



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Standards enforcement investigation: Report and decision notice

This report has been produced in accordance with section 73 and section 74 of the Welsh Language (Wales) Measure 2011

The investigation was carried out on suspicion of failure to comply with standards set by the Welsh Ministers in accordance with section 71 and Schedule 10 of the Welsh Language (Wales) Measure 2011

Rhondda Cynon Taf County Borough Council

Case number: CSG633

Date: 17 June 2021



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Background

The main aim of the Welsh Language Commissioner, an independent organisation created by the Welsh Language (Wales) Measure 2011, is to promote and facilitate the use of the Welsh language. This is done by highlighting that the Welsh language has official status 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.

The Commissioner's work will be underpinned by two principles:

- the Welsh language should not be treated less favourably than the English language in Wales;
- persons in Wales should be able to live their lives through the medium of Welsh if they wish to do so.

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Legislative context

Part 4 Welsh Language Measure

- i. Part 4 of the Welsh Language Measure sets out a legal framework to place 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'. There are standards in the following areas:
 - service provision;
 - policy making;
 - action;
 - promotion;
 - record keeping.
 - ii. The duties arising from the standards mean 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 specific standards required to be complied with, together with the days from which those standards are required to be complied with or complied with in a particular manner ('imposition days'). There will be copies on the Commissioner's website of the compliance notices in force.
 - iv. Whilst a compliance notice specific to a relevant person is in force, they will be required to comply with the standards set out in it.
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Part 5 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 set out above), and also requirements imposed on persons by the Commissioner in accordance with section 77 of the Welsh Language Measure as a result of failure to comply with a relevant requirement. The Commissioner's Enforcement Policy provides advice and information on how the Commissioner will exercise those regulatory functions.
- vi. The regulatory functions arising from Part 5 of the Welsh Language Measure are:
- consider whether or not to investigate if complaints are made about the conduct of relevant persons;
 - investigate suspicions of failure by relevant persons to comply with duties, adjudicate on investigations and produce investigation reports;
 - consider whether or not to take further action (by giving recommendations or advice) if an investigation finds that there has been no breach;
 - take one of the three steps below if an investigation finds that there has been a failure to comply:
 - take no further action;
 - do one or more of the following things:
 - require the relevant person to prepare an action plan for the purpose of preventing the failure from continuing or being repeated;
 - require the relevant person to take steps for the purpose of preventing the failure from continuing or being repeated;
 - publicising 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 things:
 - make recommendations to the relevant person or any other person;
 - give advice to the relevant person or any other person;
 - seek to enter into a settlement agreement with the relevant person.
 - making applications to a county court for court orders to enforce compliance;
 - comply with duties arising from appeals to the Welsh Language Tribunal and requests for reviews by the Tribunal;
 - produce an enforcement policy document;
 - create and maintain an enforcement action register.
- vii. The Commissioner will follow the required statutory processes in the exercise of his or her regulatory functions.
- viii. The Commissioner's Enforcement Policy contains full information about how the Commissioner will exercise his or her regulatory functions under Part 5 of the Welsh Language Measure.
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1 Terms of reference

Background

- 1.1 This investigation considers the policy decision of Rhondda Cynon Taf County Borough Council (the Council) to restructure schools as part of its 21st Century Schools scheme in Pontypridd.
- 1.2 One of the decisions associated with the restructuring was a recommendation to close Ysgol Pont Sion Norton and to open a new Welsh-medium school on the existing Heol-y-Celyn School site in Rhydfelen by 2022. Here's how the Council outlined its intention as part of the plan:

The closure of Ysgol Gymraeg Pont Sion Norton and the establishment of a new Welsh-medium primary school on the existing Heol-y-celyn School site. The Welsh stream of Heol-y-celyn School will also transfer to the new school. This will increase capacity and improve the provision of Welsh-medium education. It will also remove the two-stream provision.

- 1.3 The Council undertook a public consultation on this intention (and others involved in the scheme) between 15 October 2018 and 31 January 2019.
- 1.4 On 21 March 2019 the Council's cabinet decided to accept the recommendation to close Ysgol Pont Sion Norton and invest £10.7 million in the construction of a new school on the existing Heol-y-Celyn School site.
- 1.5 This led to the publication of a statutory notice for the declaration of objections on 30 April 2019. Following consideration of responses to the statutory notice, the Council decided to proceed with the scheme on 18 July 2019.

Suspicion of failure to comply with Welsh language standards

- 1.6 The matter came to my attention following contact from parents of pupils at Ysgol Pont Sion Norton. While they accepted that the existing school building was not fit for purpose and welcomed the Council's intention to invest in the area's Welsh-medium education, they had concerns about the decision. They considered that moving the children's education from the current site in north Pontypridd to Rhydfelen would have a detrimental effect on the Welsh language in the community.
- 1.7 They argued that the proposal to relocate the site of the school would require some pupils currently at Ysgol Pont Sion Norton to travel further to receive Welsh-medium education (a journey of over six miles from their communities in Ynysybwl, Glyncoch and Coedycwm), passing several English-medium schools on the way. It would also be more difficult, according to the parents, to make use of wrap-around care.
- 1.8 Parents considered that the Council had not adequately considered alternative options to protect the school site for the use of the communities of north Pontypridd.
- 1.9 The communications from parents amounted to interested persons raising concerns about compliance with standards in accordance with section 93 of the Welsh

Language Measure. However, as the Council had not made a final decision in relation to the proposal that was subject to consultation, it was neither appropriate nor proportionate for an investigation to be held at that point. However, as I have a wide discretion to initiate an investigation pursuant to section 93(8)¹, I considered it appropriate, after the Council had made its final decision, to initiate an investigation myself to establish whether that final decision had involved a failure to comply with policy-making standards.

1.10 I gave notice of the decision to investigate, and of the proposed terms of reference, to the Council on 4 October 2019.

Relevant standards

1.11 The Council is under a duty to comply with the standards below, and was under a duty to do so during the period in question:

Standard 88

When you formulate a new policy, or review or revise an existing policy, you must consider what effects, if any (whether positive or adverse) the policy decision 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 89

When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision 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.

Standard 90

When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so 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.

Installation day: March 30, 2016

¹ In accordance with section 93(8) of the Measure, the Commissioner has wide discretion to investigate, even if it does not meet the conditions of subsections 93(3) to 93(6) or if the factors of subsection 93(7) do not apply.

2 Evidence taken during the investigation

Evidence notice

- 2.1 On 31 October 2019, I gave the Council an evidence notice requiring it to provide the following evidence.

Information and documents

1. In the context of the policy decision to close Ysgol Pont Sion Norton, please provide copies of all the considerations given by the Council to what effects, if any, the decision 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.

Please provide copies of any Welsh language impact assessments, community impact assessments or any other assessments completed on the potential impact that the policy decision would have on the Welsh language.

Please provide copies of the minutes of any meetings where consideration was given to possible impacts that the policy decision would have on the Welsh language.

2. Please provide evidence of how the Council considered how the policy decision in question could be formulated so that the policy decision 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 provide evidence as to how the Council considered how the policy decision in question could be made, so that the policy decision would not have adverse effects, or so 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. Please provide any guidance or arrangements the Council has developed for complying with the policy making standards.
5. If the Council's arrangements had not been followed in this case, please explain why.
6. Please provide any additional information or evidence you wish the Commissioner to take into account when determining the Council's

compliance with the standards set out in the investigation's terms of reference.

7. Please provide a copy of any policy, procedure, guidance or other document you wish the Commissioner to have regard to when determining the Council's compliance with the standards set out in the investigation's terms of reference.

2.2 I received evidence from the Council in response to the above questions on 28 November 2019.

2.3 As part of its evidence the Council provided copies of the following documents:

- Consultation Document – "Consultation on the reorganisation of primary, secondary and sixth form schools in the Pontypridd area";
- Community Impact Assessment;
- Community Impact Assessment – revised;
- Welsh Language Impact Assessment;
- a revised Welsh Language Impact Assessment, published as part of the Cabinet Report;
- Equality Impact Assessment;
- a revised Equality Impact Assessment, published as part of the Cabinet Report;
- Minutes of cabinet meeting held on 3 October 2018;
- 21st Century Schools Programme – Proposals to improve education provision in the Pontypridd Wider Area – Cabinet Report 2 October 2018;
- Minutes of the Children and Young People Scrutiny Committee meeting held on 26 September 2018;
- Progress Report on the Welsh in Education Strategic Plan – Committee Report;
- Minutes of the Children and Young People Scrutiny Committee meeting held on 19 December;
- Scrutiny Committee's engagement with the 21st Century School Modernisation Programme – Committee Report;
- Minutes of the Council meeting held on 6 March 2019;
- Minutes of the Children and Young People Scrutiny Committee meeting held on 20 March 2019;
- 21st Century Schools Programme – Proposals to reorganise Primary, Secondary and Sixth Form Schools in the wider Pontypridd area – Cabinet Report 21 March 2019;
- Minutes of the Cabinet meeting held on 21 March 2019;
- Minutes of the special meeting of the Overview and Scrutiny Committee ('Drop-in' Meeting) held on 3 April 2019;
- Minutes of the Council meeting held on 10 April 2019;
- 21st Century Schools Programme – Proposals to Reorganise Primary, Secondary and Sixth Form Schools in the wider Pontypridd area – Cabinet Report 18 July 2019;
- Minutes of the Cabinet meeting held on 18 July 2019;
- Minutes of the Council meeting held on 31 July 2019;
- Minutes of the special meeting of the Overview and Scrutiny Committee ('Drop-in' Meeting) held on 31 July 2019;

- Revised Policy and Procedures for Street Naming and Numbering – Cabinet Report 24 November 2015;
- Recruitment and Selection at Rhondda Cynon Taf Council – the procedure was published in January 2018.

I considered all the information submitted in response to the evidence notice.

3 Assessment, findings and decision

Wording of standards

- 3.1 The wording of the relevant standards as they appear in the compliance notice issued to the Council is as follows:

Standard 88

When you formulate a new policy, or review or modify an existing policy, you must consider what effects, if any (whether positive or adverse) the policy decision 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 89

When you formulate a new policy, or review or modify an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision 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.

Standard 90

When you formulate a new policy, or review or modify an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so 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.

Interpretations

- 3.2 Schedule 2, Part 2, paragraph 2, of the Welsh Language Standards (No. 1) Regulations 2015 defines a policy decision as 'any decision made by a body relating to the exercise of its functions or the conduct of its business or other undertaking'. This includes, amongst other things, decisions about:
- (a) the content of legislation;
 - (b) the exercise of statutory powers;
 - (c) the content of policy statements;
 - (d) strategic strategies or plans; and
 - (d) internal structures.
- 3.3 References in the standards to positive or adverse effects involve both direct and indirect effects.

Requirements of the standards

- 3.4 The policy making standards relate to the way in which a body considers the effects of its policy decisions on the Welsh language.
- 3.5 Whether I agree or disagree with the decision taken by the Council to restructure its education provision in the Pontypridd area, including the decision to close Ysgol Pont Sion Norton, is irrelevant and did not form part of my investigation, my consideration of the relevant issues or the preparation of this report.
- 3.6 I fully recognise that local authorities have a duty to review their educational provision in accordance with the guidance and requirements of the Welsh Government's School Organisation Code.
- 3.7 However, I have the power to consider and reach a decision on the Council's compliance with standards 88, 89 and 90 when making policy decisions. The standards are a distinct statutory regime that stand separately from the School Organisation Code and the Council's general public law obligations when making decisions.
- 3.8 In particular, standards 88, 89 and 90 require the Council to consider what effects, if any, a policy decision would have on the opportunities for persons to use the Welsh language and on treating the Welsh language no less favourably than the English language, and whether the policy decision could be formulated or changed so that it increases the positive effects and minimises the adverse effects.
- 3.9 This means that the Council must make a conscientious effort to identify and consider the effects that a policy decision would have on opportunities for people to use the Welsh language or on treating the Welsh language no less favourably than the English language.
- 3.10 Although the wording of standards 88 to 90 does not prescribe the types of effect that should be considered, it is reasonable for me to think about the types of effect that the Council could have considered when I assess the quality of its efforts to comply with those standards. For example, the Council could have asked:
- Will the proposal have an impact on the number or percentage of people who can speak Welsh (or any other skill relating to the language)?
 - Will the proposal have an impact on the number or percentage of people who use Welsh?
 - Will the proposal protect, promote and enrich the heritage and culture of the area in question in relation to the Welsh language?
- 3.11 These questions could be asked as part of a broader, linguistic impact assessment in which the decision-maker seeks to:
- Identify the positive impacts of the policy on the Welsh language;
 - Identify the adverse effects of the policy on the Welsh language;
 - Consider how the policy or practice could promote opportunities for persons to use the Welsh language more widely;
 - Consider whether the policy will affect the treatment of the Welsh language less favourably than the English language;
- 3.12 Having identified the effects, standard 89 requires that a similarly conscientious effort is then made to consider how the policy could be formulated (or an existing policy

changed) so that the policy decision would have positive effects, or more positive effects, on the opportunities for persons to use the Welsh language and on treating the Welsh language no less favourably than the English language. Standard 90 then requires the decision-maker to consider how the policy could be formulated (or an existing policy changed) so that the policy decision would not have adverse effects, or so that it would have less adverse effects, on the opportunities for persons to use the Welsh language and on treating the Welsh language no less favourably than the English language.

- 3.13 Usually, compliance with standards 89 and 90 will require a conscientious effort to consider different *options* for mitigating or preventing adverse effects that the policy decision could have on the Welsh language; it is not a matter of identifying and then settling for the most minimal mitigation when more meaningful mitigation is feasible and should be considered. This is implicit in the requirement to consider how the policy “could” be formulated, or how an existing policy “could” be changed. It will also usually be necessary to consider different potential ways of achieving positive effects, or more positive effects, on the opportunities for persons to use the Welsh language and on treating the Welsh language no less favourably than the English language. Again, it is not a matter of identifying and settling for the most minimal of positive effects.
- 3.14 When assessing compliance with these standards, I will assess all the evidence presented to me in the round. The standards are practical standards intended to operate in the real world. Failing to identify a particular type of effect on the Welsh language will not necessarily mean that a standard is breached, if the evidence otherwise demonstrates a conscientious effort to identify the effects. Ultimately, what I require is evidence that a conscientious effort was made.

Considering compliance with the standards

- 3.15 The Council stated in its response to the evidence notice that it believed that it had complied with these standards. The Council provided comments and the documents listed above as evidence of its compliance.
- 3.16 The Council explained that it had carried out a community impact assessment, a Welsh language impact assessment and an equality impact assessment as part of the process for considering the potential impact of changing the provision. It referred specifically to the following statements:

"The catchment area of the new school will encompass that of the existing two schools. The relocation of Ysgol Gynradd Gymraeg Pont Siôn Norton to the Heol y Celyn site will mean that all pupils resident within this school's current catchment area will qualify for, and receive free home to school transport, as they will reside more than 1.5 miles from the new school. No child resident in the Heol y Celyn part of the catchment will qualify as none will reside more than 1 mile from the school. It is not considered that this distance will be a barrier to any child who wishes to participate in the pre and after school provision that will be offered in the new school; the maximum length of time any child will have to take to travel to the school will be 20 minutes." (Community Impact Assessment, p.2.)

"Any services provided by both YGG Pont Siôn Norton and Heol y Celyn outside of school hours, such as breakfast clubs, after school clubs and other

community facilities will continue in the new building. Any links with outside organisations such as the Urdd, Menter Iaith etc will be maintained and hopefully strengthened and expanded. [We hope that these links will be strengthened and expanded.] The new school building will have a community room facility and the headteacher will be encouraged to consider using this facility to increase participation in the Welsh language, such as offering opportunities to parents and other community members to learn Welsh." (Welsh Language Impact Assessment, p.1. Including translated sentence omitted from the English language version.)

3.17 In its response to the evidence notice, the Council also referred to the actions of its Welsh language in education strategic plan which includes targets to increase the number of children being taught through the medium of Welsh. The Council noted that the plan for the new Welsh-medium primary school will achieve the targets by opening a school with an appropriate number of places to meet demand forecasts for Welsh-medium provision, and in converting a two-language primary school into a Welsh-medium school.

3.18 The equality impact assessment also included a table containing this extract:

People / issues to consider	Will the policy / practice have an impact....?			Explain any positive or negative impact:
	Positive	Negative	Neutral (no effect)	
Welsh	Yes			A new Welsh-medium school, built in accordance with the 21st Century Schools standards, with additional places to give parents more choice about what language medium they can choose for their children.

3.19 The Council referred to its comments within the consultation documents about other grounds that had led to the proposal to move the school. This was primarily the need to create an accessible school as the existing Ysgol Pont Sion Norton site does not offer access to children and adults with mobility difficulties. The Council noted that a new accessible site will increase opportunities for children and people to use the Welsh language.

3.20 The new site will also include outdoor play facilities that the existing site does not have.

3.21 The community impact assessment also included information on the provision beyond the school timetable, including breakfast clubs in both schools. The Council stated that Heol-y-Celyn Primary School is not used outside school hours, except for groups involved with the school, such as the parent and teacher association. This school hosts an after-school club on two evenings each week.

3.22 It explained that Ysgol Pont Sion Norton holds Welsh for Adults classes on one evening a week and holds a 'clwb carco' (childminding club) on two evenings and offers after-school clubs on two other evenings. The community impact assessment then stated:

“The new school will be strongly encouraged to continue to maintain the after-school and Adult Education provision currently offered, with an opportunity to expand and extend this if there is a recognised demand.”
(Community Impact Assessment, p.1.)

3.23 The Council also stated its view that changing the language medium of Ysgol Heol-y-Celyn from a two-language school to a Welsh-only school will offer a better immersion experience for the children and therefore increase opportunities for persons to use the Welsh language.

3.24 Its response to the evidence notice also quoted the following from the community impact assessment:

“As well as improving the provision, it is hoped that a new school with 21st Century facilities will encourage parents to choose Welsh-medium education for their children, assisting the Council to achieve one of the key aims outlined in its Welsh Language in Education Strategic Plan.” (Welsh Language Impact Assessment, p.2.)

3.25 The Council referred to the Welsh language impact assessment which stated:

“In addition, following the recent consultation on the Welsh Government's draft Welsh in Education Strategic Plans Regulations (Wales) 2019 guidance which advocates an increase in Welsh medium education provision for learners with Additional Learning Needs (ALN), and in accordance with the ALN and Education Tribunal (Wales) Act 2018, RCT will consult on establishing a Welsh medium Foundation Phase and Key Stage 2 ALN provision in the new school.” (Amended Welsh Language Impact Assessment, p.2.)

3.26 In its response to the evidence notice the Council stated:

“Adhering to the Council's Welsh Language in Education Strategic Plan and providing a 21st Century learning environment demonstrates the Council's commitment to reducing any adverse effects on opportunities for persons to use the Welsh language and not treat it less favourably than the English language.” (p.8)

3.27 The Council explained that the provision of 60 nursery places in the same site will encourage more parents to choose Welsh-medium education:

“The authority mitigates the possible suggestion that the reduction in the number of opportunities for persons to use Welsh as a result of travelling over a longer distance by paying the travel costs for the low number of individuals affected. This ensures that the decision has been made in order to have less adverse effects on opportunities for persons to use the Welsh language and not to treat it less favourably than the English language.” (p.8)

3.28 The Council has provided extensive evidence of the process that it followed in undertaking the decision to close Ysgol Pont Sion Norton. The evidence included minutes of meetings and the methods of scrutinising decision.

- 3.29 The response to the evidence notice summarised the Council's responses to objections from stakeholders. The Council stated that it conducted the decision-making process transparently and provided several opportunities for interested parties to express their views:

“... by providing an opportunity to express views on matters relating to the Welsh language, we believe that it provides something additional to consider and challenges the individuals who make policy decisions before, during and after deciding to close Ysgol Pont Sion Norton.” (p.14)

- 3.30 The Council concluded its response to the evidence notice by stating:

“Cabinet meetings were held in accordance with the relevant rules of procedure set out in the Council's Constitution. In accordance with the Constitution, Cabinet Members must maintain objectivity when making decisions. Cabinet Members were made aware of the relevant issues before making a decision through Officers' reports and had the opportunity to read all the consultation responses before considering the Consultation Report at any meeting. According to the Council's view, the entirety of the discussion in relation to this proposal was open and honest, and any comments received led to a thorough and robust discussion of the proposals. Cabinet decisions were reached through the Council's democratic processes where the standards in question were considered as a process and procedure.

The Council considers that it has complied with the requirements of Standards 88, 89 and 90 in relation to the CSG633 case and generally.” (p.17)

Findings

- 3.31 Following consideration of all the evidence presented to me by the Council, it is clear that it has carried out an assessment of the impact of the proposal to close Ysgol Pont Sion Norton on Welsh-medium education in the restructuring of schools in the Pontypridd area.
- 3.32 The Council has stated on several occasions and in several documents that the proposal is part of the Welsh Language in Education Strategic Plan which plans to increase the number of pupils studying through the medium of the Welsh language within the borough. I accept that the proposal will increase the number of places available for Welsh-medium education within the catchment areas of the two existing Welsh-medium primary schools.
- 3.33 I agree with the Council's analysis that Welsh-only education in a school is likely to be more successful in promoting the use of the Welsh language than two-stream education as currently exists at Heol-y-Celyn School. This will also contribute to the realisation of the Welsh Language in Education Strategic Plan's aim of expanding education through the medium of the language.
- 3.34 I accept that the Council has discussed and analysed the impact of the proposal on the children's education and discussed issues such as play areas and the accessibility of the buildings with the aim of improving the provision of Welsh-medium education to the communities concerned.

- 3.35 Travel distance, and the implications of that on parental choice, is also a relevant factor that has been taken into account. Concerns raised during the consultation about the impact of the proposals on the families of Ysgol Pont Sion Norton were noted. The community impact assessment identified the possible reluctance among parents to send their children to a Welsh-medium school that would require them to travel further to get to school, with the consequence that they would instead choose English-medium provision closer to home. This was also considered in the Objection Report, where the Council noted that around 69% of Ysgol Pont Sion Norton's pupils currently travelled by bus, and those that do not (as they lived within the 1.5mile walking distance in the catchment area) were not eligible for free transport from their home to the new school.
- 3.36 I note however that there is no evidence that meaningful consideration was given to the potential impacts on the Welsh language of the reorganisation proposals that did not relate to Welsh-medium education. I have not been provided with evidence that, when the proposals to restructure the English-medium school were advanced, consideration was given to the effects of these proposals on the Welsh language, and whether any negative effects could be mitigated and any positive effects enhanced.
- 3.37 I would like to stress that the Welsh language standards are not only relevant to areas of decision-making that relate directly to the Welsh language (for example, Welsh-medium education). When making a policy decision, a body which is subject to standards 88-90 should consider the potential effects of that decision on the Welsh language, even if the decision does not appear to concern the language directly. If we are serious that the Welsh language is everyone's ownership and a factor in planning services, the Welsh language must be considered when undertaking all relevant decisions, particularly important long-term decisions such as those relating to education provision.
- 3.38 In my judgment, the evidence that I have considered does not show that conscientious consideration was given to the impacts of the school reorganisation proposals (including the decision to relocate Ysgol Pont Sion Norton) on the use of the Welsh language by the communities surrounding the schools affected. The Community Impact Assessment and the extract from the Objection Report extract take account of some effects, but many of the effects that ought reasonably to have been identified and considered have been overlooked.
- 3.39 In particular, the evidence does not show that conscientious consideration was given to the extent to which Welsh is currently used in the local community around Ysgol Pont Sion Norton, and the extent to which the school contributes to that.
- 3.40 In the context of school closure proposals, data and statistics often help to identify the impacts of the policy decision on the Welsh language. Indeed, the Council relied on data and statistics for other aspects of its proposals, such as the statistical data in the community impact assessment which assessed the percentage of pupils living in the appropriate school catchment area, or the statistical data in the consultation document (page 13) which stated that the percentage of pupils choosing to remain within the sixth form of their current school was low.
- 3.41 It seems to me that no specific data or statistics were obtained in relation to the effects of the reorganisation proposals on the Welsh language. In particular, there is no evidence that data were gathered on the extent to which Welsh is used locally and

then proper consideration given to how the reorganisation proposals could change that. Whilst there is no explicit obligation in the standards to collect data or statistics on the extent to which Welsh is currently used, it is difficult to see how a decision-maker could meaningfully identify the effects of a policy decision on the Welsh language without at least some data or statistics to enable the status quo to be understood.

- 3.42 In relation to the decision to close Ysgol Pont Sion Norton specifically, I think that the Council should have considered the following effects when assessing the impact of the decision on the use of the Welsh language in the community:
- Impact of relocating the wrap-around care provided by Ysgol Pont Sion Norton
 - Impact of relocating the after-school activities from the Ysgol Pont Sion Norton area.
 - Impact of relocating the community group activities from the Ysgol Pont Sion Norton area.
- 3.43 None of these factors directly relate to education provision but are all relevant when considering the impact of a school closure. All activities contribute in some way to opportunities for persons to use the Welsh language outside school hours. Although the evidence acknowledges that the location of these activities would have to change because of the school's closure, it does not show consideration of the impact of the change on opportunities to use the language in the affected area.
- 3.44 For example, the Council identified a need to mitigate the main impact of the closure of the school, namely that it would be more difficult for many pupils to attend the new site. As this has the potential to have an adverse effect on the up-take of Welsh-medium education in the area, it was proposed that transport would be made available to all pupils who would be affected by the change. I would have expected to see similar recognition and consideration of the impact of moving wrap-around care (the breakfast club and the 'clwb carco') and the after-school clubs from the Ysgol Pont Sion Norton site. This was not done.
- 3.45 Similarly, the Council identified that Welsh for Adults lessons are held on site but there is no assessment of the impact of ending the lessons in their current setting on opportunities to use the language locally.
- 3.46 It is not for me to take a view on what the outcome of considering these effects should have been, but it is for me to assess whether they were conscientiously considered. I am not satisfied that they were.
- 3.47 It is not sufficient, in my view, simply to conclude that increasing places available for primary Welsh-medium education is the only impact regarding equality; and to say that as the children within the catchment area of Ysgol Pont Sion Norton can attend the new school by transport, this necessarily means that the whole offer has a positive impact on the part of the Welsh language. I have identified above factors that certainly have the potential to adversely affect opportunities to use the language locally and which should have been considered fully before the decision was made.
- 3.48 Policy decisions relating to education provision can have complex effects on the use of the Welsh language in a community, on choices made in relation to Welsh-medium

education and on attitudes towards the Welsh language locally. These can be a mixture of positive, neutral and negative impacts. I am not satisfied that a sufficient effort was made to identify the mixture of impacts in this case.

- 3.49 The purpose of ensuring that the negative effects of a policy decision on the Welsh language are identified is to enable steps to be taken to mitigate those effects before the decision is made. Similarly, the purpose of identifying positive effects is to enable steps to be taken to enhance those effects further.
- 3.50 The standards make it open to the Council to continue with the decision or, it may conclude that the adverse effects, properly identified, are so significant that it should revisit the decision. The Council could also revisit the decision to consider whether it can be remade to have positive, or more positive effects, on the Welsh language than was proposed in the first place, or whether additional mitigation measures can be secured to prevent or reduce the adverse impact of the decision.
- 3.51 As I note above, I consider that the standards require the Council to identify the effects of each of its policy decisions, and therefore in this case, it was required to assess the reorganisation proposals as a whole, including the decisions relating to English-medium schools.
- 3.52 In my judgment, the evidence does not show that the Council made a conscientious effort to identify and then consider the effects that its policy decisions in this case would have on opportunities for people to use the Welsh language or on not treating the Welsh language less favourably than the English language.
- 3.53 Nor am I satisfied that the evidence shows that the Council made a conscientious effort to consider how the decision could be made to have more positive, or less adverse, effects on opportunities for persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.

Determination as to whether there has been a failure to comply with standard 88

- 3.54 I determine that Rhondda Cynon Taf County Borough Council has failed to comply with standard 88 in this case.
- 3.55 The basis of my decision is that the evidence does not show that the Council made a conscientious effort to identify and consider the effects that the policy decisions to restructure Pontypridd area schools would have on opportunities for persons to use the Welsh language, and on not treating the Welsh language less favourably than the English language.

Determination as to whether there has been a failure to comply with standard 89

- 3.56 I determine that Rhondda Cynon Taf County Borough Council has failed to comply with standard 89 in this case.
- 3.57 The basis of my decision is that the evidence does not show that the Council made a conscientious effort to consider how it could make its policy decisions to restructure schools in the Pontypridd area so they would have positive effects, or more positive effects, on opportunities for persons to use the Welsh language, and on not treating the Welsh language less favourably than the English language.

Determination as to whether there has been a failure to comply with standard 90

3.58 I determine that Rhondda Cynon Taf County Borough Council has failed to comply with standard 90 in this case.

3.59 The basis of my determination is that the evidence does not show that the Council made a conscientious effort to consider how it could make its policy decisions to restructure schools in the Pontypridd area so they would not have adverse effects, or so that they would have less adverse effects, on opportunities for persons to use the Welsh language, and on not treating treat the Welsh language less favourably than the English language.

Further action

3.60 Section 77 of the Welsh Language Measure allows me to take further action where there has been a failure. In the case of my ruling that the Council has failed to comply with standards 88, 89 and 90, I will take further action for the purpose of preventing the failure to comply from continuing or being repeated when considering the effects of future policy decisions made by the Council on the Welsh language.

3.91 Details of the further action are below.

Standards 88, 89 and 90 – requirement to take steps in accordance with section 77(3)(b) of the Welsh Language Measure

1. The Council must adopt a robust process for conducting and recording the consideration of any effects that a policy decision would have on opportunities for persons to use the Welsh language, and on not treating the Welsh language less favourably than the English language. The process must include clear guidance for officers and councillors to this end.
2. The Council must adopt a robust process for conducting and recording the consideration of how a policy decision could be formulated so that it has positive effects, or increased positive effects, on opportunities for persons to use the Welsh language or on not treating the Welsh language less favourably than the English language. The process must include clear guidance for officers and councillors to this end.
3. The Council must adopt a robust process for conducting and recording the consideration of how a policy decision could be formulated so that it does not have any adverse effects, or has less adverse effects, on opportunities for persons to use the Welsh language or on not treating the Welsh language less favourably than the English language. The process must include clear guidance for officers and councillors on to this end.

Timetable: Within 12 weeks of issuing the Commissioner's final determination.

Standards 88, 89 and 90 – Requirement for the Council to publicise the failure to comply with standards in accordance with section 77(3)(d) Welsh Language Measure

4. The Council must publicise its failure to comply with standards 88, 89 and 90 by publishing this report in a prominent place on its public website and include an item regarding the investigation in the news section of that website.

Timetable: Within six weeks of issuing the Commissioner's final determination.



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Decision notice

To: Rhondda Cynon Taf County Borough Council (the Council)
Case number: CSG633
Date: 17 June 2021

Determination

In accordance with my powers under section 71 of the Welsh Language (Wales) Measure 2011, I investigated to determine whether the Council had failed to comply with one or more Welsh language standards with which it has a duty to comply.

The standards applicable to the investigation are as follows:

Standard 88

When you formulate a new policy, or review or revise an existing policy, you must consider what effects, if any (whether positive or adverse) the policy decision 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 89

When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision 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.

Standard 90

When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so 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.

Imposition day: March 30, 2016

Determination as to whether there has been a failure to comply with standard 88

I determine that the Council has failed to comply with standard 88 in this case. The basis of my decision is that the evidence does not show that the Council made a conscientious effort to identify and consider the effects that the policy decisions to restructure Pontypridd area schools would have on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

Determination as to whether there has been a failure to comply with standard 89

I determine that the Council has failed to comply with standard 89 in this case. The basis of my decision is that the evidence does not show that the Council made a conscientious effort to consider how it could make its policy decisions to restructure schools in the Pontypridd area so they would have positive effects, or more positive effects, on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

Determination as to whether there has been a failure to comply with standard 90

I determine that the Council has failed to comply with standard 90 in this case. The basis of my decision is that the evidence does not show that the Council made a conscientious effort to consider how it could make its policy decisions to restructure schools in the Pontypridd area so they would not have adverse effects, or so that they would have less adverse effects, on opportunities for persons to use the Welsh language, and on treating treat the Welsh language no less favourably than the English language.

Further action

In accordance with section 77 of the Welsh Language Measure I have decided to take further action for the purpose of preventing the failure from continuing or being repeated.

Details of the further action are below.

Standards 88, 89 and 90: Requirement to take steps in accordance with section 77(3)(b) of the Welsh Language Measure

1. The Council must adopt a robust process for conducting and recording the consideration of any effects that a 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. The process must include clear guidance for officers and Councillors on how the consideration process should be carried out and recorded.
2. The Council must adopt a robust process for conducting and recording the consideration of how a policy decision could be formulated so that it has increased positive effects on opportunities for persons to use the Welsh language or on treating the Welsh language no less favourably than the English language. The process must include clear guidance for officers and Councillors on how the consideration process should be carried out and recorded.
3. The Council must adopt a robust process for conducting and recording the consideration of how a policy decision could be formulated so that it does not have any adverse effects, or has less adverse effects, on opportunities for persons to

use the Welsh language or on treating the Welsh language no less favourably than the English language. The process must include clear guidance for officers and Councillors on how the consideration process should be carried out and recorded.

Timescale: Within 12 weeks of the date of publication of the Commissioner's final determination.

Standards 88, 89 and 90: Requirement to publicise the failure to comply with standards in accordance with section 77(3)(d) of the Welsh Language Measure

4. The Council must publicise its failure to comply with standards 88, 89 and 90 by publishing this report prominently on its public website, including an item on the investigation in the news section of that website.

Timescale: Within six weeks of the date of publication of the Commissioner's final determination.

Right of appeal to the Welsh Language Tribunal

Where the Commissioner has determined that there has been no failure to comply with a standard, the complainant may appeal to the Welsh Language Tribunal. Where the Commissioner has determined that a person has failed to comply with a relevant requirement, that person may appeal to the Welsh Language Tribunal. In addition, where the Commissioner has decided to take enforcement action in respect of a failure in accordance with section 79 of the Welsh Language Measure, the Council may appeal to the Welsh Language Tribunal on the grounds that the enforcement action is unreasonable or disproportionate. Further information on the process can be found in the attached leaflet, and on the Tribunal's website.

Consequences of not complying with a requirement in a decision notice

If the Council fails to comply with any requirement of this decision notice, the Commissioner may apply to a county court for an order requiring it to comply.