



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TyG/2023/04

SB
(Ceisydd)

v.

COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Ar ôl ystyried:

- a) Hysbysiad Cais y Ceisydd, mewn ebyst dyddiedig 2ail a 4ydd Rhagfyr 2023;
- b) Ateb i gŵyn gwreiddiol y Ceisydd oddi wrth y Comisiynydd, dyddiedig 25 Medi 2023;
- c) Cais y Ceisydd yn ei Hysbysiad Cais am orchymyn yn ymestyn y cyfnod o 28 diwrnod iddo fe ddwyn y Cais;
- d) Cais y Ceisydd mewn ebost dyddiedig 1af Tachwedd 2023 am gyfeiriad bod ei achos yn aros yn ddienw;

Mae'r Tribiwnlys o'r farn:

1. Y dylid ymestyn y cyfnod o 28 diwrnod o dan rheol 11(1) Rheolau'r Tribiwnlys 2015, yn ôl rheol 14(1);
2. Y dylid achos y Ceisydd aros yn ddienw ar Gofrestr y Tribiwnlys, ac yn gwneud cyfeiriad i'r perwyl hwnnw o dan rheol 26(1) Rheolau'r Tribiwnlys 2015;



WELSH LANGUAGE TRIBUNAL

Case No: WLT/2023/04

SB
(Applicant)

v.

WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

Having considered:

- a) The Applicant's Notice of Application in emails dated 2nd and 4th December 2023;
- b) The Commissioner's response to Applicant's original complaint dated 25th September 2023;
- c) The Applicant's application in his Notice of Application for an order extending the period of 28 days for him to make his Application;
- d) The Applicant's application in an email dated 1st November 2023 for a direction that his case should remain anonymous;

The Tribunal is of the opinion:

1. That the period of 28 days under rule 11(1) of the Tribunal Rules 2015 should be extended, in accordance with rule 14(1);
2. That the Applicant's case should remain anonymous on the Tribunal's Register, and makes a direction to that effect under rule 26(1) of the Tribunal Rules 2015;

3. Nad oes disgwyliad rhesymol y byddai cais y Ceisydd am adolygiad o benderfyniad y Comisiynydd yn llwyddo; ac
4. Nad oes unrhyw reswm cryf arall pam y dylai'r cais gael ei glywed.
5. Ar ôl ystyried cais y Ceisydd, felly, nid yw'r Tribiwnlys yn rhoi caniatâd i'r cais gael ei wneud dan adran 103 Mesur y Gymraeg 2011.

Rhoddir isod rhesymau'r Tribiwnlys dros ddod i'w benderfyniad.

Rhodri Williams CB

Aelod Cyfreithiol Tribiwnlys y Gymraeg

17 Ionawr 2024

3. That the application for a review of the decision of the Commissioner would have no reasonable prospect of success, and
4. That there is no other compelling reason why the application should be heard.
5. After a consideration of the application, therefore, the Tribunal does not grant permission, under section 103 of the Welsh Language Measure 2011.

The reasons for the Tribunal's decision are noted below.

Rhodri Williams KC

Legal Member of the Welsh Language Tribunal

17 January 2024

RHESYMAU

1. Y Mae'r Tribiwnlys wedi ystyried cais y Ceisydd am ganiatâd i adolygu, o dan adran 103 Mesur y Gymraeg, penderfyniad y Comisiynydd a wnaethpwyd ar 25ain Medi 2023 i beidio cynnal ymwchiliad i'w gŵyn, o dan adran 71 Mesur y Gymraeg.
2. Serch hynny, ni chafodd y Ceisydd hysbysiad o benderfyniad y Comisiynydd tan 31ain Hydref 2023 am fod y ebost gwreiddiol wedi'i ddanfon gan y Comisiynydd at y cyfeiriad anghywir.
3. Ar 1af Tachwedd 2023 ysgrifennodd y Ceisydd at y Tribiwnlys ynglŷn ag apêl yn erbyn penderfyniad y Comisiynydd, gan gofyn os oedd ei achos yn cael aros yn ddi-enw, ond ni chafodd e ateb tan 21ain Tachwedd 2023, oedd yn esbonio y byddai'r Tribiwnlys yn ystyried hyn fel rhan o'i gais am ganiatâd o dan adran 103 o'r Mesur. Cyflwynodd y Ceisydd ei Hysbysiad Cais erbyn 4ydd Rhagfyr o fewn 13 diwrnod o'r 21ain Tachwedd 2023.
4. Yn ei gŵyn gwreiddiol i'r Comisiynydd, dyddiedig 14eg Gorffennaf 2023, honnodd y Ceisydd fod Cyngor Sir Gâr wedi methu cydymffurfio â Safonau'r Gymraeg, gan nad oedd wedi cyhoeddi ei adroddiad blynyddol ar gydymffurfio gyda'r Safonau ar gyfer 2022 – 2023, yn unol ag amserlen y Safonau, ac nad oedd adroddiad blaenorol (2021 – 2022) ar gael yn hygyrch ar wefan y Cyngor.

REASONS

1. The Tribunal has considered the Applicant's application for permission to review, pursuant to section 103 of the Welsh Language Measure, the decision of the Commissioner made on 25th September 2023 not to hold an investigation into his complaint, pursuant to section 71 of the Welsh Language Measure.
2. Nevertheless, the Applicant did not receive notice of the Commissioner's decision until 31st October 2023, since the original email was sent by the Commissioner to the wrong address.
3. On 1st November 2023, the Applicant wrote to the Tribunal about an appeal against the Commissioner's decision, asking whether his case might remain anonymous, but he did not receive a reply to this until 21st November 2023, which explained that the Tribunal would consider this as part of his application for permission under section 103 of the Measure. The Applicant submitted his Notice of Application by 4th December 2023, within 13 days of the 21st November 2023.
4. In his original complaint to the Commissioner dated 14th July 2023, the Applicant claimed that Carmarthenshire County Council had failed to comply with the Welsh Language Standards, since it had not published its annual report on compliance with the Standards for 2022 – 2023, in accordance with the timetable in the Standards, and because its previous report (2021 – 2022) was not easily available on the Council's website.

5. Yn ôl ymateb y Comisiynydd, yn ei llythyr dyddiedig 25ain Medi 2023 (CS1176), fe benderfynnodd i beidio cynnal ymchwiliad yn dilyn derbyn gwybodaeth pellach gan y Cyngor Sir.
6. Yn ôl y Comisiynydd, er bod y Cyngor dan ddyletswydd i gydymffurfio gyda'r Safonau perthnasol, sef Safonau 158, 164 a 170, roedd y Cyngor wedi cyflwyno sylwadau i'r Comisiynydd yn nodi ei fod yn derbyn cyfrifoldeb am y gŵyn ac ei fod yn derbyn nad oedd wedi cydymffurfio â gofynion y Safonau perthnasol, ond ei fod yn awyddus i baratoi adroddiad blynyddol oedd yn manylu ar ei holl weithgarwch wrth gydymffurfio â Safonau'r Gymraeg a hybu Cymraeg yn y Sir.
7. Roedd y Cyngor wedi esbonio bod casglu a dadansoddi'r holl wybodaeth yn dasg sylweddol a bod gwneud hynny ynghyd â chyrraedd yr amserlen o ran derbyn cymeradwyaeth i'r adroddiad drwy'r broses ddemocrataidd yn amhosibl.
8. Serch hynny, roedd y Cyngor wedi rhoi copi o ddrafft o'r adroddiad i'r Comisiynydd gan egluro y byddai'r adroddiad yn ei gyflwyno i dîm rheoli'r Cyngor ar 5ed Hydref 2023 ac yna i aelod porffolio o Gabinet y Cyngor ar 23ain Tachwedd 2023.
9. Yn ôl y Comisiynydd, diben ymchwilio oedd dyfarnu os oedd methiant wedi bod i gydymffurfio â safonau ac, os oedd methiant, ei galluogi i gymryd camau i orfodi newid yn ymddygiad y sefydliad cyfrifol pe bai angen.
5. According to the response of the Commissioner in her letter dated 25th September 2023 (CS1176), she decided not to hold an investigation following the receipt of further information from the Council.
6. According to the Commissioner, although the Council was under a duty to comply with the relevant Standards, namely Standards 158, 164 and 170, the Council had submitted observations to the Commissioner noting that it accepted responsibility for the complaint and that it accepted that it had not complied with the requirements of the relevant Standards, but that it was eager to prepare an annual report which would detail its entire activity in complying with the Welsh Language Standards and encouraging the Welsh Language in the County.
7. The Council had explained that collating and analysing all the information was a substantial task and that doing this whilst at the same time achieving the timetable for obtaining approval for the report through the democratic process was impossible.
8. Nevertheless, the Council had provided a copy of a draft of the report to the Commissioner, explaining that the report would be presented to the management team of the Council on 5th October 2023 and then to the portfolio member of the Council's Cabinet on 23rd November 2023.
9. According to the Commissioner, the aim of an inspection was to judge whether there was a failure to comply with the standards and, if there was such a failure, to enable her to take steps to force change in the behaviour of the institution responsible if needs be.

10. O dan yr amgylchiadau, casglodd y Comisiynydd, er ei fod yn debygol y byddai ymchwiliad yn canfod methiant gan y Cyngor i gydymffurfio â'r safonau perthnasol, nad cynnal ymchwiliad oedd yr ymyrraeth fwyaf priodol i atal y methiant rhag parhau neu ddigwydd eto yn y dyfodol.

11. Roedd arolygon roedd y Comisiynydd yn eu cynnal yn flynyddol o lefelau cydymffurfiaeth y Cyngor gyda Safonau'r Gymraeg yn dangos lefel uchel o gydymffurfiaeth, ac nad oedd problem systemig o ran ymddygiad y Cyngor tuag at gydymffurfiaeth.

12. Roedd y Comisiynydd o'r farn felly y gellid cyflawni newid cadarnhaol ac effeithiol drwy gynnal trafodaeth gyda'r Cyngor a, phe bai angen, drwy ddefnyddio'r pwerau o roddwyd iddi hi, yn adran 4(i) a 4(j) Mesur y Gymraeg, i roi sylwadau a chyngor i'r Cyngor, yn hytrach na chynnal ymchwiliad ffurfiol o dan adran 71.

13. Ym marn y Tribiwnlys, does dim rheswm i gwestiynu bod penderfyniad y Comisiynydd yn un rhesymol a chyfreithlon o dan amgylchiadau'r achos. Felly mae'r Tribiwnlys yn gwrthod dadleuon y Ceisydd bod penderfyniad y Comisiynydd yn anghywir ac yn ddiffygiol am ei fod yn afresymegol neu'n anghyfreithlon. Seilir y penderfyniad hwn ar y rhesymau a roddwyd gan y Comisiynydd yn ei llythyr dyddiedig 25ain Medi 2023.

10. In the circumstances, the Commissioner concluded that, although it was likely that an investigation would discover a failure by the Council to comply with the relevant standards, holding such an investigation was not the most appropriate intervention in order to prevent the failure from continuing or reoccurring in the future.

11. The forecasts which the Commissioner carried out annually of the levels of compliance by the Council with the Welsh Language Standards demonstrated a high level of compliance and that there was no systemic problem as regards the Council's attitude towards compliance.

12. The Commissioner was therefore of the opinion that positive and effective change could be achieved through holding a discussion with the Council and, should it be necessary, through using the powers given to her, in section 4(i) and 4(j) of the Welsh Language Measure, to make observations and give advice to the Council, rather than undertaking a formal investigation under section 71.

13. In the view of the Tribunal, there is no reason to question whether the Commissioner's decision was a reasonable and lawful one in the circumstances of the case. The Tribunal therefore rejects the Applicant's arguments that the Commissioner's decision was incorrect and defective because it was illogical or unlawful. This decision is based on the reasons given by the Commissioner in her letter dated 25th September 2023.