



WELSH LANGUAGE TRIBUNAL

Case Reference: TyG/2024/02

**Steffan Bryn (Applicant) v Welsh Language Commissioner
(Respondent)**

THE DECISION OF THE TRIBUNAL

MEMBERS OF THE PANEL

Betsan Criddle KC (President of the Tribunal)

H Eifion Jones

Glenda Jones

HEARING

3 October 2025 (with panel deliberations on 6 October 2025)

Caernarfon Justice Centre

REPRESENTATION

The Applicant represented himself.

The Respondent was represented by Owain Rhys James of Counsel, instructed by Blake Morgan LLP.

KEY MATERIAL CONSIDERED BY THE TRIBUNAL

See Appendix to this judgment

NATURE OF THE APPLICATION

An application under section 103 of the Welsh Language (Wales) Measure 2011 for a review of a decision by the Commissioner not to carry out an investigation into a complaint by the Applicant of a failure by a local authority to comply with a Welsh Language Standard.

THE TRIBUNAL'S DECISION

The Tribunal

- a) annuls the Commissioner's determination on the basis that her decision not to open an investigation into the Applicant's complaint:
 - i) was based on a misinterpretation of Standard 84; and
 - ii) failed to take into account a relevant consideration, namely the indicative timetable for being licenced as a landlord, in judging whether the Council's offer of Welsh language courses was adequate to comply with Standard 84.
- b) remits the complaint to the Commissioner with a direction that it be reconsidered in accordance with the principles set out in this judgment.

REASONS

Introduction

1. This appeal concerns the decision by the Welsh Language Commissioner ('the Commissioner') not to open an investigation into the provision by Cardiff Council ('the

Council') of online classroom courses to allow individuals wishing to be licenced as landlords in Wales to undertake training. This raises consideration of whether the Commissioner based her decision on the correct interpretation of Standard 84 of Schedule 1 to the Welsh Language Standards (No. 1) Regulations 2015 ('Standard 84'), and whether she failed to take into account a relevant consideration in making her decision, namely whether the courses offered by the Council were sufficiently frequent having regard to the 8-week indicative timetable for would-be landlords to complete the training course prior to obtaining a licence.

Factual findings

2. The factual background was not in dispute between the parties.
3. The Council operates Rent Smart Wales ('RSW'), the national service for licencing landlords in Wales. Landlords must register with RSW if they wish to let property in Wales, and if they undertake letting and management work, they are further required to obtain a licence. To obtain a licence, a landlord must complete relevant training, which is provided by RSW or other authorised training providers. The advice given to landlords by RSW is that the licencing process is expected to take up to eight weeks and that they should undertake the training before sitting the licence exam.
4. RSW offers three forms of training with a view to obtaining a licence. The first is self-study (reading text on-line in the applicant's own time). The second is online classroom training. The third is face to face classroom training. RSW offers the first two forms of training in English and Welsh, although there is a difference between the frequency of on-line English language and Welsh language training. It offers the third form of training in English only.
5. On 4 July 2024, the Applicant, Mr Bryn, presented a complaint to the Commissioner that the Council had failed to comply with Welsh Language Standards in relation to its operation of RSW. The grounds (either originally or by later amendment) included a complaint about (i) the Council's failure to provide Welsh medium face to face and virtual training for individuals seeking a landlord licence; and (ii) the Council's telephone service in respect of the RSW service.

6. On 16 September 2024, the Council wrote to the Commissioner in response to having been notified of the complaint. The letter notified the Commissioner that the Council only offered face to face classroom teaching in English because their courses had to be financially viable. The Council also stated that it did not arrange Welsh language courses as a matter of course, but that customers could contact them if they would prefer Welsh language courses. The Council stated finally that an online classroom course in Welsh had been advertised to be held on 2 October 2024.
7. On 5 November 2024, the Commissioner decided to open an investigation into the complaint about the telephone service (issue (ii) above or ‘the telephone complaint’). In respect of the complaint about training (issue (i) above or ‘the training complaint’), she decided to give advice to the Council. That decision was taken at a meeting convened to consider whether, amongst other things, such an investigation should be conducted.
8. For the purposes of enabling the Commissioner to make that decision, a reasons form was drafted by a case officer setting out advice to her as to whether she should open an investigation into the complaint. It is a structured document which sets out (a) the facts of the case; (b) the Council’s comments; (c) an assessment of the reasons for conducting an assessment or not; (d) the officer’s conclusions and recommendation to the Commissioner as to whether an investigation should be conducted; and (e) the Commissioner’s decision. The Commissioner’s decision takes the form of the document being signed by her to indicate that her decision has been made on the basis of accepting the officer’s recommendation. The Tribunal accepted that the recommendation made by the officer and upon which the Commissioner made her decision would also be informed by the underlying documents referred to in the form.
9. The form sets out the officer’s conclusions and recommendation in the following terms (underlining in the original):

It is recommended that the Welsh Language Commissioner does not carry out an investigation. As a result of this complaint, D is now promoting virtual classroom courses in Welsh. We should remind them to continue to offer these courses in Welsh.

There is no face-to-face training advertised, although classroom courses have been advertised in English. D says on their website that face-to-face courses are available in Welsh but that there is a need to contact them to arrange this. We can recommend that D advertises classroom courses in Welsh or ask them to place the advertisement for courses in Welsh more clearly on their website to try and encourage users to study the courses in Welsh. We should also encourage them to advertise Welsh courses more regularly. Conducting an investigation would not bring more benefit to Welsh language users and would be a disproportionate use of the Commissioner's resources.

Opening an investigation is not going to bring us more information about this situation. It is clear that D has the means to run these courses as they have confirmed that they now have a Welsh speaker to carry out training. It would be a disproportionate use of the Commissioner's resources to any benefit that would arise for the Welsh language and its users to carry out a full investigation into why these courses have not been advertised. We can ask D to advertise classroom courses in Welsh or ask them to put their notice about courses in Welsh more clearly on their website to try and encourage users to study the courses in Welsh.

It must also be recommended that D have a procedure in place whereby if a user accepts the offer for a Welsh course (by contacting by email as the note on the website encourages and as the complainant did) they act on that offer by providing the course in Welsh or taking steps to ensure that this happens.

10. At the time that this decision was taken, the Council had informed the Commissioner that an online Welsh classroom course would be running in October 2024. It appears that the Commissioner was also aware of another course having been arranged for April 2025, although it was not clear on the evidence before the Tribunal how that information came into her possession. These facts are recorded in the assessment of the reasons for conducting an assessment or not. There was no undertaking by the Council by its letter of 16 September 2024 to arrange any course other than the one in October 2024.
11. The Commissioner's decision was communicated to the Applicant by letter dated 12 November 2024. The Commissioner does not suggest that there is any material distinction between the decision taken and the decision communicated to the Applicant. The Commissioner's letter records that the Council's response to the training complaint was as follows:

In consequence of your complaint, they have since advertised a virtual classroom course for new landlords in Welsh in October this year, and the course will be held in April 2025. They now have a member of staff who can hold

Welsh language courses, and they will hold further courses in Welsh according to demand.

12. Her reasons for not opening an investigation into the training complaint as given to the Applicant are as follows:

We have decided that we will not conduct an investigation into the other elements of the complaint.

The purpose of holding an investigation is to come to a view on the issue of whether there has been a failure to comply with a standard and to enable us to require an organisation to change its behaviour if required. In this case, the Council has acknowledged that it had not provided classroom training in Welsh and it has taken steps to advertise virtual classroom courses since receiving your complaint. We are satisfied in this case that offering virtual classroom courses enables the Council to comply with its duty in accordance with the standards...

There is no need to take steps therefore to require the organisation to change its behaviour as it has already acknowledged its failure and has taken, or will take, voluntary steps to resolve the situation. We do not consider that conducting an investigation would bring additional benefit to users of the language over and above that which the Council has already committed to undertake. To conduct an investigation in these circumstances would be a disproportionate use of our resources.

13. Thereafter, the Commissioner informed the Applicant that the Council would be given advice in accordance with her powers under section 4(j) of the Welsh Language (Wales) Measure 2011 that it should have a permanent arrangement that online Welsh classroom courses for new landlords be offered periodically as a matter of course.

The application to the Tribunal

14. On 17 November 2024, the Applicant presented his application to this Tribunal under section 103 of the Welsh Language (Wales) Measure 2011 ('the Measure'), complaining of the Commissioner's failure to conduct an investigation into the training complaint. The grounds were given as follows:

- 14.1 The Council's promise to hold a virtual course in April 2025 was insufficient in the context of a complaint in July 2024 and having regard to the 8-week period for a landlord to complete training prior to sitting the licencing exam.

- 14.2 It was not reasonable for the Commissioner to conclude that there was equivalence of treatment between Welsh and English when English courses are offered face to face and online and the proposed Welsh course was online only.
- 14.3 The Commissioner had failed to deal with the full scope of his complaint about the Council. She had only considered the complaint about basic training for landlords and had not considered the provision made in respect of specialist and further courses. The Commissioner had also failed to deal with his complaint about the website and the fact that it was necessary in some cases to phone or e-mail to book a Welsh language course when an English language course could be booked online and that it was not clear, in the case of courses offered in both languages, Welsh and English, which was the language of the course being booked.
- 14.4 The Commissioner's response did not suggest that consideration had been given to whether the Council had complied with Standards 84 and 86 to assess the need for an educational course to be provided in Welsh.
15. On 10 December 2024, the application came before the Tribunal on the papers when permission was refused on the basis that the Commissioner's decision to give advice recommending that the Council put in place a permanent process that online classroom training for new landlords should be advertised periodically as a matter of course was within her discretion in this matter. The Tribunal rejected the argument that the decision was incorrect and defective because it was too limited, on the basis of the reasons given by the Commissioner in her outcome letter of 12 November 2024.
16. By undated letter, but received by the Tribunal on 24 December 2024, the Applicant exercised his right under rule 16(8) of the Welsh Language Tribunal Rules ('the Rules') 2015 to require that the decision be reconsidered by a tribunal panel at a hearing.
17. On 17 March 2025, the Applicant presented written submissions to the Tribunal for consideration at the hearing of his reconsideration application. In those submissions, the grounds of complaint were summarised as follows:

- 17.1 **Ground 1:** It was an error of law for the Commissioner to (i) base her decision not to open an investigation on the Council's promise to hold online Welsh classroom courses in accordance with demand; and (ii) suggest to the Council, by her advice, that it had discretion not to offer Welsh courses in the circumstances.
- 17.2 **Ground 2:** The Commissioner had misinterpreted Standard 84 in concluding that the online only provision of Welsh language classroom courses enabled the Council to comply with its obligations, when English language courses were offered face to face and online and to rely on that misinterpretation as part of her justification for not opening an investigation.
- 17.3 **Ground 3:** Further and alternatively, that the Commissioner's decision not to open an investigation involved an unreasonable interpretation of Standard 84 and without considering the general principles and specific provisions made by the Code of Practice for the Welsh Language Standards (No 1) Regulations 2015.
- 17.4 **Ground 4:** The Commissioner had failed to come to a reasonable conclusion, consistent with the policy and objectives of the Measure as to the true effect and outcomes of her decision to give advice rather than conduct an investigation on users of the Welsh language.
18. An oral permission hearing was held by MS Teams on 21 March 2025. At that hearing, the Applicant applied for permission to amend his application in accordance with the grounds as set out in his written submissions. The Tribunal granted this application and subsequently granted permission to the Applicant to pursue Grounds (1)(i), (2) and (4) as set out above. The application was treated as received by the Tribunal on 14 April 2025.
19. On 13 April 2025, the Tribunal gave directions for the exchange of statements of case. The Applicant filed and served his statement of case on 12 May 2025, when he also made a further application to amend the grounds of his claim. The Applicant sought to:

- 19.1 Add to Ground 1 a complaint as to whether RSW had complied with Standard 84 in circumstances where its policy is to cancel a course if there are insufficient attendees.
- 19.2 Add a Ground 5 that the Commissioner, in deciding not to investigate his complaint (i) erred in concluding that she could not obtain further information via an investigation by reason of conflicting information her possession at the time that she made that decision; and (ii) erred in treating the obtaining of information as the only criterion relevant to her decision.
- 19.3 Amend Ground 4 factually to complain that the Commissioner had failed to take into account relevant considerations in making her decision not to open an investigation, namely that the online Welsh language courses were offered in October 2024 and April 2025 and that provision was insufficiently regular in comparison with the English language provision. That was a change from his argument as presented at the oral permission hearing on 21 March 2025, when he contended that no course had been offered until April 2025.
20. By a decision sent to the parties on 18 May 2025, the Tribunal refused the application to amend Ground 1 and add Ground 5 and granted the application to amend Ground 4.

The issues for the Tribunal

21. At the outset of the hearing, the Tribunal confirmed the grounds of complaint being pursued by the Applicant as follows:
- 21.1 **Ground 1:** The Commissioner had erred in law in basing her decision not to open an investigation on the Council's promise to hold online Welsh classroom courses in accordance with demand.
- 21.2 **Ground 2:** The Commissioner had misinterpreted standard 84 in concluding that the online only provision of Welsh classroom courses enabled the Council to comply with its obligations, when English language courses were offered face

to face and online, and to rely on that misinterpretation as part of her justification for not opening an investigation.

- 21.3 **Ground 4:** The Commissioner had failed to come to a reasonable conclusion, consistent with the policy and objectives of the Measure as to the true effect and outcomes of her decision to give advice rather than conduct an investigation on users of the Welsh language. This was specifically said to have been a failure to take into account a relevant consideration, namely the 8-week indicative timetable for landlords to complete the training course before sitting the licencing exam, and the adequacy of courses offered in October 2024 and April 2025 against that backdrop.

22. The parties' arguments as set out in their statements of case, their skeleton arguments, and in oral submissions identified the following issues as arising for the Tribunal's determination:

- 22.1 How should the Tribunal deal with an application under section 103 of the Measure? Is there a presumption that the Commissioner should open an investigation if she receives a valid complaint or is the decision whether to do so polycentric in nature?
- 22.2 Can and should the Tribunal look at Ministerial statements about the intended scope of the Welsh Language Standards in coming to a conclusion about how to interpret Standard 84?
- 22.3 Did the Commissioner base her decision not to open an investigation on a conclusion that the reactive provision of online Welsh classroom courses complied with Standard 84? If she did, was this an error of law?
- 22.4 Does the obligation to "offer a course" for the purposes of Standard 84 encompass the way in which that course is provided? If so, did the Commissioner misinterpret Standard 84 when she decided that providing online Welsh classroom courses only was compliant with the standard?

- 22.5 Did the Commissioner fail to take into account a relevant consideration – the frequency of virtual training in the context of the indicative timetable for obtaining a licence – in deciding not to hold an investigation?
- 22.6 If the Tribunal were to conclude that the Commissioner’s decision was flawed, is s.31(2A) Senior Courts Act 1981 applicable to an application under s.103 of the Measure?
- 22.7 If s.31(2A) is applicable, has the Commissioner shown, the burden being on her, that it is ‘highly likely’ that she would come to the same decision had the error not been made?

RELEVANT LAW

The Tribunal’s jurisdiction

23. Section 103 of the Measure, as relevant here, provides that an individual may apply to the Tribunal to review the decision of the Commissioner not to open an investigation into a complaint by them that a public body has failed to comply with a standard.

24. Section 103(3) specifies that:

The Tribunal must, subject to section 104, deal with an application for such a review as if it were an application for judicial review made to the High Court.

25. Section 104 provides that:

(1) On an application under section 103, the Tribunal may –

(a) affirm the Commissioner’s determination, or

(b) annul the Commissioner’s determination.

(2) If the Tribunal annuls the Commissioner’s determination, the Tribunal must remit the case to the Commissioner with directions for its reconsideration.

The approach to a complaint under s.103

26. In *Powell v Welsh Language Commissioner* (Case No. TyG/WLT/16/8) at paragraph 14, the Tribunal identified the principles relevant to considering an application under section 103 of the Measure. These are that:

- 26.1 It is for the Applicant to demonstrate that the Commissioner has failed to act within her powers.
- 26.2 The Commissioner has a discretion, under section 93 of the Measure, whether or not to carry out an investigation of a valid complaint.
- 26.3 That discretion must be exercised in a way that is consistent with the policy and objects of the Measure generally.
- 26.4 When deciding how to exercise her discretion, the Commissioner must take into account relevant considerations and must not take into account irrelevant ones; what is relevant and what is irrelevant is to be judged by reference to the policies and objects of the Measure.
- 26.5 Although it is for the Commissioner to weigh up the relevant considerations in order to decide whether the balance favours an investigation or not, she must act rationally when doing so.
- 26.6 She must also act with procedural fairness towards the person whose complaint she is considering.

27. At paragraphs 24-26, the Tribunal went on:

“The Measure creates a system of standards of conduct in relation to the use of the Welsh language by (primarily) public bodies in Wales, with the express aim of fostering and facilitating the use of that language. It imposes on the Commissioner a duty to further that aim. It provides her with a range of powers intended to assist her in doing so. Whilst it also provides the Commissioner with a wide discretion whether, and in what way, to make use of those powers, she must, in accordance with the principle in *Padfield v Minister of Agriculture*

(see above) use that discretion in a way which is consistent with the general aims of the Measure.

A decision not to investigate a complaint which is procedurally valid and which appears, at least at first sight, to be well-founded is an important one, something which is underlined by the fact that section 93(1) of the Measure imposes a clear duty on the Commissioner (“must consider”) to give careful consideration as to whether or not to investigate such a complaint. A decision not to do so is likely to cause disappointment and frustration to the individual who has gone to the trouble of bringing to the Commissioner’s attention a breach of a legal obligation placed on a local council or other authority. That individual is likely to feel that the breach of duty is an affront to his or her rights as a member of the Welsh-speaking community. A decision not to investigate such a complaint has the potential for undermining public confidence in the effectiveness of the Measure as a means of protecting such rights. It also has far-reaching practical consequences. None of the Commissioner’s enforcement powers are available unless she has carried out a statutory investigation and determined that a failure to comply with a standard has been established.

It is true that it would still be open to the Commissioner to seek to persuade a person to comply with that person’s legal duties by other means...But this would not involve any element of compulsion. The National Assembly has, through the Measure, provided the Commissioner with a wide range of powers which do involve some degree of compulsion. Its intention must have been that these powers should be used when necessary. A decision, in a particular case, to rely on purely persuasive methods of ensuring compliance with standards would need to take into account the important difference in powers available to the Commissioner in relation to complaints formally investigated and those that are not. It would need to make clear what factors had justified abandoning the opportunity to use the enforcement machinery of the Measure.

28. The Tribunal was referred to the decision of the House of Lords in *R (Corner House Research) v Director of the Serious Fraud Office* [2009] 1 AC 756. The case concerned whether a decision by the Director of the Serious Fraud Office to discontinue a criminal investigation was unlawful.

29. The House of Lords in *Corner House Research* observed that (at paragraphs 30-32) that:

“It is common ground in these proceedings that the Director is a public official appointed by the Crown but independent of it. He is entrusted by Parliament with discretionary powers to investigate suspected offences which reasonably appear to him to involve serious or complex fraud and to prosecute in such cases...It is accepted that the decisions of the Director are not immune from review by the courts, but authority makes plain that only in highly exceptional

cases will the court disturb the decisions of an independent prosecutor and investigator...

The reasons why the courts are very slow to interfere are well understood. They are, first, that the powers in question are entrusted to the officers identified, and to no one else. No other authority may exercise these powers or make the judgments on which such exercise must depend. Secondly, the courts have recognised (as it was described in the cited passages of *Matalu*)

“the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits”.

Thirdly, the powers are conferred in very broad and un-prescriptive terms.

Of course, and this again is uncontroversial, the discretions conferred on the Director are not unfettered. He must seek to exercise his powers so as to promote the statutory purpose for which he is given them. He must direct himself correctly in law. He must act lawfully. He must do his best to exercise an objective judgment on the relevant material available to him. He must exercise his powers in good faith, uninfluenced by any ulterior motive, predilection or prejudice...”

30. The Tribunal was also referred to *JJ Management Consulting LLP v Revenue and Customs Commissioners* [2021] QB 257 in which the approach in *Corner House Research* was approved in the context of a civil investigation by HMRC (paragraphs 60-61).
31. The meaning and legal effect of the standards is a matter for the Tribunal, not a matter left to the Commissioner’s discretion. As observed in *Powell v Welsh Language Commissioner (Case No. TyG/WLT/17/2)* at paragraph 13, citing *R (Fleet Maritime Services (Bermuda) Ltd) v The Pensions Regulator* [2015] EWHC 3744 (Admin), the meaning and effect of legislation is a question of law.
32. By contrast, a decision by the Commissioner as to whether the Welsh language has, in fact, been treated less favourably than the English language is an “evaluative judgment” with which the Tribunal may not interfere provided that it is exercised within the legal parameters established by the Measure and by the Regulations: *Powell (Case No. TyG/WLT/17/2)* at paragraph 15.

Ministerial statements

33. It is a long-established principle, in the context of Westminster legislation, that statements in Parliament are generally inadmissible as an aid to legislative interpretation.
34. There is an exception which permits recourse to Hansard where three conditions are met, namely that (a) legislation is ambiguous or obscure, or leads to an absurdity, (b) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements, and (c) the statements are relied upon are clear: *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 HL at 640.
35. The same approach has been held to be applicable when considering Senedd legislation: *R (Driver) v Rhondda Cynon Taf County Borough Council* [2020] EWHC 2071 (Admin) at paragraph 70. The issue was raised on appeal (*R (Driver) v Rhondda Cynon Taf County Borough Council* [2020] EWCA Civ 1759), but the Court did not receive full submissions and declined to determine it (at paragraph 48), observing that it would have wanted to consider carefully the nature of debates and statements in the Senedd and how to address the question of statements or answers made in one language but not the other, before deciding what statements and subject to what conditions made during the course of debates were admissible to assist in the construction of Senedd legislation.
36. Explanatory Notes published with a Bill may provide contextual information that may be helpful in interpreting its provisions and purpose: *R (O (A Child)) v Secretary of State for the Home Department* [2023] AC 255 at paragraph 30. It may be noted that the Explanatory Memorandum to the Bill that became the School Standards and Organisation (Wales) Act 2013, which is Senedd legislation, was relied on in *Driver* (supra) as a relevant aid to construction (see paragraphs 68 and 85).

The role of the Commissioner

37. Section 3(1) of the Measure provides that:

The principal aim of the Commissioner in exercising his or her functions is to promote and facilitate the use of the Welsh language.

38. Section 3(3) provides further that:

In exercising functions in accordance with subsection (1), the Commissioner must have regard to –

- (c) the principle that, in Wales, the Welsh language should be treated no less favourably than the English language

39. Section 71 of the Measure provides that:

- (1) The Commissioner may investigate whether a person (D) has failed to comply with a relevant requirement.

- (2) In this Part, “relevant requirement” means any of the following –

- (a) a duty to comply with a standard specified by the Welsh Ministers

40. If the Commissioner decides to undertake an investigation, she must determine whether or not the body investigated has failed to comply with a relevant requirement: s.73(2).

41. Section 93(1) provides that:

The Commissioner must consider whether to carry out an investigation under section 71 of whether the conduct of a person (D) (“the alleged conduct”) amounts to a failure to comply with a standard if –

- (a) a person (P) makes a complaint to the Commissioner about that conduct, and
- (b) that complaint is valid.

42. Whilst the Commissioner does not have a duty to consider whether to carry out an investigation if the complaint is not valid within the meaning of s.93, she nevertheless has the power to carry out an investigation in such a case: s.93(8).

Welsh Language Standards

43. Local authorities are required, amongst others, to comply with the service delivery standards prescribed by paragraph 1 of the Welsh Language Standards (No 1) Regulations ('the Regulations') 2015.

44. Standard 84 specifies that:

If you offer an education course that is open to the public, you must offer it in Welsh.

45. In February 2020, the Commissioner published a Code of Practice giving practical guidance on the requirement of the Welsh language standards for organisations required to comply with the Regulations ('the Code'). The Code provides guidance as to what the Commissioner considers to be compliance with standards 84-86 at paragraphs 4.20.1 – 4.20.21. This includes as follows:

- | | |
|---------|--|
| 4.20.8 | To 'offer' an education course includes making it known (for example, in a prospectus or on a website) that an education course is available and will be delivered in Welsh, and that persons can attend or apply for a place or enrol on the education course if they so wish. |
| 4.20.11 | A body does not have to deliver a course in Welsh in the same setting as a course delivered in English. However, the Commissioner does not consider that a person should have to travel further in order to attend a course in Welsh compared with the distance travelled for the course in English... |
| 4.20.12 | A body does not have to deliver a course in Welsh on the same dates and at the same times as a course delivered in English. However, a body is expected to deliver courses in Welsh on days and times which would not disadvantage those enrolled on the course delivered in Welsh. |
| 4.20.14 | ...a body is expected to ensure that there are a sufficient number of Welsh language courses available which would ensure that nobody is at |

a disadvantage if they choose to attend a course in Welsh rather than a course in English.

Section 31(2A) Senior Courts Act 1981

46. Section 31(2A) provides that:

The High Court must –

- (a) refuse to grant relief on application for judicial review...
- (b) ...if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

47. Section 31(2B) empowers the court to disregard that requirement if it considers it appropriate to do so for reasons of exceptional public interest.

48. The onus is on the Defendant to establish that the section 31(2A) test is met: *R (Bokrosova) v Lambeth LBC* [2016] PTSR 355 at paragraph 88.

49. The Tribunal was referred to *R (Bradbury) v Awdurdod Parc Cenedlaethol Bannau Brycheiniog* [2025] EWCA Civ 489 at paragraph 72, which cites *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at paragraphs 272-273.

50. Paragraph 71 is of importance, where Lewis LJ observed that:

“In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied”.

51. Thereafter at paragraph 72, the Court held that there are three considerations to apply. First, there is a duty to consider s.31(2A), subject to the statutory discretion in s.31(2B). Secondly, the outcome does not inevitably have to be the same, provided that it is

“highly likely” that it would be so. Thirdly, it does not have to be shown that the outcome would have been exactly the same if it is “highly likely” that the outcome would not have been “substantially different” for the claimant. It goes on, citing from *Plan B* at paragraph 273:

“...courts should still be cautious about straying, even subconsciously, into the forbidden territory of assessing the merits of a public decision under challenge by way of judicial review. If there has been an error of law, for example in the approach the executive has taken to its decision-making process, it will often be difficult or impossible for a court to conclude that it is “highly likely” that the outcome would not have gone about the decision-making process in accordance with the law”.

52. Finally, the Court has observed that, in applying s.31(2A), a witness statement will normally be needed for it to be fulfilled: *R (Enfield) v Secretary of State for Transport* [2015] EWHC 3758 (Admin) at paragraph 106.

THE PARTIES’ ARGUMENTS

53. The Tribunal had the benefit of detailed statements of case, skeleton arguments and oral submissions from the parties, all of which it has carefully taken into account in making its decision. It is therefore the principal arguments which are summarised here.

The Applicant’s case

54. The Applicant invited the Tribunal to approach its decision making on the basis of the decision in *Powell*. He argued that the approach in *Corner House Research* is a higher test which was not applicable here as the Commissioner’s only function is to deal with the Welsh language in a different statutory context.

55. The Applicant contended that Standard 84 requires that courses are offered prospectively, not reactively, and that the Commissioner erred in concluding otherwise. He contended further that online classroom courses only in Welsh involved less favourable treatment compared to English language provision, as such training will not be suitable for everyone. Online and face to face training were not separate courses, but one course delivered in two different ways. The Commissioner had not considered the

indicative timetable, and this was a failure to take into account a relevant consideration. Finally, he argued that s.31(2A) of the Senior Courts Act 1981 was not applicable as it was not in force when the Measure was passed, and in any event, the extent of the errors in the present case meant that the Tribunal could not conclude that it was “highly likely” that the same decision would have been made in their absence.

The Commissioner’s case

56. Mr James took the Tribunal through the reasons form which he contended made it clear that the proper basis for the Commissioner’s decision was that (i) an investigation would not uncover more information; (ii) the Council had the means to offer Welsh online classroom courses and (iii) it would be a disproportionate use of her resources to open an investigation. He argued that this was a decision falling within the Commissioner’s discretion to make.
57. Mr James argued that the Commissioner could not make a determination prior to an investigation as to whether or not there had been compliance with Standards, as that would be to prejudge that which it was the function of an investigation to determine.
58. Mr James referred to the various functions of the Commissioner, drawing parallels with the role of the Director of the Serious Fraud Office in *Corner House Research* in support of that approach being applied to the present case.
59. Mr James argued that the Commissioner had approached Standard 84 correctly. He accepted that the Commissioner’s prima facie view was that the Council had done what it was required to do to comply with Standard 84.
60. Finally, Mr James argued that s.31(2A) applied because the Tribunal is obliged to hear a s.103 application as if it were a claim for judicial review and relied on the factors set out at paragraph 56 above in support of his case that it was “highly likely” that the Commissioner would have made the same decision even if she had erred.

DISCUSSION AND DECISION

(1) Preliminary issues

Approach to an application under section 103

61. The Tribunal considers that the principles set out in *Powell* at paragraph 14 and summarised at paragraph 26 above remain good law as to how it should approach its decision making in a s.103 case. The question of whether to open an investigation is a matter for the Commissioner's discretion, to be exercised in accordance with the policy and objects of the Measure.
62. The Tribunal does not consider that *Powell* is to be read as mandating a rebuttable presumption to the effect that an investigation ought to be carried out unless there is good reason not to do so. Such a reading of *Powell* is inconsistent with the reference at paragraph 26 of the decision to the powers to investigate being used when **necessary** i.e. where the Commissioner determines that an investigation is needed in all the circumstances. Further, the Tribunal's observation that in a **particular case**, the Commissioner would need to make clear what factors justified not pursuing an investigation could not be read as any general rule in this regard.
63. The Tribunal accepted that the Commissioner's role in deciding whether to carry out an investigation is properly to be described as a "polycentric" one in which she is entrusted to weigh all the relevant considerations and to come to a decision. She is required by s.93 to consider, following a complaint, whether to carry out an investigation, but she is not required to decide that there ought to be an investigation. Although there are points of factual distinction between the role of the Commissioner and that of other bodies who are empowered to decide whether to investigate other organisations, the fact of that power is what makes the Commissioner's decision polycentric in nature. The fact that her statutory role is to promote the Welsh language is not a relevant point of distinction: what matters is that s.71 of the Measure confers a discretion on her whether to open an investigation.

64. The Commissioner must however exercise her powers so as to promote the statutory purpose for which they are given. That is what s.3 of the Measure provides for, and it reflects the reasoning both in *Powell* itself and in *Corner House Research*. In that regard, as observed by the Tribunal in *Powell*, a relevant consideration is that an investigation is the only route by which the Commissioner can exercise her powers of compulsion. It is indeed, as Mr James accepted in argument, the only route by which a finding of non-compliance with Welsh Language Standards can be made. That is therefore a factor for the Commissioner to weigh in the balance in determining whether to conduct an investigation.

65. The Tribunal has therefore approached its decision on the basis that it is considering the Commissioner's decision not to open an investigation as polycentric in character.

Reliance on Ministerial statements

66. The Tribunal is bound by the decision of the High Court in *Driver* that a Ministerial statement is inadmissible unless the test in *Pepper v Hart* is satisfied. Although the Court of Appeal in *Driver* expressed doubt as to whether it might have taken a different approach, it did not do so, and, as such, the High Court's decision is binding unless the point were to be determined differently in another case.

67. The Tribunal considered the statements of the then First Minister Carwyn Jones as Minister with responsibility for the Welsh language referred to by the Applicant at paragraph 70 of his statement of case. These were statements to the effect that the Government's aim in passing the 2015 Regulations was to see Welsh become an automatic part of services in Wales, and that it wished to see bilingualism become normal for public bodies.

68. The Tribunal did not consider that the test in *Pepper v Hart* was met, as the Standards are not ambiguous or obscure. The Tribunal also did not consider that the statements were clear on the key question of how the Welsh Language Standards fall to be interpreted. Even if the Tribunal was wrong on that point, it also did not consider in any event that statements at such a high level of generality provided any assistance as to the proper construction of Standard 84.

69. By contrast, the Tribunal considered that the Explanatory Memorandum to the 2015 Regulations were of assistance to their interpretation and that is considered further below.

(2) The application

Ground 1: whether the Commissioner based her decision not to open an investigation on a conclusion that reactive provision of virtual training complied with Standard 84 and if so, whether this was an error

70. The Commissioner sought to argue that she had **not** based her decision on a conclusion that Standard 84 had been met by the provision of online classroom courses only and, as such, Ground 1 had to be rejected because she had not made the error attributed to her.

71. The Tribunal did not accept this argument for a number of reasons.

72. The Tribunal accepted Mr James's point that, at the stage of deciding whether to open an investigation, the Commissioner is not determining conclusively whether a Standard has been breached or not. It is the purpose of an investigation to determine whether there has been a breach of standards (s.73(2)) and if so, what action, if any, should be taken consequent upon that finding.

73. That, however, does not address the point that arises in this case. The Tribunal does not read the Applicant's complaint as resting on the proposition that the Commissioner had determined conclusively that there was no breach – that is not what his complaint says, and it would be wrong, in the Tribunal's view to read the use of 'conclusion' by a litigant in person as meaning a conclusive or a final determination. The Applicant's complaint is that the Commissioner had concluded – or more accurately in legal terms, had reached a prima facie conclusion – that there was no breach of Standard 84 by the Council in its reactive provision of virtual Welsh courses.

74. In this regard, the Tribunal concluded that the Commissioner's decision not to open an investigation did rest on a prima facie conclusion that the Council's reactive provision of online Welsh classroom courses complied with Standard 84. The officer's

recommendation to the Commissioner and accepted by her is that an investigation should not be opened, noting that the Council was advertising online classroom courses as a result of the complaint. It is implicit in that reasoning that the Commissioner regarded what the Council had done as sufficient to comply with Standard 84. Mr James fairly accepted in the course of argument that the Commissioner had formed this view.

75. The Commissioner's view is further made explicit in the letter sent by her to the Applicant in which she writes that she is satisfied in this case that the Council's provision of online Welsh classroom courses enabled it to conform with its obligations under the Welsh Language Standards.
76. Having concluded that the Commissioner had concluded on a prima facie basis that the Council had complied with its obligations under Standard 84, the Tribunal then went on to consider whether this disclosed an error of law.
77. The Tribunal had regard to the Explanatory Memorandum to the 2015 Regulations referred to by the Applicant in his statement of case, which states at paragraph 6 that their intention was to embody a principle of proactive provision of Welsh language services rather than a reactive provision. That statement is consistent with the meaning of "offer" which is to "present or proffer (something) for (someone) to accept or reject as desired". It is further consistent with the Code of Practice which provides at paragraph 4.20.8 that an "offer" includes making it known that an education course is available and **will** be delivered in Welsh.
78. The evidence before the Tribunal disclosed that, at the point in time at which the Commissioner made her decision, the information available to her was that the Council had run an online classroom course in Welsh in October 2024 and, it appears, would be running another in April 2025. The Tribunal did not consider that the Council had given the Commissioner any form of promise or undertaking in respect of other future courses – that is not what the letter of 16 September 2024 says. Thus, the Commissioner had no information that the Council had made or would be making proactive periodical arrangements to offer online Welsh classroom courses. The terms of the advice that she gave the Council are inconsistent with that being the factual position.

79. For all of these reasons, the Tribunal concluded that the Commissioner had erred in her prima facie conclusion that the Council had complied with Standard 84. Whilst the Tribunal agrees that a decision whether to open an investigation is a discretionary one for the Commissioner, it must be based on a correct interpretation of the relevant Standards which is a matter for the Tribunal. Ground 1 is therefore made out.

Ground 2: alleged misinterpretation of Standard 84 in relation to face to face training

80. The Tribunal also concluded that the Commissioner had erred in her prima facie conclusion that the Council's provision was adequate to comply with Standard 84 in the ongoing absence of any provision for face to face classroom courses in Welsh.

81. Mr James for the Commissioner argued that Standard 84 applied to the "offer" of a course and that the Applicant's argument wrongly equated the method of delivery with an offer. He argued that the complaint concerned the method of delivering the course and that fell outside the scope of Standard 84, though the method of delivery would be relevant to an assessment of whether there had been breach of Standard 84. He also contended in essence that acceptance of the Applicant's argument opened the floodgates to the argument that Welsh and English provision of courses had to be identical in every way which was a far-reaching conclusion that risked undermining the statutory Code of Practice.

82. The Tribunal disagreed. The obligation set out in Standard 84 is to offer a course in Welsh and English in accordance with the principle that Welsh should not be treated less favourably than English. The Council's offer is materially different between Welsh and English, and English speakers are treated more favourably because they are given a choice which is not made available to Welsh speakers. The Tribunal did not consider that there was a material distinction between offer and delivery. The offer must be a meaningful one, and that entails assessing whether what is available to a Welsh language speaker is not, in all material respects, less favourable than to an English language speaker.

83. The Tribunal also agreed with the Applicant that the Commissioner's acceptance that the delivery of the course was relevant to the question of breach was inconsistent with the argument that delivery was not an aspect of Standard 84 in the first instance. Put another way, there cannot be a breach of a standard when that obligation is not an aspect of that standard.
84. The issue of the degree of similarity required between Welsh and English language provision to comply with Standard 84 did not arise for the Tribunal's determination: that was not the case before it. On remission, it will be for the Commissioner to judge the adequacy of the Council's offer and whether that complies with Standard 84. The Tribunal's decision is limited – as it must be – to the conclusion that an offer which provides that classroom courses for Welsh speakers are only available online does not comply with Standard 84. Ground 2 is made out.

Ground 3: failure to consider the indicative timetable as a relevant consideration

85. The Tribunal agrees with the Applicant that the indicative timetable was a relevant consideration here, because the adequacy of the Council's offer had to be judged against how often there an individual might be looking to undertake the course. As set out at paragraph 4.20.14 of the Code of Practice, a body is expected to ensure that there are a sufficient number of Welsh language courses available which would ensure that nobody is at a disadvantage if they choose to attend a course in Welsh rather than a course in English.
86. The information available to the Commissioner at the time that she made her decision was that the Council had run a virtual course in Welsh in October 2024, three months after the Applicant's complaint, and would run another course in April 2025, some six months later. Against an indicative timetable of 8 weeks to complete training prior to sitting the licencing exam, an offer of courses at intervals which, on its face, could lead to an individual either having to defer their training to make of the Welsh language provision or having to undertake an English language course to be licenced more quickly was a matter that, in the Tribunal's judgment, was plainly relevant to take into account.

87. Although the information available to the Commissioner about the number of virtual courses on offer is recorded in the reasons form, there is no analysis of that factor as relevant to the decision to be made. In her statement of case, the Commissioner states that she did not regard this as a key or important point because the Council provided on-line materials through the medium of Welsh. That rationale, however, does not feature in the reasons form. The Tribunal considered that timing was a relevant factor to take into account, particularly as licencing is a necessary ingredient of the business activity of becoming a landlord, and it was not satisfied on the evidence that it had been considered. Ground 3 is made out.

(3) Disposal

Application of s.31(2A) Senior Courts Act 1981 to an application under s.103

88. The Tribunal considered this issue carefully, noting that it did not appear to have been raised previously in a s.103 case before the Tribunal.

89. The Tribunal agreed with the Commissioner that s.31(2A) of the Senior Courts Act 1981 is applicable to an application brought under s.103 of the Measure. The Tribunal is obliged by s.103(3) of the Measure to deal with such an application as if it were an application for judicial review. That is subject to s.104, but all that s.104 does is to restrict the Tribunal's powers to affirming or annulling the Commissioner's decision, which are narrower in scope than the range of powers available to the High Court in a judicial review application. There is no other 'saving' to the width of the provision made by s.103 that the law on judicial review is applicable. As the High Court would be obliged to consider s.31(2A) in a judicial review application, so must the Tribunal in a s.103 case. The fact that s.31(2A) postdates the Measure is not relevant – the effect of s.103 is to require the Tribunal to keep pace with the law on judicial review in its dealing with such cases.

Whether it is “highly likely” that the Commissioner would have made the same decision

90. The Tribunal has not been persuaded however, the burden being on the Commissioner, that it is “highly likely” that she would come to the same decision had the error not been made.
91. The Tribunal has concluded that the Commissioner erred in law in her interpretation of Standard 84 and that she failed to take account of a relevant consideration. Given the significance of those errors, the Tribunal cannot say with confidence what the result would have been without them.
92. The Tribunal accepts, as argued by Mr James, that the reasons form makes reference to relevant factors which the Commissioner is entitled to take in account in making a decision whether to open an investigation, namely the lack of benefit to Welsh speakers of an investigation; the Commissioner’s view that an investigation would yield no further information and that an investigation would be a disproportionate use of her resources.
93. The Tribunal however is not in a position to judge whether those factors would be highly likely in any event to lead the Commissioner not to open an investigation. The Tribunal has no witness statement from the Commissioner which explains why she formed the view that she did on these matters. Further, the Tribunal considered the Applicant’s points on proportionality – that an investigation into the Council in respect of the telephone complaint was open, and that there was resource being expended on advisory work in respect of the training complaint – were powerful ones. It will be a matter for the Commissioner to judge all these matters in the round when the complaint is remitted to her.

Betsan Criddle KC

Chair of the Tribunal Panel

20 October 2025

APPENDIX

(Key material considered by the Tribunal from the agreed bundle of documents or as referred to in the parties' written arguments)

- a) Applicant's Notice of Application dated 17 November 2024.
- b) Applicant's Statement of Case dated 12 May 2025.
- c) Commissioner's Statement of Case dated 24 June 2025.
- d) Applicant's Statement of Case in reply dated 16 July 2025.
- e) Letter from Cardiff Council to the Commissioner dated 16 September 2024 with enclosure.
- f) Minutes of meeting on 5 November 2024 and reasons form dated 5 November 2024.
- g) Commissioner's letter to the Applicant dated 12 November 2024.
- h) Applicant's skeleton argument dated 24 September 2025.
- i) Commissioner's undated skeleton argument.
- j) Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015 dated 19 February 2020.
- k) Explanatory Memorandum to the Welsh Language Standards (No. 1) Regulations 2015 dated 24 February 2015.