



Ein cyf/Our ref SF/LA/0738/12

Meri Huws
Welsh Language Commissioner
5-7 Market Chambers
St Mary Street
Cardiff
CF10 1AT

25 February 2013

Dear Meri,

Welsh Language Standards

Thank you for your letter dated 28 November 2012 presenting your report following your non-statutory consultation on standards and the Welsh language, which proposed 37 standards for my consideration – and asked that I set the standards on a statutory basis.

The work you have done has been helpful and has, I think, moved the dialogue forward with regard to standards. Your consultation has been useful and your meetings with key stakeholders have served to raise the profile of the Measure and the language – including within new stakeholder communities.

I understand that my officials have met with yours, including the Deputy Commissioner, to discuss your proposals – and to gain a better understanding with regard to how your standards would be put into operation. I am grateful to them for the time they have taken to brief my officials and to respond to their queries.

As you know, the Welsh Government strongly supports the Welsh language and is determined to see it thrive. As a Welsh learner myself, I am anxious to ensure that the Government does all it can to support the language and to deliver, in full, the policy aims represented by the Welsh Language (Wales) Measure 2011. In particular, I want to see rights established for Welsh speakers, with regard to Welsh language services. I want to ensure that Welsh speakers and the organisations that serve them are as clear as possible about what those rights mean in practice. I want to reduce the administrative burden on organisations required to deliver Welsh language services, so that they can focus on improving the delivery of those services. I want to ensure more consistency between organisations with regard to the provision of Welsh language services. These aims reflect the vision presented to the National Assembly for Wales by the Welsh Government during the passage of the Measure – and I am fully committed to delivering it.

I have read your consultation document carefully – and have also given full and due regard to your advice to me and your proposed standards. I fully support the principle set out in the Measure, and reflected in your proposed standards, that, in Wales, the Welsh language should be treated no less favourably than the English language. I also recognise, as did the Assembly, that any Welsh language duties to be imposed on organisations need to be reasonable and proportionate.

I would very much like to be in a position to take your standards forward and present them to the National Assembly for Wales for approval but I regret that based on policy considerations as well as legal advice, I am unable to make the standards as currently set out in your report. I will say more about my decision, below. One key issue, however, would be the need for me to take the regulations making the standards through the Assembly. With this in mind, I believe that the model you propose is too complex (which raises a problem, given the declared aim of reducing the administrative burden on organisations required to deliver Welsh language services) and it creates significant difficulties with regard to preparing a Regulatory Impact Assessment. I am also of the view that your standards, coupled with the implementation model you propose, will not achieve our shared policy aim of providing clear linguistic rights to citizens. As such, I have concluded that I cannot proceed with your proposals as they stand.

I am very keen, however, to work with you to build on your consultation exercise and, taking the responses to that exercise into account, to seek a clearer, simpler, and quicker approach to work towards fulfilling the aim that in Wales, the Welsh language should be treated no less favourably than the English language. I want us to return our focus to the vision presented to the National Assembly for Wales during the passage of the Measure as we do so, in order to achieve clear linguistic rights for citizens.

My response should not be entirely unexpected. You will recall that Emyr Roberts wrote to you on 10 August 2012, during your non-statutory consultation exercise (annex 1). In his letter, Emyr reminded you of some of the key principles and considerations that should be borne in mind with regard to Welsh language standards, reflecting the commitments made to the National Assembly for Wales by the previous Government. I am of the view that you have not taken those principles and considerations fully into account. I will return to this, below, as I address the issues which have led me to this decision.

The process undertaken to date

I am concerned by the fact that you have not undertaken a standards investigation, in accordance with sections 61 to 64 of the Welsh Language (Wales) Measure 2011. The fact that you did not undertake such an investigation means that you were unable to provide me with the information referred to in that part of the Measure, including your views with regard to the need to ensure that requirements for persons to comply with standards are not unreasonable or disproportionate.

You will also recall that my officials prepared a presentation setting out, step by step, how the Measure was intended to be implemented (annex 2). The presentation was given to your team, in Llandinam on 13 December 2011. I understand that you were not able to be taken through the presentation by my officials, but that they provided you with a copy of the presentation. The presentation set out in detail the steps to be followed and referred to the desirability of ensuring that your report to me would assist with the preparation of a Regulatory Impact Assessment to accompany the regulations making standards. Your report, however, does not offer the evidence which would assist me with that task.

Emyr Roberts' letter of 10 August 2012 also enclosed a copy of a letter submitted by Alun Ffred Jones AM, on 14 June 2010, to the Third Assembly's Legislation Committee no 2,

during its scrutiny of the proposed Measure. That letter (annex 3) made clear the expectation that the Commissioner would undertake a standards investigation before sending a standards report to Welsh Ministers. That expectation was reinforced during the Committee meeting on 17 June 2010, when Alun Ffred Jones explained that:

‘In the majority of cases, we expect that the procedure set out in the proposed Measure will be followed in that the Commissioner will undertake a standards investigation and send a copy of his or her standards report to Welsh Ministers.’

Your proposed standards

Following publication, on 28 November 2012, of your *Overview of Responses* and your revised, proposed standards, Caroline Turner wrote to you on 17 December 2012 (annex 4), setting out our concerns about your proposals.

Following my officials’ meetings with the Deputy Commissioner and her team, I’m afraid that those concerns remain. For instance, some proposed standards are unclear in their meaning; some go beyond the scope of the Measure; some of the proposed standards contradict other proposed standards; some of the proposed standards would be unreasonable and disproportionate for a great many organisations.

For example, standards such as standard 1(b), which states that ‘In the delivery of services...the Welsh language must be treated no less favourably than the English language’. As noted in Caroline Turner’s letter, if it is your intention to ensure, through compliance notices, that duties to be imposed under standards such as 1(b) are reasonable and proportionate, then the form and content of these notices as well as their effect in terms of the relationship between codes of practice and standards is not clear. I believe that such a compliance notice would be complex – and would make it difficult for a member of the public to understand what Welsh language services should be available. I am also concerned that standards of this nature would mislead the public, in that the services provided will, in many cases, fall short of the impression given to them by the standard. I understand that my officials have asked for an example of a compliance notice dealing with the above, but that this has not been provided.

I am also aware that many of the respondents to your consultation expressed their concerns about the reasonableness and proportionality of the standards. It is not clear to me what account has been taken by you of these concerns in formulating your proposed standards.

The complexity of your proposed model

I am also concerned by the procedure you suggest with regard to the steps to be taken in order to make the standards and impose duties on persons. You propose a three stage approach whereby Ministers make the standards, followed by you undertaking a standards investigation, followed by Ministers making regulations under section 39 of the Measure to make those standards specifically applicable to a person or persons. This route is more complex and more time-consuming than the route envisaged during development and scrutiny of the Measure.

I estimate that, following the process envisaged during scrutiny of the Measure, I would be able to make the first standards before the end of 2014. This would result in the first compliance notices being imposed quicker than in your proposed model, whereby the two sets of regulations would be made separately – both of which would require impact assessments and consultation. Indeed, I estimate that following the process recommended

by you would result in a delay to at least mid 2015. I am afraid that such a delay would be unacceptable to me.

Conclusion

In summary, the reasons that I am unable to support the proposed standards set out in your report are:

A standards investigation has not been undertaken;

You have not provided evidence to assist with the preparation of a Regulatory Impact Assessment;

The nature of the standards, and the uncertainty with regard to compliance notices, would make it difficult, if not impossible, to prepare an RIA. Even if we were to consult with the organisations involved, the practical implications of your standards are not clear, which would make it difficult for them to provide sound estimates with regard to the cost of compliance;

The model you propose with regard to the imposition of duties is complex. To my mind, it is more complex than the process used to develop and approve Welsh language schemes and would, therefore, be a step backwards as far as the aim of reducing the administrative burden on organisations is concerned;

Compliance notices would be complex. You also propose that every organisation should prepare compliance strategies setting out how they would comply with the duties imposed on them. Taken together, I believe that these steps would reduce consistency between organisations, with regard to the provision of Welsh language services. Ensuring greater consistency between organisations was a key aim of the Measure, as set out in its accompanying Explanatory Memorandum;

Organisations would not be clear with regard to the Welsh language services they are required to provide. This is especially true given that, as your officials explained to mine, you do not propose to approve compliance strategies. As a result, it could be difficult for them to plan their delivery of Welsh language services since they could not be confident that you would consider them adequate;

I am of the view that your standards, coupled with the model you propose, will not achieve our shared policy aim of providing clear linguistic rights to citizens.

Other key issues, for instance:

- some of the proposed standards appear to be beyond the scope of the Measure;
- some of the proposed standards contradict other proposed standards;
- many of the proposed standards would appear to be unreasonable or disproportionate.

It is not clear to me what account has been taken by you in formulating your proposed standards of the concerns expressed by many organisations in their responses to your consultation;

Your model by setting broadly scoped standards would require you to determine the details of what bodies are expected to do, by means of a compliance notice. That changes the emphasis in terms of democratic accountability from what was foreseen when the Measure was passed.

Next steps

As I mentioned above, I fully share your desire to work towards fulfilling the aim of ensuring that, in Wales, the Welsh language should be treated no less favourably than the English language. As such, I propose to build on your consultation to develop a set of standards that will fully meet the policy aims reflected in the Measure and the commitments given to the National Assembly for Wales. With this in mind, I understand that you considered other

options with regard to standards, prior to your consultation. I would be happy to have sight of those.

I look forward to taking this work forward – and I fully intend to liaise closely with you as I do so. I am also keen that our officials should continue with their discussions about standards. The agenda for those discussions should include the preparation of codes of practice, under section 68 of the Measure, which I am keen to see prepared as soon as possible.

Yours sincerely

A handwritten signature in black ink that reads "Leighton Andrews". The signature is written in a cursive style with a large, sweeping initial 'L'.

Leighton Andrews AC / AM
Y Gweinidog Addysg a Sgiliau
Minister for Education and Skills