



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TyG/23/02

ALED POWELL
(Apelydd)

v.

COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Aelodau'r Panel

Rhodri Williams CB (Aelod Cyfreithiol o'r Tribiwnlys)

Sara Peacock (Aelod o'r Tribiwnlys)

Dr. Glenda Jones (Aelod o'r Tribiwnlys).

Natur y Cais

Apêl gan yr Apelydd o dan adran 99(2) Mesur y Gymraeg (Cymru) 2011 (y Mesur) yn erbyn penderfyniad yr Atebydd (dyddiedig 7 Mehefin 2023), yn dilyn ymchwiliad o dan adran 71 ac Atodlen 10 y Mesur i mewn i weithgareddau Cyngor Bwrdeistref Sirol Wrecsam (Y Cyngor) ynglŷn â darparu gwersi nofio drwy gyfrwng y Gymraeg. Dyfarnwyd gan yr Atebydd bod y Cyngor ddim wedi methu cydymffurfio â Safon 86 Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 (Y Safonau). Yn ei Datganiad Achos, gwnaeth y Atebydd gais i ddileu apêl yr Apelydd o dan rheol 28(2) Rheolau'r Tribiwnlys y Gymraeg 2015 (y Rheolau).

Clywyd y Cais ar 19 Chwefror 2024.



WELSH LANGUAGE TRIBUNAL

Case No: WLT/23/02

ALED POWELL
(Appellant)

v.

WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

Panel Members

Rhodri Williams KC (Legally Qualified Member of the Tribunal)

Sara Peacock (Member of the Tribunal)

Dr. Glenda Jones (Member of the Tribunal)

Nature of the Application

Appeal by the Appellant under section 99(2) of the Welsh Language (Wales) Measure 2011 (the Measure) against the decision of the Respondent (dated 7 June 2023) following an investigation under section 71 and Annex 10 of the Measure into the activities of Wrexham County Borough Council (the Council) in respect of the provision of swimming lessons through the medium of Welsh. It was determined by the Respondent that the Council had failed to comply with Standard 86 of the Welsh Language Standards (No. 1) Regulations 2015 (the Standards). In her Statement of Case, the Respondent made an application to strike out the Appellant's appeal under rule 28(2) of the Welsh Language Tribunal's Rules 2015 (the Rules).

The application was heard on 19 February 2024.

Penderfyniad y Tribiwnlys

Am y rhesymau a nodir isod: -

Mae panel y Tribiwnlys yn caniatáu cais yr Atebydd ac yn dileu Apêl yr Apelydd ar y sail ei fod heb ddatgelu seiliau rhesymol o dan rheol 28(2)(c) o'r Rheolau.

Rhesymau

Cyflwyniad

1. Ar 22 Medi 2022, cyflwynodd yr Apelydd (Mr. Powell) gŵyn i'r Atebydd (y Comisiynydd) yn honni bod Cyngor Wrecsam wedi methu â chydymffurfio â safonau'r Gymraeg gan fod diffyg darpariaeth o wersi nofio drwy gyfrwng y Gymraeg gan y Cyngor. Mewn penderfyniad dyddiedig 7 Mehefin 2023, dyfarnodd y Comisiynydd fod y Cyngor wedi methu â chydymffurfio â Safonau 52, 56 a 84, ond nad oedd e wedi methu â chydymffurfio â Safon 86. Gosodwyd camau gorfodi i'r Cyngor eu cyflawni yn sgîl y methu cydymffurfio.
2. Ar 7 Mehefin, apeliodd Mr. Powell yn erbyn y penderfyniad hwn o ran y canfyddiad nad oedd y Cyngor wedi methu â chydymffurfio â Safon 86 a'r camau gorfodi. Derbyniodd y Tribiwnlys yr Apêl o ran canfyddiad ynglŷn â Safon 86 a chyflwyno cyfarwyddiadau am drefniant yr Apêl.

Tribunal's Decision

For the reasons noted below: -

The Tribunal panel allows the Respondent's application and strikes out the Appellant's Appeal on the ground that it fails to disclose reasonable grounds, under rule 28(2)(c) of the Rules.

Reasons

Introduction

1. On 22 September 2022, the Appellant (Mr. Powell) presented a complaint to the Respondent (the Commissioner) claiming that Wrexham Council had failed to comply with the Welsh Language Standards in the lack of provision by the Council of swimming lessons though the medium of Welsh. In a decision dated 7 June 2023, the Commissioner determined that the Council had failed to comply with Standards 52, 56 and 84, but that it had not failed to comply with Standard 86. Enforcement Measures were imposed on the Council as a result of its failure to comply.
2. On 7 June, Mr. Powell appealed against this decision as regards the finding that the Council had not failed to comply with Standard 86 and the enforcement measures. The Tribunal accepted the appeal in respect of the finding about compliance with Standard 86 and issued directions for the hearing of the Appeal.

3. Fel rhan o'i Datganiad Achos, gwnaeth y Comisiynydd gais i ddileu'r Apêl ar bedair sail o dan rheol 28(2) o'r Rheolau: sef bod yr Apêl (i) heb fod bellach o fewn awdurdodaeth y Tribiwnlys (rh. 28(2)(b)); (ii) heb ddatgelu seiliau rhesymol (rh. 28(2)(c)); (iii) yn wacsaw neu'n flinderus (rh. 28(2)(d)); ac/neu (iv) yn camddefnyddio, fel arall, proses y Tribiwnlys (rh. 28(2)(e)).

4. Mewn Dadl Ysgrifenedig dyddiedig 19 Chwefror 2024 (*Seiliau'r Atebydd dros gais i daflu'r apêl allan*) a gyflwynodd y Comisiynydd ar fore'r gwrandawriad, ac yn ei dadleuon ar lafar yn ystod y gwrandawriad, eglurodd y Comisiynydd ei bod hi'n dibynnu ar ddwy sail yn unig, sef seiliau o dan rheol 28(2)(c) a (d).

Ystyriaeth

5. Mae Safon 86 yn darparu fel a ganlyn:

Safon 86

“Os byddwch yn datblygu cwrs addysg sydd i'w gynnig i'r cyhoedd, rhaid ichi asesu'r angen i'r cwrs hwnnw gael ei gynnig yn Gymraeg; a rhaid ichi sicrhau bod yr asesiad wedi ei gyhoeddi ar eich gwefan.”

Diwrnod gosod: 30/03/2016

6. Yn ôl Cod Ymarfer i Reoliadau Safonau'r Gymraeg (Rhif 1) 2015, a gyflwynwyd gan y Comisiynydd yn Chwefror 2020, dywed ym mharagraff 4.20.16:

3. As part of her Statement of Case, the Commissioner made an application to strike out the Appeal on four grounds under rule 28(2) of the Rules: namely that the Appeal (i) was no longer within the jurisdiction of the Tribunal (rule 28(2)(b)); (ii) failed to disclose reasonable grounds (rule 28(2)(c)); (iii) was frivolous and vexatious (rule 28(2)(d)); and/or (iv) was otherwise an abuse of the Tribunal's process (rule 28(2)(e)).

4. In her written submissions dated 19 February 2024 (*Respondent's Grounds for striking out the Appeal*) which were submitted to the Tribunal on the morning of the hearing, and in her oral arguments during the hearing, the Commissioner explained that she relied on only two grounds, namely those under rule 28(2)(c) and (d).

Consideration

5. Standard 86 provides as follows:

Standard 86

“If you develop an education course that is to be offered to the public, you must assess the need for that course to be offered in Welsh; and you must ensure that the assessment is published on your website.”

Date of imposition: 30/03/2016

6. According to the Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015, issued by the Commissioner in February 2020, it states at paragraphs 4.20.16:

'Mae 'datblygu cwrs addysg' yn weithgarwch a all ddigwydd wrth drefnu bod cwrs newydd yn cael ei gynnig, a hefyd wrth wneud addasiadau i gwrs sy'n cael ei gynnig yn barod, ar gyfer ei gynnig eto yn y dyfodol, a hynny ar ôl y diwrnod gosod. Nid yw safon 86 yn berthnasol yn achos cwrs sydd eisoes yn cael ei gynnig cyn y diwrnod gosod a lle nad oes unrhyw newidiadau neu ddatblygiadau'n cael eu gwneud mewn perthynas â'r cwrs hwnnw.'

7. Mae'r Comisiynydd yn dadlau bod cŵyn gwreiddiol Mr. Powell yn seiliedig ar asesiad y Cyngor ar yr angen i ddarparu cwrs nofio yn Gymraeg yn 2022 ac yn cyfeirio at asesiad sydd yn delio â dadansoddiad yn ôl dewis iaith yn y cyfnodau 1.1.22 – 30.6.22 a 1.7.22 – 31.10.22 oedd yn dangos bod rhwng 7.3% a 6.2% o bobl a atebodd i'r ymholiad wedi dewis Cymraeg fel iaith cyrsiau nofio.
8. Yn ôl y Comisiynydd, mae'r Cyngor wedi dilyn cynllun addysg sydd wedi bodoli ers 2013 a chafodd yr unig addasiadau i fframwaith y cwrs eu gwneud yn 2020. Felly y tro diwethaf i Safon 86 fod yn berthnasol oedd yn ystod 2020. Er bod asesiadau pellach wedi'u gwneud yn rheolaidd ers 2020 (yn debyg bob chwarter blwyddyn), roedd hyn yn mynd y tu hwnt i'r gofyniad gan nad oedd dyletswydd ar y Cyngor i gynnal asesiad arall yn nhermau Safon 86.

"To 'develop an education course' is an activity which may occur in arranging for a new course to be offered, and also in adapting an existing course, to be offered again at a future date, after the imposition day. Standard 86 does not apply in the case of a course already being offered before the imposition day and where no changes or developments are made in relation to that course."

7. The Commissioner argues that Mr. Powell's original complaint was based on the Council's assessment of the need to provide swimming lessons in Welsh in 2022 and refers to the assessment which deals with the breakdown by language preference in the periods 1.1.22 – 30.6.22 and 1.7.22 – 31.10.22 which showed that between 7.3% and 6.2% of people who responded to the enquiry had chosen Welsh as the language for their swimming courses.
8. According to the Commissioner, the Council had followed an education plan which existed since 2013 and the only adaptations to the framework of the course occurred in 2020. Therefore the last time that Standard 86 was relevant was during 2020. Although further assessments had been done regularly since 2020 (seemingly every quarter), this went above and beyond the requirement, since there was no duty on the Council to carry out another assessment in terms of Standard 86.

9. Dadleuodd y Comisiynydd felly nad oedd seiliau rhesymol i'r Apêl gan fod yr Apelydd wedi seilio'i ddadl na chydymffurfiodd y Cyngor ar asesiad a wnaethpwyd ddwy flynedd wedi i'r cwrs nofio gael ei ddatblygu ddiwethaf.

10. Er bod Mr. Powell, yn hollol naturiol, wedi seilio ei Apêl ar yr asesiad yr oedd y Cyngor wedi'i gyfeirio ato fe a'r unig asesiad oedd ar gael erbyn hynny ar wefan y Cyngor, mae'r Tribinwlys yn cytuno, o dan yr amgylchiadau, bod Safon 86 ddim yn rhoi dyletswydd ar y Cyngor i gynnal asesiad newydd yn 2022 nac i'w gyhoeddi ar ei wefan. Mae'r Tribinwlys yn dod i'r casgliad, felly, nad oes seiliau rhesymol i'r Apêl yn erbyn canfyddiad y Comisiynydd ar Safon 86.

11. Serch hynny, mae'n drueni nad oedd yr asesiadau a wnaethpwyd gan y Cyngor yn 2017 a 2019/2020, cyn i'r cwrs nofio gael ei ddatblygu ddiwethaf, ac oedd wedi ei gyhoeddi ar hen wefan y Cyngor, bellach ar gael. Er bod yn bwysig ac yn glodwiw diweddarau'n rheolaidd asesiadau o'r angen am wersi drwy gyfrwng y Gymraeg, mae'n bwysig hefyd bod unrhyw asesiad sydd yn ymateb i'r ddyletswydd o dan Safon 86 yn aros yn hygyrch i'r cyhoedd ar wefan y Cyngor, cyhyd â'i fod yn ddilys ac yn berthnasol i weithgarwch y Cyngor.

9. The Commissioner argued therefore that the Appeal had no reasonable grounds since the Appellant had based his argument that the Council had not complied on an assessment which was done two years after the swimming course was last developed.

10. Although Mr. Powell had, quite naturally, based his Appeal on the assessment which the Council had referred him to and the only assessment which was available on the Council's website, the Tribunal agrees, in all the circumstances, that Standard 86 did not place a duty on the Council to carry out a new assessment in 2022 nor to publish it on its website. The Tribunal therefore concludes that the Appeal against the Commissioner's finding on Standard 86 does not have reasonable grounds.

11. Nevertheless, it is a pity that the assessments which were done by the Council in 2017 and 2019/2020, before the swimming course was last developed, and which had been published on the Council's former website, were no longer available. Although it is important and praiseworthy regularly to update assessments of the need for courses through the medium of Welsh, it is important too that any assessment which corresponds to the duty under Standard 86 should remain accessible to the public on the Council's website, for so long as it is valid and relevant to the activities of the Council.

12. Am y rheswm hwn nid yw'r Tribiwnlys yn cytuno gyda'r Comisiynydd pan mae hi'n dadlau bod yr Apêl yn wacsaw ac yn flinderus. Roedd Mr. Powell wedi dwyn yr Apêl mewn ffydd da ac yn seiliedig ar y wybodaeth roedd y Cyngor wedi darparu iddo fe ac roedd yn amlwg yn ystod y gwrandawriad ei fod yn ddidwyll yn ei benderfyniad i sicrhau bod aelodau'r cyhoedd yn cael cymaint o wybodaeth â phosibl er mwyn mynnu'n effeithlon ar eu hawliau ieithyddol o dan Safonau'r Gymraeg.

13. O ran cynnwys a geiriad yr asesiad a gyflawnwyd yn 2022, mae'r Comisiynydd yn dadlau nad oes sail rhesymol i ddatl Mr. Powell bod y Tabl a gyhoeddwyd yn 2022 ddim yn dangos asesiad o'r ffigyrau ynglŷn â'r angen am wersi nofio yn y Gymraeg gan fod y Tabl yn dangos canrannau yn erbyn y wybodaeth a gasglwyd oddi wrth y cyhoedd.

14. Serch hynny, mae'n anodd peidio dod i'r casgliad bod y Tabl yn ysgafn ddiffygiol gan nad yw'n datgan yn glir mai canlyniad yr asesiad yw bod galw (boed yn gymharol isel) am wersi cyfrwng Gymraeg yn bodoli ac y byddai wedi bod mor hawdd i ddatrys y diffygiant hwn drwy ychwanegu un frawddeg syml yn gosod casgliad am angen gwersi yn y Gymraeg. Byddai'r casgliad hwn yn gyson â'r cyngor roddodd y Comisiynydd yn ei Dogfen Gyngor (*Paratoi cynllun gweithredu ar gyfer cynnig gwersi nofio yn Gymraeg*) yng Ngorffennaf 2017 (gweler paragraff 3.8.10).

12. For this reason, the Tribunal does not agree with the Commissioner when she argues that the Appeal is frivolous and vexatious. Mr. Powell had brought his Appeal in good faith and based on the information which the Council had provided to him and it was obvious during the hearing that he was sincere in his determination to ensure that members of the public should have as much information as possible in order effectively to insist upon their linguistic rights under the Welsh Language Standards.

13. As far as the content and wording of the assessment which was completed in 2022 are concerned, the Commissioner argues that there is no reasonable basis to Mr. Powell's argument that the Table published in 2022 does not show an assessment of the figures in relation to the need for swimming lessons in Welsh, since the Table shows percentages against the information which was gathered from the public.

14. Nevertheless, it is difficult not to draw the conclusion that the Table is slightly deficient in that it does not clearly state that the result of the assessment was that the requirement (albeit comparatively low) for Welsh medium lessons did exist and that it would have been so easy to resolve this deficiency by adding one simple sentence stating a conclusion on the need for courses in Welsh. Such a conclusion would have been consistent with the advice the Commissioner gave in the Advice Document (*Preparing an implementation plan for offering swimming lessons in Welsh*) in July 2017 (see paragraph 3.8.10).

15. Beth bynnag, y mae'r Tribiwnlys yn ymwybodol mai pwysigrwydd casgliad unrhyw asesiad o dan Safon 86 yw pan fydd yn ei ddefnyddio i gyfiawnhau yr eithriad o dan Safon 84 i beidio â chynnig cwrs yn Gymraeg ar y sail bod dim angen gan y cyhoedd am y fath gwrs.
16. Yn yr achos presennol, yn ôl y Comisiynydd, nid yw'r Cyngor yn gwadu bodolaeth angen am gyrsiau nofio yn Gymraeg. Ei esboniad am beidio â darparu cyrsiau yn Gymraeg, ac felly ei reswm am fethu â chydymffurfio â Safon 84, yw rhywbeth hollol wahanol, sef bod diffyg athrawon cymwys sydd yn medru'r Gymraeg. Mae'r Tribiwnlys yn dod i'r casgliad, felly, nad oes seiliau rhesymol i'r Apêl yn erbyn canfyddiad y Comisiynydd ar Safon 86.
17. Nid oes tystiolaeth, fodd bynnag, bod methiant cyflogi athrawon cymwys sydd yn siarad Cymraeg wedi'i ddatgan ar wefan y Cyngor nac wedi'i gyhoeddi i'r cyhoedd yn gyffredinol.
18. Am y rheswm hwn, hefyd, nid yw'r Tribiwnlys yn cytuno gyda'r Comisiynydd pan mae hi'n dadlau bod yr Apêl yn wacsaw ac yn flinderus. Unwaith eto, roedd Mr. Powell wedi dwyn yr Apêl mewn ffydd da ac yn seiliedig ar y wybodaeth roedd y Cyngor wedi darparu'n gyhoeddus.
15. However, the Tribunal is conscious that the importance of the conclusion of any assessment under Standard 86 is when it may be used to justify the exception under Standard 84 for not offering a course in Welsh on the basis that there is no need on the part of the public for such a course.
16. In the present case, according to the Commissioner, the Council does not deny the existence of a need for swimming courses in Welsh. Its explanation for not providing courses in Welsh, and therefore its reason for failing to comply with Standard 84, is something quite different, namely that there is a lack of qualified teachers who are able to speak Welsh. The Tribunal concludes, therefore, that the Appeal against the Commissioner's finding on Standard 86 has no reasonable grounds.
17. There is no evidence, however, that the failure to employ qualified teachers who speak Welsh was stated on the Council's website, nor was it published to the general public.
18. For this reason, as well, the Tribunal does not agree with the Commissioner when she argued that the Appeal is frivolous and vexatious. Once again, Mr. Powell had brought the Appeal in good faith and based on the information which the Council had publicly provided.

Casgliad

19. O ganlyniad, am y rhesymau uchod, mewn perthynas ag Apêl yr Apelydd o dan adran 99(2) o'r Mesur, mae'r Tribwnlys yn caniatáu cais y Comisiynydd i ddileu'r Apêl ar y sail ei fod heb ddatgelu seiliau rhesymol, o dan rheol 28(2)(c) y Rheolau.

Rhodri Williams CB

Sara Peacock

Dr. Glenda Jones

23 Chwefror 2024

Conclusion

19. As a result, for the reasons given above, in relation to the Appellant's Appeal under section 99(2) of the measure, the Tribunal allows the Commissioner's application to strike out the Appeal on the basis that it discloses no reasonable grounds, under rule 28(2)(c) of the Rules.

Rhodri Williams KC

Sara Peacock

Dr. Glenda Jones

23 February 2024