

Respondent - Justin Millar

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If you provide any information that you feel is not suitable for public disclosure, please indicate which parts should not be published and give your reasons for this.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

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)

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)

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)

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)

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)

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)

Signing a petition

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)

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)

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)

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)

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)

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)

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

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

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)

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)

The Crown Prosecution Service (CPS) welcomes the opportunity to put forward comments on the proposals relating to making false or deceptive statements of fact by Members and Candidates put forward by the Senedd Cymru Standards of Conduct Committee in their "Inquiry into Individual Member Accountability".

The CPS fully recognises the importance of accountability in supporting public confidence, although the CPS does not intend to comment on the form that this should take. We do wish to raise a number of points which we believe should be considered in relation to Option 1, the creation of a criminal offence, if the Committee determines that this option should be taken forward. Some of the comments are derived from our assessment of the proposed amendment to Section 64 of the Elections and Elected Bodies Wales Bill, which was subsequently withdrawn at Stage 3 of the debate on the bill.

If Option 1 is the preferred option of the Committee, the resulting legislation must be drafted in a way that provides a clear definition of the offences, and of who is responsible for determining what is true or false, or matters of fact or opinion. The draft clause in the Bill mixed statutory definitions (using 'false' in one part and then 'inaccuracy' in another part), and lacked clarity on the responsibilities or the parameters and context of what statements would be caught by any criminal provisions.

The Committee should be mindful of the risk that an offence that is too wide in scope will run the risk of leading to a flood of allegations in relation to any commitments given during political discourse by Senedd members that were subsequently not fulfilled or are not perceived to have been fulfilled. In addition, this extensive scope would risk placing a disproportionate burden on investigatory and prosecutorial resources.

Should a new criminal offence be pursued, the CPS would welcome further close engagement on the detail of proposals as they are developed by the Committee and Senedd.

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)

If a criminal offence is proposed, it must be compliant with the ECHR Article 10 and the principles of freedom of speech. There is a risk that such a criminal offence could have a chilling effect on any individual who may be considering running as a candidate for election in the Senedd. This risk is heightened because there is no Parliamentary privilege in relation to submissions made in the Senedd.

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)

We believe the Committee should consider legislation that is already in place to guard against similar offending, including section 106 of the Representation of the People Act 1983 (legislation.gov.uk), which states that it is an illegal practice to make a false statement concerning the personal character or conduct of a candidate for the purpose of affecting the return of any candidate, e.g. calculated to influence electors. Section 179-181 of Online Safety Act 2023 (legislation.gov.uk) also introduced false communication offences. An offence is committed if a person sends a message (as defined in section 182 OSA 2023); the message conveys information that the person knows to be false; at the time of sending it, the person intended the message, or the information in it, to cause non-trivial psychological or physical harm to a likely audience; and the person has no reasonable excuse for sending the message.

The courts have also considered the principle of criminalising false statements during political discourse. In *Johnson v Westminster Magistrates' Court* | [2019] EWHC 1709 (Admin) | England and Wales High Court (Administrative Court) | Judgment | Law | CaseMine the court noted:

- The problem of false statements in the course of political campaigning is not new and has not been overlooked by Parliament. For at least the last 120 or so years Parliament has legislated to control certain false campaign statements which it considers an illegal practice. Thus the Corrupt and Illegal Practices Prevention Act 1895 protected against false statements about a candidate. It is an illegal practice to make or publish a false statement of fact about the personal character or conduct of a candidate during a parliamentary election for the purpose of affecting his/her return. The scope of the protection is narrow and in enacting the prohibition Parliament must deliberately have excluded any other form of false statement of fact, including those relating to publicly available statistics. The Representation of the People Act 1983 is the present incarnation of a like prohibition. In other words, Parliament twice made a choice not to do precisely that which the IP now seeks to achieve.

Further reference was also made to The Electoral Commission's report on the UK's membership of the EU, which noted:

- In a referendum there are at least two sides with competing arguments, both of which are highly likely to be contested to some degree. Even official data can, and will, be presented by campaigners in a way that favours their argument – that is the nature of political campaigns. It will not always be possible to establish the truth about campaign claims in an independent, truly objective sense.

Both these references may provide legal arguments for the defence if legal proceedings were commenced.

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