

# Respondent - Thomas Clarke

To assist with our inquiry, the Committee would welcome your views on any or all of the following points:

- Recall
- Triggers for a recall process
- Signing a petition
- Length of the recall process
- A system for Wales
- Disqualification
- Making of False or Deceptive Statements of Fact by Members and Candidates
- Sanction of removal of a Member

Some helpful things to be aware of before you start answering the consultation questions:

- You do not need to answer every question, only those on which you wish to share information or have a view.
- If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.

## Recall

Recall mechanisms are the means by which an elected politician can be removed from office by their constituents between elections.

The UK Parliament was the first legislature in the UK to introduce a system of recall for Members of Parliament (MPs) in 2015. If certain conditions are met, voters in the relevant constituency have six weeks to sign a "recall petition" if they wish for their MP to be removed from office. If at least 10 per cent of eligible registered electors sign the petition, there will be a by-election in that constituency via the First Past the Post (FPTP) electoral system. The recalled MP may stand in the by-election.

From 2026, all Members of the Senedd will be elected via a closed list proportional representation system. If a recall mechanism is to be adopted by the Senedd then it must be designed in accordance with the new electoral system. Under the new arrangements, there is no provision for a by-election in the event of a vacancy during a Senedd term; a vacant seat will be filled by the next eligible and willing person on the list instead.

8. Should there be a power to remove a Member of the Senedd during a Senedd term when a complaint of misconduct has been upheld?

- Yes
- No
- Don't have a view

9. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

There will be issues that emerge during the term which would cause the electorate to have made a different decision when it came to the original election were they known about at the time. Eg committing a criminal act, carrying out things not in accordance with the appropriate rules, misrepresenting people, lying or non criminal items that may just be dishonest. It for this reason the constituency should be given the opportunity to recall the Senedd member however consideration must be made to the process by which that person's position is relected. Eg first past the post system or does it go to the next person on the party's list for a constituency.

10. The following questions in this section are based on the practical implications of recall, if you do not think that a recall system should be introduced, you do not have to answer these questions.

Would you like to answer questions on the practical implications of recall?

- Yes
- No

## Triggers for a recall process

11. In the House of Commons recall system, an MP will be subject to recall if, following a report from the Committee on Standards, the House of Commons orders the suspension of the MP from the House for at least 10 sitting days or 14 calendar days.

What is your view on how long a period a Member of the Senedd should be suspended for in order to trigger a recall process?

- Fewer than 10 sitting days
- 10 sitting days
- More than 10 sitting days
- Suspension should not trigger a recall process
- Don't have a view
- Other

12. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

If the standards committee has found due cause to suspend a member then this should allow a petition to recall that member to be signed. This is because a suspension implies the breaking of rules and no matter how small a sentence imposed it is not in keeping with the standards expected of Senedd members.

13. In the House of Commons recall system, an MP will be subject to recall if, after becoming an MP, they have been convicted of providing false or misleading information in support of an expenses claim under the Parliamentary Standards Act 2009 (provision of information they know to be false or misleading in a material respect in support of a claim for allowances).

What is your view on whether the upholding of a complaint about misuse of expenses or allowances (i.e. a breach of Rule 9 of the Code of Conduct) should potentially trigger a recall process?

- A breach of Rule 9 should automatically trigger a recall process
- A breach of Rule 9 should not result in a recall process
- Triggering a recall process should be an option available to the Standards of Conduct Committee to recommend if a complaint about a breach of Rule 9 is upheld.
- Don't have a view

14. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

A crime is not keeping with the standards expected of a Senedd member and as such a recall should happen.

15. At the moment there are no sanctions if a Member leaves, joins or changes political group during a Senedd term.

What is your view on whether changing political groups should trigger recall processes (i.e. moving from party group A to party group B within a Senedd term, or moving from party group A to sit as an independent)? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

If it were a first past the post system where we elect an individual directly then the answer is no. However under the new rules a party member is elected under proportional representation. It just so happens that the individual elected is the party's most favoured candidate. Therefore the party should be given the option of selecting the member if they are the rules of election. I do not personally favour the new electoral system but if you have it some element of it may need to be retained in the replacement.

16. What is your view on whether a lack of attendance and participation in proceedings without good reason for a period of six months or more trigger recall procedures? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

My concern here would be who determines whether good reasons exist. If it is to be adopted then the rules should set out the permissible reasons for non attendance and a process for change requiring a very high bar of Senedd members to change it.

17. At present, Members of the Senedd who are convicted of a criminal offence and sentenced to a period of imprisonment or detention of 12 months or more are disqualified from being Members or candidates. In the House of Commons recall system, an MP will be subject to recall if they have, after becoming an MP, been convicted of an offence and sentenced to be imprisoned or detained for a period of less than 12 months (including suspended sentences).

What is your view on whether a Member of the Senedd convicted of a criminal offence with a sentence of less than 12 months should be subject to a recall petition? Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

A crime is a crime and if convicted they should be recalled under petition. They can stand again theoretically and if the voters select them they have the confidence of the electorate.

18. Should there be any other triggers for a recall process?

(We would be grateful if you could keep your answer to around 500 words)

Inappropriate behaviour such as blocking genuine constituents on Facebook and thereby disenfranchising them

## Signing a petition

19. In the House of Commons system, eligible voters only sign the petition if they are in favour of recalling the MP. This means that there is no option for voters to show support for the MP to remain in post and that, when entering a polling station, their intention to sign the petition is known to others.

Should the recall petition provide an option for showing support for the recalled Member to retain their seat?

Yes

No

Don't have a view

20. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

At the moment a very low bar of constituents can trigger a removal of an MP. In the Senedd you wouldn't want to re run the election especially with the complex constituencies that will exist under the new voting system. So it would be for the electorate to decide by majority whether to remove the member.

21. In the House of Commons system, if 10 per cent of eligible electors sign a recall petition, there will be a by-election in that constituency and the outgoing MP may contest that election if they wish to. The Senedd Commissioner for Standards has highlighted that if the threshold was set at the same level for a Senedd recall process, 10 per cent of the electorate could directly remove a Member, as there is no provision to replace Members of the Senedd through by-elections.

What are your views on the threshold of signatures that should be required in order for a petition to remove a Member?

(We would be grateful if you could keep your answer to around 500 words)

10 percent is appropriate providing there is a majority of those 10 percent. I favour an option of voting against the recall too so it would need to be something like 10 percent and that 10 percent is a majority of those that responded.

22. In the House of Commons system, eligible voters may sign a recall petition in person at a designated signing place, by post, or by appointing someone as a proxy to sign the petition on their behalf.

What are your views on how an eligible voter should electors be able to sign a petition?

(please select all options that you think should be available to voters)

- In person
- By post
- By proxy
- Don't have a view
- Electronically would be good.

23. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

In today's modern age with technology evolving we should consider the use of online technology as an option

## Length of the recall process

24. In the House of Commons system, electors have six weeks to sign a recall petition. Evidence suggests that the majority of people who have signed recall petitions do so early in the six-week period. Concerns have been raised about the practicalities of providing designated signing places for a six week period.

Should a recall petition be open on a single day, across a greater number of designated areas, or over a multi-week signing period in fewer areas?

- A single day across a greater number of designated areas
- A multi-week signing period in fewer areas
- Don't have a view
- Other

25. If the petition should be open for a multi-week signing period, how long it should be open for?

(We would be grateful if you could keep your answer to around 500 words)

4 weeks is sufficient.

26. Are there any other issues that you would like to raise regarding how constituents can access or participate in the process?

(We would be grateful if you could keep your answer to around 500 words)

Use of online system would be good.

## A system for Wales

Early work by the Committee has identified two initial options for consideration:

**Option 1:** A recall petition is run asking only whether the Member should be recalled. In the event a Member is recalled, the next eligible and willing candidate from the party's list on which the removed Member was elected would fill the vacant seat. This approach means that signing the petition would remove the Member, rather than result in a by-election in that constituency.

**Option 2:** A retain or remove and replace petition is run, asking whether the Member should remain in place, or be removed and replaced (if possible) with the next candidate on the party's list. This would be subject to a campaign period, allowing the Member subject to the 'recall' process an opportunity to defend their position with the electorate.

With either option, vacancies could be filled quickly and the proportionality of the last election result could be maintained. However, Members elected as independents, or those elected to represent political parties that have no remaining candidates on their lists, would not be replaced. This could affect the proportionality of the Senedd.

27. What are your views on these two options?

(We would be grateful if you could keep your answer to around 500 words)

Neither really represents the constituency.

28. Is there an alternative system which could be explored?

(We would be grateful if you could keep your answer to around 500 words)

First past the post.

## Disqualification

A person must meet certain qualifications to be eligible to be a Member or stand for election to the Senedd. These are set out in section 16 and Schedule 1A to the Government of Wales Act 2006, and include criteria such as age, citizenship, not being registered on an electoral register in Wales, bankruptcy status, certain criminal convictions or sentences, membership of other UK legislatures, and holding of certain offices.

29. A Member is disqualified from being a Member of the Senedd if, after being elected, they are convicted of a criminal offence and sentenced to imprisonment or detention for 12 months or more. We have heard some suggestions that this should be reduced, for example, to six months.

What are your views on the length of prison sentence that should trigger disqualification?

(We would be grateful if you could keep your answer to around 500 words)

It should be reduced to 1 day imprisonment and also consider whether it is suspended.

30. Other than deception, which is dealt with in the next section, are there any other grounds which should result in disqualification from membership of the Senedd?

(We would be grateful if you could keep your answer to around 500 words)

Disenfranchising constituents in social media. It's bad form when members block people for asking genuine questions in a pleasant way on social media and simply get blocked.

## Making of False or Deceptive Statements of Fact by Members and Candidates

The Code of Conduct already requires Members to be truthful and act truthfully. However, the Committee has heard suggestions that Members and candidates should be disqualified if they wilfully make false or deceptive statements with the intent to mislead.

Early work by the Committee has identified three initial options for consideration. More detail on these options is set out in the consultation document:

<https://business.senedd.wales/documents/s152624/Inquiry%20into%20Individual%20Member%20Accountability%20-%20Consultation.pdf>

**Option 1:** Create a criminal offence of deception, which would be investigated by the police and tried before the criminal courts. People convicted would be disqualified.

**Option 2:** Create a civil offence of deception, which would be investigated by an existing investigative body such as the Public Services Ombudsman and an independent Welsh Tribunal, such as the Adjudication Board for Wales.

**Option 3:** Amend the existing Code of Conduct to more explicitly prohibit wilful lying or deception and strengthen the potential sanctions. Alleged breaches would be investigated by the Senedd Commissioner for Standards, and, if upheld, referred to the Standards of Conduct Committee and Senedd. Extending this option to cover candidates as well as Members could give rise to significant practical implications.

31. What are your views on whether making of false or deceptive statements by Members of the Senedd or candidates to become Members should be grounds for disqualification?

- Grounds for disqualification for Members only
- Grounds for disqualification for candidates only
- Grounds for disqualification for Members and candidates
- Not grounds for disqualification
- Don't have a view

32. Please outline your reasons for your answer. If you have indicated that candidates should be included, please indicate at what point you think candidates should be subject to potential liability.

(We would be grateful if you could keep your answer to around 500 words)

33. If making of false or deceptive statements were to be grounds for disqualification, what are your views on any risks that could arise (such as the potential for malicious complaints to be made against Members), the effect of such risks, and how any such risks could be mitigated?

(We would be grateful if you could keep your answer to around 500 words)

Potential claims about what parties might do were they in power could give rise to a claim of deception.

34. Section 42 of the Government of Wales Act 2006 provides that statements made during Senedd proceedings are 'absolutely privileged' for the purposes of defamation. Section 43 provides that statements made during Senedd proceedings have limited protections from contempt of court.

What are your views on whether any prohibition on the making of false or deceptive statements of fact could have consequences for these 'privileges'?

(We would be grateful if you could keep your answer to around 500 words)

35. Would introducing a criminal offence or a civil sanction system give rise to any human rights issues, for example in relation to rights of freedom of expression (Article 10 of the European Convention on Human Rights) and freedom to stand in an election (Article 3 of Protocol No. 1 to the ECHR - Right to free elections)?

(We would be grateful if you could keep your answer to around 500 words)

36. What are your overall views on the three options outlined above (more detailed questions on specific issues are set out below)? Are there any other options that would be more appropriate or effective?

(We would be grateful if you could keep your answer to around 500 words)

37. Should making a false or deceptive statement of fact be made a crime or be made subject to civil sanctions?

- Crime
- Civil sanctions
- Don't have a view

38. Please outline your reasons for your answer.

(We would be grateful if you could keep your answer to around 500 words)

39. What are your views on the nature of an independent judicial process that should be used if option 2 were pursued (i.e. a civil sanction investigated by an existing investigative body such as the Public Services Ombudsman for Wales or an independent Welsh Tribunal)?

(We would be grateful if you could keep your answer to around 500 words)

40. If the making false or deceptive statements is made subject to a civil sanction, what standard of proof would be most appropriate - the civil standard (i.e. "on the balance of probabilities") or the criminal standard (i.e. "beyond reasonable doubt")? Although not common, there have been instances where professional disciplinary bodies have operated to the criminal standard.

- Civil standard
- Criminal standard
- Don't have a view

41. If option 3 were pursued (i.e. strengthening the existing Code of Conduct and sanctions) what are your views on the measures and mechanisms that could address the issue of deception or false statements? For example, through existing standards procedures or potential recall mechanisms.

(We would be grateful if you could keep your answer to around 500 words)

42. If a disqualification is introduced, what length of disqualification would be appropriate? For example, should there be a fixed period of disqualification, or a period (within a set range) to be determined on a case-by-case basis so that any mitigating circumstances that could reduce the period of disqualification are taken into consideration?

(We would be grateful if you could keep your answer to around 500 words)

43. What sanctions other than disqualification might be an appropriate penalty for the making of false or deceptive statements of fact?

(We would be grateful if you could keep your answer to around 500 words)

44. What defences should be available to an allegation of deception?

(We would be grateful if you could keep your answer to around 500 words)

45. Please outline any views you have on the interaction between proceedings for making false or deceptive statements (whether it is civil or criminal) with the rules set out in the Senedd Members' Code of Conduct which already require Members to always act truthfully.

(We would be grateful if you could keep your answer to around 500 words)

46. Please outline any views you have on the resource implications for existing bodies or bodies that might be created to investigate and decide complaints of false or deceptive statements of fact.

(We would be grateful if you could keep your answer to around 500 words)

## Sanction of removal of a Member

If a complaint against a Member of the Senedd is upheld, the Committee may recommend one or more sanctions as set out in Standing Orders. These include exclusion from Senedd proceedings for a specified period and/or the withdrawal of certain rights and privileges. The Committee cannot currently recommend the removal of a Member.

The Senedd must debate any reports published by the Committee, and decide whether to give effect to any recommended sanctions. At present, such decisions are taken by simple majority.

47. Should the Committee have the power to recommend sanctions of disqualification or recall of a Member of the Senedd?

(We would be grateful if you could keep your answer to around 500 words)

48. Are there any other sanctions that should be available to the Committee?

(We would be grateful if you could keep your answer to around 500 words)

Future Inquiries