



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Standards enforcement investigation: Proposed report and decision notice

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

The investigation of a suspicion of 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

Bridgend County Borough Council (the Council)

Case number: CS098



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Background

The principal aim of the Welsh Language Commissioner, an independent body established by the Welsh Language (Wales) Measure 2011, is to promote and facilitate the use of Welsh. 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.

Contact details

- Phone: 0345 6033 221
 - E-mail: post@welshlanguagecommissioner.wales
 - Website: welshlanguagecommissioner.wales
 - Post: Welsh Language Commissioner
Market Chambers
5–7 St Mary Street
Cardiff
CF10 1AT
-



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 should 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.
-

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 the conduct of relevant persons is complained about;
 - to investigate suspected failures by relevant persons to comply with duties, to determine investigations and to produce investigation reports;
 - to consider whether or not to take further action (by giving recommendations or advice) if an investigation finds that there was no failure to comply;
 - to 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.
 - to make applications to a county court for orders to enforce compliance;
 - to comply with the duties resulting from appeals and applications for reviews made to the Welsh Language Tribunal;
 - to produce an enforcement policy document;
 - to 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.
-

Contents

1	Terms of reference	1
2	Evidence taken during the investigation	3
3	Compliance with standards 91, 92 and 93: Assessment, findings and proposed determination	7
	Proposed decision notice	19

1 Terms of reference

Suspicion of failure to comply with Welsh language standards

- 1.1 On 26/11/2021, 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 relates to a recent consultation by the Council on a proposal to move an infant department to the Mynydd Cynffig Primary School site, and to expand the size of the new building. The complainant alleges that the consultation did not consider the effect of the proposal on the Welsh language.

Confirming responsibility for the relevant service

- 1.3 My officers wrote to the Council on 06/12/2021 to confirm whether the Council was responsible for the service complained about.
- 1.4 The Council replied on 13/12/2021 confirming responsibility for the matter. The Council confirms that the consultation related to an English medium primary school, and that the proposal included moving the infant section to the key stage two section. The Council emphasises that the process relating to organisation of schools is strictly governed by the School Organisation Code. The Council goes on to note that it is proposed to expand the size of the local Welsh-medium school, namely Ysgol y Ferch o'r Sgêr.
- 1.5 The Council notes that a Welsh language impact assessment and equality impact assessment had been completed during the consultation process. The results of the assessments were that the consultation related to an English medium school and therefore unlikely to affect pupils' opportunities to use the Welsh language; and that it does not treat the Welsh language less favourably than the English language.

Relevant standards

- 1.6 The Council has a duty to comply with the following standards, which was also the case on the date relevant to the complaint:

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 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 – 30/03/2016

Decision to investigate

- 1.7 Based on the above, I decided to conduct an investigation under section 71 of the Welsh Language Measure, in order to determine whether there had been a failure by the Council to comply with the above standards. I issued a notice of the decision to investigate, and of the proposed terms of reference, to the Council on 14/01/2022.
- 1.8 I gave notice of the final terms of reference of the investigation to the Council on 01/03/2022. The final terms of reference can be seen as an appendix to this report.

2 Evidence taken during the investigation

Evidence notice

- 2.1 On 01/03/2022, I issued an evidence notice to the Council. The evidence notice required the Council to provide the following evidence:

Information and documents

1. Please explain how the consultation document which relates to the policy in question has considered and sought views on the effects (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 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 evidence of 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 investigation's terms of reference.
6. Please provide a copy of any policy, procedure, guideline or other document which you wish us to consider when determining whether you have complied with the standards noted in the investigation's terms of reference.
- 7.

- 2.2 In response, I received evidence from the Council on 09/05/2022. Also, copies of the following documents were provided:

- Policy Consultation Report

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

The evidence received

Question 1

- 2.4 In response to the first question, the Council began by noting that the policy decision in question related to school reorganisation, and was therefore strictly governed by the School Organisation Code (the Code) and the School Organisation (Wales) Act 2013. It stated that the Code clearly sets out all stages of the consultation process and specifies a statutory consultee. In accordance with the requirements of the Code, the Council stated that it had completed an Equality Impact Assessment together with a Welsh Language Impact Assessment (WLIA).
- 2.5 The Council stated that the Code states that local authorities must ensure that there are sufficient schools to provide primary and secondary education in the area. This includes in numbers, character and equipment to provide suitable education for all pupils. The Code also states that there is a need to complete a WLIA where the proposals affect Welsh medium schools.
- 2.6 In all other cases, the Council said that the following needed to be considered:
- The effect of the proposal on meeting targets in the Welsh in Education Strategy;
 - How the proposal seeks to expand or reduce the provision of Welsh-medium education, and if it reduces it, explain why.
- 2.7 The Council explained that Mynydd Cynffig Primary School is an English medium school.
- 2.8 The Council went on to explain the action that proposes to expand the size of the new building, and that it was in response to existing problems with overcrowding at the school. The classes in the junior section were too small and therefore overflowing. As a result, the Council stated that this was not a proposal to expand the number of classes at the school, but rather a proposal to address the size of the rooms where those classes were held so that they were suitable for 30 pupils. Therefore, the Council stated that it did not anticipate negative effects on Welsh-medium education in the area should the proposal proceed.
- 2.9 The Council stated that the Code did not set out the form of impact assessments, rather, it simply stated that impact assessments should be included in consultation documents. The Council stated that it had completed initial impact assessments, which considered the effects of the proposal on the Welsh language, and these were published (see appendix B and C of the consultation document)
- 2.10 The purpose of the consultation document according to the Council was to present an initial proposal and to make contact with stakeholders in order to gather views and evidence. According to the Council, page 3 of the consultation document clearly states the purpose of the consultation and how to respond to it. The Council includes the following text as proof that it requests comments on the proposal (the Council attaches the English version so this is the corresponding Welsh version):

“Overview

The purpose of this consultation is to invite views on the proposal to make a regulated alteration to Mynydd Cynffig Primary School, in the form of an enlargement. The existing split-site arrangement would cease and the infant department would be relocated to a new build primary school on the existing Mynydd Cynffig Primary School junior site at Pwlllygath Street, Kenfig Hill, Bridgend, CF33 6ET, with effect from September 2025.

How to respond

*This consultation period will begin on **23 November 2021** and close on **12 January 2022**. You can respond on the included pro forma (see page 26 of this document) or on-line and ask further questions in the following ways:*

Tel: (01656) 643 643

E-mail: edsu@bridgend.gov.uk

On-line: www.bridgend.gov.uk/cy/fy-nghyngor/cydraddoldeb-ac-ymgysylltu/ymgyngoriadau/ “

- 2.11 The Council goes on to display the section which sought opinions on the policy (here is the English version):

Comment/suggestions/requests/questions

If you would like to suggest any changes or alternatives to the proposals presented, please give details:

- 2.12 In accordance with the Code and the Act, the Council stated that it had submitted the consultation report to the Cabinet, which informed the Cabinet of the results of the consultation. The report included all consultation responses, including the response of Rhieni dros Addysg Gymreg (RhAG) (Parents for Welsh Medium Education), on page 44 of the report. According to the Council, it also included the latest version of a revised WLIA following the responses to the consultation, and as the WLIA was regularly reviewed and updated throughout the consultation process.

Question 2

- 2.13 The second question specifically asked the Council how the consultation document complied by considering and seeking views on how the policy could have a more positive effect on opportunities to use the Welsh language and on treating the Welsh language no less favourably than English. In response, the Council stated that it had included all the details in response to the first question.

Question 3

2.14 The third question asked the Council how the consultation document considers and seeks views on how the policy could be formulated so that it would have less adverse effects on the Welsh language. As above, the Council stated that the answer to the third question had been included in the answer to the first question.

Question 4

2.15 I asked the Council to provide any internal guidance it had in order to ensure compliance with the policy making standards. In response, the Council stated that it had incorporated the WLIA as part of the equality assessment process. It included a screenshot of the procedures followed in this case:

3.2. What the council has done so far and the steps it has taken ¶¶

a) The council already undertakes Equality Impact Assessments (EIAs) on new and revised policies to identify the potential negative, neutral or positive impact on people. The EIA process has been revised and now includes specific sections and guidance on the requirements of the Welsh Language Standards for managers to use when policies are being revised or developed. This includes: ¶¶

- → considering what effects a policy will have on peoples' ability to use Welsh and whether Welsh and English are being treated equally; ¶¶
- → whether the policy will result in increased effects on opportunities for persons to use Welsh; and ¶¶
- → whether the policy could be introduced so as not to have a negative effect (or decreased negative effects) on opportunities for persons to use Welsh. ¶¶

b) The council has recently developed a new process which ensures an EIA must accompany every cabinet report. ¶¶

Question 5

2.16 I asked whether the Council had any further information or evidence for me to consider, and it noted again that a WLIA had been updated following consultation, and that the Cabinet had been informed of the impact on the Welsh language.

Question 6

2.17 For the final question, the Council reiterates that the Cabinet has received the latest version of the WLIA. It also adds that the Cabinet has approved a proposal to increase the size of the local Welsh-medium school, Ysgol y Ferch o'r Sgêr, and the new building is expected to open in September 2024.

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

Wording of the standard

3.1 This is the standard as it appears 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 impacts (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 impacts, or increased positive impacts, 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 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– 30/03/2016

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 a body's consultation documents which relate to a policy decision consider and seek views on any possible effects that the decision may have on the Welsh language and on the opportunities to use it.

- 3.4 A body must include specific questions in the consultation document which ask for a response.
- 3.5 A body is expected to give due regard to any information gathered during the consultation process, so that the body would act on any outcomes resulting from the consultation.

Considering compliance with the standard

- 3.6 This case relates to a proposal to increase the size of Mynydd Cynffig Primary School, as well as to move the infant department to the key stage two section. This will be a new building.
- 3.7 The complainant alleges that the consultation did not consider the effect of the proposal on the Welsh language and specifically on Welsh medium education within the county. The relevant standards are therefore standards 91, 92, and 93, which relate to a consultation document regarding a policy decision.
- 3.8 In the evidence notice, I asked specific questions by standard in order for the Council to show how it complied with each of them. The Council's response is disappointing, and it presents one answer for the first three questions in the evidence notice. I gave the Council an opportunity here to show me how it believes it has complied with standards 91-93 in the consultation document, and it has failed to do so fully. This response is primarily in relation to the School Organisation Code (the Code), the Welsh Language Impact Assessment (WLIA), and the consultation report. This is not relevant to this investigation, which relates to the consultation document only. The Council does not refer in its evidence to any effect considered in the consultation document in relation to the Welsh language.
- 3.9 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 should comply, and therefore any other document created by the Council during the decision-making process is irrelevant to this investigation.
- 3.10 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 confirmed by the Court of Appeal in its 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.
- 3.11 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.

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

“Seek Views”

- 3.12 Paragraph 5.1.14. of the Code of Practice states – “A body must include specific questions in the consultation document which require a response”.
- 3.13 The Council refers in its evidence to the following as evidence that it has met the element of seeking views on the proposal:

Comment/suggestions/requests/questions

If you would like to suggest any changes or alternatives to the proposals presented, please give details:

- 3.14 However, the above clause is general about the proposal itself, and does not ask for suggestions in relation to the Welsh language, and how to formulate the policy so that it would have more positive or less adverse effects on the Welsh language.
- 3.15 Looking at the consultation document, this is the only sentence that conveys that the Council is seeking views on the impact on the Welsh language:
- “An initial assessment of the impact on the Welsh language was undertaken and we would welcome your comments/views as part of this consultation on whether you consider the proposal would have a positive/ detrimental impact.”*
- 3.16 I acknowledge here that the Council is seeking views on the positive/adverse effects of the proposal on the Welsh language. However, I am not of the opinion that these clauses are specific enough to comply with the three standards. The Council must ask specific questions about the effect of the proposal on opportunities to use the Welsh language; and about the effect of the proposal on treating the Welsh language no less favourably. It does not do that here. Therefore, the Council has failed to seek the views of the public in all three of the standards in question.
- 3.17 In order to comply with these three standards, I would have expected to see the Council asking specific questions about the potential effects of the proposal on opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language; and asking the public to give their opinion on how to revise the policy so that it would have more positive effects on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language. Specific questions must also be asked to the public regarding how to formulate or revise the policy so that it would have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.

“Consideration”

- 3.18 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, and consider the options available that would enable it to make the decision in a way that would have the most positive and least adverse effects on the

Welsh language. The Council must therefore include information within the consultation document regarding how the decision will affect opportunities for the public to use the Welsh language and treat the Welsh language no less favourably than the English language.

- 3.19 In order to comply with these standards, I consider that the following three key factors need to be considered:
- The effect of the proposal on the Welsh medium education of pupils in the new building;
 - The effect of the proposal on the numbers receiving Welsh medium education in the local area;
 - The effect of the proposal on the Welsh language in the community.
- 3.20 I believe that considering the three above factors is the least a body can do to comply with these standards in relation to school reorganisation. If a body has not considered the three above factors in the context of the three standards in the consultation document, it cannot therefore be argued that it has adequately considered the effects of the proposal on the Welsh language in the consultation document.

Standard 91

- 3.21 In order to comply with standard 91, the Council must consider and seek views in the consultation document on the possible effects of the proposal on the Welsh language. As noted above, the three factors that the Council could have considered were the positive/ adverse effect of the proposal on the Welsh medium education of pupils in the new building; on the numbers receiving Welsh medium education locally; and on the Welsh language in the community.
- 3.22 As stated above in paragraph 3.8, the Council does not refer to any effect considered in the consultation document in response to the questions. Looking at the consultation document itself, the Council includes a section entitled 'Welsh Language Impact Assessment'. Here the Council considers that the Welsh language provision in the new building will not be significantly affected as the proposal relates to a controlled change through expansion of the school. It is added that the Welsh language will continue to be taught through the curriculum, and the Council will continue to comply with the standards by ensuring that all signs on the site are bilingual.
- 3.23 A section entitled 'Details of the affected school(s)', lists the schools directly and indirectly affected by the proposal. In relation to the schools that are indirectly affected, the Council stated that this is not necessarily likely, but that the proposal could indirectly affect some schools in a limited way, e.g. as a result of parents expressing a preference in relation to the preferred school for their children. Under this indirect list, the Council has included Ysgol y Ferch o'r Sgêr, and Ysgol Gyfun Gymraeg Llangynwyd.
- 3.24 In appendix C of the consultation document entitled 'Equality Impact Assessment (EIA) Screening Form', there is a section here on the Welsh Language, and asks whether the policy would have a positive or negative effect on people's ability to use

the Welsh language and treating the Welsh language no less favourably than the English language. The Council's answer to both is that there will be no effect (see table below).

	Please place an X in the relevant box			Explanation of impact
	Positive impact(s)	Negative impact(s)	No impact	
Will the policy or proposal impact on opportunities for people to use the Welsh language			X	
Will the policy or proposal treat the Welsh language no less favorably than the English language			X	

- 3.25 I acknowledge here that the Council has given limited consideration to the effect of the proposal on Welsh medium education in the new building, but there is no conscientious consideration here, only a statement that no significant effect is expected on the Welsh language provision provided at the school.
- 3.26 Recognition is given to the potential negative effect of the proposal on the Welsh schools locally. This is a very general discussion, and I would have expected to see a wider discussion of the effect on the local Welsh primary school, Ysgol y Ferch o'r Sgêr. In order to complete a conscientious assessment, the Council might have considered the effect of the proposal on local Welsh medium schools, and considered whether the new building would attract pupils from neighbouring Welsh schools as the facilities and building are new. The Council has also not considered the negative effect of the proposal on the Welsh language in terms of the increase in the number of pupils who will be able to attend the new building. This may also mean that fewer pupils are going to be able to attend the local Welsh schools as there is now more room within English medium education in the area.
- 3.27 In its response to the evidence notice, the Council explains that the increase in the size of the school is due to the fact that there are too many pupils in the existing classes as the classes are too small. According to the Council, the proposal does not increase the number of classes taught at the school, but rather addresses the size of rooms where those classes that already exist are held so that they are suitable for teaching 30 pupils. The Council explained in its evidence therefore that it does not expect to see the proposal having negative effects on Welsh-medium education in the area. I believe that this is not made clear in the consultation document, and that this could have been considered in the document so that the public better understands the effect of the proposal on Welsh-medium education locally.
- 3.28 In order to comply fully with this standard, it is expected to see conscientious consideration of the potential effects of the proposal on the Welsh language. This also includes consideration of the effect on the Welsh language in the community. One factor that could have been included is consideration of the effect of the new

building for an English medium school on the Welsh language in the community, and the fact that the school is expanding gives the impression that the Welsh language is deteriorating in the area. Linked to the second criterion to be considered, the new building may attract pupils from the local Welsh-medium primary school thus having a long-term adverse effect on the numbers of pupils moving on to Welsh-medium Secondary education, which would lead to fewer young Welsh speakers in the local community.

- 3.29 In response to the above table which states that the proposal will not affect people's opportunities to use the Welsh language or on treating the Welsh language less favourably than the English language, I question how the Council can reach this conclusion. This is because it does not give conscientious consideration to the potential effect of the proposal on the Welsh medium schools in the area in the consultation document, nor the effect of the proposal on the Welsh language in the community in general. I also consider that there is a risk here that the Council is failing to provide the public with enough information regarding the possible effect on the Welsh language by making a closed declaration stating that no adverse effect is likely.
- 3.30 Therefore, of the three expected considerations in order to comply, the Council has referred generally to the effect on the Welsh-medium education in the new building, and a reference to the potential negative effect of the proposal on Welsh-medium education locally. There is no consideration of the effect of the proposal on the Welsh language in the community.

Findings

- 3.31 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.
- 3.32 The consultation document does not do enough to seek views or convey a conscientious consideration of the possible effects of the proposal on the Welsh language. There is no consideration of the possible effect of the proposal on the Welsh language in the community, and only a broad reference to the effect of the proposal on the Welsh language in the new building and on Welsh-medium education locally.
- 3.33 This is a failure to comply with of standard 91.

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

- 3.34 I determine that the Council has failed to comply with standard 91 as the consultation document does not adequately consider or seek views on the effects the policy decision in question may have on opportunities to use the Welsh language and treating the Welsh language no less favourably.

Standard 92

- 3.35 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.

- 3.36 As I have already noted in the report, three key factors that must be considered in order to meet the requirements of these standards are the effect of the proposal on Welsh medium education of pupils in the new building; on the numbers receiving Welsh medium education locally; and on the Welsh language in the community.
- 3.37 I have already noted my disappointment that the Council did not attempt to answer this question individually and to demonstrate how it complies with standard 92 in the consultation document.
- 3.38 No consideration is given in the consultation document regarding how to formulate or revise the proposal so that it would have a more positive effect on the Welsh language in the new building. Reference is made in the consultation document to the fact that Welsh will continue to be taught through the curriculum in the new building. The Council could have considered the possibility of revising that, and a discussion of the possible options in order to increase the use of Welsh in the new building. This would mean that the policy would have a more positive effect on the Welsh language within the new building.
- 3.39 In relation to Welsh-medium education locally, insufficient context is given by the Council. A table entitled Land and Buildings shows the quality of the learning locations in the county. Ysgol Gymraeg y Ferch o'r Sgêr is on the list, with an overall condition score of C (poor; exhibiting major defects and/or not operating as intended). There is no further discussion of this in the consultation document. I am of the opinion that the Council has missed an opportunity here to give more context to the situation of Welsh-medium education in the county, so that it does not appear to the reader that substantial investment is being given to one English-medium school, but not to a Welsh-medium school that is also in a poor state.
- 3.40 Neither is consideration given in the consultation document regarding how the Council could formulate or revise the policy so that it would have a more positive effect on the Welsh language in the community.
- 3.41 Therefore, out of the three key factors to consider, the Council has not been able to consider any adjustment to the policy so that it would have a more positive effect on the Welsh language in the new building; on the numbers receiving Welsh-medium education locally; or on the Welsh language in the community.

Findings

- 3.42 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 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.
- 3.43 The consultation document does not succeed in seeking views or convey a conscientious consideration on how the policy could be formulated so that it would have more positive effects on the Welsh language.
- 3.44 This is a failure to comply with standard 92.

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

- 3.45 I determine that the Council has failed to comply with standard 92 as the consultation document does not adequately consider or seek views on how the policy could be formulated or revised so that it would have more positive effects on the Welsh language.

Standard 93

- 3.46 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 in order to avoid adverse effects, or so that it would have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.47 For this standard as well, it is expected that the consultation document includes consideration of how the policy can have a less adverse effect on the Welsh medium education of pupils in the new building; on Welsh medium education locally; and on the Welsh language in the community.
- 3.48 Again, there is no direct response to the question about this standard in the Council's evidence. From reading the consultation document, there is no consideration as to how to revise the policy so that it would have less adverse effects on the Welsh language.
- 3.49 The Council could have considered here how it is going to ensure that the new building does not attract pupils from neighbouring Welsh medium schools, which the Council has identified as a risk in the consultation document. There is also no consideration as to how to revise the proposal in order for it to have less adverse impacts on Welsh medium education within the new building, e.g. how to revise the policy to ensure that the Welsh language is not lost in a larger school where English is the main medium of education.
- 3.50 I am aware of the Council's plans to expand the size of Ysgol Gymraeg y Ferch o'r Sgêr, with the aim of increasing the number of pupils receiving Welsh medium education in the county. I believe that this is something that the Council could have included in the consultation document in order to provide the public with context regarding Welsh-medium education in the area, and also to show that plans are afoot to improve the situation of Welsh-medium education in the area as well.
- 3.51 It is also vital that the Council considers how it intends to reduce the potential adverse effect of the English-medium school on the numbers of Welsh speakers in the local community, and on the attitude towards the Welsh language locally. The Council's consultation report discusses the numbers of Welsh speakers in the area, and notes that there is "a gap in the Welsh language skills of the residents of Bridgend compared to the whole of Wales." The report goes on to consider how the school will deal with that, e.g. by offering parents and other members of the community the opportunity to attend Welsh classes on the site. This is a key factor that could have been included in the consultation document in order to demonstrate that conscientious consideration has been given to the effect of the proposal on the Welsh language in the community.

- 3.52 Considerations such as the location of the development are key to the future of Welsh language communities. I believe that developments should be sensitive to the needs of such communities and there should be an understanding of the current (and/or anticipated) linguistic profile of communities and areas. The consultation document does not cover these considerations, nor does it discuss how to reduce any adverse effect of the proposal on the Welsh language in local schools, or in the wider community.
- 3.53 Therefore, of the three key considerations to ensure compliance, the Council has not been able to consider how the policy could be formulated so that it would have less adverse effects on the Welsh language in the new building; on the numbers receiving Welsh-medium education locally; or on the Welsh language in the community.

Findings

- 3.54 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 so that it would have less adverse effects on opportunities to use the Welsh language and on treating the Welsh language no less favourably than the English language.
- 3.55 The consultation document does not succeed in seeking views or convey a conscientious consideration on how the policy could be formulated so that it would have less adverse effects on the Welsh language.
- 3.56 This is a failure to comply with of standard 93.

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

- 3.57 I determine that the Council has failed to comply with standard 93 as the consultation document does not consider or seek views on how the policy could be formulated or revised so that it would not have adverse effects on the Welsh language.

General

- 3.58 In order to comply with these standards, a conscientious effort is needed to consider the potential effects on the Welsh language. Rather, it is a superficial discussion of the Welsh language that is contained in the consultation document. I would have expected to see a real discussion of the effect of the proposal on the number of pupils in Welsh-medium schools, and the risk that building a new school in the area could attract pupils from the Welsh-medium schools, as well as how the Council intends to reduce that risk.
- 3.59 I feel that the Council has failed to include enough information in the consultation document in order to provide context of the position of Welsh-medium education in the area. I have already referred in the report to the Council's plans to invest in Ysgol Gymraeg y Ferch o'r Sgêr. I consider that the Council could have referred to this in the consultation document so that the public was aware of the intention to improve the provision of Welsh medium education locally.

- 3.60 Policy decisions relating to education provision can have complex impacts 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 impacts. 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.
- 3.61 In its evidence, the Council includes the internal guidance it uses when undertaking Impact Assessments. This guidance appears to briefly list the requirements of the three standards in relation to the consideration element. There is no reference to the element of seeking views. There is no further explanation regarding how to comply with the standards, and strengthening this internal guidance would assist in ensuring full compliance in future.
- 3.62 I note that the Council's consultation report considers 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 impacts 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 Council can then comment on them.
- 3.63 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

- 3.64 Section 77 of the Welsh Language Measure allows me to take further action where there has been a failure.
- 3.65 In the case of my proposed 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.
- 3.66 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 to seek views, and to consider the effects of the proposal on the Welsh language.

2. For the seeking views element, the Council must note that specific questions need to be asked in the consultation document which meet the requirements of the three standards. It must be noted here that asking for a general response to the consultation is not sufficient to comply, but specific questions must be asked regarding the effects of the proposal on:
 - a) Opportunities for persons to use the Welsh language, and
 - b) Treating the Welsh language no less favourably than the English language.

The Council must note in the guidance that these questions need to be clearly asked in the consultation document so that the public can give their views on the effect of the proposal on the Welsh language.

3. For the consideration element, the Council must note in the guidance that conscientious consideration needs to be given to the potential effects of the proposal on the Welsh language, and to how the policy could be formulated so that it would have more positive and less adverse effects on the Welsh language. The guidance must explain that superficial statements about the Welsh language are not sufficient to comply, and that sufficient information needs to be included so that the public is aware of the situation of the Welsh language in relation to the proposal.
4. The Council must provide training to relevant staff on how to comply with the Welsh language standards when drawing up consultation documents on policies relating to education in the county. It should raise staff awareness of the revised guidance in this training, and ensure that they are aware of all requirements of standards 91-93.
5. 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 issuing 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

6. The Council must publicise the failure to comply with standards 91, 92 and 93 by publishing this report in 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 and discussing it in internal committees.

Standards 91, 92, and 93: Publicise the Council's failure to comply in accordance with section 77(3)(c) of the Welsh Language Measure

7. I will publicise the failure to comply by publishing information about the investigation and my judgment on my website. I will do so in order to achieve my objective of educating organisations about the requirements of the policy

making standards, and to improve compliance rates with the policy making standards.

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



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Proposed decision notice

To: Bridgend County Borough Council

Case number: CS098

Date: 08/08/2022

Determination

As a result of a complaint 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 impacts, 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 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.

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 or seek views on the effects that the policy decision in question may have on opportunities to use the Welsh language and treating the Welsh language no 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 or seek views on how the policy could be formulated or revised so that it would have positive effects, or 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 does not adequately consider or seek views on how the policy could be formulated or revised so that it would not have adverse effects, or more positive effects on the Welsh 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 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 to seek views, and to consider the impacts of the proposal on the Welsh language.
2. For the seeking views element, the Council must note that specific questions need to be asked in the consultation document which meet the requirements of the three standards. It must be noted here that asking for a general response to the consultation is not sufficient to comply, but specific questions must be asked regarding the effects of the proposal on:
 - c) Opportunities for persons to use the Welsh language, and
 - d) Treating the Welsh language no less favourably than the English language.

The Council must note in the guidance that these questions need to be clearly asked in the consultation document so that the public can give their views on the effect of the proposal on the Welsh language.

3. For the consideration element, the Council must note in the guidance that conscientious consideration needs to be given to the potential effects of the proposal on the Welsh language, and to how the policy could be formulated so that it would have more positive and less adverse effects on the Welsh language. The guidance must explain that superficial statements about the Welsh language are not sufficient to comply, and that sufficient information needs to be included so that the public is aware of the position of the Welsh language in relation to the proposal.
4. The Council must provide training to relevant staff on how to comply with the Welsh language standards when drawing up consultation documents on policies relating to education in the county. It should raise staff awareness of the revised guidance in this training, and ensure that they are aware of all requirements under standards 91-93.
5. 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 issuing 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

6. The Council must publicise the failure to comply with standards 91, 92 and 93 by publishing this report in 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 and discussing it in internal committees.

Standards 91, 92, and 93: Publicise the Council's failure to comply in accordance with section 77(3)(c) of the Welsh Language Measure

7. I will publicise the failure to comply by publishing information about the investigation and my judgment on my website. I will do so in order to achieve my objective of educating organisations about the requirements of the policy making standards, and to improve compliance rates with the policy making standards.

Timetable: Within 3 months of the date of issuing 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.