yn y gwrandawriad ar 20^{fed} Gorffennaf 2023 yn canolbwyntio ar bwynt o egwyddor mewn perthynas ag ystyr y gair "ystyried" ym mhob un o'r Safonau perthnasol, yn ogystal â honni na fu mewn gwirionedd unrhyw fethiant i gydymffurfio â'r Safonau.

57. Dywedodd y Cyngor fod ei Ddogfen Ymgynghori wedi datgan:

"Beth yw'r effaith ar y Gymraeg?"

Mae Cynllun Strategol Cymraeg mewn Addysg (WESP) y Cyngor yn manylu ar sut y mae'n bwriadu cefnogi a datblygu addysg Gymraeg ymhellach mewn ysgolion.

Mae ysgolion cynradd Alltwen, Godre'r-Graig a Llangiwig yn dysgu Cymraeg fel ail iaith a bydd hyn hefyd yn wir am yr ysgol newydd. Ar hyn o bryd mae 25% o'r staff ar draws y tair ysgol yn siaradwyr Cymraeg rhugl neu weddol rugl.

Drwy gyfuno'r tair ysgol gellid gwella'r ddarpariaeth Gymraeg gan y gallai fod mwy o effaith ar gael grŵp mwy cryno o siaradwyr Cymraeg sy'n gallu cefnogi sgiliau datblygu iaith disgyblion a staff trwy gyfrwng y Gymraeg.

Mae amcan y Cynllun Strategol i 'Sicrhau bod darpariaeth ail iaith ar draws pob ysgol yn rhoi'r sgiliau a'r gallu i ddisgyblion ddod yn

inconsistencies in the decision making documents issued by the Commissioner as well as criticisms of the Commissioner's constitutional position on an investigation under section 71 of the 2011 Measure.

56. The Council's Skeleton Argument dated 11th July 2023 and its oral submissions made at the hearing on 20th July 2023 focussed on a point of principle in relation to the meaning of the word "consider" in each of the relevant Standards, as well as alleging that there had in fact been no failure to comply with the Standards.

57. The Council submitted that its Consultation Document had stated:

"What is the impact on the Welsh Language?"

The Council's Welsh in Education Strategic Plan (WESP) details how it intends to support and further develop Welsh language education in schools.

Alltwen, Godre'r Graig and Llangiwig primaries teach Welsh as a second language and this will also be the case for the new school. Currently 25% of staff across the three schools are fluent or fairly fluent Welsh speakers.

By combining the three schools Welsh language provision could be improved as there could be greater impact on having a more concentrated group of Welsh speakers able to support pupil and staff language development skills through the medium of Welsh.

The WESP objective 'To ensure that second language provision across all schools provides pupils with the skills

siaradwyr Cymraeg hyderus a pharhaus a bod y ddarpariaeth yn datblygu perthynas ystyrlon rhwng yr iaith a'r dysgwyr' yn arbennig o berthnasol i'r cynnig hwn.

Mae ardal Cwm Tawe yn ardal ieithyddol arwyddocaol gan ei bod yn cynnwys y nifer a'r canrannau uchaf o siaradwyr Cymraeg yng Nghastell-nedd Port Talbot ac ymhlith yr uchaf yng Nghymru gyfan.

Mae addysg gynradd trwy gyfrwng y Gymraeg ar gael yn Ysgol Gynradd Gymraeg Pontardawe ac Ysgol Gynradd Gymraeg Trebannws.

Yn ogystal, mae Ysgol Gymraeg Ystalyfera – Bro Dur, sydd tua 5 milltir o'r safle arfaethedig, yn darparu addysg pob oed 3-19 trwy gyfrwng y Gymraeg.

Mae buddsoddiad sylweddol wedi digwydd yn Ysgol Gymraeg Ystalyfera – Bro Dur trwy brosiectau Band A (tua £17.5m) a Band B (tua £9m) o Raglen Ariannu Cyfalaf Ysgolion yr 21ain Ganrif.

Yn ogystal, mae cyllid o £1.6m wedi'i sicrhau i wella'r ddarpariaeth yn Ysgol Gynradd Gymraeg Pontardawe, gan gynnwys gofal plant estynedig a gwell a chyfleusterau'r Cyfnod Sylfaen. Disgwylir i'r gwaith gael ei gwblhau yn 2021.

Nid oes disgwyl y byddai'r cynnig hwn yn lleihau'r ddarpariaeth Gymraeg yn yr ardal, ond bydd asesiad o'r effaith ar y Gymraeg yn cael ei gynnal yn ystod yr ymgynghoriad."

and ability to become confident and sustained speakers of Welsh and that the provision develops a meaningful relationship between the language and the learner' is of particular relevance to this proposal.

The Swansea Valley area is a linguistically significant area as it contains the highest number and percentages of Welsh speakers in Neath Port Talbot and is amongst the highest in Wales as a whole.

Primary education through the medium of Welsh is available at Ysgol Gynradd Gymraeg Pontardawe and Ysgol Gynradd Gymraeg Trebannws.

Additionally Ysgol Gymraeg Ystalyfera –Bro Dur, which is approximately 5 miles from the proposed site, provides all through 3-19 education through the medium of Welsh.

Significant investment has taken place at Ysgol Gymraeg Ystalyfera –Bro Dur through projects in both Band A (circ. £17.5m) and Band B (circ. £9m) of 21st Century Schools Capital Funding Programme.

In addition funding of £1.6m has been secured to improve provision at Ysgol Gynradd Gymraeg Pontardawe, including extended and enhanced childcare and Foundation Phase facilities. Work is expected to be completed in 2021.

It is not expected that this proposal would reduce Welsh language provision in the area, however a Welsh language impact assessment will be undertaken during consultation."

58. Ar fater y pwynt o egwyddor, dadleuodd y Cyngor mai mater i'r awdurdod cyhoeddus, yn hytrach na'r Comisiynydd, yw asesu effeithiau

58. On the issue of the point of principle, the Council argued that it is for the public authority, rather than the Commissioner, to assess the potential effects of the

posibl y cynnig ar y materion perthnasol, ac a ellid newid y cynnig i gael effeithiau mwy cadarnhaol/lleihau effeithiau andwyol ar y materion hynny. Felly asesiad y Cyngor sy'n rhaid ei "ystyried", yn yr ystyr o gael ei gofnodi, yn y ddogfen ymgynghori.

59. Dadleuwyd bod y dehongliad hwn o'r Cyngor yn well, am y rhesymau a ganlyn.

60. Yn gyntaf, dim ond pan fydd corff perthnasol yn cyhoeddi dogfen ymgynghori y mae Safonau 91 – 93 yn gymwys. Mae safonau gwahanol yn berthnasol pan fydd corff yn llunio polisi newydd neu'n adolygu/diwygio un sy'n bodoli eisoes. Drwy ddiffiniad, cyhoeddir dogfen ymgynghori ar adeg pan fo cynigion yn dal mewn cyfnod ffurfiannol. Os bydd awdurdod cyhoeddus yn aros i ymgynghori nes bod ei gynnig wedi datblygu i fod yn ateb pendant, byddai'r ymgynghoriad yn anghyfreithlon. Yn aml ni fydd awdurdod cyhoeddus yn gwybod am ystod lawn o effeithiau posibl y penderfyniad polisi dan sylw.

61. Un o brif ddibenion ymarfer ymgynghori yw cael gwybodaeth am ganlyniadau posibl cynnig polisi, a fydd wedyn yn cael ei hystyried gan y penderfynwr cyn gwneud penderfyniad terfynol. Cyfeiriwyd at *R (Moseley) v Haringey LBC [2014] 1 WLR 3947*, yn [23] – [24]. Nid oedd yn syndod mai asesiad rhagarweiniol yn unig fyddai unrhyw asesiad, neu "ystyriaeth" ar hyn o bryd.

62. Yn ail, mae Safonau 91-93 yn ymwneud ag effeithiau posibl y polisi sy'n cael ei ystyried, pe bai'n cael ei fabwysiadu a'i weithredu maes o law. Mae hyn o reidrwydd yn cynnwys barn ragfynegol am ganlyniadau gwahanol opsiynau gerbron y penderfynwr: gweler, trwy gyfatebiaeth, *R (Mott) v Asiantaeth yr*

proposal on the relevant matters, and whether the proposal could be changed to have more positive effects/decreased adverse effects on those matters. It is thus the Council's assessment that must be "considered", in the sense of being recorded, in the consultation document.

59. This interpretation of the Council, it was argued, was to be preferred, for the following reasons.

60. First of all, Standards 91 – 93 apply only when a relevant body publishes a consultation document. Different standards apply when a body is formulating a new policy or reviewing/revising an existing one. By definition, a consultation document is published at a point when proposals are still at a formative stage. If a public authority waits to consult until its proposal has evolved into a definite solution, the consultation would be unlawful. A public authority will often not know the full range of potential impacts of the policy decision under consideration.

61. One of the key purposes of a consultation exercise is to obtain information about the potential consequences of a policy proposal, which will then be considered by the decision maker before a final decision is taken. Reference was made to *R (Moseley) v Haringey LBC [2014] 1 WLR 3947*, at [23] – [24]. It was hardly surprising that any assessment, or "consideration" at this stage would only be a preliminary one.

62. Secondly, Standards 91-93 are concerned with the potential effects of the policy being considered, should it be adopted and implemented in due course. This necessarily involves a predictive judgment about the consequences of different options before the decision-maker: see, by analogy, *R (Mott) v Environment Agency [2016] 1 WLR 4338*

Amgylchedd [2016] 1 WLR 4338 yn [70], [74] a [78]. Roedd cywirdeb dyfarniadau o'r fath yn hynod o anodd i'w brofi'n empirig.

63. Tynnodd y Cyngor gyfatebiaeth â phenderfyniadau mewn adolygiadau barnwrol yn y maes cynllunio yna chyflwynodd mai'r Cyngor, yn amodol ar brawf afresymoldeb, oedd i benderfynu beth oedd yr “*ystyriaethau perthnasol*” i'w hystyried fel rhan o'r broses ymgynghori. Cyfeiriwyd at *Adolygiad Barnwrol De Smith 9^{ed} Arg* yn §§ 5 – 114 i 5 – 116 ac at ddyfarniad Tŷ'r Arglwyddi yn *Tesco Stores Limited-v-Ysgrifennydd Gwladol dros yr Amgylchedd [1995] 1 WLR 759* yn ôl Arglwydd Hoffmann yn 780 F – G.

64. Yng nghyd-destun penderfyniad polisi ynghylch ad-drefnu ysgolion, roedd y rhagfynegiadau hyn ar gyfer y Cyngor, fel y penderfynwr a etholwyd yn ddemocrataidd, sydd â'r dasg o arfer y swyddogaethau hynny yn ardal y Cyngor. Nid lle'r Comisiynydd yw sefyll yn esgidiau'r Cyngor, gwneud ei rhagfynegiad ei hun am effeithiau posibl y polisi dan sylw a/neu ddiwygiadau neu ddiwygiadau y gellid eu gwneud iddo. Cyfeiriwyd at *A v Ysgrifennydd Gwladol yr Adran Gartref [2005] 2 AC 68*, yn ôl Arglwydd Bingham yn [29], lle cynhaliwyd:

“Mae unrhyw ragfynegiad am ymddygiad bodau dynol yn y dyfodol (yn hytrach na chlyfnodau'r lleuad neu benllanw yn London Bridge) o reidrwydd yn broblematic. Gall meddyliau rhesymol a gwybodus amrywio, ac ni ddangosir bod dyfarniad yn anghywir neu'n afresymol oherwydd nad yw'r hyn y credir sy'n debygol o ddigwydd yn digwydd.”

65. Yn drydydd, pe bai dehongliad y Comisiynydd yn gywir, byddai'n

at [70], [74] & [78]. The correctness of such judgments was notoriously difficult to test empirically.

63. The Council drew an analogy with decisions in planning judicial reviews and submitted that subject to a test of irrationality, it was for the Council to determine what were the “*material considerations*” to be taken into account as part of the consultation process. Reference was made to *De Smith's Judicial Review 9th Ed* at §§ 5 – 114 to 5 – 116 and to the judgment of the House of Lords in *Tesco Stores Limited-v-Secretary of State for the Environment [1995] 1 WLR 759* per Lord Hoffmann at 780 F – G.

64. In the context of a policy decision about school reorganisation, these predictions were for the Council, as the democratically elected decision-maker, tasked with exercising those functions in the Council's area. It is not for the Commissioner to stand in the shoes of the Council, to make her own prediction about the potential effects of the policy under consideration and/or revisions or amendments that could be made to it. Reference was made to *A v Secretary of State for the Home Department [2005] 2 AC 68*, per Lord Bingham at [29], where it was held:

“Any prediction about the future behaviour of human beings (as opposed to the phases of the moon or high water at London Bridge) is necessarily problematical. Reasonable and informed minds may differ, and a judgment is not shown to be wrong or unreasonable because that which is thought likely to happen does not happen.”

65. Thirdly, if the Commissioner's interpretation were correct, it would be

amhosibl i gorff perthnasol byth wybod a oedd wedi cydymffurfio â Safonau 91 – 93. Pe bai'r Comisiynydd wedyn, yn ystod ymchwiliad, yn gallu nodi effaith bosibl nas cofnodwyd yn y Ddogfen Ymgynghori, ni waeth pa mor anghysbell neu annhebygol yw'r effaith bosibl honno mewn bywyd go iawn, yna gallai'r Comisiynydd ddod i'r casgliad nad oedd y Ddogfen Ymgynghori wedi “ystyried” yr effaith honno. Byddai ymagwedd o'r fath yn sicr o arwain at ansicrwydd. Ni all hyn fod yn fwriad gan Weinidogion Cymru wrth wneud Rheoliadau 2015, na bwriad Cynulliad Cenedlaethol Cymru (ar y pryd) wrth eu cymeradwyo.

66. Gwnaethpwyd cymhariaeth hefyd â dyletswydd cydraddoldeb y sector cyhoeddus (“y PSED”) a gynhwysir yn adran 149(1) o Ddeddf Cydraddoldeb 2010. Cyflwynwyd bod y PSED yn gosod dyletswydd ar awdurdodau cyhoeddus, wrth arfer eu swyddogaethau, i roi “sylw dyledus” i'r tri angen cydraddoldeb. Dywedwyd bod y ddyletswydd sylw dyledus yn amlwg yn ddyletswydd fwy beichus na'r gofyniad i “ystyried” amrywiol faterion.

67. Gall y ddyletswydd sylw dyledus ei gwneud yn ofynnol i awdurdodau cyhoeddus gymryd camau i asesu effaith debygol cynnig. Fodd bynnag, mae'r llysoedd wedi dyfarnu'n gyson bod angen i ystyriaeth awdurdod cyhoeddus o'r amgylchiadau perthnasol fod yn “*rhesymol a chymesur*”, ac nad yw'n ofynnol i awdurdod cyhoeddus ystyried pob goblygiadau posibl o arfer (neu arfer arfaethedig) ei swyddogaethau: cyfeiriwyd at *R (Bailey) v Brent LBC [2011] EWCA Civ 1586; [2012] LGR 530*, yn [94] – [95] ac yn [102] lle dyfarnwyd “*na ellir disgwyl i Gynghorau ddyfalu ar faterion o'r*

impossible for a relevant body ever to know whether it had complied with Standards 91 – 93. If the Commissioner were subsequently able, during the course of an investigation, to identify a potential effect not recorded in the Consultation Document, no matter how remote or implausible that potential effect was in real life, then the Commissioner could conclude that the Consultation Document did not “*consider*” that effect. Such an approach would be a recipe for uncertainty. This cannot have been the intention of the Welsh Ministers in making the 2015 Regulations, or of the (then) National Assembly for Wales in approving them.

66. A comparison was also made with the public sector equality duty (“the PSED”) contained in section 149(1) of the Equality Act 2010. It was submitted that the PSED imposes a duty on public authorities, in the exercise of their functions, to have “*due regard*” to the three equality needs. The due regard duty, it was said, was obviously a more onerous duty than the requirement to “*consider*” various matters.

67. The due regard duty may require public authorities to take steps to assess the likely impact of a proposal. However, the courts have consistently held that a public authority's consideration of the relevant circumstances needs to be “*reasonable and proportionate*”, and that a public authority is not required to consider every possible ramification of the exercise (or proposed exercise) of its functions: reference was made to *R (Bailey) v Brent LBC [2011] EWCA Civ 1586; [2012] LGR 530*, at [94] – [95] and at [102] where it was held that “*Councils cannot be expected to speculate on or to investigate or to explore*

fath nac ymchwilio iddynt nac archwilio materion o'r fath ad infinitum".

such matters ad infinitum".

68. Dadleuwyd y dylid defnyddio dull tebyg o ymdrin â'r gofyniad llai beichus i "*ystyried*" y materion amrywiol o dan Safonau 91 – 93, nad oedd y term hwnnw wedi'i amodi ymhellach. Dywedwyd mai'r Cyngor yn unig a ddylai benderfynu a oedd wedi ystyried mater yn briodol at y dibenion hyn ai peidio.
69. Yn benodol mewn perthynas â Safon 91, haerodd y Cyngor fod y Comisiynydd yn anghywir i ddod i'r casgliad nad oedd y Cyngor yn "*ystyried*" yr effeithiau posibl ar y Gymraeg o dan safon 91.
70. Cynnig penodol ar gyfer ysgolion oedd y polisi dan sylw. Y rhagosodiad ar gyfer y penderfyniad hwn oedd barn y Comisiynydd, yn achos ad-drefnu ysgolion, y dylid ystyried y mater perthnasol dan sylw, "*gan ystyried nid yn unig yr effaith ar yr ysgol(ion) dan sylw, ond hefyd yr effaith ar yr ardal leol a'r gymuned*". Ac eto ni wnaeth y Comisiynydd, ar unrhyw adeg yn ei phenderfyniad, hyd yn oed awgrymu beth allai'r effaith ar y "*gymuned ehangach*" fod yn yr ardal leol. Nid oedd y Cyngor yn ystyried y byddai'r cynnig yn cael unrhyw effaith o'r fath.
71. Ymhellach, fe wnaeth y Cyngor "*ystyried*" yr effeithiau y byddai'r penderfyniad polisi dan sylw yn ei gael ar (a) cyfleoedd i bersonau ddefnyddio'r Gymraeg, a (b) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Roedd hyn yn amlwg o unrhyw ddarlleniad teg o'r Ddogfen Ymgynghori.
72. Yn gyntaf, roedd yr adran dan y pennawd "*Beth yw'r effaith ar y Gymraeg*" yn amlinellu'r effeithiau
68. It was argued that a similar approach should be applied to the less onerous requirement to "*consider*" the various matters under Standards 91 – 93, which term was not further qualified. It was said that the Council alone should decide whether or not it had appropriately considered a matter for these purposes.
69. Specifically in relation to Standard 91, the Council submitted that the Commissioner was wrong to conclude that the Council did not "*consider*" the potential effects on the Welsh language under standard 91.
70. The policy under consideration was a specific proposal for schools. The premise for this determination was the Commissioner's view that, in the case of school reorganisation, consideration of the relevant matter involved, "*considering not only the effect in the school(s) in question, but also the effect on the local area and the community*". Yet the Commissioner did not, at any point in her determination, even suggest what the effect on the local area "*wider community*" might be. The Council did not consider that the proposal would have any such effect.
71. Moreover, the Council did "*consider*" the effects that the policy decision under consideration would have on (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. This was clear from any fair reading of the Consultation Document.
72. First of all, the section headed "*What is the impact on the Welsh language*"

cadarnhaol a ragwelir ar ddisgyblion yn yr ysgol newydd.

73. Yn ail, rhagfynegiad y Cyngor, yn seiliedig ar brofiad blaenorol o agor ysgolion cyfrwng Saesneg newydd tebyg, oedd na fyddai ysgolion cyfrwng Cymraeg yn yr ardal berthnasol yn dangos unrhyw ostyngiad yn niferoedd disgyblion. Roedd y Ddogfen Ymgynghori yn cofnodi hyn, gan ddod i'r casgliad, "*Nid oes disgwyl y byddai'r cynnig hwn yn lleihau'r ddarpariaeth Gymraeg yn yr ardal, ond bydd asesiad o'r effaith ar y Gymraeg yn cael ei gynnal yn ystod yr ymgynghoriad*".

74. Yn drydydd, roedd yr un adran hefyd yn nodi bod yr ardal yn un o arwyddocâd ieithyddol. Roedd yn crynhoi'r gwaith a wnaed gydag ysgolion cyfrwng Cymraeg lleol i gynyddu capasiti a gwella'r ddarpariaeth ar gyfer y rhai sy'n dymuno cael addysg cyfrwng Cymraeg.

75. Yn bedwerydd, cadarnhaodd y Ddogfen Ymgynghori fod asesiad effaith cam cyntaf wedi'i gynnal i gynorthwyo'r Cyngor i gyflawni ei ddyletswyddau statudol, gan gynnwys o dan Reoliadau 2015. Roedd yr asesiad cam cyntaf wedi nodi y byddai angen asesiad manylach pe bai'r cynigion yn mynd rhagddynt, gan ei fod yn debygol o gael effaith ar ddisgyblion, staff a defnyddwyr posibl eraill yr ysgol.

76. Dywedodd ymhellach y gallai'r cynnig hefyd effeithio ar gyfleoedd i ddefnyddio'r Gymraeg. Cadarnhaodd y cyfeiriad hwn eto fod yr union fater hwn wedi'i ystyried fel rhan o'r ymgynghoriad ac y byddai datganiad llawn o'r effaith ar y Gymraeg yn cael ei gynnal.

outlined the predicted positive impacts on pupils at the new school.

73. Secondly, the Council's prediction, based on past experience of opening similar new English medium schools, was that Welsh medium schools in the relevant area would not show any decline in pupil numbers. The Consultation Document recorded this, concluding that, "*It is not expected that this proposal would reduce Welsh language provision in the area, however a Welsh language impact assessment will be undertaken during consultation*".

74. Thirdly, the same section also noted that the area was one of linguistic significance. It summarised the work that had been done with local Welsh medium schools to increase capacity and improve provision for those wishing to access a Welsh medium education.

75. Fourthly, the Consultation Document confirmed that a first stage impact assessment had been undertaken to assist the Council in discharging its statutory duties, including under the 2015 Regulations. The first stage assessment had indicated that a more in depth assessment would be required if the proposals were to proceed, as it was likely to have an impact on pupils, staff and other potential users of the school.

76. It further stated that the proposal might also impact on opportunities to use the Welsh language. This reference again confirmed that this very issue had been considered as part of the consultation and that a full Welsh language impact statement would be carried out.

77. Ar unrhyw ddadansoddiad, fe wnaeth y Cyngor “ystyried” effeithiau posib y penderfyniad polisi ar y materion perthnasol. Honiad y Comisiynydd oedd y gallai’r polisi dan sylw o bosibl fod wedi cael effeithiau ychwanegol, anhysbys, ar y “*gymuned ehangach*”. Fodd bynnag, ni allai’r ffaith y gallai fod effeithiau ychwanegol, yn ddamcaniaethol, yn deillio o’r polisi (pa mor annhebygol bynnag y byddent yn y pen draw) olygu bod y Cyngor wedi methu â chydymffurfio â safon 91.
78. Mewn perthynas â methiant i gydymffurfio â Safon 92, honnodd y Cyngor yr un gwallau ar ran y Comisiynydd.
79. Roedd y Ddogfen Ymgynghori yn cofnodi’r hyn yr oedd y Cyngor yn ei asesu fel yr effaith gadarnhaol ar faterion perthnasol y cynnig penodol dan sylw. Roedd y cynnig yn gynnig ar wahân am ad-drefnu ysgolion – i gau tair ysgol gynradd a sefydlu ysgol newydd, fwy.
80. Ni esboniodd y Comisiynydd sut y gallai’r polisi hwnnw fod wedi’i lunio na’i ddiwygio i gael effeithiau mwy cadarnhaol ar y materion perthnasol. Yr unig enghraifft a roddwyd yn ystod y broses ymchwilio gyfan oedd barn y Comisiynydd y dylai’r Cyngor fod wedi ystyried gwneud yr ysgol newydd yn ysgol cyfrwng Cymraeg.
81. Ac eto nid oedd hynny byth yn opsiwn realistig nac ymarferol i’r Cyngor, mewn amgylchiadau lle’r oedd cannoedd o rieni eisoes wedi dewis i’w plant dderbyn addysg cyfrwng Saesneg yn y tair ysgol y cynigir eu cau. Nid oedd yn ofynnol i’r Cyngor ystyried cynigion hollol wahanol ar gyfer ad-drefnu ysgolion.
82. Ac eithrio’r awgrym cwbl afrealistig hwn, ni nododd y Comisiynydd un
77. On any analysis, the Council therefore did “*consider*” the potential effects of the policy decision on the relevant matters. The Commissioner’s contention was that the policy under consideration could conceivably have had additional, unidentified, effects on the “*wider community*”. However, the fact that there might, hypothetically, be additional effects arising from the policy (however unlikely it was that they might eventuate) could not mean that the Council had failed to comply with standard 91.
78. In relation to the failure to comply with Standard 92, the Council alleged the same errors on the part of the Commissioner.
79. The Consultation Document did record what the Council assessed as being the positive effect on the relevant matters of the specific proposal under consideration. The proposal was a discrete proposal about school reorganisation – to discontinue three primary schools and establish a new, larger, school.
80. The Commissioner did not explain how that policy could have been formulated or revised to have increased positive effects on the relevant matters. The only example given during the entire investigation process was the Commissioner’s view that the Council should have considered making the new school a Welsh medium school.
81. Yet that was never a realistic or viable option for the Council, in circumstances where hundreds of parents had already elected for their children to receive English medium education in the three schools being proposed for closure. The Council was not required to consider completely different proposals for school reorganisation.
82. Absent this wholly unrealistic suggestion, the Commissioner did not identify a

ffordd y gallai'r polisi penodol dan sylw fod wedi'i lunio neu ei ddiwygio i gael effeithiau mwy cadarnhaol ar y materion perthnasol na chyfeiriwyd atynt eisoes gan y Cyngor yn ei Ddogfen Ymgynghori. Nid oedd y Cyngor yn ystyried bod yna unrhyw ddiwygiadau o'r fath. O dan yr amgylchiadau hyn, mae'n amhosibl gweld sut y torrwyd Safon 92.

83. Mewn perthynas â Safon 93, dadleuodd y Cyngor yn gyntaf nad oedd y Safon yn berthnasol o gwbl yn yr achos hwn, gan nad oedd yn ofynnol i gorff cyhoeddus a oedd wedi esbonio bod y cynnig yn debygol o gael effeithiau buddiol ar y Gymraeg hefyd i esbonio sut y gellid llunio neu adolygu'r polisi fel na fyddai'n cael effeithiau andwyol neu effeithiau llai andwyol. Nid oedd unrhyw effeithiau andwyol wedi'u nodi.

84. Ymhellach neu fel arall, dywedwyd bod yr un gwallau wedi codi mewn perthynas â Safon 93 ag a nodwyd mewn perthynas â Safonau 91 a 92. Roedd y Comisiynydd yn cydnabod rhagfynegiad y Cyngor, y cyfeiriwyd ato yn y Ddogfen Ymgynghori, nad oedd disgwyl i'r cynnig leihau'r ddarpariaeth addysgol Gymraeg yn yr ardal. Os oedd hynny'n wir, yna roedd yn amhosibl gweld sut y byddai'r cynnig yn lleihau datblygiad y Gymraeg yn yr un ardal.

85. Yn olaf, mewn perthynas â gorfodi, er bod y Cyngor wedi mynd i'r afael yn wreiddiol â phob un o'r camau gweithredu gofynnol gan y Comisiynydd ar y sail eu bod yn ddiangen ac yn anghymesur, yn ystod y gwrandawriad ar 20^{fed} Gorffennaf 2023, cyflwyniad y Cyngor oedd nad nad oedd angen i'r camau gorfodi ffurfiol gael eu "*plismona*" gan y Comisiynydd, gyda'r canlyniad, er ei fod yn derbyn, pe bai'r canfyddiad o ddiffyg cydymffurfio yn cael ei

single way in which the specific policy under consideration could have been formulated or revised to have increased positive effects on the relevant matters, that had not already been referred to by the Council in the Consultation Document. The Council did not consider that there were any such revisions. In these circumstances, it is impossible to see how Standard 92 was breached.

83. In relation to Standard 93, the Council first of all argued that the Standard did not apply at all in the instant case, since it did not require a public body which explained that the proposal was likely to have beneficial effects on the Welsh language also to explain how the policy could be formulated or revised so that it would not have adverse effects or less adverse effects. No adverse effects had been identified.

84. Further or alternatively, the same errors were said to have arisen in relation to Standard 93 as had been identified in relation to Standards 91 and 92. The Commissioner acknowledged the Council's prediction, referred to in the Consultation Document, that the proposal was not expected to reduce Welsh educational provision in the area. If that was the case, then it was impossible to see how the proposal would reduce Welsh language development in that same area.

85. Finally in relation to enforcement, whilst the Council had originally taken issue with each of the actions required by the Commissioner on the grounds that they were unnecessary and disproportionate, during the hearing on 20th July 2023, the Council's submission was that there was no need for the formal enforcement action to be "*policed*" by the Commissioner, with the result that whilst it accepted, should the finding of non-compliance be upheld, that actions (i) – (iii) and (v) were appropriate, it was

gadarnhau, bod camau gweithredu (i) – (iii) a (v) yn briodol, dadleuwyd bod camau (iv) a (vi) yn ei gwneud yn ofynnol i'r Cyngor ddarparu tystiolaeth ysgrifenedig a oedd yn bodloni'r Comisiynydd bod y camau gorfodi eraill wedi'u cymryd a bod y gofyniad i roi cyhoeddusrwydd wedi'i gwblhau yn afresymol ac anghymesur ac y dylid eu rhoi o'r neilltu.

Achos yr Atebydd

86. Roedd y Comisiynydd wedi ffeilio Datganiad Achos dyddiedig 5^{ed} Ebrill 2023 ond dim Braslun o Ddadl ar gyfer y gwrandawriad, gan ddibynnu yn lle hynny ar ei Datganiad Achos. O ystyried y ffordd nad oedd Datganiad Achos y Cyngor wedi delio â'r mater o egwyddor, ymdriniwyd â hyn am y tro cyntaf gan y Comisiynydd yn y cyflwyniadau llafar a wnaed gan gwnsler ar ei rhan yn y gwrandawriad ar 20^{fed} Gorffennaf 2023.
87. Yng nghyflwyniad y Comisiynydd, fel y nodir yn yr Adroddiad Terfynol a'r Hysbysiad o Benderfyniad, roedd y gofyniad o fewn y Safonau i'r Cyngor ystyried yr effeithiau amrywiol ar y Gymraeg yn y Ddogfen Ymgynghori yn golygu bod yn rhaid i'r ddogfen nodi, amlinellu ac ystyried effeithiau posibl y cynnig dan sylw ar y Gymraeg ac ystyried yr opsiynau sydd ar gael a fyddai'n ei alluogi i wneud y penderfyniad mewn modd a fyddai'n cael effeithiau mwy cadarnhaol a/neu lai andwyol ar yr iaith. Roedd y Comisiynydd yn disgwyl fel isafswm ymdrech gydwybodol ar ran y Cyngor i ystyried yr effeithiau perthnasol.
88. Roedd y Comisiynydd yn gresynu at y duedd anffodus ar ran y Cyngor, yn enwedig yn ei Ddatganiad Achos, i geisio beirniadu Adroddiad Terfynol y Comisiynydd yn ddi-sail, yn hytrach na cheisio dadlau bod y Ddogfen Ymgynghori mewn gwirionedd yn cydymffurfio â Safonau 91 – 93.

argued that actions (iv) and (vi) requiring the Council to provide written evidence that satisfied Commissioner that the other enforcement actions had been undertaken and that the requirement to give publicity had been completed were unreasonable and disproportionate and should be set aside.

The Respondent's case

86. The Commissioner had filed a Case Statement dated 5th April 2023 but no Skeleton Argument for the hearing, relying instead on her Case Statement. Given the way in which the Council's Case Statement had not dealt with the issue of principle, this was addressed for the first time by the Commissioner in the oral submissions made by counsel on her behalf at the hearing on 20th July 2023.
87. In the Commissioner's submission, as set out in the Final Report and Decision Notice, the requirement within the Standards for the Council to consider the various impacts on the Welsh language in the Consultation Document meant that the document had to identify, outline and consider the potential effects of the proposal in question on the Welsh language and consider the options available which would enable it to make the decision in a way which would have more positive and/or less adverse effects on the language. As a minimum, the Commissioner expected a conscientious effort on the part of the Council to consider the relevant effects.
88. The Commissioner regretted the unfortunate tendency on the part of the Council, particularly in its Case Statement, to seek to make unfounded criticisms of the Commissioner's Final Report, rather than trying to argue that the Consultation Document in fact complied with Standards 91 – 93.

89. Mewn perthynas â Safon 91, dadleuodd y Comisiynydd nad oedd yr un o'r beirniadaethau'n ddilys. Mewn perthynas ag effeithiau'r cynnig ar y gymuned ehangach y tu hwnt i'r tair ysgol gynradd cyfrwng Saesneg a oedd yn destun y cynnig, cyflwynwyd nad oedd unrhyw anghysondeb yn y dull a fabwysiadwyd gan y Comisiynydd yn ei hadroddiad terfynol.

90. Cyflwynwyd ei bod yn gwbl amlwg nad oedd y datganiadau hyn yn cyfeirio at effaith posib y cynnig "*ar gyfleoedd i ddefnyddio'r Gymraeg yn y gymuned ehangach*" ac at "*ddefnydd o'r Gymraeg yn y gymuned leol ehangach*" a hefyd nad oedd "*defnydd y Gymraeg yn ysgolion cynradd Cymraeg yr ardal*" yn anghyson â'i gilydd.

91. Yn yr adran hon o'r adroddiad, wrth ymdrin â'r tair safon yn eu tro, cyflwynodd y Comisiynydd ei dadansoddiad manwl yn gyntaf cyn crynhoi ei chasgliadau ar y diwedd mewn isadran lawer byrrach. Roedd angen darllen yr adran yn ei chyfanrwydd er mwyn deall rhesymeg lawn y Comisiynydd mewn perthynas â safon 91.

92. Mewn perthynas â'r "*canfyddiad anghywir honedig bod methiant i ystyried effaith y cynnig ar ddefnydd y Gymraeg yn ysgolion cynradd cyfrwng Cymraeg yr ardal*", roedd yn ymddangos bod y Cyngor yn ceisio dadlau bod y Ddogfen Ymgynghori yn cymryd i ystyriaeth effaith y cynnig ar ysgolion cynradd cyfrwng Cymraeg yr ardal oherwydd ei fod yn cynnwys cyfres o ddatganiadau ffeithiol am ysgolion cyfrwng Cymraeg yr ardal a buddsoddiadau diweddaraf y Cyngor yn yr ysgolion hynny.

89. In relation to Standard 91, the Commissioner argued that none of the criticisms was valid. In relation to the effects of the proposal on the wider community beyond the three English medium primary schools which were the subject of the proposal, it was submitted that there was no inconsistency in the approach adopted by the Commissioner in her final report.

90. It was submitted that it was entirely obvious that these statements referring to potential impact of the proposal "*on opportunities to use the Welsh language in the wider community*" and to "*the use of the Welsh language in the wider local community*" and also "*use of the Welsh language in the Welsh primary schools in the area*" were not inconsistent with each other.

91. In this section of the report, when dealing with the three standards in turn, the Commissioner first presented her detailed analysis before summarising her conclusions at the end in a much shorter subsection. The section needed to be read in its entirety to understand the Commissioner's full reasoning in relation to standard 91.

92. In relation to the alleged "*incorrect finding that there had been a failure to consider the impact of the proposal on Welsh language use in the Welsh-medium primary schools of the area*", it appeared that the Council was seeking to argue that the Consultation Document did take into account the impact of the proposal on the Welsh-medium primary schools of the area because it included a series of factual statements about the Welsh-medium schools of the area and the Council's latest investments in those schools.

93. Roedd yn amlwg nad oedd hon yn ddadl gredadwy. Nid oedd cynnwys cyfres o ddatganiadau cyffredinol am y ddarpariaeth addysg cyfrwng Cymraeg yn yr ardal yn gyfystyr ag ystyriaeth o effaith bosibl y cynnig addrefnu penodol hwn ar y ddarpariaeth honno.
94. Yn wir, roedd y Comisiynydd wedi rhagweld y ddadl hon yn ei hadroddiad, drwy feirniadu dibyniaeth y Cyngor ar "*ddatganiadau ffeithiol am y Gymraeg*" yn y Ddogfen Ymgynghori ar draul "*ymdrech ymwybodol....i ystyried yr effeithiau posib ar y Gymraeg*".
95. Mewn perthynas â'r honiad nad oedd "*unrhyw ddiffiniad o'r hyn a olygir wrth 'y gymuned leol ehangach', nad oedd angen ei ystyried beth bynnag*", nid oedd unrhyw ddirgelwch yng nghasgliad y Comisiynydd y dylai'r Cyngor fod wedi ystyried effaith y cynnig ar y defnydd o'r Gymraeg yn "*y gymuned leol ehangach*".
96. Roedd y canfyddiad hwnnw'n anochel ar ôl i'r Comisiynydd ddod i'r casgliad (yn gywir) nad oedd y safonau perthnasol yn caniatáu i'r Cyngor ganolbwyntio'n unig ar effeithiau'r cynnig ar y defnydd o'r Gymraeg o fewn yr ysgolion sy'n cael eu hadrefnu. Roedd geiriad y safonau yn glir: roedd angen ystyried effeithiau'r cynnig (boed yn gadarnhaol neu'n andwyol) ar y "*cyfleoedd i bersonau ddefnyddio'r Gymraeg*". Roedd angen ystyried y "*cyfleoedd*" hynny yn gyffredinol, nid mewn un sefyllfa neu gyd-destun cul yn unig.
97. Roedd dewis iaith y Comisiynydd, wrth gyfeirio at yr effaith ar "*y gymuned leol ehangach*", yn gyson ag ehangder yr hyn sydd angen ei ystyried wrth bwysu a mesur yr effeithiau posibl ar y "*cyfleoedd i bersonau ddefnyddio'r Gymraeg*".
93. It was plain that this was not a credible argument. Including a series of general statements about the provision of Welsh-medium education in the area did not constitute consideration of the potential impact of this particular reorganisation proposal on that provision.
94. Indeed, the Commissioner had anticipated this argument in her report, by criticising the Council's reliance on "*factual statements about the Welsh language*" in the Consultation Document at the expense of "*a conscious effort....to consider the potential effects on the Welsh language*".
95. In relation to the allegation that there was "*no definition of what is meant by 'the wider local community', which in any case did not need to be considered*", there was no mystery in the Commissioner's conclusion that the Council should have considered the impact of the proposal on the use of Welsh in "*the wider local community*".
96. That finding was inevitable after the Commissioner concluded (correctly) that the relevant standards did not allow the Council to focus solely on the effects of the proposal on the use of Welsh within the schools being reorganised. The wording of the standards was clear: the effects of the proposal (whether positive or adverse) on the "*opportunities for persons to use the Welsh language*" needed to be considered. Those "*opportunities*" needed to be considered across the board, not just in one narrow situation or context.
97. The Commissioner's choice of language, in referring to the impact on "*the wider local community*", was consistent with the breadth of what needed to be considered when weighing the potential impacts on the "*opportunities for persons to use the Welsh language*".

98. Byddai'r Comisiynydd wedi camddehongli'r safonau pe bai wedi dod i'r casgliad ei bod yn ofynnol i'r Cyngor ystyried yr effeithiau posibl o fewn ardal ddaearyddol benodol a ddiffinnir yn fympwyol gan y Comisiynydd. Mater i'r Cyngor oedd nodi natur a maint effeithiau cymunedol y cynnig ac yna ystyried yr effeithiau hynny yn gydwybodol yn y Ddogfen Ymgynghori. Ni ddigwyddodd hynny o gwbl yn yr achos hwn.

99. Mewn perthynas â "*beirniadaeth haniaethol nad oedd yn seiliedig ar y ffeithiau a thystiolaeth*", cyflwynwyd bod y Comisiynydd, yn groes i haerriad y Cyngor, wedi nodi'n glir yn yr adroddiad y mathau o effeithiau posibl ar y Gymraeg y dylai'r Ddogfen Ymgynghori eu hystyried, y tu hwnt i'r sylw cul a roddir i'r un effaith gadarnhaol bosibl ar y defnydd o'r Gymraeg drwy gyfuno'r tair ysgol mewn un adeilad.

100. Dylai fod wedi bod yn amlwg i'r Cyngor y gallai agor ysgol cyfrwng Saesneg newydd gydag adnoddau trawiadol gael effeithiau negyddol posibl ar ysgolion cyfrwng Cymraeg yr ardal.

101. Dywedodd y Cyngor nad oedd angen iddo ystyried yr effeithiau hyn gan nad oedd yn "*meddwl*" eu bod yn bodoli. Nid dyna oedd safbwynt y Cyngor yn y Ddogfen Ymgynghori, lle nododd y Cyngor nad oedd yn "*disgwyl i'r cynnig hwn i leihau'r ddarpariaeth Gymraeg yn yr ardal, fodd bynnag, bydd asesiad effaith ar y Gymraeg yn cael ei gynnal yn ystod yr ymgynghoriad*".

102. Roedd y Cyngor felly yn cydnabod yn llawn yr angen i roi ystyriaeth lawnach i effeithiau'r cynllun ar y cyfleoedd i ddefnyddio'r Gymraeg

98. The Commissioner would have misinterpreted the standards had she concluded that they required the Council to consider the potential effects within a particular geographical area arbitrarily defined by the Commissioner. It was for the Council to identify the nature and extent of the community impacts of the proposal and then conscientiously consider those impacts in the Consultation Document. That did not happen at all in this case.

99. In relation to "*abstract criticisms that were not based on the facts and evidence*", it was submitted that, contrary to the Council's assertion, the Commissioner made clear in the report the types of potential impacts on the Welsh language that the Consultation Document should have considered, beyond the narrow attention given to the one possible positive impact on the use of the Welsh language by combining the three schools in one building.

100. It should have been obvious to the Council that the opening of a new English-medium school with impressive resources could have potential negative effects on the Welsh-medium schools of the area.

101. The Council stated that it did not need to consider these effects as it did not "*think*" they existed. That was not the Council's position in the Consultation Document, in which the Council stated that it did not "*expect this proposal to reduce Welsh language provision in the area, however, an impact assessment on the Welsh language will be carried out during the consultation*".

102. The Council therefore fully recognised the need to give fuller consideration to the effects of the scheme on the opportunities to use the Welsh

ond wedi penderfynu gohirio'r ystyriaeth lawnach honno a pheidio â'i chynnwys yn y Ddogfen Ymgynghori. Roedd hynny'n amlwg yn torri safonau 91, 92 a 93.

103. Yn olaf, mewn perthynas â'r "*camddealltwriaeth honedig o wahanol swyddogaethau cyfansoddiadol y Comisiynydd a'r Cyngor*" a'r "*camddealltwriaeth o ffiniau'r broses ad-drefnu statudol*", yn ei hadroddiad terfynol, roedd y Comisiynydd wedi asesu a oedd y Ddogfen Ymgynghori yn cydymffurfio â'r Safonau perthnasol. Nid oedd ei chanfyddiad bod y Cyngor wedi methu ag ystyried sut y gellid newid y cynnig i gael effeithiau mwy cadarnhaol a/neu lai andwyol ar y Gymraeg yn golygu y byddai'n ofynnol i'r Cyngor weithredu fersiwn ddiwygiedig benodol o'r cynllun i gyflawni'r holl effeithiau mwy cadarnhaol a/neu lai andwyol hynny.

104. Roedd safonau 91, 92 a 93 yn gofyn am ystyriaeth gydwobodol o effeithiau, a sut y gellid gwireddu neu liniaru'r effeithiau hynny, ystyriaeth nad oedd yn rhan o'r Ddogfen Ymgynghori. Yn ôl y Comisiynydd, roedd yn rhaid cael isafswm safon o ystyriaeth, neu fel arall byddai "ystyriaeth annigonol" yn ddigon.

105. Yn groes i'r awgrym a wnaed gan y Cyngor, nid oedd adroddiad terfynol y Comisiynydd yn awgrymu y dylai'r Cyngor fod wedi diwygio'r cynnig yn y Ddogfen Ymgynghori i gynnig agor ysgol cyfrwng Cymraeg newydd yn hytrach nag ysgol cyfrwng Saesneg. Yn ei hadroddiad terfynol, roedd ffocws y Comisiynydd, yn briodol, ar benderfynu a oedd y Cyngor wedi methu â chydymffurfio â'r safonau dan sylw drwy beidio ag ystyried y materion y cyfeirir atynt yn y safonau.

language but had decided to defer that fuller consideration and not to include it in the Consultation Document. That was in clear breach of standards 91, 92 and 93.

103. Finally, in relation to the alleged "*misunderstanding the different constitutional functions of the Commissioner and the Council*" and the "*misunderstanding the boundaries of the statutory reorganisation process*", in her final report, the Commissioner had assessed whether the Consultation Document complied with the relevant Standards. Her finding that the Council had failed to consider how the proposal could be changed to have more positive and/or less adverse effects on the Welsh language did not mean that the Council would be obliged to implement a specific revised version of the plan to achieve all those more positive and/or less adverse effects.

104. Standards 91, 92 and 93 required conscientious consideration of impacts, and how those effects might be realised or mitigated, a consideration that was missing from the Consultation Document. According to the Commissioner, there had to be a minimum standard of consideration, otherwise "insufficient consideration" would be enough.

105. Contrary to the suggestion made by the Council, the Commissioner's final report did not suggest that the Council should have amended the proposal in the Consultation Document to propose the opening of a new Welsh-medium school rather than an English-medium school. In her final report, the Commissioner's focus was, appropriately, on determining whether the Council had failed to comply with the standards in question by not considering the matters referred to in the standards. The Commissioner considered that there were significant failures in

- Roedd y Comisiynydd o'r farn bod methiannau sylweddol o ran dyletswydd y Cyngor i ystyried y materion hyn.
106. Mewn perthynas â Safon 92, roedd y dadleuon byr a gyflwynwyd gan y Cyngor yr un fath â Safon 91 ac yn destun yr un feirniadaeth.
107. Mewn perthynas â Safon 93, dadleuodd y Cyngor y byddai wedi bod yn afresymegol iddo ystyried sut y gellid llunio neu addasu'r cynllun fel na fyddai'n cael effeithiau andwyol, neu'n cael effeithiau llai andwyol ar y Gymraeg, pe bai'n ystyried y byddai'r cynllun yn cael "*effeithiau positif*" ar y Gymraeg.
108. Fodd bynnag, roedd defnydd y Cyngor o'r llysof ("effeithiau gadarnhaol") yn anghywir gan mai dim ond un effaith gadarnhaol bosibl ar y Gymraeg y cyfeirir ati yn y Ddogfen Ymgynghori, sef yr effaith gadarnhaol bosibl o gyfuno athrawon cyfrwng Gymraeg o dair ysgol yn un ysgol.
109. Nid oedd crybwyll un effaith gadarnhaol bosibl yn gyfystyr ag asesu ystod resymol o effeithiau posibl y cynnig ar y Gymraeg, boed yn gadarnhaol neu'n andwyol, fel y cyfaddefodd y Cyngor ei hun yn y Ddogfen Ymgynghori drwy ddatgan bod angen cynnal asesiad effaith pellach ar y Gymraeg yn ystod yr ymgynghoriad. O gyfaddef hyn, roedd y Cyngor, mewn gwirionedd, yn cydnabod bod y Ddogfen Ymgynghori yn ddiffygiol yn ei asesiad o effeithiau'r cynnig ar y Gymraeg.
110. Byddai wedi bod yn gwbl resymegol i'r Cyngor nodi'r effaith gadarnhaol bosibl ar y Gymraeg o gyfuno darpariaeth addysg Gymraeg yn un ysgol, ond wedyn ystyried sut y gellid llunio neu adolygu'r cynllun er terms of the Council's duty to consider these matters.
106. In relation to Standard 92, the brief arguments presented by the Council were the same as for Standard 91 and were subject to the same criticisms.
107. In relation to Standard 93, the Council argued that it would have been illogical for it to consider how the scheme could be formulated or modified so that it would not have adverse effects, or have less adverse effects on the Welsh language, if it considered that the scheme would have "*positive effects*" on the Welsh language.
108. However, the Council's use of the plural ("*positive effects*") was incorrect as there was only one potential positive effect on the Welsh language referred to in the Consultation Document, namely the potential positive effect of combining Welsh-medium teachers from three schools into one school.
109. Mentioning a single potential positive impact did not equate to assessing a reasonable range of the potential impacts of the proposal on the Welsh language, whether positive or adverse, as the Council itself admitted in the Consultation Document by stating that a further impact assessment on the Welsh language needed to be carried out during the consultation. By admitting this, the Council was, in truth, acknowledging that the Consultation Document was flawed in its assessment of the effects of the proposal on the Welsh language.
110. It would have been perfectly logical for the Council to identify the potential positive impact on the Welsh language of combining Welsh language education provision into one school, but then to consider how the scheme could be

mwyn osgoi neu liniaru effeithiau andwyol posibl y cynllun ar ddarpariaeth addysg Gymraeg y tu hwnt i'r ysgolion dan sylw, ac ar y defnydd o'r Gymraeg yn y gymuned leol. Yn wir, dyma oedd yn ofynnol gan safon 93.

111. Fel arall, roedd y dadleuon a wnaed mewn perthynas â Safon 93 yn adleisio'r rhai a wnaed mewn perthynas â safon 92 ac roeddent yr un mor ddiffygiol.

112. O ran y camau gorfodi gofynnol, gwrthodwyd, yn holl amgylchiadau'r achos, fod y gofyniad i ddarparu tystiolaeth ysgrifenedig bod y Cyngor wedi cwblhau'r camau gorfodi eraill, gan gynnwys rhoi cyhoeddusrwydd i'r ddau mewn man amlwg ar ei wefan a thrwy gyhoeddi'r adroddiad ar fewnrwyd ei staff, yn afresymol neu'n anghymesur.

Penderfyniad Y Tribiwnlys

113. Rôl y Tribiwnlys ar apêl o dan adran 95(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 ynghlych a oedd dyfarniad yr Atebydd yn gywir; gweler *Achos Rhif TyG 21/01 Cyngor Dinas a Sir Abertawe – v – Comsiynydd y Gymraeg* penderfynwyd 27.7.22

114. Mae adran 25 o Fesur y Gymraeg 2011 yn darparu bod rhaid i berson, megis y Cyngor yn yr achos presennol, gydymffurfio â safon ymddygiad a bennir gan Weinidogion Cymru. Mae adran 29 yn ymdrin â safonau llunio polisi. Mae safonau o'r fath yn cynnwys y rhai a nodir yn Rhan 1 o Atodlen 2 i Reoliadau Safonau'r Gymraeg (Rhif 1) 2015. Mae'r rhain

formulated or revised so as to avoid or mitigate the potential adverse effects of the scheme on Welsh language education provision beyond the schools concerned, and on the use of the Welsh language in the local community. Indeed, this was what was required by standard 93.

111. Otherwise the arguments made in relation to Standard 93 echoed those made in relation to standard 92 and were equally flawed.

112. In respect of the required enforcement actions, it was denied, in all the circumstances of the case, that the requirement to provide written evidence that the Council had completed the other enforcement actions, including that of giving publicity both in a prominent place on its website and by publishing the report on its staff intranet, was unreasonable or disproportionate.

Tribunal's Decision:

113. The role of the Tribunal on an appeal under section 95 (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; see *Case No. WLT/21/01 The City and County of Swansea Council – v – The Welsh Language Commissioner* decided 27.7.22.

114. Section 25 of the Welsh Language Measure 2011 provides that a person, such as the Council in the instant case, must comply with a standard of conduct specified by the Welsh Ministers. Section 29 deals with policy making standards. Such standards include those set out in Part 1 of Schedule 2 to the Welsh Language Standards (No. 1) Regulations 2015.

yn cynnwys Safonau 91 – 93 (a nodir ym mharagraff 5 uchod).

These include Standards 91 – 93 (set out in paragraph 5 above).

115. Yr hyn sy'n gyffredin i bob un o'r Safonau hyn yw bod yn rhaid i'r person sy'n ddarostyngedig iddynt, wrth gyhoeddi dogfen ymgynghori sy'n ymwneud â phenderfyniad polisi, "ystyried" yr effeithiau (boed yn gadarnhaol neu'n andwyol) y byddai'r penderfyniad polisi o dan ystyriaeth yn eu cael ar (a) cyfleoedd i bersonau ddefnyddio'r Gymraeg a (b) peidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg. Nid yw'r term "ystyried" wedi'i ddiffinio ym Mesur y Gymraeg 2011 na Rheoliadau 2015.

116. Ystyr y gair "ystyried" yn ôl *Geiriadur Prifysgol Cymru Cyfrol IV* (2002) yw "meddwl yn ddwys (am), myfyrio, synfyfyrio, rhoddi ystyriaeth neu sylw (i), cadw mewn cof, meddwl, credu, barnu, cynllunio, trefnu."

117. O ystyried yr ystyr arferol hwn i'r gair "ystyried", nid yw'r Tribiwnlys yn cytuno bod dim ond cyfeirio'ch meddwl at eiriad y Safonau neu ddatgan bod rhywun wedi ystyried eu cynnwys yn ddigon i fod yn gyfystyr ag "ystyriaeth" at ddibenion Safonau 91 – 93.

118. I'r graddau hynny, mae'r Tribiwnlys yn derbyn y diffiniad a fabwysiadwyd gan y Comisiynydd pan fydd yn datgan ei bod yn disgwyl ymdrech gydwybodol ar ran y Cyngor i ystyried effeithiau ei gynnig ar y Gymraeg ym mhob un o'r ffyrdd sy'n ofynnol gan y Safonau priodol, 91, 92 a 93.

119. Mae dehongliad o'r fath yn gyson â phedwaredd egwyddor *Gunning* mewn perthynas ag ymgynghori a nodir yn adran 3.1 o'r Cod Trefniadaeth Ysgolion (2018), er

115. Common to each of these Standards is that the person subject to them, when publishing a consultation document which relates to a policy decision, must "consider" the effects (whether positive or adverse) that the policy decision under consideration would have on (a) opportunities for persons to use the Welsh language and (b) treating the Welsh language no less favourably than the English language. The term "consider" is not defined in the Welsh Language Measure 2011 or the 2015 Regulations.

116. The meaning of the word "consider" according to *Geiriadur Prifysgol Cymru* (University of Wales Dictionary) Volume IV (2002) is "to think intensely (about), study, muse, give consideration or attention (to), keep in mind, think, believe, judge, plan, organise."

117. Given this ordinary meaning of the word "consider", the Tribunal does not agree that merely directing ones mind to the wording of the Standards or stating that one has considered their content is sufficient to amount to "consideration" for the purposes of Standards 91 – 93.

118. To that extent, the Tribunal accepts the definition adopted by the Commissioner when she states that she expects a conscientious effort on the part of the Council to consider the effects of its proposal on the Welsh language in each of the ways required by the respective Standards, 91, 92 and 93.

119. Such an interpretation is consistent with the fourth of the *Gunning* principles in relation to consultation set out in section 3.1 of the School Organisation Code (2018), albeit in respect of a slighter later

mewn perthynas â cham ychydig yn ddiweddarach yn y broses ymgynghori, sef y dylai'r broses ymgynghori “*sicrhau bod cynnyrch yr ymgynghoriad yn cael ei ystyried yn gydwobodol pan wneir y penderfyniad terfynol*”.

120. Mewn perthynas â'r Ddogfen Ymgynghori ei hun, bydd “*ystyriaeth*” yn golygu bod y ddogfennaeth a gyhoeddir yn nodi'r materion a'r agweddau y mae'r Cyngor yn ystyried eu bod yn berthnasol iddynt. Eto, mae hyn yn gyson ag ail egwyddor *Gunning*, sef y dylai'r broses ymgynghori “*gynnwys digon o resymau a gwybodaeth ar gyfer cynigion penodol i alluogi ystyriaeth ac ymateb deallus*”.

121. Gall p'un a yw rhywun yn nodweddu hyn fel ystyriaeth “*briodol*”, “*digonol*” neu “*ddyledus*” fod yn academaidd, ond rhaid iddo fod yn ystyriaeth resymol a chydwybodol. Nid yw datgan yn unig nad yw'r Cyngor yn ystyried bod ystyriaeth berthnasol yn gymwys yn ddigon i ddangos bod y Cyngor wedi cydymffurfio â'r Safon berthnasol pan fo'r mater mewn gwirionedd yn berthnasol i'r ystyriaeth honno.

122. Nid yw'r Tribiwnlys yn ystyried mai mater o'r pwysau y dylai'r Cyngor ei roi i ystyriaeth berthnasol yn unig yw hyn. Yn hytrach, mae hyn yn mynd at fodolaeth yr ystyriaeth berthnasol yn y lle cyntaf. Mae hyn, ymhellach, yn gyson ag ymagwedd yr Uchel Lys mewn adolygiad barnwrol statudol yn y maes cynllunio. Mater cyfreithiol yw a yw rhywbeth yn ystyriaeth berthnasol, yn hytrach na mater o farn yn llwyr ar gyfer yr awdurdod penderfynu; gweler *Tesco Stores Limited-v-Yr Ysgrifennydd Gwladol dros yr Amgylchedd [1995] 1 WLR 759*.

stage of the consultation process, namely that the consultation process should “*ensure that the product of consultation is taken conscientiously into account when the ultimate decision is taken*”.

120. In respect of the Consultation Document itself, “*consideration*” will entail that the documentation issued sets out the issues and the matters considered by the Council to be relevant to them. Again, this is consistent with the second of the *Gunning* principles, namely that the consultation process should “*include sufficient reasons and information for particular proposals to enable intelligent consideration and response*”.

121. Whether one characterises this as “*proper*”, “*adequate*” or “*due*” consideration may be academic, but it must be reasonable consideration conscientiously undertaken. Merely stating that the Council does not consider that a material consideration is applicable is not sufficient to demonstrate that the Council has complied with the relevant Standard when the matter is in fact relevant to that consideration.

122. The Tribunal does not consider that this is simply a matter of the weight which the Council should give to a material consideration. Rather this goes to the very existence of the material consideration in the first place. This is, furthermore, consistent with the approach of the High Court in a planning statutory judicial review. Whether something is a material consideration is a question of law, rather than a question of judgment which would be entirely a matter for the deciding authority; see *Tesco Stores Limited-v-Secretary of State for the Environment [1995] 1 WLR 759*.

123. Er mai mater i'r Cyngor felly yw'r ystyriaethau perthnasol cymwys yn y lle cyntaf, wrth lunio ei Ddogfen Ymgynghori, mae hyn yn amodol ar adolygiad gan y Comisiynydd, pe bai ymchwiliad yn cael ei gynnal ganddi ac, yn y pen draw, ar apêl dilynol yn erbyn unrhyw Hysbysiad o Benderfyniad a gyhoeddwyd gan y Comisiynydd, gan Dribiwnlys y Gymraeg ei hun.

Safon 91

124. Mae'r Safon hon yn ei gwneud yn ofynnol i'r Cyngor, wrth gyhoeddi ei Ddogfen Ymgynghori, ystyried yr effeithiau, boed yn gadarnhaol neu'n andwyol, y byddai'r cynnig ad-drefnu ysgolion yn ei gael ar gyfleoedd i ddefnyddio'r Gymraeg ac ar beidio â thrin y Gymraeg yn llai ffafriol na'r Saesneg.

125. Nododd Dogfen Ymgynghorol y Cyngor, yn yr adran "*Beth yw'r effaith ar y Gymraeg?*" un effaith gadarnhaol bosibl ar y ddarpariaeth Gymraeg drwy gyfuno'r tair ysgol gynradd.

126. Ni ddisgrifiwyd nac ystyriwyd unrhyw effeithiau andwyol penodol. Er y dywedwyd nad oedd disgwyl y byddai'r cynnig yn lleihau'r ddarpariaeth Gymraeg yn yr ardal, nid oedd hyn yn ystyriaeth derfynol, gan y dywedwyd hefyd y byddai asesiad o'r effaith ar y Gymraeg yn cael ei gynnal yn ystod yr ymgynghoriad ac, yn yr adran flaenorol dan y pennawd "*Asesiad Effaith Integredig*" dywedwyd eisoes y gallai'r cynnig hefyd effeithio ar gyfleoedd i ddefnyddio'r Gymraeg.

127. Mewn ymateb i gwestiwn yn y gwrandawriad, dywedodd y Cyngor mai cyfeiriad oedd hwn at yr un effaith gadarnhaol bosibl. Os yw hynny'n gywir, yna nid oedd unrhyw ystyriaeth

123. Whilst the relevant material considerations are therefore a matter for the Council in the first instance, in the drawing up of its Consultation Document, this is subject to review by the Commissioner, should an investigation be carried out by her and, ultimately, upon an eventual appeal against any Decision Notice issued by the Commissioner, by the Welsh Language Tribunal itself.

Standard 91

124. This Standard requires the Council, when publishing its Consultation Document, to consider the effects, whether positive or adverse, which the school reorganisation proposal would have on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.

125. The Council's Consultation Document, in the section headed "*What is the impact on the Welsh language?*" noted one potential positive impact on Welsh language provision by the combining of the three primary schools.

126. No specific adverse impacts were described or considered. Whilst it was stated that it was not expected that the proposal would reduce Welsh language provision in the area, this was not a concluded consideration, since it was also stated that a Welsh language impact assessment would be undertaken during consultation and, in the previous section under the heading "*Integrated Impact Assessment*" it had already been stated that the proposal might also impact on opportunities to use the Welsh language.

127. In answer to a question at the hearing, the Council stated that this was a reference to the one potential positive impact. If that is correct, then there was absolutely no written consideration in the Consultation

ysgrifenedig o gwbl yn y Ddogfen Ymgynghori o unrhyw effeithiau andwyol posibl.

Document of any potential adverse impacts.

128. Hyd yn oed os yw hyn, mewn gwirionedd, yn gydnabyddiaeth y gallai fod rhai effeithiau andwyol nas nodwyd, nid oes unrhyw ystyriaeth o gwbl i'r hyn y gallai'r rheini fod ac, fel y mae'r Comisiynydd wedi honni, dim ystyriaeth o unrhyw effeithiau y tu allan i'r ddarpariaeth Gymraeg yn y tair ysgol gynradd a oedd yn destun y cynnig ad-drefnu, h.y. dim ystyriaeth o'r effaith yn y cyd-destun cymunedol ehangach.

128. Even if this is, in fact, a recognition, that there might be some unidentified adverse impacts, there is no consideration at all of what those might be and, as the Commissioner has maintained, no consideration of any impacts outside the Welsh language provision in the three primary schools which were the subject of the reorganisation proposal, i.e. no consideration of the impact in the wider community context.

129. Mae'r Tribiwnlys o'r farn bod y cyfeiriad yng ngeiriad y Safon at "gyfleoedd i bersonau ddefnyddio'r Gymraeg" yn wir yn ddigon eang i gwmpasu effaith y cynnig y tu hwnt i gyfyngiadau cul yr ysgolion sy'n cael eu had-drefnu

129. The Tribunal considers that the reference in the wording of the Standard to "opportunities for persons to use the Welsh language" is indeed wide enough to encompass the impact of the proposal beyond the narrow confines of the schools being reorganised

130. Cadarnheir hyn gan y dehongliad yn Rhan 2 o Atodlen 2 i Reoliadau 2015, sy'n darparu bod "Yn Rhan 1 o'r Atodlen hon mae cyfeiriad at effeithiau cadarnhaol neu andwyol yn gyfeiriad at effeithiau o'r fath boed yn uniongyrchol neu'n anuniongyrchol."

130. This is confirmed by the interpretation in Part 2 of Schedule 2 to the 2015 Regulations, which provides that "In Part 1 of this Schedule a reference to positive or adverse effects is a reference to such effects whether direct or indirect."

131. Mae hefyd yn gyson â chanfyddiad yr Uchel Lys yn *R (Rhieni Dros Addysg Gymraeg)-v-Cyngor Bwrdeistref Sirol Castell-nedd Port Talbot [2022] EWHC 2674 (Gweinyddol)* yn ôl Kerr J. yn [105] – [123], er mewn perthynas â dehongliad adran 3.4 o'r Cod Ad-drefnu Ysgolion (2018).

131. It is also consistent with the finding of the High Court in *R (Rhieni Dros Addysg Gymraeg)-v-Neath Port Talbot CBC [2022] EWHC 2674 (Admin)* per Kerr J. at [105] – [123], albeit in respect of the interpretation of section 3.4 of the School Reorganisation Code (2018).

132. Cadarnhawyd bod y Cyngor yn gywir, neu y byddai wedi bod yn gywir, i nodi effeithiau andwyol anuniongyrchol o'r fath fel mater o ffaith gan y AEIG a ymgwymerwyd wedyn gan y Cyngor; gweler *R (Rhieni Dros Addysg Gymraeg)-v-Cyngor Bwrdeistref Sirol Castell-nedd Port*

132. That the Council was, or would have been correct, to identify such indirect adverse impacts was also confirmed as a matter of fact by the WILA which was subsequently undertaken by the Council; see *R (Rhieni Dros Addysg Gymraeg)-v-Neath Port Talbot CBC* (ibid) at [45] [63] & [118] – [120].

Talbot (ibid) yn [45] [63] a [118] – [120].

133. Mae'r Tribiwnlys felly'n gwrthod dadl gyntaf y Cyngor ei fod yn ystyried na fyddai'r cynnig yn cael unrhyw effaith o gwbl ar y defnydd o'r Gymraeg yn yr ardal leol a'r gymuned ehangach a'i fod felly wedi "*ystyried*" mater effeithiau cadarnhaol ac andwyol at ddibenion Safon 91.

134. Nid oedd y ffaith bod y Cyngor wedi nodi un effaith gadarnhaol bosibl yn rhyddhau'r Cyngor o'i gyfrifoldebau o dan Safon 91. Nid yw ei haeriad na ddisgwyllir y byddai'r cynnig yn lleihau'r ddarpariaeth Gymraeg yn yr ardal, hyd yn oed os yw'n gredadwy, yn ymdrin ag agweddau ehangach Safon 91.

135. Yn olaf, byddai'r ffaith y byddai AEIG llawn yn cael ei gynnal yn ddiweddarach, yn tueddu i ddangos bod ystyried unrhyw effeithiau andwyol posibl, fel y nodwyd eisoes yn yr Aseiad Effaith Integredig, yn cael ei ohirio tan yn ddiweddarach ar ôl yr ymgynghoriad cyhoeddus ac nad yw'n cael ei ystyried yn y Ddogfen Ymgynghori ei hun. Fel y cadarnhawyd yn ddiweddarach gan yr AEIG, roedd yr effeithiau andwyol hyn, ymhell o fod yn ddamcaniaethol yn unig, yn bosibilrwydd gwirioneddol ac roedd angen eu hystyried.

136. O dan yr amgylchiadau hynny, mae'r Tribiwnlys yn canfod na wnaeth y Cyngor ymdrech gydwbybodol i ystyried yn ei Ddogfen Ymgynghori yr effeithiau, boed yn gadarnhaol neu'n andwyol, y byddai ei gynnig yn ei gael ar gyfleoedd i bersonau ddefnyddio'r Gymraeg ac felly ei fod wedi methu cydymffurfio â Safon 91 o Safonau'r Gymraeg.

133. The Tribunal therefore rejects the Council's first argument that it considered that the proposal would not have any effects whatsoever on the use of the Welsh language in the local area and the wider community and that thus it had "*considered*" the issue of positive and adverse impacts for the purposes of Standard 91.

134. The mere fact that the Council had identified a single positive potential impact did not absolve the Council of its responsibilities under Standard 91. Its assertion that it was not expected that the proposal would reduce Welsh language provision in the area, even if credible, does not deal with the broader aspects of Standard 91.

135. Finally, the fact that a full WLIA was to be carried out at a later stage, would tend to indicate that consideration of any possible adverse impacts, as had already been identified in the Integrated Impact Assessment, was merely being postponed until a later stage after the public consultation and not being considered in the Consultation Document itself. As was later confirmed by the WLIA, these adverse impacts, far from being merely hypothetical, were a real possibility and needed to be considered.

136. In those circumstances, the Tribunal finds that the Council did not make a conscientious effort to consider in its Consultation Document the effects, whether positive or adverse, that its proposal would have on opportunities for persons to use the Welsh language and thus that it failed to comply with Standard 91 of the Welsh Language Standards.

Safon 92

137. Mae safon 92 yn ei gwneud yn ofynnol i'r Cyngor ystyried sut y gellid llunio neu adolygu ei gynnig fel y byddai'n cael effeithiau cadarnhaol, neu effeithiau mwy cadarnhaol, ar gyfleoedd i bersonau ddefnyddio'r Gymraeg. Mae dadleuon y Cyngor ynghylch pam na fethodd â chydymffurfio â'r Safon hon yn debyg os nad yn union yr un fath â'i ddadleuon o dan Safon 91 ac yn cael eu gwrthod am yr un rhesymau.
138. Nid lle'r Comisiynydd oedd cyfarwyddo'r Cyngor ar sut y gallai gydymffurfio â'r Safon hon. Yn hytrach, mater i'r Cyngor oedd cydymffurfio â'i rwymedigaethau o dan y Safon.
139. Ym marn y Tribiwnlys, ni wnaed unrhyw ymdrech i ystyried sut y gellid diwygio'r cynnig i gyflwyno effeithiau mwy cadarnhaol na sut y gellid cynyddu'r un effaith gadarnhaol bosibl.
140. O dan yr amgylchiadau hynny, mae'r Tribiwnlys yn canfod na wnaeth y Cyngor ymdrech gydwbybodol i ystyried yn ei Ddogfen Ymgynghori sut y gallai ei gynnig gael ei lunio neu ei ddiwygio fel y byddai'n cael effeithiau cadarnhaol, neu effeithiau mwy cadarnhaol, ar gyfleoedd i bersonau ddefnyddio'r Gymraeg ac felly ei fod wedi methu cydymffurfio â Safon 92 o Safonau'r Gymraeg.

Safon 93

141. Roedd y Safon hon yn ei gwneud yn ofynnol i'r Cyngor ystyried sut y gellid llunio neu adolygu ei gynnig fel na fyddai'n cael effeithiau andwyol, neu'n cael effeithiau llai andwyol, ar gyfleoedd i bersonau ddefnyddio'r Gymraeg.

Standard 92

137. Standard 92 requires the Council to consider how its proposal could be formulated or revised so that it would have positive effects, or increased positive effects, on opportunities for persons to use the Welsh language. The Council's arguments as to why it did not fail to comply with this Standard are similar if not identical to its arguments under Standard 91 and are rejected for the same reasons.
138. It was not for the Commissioner to instruct the Council on how it might comply with this Standard. Rather, it was for the Council to comply with its obligations under the Standard.
139. In the view of the Tribunal, no effort was made to consider how the proposal might be revised to introduce more positive effects or how the one potential positive impact might be increased.
140. In those circumstances, the Tribunal finds that the Council did not make a conscientious effort to consider in its Consultation Document how its proposal could be formulated or revised so that it would have positive effects, or increased positive effects, on opportunities for persons to use the Welsh language and thus that it failed to comply with Standard 92 of the Welsh Language Standards.

Standard 93

141. This Standard required the Council to consider how its proposal could be formulated or revised so that it would not have adverse effects, or would have decreased adverse effects, on opportunities for persons to use the Welsh language.

142. Mae dadl gyntaf y Cyngor, gan nad oedd wedi nodi unrhyw effeithiau andwyol, nad oedd y Safon yn gymwys yn cael ei gwrthod gan y Tribiwnlys. Roedd dogfennaeth y Cyngor ei hun ar adeg yr Ymgynghoriad ac wedi hynny yn cydnabod effeithiau andwyol posibl. Os nad oedd y Cyngor o'r farn ei fod wedi nodi effeithiau o'r fath, yna, ym marn y Tribiwnlys, nid oedd ei ymdrechion i wneud hynny wedi'u gwneud yn gydwobodol.

143. Ar wahân i hynny, mae dadleuon y Cyngor ynghylch pam na fethodd â chydymffurfio â'r Safon hon yn debyg os nad yn union yr un fath â'i ddadleuon o dan Safon 91 ac yn cael eu gwrthod am yr un rhesymau.

144. Ym marn y Tribiwnlys, ni wnaed unrhyw ymdrech i ystyried sut y gellid diwygio'r cynnig er mwyn cyflwyno dim neu lai o effeithiau andwyol.

145. O dan yr amgylchiadau hynny, mae'r Tribiwnlys yn canfod na wnaeth y Cyngor ymdrech gydwobodol i ystyried yn ei Ddogfen Ymgynghori sut y gellid llunio neu ddiwygio ei gynnig fel na fyddai'n cael effeithiau andwyol, neu y byddai'n cael effeithiau llai andwyol, ar gyfleoedd i bobl defnyddio'r Gymraeg ac felly ei fod wedi methu â chydymffurfio â Safon 93 o Safonau'r Gymraeg.

Gorfodi

146. Nid yw'r Cyngor yn herio *awdurdod* y Comisiynydd i osod y mesurau gorfodi a gynhwyswyd yn ei Hysbysiad o Benderfyniad dyddiedig 21^{ain} Rhagfyr 2022.

147. Yn wir, mae adran 77(3)(d) o Fesur y Gymraeg yn darparu'n benodol y caiff y Comisiynydd ei gwneud yn ofynnol i berson fel y Cyngor roi cyhoeddusrwydd i'w

142. The Council's first argument that, as it had not identified any adverse effects, the Standard was not applicable is rejected by the Tribunal. The Council's own documentation both at the time of the Consultation and afterwards acknowledged possible adverse effects. If the Council did not consider that it had identified such effects, then, in the Tribunal's view, its efforts to do so had not been undertaken conscientiously.

143. Other than that, the Council's arguments as to why it did not fail to comply with this Standard are similar if not identical to its arguments under Standard 91 and are rejected for the same reasons.

144. In the view of the Tribunal, no effort was made to consider how the proposal might be revised so as to introduce no or fewer adverse effects.

145. In those circumstances, the Tribunal finds that the Council did not make a conscientious effort to consider in its Consultation Document how its proposal could be formulated or revised so that it would not have adverse effects, or would have decreased adverse effects, on opportunities for persons to use the Welsh language and thus that it failed to comply with Standard 93 of the Welsh Language Standards.

Enforcement

146. The Council does not contest the *vires* of the Commissioner to impose the enforcement measures which were included in her Decision Notice of 21st December 2022.

147. Indeed, section 77(3)(d) of the Welsh Language Measure expressly provides that the Commissioner may require a person such as the Council to publicise its failure to comply with the relevant requirement

fethiant i gydymffurfio â'r gofyniad perthnasol ac mae adran 77(3)(b) yn darparu y caiff y Comisiynydd ei gwneud yn ofynnol iddo gymryd camau at ddiben atal y methiant i gydymffurfio rhag parhau neu gael ei ailadrodd (gweler hefyd adrannau 8.7 – 8.8 *Polisi Gorfodi Comisiynydd y Gymraeg*).

148. Mae'r Cyngor yn dadlau pe canfyddir ei fod wedi methu â chydymffurfio â'r Safonau perthnasol y byddai'n fodlon gweithredu'r mesurau gorfodi a restrir ym mharagraffau 1 – 3 a 5 o'r Hysbysiad o Benderfyniad dyddiedig 21^{ain} Rhagfyr 2022.

149. Mae'n dadlau felly nad oes angen gwneud iddo gydymffurfio â pharagraffau 4 a 6 o'r camau gorfodi a restrir yn yr Hysbysiad o Benderfyniad, drwy fod yn ofynnol iddo ddarparu tystiolaeth ysgrifenedig sy'n bodloni'r Comisiynydd bod y camau gorfodi sy'n weddill wedi'u cwblhau. Mae'n nodi y byddai gweithredu o'r fath yn ddiangen ac yn anghymesur ac na fyddai gorchymyn "*gorfodol*" o'r fath yn cael ei osod gan yr Uchel Lys ar achos adolygiad barnwrol.

150. O dan holl amgylchiadau'r achos, gan gynnwys y modd y mae'r Cyngor wedi herio ymyrraeth y Comisiynydd yn yr achos hwn, nid yw'r Tribiwnlys o'r farn ei bod yn ddiangen neu'n anghymesur ei gwneud yn ofynnol i'r Cyngor ddarparu tystiolaeth ysgrifenedig i'r Comisiynydd ei fod wedi cydymffurfio â'r camau eraill sy'n ofynnol ganddo mewn perthynas ag adolygu ei ganllawiau mewnol, cynnwys y canllawiau hynny, hyfforddiant staff a rhoi cyhoeddusrwydd i'w fethiant i gydymffurfio ar ei brif wefan gyhoeddus ac ar fewnrwyd fewnol ei

and section 77(3)(b) provides that the Commissioner may require it to take steps for the purpose of preventing the continuation or repetition of the failure to comply (see also sections 8.7 – 8.8 of the *Welsh Language Commissioner's Enforcement Policy*).

148. The Council argues that if it were found to have failed to comply with the relevant Standards that it would willingly carry out the enforcement measures listed at paragraphs 1 – 3 and 5 of the Decision Notice dated 21st December 2022.

149. It therefore argues that it is not necessary for it to be made to comply with paragraphs 4 and 6 of the enforcement actions listed in the Decision Notice, by being obliged to provide written evidence that satisfies the Commissioner that the remaining enforcement action has been completed. It states that such action would be unnecessary and disproportionate and that such a "*mandatory*" order would not be imposed by the High Court on an action for judicial review.

150. In all the circumstances of the case, including the manner in which the Council has contested the intervention of the Commissioner in this case, the Tribunal does not consider that it is unnecessary or disproportionate to require the Council to provide to the Commissioner written evidence that it has complied with the other steps required of it in relation to the review of its internal guidance, the content of that guidance, staff training and the publicising of its failure to comply both on its main public website and on its internal staff intranet and to do so within a

staff ac i wneud felly o fewn cyfnod o dri mis.

151. Unwaith y bydd y canllawiau mewnol wedi'u hadolygu a'u diwygio ac unwaith y bydd yr hyfforddiant staff wedi'i ddyfeisio a'r wefan a'r fewnrwyd staff wedi'u diweddarau, byddai'n gymharol hawdd darparu tystiolaeth o'r fath.

152. At hynny, mae rhwymedigaeth o'r fath yn gwbl gyson â Safon 166 yn Rhan 2 o Atodlen 6 (Safonau sy'n ymdrin â Materion Atodol mewn perthynas â Safonau Llunio Polisi) i Reoliadau 2015. O dan y pennawd "*Corff sy'n darparu gwybodaeth i Gomisiynydd y Gymraeg*", mae hyn yn darparu:

"Rhaid ichi ddarparu unrhyw wybodaeth y gofynnir amdani gan Gomisiynydd y Gymraeg sy'n ymwneud â chydymffurfiaeth â'r safonau llunio polisi yr ydych o dan ddyletswydd i gydymffurfio â hwy".

153. Nid yw'r gymhariaeth a godwyd gan y Cyngor â'r pwerau a ddefnyddir gan yr Uchel Lys ar adolygiad barnwrol, ym marn y Tribiwnlys, yn briodol, oherwydd, yn wahanol i'r Comisiynydd, nid yw'r Uchel Lys yn rheolydd statudol sydd â'r dasg o sicrhau cydymffurfiaeth gan gyrff cyhoeddus, megis y Cyngor, gyda'u dyletswyddau statudol o dan ddeddfwriaeth Safonau'r Gymraeg.

154. Ym marn y Tribiwnlys, mae'n bwysig nid yn unig bod y Comisiynydd yn gallu sicrhau, drwy ei hymchwiliadau o dan adran 71 o Fesur y Gymraeg, y cydymffurfir â'r Safonau, ond hefyd, os bydd canfyddiad o ddiffyg cydymffurfio, bod y Comisiynydd wedi hynny yn gallu sicrhau, yn ddarostyngedig i apêl i'r Tribiwnlys hwn, y

period of three months.

151. Once the internal guidance has been reviewed and revised and once the staff training has been devised and the website and staff intranet updated, provision of such evidence would be relatively easy to undertake.

152. Moreover, such an obligation is entirely consistent with Standard 166 in Part 2 of Schedule 6 (Standards which deal with Supplementary Matters in relation to Policy Making Standards) to the 2015 Regulations. Under the heading "*A body providing information to the Welsh Language Commissioner*", this provides:

"You must provide any information requested by the Welsh Language Commissioner which relates to compliance with the policy making standards with which you are under a duty to comply".

153. The comparison, raised by the Council, with the powers exercised by the High Court on a judicial review is, in the view of the Tribunal, not appropriate, since, unlike the Commissioner, the High Court is not a statutory regulator tasked with ensuring compliance by public bodies, such as the Council, with their statutory duties under the Welsh Language Standards legislation.

154. In the view of the Tribunal, it is important not only that the Commissioner is able to ensure, by means of her investigations under section 71 of the Welsh Language Measure, that the Standards are complied with, but also, should a finding of non-compliance be made, that the Commissioner is thereafter able to ensure, subject to an appeal to this

cydymffurfir yn briodol ag unrhyw fesurau gorfodi a osodir.

Casgliad

155. Am y rhesymau hynny, mae'r Tribiwnlys yn canfod bod y Cyngor wedi methu â chydymffurfio â Safonau 91, 92 a 93 o Reoliadau Safonau'r Gymraeg (Rhif 1) 2015 ac o ganlyniad, mae'r Tribiwnlys yn cadarnhau dyfarniad y Comisiynydd. Felly, caiff apêl yr Apelydd o dan adran 95(2) o Fesur y Gymraeg (Cymru) 2011 ei gwrthod a chaiff penderfyniad yr Atebydd ei gadarnhau, yn unol ag adran 96(1)(a).
156. Apeliodd yr Apelydd ymhellach yn erbyn y camau gorfodi a osodwyd gan yr Atebydd.
157. Nid yw'r Tribiwnlys o'r farn bod nodau'r camau gorfodi yn afresymol nac yn anghymesur o dan yr holl amgylchiadau, gan mai'r cyfan y mae'r camau gweithredu yn ei wneud yw ei gwneud yn ofynnol i'r Apelydd sicrhau, mewn perthynas â phenderfyniadau yn y dyfodol, y cydymffurfir â gofynion y Safonau ac i'r Apelydd ddarparu tystiolaeth ei fod wedi cymryd y camau angenrheidiol i wneud hynny.
158. Felly, yr unig amrywiad i'r mesurau gorfodi ddylai fod mewn perthynas â'r cyfnod cydymffurfio y dylid ei ymestyn i dri mis o ddyddiad y penderfyniad hwn gan y Tribiwnlys.

Tribunal, that any enforcement measures imposed are duly complied with.

Conclusion

155. For those reasons, the Tribunal therefore finds that the Council has failed to comply with Standards 91, 92 and 93 of the Welsh Language Standards (No. 1) Regulations 2015 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 therefore rejected and the Respondent's determination is affirmed, pursuant to section 96(1)(a).
156. The Appellant further appealed against the enforcement action imposed by the Respondent.
157. 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 Standards are complied with and for the Appellant to provide evidence that it has taken the necessary steps to do so.
158. The only variation to the enforcement measures should therefore be in relation to the period for compliance which should be extended to three months from the date of this determination by the Tribunal.

159. Yn unol â hynny, gwrthodir apêl yr Apelydd o dan adran 95(4) ond mae'r Tribiwnlys yn amrywio'r camau gorfodi, fel y nodir uchod, yn unol ag adran 96(2)(b) o Fesur y Gymraeg 2011.

Rhodri Williams CB
Aelod Cyfreithiol o'r Tribiwnlys
21 Awst 2023

159. Accordingly, 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 Welsh Language Measure 2011.

Rhodri Williams KC
Legal Member of the Tribunal
21 August 2023

Atodiad/Appendix

Achos / Case: TyG 22/01

Dogfennau a ystyriwyd gan y Tribiwnlys/ Documents considered by the Tribunal

Cais yr Apelydd / Applicant's Application 17.1.23

Applicant's Case Statement 10.3.23

Applicant's Appeal Grounds Amended 10.3.23

Appellant's Skeleton Argument 11.7.23

Datganiad Achos yr Atebydd / Respondent's Case Statement 5.4.23

Ymchwiliad gorfodi safonau CS114: Adroddiad a hysbysiad penderfynu terfynol 21.12.22/
Standards enforcement investigation CS114: Final report and decision notice 21.12.22

Ymchwiliad gorfodi safonau CS114: Cylch gorchwyl arfaethedig 1.2.22/ Standards enforcement investigation: Proposed Terms of Reference 1.2.22

Ymchwiliad gorfodi safonau CS114: Cylch gorchwyl terfynol 14.3.22/ Standards enforcement investigation: Final Terms of Reference 14.3.22

Ymchwiliad gorfodi safonau CS114: Hysbysiad tystiolaeth 14.3.22/ Standards enforcement investigation: Evidence Notice 14.3.22

Ymchwiliad gorfodi safonau CS114: Adroddiad a hysbysiad penderfynu arfaethedig 11.7.22/
Standards enforcement investigation CS114: Proposed report and decision notice 11.7.22

Ymchwiliad gorfodi safonau CS114: Adroddiad a hysbysiad penderfynu arfaethedig diwygiedig 21.10.22/
Standards enforcement investigation CS114: Revised Proposed report and decision notice 21.10.22

Neath Port Talbot Integrated Impact Assessment Guidance undated (English version only)

Dogfen Ymgynghori / Consultation Document (undated)

Cod Ymarfer i Reoliadau Safonau'r Gymraeg (Rhif 1) 2015/ Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015

Polisi Gorfodi Comisiynydd y Gmraeg/Welsh Language Commissioner's Enforcement Policy

Cod Trefnidiaeth Ysgolion (Tachwedd 2018)/ School Organisation Code (November 2018)

Llythyr dyddiedig 10.1.22 Comisiynydd y Gymraeg at Rhian Headon, Swyddog Cydraddoldeb a Chynnwys, Cyngor Castell-Nedd Port Talbot/Letter dated 10.1.22 Welsh Language Commissioner to Rhian Headon, Equalities and Engagement Officer, Neath & Port Talbot Council

Letter dated 20.1.22 Sheenagh Rees, Head of Human and Organisational Development, Neath & Port Talbot Council to Welsh Language Commissioner (English version only)

Llythyr dyddiedig 1.2.22 Comisiynydd y Gymraeg at Karen Jones, Prif Weithredwr, Cyngor Castell-Nedd Port Talbot/ Letter dated 1.2.22 Welsh Language Commissioner to Kare Jones, Chief Executive, Neath & Port Talbot Council

Letter dated 14.2.22 Sheenagh Rees, Head of Human and Organisational Development, Neath & Port Talbot Council to Welsh Language Commissioner (English version only)

Llythyr dyddiedig 14.3.22 Dirprwy Gomisiynydd y Gymraeg at Rhian Headon, Swyddog Cydraddoldeb a Chynnwys, Cyngor Castell-Nedd Port Talbot/Letter dated 14.3.22 Deputy Welsh Language Commissioner to Rhian Headon, Equalities and Engagement Officer, Neath & Port Talbot Council

Letter dated 29.4.22 Sheenagh Rees, Head of Human and Organisational Development, Neath & Port Talbot Council to Deputy Welsh Language Commissioner (English version only)

Llythyr dyddiedig 11.7.22 Dirprwy Gomisiynydd y Gymraeg at Karen Jones, Prif Weithredwr, Cyngor Castell-Nedd Port Talbot/ Letter dated 11.7.22 Deputy Welsh Language Commissioner to Kare Jones, Chief Executive, Neath & Port Talbot Council

Llythyr dyddiedig 3.8.22, Craig Griffiths, Pennaeth Gwasanaethau Cyfreithiol a Democrataidd, Cyngor Bwrdeistref Sirol Castell-Nedd Port Talbot at Gomisiynydd y Gymraeg/ Letter dated 3.8.22 from Craig Griffiths, Head of Legal and Democratic Services, Neath Port Talbot County Borough Council to Welsh Language Commissioner

Llythyr dyddiedig 21.10.22 Dirprwy Gomisiynydd y Gymraeg at Karen Jones, Prif Weithredwr, Cyngor Castell-Nedd Port Talbot/ Letter dated 21.10.22 Deputy Welsh Language Commissioner to Karen Jones, Chief Executive, Neath & Port Talbot Council

Llythyr dyddiedig 15.11.22, Craig Griffiths, Pennaeth Gwasanaethau Cyfreithiol a Democrataidd, Cyngor Bwrdeistref Sirol Castell-Nedd Port Talbot at Gomisiynydd y Gymraeg/Letter dated 15.11.22, Craig Griffiths, Head of Legal and Democratic Services, Neath Port Talbot County Borough Council to Welsh Language Commissioner

Llythyr dyddiedig 21.12.22 Dirprwy Gomisiynydd y Gymraeg at Karen Jones, Prif Weithredwr, Cyngor Castell-Nedd Port Talbot/ Letter dated 21.12.22 Deputy Welsh Language Commissioner to Karen Jones, Chief Executive, Neath & Port Talbot Council

Awdurdodau cyfreithiol yr Apelydd / Applicant's legal authorities.