

Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Standards enforcement investigation: Final report and decision notice

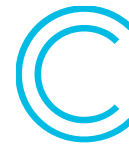
This report was prepared in accordance with sections 73 and 74 of the Welsh Language (Wales) Measure 2011

The investigation into a suspected failure to comply with standards set by Welsh Ministers was conducted in accordance with section 71 and Schedule 10 of the Welsh Language (Wales) Measure 2011

Neath Port Talbot Council (the Council)

Case number: CS114

Date: 21/12/2022



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Background

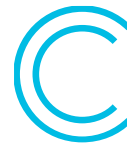
The principal aim of the Welsh Language Commissioner, an independent organisation established by the Welsh Language (Wales) Measure 2011, is to promote and facilitate the use of the Welsh language. This is done by raising awareness of the official status of the Welsh language in Wales, by imposing standards on organisations, and by regulating compliance with the Welsh Language Measure. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the Commissioner's work:

- in Wales, the Welsh language should be treated no less favourably than the English language;
- persons in Wales should be able to live their lives through the medium of Welsh if they choose to do so.

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Legislative context

Part 4 of the Welsh Language Measure

- i. Part 4 of the Welsh Language Measure sets out a legal framework for imposing a duty on some organisations to comply with one or more standards in relation to the Welsh language. Organisations subject to standards are known as 'relevant persons'. The standards apply to the following areas:
 - service delivery;
 - policy making;
 - operational;
 - promotion;
 - record keeping.
 - ii. The duties resulting from the standards require that relevant persons must not treat the Welsh language less favourably than the English language, and should promote and facilitate the use of the Welsh language.
 - iii. Compliance notices given to relevant persons by the Commissioner under Part 4 of the Welsh Language Measure specify the standards requiring compliance, together with the days from which it is required to comply with each standard or to comply with each standard in a particular respect ('imposition days'). Copies of the compliance notices that are in force will be on the Commissioner's website.
 - iv. Whilst a compliance notice specific to a relevant person is in force, that person will be required to comply with the standards specified within it.
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Part 5 of the Welsh Language Measure

- v. Part 5 of the Welsh Language Measure gives the Commissioner statutory regulatory functions to ensure that relevant persons comply with their duties. Duties may include compliance with Welsh language standards (as stated above), and also requirements imposed on persons by the Commissioner in accordance with section 77 of the Welsh Language Measure as a result of a failure to comply with a relevant requirement. The Commissioner's Enforcement Policy provides advice and information regarding how the Commissioner will exercise those regulatory functions.
- vi. The regulatory functions resulting from Part 5 of the Welsh Language Measure are to:
- consider whether or not to investigate if there is a complaint regarding the conduct of relevant persons;
 - investigate suspected failures by relevant persons to comply with duties, to determine investigations and to produce investigation reports;
 - consider whether or not to take further action (by giving recommendations or advice) if an investigation finds that there was no failure to comply;
 - take one of the three steps below if an investigation finds that there was a failure to comply:
 - take no further action;
 - do one or more of the following:
 - require the relevant person to prepare an action plan for the purpose of preventing the continuation or repetition of the failure;
 - require the relevant person to take steps for the purpose of preventing the continuation or repetition of the failure;
 - publicise the relevant person's failure to comply with the relevant requirement;
 - require the relevant person to publicise the failure to comply with the relevant requirement;
 - impose a civil penalty on the relevant person.
 - do one or more of the following:
 - give the relevant person or any other person recommendations;
 - give the relevant person or any other person advice;
 - seek to enter into a settlement agreement with the relevant person.
 - make applications to a county court for orders to enforce compliance;
 - comply with the duties resulting from appeals and applications for reviews made to the Welsh Language Tribunal;
 - produce an enforcement policy document;
 - create and maintain a register of enforcement action.
- vii. The Commissioner will follow the required statutory processes in exercising the Commissioner's regulatory functions.
- viii. The Commissioner's Enforcement Policy contains full information regarding the way in which the Commissioner will exercise the Commissioner's regulatory functions under Part 5 of the Welsh Language Measure.
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1 Terms of reference

Suspected failure to comply with Welsh language standards

- 1.1 On 08/12/2021, I received a complaint from a member of the public. It met the conditions of section 93 of the Welsh Language Measure and was therefore a valid complaint.
- 1.2 The complaint alleges that the Council did not give sufficient consideration to the Welsh language when consulting on a proposal for the reorganisation of English medium primary schools in the town of Pontardawe.

Confirming responsibility for the relevant service

- 1.3 My officers wrote to the Council on 10/01/2022 to confirm whether the Council was responsible for the matter which was the focus of the complaint.
- 1.4 I received a response from the Council on 10/01/2022 confirming responsibility for the matter, and noting that it had considered the Welsh language throughout the decision making process.

Relevant standards

- 1.5 The Council has a duty to comply with the following standards, and it had a duty to do so on the date relevant to the complaint:

Standard 91

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

Standard 92

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

Standard 93

When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy to formulate or revise the policy under consideration in a way that would not have adverse effects, or so that it would have decreased adverse effects, on –
(a) opportunities for persons to use the Welsh language, and
(b) treating the Welsh language no less favourably than the English language.

Decision to investigate

- 1.6 Based on the above, I decided to conduct an investigation under section 71 of the Welsh Language Measure. This was to determine whether there had been a failure by the Council to comply with the standards noted. I issued a notice of the decision to investigate, and of the proposed terms of reference, to the Council on 01/02/2022.
- 1.7 I gave notice of the investigation's final terms of reference to the Council on 14/03/2022. The final terms of reference appear as an appendix to this report.

2 Evidence taken as part of the investigation

Evidence notice

- 2.1 On 14/03/2022, I issued an evidence notice to the Council. The evidence notice required the Council to provide the following evidence:

Information and documents

This complaint relates to a recent consultation by the Council proposing to reorganise English medium primary schools in the town of Pontardawe.

1. Explain how the consultation document which relates to the policy in question has considered and sought views on the impacts (whether positive or adverse) of the policy decision under consideration on—
 - (a) opportunities for persons to use the Welsh language, and
 - (b) treating the Welsh language no less favourably than the English language.
2. Please explain how the consultation document in question considered and sought views on how the policy under consideration could be formulated or revised so that it would have positive effects, or more positive effects, on –
 - (a) opportunities for persons to use the Welsh language, and
 - (b) treating the Welsh language no less favourably than the English language.
3. Please explain how the consultation document in question considered and sought views on how the policy under consideration could be formulated or revised so that it would not have adverse impacts, or that it would have less adverse effects, on –
 - (a) opportunities for persons to use the Welsh language, and
 - (b) treating the Welsh language no less favourably than the English language.
4. Provide evidence of the any guidance or arrangements developed by the Council in order to comply with the policy making standards when publishing consultation documents. Were these arrangements followed in this case? If not, please explain why.
5. Please provide any additional information or evidence you wish us to consider when determining your compliance with the standards noted in the inquiry's terms of reference.
6. Please provide a copy of any policy, procedure, guidance or other document which you wish us to consider when determining whether you have complied with the standards noted in set out in the investigation's terms of reference.

2.2 In response, I received evidence from the Council on 29/04/2022. Also, copies of the following documents were provided:

- Consultation Document
- Consultation Report
- Welsh Language Impact Assessment and supporting evidence, February 2021
- Welsh Language Impact Assessment and revised supporting evidence, October 2021
- School Organisation Code
- Cabinet Report 21/12/2020.

2.3 I considered all the information provided in response to the evidence notice.

The evidence received

2.4 Before responding to the specific questions, the Council provides general statements. Firstly, the Council rejects any suggestion there has been a failure to comply in terms of considering the Welsh language in the consultation on the reorganisation of English medium schools in the town of Pontardawe.

2.5 The Council provides a timetable of the process as follows:

- 21/10/2020: Council's Cabinet decides to go out to consultation
- 3/11/2020-19/01/2021: Consultation period
- 16/06/2021: Cabinet publishes statutory proposals
- 17/06/2021-14/7/2021: Period for objections
- 20/10/2021: Cabinet decides to implement statutory proposals

2.6 The Council proceeds to present its position on the matter. They say that the allegation in this case was incorrect for a number of reasons:

2.7 Firstly, the council discusses the Welsh Language Impact Assessment (WLIA). The Council stated that the Cabinet had considered the WLIA on 16/6/2021 and the Cabinet then updated and considered it on 20/10/2021. Both WLIA's were published prior to Cabinet meetings. The Council stated that it had commissioned the WLIA in accordance with a range of statutory requirements including the School Organisation Code (the Code); the Equality Act 2010; the Welsh Language Regulations 2015; the Well-being of Future Generations (Wales) Act 2015; and the Environment (Wales) Act 2015. The Council stresses that the fact that a WLIA has been given to the Cabinet does not suggest that the Council considers that there would be negative effects on the Welsh language. The Council also say that it does not imply that the Council must consult on a WLIA under the Code.

2.8 Secondly, the Council noted that a copy of the consultation document was provided to the Commissioner's office on 3/11/2020 inviting a response. I did not provide a

response to the Council during the consultation period. The Council acknowledges my previous comments in the investigation that my lack of comments does not mean there was no failure to comply, but the Council considers that my comments or concerns would have been helpful during the consultation as I am a statutory consultee under the Code. Similarly, the Council state that it would have been helpful had the complainant complained at the time, rather than 14 months later. The complainant has allowed the whole process to proceed to its conclusion before highlighting the problem. The Council request that I consider this as part of the judgment.

- 2.9 The Council said that the challenges for school reorganisation were well known due to the long process and its wide-ranging impact. The Council refers to legal proceedings that may be relevant here, namely *R v Leeds City Council, ex parte N* [1999] ELR 324 (attached by the Council). In this case, Schiemann LJ stated: *“Applicants in these school cases must realise that it is important to give early warning to what is going on so that people can endeavour to conclude matters soon, so that the whole education system in the city is not kept in suspense while legal proceedings drag on.”* The Council say that this is relevant here as part of any decision on whether or not a complaint should be considered.
- 2.10 Thirdly, the Council state that the Code was followed, but it was not required to consult on a WLIA. It stated that it does not have to provide it as a consultation document, as this is not required by the Code, nor any other common or statutory law. The Council proceed to discuss the requirements under the Code, and state that there is no requirement to consult on the WLIA, as the schools in question do not teach through the medium of Welsh. It states that the WLIA is not a special type of document that must be consulted upon. The factors that needed to be considered under the Welsh language standards were included in the consultation and had been considered.
- 2.11 Finally, the Council states that all elements of standards 91-93 were included in the consultation document. The Council referred to the fact that the document asked a consultee whether the proposal would have a positive or adverse effect on the use of the Welsh language or the opportunities to use it. The Council stresses that the fact that it consulted on these issues does not mean it believes there would be a negative effect on the Welsh language. It was an opportunity for a consultee to give their views, and it therefore shows compliance with the relevant standards.
- 2.12 Before responding to the questions in the evidence notice, the Council highlights that there was a forthcoming judicial review on a similar matter to this complaint. The Council elaborates on the allegations made under the judicial review, and adds that it rejects all allegations.

Question 1

- 2.13 Next, the Council responds to the questions asked in the evidence notice. The first question asks how the consultation document complies with the standards and considers and seeks views on any effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 2.14 The Council's response is that the consultation document shows it gave consideration to the proposal's potential effects on the Welsh language.

Considering the English version of the document (page numbers are different in the Welsh version), it refers to page 36, and quotes a sentence stating that a first stage effects assessment has been carried out. On page 37, a section considers the impact on the Welsh language, which outlines the expected positive impacts. This includes an increase in the number of staff going to work in the new school, which would benefit pupils.

- 2.15 The Council stated that the document also refers to the fact that the area is linguistically sensitive, and provides a summary of the work carried out in neighbouring Welsh medium schools to increase their size and improve their provision. The Council stated that this section clearly states that no decrease is expected in Welsh medium provision in the area.
- 2.16 The Council stated that the document also includes an Integrated Impact Assessment section, which states that the proposal may potentially affect opportunities to use the Welsh language, and further evidence on this will be considered at a later date.
- 2.17 Therefore, the Council believes that consideration has clearly been given to potential effects, both positive or adverse, on opportunities to use the Welsh language and on treating the Welsh language no less favourably.
- 2.18 The Council goes on to note that it has sought views on the same matters, by asking specific questions about the Welsh language in the consultation document.
- 2.19 The Council proceeds once more to discuss the Code, and states that the information in the document conforms with the Code, and in accordance with specific rules regarding school reorganisation. The Council notes that the consultation process for school reorganisation differs from other processes, as it follows the specific rules of the Code, and the Council provides a brief description of those rules. The Council state that the relevant documents and reports are for the attention of elected members on three separate occasions. The process can take in excess of 9 months to gather views and produce reports for consideration.
- 2.20 The Council proceeds to state it has reorganised over 30 schools across the county, and that associated processes have been tried and tested well.

Question 2

- 2.21 For question two, I asked the Council how the consultation document complies with the standards by considering and seeking views on how the proposal can have a more positive impact on opportunities to use the Welsh language and on treating the Welsh language no less favourably.
- 2.22 The Council again refers to the section "What is the impact on the Welsh language" which, according to the Council, indicates that consideration has been given to potential impacts. It refers to page 30 of the document (35 on the Welsh document) which states that merging the three primary schools will mean there will be more Welsh speaking staff on the new site, which will have a positive impact on supporting pupils and staff to learn and teach through the medium of Welsh. The Council states that the document makes it clear it is seeking views on the proposal, and that a report will be published based on the results. It refers again to the specific questions that seek views on the potential impacts on the Welsh language.

2.23 The Council refers again to the fact that a fuller WLIA had been created which detailed the consultees' views and further information. The Assessment was published, providing consultees with an opportunity to make further comments.

Question 3

2.24 The second question asks how the consultation document complies with the standards when considering and seeking views on how the proposal can have a more positive impact on opportunities to use the Welsh language and on treating the Welsh language no less favourably.

2.25 The Council reiterates that it has included a section on impacts on the Welsh language, which shows that the negative impacts have been considered. It refers to page 38 (36 on the Welsh language document), which states that the area in question is an area of linguistic significance, and identifies what it has already done to increase the size of Welsh medium schools in the area and improve provision. The Council states that the document makes it clear that it does not foresee a reduction in Welsh language provision in the area, but that a WLIA will be completed following consultation.

2.26 The Council states that a consultation report was published which took into account all views on the proposal, and refers to page 36 of the report, which considers how to reduce adverse impacts.

Question 4

2.27 For question four, I asked the Council to provide evidence of any internal guidance it has in order to ensure compliance with the policy making standards in question, and whether this guidance was followed in this case.

2.28 He responded by referring to his Integrated Impact Assessment Guidance, which includes the following (The Council's response was in English):

“Welsh Language Standards

When developing the initiative you will have taken into account the requirements of the Welsh Language Standards. You will have considered:

- *What effects the initiative would have on:*
 - *People’s opportunities to use the Welsh language*
 - *Treating the Welsh and English languages equally.*
- *How the initiative could be developed or revised so that it would have positive effects or increased positive on:*
 - *People’s opportunities to use the Welsh language*
 - *Treating the Welsh and English languages equally*
- *How the initiative could be developed or revised so that it would not have negative effects or decreased negative effects on:*
 - *People’s opportunities to use the Welsh language*
 - *Treating the Welsh and English languages equally*

*Additionally, as part of the consultation on the initiative you must **consider and seek views** on all of the above.”*

The Council also refers to Staff Guidance, which states that:

“Consultations

- *When you publish a consultation document, which relates to a policy decision, the consultation must consider and seek views on the effects that the policy decision under consideration would have on the use of the Welsh language.*
- *The consultation document must also consider and seek views on how the policy under consideration could be formulated or changed, to ensure the policy decision would have positive and not negative effects on opportunities to use the Welsh language.*
- *You must ensure that the consultation document treats Welsh and English language equally..”*

Question 5

2.29 No further information was provided by the Council in response to question 5, but after I shared a draft of this decision with the Council, I received a letter dated August 3rd 2022 from the Council's Head of Legal and Democratic Services ("the Council's Legal Letter"), putting forward a number of arguments, and I have considered those arguments in making this decision. Where appropriate, I have mentioned some of those arguments in this report.

Question 6

2.30 Finally, I asked the Council to provide me with copies of any document or guidance to consider in this case. The Council provided the following:

- Report to Council 21/10/2020
- School Organisation Code
- Consultation Document
- Response to the consultation document
- AEIG June 2021
- WLIA October 2021

2.31 To conclude the Council's response, it invites me to consider whether there is a real basis for me to investigate the case, either because there is a judicial review, or because there are no grounds for investigation as the Council has complied fully.

3 Compliance with standards 91, 92 and 93. Assessment, findings and determination

The wording of the standards

- 3.1 These are the standards as they appear in the compliance notice issued to the Council:

Standard 91

When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 92

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

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 93

When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would not have adverse effects, or reduced adverse effects, on –

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Interpretations

- 3.2 Part 2, section 3 of the Welsh Language Standards Regulations 2015 states :

In Part 1 of this Schedule, a reference to positive or adverse effects is a reference to such effects, whether direct or indirect.

Requirements of the standard

- 3.3 These standards are a means of ensuring that consultation documents, which relate to a policy decision, consider and seek views on the possible effects of the decision on the Welsh language and opportunities to use it.
- 3.4 Specific questions must be included in the consultation document which ask for a response.

- 3.5 A body should give due consideration to any information gathered during this process when making the policy decision, so that the body would act on any outcomes from the consultation.

Considering compliance with the standard

- 3.6 This complaint relates to a proposal by the Council to reorganise English medium primary schools in the town of Pontardawe. The proposal includes the construction of a new building for English medium education between 3-11, leading to the closure of Alltwen, Godre'r Graig, and Llangiwg primary schools.
- 3.7 The complainant alleges that the Council did not give due consideration to the Welsh language when consulting on the above proposal. The relevant standards are therefore standards 91, 92, and 93, which relate to a consultation document relating to a policy decision.
- 3.8 It must be stressed that the only issue under consideration in this investigation is the compliance of the consultation document itself with Welsh language standards. The standards state very specifically that it is the consultation document itself that needs to comply, and therefore any other document created by the Council during the decision-making process is irrelevant to this investigation.
- 3.9 The Council often refers in its response to the School Organisation Code and the Welsh Language Impact Assessment. I am keen to emphasise that the Code and the standards are separate legal systems, and the Council's compliance with the Code is irrelevant to this investigation, or any other investigation I conduct. This is acknowledged in the Court of Appeal's conclusion in *Driver v Rhondda Cynon Taf*.¹ The standards in question are specific to the consultation document, and therefore only that document is under consideration.
- 3.10 The Council also notes in its evidence that I did not respond to the consultation document, or make comments at any point during the consultation. I must stress that I do not routinely comment on the compliance of local education consultations with the standards, for reasons such as that I do not have the resources or local expertise to respond meaningfully to all local education consultations. Neither does my lack of response indicate that the consultation document is fully compliant. If I decided to respond to a local education consultation, then I would be responding by virtue of my policy work, not sharing views on whether the Council is complying with statutory requirements. The most effective way for me to influence local decisions is by focusing on national policy issues and county schemes such as Welsh in Education Strategic Plans (WESPs).
- 3.11 In order for the consultation document to comply, two specific requirements of the standards must be met. Firstly, the potential effects must be 'considered'; and secondly, it must 'seek views' on any potential effects. These are two separate things. In the Council's Legal Letter, this argument was presented: "By finding that the document sought views on these matters, it must follow that the document considered them, as otherwise there would not have been material to seek views on." I do not agree with this interpretation of the standards in question. A document needs to do more than just seek views in order to comply with them. The document

¹ [Driver -v- Rhondda Cynon Taf County Borough Council \(welshlanguagecommissioner.wales\)](https://www.welshlanguagecommissioner.wales) paragraph 66

also needs to **consider** the issues. Otherwise, the word 'consider' would be redundant.

'Seek Views'

- 3.12 For this element, the Council has asked specific questions about the Welsh language in the section entitled 'Possible impacts on the Welsh language' (page 45). Below are the questions asked by the Council:

Effeithiau posib ar y Gymraeg

Ydych chi'n credu y bydd y cynnig yn cael effaith gadarnhaol, negyddol neu niwtral ar gyfleoedd i ddefnyddio'r Gymraeg?

Cadarnhaol Negyddol Niwtral

Rhowch fanylion yr effaith a pha gamau y gallem eu hystyried i leihau neu ddileu hyn a gwella effeithiau cadarnhaol.

Ydych chi'n credu y bydd y cynnig yn trin y Gymraeg a'r Saesneg yn gyfartal?

Ydw Nac ydw Niwtral

Defnyddiwch y blwch isod i roi eich sylwadau

- 3.13 Paragraph 5.1.14. of the Code of Practice states – “A body must include specific questions in the consultation document which require a response”.
- 3.14 I consider that the first question above meets the first requirement of the three standards, namely to seek views on the effect of the proposal on opportunities to use the Welsh language. The Council also provides an opportunity here for the public to make proposals on how to minimise any adverse effect, and to improve any positive effect.
- 3.15 The second question then addresses the second requirement under the standards, namely to seek views on the effect of the proposal on treating the Welsh language no less favourably than the English language. By asking whether the proposal will treat the Welsh and English languages equally, the Council is in fact asking whether the Welsh language will be treated less favourably than the English language if it proceeds with the proposal.
- 3.16 I therefore consider that the Council has done enough to comply with the element of seeking opinions under all three standards, as specific questions have been asked about the effect of the proposal on opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language.

‘Consider’

- 3.17 The Council's compliance with the second element of giving **consideration** to the effects on the Welsh language within the consultation document is slightly more unclear. I interpret this requirement to mean that the consultation document must identify, outline and consider the potential effects of the proposal in question on the Welsh language (standard 91), and consider the options available that would enable it to make the decision in a way that would have more positive (standard 92) and less adverse (standard 93) effects on the Welsh language. The Council must therefore include information within the consultation document regarding how the policy decision will effect the two things noted in the standards, which are (1) opportunities for the public to use the Welsh language and (2) treating the Welsh language no less favourably than the English language.
- 3.18 In order to comply with these standards, I am of the opinion that consideration needs to be given to the effect on these two things (and how the policy under consideration could be drawn up or modified), in the context of the state of the Welsh language in the areas or communities affected by the policy decision. In the case of school reorganisation, that therefore includes considering not only the effect in the school(s) in question, but also the effect on the local area and the community. Limiting the consideration to only the schools in question would set artificial boundaries on the standards and would be contrary to the intention of the Welsh Language (Wales) Measure 2011.
- 3.19 The Council believes that there has been no failure to comply in its consultation on the proposal, and notes that all elements of standards 91-93 have been included in the consultation document.

Standard 91

- 3.20 In order to comply with standard 91, the Council must consider and seek views in the consultation document on the proposal's potential effects on the Welsh language.
- 3.21 The Council argued that it complied with standard 91 because of the following:
- There is a section entitled 'What is the impact on the Welsh language' that outlines the expected positive impacts on the pupils at the new school by increasing the number of Welsh speaking staff. The Council argued that there is a clear link to the target within this WESP.
 - The area is of linguistic significance and the consultation document provides a summary of the work completed in the local Welsh medium schools to increase capacity and improve provision (Ysgol Gynradd Gymraeg Pontardawe, Ysgol Gynradd Gymraeg Trebannws, and Ysgol Gymraeg Ystalyfera-Bro Dur).
 - This section clearly states that there will not be a reduction in Welsh language provision in the area.
 - The consultation document also includes a section entitled 'Integrated Impact Assessment' that states that there may be impacts on people's opportunities to use the Welsh language.

- 3.22 Therefore, the Council believes that it is clear that consideration has been given within the consultation document to the potential effects on people's opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.23 I acknowledge that there is reference here to one possible positive effect the proposal may have on the Welsh language, namely the effect on the pupils at the new school.
- 3.24 Having said that, although the Council states that this is a linguistically sensitive area, it does not identify or discuss any possible adverse or positive effect that the proposal may have on the Welsh language beyond the schools under consideration. For example, the Council does not consider the possible effect of the proposal (1) on the use of the Welsh language in the Welsh primary schools in the area (it is noted, without explanation, that the proposal was not expected to reduce the provision of Welsh in the area but it is not enough to meet the standard); (2) on the use of the Welsh language in the wider local community in the short and long term; (3) on not treating the Welsh language less favourably than the English language (e.g. in terms of the standard of educational facilities).
- 3.25 In response to the Council's view that it has made a clear link to the targets in the WESPs in the consultation document, I disagree. The consultation document only includes one sentence stating that the Council's WESPs "details how it intends to support and further develop Welsh language education in schools". No link is made to any of the targets, and there is no further consideration on the proposal's potential effect on those targets, e.g. how the proposal will help the Council to ensure that more primary school aged children receive their education through the medium of Welsh, or how the proposal will affect the opportunities for learners to use the Welsh language in different contexts in the new school.
- 3.26 There is a sentence in the 'Integrated Impact Assessment' section of the consultation document stating, "the proposal may also impact on opportunities to use the Welsh language". There is no further explanation here of these potential effects, whether positive or adverse.

Findings

- 3.27 In order to comply with standard 91, the Council must consider and seek views in the consultation document on the potential effects of the proposal (whether positive or adverse) on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.28 The consultation document seeks views on the possible effects on the Welsh language in terms of opportunities to use it and in terms of not treating it less favourably than English, but it limits any consideration of those effects to the effect on opportunities to use it within the schools involved in the consultation. There is no consideration of the possible effect of the proposal on opportunities to use the Welsh language in the wider community or at all on not treating it less favourably than English.
- 3.29 This is a failure to comply with of standard 91.

Determination of whether there has been a failure to comply with standard 91

3.30 I determine that the Council has failed to comply with standard 91 as the consultation document does not consider the effects that the policy decision in question may have on opportunities to use the Welsh language beyond the schools in question, nor consider the effects on not treating Welsh less favourably than English.

Standard 92

3.31 In order to comply with standard 92, the Council must consider and seek views in the consultation document on how the policy could be formulated or revised so that it would have positive, or more positive, effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.

3.32 Firstly, I note again that only the consultation document itself is relevant to the investigation, and therefore material in other documents outside of that and which are not mentioned in the consultation document does not affect the Council's compliance with the standards in question.

3.33 As I have already noted in the report, in order to comply with this standard, I am of the opinion that consideration needs to be given to how the policy in question could be formulated or revised, in the context of the state of the Welsh language in the areas or communities affected by the policy decision. In the case of school reorganisation, that includes considering not only how to have positive, or more positive effects in the school(s) in question, but also doing so in the local area and the community.

3.34 The Council argued that it complied with standard 92 because of the following:

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

3.35 Although one positive effect has been mentioned in the consultation document, there is no consideration of how the policy can be formulated or modified so that it has positive, or more positive effects. In addition to that, there is no mention at all of positive effects beyond the schools in question or in terms of not treating the Welsh language less favourably than English. While a number of options are being considered in terms of the possible effects of the policy on other issues, this is not being done in terms of the possible effects on the Welsh language.

Findings

- 3.36 In order to comply with standard 92, the Council must consider and seek views in the consultation document on how the policy could be formulated in order to have positive, or more positive, effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.37 The consultation document seeks views on the potential effects on the Welsh language, but fails to consider how the policy could be formulated in order to have more positive effects on the Welsh language.
- 3.38 This is a failure to comply with of standard 92.

Determination of whether there has been a failure to comply with standard 92

- 3.39 I determine that the Council has failed to comply with standard 92 as the consultation document does not consider how the policy could be formulated or revised so that it would have positive, or more positive effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

Standard 93

- 3.40 In order to comply with standard 93, the Council must consider and seek views in the consultation document on how the policy could be formulated or revised in order to avoid adverse effects, or have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.41 Firstly, I note again that only the consultation document itself is relevant to the investigation, and therefore material in other documents outside of that and which are not mentioned in the consultation document does not affect the Council's compliance with the standards in question.
- 3.42 As I have already noted in the report, in order to comply with this standard, I am of the opinion that consideration needs to be given to how the policy in question could be formulated or revised, in the context of the position of the Welsh language in the areas or communities affected by the policy decision. In the case of school reorganisation, that includes considering not only how to have positive, or more positive, effects in the school(s) in question, but also doing so in the local area and the community.
- 3.43 The Council argues that it complied with standard 93 because of the following:
- The Council again refers to the section 'What is the impact on the Welsh language' which, according to the Council, indicates it has given consideration to the adverse effects of the proposal on the Welsh Language. It refers to the statement that the area in question is of linguistic significance. The Council believes that it has identified actions that have been actioned in order to increase the size of the nearby Welsh medium schools and to improve the provision of Welsh medium education in those schools.

- The document states that it does not expect to see a reduction in the development of the Welsh language in the area, and that a WLIA will be completed following the consultation.
- Following the consultation, a consultation report was published which considered the adverse effects on opportunities to use the Welsh language. The report refers to mitigation options to reduce adverse effects on the Welsh language, and recommends that these be implemented.

3.44 I acknowledge that the Council states how much has been spent in local Welsh medium schools, but this does not constitute a consideration of how to formulate or revise the policy so that it prevents or has less adverse effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. There is no such consideration in the consultation document. While a number of options are mentioned in terms of the potential effects of the policy on other issues, this is not done in terms of the potential effects on the Welsh language. I note, in terms of the second point above, while the consultation document states that the proposal was not expected to reduce Welsh (i.e. educational) provision in the area, it does not mention that the proposal would not 'reduce Welsh language development in the area'.

Findings

- 3.45 In order to comply with standard 93, the Council must consider and seek views in the consultation document regarding how the policy could be formulated in order to avoid adverse effects, or have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.46 The consultation document seeks views on the potential effects on the Welsh language, but it fails to consider how the policy could be formulated or revised so that it would not have adverse effects, or so that it would have less adverse effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than the English.
- 3.47 This is a failure to comply with of standard 93.

Determination of whether there has been a failure to comply with standard 93

3.48 I determine that the Council has failed to comply with standard 93 as the consultation document does not consider how the policy could be formulated or revised in a way that would not have adverse effects, or so that it would have less adverse effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

General

3.49 In order to comply with these standards, a conscious effort is needed to consider the potential effects on the Welsh language. Rather, the consultation document contains a superficial discussion of the Welsh language. In fact, it seems that what we have here is a number of factual statements about the Welsh language. Considering that the proposed policy is in an area identified in the consultation document as being a 'linguistically significant' area, I would have expected to see a

real discussion of the effect of the proposal on the Welsh language beyond the boundaries of the proposed new school.

- 3.50 Policy decisions relating to education provision can have complex effects on the use of the Welsh language in a community; on decisions made in relation to Welsh medium education; and on attitudes towards the Welsh language locally. These can be a mixture of positive, adverse and neutral effects. I am not satisfied that the Council has made sufficient efforts in this case to identify in the consultation document the mix of potential effects the proposal may have on the Welsh language.
- 3.51 In its evidence, the Council includes the internal guidance it uses when developing consultation documents. It seems that this guide merely lists the standards. There is no further explanation regarding how to comply with them, and strengthening this internal guidance would assist in ensuring full compliance in future.
- 3.52 I note that the Council's consultation report and the WLIA consider the Welsh language more widely than the consultation document, and there are further considerations of the potential effects. However, this is not relevant to this investigation. It is important that the Council itself identifies the main possible effects of the proposal on the Welsh language, and considers them in the consultation document along with mitigating options so that the public can make informed comments on them. It is not the public's responsibility to present the potential effects of the proposal to the Council in response to the consultation, as the Council itself should have identified them in the consultation document, so that the public can then comment on them.
- 3.53 If a consultation document does not address the potential effects of the proposal on the Welsh language locally, then it is not possible to have a truly open conversation and discussion with the public regarding the proposal. That is, even if the Council asks specific questions regarding the Welsh language in the consultation document, if the relevant information is not available to the public in the document, the public cannot comment fully on the proposal.

Further action

- 3.54 Section 77 of the Welsh Language Measure allows me to take further action where there has been a failure.
- 3.55 In the case of my determination that the Council has failed to comply with standards 91, 92, and 93, I will be taking further action for the purpose of preventing the continuation of the failure to comply.
- 3.56 Details of the further action are set out below.

Standards 91, 92, and 93: Requirement to take action in accordance with section 77 of the Welsh Language Measure

1. The Council must conduct a review of the internal guidance, adding to it so that there is more content rather than merely a list of policy making standards, so that staff have more instructions when preparing a consultation document.

The guidance must reflect the fact that two elements need to be met under the three standards, namely seeking views, and considering the effects of the proposal on the Welsh language. The purpose of this enforcement step is to ensure that a clear guide is available to staff responsible for formulating consultation documents that explain the requirements of the standards, and so that there is clear guidance to turn to in the future.

2. For the consideration element, the Council must state in the internal guidance the need to consider the effects, whether positive or adverse, the policy decision would have on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language. Consideration must also be given to how the policy under consideration could be formulated or adapted in order for it to have positive effects, or more positive effects, and to avoid adverse effects, or so that it would have decreased adverse effects, on opportunities to use the Welsh language, and treating the Welsh language no less favourably than the English language. The purpose of this enforcement step is to strengthen the internal guidance so that the requirements of the standards are clear, and so that the Council complies with them in the future.
3. The Council must provide training to the staff who draw up its consultation documents on policy decisions relating to reorganising education in the Council's area. The Council must raise staff awareness of the revised guidance in this training, and ensure they are aware of all the requirements of standards 91-93. The purpose of this enforcement action is to ensure that the Council staff referred to are aware of the requirements of standards 91-93, and that when drawing up consultation documents regarding reorganisation of education in the future, they will be familiar with the requirements of the standards and therefore less likely to fail to comply with these standards in the future.
4. The Council must provide written evidence that satisfies the Welsh Language Commissioner that enforcement actions 1-3 have been completed.

Timetable: Within 3 months of the date of issue of the final determination.

Standards 91, 92, and 93: Requirement to publicise the failure to comply in accordance with section 77(3)(d) of the Welsh Language Measure

5. The Council must publicise the failure to comply with standards 91, 92, and 93 by publishing this report on a prominent place on its main website. The Council must raise relevant staff awareness of the failure by publishing the report on its staff intranet.
6. The Council must provide written evidence that satisfies the Welsh Language Commissioner that it has completed this requirement to give publicity.

Timetable: Within 3 months of the date of issue of the final determination.



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Decision notice

To: Neath Port Talbot Council

Case number: CS114

Date: 21/12/2022

Determination

As a result of a complaint received from a member of the public, I conducted an investigation under section 71 of the Welsh Language (Wales) Measure 2011 to determine whether there had been a failure by the Council to comply with one or more Welsh language standards with which it is duty-bound to comply.

The standards relevant to the investigation are as follows:

Standard 91

When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 92

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

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

Standard 93

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

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

I determine that the Council has failed to comply with standard 91.

The basis of my determination is that the consultation document does not adequately consider the effects that the policy decision in question may have on opportunities to use the Welsh language and not to treat the Welsh language less favourably.

I determine that the Council has failed to comply with standard 92.

The basis of my determination is that the consultation document does not adequately consider how the policy could be formulated or revised in order to have more positive effects on the Welsh language.

I determine that the Council has failed to comply with standard 93.

The basis of my determination is that the consultation document has not adequately considered how the policy could be formulated or revised to avoid having adverse effects on the Welsh language.

Further action

I have decided, in accordance with section 77 of the Welsh Language Measure to take further action to prevent the continuation or repetition of the failure

Details of the further action are set out below.

Standards 91, 92, and 93: Requirement to take action in accordance with section 77 of the Welsh Language Measure

1. The Council must conduct a review of the internal guidance, adding to it so that there is more content rather than merely a list of policy making standards, so that staff have more instructions when preparing a consultation document. The guidance must reflect the fact that two elements need to be met under the three standards, namely seeking views, and considering the effects of the proposal on the Welsh language. The purpose of this enforcement step is to ensure that a clear guide is available to staff responsible for formulating consultation documents that explain the requirements of the standards, and so that there is clear guidance to turn to in the future.
2. For the consideration element, the Council must state in the internal guidance the need to consider the effects, whether positive or adverse, the policy decision would have on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language. Consideration must also be given to how the policy under consideration could be formulated or adapted in order for it to have positive effects, or more positive effects, and to avoid adverse effects, or so that it would have decreased adverse effects, on opportunities to use the Welsh language, and treating the Welsh language no less favourably than the English language. The purpose of this enforcement step is to strengthen the internal guidance so that the requirements of the standards are clear, and so that the Council complies with them in the future.

3. The Council must provide training to the staff who draw up its consultation documents on policy decisions relating to reorganising education in the Council's area. The Council must raise staff awareness of the revised guidance in this training, and ensure they are aware of all the requirements of standards 91-93. The purpose of this enforcement action is to ensure that the Council staff referred to are aware of the requirements of standards 91-93, and that when drawing up consultation documents regarding reorganisation of education in the future, they will be familiar with the requirements of the standards and therefore less likely to fail to comply with these standards in the future.
4. The Council must provide written evidence that satisfies the Welsh Language Commissioner that enforcement actions 1-3 have been completed.

Timetable: Within 3 months of the date of issue of the final determination.

Standards 91, 92, and 93: Requirement to publicise the failure to comply in accordance with section 77(3)(d) of the Welsh Language Measure

5. The Council must publicise the failure to comply with standards 91, 92, and 93 by publishing this report on a prominent place on its main website. The Council must raise relevant staff awareness of the failure by publishing the report on its staff intranet.
6. The Council must provide written evidence that satisfies the Welsh Language Commissioner that it has completed this requirement to give publicity.

Timetable: Within 3 months of the date of issue of the final determination.

Right of appeal to the Welsh Language Tribunal

Where the Commissioner has determined that there has not been a failure to comply with a standard, the complainant may appeal to the Welsh Language Tribunal. Where the Commissioner determines that a person has failed to comply with a relevant requirement, that person may appeal to the Welsh Language Tribunal. Additionally, when the Commissioner has decided to take enforcement action in relation to a failure, the Council may appeal to the Welsh Language Tribunal on the grounds that the enforcement actions are unreasonable or disproportionate. There is more information about the process in the enclosed leaflet, and on the Welsh Language Tribunal's website.

Consequences of failure to comply with a requirement in a decision notice

Should the Council fail to comply with any requirement within this decision notice, the Commissioner may apply for a county court order requiring its compliance.