

Appointment of the Senedd Commissioner for Standards

March 2021

The report recommends that Douglas Bain CBE TD be appointed Senedd Commissioner for Standards from 1 April 2021 and recommends the remuneration package.

Background

1. The National Assembly for Wales Commissioner for Standards Measure 2009 (the Measure) established the independent office of Senedd Commissioner for Standards (the Commissioner).
2. The office of Commissioner became vacant in November 2019, following the resignation of Sir Roderick Evans. Douglas Bain CBE TD was appointed acting Commissioner in November 2019. The Senedd agreed in October 2020 to delegate responsibility for the recruitment of a Commissioner to the Chief Executive and Clerk of the Senedd (the Clerk).
3. This will be the third appointment to the office of Commissioner.

The role of the Senedd Commissioner for Standards

4. The Commissioner is appointed by the Senedd as an independent office holder responsible for considering matters relating to the conduct of Members.
5. The principal aim of the Commissioner, in exercising functions under the Measure, is to promote, encourage and safeguard high standards of conduct in



the public office of a Member of the Senedd. The main responsibilities and duties of the Commissioner are:

- ensuring the requirements of the Measure are met;
- undertaking investigations as provided for by the Measure and reporting findings to the Standards of Conduct Committee;
- advising Members of the Senedd and the public about the procedures for making and investigating complaints; and
- advising the Senedd on matters of general principle relating to the Code of Conduct and associated documents or to the conduct of Members of the Senedd generally; on procedures relating to the investigation of complaints; and on any other matter relating to promoting high standards of conduct in the public office of Members of the Senedd.¹

The process to appoint the Senedd Commissioner for Standards

6. The Measure sets out that the appointment is made by the Senedd.

Paragraph 2 of the Schedule to the Measure states:

“Arrangements referred to in paragraph 1 , (but not the appointment of the person so identified,) may be delegated by the Senedd , in whole or in part, to the Commission, to the Committee on Standards of Conduct or to the staff of the Senedd and such arrangements may include the involvement of persons independent of the Senedd”

7. On 7 October 2020, the Senedd delegated responsibility for the recruitment of a Commissioner to the Clerk.

8. The Clerk made the arrangements for selecting the candidate for appointment, and invited the Standards of Conduct Committee (the Committee) to contribute to the recruitment process. This included commenting on the position description, recruitment process, terms and conditions of appointment, and nominating Members of the Committee to sit on the selection panel.

9. The four member selection panel comprised of:

- Manon Antoniazzi, Chief Executive and Clerk of the Senedd (Chair);

¹ The functions of the Commissioner are set out in full in the National Assembly for Wales Commissioner for Standards Measure 2009.

- Jayne Bryant MS, Chair of the Standards of Conduct Committee;
- Rhun Iwan Iorwerth MS, Member of the Standards of Conduct Committee; and
- Sir Paul Grice, Principal and Vice-chancellor of Queen Margaret University and former Clerk and Chief Executive of the Scottish Parliament (independent panel member).

10. The advert for the position was posted on the Senedd's website under the public appointment section and promoted via social media. The Whitehall Industry Group was utilised during the recruitment process.

11. The selection panel interviewed shortlisted candidates in January 2021 and identified a preferred candidate: Douglas Bain CBE TD.

Remuneration and terms of appointment

12. Annex A sets out the remuneration package for the office of Commissioner. In summary the terms are:

- an annual retainer of £5,767.62 (to be paid monthly), and a daily rate of £430.33 (or pro-rata for part of a day) for activities that relate directly to the role and responsibilities of the post plus reasonable expenses; and
- provision to determine that the Commissioner's remuneration package be adjusted in April of each year by the change in the ASHE (Annual Survey of Hours and Earnings for full-time employee jobs in Wales) between April and April of the previous year, with a 0% collar and a cap of 3% - it is proposed that this is delegated to the Clerk.

13. This is a six year appointment². It is recommended that the appointment commences on 1 April 2021.

14. The Measure allows for the Commissioner to appoint staff or secure the provision of services considered necessary to assist in the exercise of the Commissioner's functions³. The Commissioner may also enter into arrangements with other public bodies or office holders to provide services to the Commissioner

² As required by section 1(4) of the Measure.

³ Paragraph 6(1) of the Schedule to the Measure.

for that purpose⁴. Currently, administrative support for the acting Commissioner is provided by staff of the Senedd Commission.

Pre-appointment hearing

15. The Committee held a pre-appointment hearing on 23 February 2021 with the preferred candidate, Douglas Bain CBE TD. A transcript of the session is attached at Annex B.

16. The Committee welcomed the candidate setting out his approach for the six year term and his ambition to raise the profile of standards of conduct during this period.

17. The Committee noted that the candidate has broad experience of dealing with complaints, particularly in dealing with complaints that may fall under the dignity and respect policy.

Conclusion and Recommendation

Conclusion 1. The Committee fully endorses the nomination of Douglas Bain CBE TD as Senedd Commissioner for Standards.

Recommendation 1. The Committee recommends that the Senedd appoints Douglas Bain CBE TD as Senedd Commissioner for Standards from 1 April 2021 for a six year term.

Recommendation 2. The Committee recommends that the Senedd agrees the terms of appointment set out at Annex A.

Recommendation 3. The Committee recommends that the Senedd delegates:

- the making of decisions in relation to the annual adjustment of the Commissioner's remuneration package to the Clerk; and
- the settling of all terms of appointment other than those at Annex A to the Clerk.

⁴ Paragraph 6(2) of the Schedule to the Measure.

Annex A - Terms of Appointment

- The remuneration is to be an annual retainer of £5,767.62 and a daily rate of £430.33 (or pro-rata for part of a day) for activities that relate directly to the role and responsibilities of the post plus reasonable expenses.
- The remuneration package may be adjusted in April of each year by the change in the ASHE (Annual Survey of Hours and Earnings for full-time employee jobs in Wales) between April and April of the previous year, with any adjustment subject to an upper limit of 3% and not being lower than 0%.
- All sums referred to in paragraph 1 (as adjusted in accordance with the mechanism referred to in paragraph 2) are to be paid to the Commissioner by the Senedd Commission and charged on the Welsh consolidated fund.

Annex B – Transcript of Pre-Appointment Hearing

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 gyfsweld 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.

Annex C – Career History - Douglas Bain

Douglas was called to the Scottish Bar in 1974. He served as a Procurator Fiscal Depute specialising in the investigation of serious and complex fraud and corruption.

In 1988 he moved to Northern Ireland where he held senior appointments in a specialist unit charged with the disruption or investigation of terrorist finance and in the Northern Ireland Prison Service. Following his retirement from the civil service Douglas was the Chief Electoral Officer for Northern Ireland from 2006 to 2010. From 2010 to 2013 he was a Commissioner of the Parades Commission for Northern Ireland.

In 2012 he was appointed as first Northern Ireland Assembly Commissioner for Standards and held that office for the statutory maximum period of five years. In that office his functions were similar to those of the Senedd Commissioner for Standards. During the same period, as the Appointed Person for the whole of the United Kingdom under the Proceeds of Crime Act 2002 his main duty was to consider and report on the manner in which police powers under that Act to search without a warrant were exercised.

Since November 2019 he has been the Acting Senedd Commissioner for Standards.

Douglas was appointed CBE in 2010 for services to the Northern Ireland Prison Service. He holds the Territorial Decoration with bar. He lives with his wife in County Down.