

Y Pwyllgor Safonau Ymddygiad

SOC(3)-02-08 (p1) Dydd Mawrth 3 Mehefin 2008

Teitl: Defnyddio'r bleidlais fwrw yn y weithdrefn gwyno

Cefndir

1. Yn ei gyfarfod ar 21 Tachwedd 2007, bu'r pwyllgor yn trafod adolygiad o'r weithdrefn ar gyfer delio â chwynion yn erbyn Aelodau'r Cynulliad, a gwnaed argymhellion penodol ar gyfer diwygio'r weithdrefn. Hefyd, bu'r pwyllgor yn ceisio eglurder o ran defnyddio'r bleidlais fwrw wrth ystyried cwyn.

Ystyriaeth

2. Dyma'r egwyddorion sylfaenol ar gyfer defnyddio'r bleidlais fwrw:

- i) ni ddylai pleidlais fwrw'r Cadeirydd atal y pwyllgor rhag trafod ymhellach;
- ii) ni ddylid gwneud penderfyniad oni bai bod y mwyafrif o blaid y penderfyniad hwnnw;
- iii) dylid ffafrio'r testun gwreiddiol yn hytrach na thestun wedi'i ddiwygio.

3. Mae'r pwyllgor wedi cytuno y bydd aelodau am ymdrechu i gyrraedd consensws wrth ystyried cwyn, neu o leiaf byddant am wneud penderfyniad clir y naill ffordd neu'r llall. Efallai y bydd hyn yn golygu oedi o ran ystyried rhai materion er mwyn cael cyfle i ystyried y materion ymhellach neu i geisio eglurder. Mae'r cyngor a geir yn Atodiad A yn datgan yn glir y dylid rhoi pleidlais yn negyddol os bydd yn rhaid i bleidlais fwrw gael ei rhoi, a hynny er mwyn sicrhau bod y pwyllgor yn parhau i drafod y mater sydd gerbron.

4. Mae Rheol Sefydlog 16 yn rhoi i'r pwyllgor y cyfrifoldeb dros ddyfarnu ar honiadau o gwynion a chyflwyno adroddiad arnynt. Mae'r weithdrefn ar gyfer delio â chwynion yn gofyn bod y pwyllgor yn cynnal gwerthusiad manwl o adroddiad y Comisiynydd ac unrhyw dystiolaeth arall. Adroddiad y pwyllgor yw'r cam olaf yn y broses o ymchwilio i gwyn. Ni cheir cynnal trafodaeth bellach ar yr ymchwiliad hwnnw yn y Cyfarfod Llawn. Mae hyn yn rhoi effaith i'r egwyddor na ddylid penderfynu gwneud argymhelliad oni bai bod y mwyafrif o blaid y penderfyniad hwnnw.

5. Nid yw geiriad y cynnig i'w ystyried yn cael effaith ar y ffordd y caiff y bleidlais fwrw ei harfer. Efallai y caiff cynnig ei eirio mewn ffordd sy'n gwahodd y pwyllgor i ganfod bod yr Aelod Cynulliad wedi torri'r Cod. Ar y llaw arall, efallai y bydd yn gwahodd y pwyllgor i ganfod nad yw'r Aelod Cynulliad wedi torri'r Cod. Yn y naill achos neu'r llall, byddai pasio'r cynnig yn golygu na fydd y pwyllgor yn ystyried y mater ymhellach. Felly, yn y ddau achos mae Rheol Sefydlog 2.20 yn ei gwneud yn ofynnol bod y bleidlais fwrw'n cael ei rhoi yn erbyn y cynnig.

6. Mae'r cyngor yn Atodiad A yn cynnwys awgrym y dylid diwygio'r weithdrefn gwyno i egluro sut y bydd y pwyllgor mynd yn ei flaen. Mae Atodiad B yn nodi adran berthnasol y weithdrefn gwyno ac yn awgrymu geiriad i'w ychwanegu at y weithdrefn. Bydd hwn yn egluro'r ffaith bod yn rhaid cael mwyafrif o blaid argymhelliad a wneir gan y pwyllgor cyn iddo wneud penderfyniad. Mae'r testun perthnasol wedi'i danlinellu.

Argymhellion

7. Gwahoddir y pwyllgor i

- a) nodi'r cyngor sydd ynghlwm yn Atodiad A; a
- b) ystyried y gwelliant arfaethedig i'r Weithdrefn Gwyno sydd ynghlwm yn Atodiad B

**Gwasanaeth y Pwyllgorau
Mehefin 2008**

Annex A

Exercise Of The Chair's Casting Vote In The Committee On Standards Of Conduct

Introduction

1. This purpose of this paper is to advise the Chair and Members of the Committee on the use of the casting vote in relation to decisions on complaints that AMs have breached the Code of Conduct for Assembly Members.

Standing Orders

2. Standing Order 2.20 prescribes the way in which the Presiding Officer's casting vote is to be used in plenary proceedings when there

would otherwise be an equality of votes.

3. Standing Order 10.32 provides that in the event of an equality of votes in a committee meeting the chair must rule as to the disposal of the business in accordance with Standing Order 2.20.

4. Standing Orders prohibit the Presiding Officer from voting in plenary proceedings. The Presiding Officer therefore has only a casting vote. A Committee chair may, on the other hand, vote in committee proceedings in the same way as any other member of the committee. A casting vote by a Committee chair is therefore in addition to any normal vote which the chair may already have cast.

5. Standing Order 10.20 provides that, except where Standing Orders provide otherwise, the chair of a committee must determine its procedures, having regard to any written guidance which may be issued by the Presiding Officer after consulting with the Business Committee and the chairs of committees. No guidance has been issued relating specifically to the use of casting votes in the Committee on Standards of Conduct. Guidance on the disposal of business in committees generally (including guidance on the use of the chair's casting vote) was issued in September 2004. This advice is consistent with that guidance.

Standing Order 2.20

6. This provides that:

"Where there is an equality of votes a casting vote must be given:

- (i) in the affirmative where **(if the motion is passed*)** further discussion of the matter before the Assembly is possible; and
- (ii) in the negative where **(if the motion is passed*)** further discussion is not possible or where there is a vote on an amendment."

(* the words in bold do not appear in the Standing Order but are clearly implied and help to make the meaning of the Standing Order clearer.)

7. As the September 2004 Guidance explains, Standing Order 2.20 reflects the following underlying principles, derived from usage in many Commonwealth and other Parliamentary bodies:

- i) that the Chair's vote should not prevent further discussion;
- ii) that decisions should only be taken where a majority exists in favour of so doing;
- iii) that an original text should be preferred to an amended text.

8. Application of the rule normally gives rise to no difficulty:

Example 1

The Finance Minister proposes an annual budget motion under Standing Order 27.17. There is an equality of votes. If the motion is passed the budget will have been approved and no further discussion of it will be possible. Standing Order 2.20 requires that the casting vote should be in the negative. This gives effect to the principle that the budget should not be approved when there is no majority for doing so.

Example 2

The general principles of a proposed Assembly Measure are considered in plenary under Standing Order 23.24. There is an equality of votes. If the motion is passed there will be a further opportunity (under Standing Order 23.58) to consider whether to pass the proposed Measure. Standing Order 2.20 requires that the casting vote should be in the affirmative. This gives effect to the principle that the casting vote should not be used in a way which would prevent further discussion.

Decisions which the Committee on Standards of Conduct is required to take in relation to complaints against AMs

9. The Procedure for Dealing with Complaints against Assembly Members requires Complaints to be referred to and investigated by the Commissioner for Standards. Only if the Commissioner has concluded that the complaint is admissible and has then carried out a formal investigation does the Committee have any role in adjudicating on the complaint. This role is triggered by the Commissioner's report, but the Committee must also consider the evidence of the AM and any witnesses which the AM may call and may consider the evidence of other witnesses. The Committee must then decide (a) whether the AM was in breach of the Code of Conduct and (b) if so, what sanction (if any) it is to recommend.

10. The findings of the Committee must be set out in a report to the Assembly as a whole. If the Committee recommends dismissal of the complaint, no further action is taken in relation to the report. If the Committee reports that a breach has taken place, the Chair of the Committee tables a motion calling on the Assembly to endorse the Committee's recommendation. That motion is not subject to amendment so must either be passed or rejected as it stands.

11. Crucial decisions which the Committee has to take are, therefore, whether the Committee finds that the Member has committed a breach of the Code of Conduct and, secondly, what sanction to recommend.

Use of the casting vote in relation to a decision of the Committee as to whether a breach has been committed

12. How should the Chair's casting vote be cast if equal numbers of votes are cast for and against a motion relating to a finding that the AM has breached the Code?

13. The Committee will naturally want to strive to reach a consensus, or at least a clear decision one way or another, if at all possible. This may require consideration of the matter being deferred to enable there to be further reflection or to ensure that a member who is unavoidably absent to attend and to participate in the decision. Standing Order 16.8 does however require the Committee to report to plenary and the Procedure for Dealing with Complaints requires that report to include a finding of whether or not there has been a breach. The Committee's consideration of the complaint must therefore eventually conclude with a definite finding as to whether or not the AM has committed the alleged breach of the Code of Conduct.

14. Consideration by the Committee of a complaint of misconduct against an AM is a matter to which its own unique procedures apply. It is not a matter delegated to the Committee by plenary. Instead, Standing Order 16 confers directly on the Committee the responsibility of adjudicating and reporting on allegations of complaints and the Procedure for Dealing with Complaints requires the Committee to carry out a detailed evaluation of the report of the Commissioner and of other evidence. The subsequent vote in plenary, if the Committee reports a finding of breach, is a totally separate and distinct procedure of much more limited scope. The investigation of the complaint ends with the Committee's report. That investigation cannot be regarded as being capable of being discussed further in plenary.

15. A finding by the Committee as to whether an AM has committed a breach of the Code of Conduct is not merely a stage in a potentially longer process but is rather the final irrevocable outcome of the Committee's investigation. The basic finding of that investigation cannot be considered as open to further consideration.

16. It follows that in the event of an equality of votes Standing Order 2.20(ii) applies and the casting vote should be cast against a finding of breach of the Code of Conduct. The Committee cannot resolve to report to the Assembly that an AM has committed a breach of the Code of Conduct on the basis of the exercise of the Chair's casting vote.

17. This result gives effect to the principle referred to above, namely that no decision should be taken unless a majority exists in favour of that decision.

18. The way in which the motion to be considered is worded makes no difference to the way in which the casting vote is exercised. A motion might be worded so as to invite the Committee to find that the AM has breached the Code. It might, on the other hand invite the Committee to find that the AM has "not" been in breach of the Code. In either case the passing of the motion would bring the Committee's consideration of the matter to an end and so in both cases SO 2.20 requires the casting vote to be exercised against the motion.

Practical consequences of the exercise of the casting vote

19. Although it is clear that the Committee cannot find, based only on a casting vote, that an AM has acted in breach of the Code of Conduct, the Procedure for Dealing with Complaints does not deal explicitly with the consequences of an inability to make such a finding (because of an equality of votes and the exercise of the casting vote). There are two possible interpretations. One is that if the Committee cannot agree to find the AM in breach then it must dismiss the complaint. The other is that the complaint remains unresolved, one way or the other, until a majority of the Committee supports a finding that the AM is in breach or is not in breach, as the case may be.

20. It is therefore essential, in order to avoid uncertainty, and to ensure that the Committee's consideration of a complaint must, in some way, be brought to an eventual conclusion, that the Procedure should be revised to make it clear how the Committee is to proceed, in the event of its inability to reach a clear majority decision as to whether or not an AM has been in breach of the Code.

Keith Bush
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Annex B

Extract from the Complaints Procedure

7. Consideration by the Standards Committee

Initial Consideration

Oral Hearing

Committee's Consideration of its Decision

1. Following any oral hearing, the Committee will meet in private to consider whether the Member is in breach of one of the matters encompassed within Standing Order 16.1(i) and what action if any it should advise the Assembly to take if a breach is found.

2. In order for the committee to take a decision to make a recommendation, as detailed at 7.11, a clear majority must

exist in favour of the recommendation.

Committee's Recommendations

7.11 The Committee may take a decision to recommend any of the following:

- i. that no breach has been found and that the complaint is dismissed;
- ii. that a breach has been found but that it is a failure of a minor nature and the complaint should be dismissed;
- iii. that a breach has been found and that no further action should be taken;
- iv. that a breach has been found and that the Member should be "censured" under Standing Order 16.9; or
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time.

7.12 As soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee's report, the Committee will publish the report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee. In those cases where the Commissioner has recommended that a report should be considered in private, and where there is no breach or the case is dismissed, the Committee may decide that the report should be anonymised.