

Dear Commissioner,

**Challenging future duties: Consultation in determining an application by Neath Port Talbot County Borough Council [section 57(4) of the Welsh Language (Wales) Measure 2011]**

I write in response to your letter dated 6 June 2016.

First, I thank you for agreeing to extend the deadline for submitting a response to your correspondence. For the reasons explained to your staff, it would have not been possible to provide a response within the initial timetable of ten working days. The extended timetable has enabled elected Members to formally consider your correspondence and to properly scrutinise the Council's response, respecting their democratic mandate.

However, the Council very much regrets that you have not been prepared to remove the "confidential" status attached to your correspondence. We consider these matters to be very much in the public interest and we have placed all of the responses to the various consultations in the public domain. Additionally, we have been free to share our considerations and proposals with other bodies subject to the standards (and they with us) enabling us to identify options for meeting the standards that we had not considered, as well as enabling standards that pose a difficulty in a number of organisations to be highlighted. I urge you to reconsider your position on this point. However, as per the email correspondence sent to your office (dated 6<sup>th</sup> July 2016), the Authority has determined that it is not able to present the report containing the draft response to the Policy & Resources Cabinet Board (14<sup>th</sup> July 2016) as an "exempt report" for the statutory reasons outlined in that correspondence.

In your letter, you make reference to the Council's initial Challenge sent to you on 15 January 2016 and comment on an opportunity given on 3 February to provide further information in support of our Challenge. You point out that we did not provide additional information; but there was no indication at the time that you were intending to set such a high evidential threshold to inform your consideration of the Challenge. Had there been clear guidance on this point, then we would have responded

differently. When we sent our Challenge to you, we considered that we had set out the main arguments as to why the standards, subject of the Challenge, were problematic. Consequently, there cannot be adverse inference drawn of the fact that the Council did not submit additional evidence following your correspondence of 3 February 2016.

However, I welcome your invitation to make suggestions as to where the standards could be varied to make the standards reasonable and proportionate. You will see in the attached document that we have identified 21 standards where we could comply if you were minded to adopt the variations that we have proposed. We also note and welcome the additional clarification and/or changes to a further three standards which, if the standards remain as now drafted, would be acceptable to the Council. I hope you will appreciate that we have invested considerable time in identifying such variations and I hope that you will respond positively to our proposals.

Whilst we have been able to see ways to embrace the 24 standards referred to above, provided the variations are agreed, there are 30 standards which the Council is proposing are not applied at this time. There are a range of reasons for arriving at this position, not least the additional cost in times of severe budgetary constraints; deficits in the linguistic capability of our current workforce and in some particular instances, because the Council does not have the practical means to comply with the requirements. We maintain that the evidence that we have provided previously and now demonstrates that the 30 standards are unreasonable and disproportionate at this time. However, I also want to make it clear that the Council is open to revisiting these standards in the future when circumstances change.

I would like to draw your attention to the following sentence on page 26 of your initial findings:

*2.36 ..... You must also comply with standards 65 and 65A from the day your rights of appeal are exhausted.*

We have presumed in our response this has been included in error as these standards have not been applied to this Council. I would be grateful for clarification on this.

I am sure you will know that local authorities have many statutory duties to discharge. Adherence to the Welsh Language Standards is one of very many requirements that we must try to respond to. It is essential that your work also reflects this reality and that there is a proportionate and reasonable approach to identifying what is possible in our local circumstances at this point in time, balancing the aims behind the Welsh Language (Wales) Measure 2011 with other rights and duties that arise from other legislation. Indeed, the Welsh Language Standards (No.1) Regulations 2015 requires this of you. I believe that the position we are now proposing to you enables an appropriate balance to be given to the introduction of the Welsh Language Standards set against the other significant duties and responsibilities that we have to shoulder.

I also believe that the process that has been followed would benefit from review. This is a point I have also made to the Welsh Government and is one that I believe they accept. I am sure we all accept that there are improvements that can be identified and which should inform future practice. In particular, if Councils had been asked to identify standards to you that could be met in the first instance, rather than councils being required to respond to a set you had decided should apply, we could have moved forward much more quickly together and with considerably less effort. This could have been accompanied by an agreed continuous improvement plan that identified how other standards could be achieved within a given period to bring all councils to a more consistent position but at a pace that reflected their own starting points. I offer this to you as a suggestion that has merit and in recognition of the way in which the standards will be gradually introduced to more organisations in the coming years.

This brings me to my final point. I do not think that relying on a written exchange of views is conducive to developing a shared understanding of what is possible in our local circumstances and I would therefore request that you agree to a meeting to discuss our submission, prior to you coming to your final determination. I make the point that I wrote to you twice last year on 24 July 2015 and 15 October 2015 in an attempt to initiate a dialogue on these matters; but did not receive a response on either occasion. I understand that there have been meetings between council officers and your officials in some parts of Wales and we would seek the same opportunity.

It is not in the public interest for there to be further Challenge between two public bodies and we would certainly wish to avoid the necessity to resort to the Welsh Language Tribunal to resolve our genuine concerns. I look forward to your response.

Yours sincerely,

**Steven Phillips**  
**Chief Executive**