



JUDICIARY OF
ENGLAND AND WALES

21st December 2020

The Queen on the application of
ANNE-MARIE DRIVER

Claimant/Respondent

-and-

RHONDDA CYNON TAF
COUNTY BOROUGH COUNCIL

Defendant/Appellant

-and-

(1) THE WELSH LANGUAGE COMMISSIONER
(2) THE WELSH MINISTERS

Interveners

JUDGMENT SUMMARY (available in Welsh and English)

Important note for press and public: this summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided.

1. This was an appeal from Mr Justice Fraser, who quashed a decision made by Rhondda Cynon Taf County Borough Council (“Rhondda Cynon Taf”), taken on 18 July 2019, to implement three proposals proposing the closure of certain schools and the establishment of new schools in the Pontypridd area.
2. The claimant, Ms Driver, was a member of a campaign group called “Our Children First – Ein Plant yn Gyntaf”. Rhondda Cynon Taf consulted on proposals to reorganise schools, and then published four statutory notices making proposals (i) to alter the age range of the Cardinal Newman Roman

Catholic Comprehensive School from 11-19s to 11-16s, (ii) to close Pontypridd High School (for 11-19s) and Cilfynydd Primary School and to open a new school for 3-16s, (iii) to close Hawthorn High School (for 11-19s) and Hawthorn Primary School and to create a new school without a sixth form, and (iv) to close Ysgol Gynradd Gymraeg Pont Sion Norton (a Welsh medium primary) and Heol y Celyn Primary School (dual medium) and to open a new Welsh medium primary school.

3. The main issue was as to the proper construction of the School Standards and Organisation (Wales) Act 2013 passed by the Senedd Cymru in both Welsh and English texts in 2013.
4. In the English language, the School Standards and Organisation (Wales) Act 2013 provided that certain proposals for school reorganisations required the approval of the Welsh Ministers. Section 50(1) provided that those proposals which “affect sixth form education” required such approval. Section 50(2) provided that “[p]roposals affect sixth form education if - (a) they are proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age”.
5. In the Welsh language, section 50(1) of Deddf Safonau a Threfniadaeth Ysgolion (Cymru) 2013 provided that “cynigion yn effeithio ar addysg chweched dosbarth” required approval from the Welsh Ministers. Section 50(2) provided that “[m]ae cynigion yn effeithio ar addysg chweched dosbarth - (a) os ydynt yn gynigion i sefydlu neu derfynu ysgol sy’n darparu addysg sy’n addas at anghenion personau sydd dros oedran ysgol gorfodol yn unig”.

6. The judge decided that the words “proposals to establish or discontinue a school providing education suitable only to the requirements of persons above compulsory school age” and “yn gynigion i sefydlu neu derfynu ysgol sy’n darparu addysg sy’n addas at anghenion personau sydd dros oedran ysgol gorfodol yn unig” encompassed proposals to close a school that provided sixth form education, whether or not that school also provided education to other age groups. Accordingly, the judge held that Rhondda Cynon Taf’s second and third proposals (in paragraph 2 above) had to be referred to the Welsh Ministers.
7. Rhondda Cynon Taf appealed to the Court of Appeal, contending that the statute referred only to proposals to close schools that only provided sixth form education, so that the second and third proposals did not need to be referred to Welsh Ministers.
8. The Court of Appeal (Sir Geoffrey Vos, Chancellor of the High Court, Lady Justice Nicola Davies and Lord Justice Lewis) allowed Rhondda Cynon Taf’s appeal deciding that its second and third proposals did not need to be referred to the Welsh Ministers. A proposal for the establishment or closure of a school only fell within section 50(2) of the 2013 Act if the school provided education only for those above compulsory school age.
9. The Court of Appeal referred to section 156 of the Government of Wales Act 2006, which provided that the English and Welsh texts of any Senedd Act which is in both English and Welsh are to be treated for all purposes as being of equal standing. It said that the best approach to the interpretation of bilingual legislation, where different language texts bear different meanings, and where it was not possible to reach an interpretation consistent with the literal meaning

of both language versions, was to discern the legislative intention by reference to the purposes or objects of the legislation as they appeared from the texts. Where legislation was enacted in two languages of equal standing, and the parties submit that there is, or may be, a conflict, difference or distinction between the two language versions, detailed analysis of each version may be necessary. Where it was not suggested that the different language versions differ in meaning, the court could be sure that either version reflected the intention of the legislature.

10. The Court of Appeal also decided that judge had been wrong (i) to conclude that Rhondda Cynon Taf had failed to comply with paragraph 1.9 of the School Organisation Code, when it approved the fourth proposal, and (ii) to find that Rhondda Cynon Taf had failed to comply with paragraph 1.4 of the Code and to have regard to the impact of the closure of the Welsh medium primary, Pont Sion Norton, on Welsh medium education generally. The Court of Appeal, therefore, decided to consider afresh the question of whether Rhondda Cynon Taf had breached the Code. It decided that Rhondda Cynon Taf had not breached the Code. The documentation made clear that the proposed new Welsh medium primary school would have 93 more Welsh medium primary places than the previous schools, and would provide sufficient places for anticipated demand over the coming years. Moreover, Rhondda Cynon Taf had addressed the accessibility of the proposed new school, the transport issues affecting pupils of the former schools and whether the proposal would place a barrier to the take up of Welsh medium primary education.

11. Accordingly, Rhondda Cynon Taf's decisions to implement the second third and fourth proposals was lawful and the appeal would be allowed.