

Penodi Comisiynydd Safonau y Senedd

Mis Mawrth 2021

Mae'r adroddiad yn argymhell y dylid penodi Douglas Bain CBE TD yn Gomisiynydd Safonau y Senedd o 1 Ebrill 2021 ymlaen, ac mae'n argymhell y pecyn taliadau.

Cefndir

1. Sefydlodd Mesur Comisiynydd Safonau Cynulliad Cenedlaethol Cymru 2009 (y Mesur) swyddfa annibynnol Comisiynydd Safonau y Senedd (y Comisiynydd).
2. Daeth swydd y Comisiynydd i fod yn swydd wag ym mis Tachwedd 2019, yn dilyn ymddeoliad Syr Roderick Evans. Penodwyd Douglas Bain CBE TD yn Gomisiynydd dros dro ym mis Tachwedd 2019. Cytunodd y Senedd ym mis Hydref 2020 i ddirprwyo'r cyfrifoldeb o recriwtio Comisiynydd i Brif Weithredwr a Chlerc y Senedd (y Clerc).
3. Hwn fydd y trydydd penodiad i swyddfa'r Comisiynydd.

Rôl Comisiynydd Safonau y Senedd

4. Penodir y Comisiynydd gan y Senedd fel deiliad swydd annibynnol sy'n gyfrifol am ystyried materion sy'n ymwneud ag ymddygiad Aelodau.
5. Prif nod y Comisiynydd, wrth arfer swyddogaethau o dan y Mesur, yw hyrwyddo, annog a diogelu safonau uchel o ran ymddygiad yn swydd Aelod o'r Senedd, sy'n swydd gyhoeddus. Dyma brif gyfrifoldebau a dyletswyddau'r Comisiynydd:



- sicrhau bod gofynion y Mesur yn cael eu bodloni;
- cynnal ymchwiliadau fel y darperir ar eu cyfer gan y Mesur, ac adrodd ar ganfyddiadau i'r Pwyllgor Safonau Ymddygiad;
- cynghori Aelodau o'r Senedd a'r cyhoedd am y gweithdrefnau ar gyfer gwneud ac ymchwilio i gwynion; a
- chynghori'r Senedd ar faterion o egwyddor gyffredinol sy'n ymwneud â'r Cod Ymddygiad a dogfennau cysylltiedig, neu ymddygiad Aelodau o'r Senedd yn gyffredinol; ar weithdrefnau sy'n ymwneud ag ymchwilio i gwynion; ac ar unrhyw fater arall sy'n ymwneud â hyrwyddo safonau uchel o ran ymddygiad yn swydd Aelod o'r Senedd, sy'n swydd gyhoeddus.¹

Y broses i benodi Comisiynydd Safonau y Senedd

6. Mae'r Mesur yn nodi mai'r Senedd sy'n penodi. Yn ôl paragraff 2 o'r Atodlen i'r Mesur:

“Caniateir i'r trefniadau y cyfeirir atynt ym mharagraff 1, (ond nid penodi'r person a nodir fel hyn,) gael eu dirprwyo gan y Senedd, yn gyfan gwbl neu'n rhannol, i'r Comisiwn, i'r Pwyllgor Safonau Ymddygiad neu i staff y Senedd a chaniateir i'r trefniadau hynny gynnwys personau sy'n annibynnol ar y Senedd”

7. Ar 7 Hydref 2020, dirprwyodd y Senedd y cyfrifoldeb am recriwtio Comisiynydd i'r Clerc.

8. Gwnaeth y Clerc y trefniadau ar gyfer dewis yr ymgeisydd i'w benodi, ac estynnodd wahoddiad i'r Pwyllgor Safonau Ymddygiad (y Pwyllgor) i gyfrannu at y broses recriwtio. Roedd hynny'n cynnwys rhoi sylwadau ar y disgrifiad swydd, y broses recriwtio, telerau ac amodau penodi, ac enwebu Aelodau o'r Pwyllgor i eistedd ar y panel dethol.

9. Dyma'r pedwar oedd yn ffurfio'r panel dethol:

- Manon Antoniazzi, Prif Weithredwr a Chlerc y Senedd (Cadeirydd);

¹ Mae swyddogaethau'r Comisiynydd wedi'u nodi'n llawn ym Mesur Comisiynydd Safonau Cynulliad Cenedlaethol Cymru 2009.

- Jayne Bryant AS, Cadeirydd y Pwyllgor Safonau Ymddygiad;
- Rhun Ap Iorwerth AS, Aelod o'r Pwyllgor Safonau Ymddygiad; a
- Syr Paul Grice, Pennaeth ac Is-ganghellor Prifysgol y Frenhines Margaret a chyn Clerc a Phrif Weithredwr Senedd yr Alban (aelod annibynnol o'r panel).

10. Rhoddwyd yr hysbyseb ar gyfer y swydd ar wefan y Senedd o dan yr adran penodiadau cyhoeddus, ac fe'i hyrwyddwyd ar y cyfryngau cymdeithasol. Defnyddiwyd y Whitehall Industry Group yn ystod y broses recriwtio.

11. Bu'r panel dethol yn cyfweld ag ymgeiswyr ar y rhestr fer ym mis Ionawr 2021, gan nodi'r ymgeisydd a ffafrir: Douglas Bain CBE TD.

Cydnabyddiaeth ariannol a thelerau penodi.

12. Mae Atodiad A yn nodi'r pecyn taliadau ar gyfer swyddfa'r Comisiynydd. Yn gryno, dyma'r telerau:

- tâl cadw blynyddol o £5,767.62 (i'w dalu bob mis), a chyfradd ddyddiol o £430.33 (neu pro-rata am ran o ddiwrnod) ar gyfer gweithgareddau sy'n ymwneud yn uniongyrchol â rôl a chyfrifoldebau'r swydd, ynghyd â threuliau rhesymol; a
- darpariaeth i benderfynu bod pecyn cydnabyddiaeth y Comisiynydd yn cael ei addasu ym mis Ebrill bob blwyddyn gan y newid yn yr *ASHE* (yr arolwg blynyddol o oriau ac enillion ar gyfer swyddi gweithwyr amser llawn yng Nghymru) rhwng mis Ebrill a mis Ebrill y flwyddyn flaenorol, gan isafswm o 0% ac uchafswm o 3% – cynigir dirprwyo hynny i'r Clerc.

13. Mae hwn yn benodiad o chwe blynedd². Argymhellir bod y penodiad yn cychwyn ar 1 Ebrill 2021.

14. Mae'r Mesur yn caniatáu i'r Comisiynydd benodi staff neu sicrhau darparu gwasanaethau yr ystyrir eu bod yn angenrheidiol i gynorthwyo'r broses o arfer swyddogaethau'r Comisiynydd³. At hynny, gall y Comisiynydd ddod i drefniadau gyda chyrff cyhoeddus eraill neu ddeiliaid swyddi i ddarparu gwasanaethau i'r

² Fel sy'n ofynnol gan adran 1(4) o'r Mesur.

³ Paragraff 6(1) o'r Atodlen i'r Mesur.

Comisiynydd at y diben hwnnw⁴. Ar hyn o bryd, mae cefnogaeth weinyddol i'r Comisiynydd dros dro yn cael ei darparu gan staff Comisiwn y Senedd.

Gwrandawriad cyn penodi

- 15.** Cynhaliodd y Pwyllgor Cyllid wrandawriad cyn penodi ar 23 Chwefror 2021 gyda'r ymgeisydd a ffafrir, Douglas Bain CBE TD. Mae trawsgrifiad o'r sesiwn wedi'i atodi yn Atodiad B.
- 16.** Croesawodd y Pwyllgor yr ymgeisydd yn nodi ei ddull ar gyfer y tymor chwe blynedd a'i uchelgais i godi proffil safonau ymddygiad yn ystod y cyfnod hwn.
- 17.** Nododd y Pwyllgor fod gan yr ymgeisydd brofiad eang o ddelio â chwynion, yn enwedig wrth ddelio â chwynion y gallent syrthio o dan y polisi urddas a pharch.

Casgliad ac Argymhelliad

Casgliad 1. Mae'r Pwyllgor yn cymeradwyo'n llawn enwebu Douglas Bain CBE TD fel Comisiynydd Safonau y Senedd.

Argymhelliad 1. Mae'r Pwyllgor yn argymhell bod y Senedd yn penodi Douglas Bain CBE TD yn Gomisiynydd Safonau y Senedd o 1 Ebrill 2021 ymlaen, am dymor o chwe blynedd.

Argymhelliad 2. Mae'r Pwyllgor yn argymhell bod y Senedd yn cytuno ar y telerau penodi a nodir yn Atodiad A.

Argymhelliad 3. Mae'r Pwyllgor yn argymhell bod y Senedd yn dirprwyo fel a ganlyn:

- y broses o wneud penderfyniadau mewn perthynas ag addasiad blynyddol i becyn taliadau'r Comisiynydd i'r Clerc; a
- setlo'r holl delerau penodi, ac eithrio'r rheini yn Atodiad A, i'r Clerc.

⁴ Paragraff 6(2) o'r Atodlen i'r Mesur.

Atodiad A – Telerau Penodi

- Bydd y taliadau yn dâl cadw blynyddol o £5,767.62, a chyfradd ddyddiol o £430.33 (neu pro-rata am ran o ddiwrnod) ar gyfer gweithgareddau sy'n ymwneud yn uniongyrchol â rôl a chyfrifoldebau'r swydd, ynghyd â threuliau rhesymol.
- Gellir addasu'r pecyn taliadau ym mis Ebrill bob blwyddyn trwy'r newid yn yr *ASHE* (yr arolwg blynyddol o oriau ac enillion ar gyfer swyddi gweithwyr amser llawn yng Nghymru) rhwng mis Ebrill a mis Ebrill y flwyddyn flaenorol, gydag unrhyw addasiad yn ddarostyngedig i uchafswm o 3% a heb fod yn is na 0%.
- Mae'r holl symiau y cyfeirir atynt ym mharagraff 1 (fel y'u haddaswyd yn unol â'r mecanwaith y cyfeirir atynt ym mharagraff 2) i'w talu i'r Comisiynydd gan Gomisiwn y Senedd, a'u codi ar Gronfa Cyfunol Cymru.

Atodiad B – Trawsgrifiad o'r Gwrandawriad Cyn Penodi

Y Pwyllgor Safonau Ymddygiad

Standards of Conduct Committee

23/02/2021

2. Gwrandawriad cyn penodiad Comisiynydd Safonau y Senedd

2. Pre-appointment hearing of a Senedd Commissioner for Standards

Jayne Bryant MS 09:30:48

So, this morning we have the acting commissioner, Douglas Bain, with us here this morning. Obviously, we've had an interview and selection process for the position of the commissioner, and Douglas has been our chosen candidate, and he's here this morning in the pre-appointment part of the hearing. So, Douglas, would you like to outline some of the vision that you have for the standards commissioner over the next six years to the committee?

Douglas Bain 09:31:26

Yes. Thank you, Chair, and good morning to everyone. I think the next six years is a period of opportunity for the standards regime and indeed for the Senedd, to the extent it's been through a difficult past 18 months, and it may get more difficult over the next couple of months in the lead up to the election, but we have, or we're going to have a new code of conduct for Members, so I hope we're going to have a radically revised procedure. There will be new guidance that will follow on that, plus we'll have new Members, and I hope there will be a new commissioner. So, I think that's an opportunity to reinforce the importance of standards because the standards commissioner underpins, in many ways, the Senedd. If people don't have respect for the standards regime, it's unlikely that they will have respect for the Senedd, and there are a number of ways that I think that can be done. But it's going to have to be done against the background of a huge increase in the number of complaints being made. In January of this year, the figure was 140 compared with 106 in the whole of last year. In the last 20 days, it's risen by another 27. So, that's something that has to be addressed, and plainly that will take time for the new commissioner.

But I would like to see a reduction in the number of complaints by making the system more user friendly to eliminate the complaints that shouldn't ever come, and that would allow the commissioner—hopefully myself—more time to deal with the other aspects of the role. I think there's a need to reach out into the community to explain the standards system. I noted last night that, other than complaints from Mr McEvoy, I don't think we've had a single complaint from a member of an ethnic minority group, and it can't be that they don't feel aggrieved, so there is a problem there that needs to be addressed, and that would be one of the areas that I'd like to look at.

Also, there is, I think, something to be learned from some sort of standards network within Wales of people like the commissioner who are involved in standards. The standards commissioner at the Senedd should, I think, be taking a lead in setting standards in public office in Wales, and I'm not sure that that's the case at the moment. Thank you.

Jayne Bryant MS09:34:17

Thank you, acting Commissioner. Do any Members have any questions? No Members have got any questions. Rhun.6

Rhun ap Iorwerth MS 09:34:31

Bore da i chi. Mi oedd y broses gyfweld ei hun yn un drwyadl iawn, wrth gwrs. Rydym ni'n ffodus iawn o gael calibr mor uchel o bobl yn dymuno bod yn gomisiynydd safonau. Os ydych chi yn cael eich cadarnhau, dywedwch fwy am y ffordd y byddech chi'n addasu y ffordd yr ydych chi'n gweithredu yn y swydd, yn cynnwys sut y byddech chi'n mynd ati i wynebu'r cyhoedd yn y gwaith rydych chi yn ei wneud.

Good morning to you. The interview process itself was a thorough one, of course, and we're very fortunate of having such a high calibre of person who want to be the standards commissioner. If you do get confirmed, could you tell us more about how you would adapt the way in which you operate in the job, including how you would engage the public in the work that you do?

09:35

Douglas Bain 09:35:10

Yes, certainly, and good morning. I think the new appointment provides a handle on which I could engage with the media, though not about particular complaints, but I think there's free publicity to be had at the time of appointment about that as a new commissioner and how I'm going to approach the work. Part of that is having new guidance on the complaints process, because, frankly, at the moment it isn't good and the process is unduly burdensome and, I think, daunting for some people.

I think another aspect is providing support to complainants, particularly where they are matters of dignity and respect, and I'd be keen to explore the possibility of having a HR person as an assessor to support people who might be reluctant to come forward. But I think it's also about getting out on the ground and, certainly, when I did the equivalent job in Northern Ireland, I used to speak to round-tables and similar organisations—at their request—and, hopefully, you recruit these people to spread the word on your behalf. And, of course, I'm not entirely clear about the position in Wales, but certainly in Northern Ireland there is a very extensive local newspaper network, and they will always cover any event like that, giving further publicity. So, it's making people aware that the system is there to help them and, if they feel aggrieved about something a Member has done, there is a way to deal with it. But equally it's about making sure the system is fair to Members and that they're not unduly burdened by frivolous complaints, because even if there's no substance to the complaint, it is still time-consuming for a Member and diverts them from the work they should be doing.

Rhun ap Iorwerth MS 09:37:20

Un cwestiwn arall os caf i, Cadeirydd. Mae tegwch yn air rydych chi wedi'i ddefnyddio yn fan yna. Un rhan gwbl allweddol o degwch ydy diduedd-dra a gallu comisiynydd i weithredu yn gwbl annibynnol o unrhyw ragfarn yn wastad. O bosib yn cyfeirio at eich profiadau chi o'r gorffennol, sut ydych chi'n wynebu cyhuddiadau neu awgrymiadau y gallai'r swydd hon, pe baech chi'n cael eich cadarnhau, yn cael ei dylanwadu gan unrhyw safbwyntiau neu grwpiau neu beth bynnag?

One further question, if I may, Chair. Fairness, that's a word that you have used there. One key part of fairness is impartiality and the ability of the commissioner to always act completely independently of any prejudice or bias. Possibly referring to your experiences in the past, how would you face accusations or suggestions, if

you were confirmed in the role, that you were being influenced by any viewpoints or groups and so forth?

Douglas Bain 09:38:07

I think whoever is commissioner has to display their absolute integrity in the post, and that's why, for example, although there's no requirement for the acting commissioner to declare their private interests, one of the first things I did was display mine on my website. It's a little far-fetched, perhaps, to suggest that someone living in Northern Ireland is going to be hugely influenced by any particular political party, but I have never been a member of any political party and I certainly won't be whilst I'm holding any public office. But you also need to be seen to be fair to all complainants and Members. That includes making sure reports are dealt with within a reasonable time and making sure the public have a better understanding of the process. And, of course, if there is anything that could reasonably be perceived as being a conflict of interest—and I find it hard to imagine what that would be—then the process is there for the commissioner to recuse him or herself and for an acting commissioner to be appointed. And that was my first experience of being an acting commissioner, when Sir Roderick recused himself. And there was an occasion in Northern Ireland, when I was the commissioner, where there was a perceived conflict of interest between my role as a commissioner and a decision that I'd been involved in as a member of the Parades Commission for Northern Ireland. I recused myself and, in fact, Gerard Elias was fortunate, though you might say unfortunate, enough to be appointed as acting commissioner to deal with it.

Rhun ap Iorwerth MS 09:40:00

Thank you. Diolch.

09:40

Jayne Bryant MS 09:40:01

Okay. Thank you, Rhun. David.

David J. Rowlands MS 09:40:04

My understanding, Douglas, is that you will be still based in Northern Ireland, and I feel that, perhaps, the public—. It's important for us to let the public know that you can operate from Northern Ireland as efficiently and with no real extra cost to the public purse. It's for whoever is on the standards committee to help explain that in general terms, but how do you feel that we ought to address that matter?

Douglas Bain 09:40:42

It's certainly true that you can do the job based solely in Northern Ireland, but not as effectively as I would like. Not being able to—. It is difficult, for example, to conduct an interview remotely, as you can't really observe the body language, which is often as important as what people are actually saying. So, it would be my intention to be in Cardiff approximately once a month, and more often if necessary. And I think it's important to make the personal contacts with the committee, with Members, and to be available for Members who want to just drop into the office to ask a question. And I would certainly see part of the role of the new commissioner as being involved in the induction process for new Members, but also making himself available to party groups or to individual Members, to explain my approach to the job and to answer any questions they might have about the new code.

Jayne Bryant MS 09:42:00

David, did you want to come back?

David J. Rowlands MS 09:42:01

Yes. I think that perhaps the public may have the perception that, obviously, there'll be extra costs involved to the public purse by you having to travel, even if it's once a month or whatever it is, to Cardiff. So, can you explain how we might be able to mitigate any journalistic attempts to point that factor out?

Douglas Bain 09:42:38

If anyone actually looks at the costs, they are not significant. Unfortunately, the flight from Belfast to Cardiff no longer exists, but last time I checked, the flight to Bristol booking in advance—that isn't always possible—is somewhere around £100 return, which, compared with the other costs of an investigation, is de minimis.

David J. Rowlands MS 09:43:12

Okay. Thank you, David. Douglas, you were talking about presumably coming into it with a new Senedd and new Members, and, obviously, existing Members. How do you see that working to ensure that new Members and those Members who are returned are aware of the work that you're doing and your vision for the role as well over the next six years?

Douglas Bain 09:43:40

As regards new Members, first of all, Chair, I'm not sighted on exactly what's planned as the induction process, but I would wish to be involved in that, and if there is an opportunity to speak to the new Members, either individually or as a group, then that's something I would certainly like to take up.²⁰

As regards existing Members, or returning Members—and they're equally important in this—I would, as I did shortly after being appointed as acting commissioner, offer briefings to party groups, which were taken up by a number of the parties; other parties, I met with the party leader and he or she passed the information on to the group. But it's also about being available, whether by Zoom or telephone or during a visit to Cardiff, saying, 'I'm available during these hours. If you want to speak to me, don't hesitate to pick up the phone and we can discuss whatever it is you want to discuss.'

Jayne Bryant MS 09:44:48

Thanks, Douglas. Just finally from me, you mentioned perhaps exploring the use of HR experts, or people that you think might be able to support in certain investigations. Can you say a little bit more about that?

09:45

Douglas Bain 09:45:11

Yes. One of the things I would like to see in the new procedure would be making it very clear that whenever anyone attends for interview, they can bring with them a friend or—it's unlikely to be a trade union representative—someone to help. But in dealing with sensitive issues—for example if someone was complaining that they'd become ill as a result of, perhaps, stress as a result of a Member's conduct—they might well be reluctant to speak to a man who is perhaps a lot older than they are and give all the details, and having, perhaps, often a female there with perhaps softer skills than I have may help. I certainly encountered this in my previous experience in Northern Ireland. There was a complaint that a Member had sexually harassed a large number of people, and I found that, after the first few interviews, there was a reluctance among some of the witnesses. I used a colleague who is experienced in HR to assist me at the interviews, and that seemed to put the witness at rest a little more. So, it's always going to be difficult for someone to give evidence about sensitive, personal matters.²³

But also, building on that—and it's something I would want to discuss with the committee—while the standards committee need to have the full details of anything of that nature, I'm by no means convinced that it's necessary for that to appear within the report that is published, and I would wish to discuss with the committee if I'm confirmed, whether it is necessary, ever, for the commissioner's report to be published and whether the committee's report to the Senedd is sufficient.²⁴

Jayne Bryant MS 09:47:30

Okay, thank you, Douglas. Any further questions? No. Okay, that finishes that item. Thank you, Douglas.

Atodiad C Hannes Gyrfa – Douglas Bain

Galwyd Douglas i Far yr Alban ym 1974. Daeth yn Ddirprwy Brocuradur Ffisgal, gan arbenigo ym maes ymchwilio i dwyll a llygredd difrifol a chymhleth.

Ym 1988 symudodd i Ogledd Iwerddon, lle cafodd ei benodi i nifer o swyddi uwch, a hynny mewn uned arbenigol a oedd yn gyfrifol am ymchwilio i gyllid terfysgwyr a tharfu ar ffynonellau'r cyllid hwnnw, ac yng Ngwasanaeth Carchardai Gogledd Iwerddon. Wedi iddo ymddeol o'r gwasanaeth sifil, Douglas oedd Prif Swyddog Etholiadol Gogledd Iwerddon rhwng 2006 a 2010. Rhwng 2010 a 2013, roedd yn aelod o Gomisiwn Gorymdeithiau Gogledd Iwerddon.

Douglas oedd Comisiynydd Safonau cyntaf Cynulliad Gogledd Iwerddon, ac roedd yn y swydd honno am bum mlynedd, sef y cyfnod statudol hwyaf bosibl. Yn y rôl honno, roedd ei brif swyddogaeth yn debyg i swyddogaethau Comisiynydd Safonau'r Senedd. Yn ystod yr un cyfnod, fel y Person Penodedig ar gyfer y Deyrnas Unedig gyfan o dan Ddeddf Enillion Troseddau 2002, ei brif ddyletswydd oedd ystyried ac adrodd ar y modd roedd pwerau'r heddlu i chwilio heb warant yn cael eu harfer.

Ers 2019, Douglas yw Comisiynydd Safonau'r Senedd.

Cafodd CBE yn 2010 am ei wasanaeth i Wasanaeth Carchardai Gogledd Iwerddon. Mae ganddo'r Fedal Dirioogaethol â bar. Mae'n byw gyda'i wraig yn Swydd Down.