

# Respondent - Paul Morris

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If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.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

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

## 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.

13. 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)

14. 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.

15. 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

16. 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)

Chief Constables would not comment on the appropriateness of this, but would wish to highlight some issues in relation to the creation of a criminal offence, the logistical and resourcing implications of this.

17. 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)

From a policing perspective there would be obvious risks, including the potential for malicious allegations as noted above. There would have to be absolute clarity between what is a false or deceptive statement and what is general political discourse. A bar would have to be put in place and made very clear before policing would engage in a criminal investigation were such an offence be created.

18. 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)

In terms of existing legislation at the UK level there is a similar offence within the Representation of the People act 1983. S106 of the RPA act covers the offence of making a false statement as to candidates.

This is defined as

A person who, or any director of any body or association corporate which—

(a) before or during an election,

(b) for the purpose of affecting the return of any candidate at the election, makes or publishes any false statement of fact in relation to the candidate's personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, that statement to be true.

However, this offence is only relevant during an election period whereas it appears that the current consultation would instil a continuous expectation.

In the recent General Election, the briefing of candidates by police force leads and the Electoral Commission placed a specific emphasis and expectation on candidates to ensure their election material did not breach this offence. Whether because of this or otherwise no s106 offences were reported.

In terms of the proposed legislation item 3.127 (page 32) indicates that there would be a window of opportunity for a member to retract or correct their comment which may result in very few cases being referred to the Police. Again this would require clear articulation within any proposed legislation to avoid confusion around statements made by Senedd members or candidates.

19. 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)

Any move to create a criminal offence would have to clearly take cognisance of Article 10 and the existence of parliamentary privilege. The experience of the recent General Election is an excellent example of how problems can be averted through engagement.

During the recent General Election, Police election SPOCs met regularly in the run up to the election including an all-Wales meeting with the Chief Executives of the main parties where a clear policing style was set out which included the principle of engagement and advice rather than enforcement.

All candidates had access to SPOC contact details and vice versa, and all understood that if an issue arose the initial response would be to assess and where necessary engage with the other party to resolve issues without recourse to a formal police investigation.

For example, one campaign were not using the required digital imprint on their campaign material which led to a complaint. This was resolved via appropriate advice through engagement to the satisfaction of all parties.

As a result of this approach focusing on engagement, queries and complaints were kept to a very low level.

20. 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)

No Comment

21. 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

22. Please outline your reasons for your answer.

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

As previously noted, Chief Constables would not comment on a matter of this nature and reserve their observations to the impacts on operational policing delivery.

23. 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)

No Comment

24. 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

25. 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)

No Comment

26. 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)

No Comment

27. 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)

No Comment

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

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

No Comment

29. 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)

No Comment

30. 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)

Chief Constables would flag the potential resource implications of the move to create a criminal offence, particularly the fact that this is proposed as a continual requirement and not just limited to election periods. This is also impacted by the proposal to increase the number of Senedd members at the next election and consequent increases in the number of potential candidates.

If the option to create a new criminal offence is pursued, once a complaint is made, then the nature of this would need to be assessed and an appropriate response would need to be decided upon. The expectation would be for that complaint to come to the Economic Crime Unit Detective Inspector who has the election SPOC and bribery areas of responsibility.

The view of Chief Constables is that there should be a very high bar before Police decide to intervene with a formal investigation and stakeholders should be prepared to accept that advice and the opportunity to correct false information if identified will often be a better course of action. Any political matter has the potential to be high profile and based on the level of risk posed, more serious cases could be escalated to the Head of Crime or other appointed Senior Investigating Officer.

It is very difficult to comment on the resourcing requirement for policing from this measure if enacted. It would be entirely dependent on the detail contained within the legislation and the expectation placed on Welsh forces as a result. As noted elsewhere in this response, we would urge that any response is based more on engagement and advice rather than enforcement.

## 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.

31. 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)

No Comment

32. 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)

No Comment

## Future Inquiries