

# Respondent - Jessica Blair

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If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.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.

10. 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

11. Please outline your reasons for your answer.

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

Recall of elected members is a relatively rare form of direct democracy, although its usage is increasing. In 2015 a recall mechanism for Members of Parliament in Westminster was introduced in response to the expenses scandal that occurred during the 2010 General Election. This is currently the only form of recall for elected officials of any level across the UK but operates under the First Past The Post electoral system.

It is important that Members of the Senedd can be held to account and some existing mechanisms continue. For example, representatives who are convicted of a criminal offence should face sanctions and those sanctions should include, at the most serious level, the powers to remove a Member of the Senedd when a complaint of misconduct has been upheld.

Addressing serious wrongdoing should not be left to potentially unsuccessful recall petitions but dealt with by the Senedd in the most egregious situations. It should not be the voters' job to police their representatives.

In some situations a recall process involving the public may be suitable, but this should not replace a mechanism for the Senedd itself to deal with the most serious offences.

12. 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

13. 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

14. Please outline your reasons for your answer.

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

A suspension of 10 sitting days triggering a recall process is consistent with the Westminster rules around a recall process. The Senedd should consider a scale of suspension and whether much longer suspensions should automatically trigger removal of an MS, if endorsed by the Senedd as a whole. This scale should be clear and accessible to MSs and the public.

15. 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

16. Please outline your reasons for your answer.

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

The misuse of expenses was a big motivating factor behind the introduction of a recall mechanism in Westminster, and as such is a key element of the Westminster rules. Given the low levels of trust in politics and politicians across the UK, ensuring that there are mechanisms holding Members to account in the case of misuse of expenses appears to be a suitable course of action.

17. 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)

With the Senedd moving to a system entirely made up of Closed Lists, MSs changing political parties will be something that has to be considered.

While up until 2016 this was a relatively rare occurrence, with only four MSs switching parties across the first four Senedd terms (1999 - 2016), in the fifth Senedd term (2016 - 2021) nine MSs changed parties a total of 19 times. All of the MSs in question were elected under the regional list, using the Closed List system where voters cast their ballot for a party not an individual candidate. Six of these nine MSs changed parties multiple times over the course of the fifth Senedd, with then Member of the Senedd Mark Reckless changing allegiance a total of four times. To date 87% of incidences of MSs changing parties during a Senedd term have been those elected via the regional list (20 of the 23 incidences), with the regional list currently only making up 1/3 of the membership of the Senedd. This situation could get worse as we move to a 100% Closed List system and leave voters represented by a party that they didn't vote for.

We have long raised concerns about the Closed List system due to the lack of choice for voters, the emphasis on political parties, and the removal of their ability to vote for an individual candidate. This lack of choice would be exacerbated in the scenario of an MS changing political parties and therefore strict procedures for this must be in place. However, this is not a feature of the Westminster recall process and unintended consequences should be considered.

For example, a scenario might occur where a Member is suspended for less than ten sitting days, so a threshold for a recall petition is in theory not triggered, yet their party suspends their membership and thus they can't sit in their group. Recall would not address this and a Member would effectively be in limbo. Ultimately this is why the Senedd's standing orders should be clear on the consequences of both suspensions under the recall threshold and the ability for members to proactively switch political party.

18. 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)

For the Senedd to function MSs need to be doing their job, taking part in debates, committees and representing people in their area. In any other job not turning up to work for far less than six months without good reason would be grounds for serious consequences and likely dismissal.

There has to be a line in the sand with regards to when recall is an appropriate mechanism. In this scenario, this seems to go far beyond that line and would possibly be addressed through either standing orders or a code of conduct for Members, which would give the Standards Commissioner and Committee clear guidance on when automatic dismissal should be triggered.

19. 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)

This suggestion appears to be in line with the Westminster process, where a sentence of 12 months or more would trigger automatic disqualification but anything less than that triggers a recall petition.

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

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

21. 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

22. Please outline your reasons for your answer.

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

While there is an argument that there is a risk with a recall petition only having an option to recall a Member reduces anonymity, there are additional risks in providing two options on a recall petition. This might increase confusion in an already complicated process, and there are practical considerations around what positive responses would count for and how they would be used.

23. 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)

While 10% of the electorate is a figure used by the Westminster process, there are a number of factors that should be considered when setting the threshold for a Senedd recall petition.

Firstly, the lack of by-elections following a successful recall petition effectively makes a recall petition for the Senedd an automatic dismissal for a MS if successful. Ultimately, this is not the case for the Westminster system and could arguably be a case for having a higher threshold.

However, turnout at the last Senedd election in 2021 was just 47%, with a high variation between constituencies. Merthyr Tydfil and Rhymney saw the lowest turnout at 34.8% and Cardiff North had the highest at 58.1%.

With overall turnout being less than half of the electorate this could effectively increase the signature threshold to over 20% if the 53% of voters who didn't turnout for the election would also not turnout for the recall petition. This would increase to an effective threshold of 29% in Merthyr Tydfil and Rhymney if the 65% of voters who didn't turnout for the Senedd election would also not turnout for a recall petition. Given this, an arbitrary 10% figure for a recall petition to be successful would effectively create different hurdles in different constituencies. With the introduction of Automatic Voter Registration the register will also grow considerably, while turnout might reduce. 10% in this case would seem particularly high. Linking the number of votes cast at the last election to the threshold for success for the recall petition would counter variability and differing levels of voter engagement across the constituencies.

24. 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
- Other

25. Please outline your reasons for your answer.

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

Postal votes and proxy votes are part of the usual democratic process at standard elections and there does not appear to be any reason why this should be different for a recall petition. This would be consistent with the Westminster process.

## Length of the recall process

26. 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

27. 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)

ERS Cymru has called for an extension of the pilots at the 2022 local elections, which saw voting in different days and different places. Ultimately elections should remove barriers to voters and encourage engagement and there are provisions in the Elections and Elected Bodies (Wales) Act 2024 for further pilots and innovations.

A recall process should be no different. The Westminster process has petitions open for six weeks and allows for postal and proxy voting.

In the Welsh context a multi week signing process seems consistent, as well as numerous places to sign. We would not imagine this to be all polling stations due to practicality but maybe a number of council run venues across a constituency. Ensuring the accessibility of venues in which to vote in a recall petition process should be a key consideration.

28. 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)

As above, ensuring the accessibility of venues in which to vote in a recall petition process should be a key consideration.

## 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.

29. What are your views on these two options?

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

Both option 1 and option 2 do not have a mechanism for replacing a Member who is recalled if the party list in that constituency is exhausted. While the likelihood of this occurring may be small (assuming all parties ran full lists at the previous elections) it should still be addressed with a backstop to avoid unnecessary vacancies agreed. For smaller parties the chance of a list being exhausted may also be significantly higher.

Given the move to the Closed List system, it would be inappropriate to use a by-election using First Past the Post as a backstop mechanism and we would want to explore whether a preferential system, such as the Supplementary or Alternative Vote, could be used in its place in the circumstance that a list is exhausted.

Causal vacancies where the party list is exhausted will have the same issue, and in the interest of maintaining a 96 seat Senedd the same backstop mechanism should be used to fill the seat in either case, unless very close to the next scheduled election.

There is also a problem by going to the next candidate on the list in terms of the perception that a party may be being rewarded for a previous Member's bad behaviour. In the last Westminster term (2019-2024) there were four by-elections as a result of recall petitions. In three of these instances a different party won that seat at the by-election than had held the seat previously. This can also be seen to be a rejection of the party as well as the Member who had been the subject of the recall petition as in two of the three cases where a different party won, a different candidate had stood for the incumbent party.

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

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

As above, a by-election using the Supplementary Vote or the Alternative Vote could be explored.

### 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.

31. 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)

As we've made clear in our response, addressing serious wrongdoing should not be left to potentially unsuccessful recall petitions but dealt with by the Senedd in the most egregious situations. It should not be the voters' job to police their representatives.

The Committee should have the power to recommend sanctions and this should be subject to the majority approval of the Senedd as a whole.

32. 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)

### 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.

33. 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

34. 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)

35. 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)

36. 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)

37. 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)

38. 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)

39. 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

40. Please outline your reasons for your answer.

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

41. 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)

42. 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

43. 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)

44. 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)

45. 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)

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

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

47. 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)

48. 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.

49. 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)

50. 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