



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Safonau Ymddygiad](#)

[The Standards of Conduct Committee](#)

08/03/2016

[Agenda'r Cyfarfod](#)

[Meeting Agenda](#)

[Trawsgrifiadau'r Pwyllgor](#)

[Committee Transcripts](#)

Cynnwys Contents

- 3 Cyflwyniad ac Ymddiheuriadau
Introduction and Apologies
- 3 Gwrandawriad Cadarnhau—Penodi Comisiynydd Safonau
Confirmation Hearing—Appointment of the Commissioner for
Standards
- 13 Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn
ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in
the committee. In addition, a transcription of the simultaneous interpretation
is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Llyr Gruffydd Bywgraffiad Biography	Plaid Cymru The Party of Wales
John Griffiths Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Mark Isherwood Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Eluned Parrott Bywgraffiad Biography	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Syr / Sir Roderick Evans	Comisiynydd Safonau Cynulliad Cenedlaethol Cymru Arfaethedig Proposed National Assembly for Wales Commissioner for Standards
-----------------------------	---

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Bethan Davies	Clerc Clerk
---------------	----------------

Dechreuodd y cyfarfod am 09:29.
The meeting began at 09:29.

Cyflwyniad ac Ymddiheuriadau
Introduction and Apologies

[1] **John Griffiths:** We've reached the appointed hour. Today's is a public, formal meeting, so welcome to everyone. Headsets are available, as ever, for amplification and interpretation, and of course Members are very welcome to contribute in either Welsh or English.

[2] Our first item is introduction and apologies; we haven't received any apologies that I'm aware of, and hopefully Eluned Parrott will join us in due course.

09:30

Gwrandawriad Cadarnhau—Penodi Comisiynydd Safonau
Confirmation Hearing—Appointment of the Commissioner for
Standards

[3] **John Griffiths:** Item 2, then, is our confirmation hearing regarding the appointment of our National Assembly for Wales Commissioner for Standards. We're very pleased to have Roderick with us here today, having gone through the panel appointment procedure. I think it would be very useful for the committee—morning, Eluned—if we were to begin with a brief presentation from Sir Roderick Evans regarding his application for the post of commissioner for standards, following which I will invite Members to ask any questions they may have. So, over to you at this stage, Sir Roderick, if you'd like to make a brief presentation to the committee.

[4] **Sir Roderick Evans:** Thank you very much. It is a great pleasure to be here, and I'm very conscious of the importance of the role that I hope to undertake of commissioner, and the sensitivity of the job. If the Assembly approves my appointment next week, then I shall strive to discharge that role appropriately.

[5] Before I applied for the post, I did some research, obviously, into the role of commissioner, and I had a very informative meeting with Gerard, who told me what the role involves and what might be ahead for his successor. I've also spoken, of course, to John and to Claire Clancy, and learned more about the role of commissioner from them. I do, therefore, have a little knowledge of the role, but as always, a little knowledge can be a dangerous thing. It can lead one to believe that one knows what the problems and issues ahead are, and how they should be dealt with, when the reality is, in fact, that I'm still on the outside looking in at the role of commissioner, and when I learn more about the role, I'm sure that my idea and perceptions of the role might change. Gerard, as I mentioned earlier, has been very, very generous, as you'd expect, and he's offered to spend time with me over the coming months to help play me into the role, and for that I'm very grateful.

[6] Well, what do I see at the moment, anyway, as priorities and challenges for the future? The fundamental priority, it seems to me, is one of confidence. That is, that the public has confidence in the office of Assembly Member and in the institution of the Assembly itself. That's the ball, I think, that we must keep our eye on at all times and it must be watched against a

developing institutional and constitutional background.

[7] There are a number of challenges. After the May elections, there will inevitably be a significant number of new Members of the Assembly. A lot are standing down, and therefore there'll be new people coming into the Assembly. It may well be that, after the following election, which will be in the latter half of the next commissioner's period of office, that not only will there be an inevitable new cohort of Members, but there may also be 20 or perhaps 40 additional Members of this institution. All those Members will need to be made familiar with the culture of public office, which may be new to many of them. There is, I know, an induction process for new Members, and I would be very happy to contribute to that in any way that was thought appropriate. It may be that my experience in arranging courses for the training of the judiciary will prove useful in that context.

[8] Secondly, the sphere of influence of the Assembly and the fields over which it has power and responsibility have grown enormously since 1997, and in the next few years they will expand further, and expand in ways that will increasingly, it seems to me, attract the attention of lobbyists—and we discussed this informally a few moments ago. Lobbying, of course, is a perfectly proper way of influencing political life, influencing political decisions and policies, but it can be carried out in improper ways, which could compromise the position of Members. And it seems to me that, in the coming years, vigilance—perhaps even increased vigilance—will be required to ensure that Members are aware of the risks of lobbyists.

[9] And thirdly, if the constitutional position of the Assembly develops so that there's a greater interface between the Assembly and the judiciary, it might be that we'll have to consider protocols to regulate that relationship. There's a well-trodden path between the senior judiciary in London and Whitehall. That can be an entirely proper relationship. The judiciary are asked, for example, questions such as, 'If these regulations were passed, if this clause were enacted, what would be the consequences of it?' And it's perfectly proper for the judiciary to express a view, not on the politics of the issue, but on the legal effect and consequences of it. As a former judge, I believe passionately that ensuring judicial independence—keeping the judiciary out of politics—is crucial. And in London, protocols are being developed now to regulate the relationship between the judiciary and the legislature and Whitehall, and to ensure that the judiciary is not asked questions that either shouldn't be asked, or if they are asked, they shouldn't answer. The vital commodity here is transparency.

[10] It is interesting to note that on the day that I was interviewed by John and the panel, the Lord Chief Justice of England and Wales appeared before the legal affairs committee of the House of Commons, which is chaired by a very senior Queen's Counsel. And the first question he asked the Lord Chief Justice was a question that he shouldn't have asked, and the Lord Chief Justice had to tell him that he couldn't answer it. So, it may well be that in future, if the interface and if the need for judicial advice in the terms I've mentioned arises, we would have to consider protocols to regulate it.

[11] Those are issues, I think, that can properly be described as ethical issues. There are, however, other issues that are not strictly ethical, but they do have the ability to greatly affect the confidence of the public in an Assembly Member and in the institution itself; they can be described as performance issues—'How well do Assembly Members carry out their functions?' Whether a Member carries out his or her duties in a good, bad or indifferent way is not, in my view, an issue that the commissioner should get involved in as commissioner, let alone seek to police. Whether a Member answers his mail promptly or deals adequately with matters raised by a constituent are matters on which judgment should be passed through the democratic process—that is, through the ballot box, and not by the commissioner.

[12] However, it has to be recognised that the way a Member interacts with the public is central to maintaining the public's confidence, not only in that Member, but in the institution itself. And that is something in which we all have a legitimate interest that needs to be protected. I simply wonder—maybe from a position of ignorance—whether there isn't scope to give assistance to Members as to what they might aspire to; assistance in the way of a discussion between the commissioner and party leaders to try to agree some form of informal protocol, not for policing by the commissioner, but something to which Members should aspire to. For example, if a member of the public writes to a Member, he should receive a response to a letter or an e-mail within x days. And then there should be a follow-up, hopefully a more substantive follow-up, within y days. It does seem to me that promoting or encouraging, which are the words of the Measure, standards such as those do come within the advisory role of the commissioner.

[13] But performance issues are wider than office management, it seems to me. The legislative competence of this place has grown significantly since 1998, and it will, in all probability, grow further in the next few years. The

result will be that the number, the breadth, and the complexity of Assembly Acts will increase, and scrutiny of the proposed legislation by Assembly Members will become more and more important. It may be, of course, that there'll be lawyers among the new Members, but there will inevitably be those who have no experience of the law, let alone of how to scrutinise draft legislation. However, scrutiny of draft legislation is a central part of the role of an Assembly Member, and how that role is discharged, and the quality of resulting legislation, does appear to me to be something that affects, and can affect profoundly, the public's confidence in this institution.

[14] I know that there are professional development courses for AMs, and they do involve training in legislative scrutiny, and perhaps there's a role for the commissioner to help in arranging such courses. That, again, doesn't seem to me to be inconsistent with the statutory role of the commissioner. Those are the challenges that, as an outsider, I presently perceive. No doubt, there'll be others that will become apparent if I had the opportunity of seeing the role from the inside, rather than looking in from the outside.

[15] How would I carry out the duties of commissioner? The first point to make, it seems to me, is that, in seeking to carry out the role, the commissioner will be responding to two different constituencies, the public and Assembly Members, although the ultimate expectation of each will, I think, be very similar. The commissioner—I—would need to adhere to the Nolan principles of conduct in public life and to maintain those standards that the commissioner aims to promote, encourage and safeguard in the office of Assembly Members. Transparency, approachability and independence from political considerations are central to the role. One of the features of Gerard's period in office, it seems to me, is that the codes that have been promulgated have not been imposed, as it were, from above on Assembly Members, against their wishes. They've been accepted by AMs, following consultation. They've accepted the burden of regulation and that, I think, is a very valuable approach, which I would wish to emulate.

[16] There'll be times when the commissioner will need to be firm and decisive, and others when such an approach will be tempered with pragmatism and common sense. Much of what I've described applies, of course, to the life and work of a judge, and I hope that my career so far will be of assistance in earning the respect and confidence of both the public and Members of the Assembly. Thank you.

[17] **John Griffiths:** Diolch yn fawr, Roderick. Thank you very much for

setting out your thoughts on this very important post, and the challenges and priorities that you see involved. I will now ask committee members whether they wish to ask any questions. Llyr.

[18] **Llyr Gruffydd:** Diolch yn fawr. Fe wnaif ofyn fy nghwestiwn yn Gymraeg. Bore da, a diolch i chi am eich cyflwyniad. Rŷch chi'n sicr yn dod â phrofiad anrhydeddus a pherthnasol iawn i'r rôl yma.

Llyr Gruffydd: Thank you. I'll ask my question in Welsh. Good morning, and thank you for your presentation. You certainly come here with very honourable and relevant experience to bring to this role.

[19] Ond, wrth gwrs, un o'r gwahaniaethau pennaf yr ŷch chi wedi, efallai, cyffwrdd ag ef yn gynharach yw bod yr amgylchedd yn fwy sensitif yn wleidyddol, ac mae yna honiadau o amryfusedd, efallai, sy'n gallu cario goblygiadau gwleidyddol yn ogystal â goblygiadau personol i unigolion sydd yn wynebu honiadau o'r fath. Fe fydden i jest yn gofyn i chi sôn ychydig am unrhyw brofiad sydd gennych chi o gadw'r 'objectivity' yna yn y cyd-destun gwleidyddol, efallai, o unrhyw brofiadau rŷch chi wedi'u cael yn y gorffennol.

But, of course, one of the main differences that you may have touched on earlier was that the environment is more politically sensitive, and there are allegations of breaches, perhaps, that can have political implications as well as personal implications for the individuals facing those allegations. So, I would just ask you to talk a little bit about any experience that you have of maintaining that objectivity in the political context, perhaps, of any experiences that you've had in the past.

09:45

[20] **Syr Roderick Evans:** Wel, mae bod yn wrthrychol, wrth gwrs, yn rhan annatod o waith barnwr. Nid yw barnwr—yn bendant ddim ar fy lefel i—yn ymwneud yn uniongyrchol â gwleidyddion, na gwleidyddiaeth. Ond, ar y llaw arall, mae nifer o bethau y mae barnwr yn gorfod gwneud, a nifer o ystyriaethau sydd yn dod mewn i achos, yn rhai gwleidyddol. Felly, mae'n rhaid cadw

Sir Roderick Evans: Well, being objective, of course, is an integral part of the work of a judge. A judge—certainly not on my level—does not directly get involved with politicians, or politics. But, on the other hand, there are a number of things that a judge has to do, and a number of considerations that come into a case, are political ones. So, one has to keep a distance from any open

draw oddi wrth unrhyw berthynas political relationship. That is particularly important, for example in judicial review work, when a judge has to judge the accuracy of a decision taken by a public body—not judge the decision or the political policy, but judge the way in which that decision has been taken. I believe that that line is quite a clear line and, to be honest, it is quite easy to retain that degree of separation, but I accept the point that you make: in an environment such as this institution, politics is much closer. One will have to be very cautious.

draw oddi wrth unrhyw berthynas wleidyddol agored. Mae hynny'n arbennig o bwysig, er enghraifft mewn gwaith *judicial review*, pan fydd barnwr yn gorfod barnu cywirdeb penderfyniad corff cyhoeddus—nid barnu'r penderfyniad ac nid barnu'r polisi gwleidyddol, ond barnu'r ffordd y mae'r penderfyniad wedi cael ei wneud. Rwy'n credu bod y llinell yna yn llinell ddigon clir ac, a bod yn onest, yn ddigon hawdd i'w gadw, ond rwy'n derbyn y pwynt rŷch chi'n ei wneud: mewn amgylchfyd fel y sefydliad hwn, mae gwleidyddiaeth yn lot mwy agos. Bydd rhaid bod yn wylidwrus.

[21] **John Griffiths:** Diolch yn fawr. **John Griffiths:** Thank you very much, Eluned.

[22] **Eluned Parrott:** Thank you, Chair. Clearly, the complaints system, as it works at the moment, involves the commissioner working in tandem with this committee, whereby you, as commissioner, would investigate complaints and make recommendations, but the committee would then act upon them. Can I ask: there is a potential, is there not, for the committee and the commissioner to not necessarily agree on courses of action? How would you deal with that potential challenge?

[23] **Sir Roderick Evans:** I'm not sure that I take it as a challenge. My understanding, so far—and, again, I emphasise that it is an understanding so far—is that we have different constitutional roles to perform. It's by no means unknown for different parts of the constitution to come to different views on things. The system is such that those play out so that there'll be no real difficulty, I think. I hope that if I were to make a recommendation or make a report that came before this committee, then the committee would, at the very least, seriously consider why I have come to the conclusion or view that I have. If there is a difference, then that's fine. It's a bit like making a decision in the High Court and being overturned by the Court of Appeal. That's not an entirely correct analogy, but there are differences and that's part of the process, I think.

[24] **Eluned Parrott:** The roles of the commissioner and the committee have changed over a period of time. They have obviously evolved as the institution has matured. You've touched on lobbying as being an area of perhaps future concern. Are there any other areas where you might anticipate that there may be a future role for the standards commissioner and this committee to ensure public confidence where we are not currently operating?

[25] **Sir Roderick Evans:** I think it would be presumptuous of me to go beyond what I've said already about that. Things are going to change. Politics and particular institutions are dynamic beings; they will change and things will arise. I think, from what I can see at the moment, that lobbying is going to be a major issue. Lobbyists, by their very nature, want to get their way and, very often, they don't mind how they get their way. Sometimes, they dress up the way they want to get their way in what might appear to be a perfectly innocent or perfectly acceptable guise. That can be misleading, I think, so there will need to be extreme vigilance. Once you get increased powers—and there'll be increased powers, it seems, in the next couple of years—and once the fields of operation expand, then the scope for interested parties to lobby is going to increase, and big business—we know from other places what happens—that, I think, is going to be a very substantial issue. I don't think, at the moment, it would be wise for me to go beyond that. I'm sorry to be so reticent.

[26] **Eluned Parrott:** No, no; that's fine. Thank you.

[27] **William Graham:** Okay, Eluned? Mark.

[28] **Mark Isherwood:** I'm heartened that, in the notes we've got, you stated during the panel interview that you saw the importance of the independence of the role. Of course, in court, you would invariably not know the person or persons concerned, and if you did, you'd have to declare that you did and step aside. But here, it's highly likely that you may be asked to consider cases where you inevitably know the person or persons involved, either because the allegation has been made against them, or the persons making the allegation, or other parties involved, may be known to you, and you can't step back because we've only got one commissioner. So, how would you fulfil that role of independence in such circumstances?

[29] **Sir Roderick Evans:** There are parts of a judicial jurisdiction that can create that kind of issue. If there is a complaint against a judge—a circuit

judge or district judge—then there would be an internal process by which a High Court judge would be nominated to investigate, and he might know that judge. I think, in order to ensure confidence, there has to be a transparent process of how you investigate, how you draw your conclusions, and the result must be consistent with your investigation and your reasoning. If there were to be a need to investigate somebody you know, then, obviously, you'd have to declare that, but I think the transparent way in which the investigation is carried out, in particular if the result is endorsed by the committee, would give confidence that it has been carried out properly.

[30] **Mark Isherwood:** Thank you. Again, you've talked about what the expectation of Assembly Members should be and of the need for incoming new Members to be inducted and made aware of those wider responsibilities, but how would you, in your role, engage with Members, to help their understanding of and engagement with the standards that would be expected of them?

[31] **Sir Roderick Evans:** Well, I don't want to keep repeating the same word, but transparency is, I think, crucial, so people know what goes on. Engaging with Members, there would have to be approachability, that the committee or Member can ask for advice: 'Should I do this? Should I not do that?' And I think that advice can be given on the basis, for example, that if what you tell me is the full story, then the likelihood is that, if it ever becomes an issue, my view would be whatever. And I think giving that kind of advice is acceptable and wise. But, ultimately, there has to be a transparency to all this, coupled with approachability.

[32] **Mark Isherwood:** And would you see your role being proactive, as having an open door, as people wish to come to you for that advice, but a proactive role at all, as well, at an engagement level to avoid the need to become involved later on?

[33] **Sir Roderick Evans:** I think that we would need to keep an eye on issues. The best way of dealing with a problem is to foresee it and head it off, and if that can be done—. For example, if Claire Clancy were to say, 'There's an issue about to arise on this point, do we need to issue guidance, talk to people?', then I think that's the way to do it, rather than wait until you have to react to a problem.

[34] **Mark Isherwood:** Okay. Thank you.

[35] **John Griffiths:** Okay. Eluned.

[36] **Eluned Parrott:** I wonder if I might ask—I very much welcome your comments on engagement with the Members, but there are of course other audiences who have a keen interest in the work that you will be doing. Most notably, obviously, we talked about public confidence being the purpose of the role that this committee and your office hold. Can I ask: how would you engage with the public to make sure that they are aware of the work of the standards commissioner and that they have an understanding of how you operate, and how can you contribute to their public confidence by being proactive in that sense?

[37] **Sir Roderick Evans:** Can I split that in two?

[38] **Eluned Parrot:** Of course.

[39] **Sir Roderick Evans:** I think that there are processes to lay out before the public what the commissioner does, how he can engage with the public and how the public can engage with him, and I would be very keen, by way of websites or whatever, to do that. What I would not be happy to do, I have to say, is to engage with the public through the press or the media. I won't say 'never'—if there were to be cause for a proper, responsible public discussion on the role, then it may well be that somebody, maybe the commissioner, might engage with that. But I would be very reluctant to do that. I've never done it as a judge, and maybe that's colouring my approach. And then, of course, it seems to me, there can never be discussion about an individual case in public, which is precisely the point that the Lord Chief Justice made to the legal affairs committee last week.

[40] **Eluned Parrott:** Thank you.

[41] **John Griffiths:** Okay. Mark.

[42] **Mark Isherwood:** Related to that, actually—. If I may, just one final question from me—

[43] **John Griffiths:** Yes.

[44] **Mark Isherwood:** —because you've identified the growing public interest over recent years in the standards of politicians. How would you manage the public expectation of your role, given the constraints you've just

described, (a), to ensure—and I'm sure you would—what the public actually does expect, and, (b), to provide them with assurance that those standards are being applied?

[45] **Sir Roderick Evans:** The basic expectation, it seems to me, is not of the commissioner, but of the Assembly Members. That is the fundamental—. The commissioner can engage with the public and raise public confidence by the kind of procedure that we've just discussed about laying out how the public can engage. I would not be happy to become involved with the public directly on any issue to do with a complaint or with the role beyond extending information to the public about it. It's a curious line, isn't it? It's the same with the judiciary. The anonymity of a judge is a very good thing, I think, because you don't really want to know much about the judge. All you want to know is what he does and that his decisions are as right as he can get them. Coming back to this business of transparency, if the commissioner does a report and sets out, (a), the complaint, what he's done about it, what his conclusions are—so that it's all laid out, available for the public to look at on the website or the report or whatever—that is the kind of thing, it seems to me, that will engage and increase public confidence. I'm not sure that answers your question.

10:00

[46] **Mark Isherwood:** As a lawyer, you make the law and they apply the law, whereas in this role, the commissioner is, in effect, participating in rule making and then applying the rules, if an individual case comes to you, which of course is confidential. It's ensuring that the rule-making reflects public concern, or manages that public concern; so, ensuring that you are, therefore, connected with the world of Wales to know how people are thinking and what they're expecting of us.

[47] **Sir Roderick Evans:** Yes. I think that, again—I don't want to come back to the judicial comparison, but judges and commissioners for standards live in the real world. They aren't divorced from reality. There can be little doubt as to what the public expects. It expects, on behalf of Assembly Members, integrity, efficiency, honesty and other basic requirements of public life. Now, how do you encourage that? You encourage Members to behave in accordance with those principles and you set out, in full detail, where—if it ever happens—that standard has been missed by somebody. Again, I'm not sure that answers your question entirely.

[48] **Mark Isherwood:** Thank you very much. Thank you very much, Chair.

[49] **John Griffiths:** Okay. Well, thank you very much, Roderick, for your presentation and indeed your answers to Members' questions.

10:02

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o weddill y exclude the public from the
cyfarfod yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[50] **John Griffiths:** The next item on our agenda is to move into private session to consider further the appointment of the standards commissioner and the rest of the business for today. So, thank you very much, Roderick.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:02.

The public part of the meeting ended at 10:02.