



TRIBIWNLYS Y GYMRAEG

Achos Rhif: TyG/2023/03

CURON WYN DAVIES
(Apelydd)

v.

COMISIYNYDD Y GYMRAEG
(Atebydd)

PENDERFYNIAD

Aelodau'r Panel

Iwan Jenkins (Llywydd y Tribiwnlys)

Sara Peacock

Eifion Jones

Gwrandawriad

14 Mai 2024, Canolfan Cyfiawnder Sifil, Caerdydd.

Yn Cynrychioli

Cynrychiolodd yr Apelydd ei hun.

Cynrychiolwyd yr Ymatebydd gan Ms Fflur Jones
(Darwin Gray LLP).

Deunydd a ystyriwyd gan y Tribiwnlys

Gweler yr Atodiad.

Natur y Cais

1. Mae'r Apêl hon o dan adran 99 o Fesur y Gymraeg (Cymru) 2011 (Y Mesur). Mae gan yr Apelydd hawl i apelio ar y pwynt hwn o dan y Mesur. Mae'r Apelydd yn apelio yn erbyn un rhan o benderfyniad y Comisiynydd yn ymchwiliad a dyfarniad gorfodi safonau'r Comisiynydd (Cyf CS 1035). Sail yr apêl honno yw bod penderfyniad y Comisiynydd nad oedd methiant i gydymffurfio â Safon 69 o Reoliadau Safonau'r Gymraeg (Rhif 1) 2015 (Y Safonau) pan gyhoeddwyd hysbysiad



WELSH LANGUAGE TRIBUNAL

Case No: WLT/2023/03

CURON WYN DAVIES
(Appellant)

v.

WELSH LANGUAGE COMMISSIONER
(Respondent)

DECISION

Member of the Panel

Iwan Jenkins (President of the Tribunal)

Sara Peacock

Eifion Jones

Hearing

14 May 2024, Civil Justice Centre, Cardiff.

Representation

The Appellant represented himself.

The Respondent was represented by Ms Fflur Jones
(Darwin Gray LLP).

Material considered by the Tribunal

See the Appendix.

Nature of the Application

1. This Appeal is under section 99 of the Welsh Language (Wales) Measure 2011 (The Measure). The Appellant has a right of appeal on this point under the Measure. The Appellant appeals against one part of the Commissioner's decision in the Commissioner's standards enforcement investigation and determination (Ref CS 1035). The basis of that appeal is that the Commissioner's decision that there was no failure to comply with Standard 69 of the

swyddogol yn Saesneg yn unig yn anghywir ac yn afresymol. Mae'r Apelydd yn dymuno dirymu'r rhan honno o benderfyniad y Comisiynydd.

Penderfyniad y Tribiwnlys

2. Mae'r Tribiwnlys yn cadarnhau penderfyniad y Comisiynydd ac nid yw'n caniatáu'r Apêl.

Mater Rhagarweiniol

3. Yn y gwrandawriad, cyflwynodd yr Ymatebydd ddatllyd y dylid dileu'r Cais o dan adran 28 o Reolau Tribiwnlys y Gymraeg 2015 (y Rheolau). Mae gan y Tribiwnlys y pŵer hwnnw, ond mae adran 28 o'r rheolau yn nodi'r broses ar gyfer ymdrin â chais o'r fath. Mae'r adran yn nodi cyfnodau amser, hysbysiad priodol a'r hawl i'r ymgeisydd gael cyfle i gyflwyno sylwadau ysgrifenedig neu lafar. Mae cyfeiriad at glywed cais o'r fath ar ddechrau gwrandawriad sylweddol yn rheol 28(7) ond nid yw hynny'n diystyru'r angen i gydymffurfio â chanllawiau eraill yn y rheolau ynghylch amseru a hysbysu'r ymgeisydd.
4. Pan ofynnwyd iddo gan y Tribiwnlys, dywedodd yr Ymatebydd, er nad oedd y datganiadau achos a gyflwynwyd ganddo yn cyfeirio'n uniongyrchol at gais o dan adran 28 o'r Rheolau, y bwriad oedd ei weithredu fel cais o'r fath.
5. Dywedodd yr Ymatebydd hefyd y penderfynwyd mewn trafodaethau nad oedd yn achos lle nad oedd sail resymol neu lle'r oedd yn wacsaw neu'n flinderus.
6. O ystyried y sylwadau hynny, mae'r Tribiwnlys yn canfod nad oedd y cais i ddileu'r mater o dan adran 28 o'r Rheolau wedi'i gyflwyno'n briodol yn unol â'r Rheolau ac na fyddai'n cael ei glywed. Roedd y rhesymau'n cynnwys:-
 - A) Ni chyflwynwyd hysbysiad yn unol â'r Rheoliadau.
 - B) Nid oedd yr Apelydd wedi derbyn hysbysiad nac wedi cael cyfle i Ymateb.
 - C) Ni ellid cywiro absenoldeb cyfeiriad at gais o dan adran 28 yn y datganiadau achos a ddrafftwyd gan gynrychiolwyr cyfreithiol gan y sylw hwyr yn y gwrandawriad.
 - D) Dywedodd cynrychiolydd yr Ymatebydd fod trafodaethau o fewn paratodau achos yr Ymatebydd wedi cyfeirio at y ffaith eu bod yn teimlo na ddylid ei ystyried yn achos lle nad oedd sail resymol dros yr apêl neu ei

Welsh Language Standards (No 1) Regulations 2015 (The Standards) when an official notice was published in English only was wrong and unreasonable. The Appellant seeks to annul that part of the Commissioner's decision.

The Tribunal's Decision

2. The Tribunal affirms the Commissioner's decision and does not allow the Appeal.

Preliminary Issue

3. The Respondent at the hearing presented an argument that the Application should be struck out under section 28 of the Welsh Language Tribunal Rules 2015 (the Rules). The Tribunal does have that power, but section 28 of the rules does identify the process for dealing with such an application. The section identifies time periods, appropriate notice and the right for the applicant to have an opportunity to make written or verbal representations. There is reference to hearing such an application at the start of a substantive hearing in rule 28(7) but that does not override the need to comply with other guidance in the rules regarding timing and notice to the applicant.
4. When asked by the Tribunal the Respondent stated that whilst the case statements it served did not directly refer to an application under section 28 of the Rules it was intended to act as such an application.
5. The Respondent also stated that in discussions it had been decided that it was not a case where it should be considered to be a case where there were no reasonable grounds or was frivolous or vexatious.
6. Considering those comments the Tribunal finds that the application to strike the matter out under section 28 of the Rules had not been served properly in accordance with the Rules and would not be heard. The reasons included: -
 - A) A notice had not been served in accordance with the Rules.
 - B) The Appellant had not been given notice or an opportunity to Respond.
 - C) The absence of a reference to an application under section 28 in the case statements drafted by legal representatives could not be rectified by the late mention at the hearing.
 - D) The Respondent's representative stated that discussions within the

fod yn gais gwacsaw neu flinderus.

7. Aeth y Tribiwnlys ymlaen i ymdrin â'r mater fel gwrandawriad o dan adran 99 o'r Mesur.

Respondent's case preparation had referred to the fact they felt it should not be considered to be a case where there were no reasonable grounds for the appeal or that it was a claim that was frivolous or vexatious.

7. The Tribunal proceeded to deal with the matter as a hearing under section 99 of the Measure.

Rhesymau

8. Safon 69 o'r Safonau yw'r safon dan sylw ac ystyriodd y Tribiwnlys safon 69 ac adran 41 o ran 3 o'r Safonau ("Dehongli'r Safonau"). Mae'r geiriad yn glir yn adran 41 o ran 3 o'r Safonau (adran 41 rhan 3) at ddibenion safon 69 "ystyr "hysbysiad swyddogol" yw unrhyw hysbysiad y mae corff yn ei gyhoeddi er mwyn rhoi gwybod i bersonau am weithgareddau cyflenwi gwasanaethau neu newidiadau i weithgareddau cyflenwi gwasanaethau'r corff, ond nid yw'n cynnwys hysbysiadau swyddogol a ragnodir gan ddeddfiad." Cyflwynwyd y Safonau o dan y Mesur sy'n gwneud darpariaeth ar gyfer pennu Safonau a daeth i rym ar 31 Mawrth 2015.
9. Dadleuodd yr Apelydd nad oedd yr esemptiad a ddarperir gan adran 41 o Ran 3 yn berthnasol oni bai bod y deddfiad yn pennu fformat yr hysbysiad i'w gynnwys h.y. ffurflen at ddiben cyhoeddi'r hysbysiad. Ystyriodd y Tribiwnlys ystyr y geiriau "hysbysiadau swyddogol a ragnodir gan ddeddfiad". Defnyddir y gair deddfiad i ymdrin â phob math o ddeddfwriaeth ac mae geiriau fel Deddf, Cyfraith, Rheoliadau yn cael eu cyfnewid yn rhwydd er bod iddynt ystyr cyfreithiol gwahanol. Mae geiriaduron yn cysylltu'r geiriau â'i gilydd yn rheolaidd. Nid yw'r Tribiwnlys yn ystyried bod y gair "deddfiad" yn cyfyngu'r esemptiad i unrhyw ddsbarth o ddeddfwriaeth. Mae o'r farn y gall gynnwys Rheoliadau Gorchmynion Traffig Awdurdodau Lleol (Gweithdrefn) (Cymru a Lloegr) 1996.
10. Nid yw'r Tribiwnlys yn ystyried bod geiriad adran 41 rhan 3 wedi'i gyfyngu i ddarnau o ddeddfwriaeth sy'n rhagnodi fformat yr hysbysiad yn fanwl, megis ffurflen. Mae geiriad adran 41 rhan 3 yn benodol ac yn datgan "hysbysiadau swyddogol a ragnodir gan ddeddfiad". Gall hynny gynnwys deddfiad sy'n cadarnhau pa wybodaeth y mae'n rhaid ei darparu hyd yn oed os nad yw'n cadarnhau union natur y ffurflen. Nid yw'r Tribiwnlys yn cytuno bod adran 41 i'w dehongli yn y modd cyfyngedig hwnnw. Nid yw'r Cod Ymarfer ar gyfer Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 yn cyfyngu ar ddiffiniad adran 41 rhan 3

Reasons

8. Standard 69 of the Standards is the standard under question and the Tribunal considered both standard 69 and section 41 of part 3 of the Standards ("Interpreting the Standards"). The wording is clear in section 41 of part 3 of the Standards (section 41 part 3) that for the purposes of standard 69 "an "official notice" means any notice that a body publishes to inform persons about service delivery activities or changes to service delivery activities, but it does not include official notices prescribed by an enactment". The Standards were introduced under the Measure which makes provision for Standards to be specified and came into force on the 31 March 2015.
9. The Appellant argued that the exemption provided by section 41 of Part 3 was not relevant unless the enactment prescribed the format of the notice to be included i.e. a form for the purpose of publicising the notice. The Tribunal considered the meaning of the words "official notices prescribed by an enactment". The word enactment is used to cover all forms of legislation and words such as Act, Law, Regulations are interchanged readily although they do have separate legal meaning. Dictionaries regularly have the words linked together. The Tribunal does not consider that the word "enactment" limits the exemption to any class of legislation. It finds it can include The Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations 1996.
10. The Tribunal does not consider that the wording of section 41 part 3 is limited to pieces of legislation that prescribe the format of the notice in specific detail such as a form. The wording of section 41 part 3 is specific and states "official notices prescribed by enactment". That can include an enactment that confirms what information must be provided even if it does not confirm the exact nature of the form. The Tribunal does not agree that section 41 is to be interpreted in

- neu'r defnydd ohono i fath penodol o hysbysiad gyda strwythur penodol.
11. Dywedodd yr Apelydd, os caniateir yr esemptiad, y canlyniad yw bod hyn yn mynd yn groes i bwrpas y Mesur. Mae'n tansilio prif nod y Comisiynydd i hybu'r defnydd o'r Gymraeg fel y manylir arno yn Adran 3 o'r Mesur. Dadleuodd yr Apelydd fod y gwrthdaro rhwng egwyddor y Mesur a'r esemptiad o dan adran 41 rhan 3 yn golygu bod cyflwyno'r esemptiad yn anghyfreithlon a'r term a ddefnyddir gan yr Apelydd yw bod yr esemptiad yn "ultra vires". Mae'r Apelydd yn datgan bod adran 42 o'r Mesur ynghyd ag atodlen 9 yn cadarnhau bod yn rhaid gosod safonau ar gyfer hysbysiadau swyddogol ac mae'r esemptiad yn groes i hynny. Mae'r Tribiwnlys yn deall y ddadl honno ond mae adran 41 rhan 3 wedi'i chynnwys yn benodol yn y Safonau, a grëwyd yn dilyn proses gyfreithiol briodol. Mae presenoldeb adran 41 rhan 3 yn golygu bod yn rhaid i'r Comisiynydd ac eraill roi sylw dyledus iddo oni bai bod y Safonau yn cael eu diwygio drwy'r broses gyfreithiol gywir.
 12. Mae'r Apelydd yn dadlau bod sawl safon arall sy'n berthnasol i gyhoeddi hysbysiadau swyddogol gan gyrrff gan gynnwys awdurdodau lleol. Mae'n cyfeirio'n benodol at safonau 37, 38, 40, 44, 45, 46, 47 ac 88-90. Mae safonau sy'n ymdrin â chyhoeddi hysbysiadau sy'n ei gwneud yn ofynnol i'r hysbysiadau fod yn ddwyieithog. Fodd bynnag, mae cysylltiad uniongyrchol rhwng safon 69 ac adran 41 rhan 3 ac ni ellir eu gwahanu. Mae'r ffaith nad yw safonau eraill yn cael eu cynnwys gan yr esemptiad hwnnw yn cadarnhau bod adran 41 rhan 3 wedi'i chyfyngu i'r amgylchiadau penodol a ddisgrifir. Nid yw absenoldeb esemptiadau mewn safonau eraill yn golygu eu bod yn diystyru darpariaethau safon 69 ac adran 41 rhan 3. Maent ar wahân am reswm a rhaid eu hystyried ar wahân yn hytrach nag fel grŵp o safonau y mae angen eu dehongli mewn un modd hollgynhwysol.
 13. Mae'r Tribiwnlys o'r farn bod darparu ffyrdd i'r cyhoedd a'r hysbysiad o gau yn berthnasol i'r modd y maent yn darparu gwasanaeth i'r cyhoedd. Mae hyn yn berthnasol i safon darparu gwasanaethau.
 14. Mae'r Apelydd yn cyfeirio at safonau 88-90 gan nodi bod y rhain yn cyfeirio at benderfyniadau polisi. Mae'n dweud bod yr hysbysiad a gyhoeddwyd gan y Cyngor yn cynnwys penderfyniad polisi. Dywed y gall rhan gychwynnol y rhybudd ar y dechrau fod yn hysbysiad swyddogol a ragnodwyd gan ddeddfiad, ond nad yw gweddill y ffurflen. Dywedodd yr Apelydd mai penderfyniad polisi oedd y penderfyniad ynghylch pa ffyrdd i'w cau a'i fod wedi'i gynnwys yn safonau 88-

that limited way. The Code of Practice for the Welsh Language Standards (No 1) Regulations 2015 does not limit the definition or application of section 41 part 3 to a particular type of notice with a specific structure.

11. The Appellant stated that if the exemption is allowed then the result is that this defeats the purpose of the Measure. It undermines the Commissioner's principal aim to promote the use of the Welsh language as detailed in Section 3 of the Measure. The Appellant argued that the conflict between the principle of the Measure and the exemption under section 41 part 3 means that the introduction of the exemption was unlawful and the term used by the Appellant is that the exemption was "ultra vires". The Appellant states that section 42 of the Measure together with schedule 9 confirm there must be standards imposed for official notices and the exemption is contradictory to that. The Tribunal understands that argument but section 41 part 3 has specifically been included in the Standards, which were created following appropriate legal process. The presence of section 41 part 3 means that the Commissioner and others have to have due regard to it unless the Standards are amended through the correct legal process.
12. The Appellant argues that there are several other standards that are applicable to the publication of official notices by bodies including local authorities. He makes specific reference to standards 37, 38, 40, 44, 45, 46, 47 and 88-90. There are standards that deal with the publication of notices that require the notices to be bilingual. However, standard 69 and section 41 part 3 are directly linked and cannot be separated. The fact other standards are not caught by that exemption confirms section 41 part 3 is limited to the specific circumstances described. The absence of exemptions in other standards does not mean they override the provisions of standard 69 and section 41 part 3. They are separate for a reason and must be considered separately rather than as a group of standards that need to be interpreted in an all-encompassing single way.
13. The Tribunal is of a view that the provision of roadways for the public and the notification of closure is relevant to their delivery of a service to the public. This is relevant to a service delivery standard.
14. The Appellant refers to standards 88-90 stating that these refer to policy decisions. He states that the notice published by the Council

90. Byddai hyn yn golygu y dylai'r hysbysiad fod yn ddwyieithog ac na ddylid trin y Gymraeg yn llai ffafriol. Nid oedd y Tribiwnlys yn cytuno â'r ddadl hon. Y rheswm a'r pwrpas dros godi'r hysbysiad oedd er mwyn cydymffurfio â rhwymedigaethau statudol y Cyngor fel y'u pennir gan y Rheoliadau. Nid oedd y Tribiwnlys o'r farn bod penderfyniadau polisi wedi'u gwneud wrth gyhoeddi'r hysbysiad swyddogol.
15. Dywedodd yr Apelydd fod yr Ymatebydd wedi gwrthod cynnwys safonau 37, 38, 40, 44, 45, 46, 47 ac 88-90 yn y Cylch Gorchwyl fel yr oedd wedi awgrymu. Dywedodd yr Ymatebydd ei fod wedi'i ystyried, ond daeth i'r casgliad na ellid eu cynnwys yn y cylch gorchwyl heb gred resymol bod y safonau hynny wedi cael eu torri. Cyfeiriodd yr Apelydd hefyd at ddatganiad yr Ymatebydd iddo na ellid diwygio'r cylch gorchwyl ar ôl ei sefydlu. Mae'r Tribiwnlys wedi derbyn Apêl o dan adran 99 o'r Mesur sy'n ystyried yn benodol y pwynt ynghylch a oedd penderfyniad yr Ymatebydd i ganfod nad oedd Safon 69 wedi'i dorri yn gywir neu'n anghywir. Mae ffyrdd eraill y gellir herio penderfyniad yr Ymatebydd ynghylch y Cylch Gorchwyl a'r hyn oedd i'w ymchwilio. Mae'r cyfle i wneud hynny wedi mynd heibio. Nid yw'r Tribiwnlys yn meddwl ei fod yn briodol ystyried yr her o ran yr hyn a gafodd ei gynnwys ac na chafodd ei gynnwys yn y Cylch Gorchwyl yn yr apêl hon.
16. Mae'r Apelydd yn cyfeirio at adran 26 o Ddeddf yr Iaith Gymraeg 1993 a Deddf Cymru 2007 i gefnogi ei honiad ei fod yn grymuso Gweinidogion Cymru i ragnodi ffurf Gymraeg unrhyw hysbysiad swyddogol a ragnodwyd drwy ddeddfiad. Dywed fod hyn yn cadarnhau nad oes angen unrhyw esemptiad a bod presenoldeb esemptiad yn ddiangen ac yn anghywir. Ni dderbyniodd y Tribiwnlys unrhyw dystiolaeth i gadarnhau sut y byddai hyn yn diystyru'r Mesur a'r Safonau. Rhaid ystyried bodolaeth adran 41 rhan 3 o'r Safonau fel un cyfreithlon a dilys. Nid yw'r Tribiwnlys yn barnu bod y Safonau a'r esemptiad yn cael eu diystyru gan y ddadl hon. Mae'n safbwynt rhesymol a rhesymegol i'r Ymatebydd ddilyn geiriad adran 41 rhan 3.
17. Nid yw'r Tribiwnlys yn caniatáu'r apêl ac mae'n cadarnhau penderfyniad yr Ymatebydd (y Comisiynydd) ar y mater hwn. Mae'r Tribiwnlys yn deall rhwystredigaeth yr Apelydd ynghylch yr esemptiad. Mae'n caniatáu i nifer sylweddol o hysbysiadau swyddogol a ragnodir gan ddeddfiad gael eu cyhoeddi yn Saesneg yn unig drwy Gymru. Mae'n bosibl y bydd y Comisiynydd a Gweinidogion Cymru yn ailystyried y sefyllfa bresennol yn y dyfodol.

- did include a policy decision. He states that the initial part of the notice at the start may be an official notice prescribed by enactment, but the remainder of the form is not. The Appellant stated that the decision regarding which roads to close was a policy decision and captured by standards 88-90. This would mean that the notice should be bilingual and not treat the Welsh language less favourably. The Tribunal did not agree with this argument. The reason and purpose of erecting the notice was to comply with the Council's statutory obligations as prescribed by the Regulations. The Tribunal did not consider that there were policy decisions made in publicising the official notice.
15. The Appellant stated that the Respondent had refused to include standards 37, 38, 40, 44, 45, 46, 47 and 88-90 in the Terms of Reference as he had suggested. The Respondent stated that it had been considered but concluded that without a reasonable belief that there had been a breach of those standards they could not be included in the terms of reference. The Appellant also referred to the Respondent's statement to him that the terms of reference could not be amended once settled. The Tribunal has received an Appeal under section 99 of the Measure which specifically considers the point of whether the Respondent's decision to find that the Standard 69 was not breached was right or wrong. There are other ways in which the Respondent's decision regarding the Terms of Reference and what was to be investigated can be challenged. The opportunity to do that has passed. The Tribunal does not find it appropriate to consider the challenge as to what was and was not included in the Terms of Reference in this appeal.
16. The Appellant refers to section 26 of the Welsh Language Act 1993 and the Wales Act 2007 in support of his claim that it empowers Welsh Ministers to prescribe the Welsh form of any official notice that has been prescribed by an enactment. He states this confirms that there is no need for any exemption and the presence of an exemption is unnecessary and wrong. The Tribunal did not receive any evidence to confirm how this would override the Measure and the Standards. The existence of the section 41 part 3 of the Standards must be considered as lawful and legitimate. The Tribunal does not find that the Standards and exemption are overridden by this argument. It is a reasonable and rational position for the

Iwan Jenkins
Sara Peacock
Eifion Jones

14 Mai 2024

- Respondent to follow the wording of section 41 part 3.
17. The Tribunal does not allow the appeal and affirms the Respondent's (Commissioner's) determination in this matter. The Tribunal understand the frustration of the Appellant at the exemption. It does allow for a substantial number of official notices prescribed by enactment to be published in English only throughout Wales. It may be that the Commissioner and the Welsh Ministers reconsider the current position in the future.

Iwan Jenkins
Sara Peacock
Eifion Jones

14 May 2024

Atodiad/Appendix

Achos / Case: TYG/WLT 2023/03

Deunydd a ystyriwyd gan y Tribiwnlys / Material considered by the Tribunal

1. Cais yr Apelydd / Appellants application.
2. Datganiad achos yr Apelydd / Appellants case statement.
3. Datganiad achos yr Ymatebydd / Respondents case statement.
4. Datganiad achos pellach yr Apelydd mewn ymateb / Appellants further case statement in response.
5. Dogfen ysgrifenedig yr Ymatebydd wedi'i chyflwyno yn y gwrandawriad – pwyntiau sylfaen o blaid gwrthod yr Apêl / Respondents written document presented at the hearing – foundation points in support of rejecting the Appeal.
6. Mesur y Gymraeg (Cymru) 2011 / The Welsh Language (Wales) Measure 2011.
7. Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 / The Welsh Language Standards (No 1) Regulations 2015.
8. Rheolau Tribiwnlys y Gymraeg 2015 / The Welsh Language Tribunal Rules 2015.
9. Cod Ymarfer ar gyfer Rheoliadau Safonau'r Gymraeg (Rhif 1) 2015 / Code of Practice for the Welsh Language Standards (No 1) Regulations 2015.