



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Investigation into an interference with an individual's freedom to use Welsh

Bupa Dental Care (D)

Reference Number: *Rhydd1*

This document is an abridged version of the full report given to the Welsh Ministers under section 118(2) of the Welsh Language (Wales) Measure 2011 (of which a copy was given to the applicant and the organisation under investigation). This public document was published in accordance with section 118(4)(b) of the Measure.

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1. Background

- 1.1 The Welsh Language (Wales) Measure 2011 establishes the principle that individuals in Wales have the freedom to communicate in Welsh with one another.
- 1.2 Individuals who feel that an organisation or person has interfered with their freedom to use Welsh may ask the Commissioner to investigate their case.
- 1.3 On 15 April 2021, I received an application from an individual (P) asking me to investigate whether Bupa Dental Care (D) had interfered with their freedom to undertake a Welsh communication with another individual.
- 1.4 P's application related to alleged interferences associated with a dental practice in Wales. D is responsible for the dental practice.
- 1.5 Based on P's application and D's comments, I decided to investigate the alleged interferences.
- 1.6 P's application claimed that statements made by D in the following correspondence equated to interference with his freedom to communicate in Welsh with staff at the practice:
 - email from the practice manager
 - letter from Bupa Dental Care Regional Operations Director.

2. Interference 1

2.1 The Welsh Language Measure confirms that a person (D) would be interfering with an individual's (P)'s freedom to undertake a Welsh communication with another individual (R) if D:

“[...] indicates that P or R should **not undertake**—

- (a) a particular communication in Welsh that is a Welsh communication¹, or
- (b) **a category of communications in Welsh consisting (wholly or partly) of one or more Welsh communications.**

2.2 The Measure states that one way of doing this would be to instruct P not to undertake a particular Welsh communication or a category of Welsh communications.

2.3 On 22 March 2021, the practice manager (X) emailed P on 22 March 2021.

2.4 The correspondence was sent to P following a series of communications between P and another member of staff at the dental practice (A) in Welsh only.

2.5 The email included the following statement:

“[...] all communication should be either in English or bilingual in order that the whole team can understand instruction”.

2.6 Through this statement, D indicated to P that all future communications should be made in either English only or bilingually (namely in English and Welsh).

2.7 The practical effect of this statement was that D had indicated to P that he should not undertake a communication in Welsh only and should not undertake a communication in Welsh without also repeating that communication in English.

2.8 In doing so, D indicated that P should not undertake a category of Welsh communications.

2.9 The investigation highlighted that there was disagreement between D and P over exactly which communications X was referring to when instructing P to undertake "all communication" in English or bilingually from then onwards.

2.10 D's view is that the statement was relevant only to communications made between P and X. P's view is that the statement was referring to communications made with any staff in the workplace, including those communications made between P and A and any other Welsh-speaking staff at the practice.

2.11 It is my opinion that the statement instructing P not to communicate in Welsh only did not

¹“Welsh communication” means a communication in Welsh between two individuals, both of whom are in Wales, and wish to use the Welsh language with one another in undertaking the communication.

just refer to the communications made between P and X. X sent the email containing the statement in question following, and in direct relation to matters relating to the Welsh-only communications made between P and A. Taking into account the context and timing of sending the statement to P, it was reasonable for P to have concluded that the statement curtailing his use of Welsh did relate to those communications P would have in the future with A (and indeed any other Welsh-speaking member of staff).

- 2.12 D explains that the statement was not *intended* to instruct P not to use Welsh only with A or other Welsh-speaking staff (but rather, to instruct P not to do so with X). However, having read the contents of the statement and having acknowledged the wider context of the email, P interpreted the statement to have this effect.
- 2.13 Consequently, the statement had the practical effect of instructing P to stop communicating in Welsh only (and to communicate bilingually or in English only) with the Welsh-speaking staff at the practice (even if staff had wanted to communicate with P in Welsh only).
- 2.14 The majority of practice staff were Welsh speakers and appeared to have chosen to, and wished to, communicate with P in Welsh. The communications mentioned in the statement therefore included communications between two individuals (namely P and one of the Welsh-speaking practice staff) who wished to use Welsh with one another. X's statement therefore related to communications which encompassed the meaning of the term "Welsh communication" in section 112 of the Measure.
- 2.15 This statement by X was therefore consistent with the first example of interference with the freedom to use Welsh outlined in subsection 2(b) of section 113 of the Measure, namely that D had interfered with an individual's (P's) freedom to undertake a Welsh communication with another individual (R) by indicating that P should not undertake a category of communications in Welsh. D did this specifically by indicating that Welsh (only) should not be used with staff in the practice.

3. Commissioner's views on interference 1

- 3.1 The email was sent to P in an attempt to deal with administrative errors that allegedly occurred at the practice. Included in the email were suggestions from X as to what action needed to be taken to address those errors. One of those remedial actions was that all communications should be English or bilingual from then on.
- 3.2 There was no evidence that would have suggested that any administrative errors had been made as a result of P's or any other person's use of the Welsh language. As a result, I am of the view that there was no justification in interfering with P's use of Welsh with A or others in order to try to manage and deal with the administrative errors made at the practice.
- 3.3 In that respect, even if I had found evidence that the administrative errors had occurred due to P's use of the Welsh language, that would not necessarily have meant that the basis on which D interfered with P's use of Welsh was sound, and therefore, the interference could have been justified.
- 3.4 Before choosing to interfere with P's freedom to use Welsh, possible alternative methods of trying to deal with the alleged administrative errors, in a way that did not interfere in P's use of Welsh, were not considered. Rather than exploring ways of managing and dealing with the administrative errors allegedly made at the dental practice in a way that also enabled and fostered a working environment where staff could use Welsh freely, D insisted that P limit his usual use of the Welsh language in order to try to resolve the issue.
- 3.5 The dental practice is based in Wales, in one of the strongholds of the Welsh language² and served by staff almost all of whom have Welsh language skills. The Welsh Language (Wales) Measure 2011 also gives official status to the Welsh language in Wales and gives individuals in Wales the freedom to live in a society where they can use Welsh freely in their personal life and in the workplace.
- 3.6 With that in mind, I am of the view that D should do more to acknowledge, respect and facilitate the use of Welsh between staff in the dental surgeries that they maintain.
- 3.7 Evidence was provided during this investigation expressing that the use of the Welsh language in certain contexts is a normal part of the working life of the dental practice and that this is accepted and encouraged by D - for example, I note from D's evidence that the dental office staff tended to greet each other in Welsh and that staff use Welsh with customers when that is their preference.
- 3.8 However, in the specific situation that is the subject of this investigation, it does not appear that what occurred contributed to ensuring that the use of the Welsh language was respected or facilitated in the practice, and instead, action was taken to try and deal with the alleged administrative errors in a way that created the suggestion that the alleged problems could only be dealt with by using English, and that that the use of English was the only way of operating and communicating effectively in the workplace.

² The Annual Population Survey indicated that the majority of the population of the area in question could speak Welsh (as of 30 September 2021)

4. Interference 2

- 4.1 Bupa Dental Regional Operations Director (Y) sent a letter to P on 8 April 2021.
- 4.2 The letter reminded P of the obligations relating to conduct contained in the terms of his Associate Agreement with D.
- 4.3 The letter made reference to particular clauses of the agreement that P had entered into. The letter stated that D considered that there had been cases of P breaching these provisions. the following was given as one example of many actions by P which corresponded to a breach of clauses of the agreement:

"[...] choosing to communicate with the Practice Team in the Welsh language rather than English when you know that the Practice Manager does not speak Welsh."

- 4.4 Referring back to the alleged breaches listed in the letter, statements were made to P in the letter which suggested that his associate agreement would be terminated with immediate effect, and that D would make no further payments to P under the agreement, if P did not rectify the alleged breaches of his agreement. One of those breaches was that P had chosen to communicate with the Dental Practice Team (and not necessarily X directly) in Welsh rather than in English (knowing that X did not speak Welsh).
- 4.5 By making this statement, D made it clear to P that he would possibly be subjected to detriment (associated with terminating his agreement) if he continued to communicate with the Dental Practice Team in Welsh (instead of in English).
- 4.6 It seems that members of the dental practice team wished to use Welsh with P. D's statement therefore informed P that there would be potential negative implications if he continued to undertake communications between individuals who wished to use Welsh with one another.
- 4.7 It was therefore made quite clear to P that continuing to undertake a "Welsh communication" with R (namely the staff of the Dental Practice Team and not necessarily X directly) could lead to P experiencing detriment relating to his job and livelihood.
- 4.8 The statements made were therefore consistent with the first example of interference with the freedom to use Welsh set out in subsection 2(b) of section 113 of the Measure, namely that D had interfered with an individual's (P's) freedom to undertake a Welsh communication with another individual (R) by indicating that P should not undertake a category of communications in Welsh. D did this specifically by indicating to P that he would be subjected to a detriment if he undertook a category of communications in Welsh.

5. Commissioner's views on interference 2

- 5.1 D relied on the following to try and justify their interference with P's freedom to use Welsh, which in this case was the request for P to stop communicating with the Dental Practice Team in Welsh (and for him to communicate in English, knowing that X could not speak Welsh):
- a) that this action/omission constitutes a breach of [clause A] of P's Associate Agreement; and
 - b) that this action/omission constitutes a breach of [clause B] of the Associate Agreement.
- 5.2 Clause A related to ensuring that P, amongst other matters, worked effectively with his colleagues and contributed to good teamwork. Clause B related to ensuring that P treated staff with respect and dignity and contributed to a working environment free from bullying.
- 5.3 No evidence was found to confirm that P's conduct in communicating with the Dental Practice Team in Welsh (rather than English, when X was known not to speak Welsh) equated to any breach of one or more of the conditions in his associate agreement.
- 5.4 As I am not persuaded that there are clear grounds to suggest that P's use of Welsh constitutes, or would constitute, the breaches outlined in D's letter, I am not of the view that the interference in P's use of Welsh in this case is justified.
- 5.5 There was no evidence to suggest that there was a real business case to limit P's use of Welsh.
- 5.6 If D's intention in limiting P's use of Welsh with others was to ensure that all communications made at the practice could be understood by those who were unable to speak Welsh, then D would have been able to look at other ways of achieving the same purpose, without prohibiting P's use of Welsh.
- 5.7 Wales is a bilingual country, which means that employers and staff should respect and acknowledge the fact that some staff within the workplace may choose to communicate in Welsh with others at work.
- 5.8 Whilst I recognise that not all staff who interact with a member of staff who wishes to use Welsh at work can speak Welsh themselves, that does not mean that the only way to operate the organisation effectively is to communicate in English only. For example, it is possible that arrangements could be put in place in the organisation whereby non-Welsh speakers are supported with understanding any Welsh communications made for the purpose of conducting business, whether through translation technology or other means.
- 5.9 D should be alert to the concept of having to conduct their business in Wales in a way that involves respecting the choice of staff to use Welsh with fellow members of staff. For this purpose, I am of the view that D should consider adopting a policy on the use of Welsh in the workplaces that they maintain in Wales. In order to ensure that this type of interference does not happen again, the freedom that their staff in Wales have to use Welsh with each other (unless there is justification in not doing so) should also be officially recognised.
- 5.10 In terms of limiting any informal use of Welsh in the workplace, I cannot consider any situation where this would be acceptable. Speaking Welsh in Wales with others who wish to do so, whether in the presence of someone who cannot understand Welsh or not, is not an

example of discrimination against those who do not necessarily understand the conversation that is taking place. Naturally, communications between people in Welsh are an intrinsic part of life in Wales. Therefore, people should not feel that the use of Welsh causes an unreasonable barrier or feel pressured to turn to English.

6. Further action

- 6.1 Section 117(7) of the Welsh Language Measure allows me to give advice to any person in relation to the interference.
- 6.2 In the case of my determination that D interfered with P's freedom to undertake a communication in Welsh with another individual, I provide the following advice:

Advice 1

I advise D to state in a policy document:

- that it recognises that Part 1 of the Welsh Language (Wales) Measure 2011 ('the Measure') gives official status to the Welsh language in Wales;
- that Part 6 of the Measure establishes the principle that an individual has the freedom to undertake a Welsh communication with another individual in Wales;
- that it commits as a company to ensuring that it does not interfere with the freedom of individuals (or its staff) to undertake a Welsh communication with one another in Wales; and
- that it will not condone any unjust interference with the freedom of its staff to communicate in Welsh with each other.

Advice 2

I advise D to raise the awareness of managers and staff in their workplaces in Wales of the principle established in Part 6 of the Measure that an individual's freedom to undertake a Welsh communication with another individual in Wales should not be interfered with.

Advice 3

I advise D to adopt a policy on the use of Welsh in the workplace, with a view to facilitating the use of Welsh by staff in its workplaces in Wales.