



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Part 6 of the Welsh Language (Wales) Measure 2011: Freedom to use Welsh

The Welsh Language Commissioner's determination and report on an investigation into an application under section 111 of the Welsh Language (Wales) Measure 2011

2 Sisters Food Group

Ref: 2456

20/12/2018

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 use of the Welsh language. This is done by raising awareness of the official status of the Welsh language in Wales, by imposing standards on organisations, and by reviewing and investigating compliance with the Measure. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the work:

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

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Foreword

Part 6 of the Welsh Language (Wales) Measure 2011 ('the Measure') establishes the principle that an individual has the freedom to undertake a Welsh communication with another individual in Wales. This foreword summarises the main rights and duties under Part 6 of the Measure in order to give a general context only. It is not a full statement of the law and does not include all aspects of the detail and steps in that Part.

Application to Commissioner

Under section 111 of the Measure:

'An individual (P) may apply to the Commissioner for the Commissioner to investigate whether a person (D) has interfered with P's freedom to undertake a Welsh communication with another individual (R) (the "alleged interference").'

Deciding whether to investigate

It is for the Commissioner to decide whether or not to investigate an alleged interference. When deciding, the Commissioner must take into account the context in which interference is alleged to have taken place. The Commissioner may ask P, D, or any other person, for information or views relating to the alleged interference. If the Commissioner decides to do so, he or she must give P and D the relevant information about investigations.

Investigations

An investigation is conducted into an alleged case of interference under sections 115-117 of the Measure:

'115 – (2) The Commissioner may ask P, D, or any other person, for information or views relating to the alleged interference.'

When conducting an investigation, the Commissioner must, so far as it is practicable, give D the opportunity to respond to the allegations made by P.

Discontinuing investigations

In accordance with section 116 of the Measure, the Commissioner may, at any time, discontinue the investigation.

Concluding investigations

If the Commissioner decides to investigate an application, and does not discontinue that investigation, the Commissioner must determine whether or not D has interfered with P's freedom to undertake the Welsh communication. If the Commissioner determines that D has interfered with P's freedom to undertake the communication, the Commissioner must also give his or her views on the interference (including his or her views on whether the interference was justified).

The Commissioner must inform D of the determination he or she is proposing to make and, so far as it is practicable, give D the opportunity to respond to that determination, before making the determination.

The Commissioner must notify P and D of the determination and, if the determination is that interference has occurred, of his or her views on the interference.

The Commissioner may give P, D, or any other person advice about the alleged interference or any matter that relates to the alleged interference.

Reports

A report is produced under section 118 of the Measure based on the findings of the investigation.

'118 – (2) The Commissioner may produce, and give the Welsh Ministers, a report on –

(a) the application, and

(b) the action taken by the Commissioner in response to the application.

The Commissioner must give copies of any such report to P and D.

With the agreement of P and D the Commissioner may publish a report or a version of such a report or another document that relates to the subject matter of such a report. The Commissioner may also publish a public document without agreement if he or she considers that doing so would be in the public interest.

Before publishing a public document the Commissioner must, so far as it is practicable, notify P and D of the intention to do so. This will give P, D, or any other person which the Commissioner thinks it is appropriate to take account of, the opportunity to provide the Commissioner with views about the publication of a public document.

In relation to any application in which the Commissioner determines that D has not interfered with P's freedom to undertake a Welsh communication, a public document must not identify D.

1. Application to Commissioner

- 1.1 The Commissioner received a valid application under section 111 of the Measure from an individual (P) on 27/04/2018. P alleged that his employer at the time, 2 Sisters Food Group (D), had interfered with his freedom to undertake a Welsh communication with other individuals, namely a colleague who spoke Welsh in Wales (R). Specifically, the individual alleged that a staff manager from 2 Sisters Food Group had refused to allow him to answer a question asked by a colleague in Welsh during a training course in October 2017. The application is written and provides an address at which the Commissioner can contact P.
- 1.2 The application identifies D and describes the alleged interference.
- 1.3 Two individuals attempted to undertake a direct Welsh communication in Wales. The individuals wished to use the Welsh language with one another in undertaking the communication.

2. Deciding whether to investigate

- 2.1 On the basis of P's application and after considering the specific matters under section 114 of the Measure, the Commissioner decided to open an investigation under part 6 of the Measure during a meeting of the Investigations and Enforcement Panel on 14/06/2018.
- 2.2 The Commissioner provided P and D with the procedure for conducting an investigation under Part 6 of the Measure and the Commissioner's powers in relation to such an investigation, in accordance with section 114(3)(c) of the Measure.

3. The investigation

- 3.1 This document is the Commissioner's determination on the investigation conducted in response to P's application under sections 115-117 of the Measure and the Commissioner's report under section 118 of the Measure. The aim of the investigation was to enable the Commissioner to determine whether or not D interfered with P's freedom to undertake a Welsh communication.
- 3.2 Section 115 of the Measure gives the Commissioner the discretion to specify the procedure for conducting an investigation. The procedure was outlined in a letter to P and D, dated 17/07/2018. The parties were asked to respond to specific questions regarding the alleged interference and they were invited to provide any additional information or views which they believed were relevant to the investigation.
- 3.3 P and D responded as follows:
 - No response was received from P.
 - A response, dated 25/07/2018, was received from D on 31/07/2018.

4. The findings of the investigation

P's allegation

- 4.1 An allegation was received by P who was a member of staff at the 2 Sisters Food Group (D) company on 27 April 2018. P alleged that the company's Health and Safety Manager had refused to allow P to respond to a Welsh language question asked by a colleague in Welsh. According to P, this occurred during a training course in October 2017.
- 4.2 According to the details provided by P, the Health and Safety Manager was the trainer on the course. P states that the trainer said "No Welsh please" when a colleague asked P a question in Welsh.
- 4.3 P explained that he responded rudely to the order not to answer in Welsh, and he told the Commissioner that he felt that this order not to respond in Welsh was derogatory. P explained further that he believed no one had the right to prevent someone else from speaking Welsh.
- 4.4 According to P, the incident led to an investigation into P's behaviour and, according to P, his right to use Welsh was disregarded.
- 4.5 P explained that he was unwilling to use the Welsh language at work following the incident, and that he felt he was under closer supervision by the site's safety officers and managers as some believed he was a dangerous nationalist.
- 4.6 P contacted the Commissioner seven months after the incident. According to P, he did not want to make contact before then as he was afraid of losing his job and he was afraid that his colleagues would not confirm his story.
- 4.7 In presenting his allegation P explained that he had complained to his line manager and the trainer on the course informally. According to P, his manager told him to be more inclusive and to not stir up trouble.
- 4.8 From the information provided, the Commissioner's understanding is that P alleges that he was prevented by D from using the Welsh language when undertaking a communication with a colleague in Wales.

D's reponse

- 4.9 In its response, D explained that P and the Health and Safety Manager who was responsible for the training course have since left the company. However, D explains that a report was written by the Health and Safety Manager following the incident in question.
- 4.10 In the Health and Safety Manager's report of the incident, it is explained that the Health and Safety Manager was conducting a Health and Safety training course which was attended by P. During the briefing P behaved in a disruptive and uncooperative manner. According to D, it was reported that P had shouted to the group that the training was a waste of time. D then explains that P proceeded to engage in a conversation with the assembled group in Welsh. According to D, as a non-Welsh speaker, the Health and Safety Manager requested that the conversation took place in English so he could be included. According to D, the Manager was advised to learn Welsh.

- 4.11 In its response D explains that the training was around 'Isolation and lock-off' of machinery and therefore it was imperative for the Manager to ensure that all delegates were competent and understood the full content of the course. As a result, the Health and Safety Manger did not feel that his request for P to converse in English was unreasonable or a breach of his freedom to undertake a Welsh communication with another individual.
- 4.12 D provided general information on the linguistic situation on the company's site in Llangefni. According to D's evidence, the Welsh language is spoken freely on the site and the company explains that the majority of the workforce is Welsh speaking. However, it is explained that a proportion of individuals of other nationalities also work on the site therefore English is the business language of the company. According to D, the company works closely with its employees to accommodate requests for meetings or interviews to be conducted in Welsh.
- 4.13 The company did not support the actions taken by the manager nor did it criticise them. It only explained what happened during the course. The company did not mention conducting any training to raise awareness of the area's linguistic situation.

5. Completing the investigation

- 5.1 After considering all the information noted above, the Commissioner has come to the following conclusions:
- 5.1.1 D acknowledges that the Health and Safety Manager who was employed at the time asked P to continue his conversation in English so that he could be included. On the basis of this information, the Commissioner determines that D interfered with P's freedom to undertake a Welsh communication.
- 5.2 Therefore the Commissioner gives her views on the interference below (including, but not limited to, her views about whether the interference was justified).
- 5.2.1 It appears to the Commissioner that P believes that he had reason to speak to his colleague in Welsh and he exercised his right to do so in Welsh.
- 5.2.2 Situations arise in bilingual workplaces, or multilingual workplaces in this case, where discussions need to take place in a language which everyone understands. However, in this case it was a conversation between P and his colleague or colleagues and not everyone present needed to be part of the conversation.
- 5.2.3 The Commissioner understands that everyone must understand health and safety matters and that the aim of the training was to ensure that the workers fully understood the matter in question. However, the conversation in question was not providing information on health and safety. There may be cases where health and safety is a reason for using one language in the workplace. However, I do not believe that all matters relating to health and safety need to be conducted in English. The conversation was not contributing towards achieving the objectives of the training, and it did not mean that the Manager would not understand a health and safety matter. Therefore, the fact that the communication occurred during a health and safety training course is irrelevant. Part 6 of the Measure gives individuals legal freedom to use the Welsh language in Wales. Therefore, in a

situation where two individuals wish to discuss business matters or other matters with one another in Welsh, there should be no interference with their freedom to do so in any way.

- 5.2.4 When a manager instructs staff at a lower level to use English, then I believe an officer at a lower level would feel under pressure to comply with the manager's request and would possibly worry about being subject to a detriment if they chose to continue to speak Welsh in contrary to the manager's instructions. This is how P felt according to his evidence to the Commissioner. Instructions, such as those given by the Health and Safety Manager to P, can convey the message that speaking Welsh is not welcomed in the workplace.
- 5.2.5 The company must consider the possibility that the Health and Safety Manager's lack of understanding of the linguistic nature of the area and the workforce led to his instruction not to speak Welsh. If this was the reason behind the Manager's request for those present not to speak Welsh then the employer should shoulder some of the responsibility for this.
- 5.2.6 The Commissioner believes that D interfered with P's freedom to undertake the Welsh communication, and that there was no justification for that interference. In this instance, the result of the interference was that P felt degraded and did not feel confident to speak Welsh in the workplace.
- 5.3 Section 117 (4) of the Measure states that the Commissioner is required to notify D of the determination which the Commissioner proposes to make and of the opinion which the Commissioner proposes to give on the intervention. In accordance with this duty, 2 Sisters Food Group was informed of the Commissioner's proposed determination and opinion on 14 November 2018. Subsequently, additional information was received from the company in a letter, dated 26 November 2018. The additional information outlined in the letter did not provide further detail on the incident in question, but rather provided the company's response to the investigation and the proposed determination.
- 5.4 The company explained that the events leading up to the complaint had been taken very seriously by the company and that appropriate support measures had been put in place to ensure that P's request that further meetings be held in Welsh could be realised.
- 5.5 The company explained that 40% of the on-site management team in Llangefnï spoke Welsh, as well as half of the HR officers and 10 other members of staff who are in positions that supervise or support other staff also speak Welsh. In addition to this half of the union representatives also speak Welsh.
- 5.6 The company explains that the Welsh language is used extensively across the site and that the use of the Welsh language is seen as the 'norm'. The company therefore explains that the formalisation of the use of Welsh had not previously been considered as the use of Welsh was very common on the site and speaking Welsh was commonly accepted
- 5.7 However, the company accept the Commissioner's comments and have made changes in order to formalise the company's commitment to supporting the rights of their employees to speak the language they choose to speak, with an emphasis on the Welsh language because of the location of the site. The company intends to include the following paragraph in the Equal opportunities policy which is in the 2 Sisters Staff Handbook:

“Although the established Language of 2Sisters Food Group is English we recognise each individuals' freedom to speak Welsh at work. No person will be

prevented from using the Welsh Language. Key departments within 2Sisters Llangefni have appointed English and Welsh speakers to further strengthen our freedom of language”

- 5.8 It is also explained that posters will be displayed on display boards informing staff that there are signs with the red dragon available to put on Welsh speakers' workstations if they wish to do so.
- 5.9 The company thanked the Commissioner for the advice in the report. The company hoped that the actions they have taken show how serious they are about the welfare of staff and the freedom of staff to use their own languages.
- 5.10 I welcome the steps the company has introduced. The information that the company has submitted has not changed my determination on the interference with the freedom to use Welsh

6. Advice

- 6.1 In accordance with section 117(7) of the Measure, the Commissioner gives D the following advice about the interference:
 - 6.1.1 Part 1 of the Measure gives the Welsh language official status in Wales. As an organisation which conducts its business in Wales, 2 Sisters Food Group should give full consideration to its official status by providing guidance to its staff and managers regarding individuals' freedom to speak Welsh at work.
 - 6.1.2 2 Sisters Food Group should raise the awareness of its managers and the rest of its staff of the principle that staff should not be prevented from using the Welsh language. It should consider including this in human resources documents.
 - 6.1.3 2 Sisters Food Group should consider the best way of raising the awareness of staff and managers in Wales and beyond of the Welsh language.
 - 6.1.4 2 Sisters Food Group should state in a policy document that the company's staff will not interfere with individuals' freedom to use the Welsh language with one another and that the company will not condone bans or restrictions on staff speaking Welsh with other staff who also wish to use the Welsh language.

7. Inquiries

7.1 The Commissioner would like to thank the relevant parties for their cooperation in conducting this investigation.

7.2 Any inquiries regarding the investigation report should be referred to:

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