

CYNULLIAD CENEDLAETHOL CYMRU: Y PWYLLGOR SAFONAU YMDDYGIAD

ADRODDIAD 01-2006 - Cyflwynwyd gerbron Cynulliad Cenedlaethol Cymru

Ar 5 Rhagfyr 2006 yn unol â Rheol Sefydlog 16.7

CWYN YN ERBYN PETER BLACK AC

Diben a Chwmpas yr Adroddiad

1. Dyma adroddiad i'r Cynulliad gan y Pwyllgor Safonau Ymddygiad o dan Reol Sefydlog 16.7 ynghylch cwyn y mae wedi'i hystyried yn erbyn Peter Black AC. Roedd y gwyn, gan Dr John Marek, AC, yn honni i Mr Black dorri *Cod Ymddygiad ar gyfer Aelodau Pwyllgor y Ty* ("Cod Pwyllgor y Ty")¹ drwy roi gwybodaeth ar ei wefan ar 13 Gorffennaf 2006, yn ymwneud â chyfarfod preifat o Bwyllgor y Ty a gynhaliwyd y diwrnod hwnnw.
2. Mae manylion llawn yr honiadau a wnaed i'w cael yn adroddiad y Comisiynydd i'r Pwyllgor Safonau yn Atodiad A.

Cylch Gwaith y Pwyllgor Safonau

3. O dan Reol Sefydlog 16.1(ii) bydd y Pwyllgor Safonau:

"yn ymchwilio i unrhyw gwyn a gyfeirir ato gan y Comisiynydd Safonau fod Aelod heb gydymffurfio ag unrhyw benderfyniad gan y Cynulliad ynglŷn â safonau ymddygiad yr Aelodau, yn adrodd ar y gwyn hwnnw ac, os bydd briodol, yn argymhell y camau y dylid eu cymryd mewn perthynas â'r gwyn. ..."

4. Mae detholiad o'r Rheolau Sefydlog, sy'n amlinellu cylch gwaith y Pwyllgor yn llawn, yn Atodiad B. Mae rhestr o aelodau presennol y Pwyllgor yn Atodiad C.

Y gwyn

5. Cyflwynwyd y gwyn i Ysgrifenyddiaeth y Pwyllgor Safonau Ymddygiad ar 1 Medi 2006. Yn unol â'r Weithdrefn ar gyfer *Ymdrin â Chwynion yn Erbyn Aelodau'r Cynulliad* (y Weithdrefn Gwyno)², cyfeiriwyd y gwyn at y Comisiynydd Safonau.

¹ wedi'i gymeradwyo gan y Cynulliad Cenedlaethol ar 26 Ionawr 2005.

² wedi'i gymeradwyo gan y Pwyllgor Safonau ar 18 Tachwedd 2004

Crynodeb o Ymchwiliad y Comisiynydd

6. Mae dau gam posibl i unrhyw ymchwiliad gan y Comisiynydd i'r gwyn:
 - (i) Ymchwiliad rhagarweiniol er mwyn penderfynu a yw cwyn yn dderbyniadwy ai peidio; ac os yw'r gwyn yn dderbyniadwy;
 - (ii) Ymchwiliad Ffurfiol i'r gwyn yn arwain at adroddiad i'r Pwyllgor Safonau Ymddygiad.
7. Dywedodd y Comisiynydd wrth y Pwyllgor Safonau Ymddygiad ar 27 Medi 2006 iddo ddod i'r casgliad fod y gwyn yn dderbyniadwy ac y byddai'n cynnal Ymchwiliad Ffurfiol.
8. Cyflwynodd y Comisiynydd adroddiad am ei Ymchwiliad Ffurfiol i'r Pwyllgor ar 13 Hydref 2006. Roedd Mr Black a'r achwynydd wedi gweld copi o'r adroddiad drafft ac roedd y Comisiynydd wedi ystyried eu sylwadau.

Crynodeb o drafodaethau'r Pwyllgor

9. Cynhaliodd y Pwyllgor gyfarfod preifat, yn unol â Rheol Sefydlog 16.5, ar 16 Tachwedd 2006, i ystyried adroddiad y Comisiynydd. Roedd Mr Black yn bresennol yn y cyfarfod i roi sylwadau ar lafar i'r Pwyllgor.
10. Yn gyntaf, ystyriodd y Pwyllgor argymhelliad y Comisiynydd na ellid dweud bod Mr Black wedi torri gofynion Paragraff 24 o God Pwyllgor y Ty sy'n nodi:

'...nid yw'n briodol i Aelodau ddatgelu trafodaethau preifat neu wybodaeth gyfrinachol yn gyhoeddus drwy ychwanegu at y cofnodion hynny, ac yn benodol, drwy briodoli sylwadau neu ddatganiadau i Aelodau neu swyddogion a enwir.'

Cytunodd yr Aelodau â chasgliadau'r Comisiynydd. Er eu bod yn teimlo bod y cofnod ar y wefan yn cynnwys mwy o wybodaeth am drafodaethau preifat y Pwyllgor nag a gofnodwyd wedi hynny yn y cofnodion, cafodd yr erthygl ei chyhoeddi cyn i'r cofnodion gael eu cyhoeddi ac, felly, yn dechnegol, nid oedd yn bosibl ychwanegu atynt. Teimlai'r Pwyllgor, fodd bynnag, nad oedd y cofnod yn cadw at ysbryd paragraff 24 o God Ymarfer Pwyllgor y Ty ac, o ystyried yr achos hwn, awgrymodd y dylai Pwyllgor y Ty ailedrych ar yr agwedd hon ar y Cod.

11. Fodd bynnag, yn ei adroddiad, daeth y Comisiynydd i'r casgliad fod Mr Black wedi torri gofynion paragraff 23 o God Pwyllgor y Ty a oedd yn nodi:

"Mae Pwyllgor y Ty, oherwydd ei natur, yn delio'n rheolaidd â gwybodaeth sensitif, ac mae angen i'r Aelodau gofio am yr egwyddorion hyn wrth ystyried a ddylent ddatgelu gwybodaeth sy'n

codi yn ystod trafodion unrhyw Bwyllgor sy'n cael ei gynnal yn breifat ..."

Gan hynny, wrth ystyried yr achos, canolbwyntiodd y Pwyllgor ar gasgliad y Comisiynydd fod y cofnod ar y wefan wedi datgelu gwybodaeth am gyfarfod preifat o Bwyllgor y Ty, drwy ddisgrifio gwrthdaro rhwng y Comisiwn a'r Dirprwy Lywydd ynglŷn â chyllideb Gwasanaeth Seneddol y Cynulliad.

12. Yn ystod ei drafodaethau, gwnaed y pwyntiau a ganlyn gan aelodau'r Pwyllgor:

Roedd y gwyn yn ymwneud â'r wybodaeth a gofnodwyd ar wefan Mr Black ar 13 Gorffennaf yn ei chyfanrwydd, ac nid am ymddiswyddiad honedig Dr Marek fel Cadeirydd Pwyllgor y Ty yn unig;

Wrth gyflwyno'i sylwadau, roedd Mr Black wedi derbyn y gallai fod wedi rhoi gormod o wybodaeth am y trafodaethau am gyllideb GSC yn ystod cyfarfod Pwyllgor y Ty;

Er bod gwybodaeth am rai o drafodaethau Pwyllgor y Ty ar gael i'r cyhoedd eu gweld, nid oedd yn bosibl defnyddio hyn fel amddiffyniad.

Casgliad

13. O ystyried yr holl dystiolaeth a gyflwynwyd iddynt a'r sylwadau a wnaed, daeth yr Aelodau i'r casgliad fod Peter Black wedi torri gofynion *Cod Pwyllgor y Ty* a, thrwy hynny, heb gydymffurfio â Rheol Sefydlog 16.1 (ii). Barn y Pwyllgor oedd y dylai, yn unol â Pharagraff 7.8 (iii) o'r Weithdrefn Gwyno, argymhell i'r Cynulliad "y canfuwyd methiant i gydymffurfio ac na ddylid cymryd camau pellach."

14. Yn unol â pharagraffu 7.9 a 9.1 o'r Weithdrefn Gwyno, bydd y Pwyllgor yn awr yn gosod yr adroddiad gerbron y Cynulliad, ynghyd ag adroddiad y Comisiynydd i'r Pwyllgor; a bydd Cadeirydd y Pwyllgor Safonau yn cyflwyno cynnig yn galw ar y Cynulliad i gadarnhau argymhellion y Pwyllgor.

Y Pwyllgor Safonau Ymddygiad
5 Rhagfyr 2006

STRICTLY PRIVATE AND CONFIDENTIAL

Reference: CO63-06

Report to the Committee on Standards of Conduct by the Commissioner for Standards following a Formal Investigation of the complaint by Dr. John Marek AM against Peter Black AM.

1. Background to the complaint

- 1.1 On 1 September 2006 Dr John Marek AM wrote to me to make a formal complaint about a story entitled 'Marek Quits' which appeared on the website of Peter Black AM on 13 July 2006. Dr Marek alleged that the publication of this website entry might be a breach of the *Code of Conduct for Members of the House Committee (the "House Committee Code")*, or a breach of confidentiality generally. A copy of the letter of complaint is at Annex A and a copy of the original website entry is at Annex B.
- 1.2 In accordance with the *Procedure for Dealing with Complaints against Assembly Members* (the Complaints Procedure) I undertook a Preliminary Investigation. I wrote to Peter Black on 9 September 2006 to make him aware of the complaint and my Preliminary Investigation, and giving him an opportunity to comment. Peter Black's initial response is at Annex C.

2. Preliminary Investigation Stage - Admissibility

- 2.1 The Complaints Procedure sets out a series of six 'tests' to determine whether a complaint is 'admissible':
- i. *'It is in writing'.*
 - ii. *'It is about the conduct of an Assembly Member'*
 - iii. *'It is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her'*
 - iv. *'It clearly identifies the Assembly Member complained of''.*
 - v. *'It is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about'*
- 2.2 The complaint against Peter Black AM clearly met the first five requirements. The sixth test of admissibility is that:
- vi. *'It appears at first sight that, if all or part of the conduct complained about is established to have been committed by the Member, it might amount to a breach of any of the matters encompassed within Standing Order 16.1(i) or (ii)'*

- 2.3 Peter Black does not dispute that the blog entry which is the subject of the complaint appeared on his website. However, while expressing regret that the matter had caused Dr. Marek some discomfort, he did not accept that in publishing the article he had breached the Code of Conduct.

Conclusion on 'admissibility' of the complaint:

- 2.4 In reaching my conclusion on 'admissibility' I carefully considered the representations from Dr Marek and Peter Black together with the House Committee Code, a copy of which is at Annex D. Paragraphs 22 to 25 of the House Committee Code deal with disclosure of Committee proceedings or information.

Disclosure of Committee Proceedings or Information

22. *The Code of Conduct for Assembly Members provides that:-*

“Assembly Members must not prevent any person from gaining access to information which that person is entitled to by law, but must not disclose confidential information, including confidential information from Assembly Committees, without consent unless required to do so by law. Any such confidential material received by Members in the course of their Assembly duties should only be used in connection with those duties and must never be used for the purpose of financial gain.”

23. *The House Committee, of its nature, regularly deals with sensitive information, and Members will need to apply their minds to these principles when considering whether to disclose information arising from any Committee proceedings which take place in private. It may be necessary for Members to consult other Assembly Members about aspects of the House Committee’s considerations, and they should in so doing impress upon these Members the need to keep relevant information confidential.*

24. *The Committee’s minutes are published in accordance with Standing Orders, but it is not appropriate for Members publicly to reveal private discussions or confidential information by amplifying those minutes, in particular by ascribing views or statements to named Members or officials.*

25. *In considering requests for disclosure of information the Committee will need to apply the Assembly’s Code of Practice on Public Access to information. Notwithstanding the principles of openness pursued by the Code, Members should be aware of the confidentiality which attaches to certain types of information and should take particular care in respect of the following types of information:-*

- *Commercially confidential information which, if released, may damage the business interests of a third party or the position of the Assembly in terms of current negotiations or binding agreements;*
- *Information about the terms and conditions of employment of*

identifiable members of staff.

- 2.5 After considering the evidence presented I concluded that, at first sight, the conduct of Peter Black might amount to a breach of Standing Order 16.1(ii) in that the publication of an article that contained information about a private meeting of the House Committee might amount to a breach of the House Committee Code. I therefore concluded that the complaint was 'admissible' and proceeded to the Formal Investigation stage of the Complaints Procedure.
- 2.6 The Committee on Standards of Conduct, John Marek AM and Peter Black AM were informed of the outcome of my Preliminary Investigation on 27 September 2006.

3. Formal Investigation Stage

- 3.1 The purpose of the Formal Investigation stage is for the Commissioner for Standards to investigate an 'admissible complaint' with a view to:
- i) establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and
 - ii) reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i), (i)(a) or (ii).
- 3.2 In relation to point (i) above Peter Black has confirmed that he published the relevant website entry on the evening of 13th July 2006, the day that the House Committee meeting in question took place. The following factors have been identified through the investigation process:
- a) In his initial response to me Peter Black claims that there is no reference in this final paragraph of the website entry to anything that Dr. Marek said to the House Committee. He claims that the paragraph (in its opening four words - '*I have now learnt*') makes it clear that he is referring to information that was passed to him outside the meeting of the Committee
 - b) In a later response made to me (which is also at Annex E) Peter Black states:

"Dr. Marek alleges that I directly reported his threat to resign and thus breached the confidentiality provisions in the Code of Conduct. As I said in my initial response I did not do that. In fact, I reported issues raised with me outside of the Committee. I quote:

With regards to the specific complaint, which relates to the final paragraph of that post, there is no reference whatsoever to anything that Dr. Marek told the House Committee. The paragraph makes it clear in its first four words that it is referring to information that was passed to

me outside the House Committee, information that actually turned out to be wrong and was subsequently corrected. There is no mention to the form of words used by the DPO in the meeting, which amounted to something less than resignation”.

- c) Peter Black has confirmed that he later found out that the information published turned out to be wrong and that he has subsequently corrected it. However, I have checked Peter Black’s website which still contains the original entry in its entirety (Annex F) with an added footnote that reads:

‘Despite having confirmed John Marek’s resignation with two different sources it seems that he has not yet left the chair of House Committee. I am told that he is still considering his position.’

- d) Peter Black claims that a rumour spread rapidly after the meeting that Dr. Marek had threatened to resign and that he had no part in leaking the information but that when he was told (wrongly) that the Deputy Presiding Officer’s threat had been put into effect he felt able to report on it anticipating that it would subsequently appear in the news.
- e) Peter Black does not dispute that this story appeared on his website and has expressed his regret that the matter has caused Dr. Marek some discomfort. He does not, however, accept that he has breached the Code of Conduct by his actions and therefore disputes the allegations made.
- f) Dr. Marek confirms that at the conclusion of item 2.1 on the agenda of the House Committee meeting on 13 July 2006 (draft APS budget for 2007-2008) he said that he “*would be considering my position*” but that he did not make this public outside the Committee.
- g) The minutes of the House Committee on 13 July 2006 (which are now in the public domain) record that the Chair would not be supporting the proposal to adopt the budget, but do not go further than that on this matter. The minutes do not record that there was any conflict between the Commission and the Deputy Presiding Officer, and does not include any statement by the Chair of the Committee about his future intentions. A copy of the minutes is at Annex G.

- 3.3 The two main questions I had to therefore consider were (i) did the content of the web entry disclose Committee proceedings or information from a private meeting of the House Committee; and (ii) if it did, whether this was done in breach of the House Committee Code.

4. The Web Site Entry

- 4.1 The full text of the entry which appeared on Peter Black's 'blog-site' on 13th July is at Annex B. As outlined above, the complaint as made by Dr Marek is "*whether the web site entry was a breach of the Code for Members of the National Assembly's House Committee or a breach of confidentiality generally*". To clarify, a 'Blog' site is a Web site that contains dated entries in reverse chronological order (most recent first) about a particular topic.
- 4.2 The main body of the web entry says that the House Committee had considered the budget for the Assembly Parliamentary Service at that morning's meeting, and provides background information regarding budgetary process. The entry also includes some examples of where there are significant new pressures on the budget, and explains that making the budget would entail making some savings. Towards the end of the entry Peter Black then detailed what he described as:

"some conflict at this morning's meeting between the Commission and the Deputy Presiding Officer. He had an alternative budget, which he believed would avoid making these savings, however he was outvoted."

Peter Black went on to say:

"I have now learnt that as a consequence of that decision the DPO has resigned as Chair of the House Committee"

5. Summary and Conclusion

- 5.1 I have conducted a Formal Investigation in line with the *Procedure for Dealing with Complaints against Assembly Members* into the complaint by Dr. John Marek AM that, in publishing the website entry entitled '*Marek Quits*', Peter Black AM had breached the Code of Conduct for Members of the House Committee.
- 5.2 It is clear that the website entry, as published on 13th July 2006, does disclose Committee information about a private meeting of the House Committee held that day. The entry reveals a decision that was taken by the Committee following a vote, and refers to what Peter Black describes as 'conflict' between the Commission and the Deputy Presiding Officer in reaching that decision.
- 5.3 Paragraph 23 of the *Code of Conduct for Members of the House Committee* states that:

'Disclosure of Committee Proceedings or Information

23. The House Committee, of its nature, regularly deals with sensitive information and Members will need to apply their minds to these principles when considering whether to disclose information arising from any Committee proceedings which take place in private. It may be necessary for Members to consult other Assembly Members about aspects of the House Committee's considerations and they should in

doing so impress upon these Members the need to keep relevant information confidential.'

5.4 I have carefully considered this paragraph of the House Committee Code together with the representations from Dr Marek and Peter Black. I have concluded that the website entry published by Peter Black did disclose information about private proceedings of the Committee. In doing so, Peter Black's conduct is in breach of Paragraph 23 of the House Committee Code and is therefore a breach of Standing Order 16.1(ii).

5.5 I also considered whether the conduct of Peter Black might also have been in breached Paragraph 24 of the House Committee Code, which states that:

'it is not appropriate for Members to publicly reveal private discussions or confidential information by amplifying the committee minutes, in particular by ascribing views or statements to named members or officials'

5.6 I considered this paragraph in some detail. It is clear that the website entry does provide more information about the Committee's private discussions than is recorded in the minutes. In my view, this is not in accordance with the spirit of the House Committee Code which clearly expects Members to uphold the principle of confidentiality about the Committee's private proceedings. However, as the website article was published before the minutes had been produced, Peter Black cannot be said to have breached the Code "...by amplifying the committee minutes...".

Committee Consideration of Complaint

5.7 Once the Formal Investigation has been completed the Commissioner must make this report to the Committee on Standards of Conduct. The current Complaint Procedure specifies that that report should include a recommendation whether the complaint hearing should be held in private. Members will recall that, following the recent review of the Complaints Procedure, Members recommended that this provision be removed from the Procedure (the Committee are due to consider this formal revision on Thursday 19th October). Accordingly, I have made no such recommendation.

Richard Penn
Commissioner for Standards

13 October 2006

STANDING ORDER 16 - Standards of Conduct

Title and Terms of Reference

16.1 There shall be a Committee on Standards of Conduct, which shall:

(i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards that a Member has not complied with Standing Order 4 or any Assembly resolution relating to the financial or other interests of Members, or that a Minister has not complied with the requirements of Standing Order 2.8;

(i) (a) investigate, report on and if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards that a member has not complied with any requirement to record matters specified under Standing Order 38.

(ii) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards that a Member has not complied with any Assembly resolution relating to Members' standards of conduct or with the guidance for Ministers which the Assembly has approved in accordance with Standing Order 2.7 or the Code of Conduct under Standing Order 18.14;

(iii) consider any matters of principle relating to the conduct of Members generally;

(iv) supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and the Record of Membership of Societies, and the form and content of the Register and the Record;

(v) present an annual report to the Assembly on the complaints made under (i), (i)(a) and (ii) and the action taken, and on its conclusions in respect of ethical standards in the conduct of the Assembly's business; and -

(vi) establish and lay before the Assembly procedures for the investigation of complaints under Standing Orders 16.1 (i), (i)(a) and (ii).

Membership

16.2 The Assembly shall elect a Member to chair the Committee, together with other Members elected so far as practicable to reflect the balance of political groups in the Assembly. The Presiding Officer shall not be a member of the Committee, but shall be entitled to attend any meeting of the Committee, or submit papers to it, for the purpose of drawing to its attention such considerations as he or she considers appropriate.

16.2A Where a Committee Member is subject to a complaint under this Standing Order he or she shall take no part in any consideration of the complaint by the Committee. In such circumstances, and in relation solely to the consideration of

the complaint concerned, another Member from the same political group, who has been nominated in advance by the Leader of that group, may replace that member. The nominated Member may participate in the meetings of the Committee to consider the complaint as if he or she were a member of it. No Member may replace more than one Committee member at a meeting.

Commissioner for Standards

16.3 The Assembly shall appoint a person who is not an Assembly Member or a member of its staff to act as the Commissioner for Standards. The duties of the Commissioner shall be:

- i. to investigate factual matters arising out of any complaint against a Member;
- ii. to advise the Committee on any matters of general principle relating to the standards of conduct of Members;
- iii. to advise the Committee on any matters of general principle relating to the Registration of Members' Interests and the Recording of Membership of Societies; and
- iv. otherwise render such assistance on matters relating to the standards of conduct of Members as the Assembly may from time to time decide.

16.3A Where the Commissioner for Standards is unable, for whatever reason, to investigate a complaint, the chair of the Committee (or if he or she is unable to act another member of the Committee acting on his or her behalf) shall propose to the Assembly the temporary appointment of a person, who is not an Assembly Member or a member of its staff, to investigate the complaint. Time shall be made available as soon as possible for such a motion to be debated; and in any event such a debate shall take place within five working days of the motion having been tabled. Such motions shall not be subject to amendment.

Meetings

16.4 The Committee shall meet as soon as may be after a complaint has been referred to it by the Commissioner for Standards; and at other times as convened by the chair.

16.5 The Committee may meet in public or in private, but when deliberating upon a complaint, the Committee shall meet in private unless it resolves otherwise. Any Member who is the subject of an investigation by the Committee shall be permitted to make oral or written representations to it and may be accompanied at oral hearings by another person (who may participate in the proceedings with the permission of the chair).

16.6 The chair may, after consulting the Presiding Officer, call a meeting of the committee in a week in which the Assembly is not holding a Plenary meeting in order to consider an urgent matter.

Reports

16.7 If the Committee has investigated a complaint referred to it by the Commissioner for Standards, it shall report to the Assembly as soon as may be after completion of the investigation. Such a report may include a recommendation to censure a Member for failing to comply with any of the matters encompassed within Standing Order 16.1 (i), 16.1(i)(a) or 16.1 (ii).

16.8 If a motion to consider a report under Standing Order 16.7 is tabled by a member of the Committee, time shall be made available as soon as possible for the motion to be debated. Such motions shall not be subject to amendment.

16.9 The Committee may report to the Assembly on other matters within its remit from time to time.

MEMBERSHIP OF THE COMMITTEE ON STANDARDS OF CONDUCT

Kirsty Williams (Chair)	Brecon & Radnorshire	Liberal Democrats
David Davies	Monmouth	Conservative
Glyn Davies	Mid and West Wales	Conservative
Jocelyn Davies	South Wales East	Plaid Cymru/ Party of Wales
Tamsin Dunwoody	Preseli Pembrokeshire	Labour
Val Lloyd	Swansea East	Labour
Lynne Neagle	Torfaen	Labour
Karen Sinclair	Clwyd South	Labour
Owen John Thomas	South Wales Central	Plaid Cymru/ Party of Wales
Gwenda Thomas	Neath	Labour
Clerk	Andrew George	
Deputy Clerk	Gareth Rogers	
Commissioner for Standards	Richard Penn	
Counsel to the Assembly	Peter Jones	
Parliamentary Service		