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Mind your language

While the court was highly critical of Denbighshire County Council's decision to close a Welsh-language primary school, the judgment may only be a short-lived victory, writes **Ane Vernon**

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Issues involving the education or schooling of children in a regional or minority language typically generate passionate debate. A controversial decision by Denbighshire County Council to close a small Welsh-language primary school in the village of Pentrecelyn in rural Wales was challenged in an application for judicial review earlier this year (*R (Aron Wyn Jones) v Denbighshire County Council* [2016] EWHC 2074). It was only the second case since the High Court was established in 1875 in which written and oral submissions had been made in Welsh.

The closure of a Welsh-medium primary school is a sensitive issue in light of the decline in the number of native Welsh speakers. The 1911 census showed that 43.5 per cent of the population in Wales were Welsh speakers; in 2011 only 19 per cent could speak Welsh. When the UK signed the European Charter for Regional or Minority Languages in respect of Welsh, Gaelic, Irish, and Ulster-Scots, it undertook to make available primary and secondary education in the relevant regional or minority languages.

A report commissioned by the Welsh government, issued earlier this year, noted that Welsh-medium education was not meeting demand in some areas and was undermining the Welsh government's commitment to ensuring the growth of Welsh-medium education. Local authorities were encouraged to ensure that local decisions, policies, and procedures reflected the vision for Welsh-medium education.

School closure

Ysgol Pentrecelyn is a Welsh-medium primary school with accommodation for 56 pupils aged 4 to 11 years. It is designated as a category 1 Welsh-medium school with virtually all teaching in Welsh, which is also the language of the school administration and the playground. The council's plan was to merge Ysgol Pentrecelyn with a slightly larger bilingual primary school.

The new school was proposed to be dual stream, with teaching in Welsh and English existing side by side. The plan was to close both schools and in the first phase open the new school on the existing two sites. In the second phase of the proposal, after about a year, the new school would be established on a new single site.

The council's decision was challenged by a representative claimant, a 19-year-old former student with younger siblings still at the school. In addition, the claimant was supported by a local campaign group. The judgment was highly critical of the council's decision and ordered that it should be quashed.

The closure or alteration of a school in Wales is governed by the School Standards and Organisation (Wales) Act 2013. As required by the Act, in 2013 the Welsh ministers published a code on school organisation, which contains requirements and guidelines to be followed unless there is justification for departure.

A school closure, such as was proposed here,

requires an assessment to be carried out as to the impact on the community and the Welsh language. The consultation process 'should be undertaken when proposals are still at the formative stage' and 'should include enough information and reasons for specific proposals to ensure intelligent discussion and response'. The consultation document should cover:

'When proposals include establishing a new school… the new school's… location… [and] details of the proposed buildings and rooms, including a list of the proposed facilities;

'When proposals include closing a school… the impact of proposals on the local community, particularly in rural areas…[and] the likely impact on staff of schools named in proposals; [and]

'When any school that is part of a proposal or which is affected by a proposal teaches through the medium of Welsh… the effect of the proposals on the Welsh language'.

Unlawful and unwise

The claimant argued that in determining to implement the first phase of the proposal, the council failed to take into account the language and community impact of the second phase.

The court agreed and held that the decision to initiate the temporary arrangements of the first phase without some appreciation of the risks – in terms of the adverse impact on language and community – that lay ahead was 'unlawful as well as unwise'.

The claimant also contended that the consultation document was so inconsistent and unclear about the scope of the exercise that it was not possible to respond intelligently to it. The court agreed and found the document to be 'hopelessly confused'.

In addition, the court found it 'highly regrettable' that there were significant differences between the two language versions of the consultation document: 'A person reading such a document in either language is entitled to expect that there are no significant differences between the two language versions.'

The judges hearing the application reminded the claimant and his supporters of the limited effect of the ruling quashing the council's decision: the decision was quashed on procedural grounds and not on the merits.

The quashing of a decision on procedural grounds will in many cases render the sense of victory of the successful claimants short-lived. More often than not, the relevant issue that was the subject of the judicial review is remitted to the original decision maker, who can commence a fresh process with the benefit of the court's guidance set out in its judgment. The decision maker, so long as it follows the guidance of the court, is not obliged to come to a different decision to its initial determination. Nevertheless, the potency of litigation can focus the minds of the decision makers to substantially rethink their initial policy. SJ

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