

## **COMPASSION IN POLITICS SUBMISSION TO THE SENEDD COMMITTEE ON STANDARDS CONSULTATION ON THE MAKING OF FALSE OR DECEPTIVE STATEMENTS**

**27<sup>th</sup> September, 2024**

### **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.

**17. 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

**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).

Candidates should be included once they have been selected by the Party. This gives them an official position and a platform. This position should carry with it responsibilities alongside the privilege that 'candidate' status carries not least in terms of visibility and access to debates, media etc. Including candidates also ensures that those who, by reason of their lack of honesty, are not fit for office can be disqualified before they get there.

**18. 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)

There is a risk of malicious or vexatious complaints but this can be mitigated by the creation of an offence of making a malicious, vexatious or frivolous complaint (as was contained in the amendment that was presented to the Senedd in July).

The ability to deter malicious complaints is important as the measure is designed to prevent the spreading of misinformation and so the possibility of an offence inadvertently creating the opportunity for misinformation to be spread via a malicious complaint should be addressed firmly. In addition, there are already sanctions for those who waste police time.

**19. 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)

The exemption for defamation is important. However, privilege in the Senedd does not exist in the same way as in Westminster. Save for defamation and contempt, members of the Senedd remain subject to civil and criminal action for what they say or do in the Senedd. For example, they can be prosecuted for hate crimes or assault.

- It is important that deliberately making false statements of fact (that aren't exempted for national security reasons and haven't been corrected within the requisite period) is subject to the full force of the law because of the harm they can cause to public trust in all politicians, and democratic institutions.

If privilege were available as a defence, false statements made on the floor of the parliament could be disseminated and repeated outside the Senedd to the detriment of individuals and organisations as well as polluting the wider political space and further undermining the trust of the electorate.

**20. 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)

Since this measure only applies to statements that are knowingly false we do not think there will be a conflict.

The freedom to stand in an election is not an unlimited one. Take for example, those who have been declared bankrupt.

Further, this measure would be interpreted by courts in a way that is consistent with obligations under European Law, and therefore judgments would be likely to err on the side of protecting freedom of expression.

**21. 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)

**24. 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

**Please outline your reasons for your answer.**

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

It is our strong view, that this measure should be criminal if it is to have a meaningful impact on: reducing the serious harm caused to the reputations of all politicians by a small number of bad actors and in restoring public trust in politics. Here are the reasons in summary:

1. Widespread public support for a criminal sanction both in Wales and nationally is grounded in the critically low levels of public trust for politicians creating “one rule for them, another for us”. This is the case irrespective of the high levels of integrity with which most politicians conduct themselves in often difficult circumstances.

Our national polls conducted by Opinium shows 72% of the public support it being a criminal offence. The responses from those in Wales are consistent with the overall figure. [The change.org petition](#) backing this intervention has now been signed by over 201,000 members of the public who support of it becoming a criminal measure.

And with the [IPSOS Veracity Index](#) showing trust in politicians at a forty-year low we feel it is imperative that the public see a clear and visible sign that the government is taking this issue very seriously indeed.

2. A criminal offence shows that deception of the electorate (essentially political deception) is treated as seriously as other forms of fraudulent deception in the public sphere.
3. Treating it as less than a criminal offence, signals that it's not as serious a matter.
4. Once the Hillsborough Law has been passed by the Westminster Government it would create an invidious situation if public officials were to be held to higher standards than their political masters.
5. For the measure to be effective in restoring public trust it cannot be seen as politicians 'policing' themselves. Current mechanisms of this nature have presided over the decline in public trust and have demonstrably and empirically failed and continue to fail the restoration of public trust. The courts and the police are the bodies that would investigate and try issues of fraudulent misrepresentation for the public and their businesses and the same should be true for politicians.
6. Further, the courts are perceived by the public as more independent than any other judicial process.
7. The harsh sentences handed down to this summers' rioters shows the effectiveness of a clear signal being sent by the courts that a behaviour is unacceptable.
8. A legal, independent means of public redress offers the legitimate alternative needed to stem the increasingly higher levels of abuse and harassment experienced by politicians

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

**25. 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)?**

Key criteria for the nature of any independent judicial process is that it's transparent and perceived as the same as any independent judicial process a member of the public is subject to if they commit fraudulent misrepresentation.

**26. If the making of 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)

Leaving deliberate deception to be addressed internally by existing or strengthened measures is unlikely to halt the erosion of public trust. New and strengthened self regulatory measures and codes were introduced after the expenses scandal and public trust has continued to fall.

The Senedd has created the opportunity to be a world leader in this area and has already received considerable publicity nationally and globally for being so. Further, it has publicly committed to take definitive action and there would be a real danger that it was reneging on the intent behind the agreement reached if not the agreement itself.

To be effective any process needs to be independent of politicians themselves and judicial in nature. It needs to be beyond reproach and so cannot be an arms-length body that may be subject to the real or perceived influence of an appointment and funding process that can be influenced by the politicians who will be the subject of its adjudications. This is not an issue that can be fudged. It could be seen as the political class policing itself and marking its own homework. As has been noted above, once the Hillsborough Law has been

passed by the Westminster Government it would create an invidious situation in which public officials are held to higher standards than their political masters.

Recall measures exist in Westminster and have been ineffective in dealing with this issue and also in halting the decline in voter trust in politicians which currently, according to IPSOS, stands at 8% (IPSOS Veracity Index).

Recall is also inappropriate as the misinformation may already have influenced the electorate thus creating a perverted outcome by allowing those who spread misinformation to benefit from their lies. In addition, whilst an electorate may dislike false statements there may be other reasons why they vote against the recall of an elected representative for example party loyalty.

Further, it would be invidious to suggest that deliberate political deception, in particular a mis-statement of fact is only 'wrong' if voters chose to make it so. Imagine, for example, taking another offence eg assault or even rape only being sanctioned if a certain percentage of the electorate vote for that to happen.

Recall would also take too long. For the spread of misinformation to be stopped, action needs to be taken quickly. Once the lie is in public circulation a lot of the damage will have been done.

We would further refer to the evidence given to the Committee in relation to this issue by barrister, Dr Sam Fowles on 24th June, 2024, namely:

**“Political lying stands outside the standards regime in terms of how the public view it. The public see it as a far more serious issue and, as a constitutional expert, I also consider it a more serious issue than most things a standard regime covers, because it fundamentally undermines not just confidence in democracy, but the functioning of the democratic process. So, simply treating it as part of a standards regime that covers a lot of other things as well doesn't say to the public, 'We take this as seriously as you do'. Reach is the second thing. The standards regime covers only Members of the Senedd; it doesn't cover Ministers and doesn't cover candidates. And, indeed, it would be impossible to cover candidates in the standards regime. So, when you have candidates—and it tends to be candidates—from the extremes at both ends of the political scale, who engage in the most egregious forms of political deception, the standards regime can't touch them and, indeed, there is no regime that can touch them. So, it's necessary to use the criminal regulatory regime, in the same way that we do for lots of other things. And the third is independence. Now, this is not to suggest that, as a matter of fact, anyone in the Senedd is making decisions on anything but the most objective and honest basis, but, again, as is recognised in law, the appearance of a lack of objectivity is as damaging as a lack of objectivity itself. And because the public don't trust political institutions to have a system that is essentially reliant on politics, and, under the standards regime, of course, ultimately, any decision goes for confirmation by the whole house, that appears to the public, and appears to a lawyer, as, essentially, politicians sitting in judgment upon themselves, and so, as both a voter and also if I were ever accused of this sort of wrong, I would prefer an entirely independent tribunal, i.e. a court of law, to litigate on that, and I think the public, when the public see that, they are more likely to have confidence in a court of law than what would appear to them to be a political process.”**

**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)

To be an effective deterrent and to protect the length of a parliament, the period of disqualification should be for the length of one parliament. For the unscrupulous bad actor, there are considerable advantages that can be achieved through dishonesty – including electoral advantage and the spreading of confusion – and so the sanction has to be strong enough to outweigh any perceived advantages.

There should also be a degree of certainty about the penalty. If the unscrupulous offender knows that arguments of mitigation can be made this may decrease the deterrent effect.

**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)

The deliberate and knowing repetition of untrue information could, in extreme circumstances be grounds for imprisonment. Take, for example, a leader who deliberately causes instability and a loss of faith in democracy by falsely claiming an election has been rigged.

**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)

There should be a defence for those acting in the needs of national security. And the offence will only have been committed if there is a failure to correct the misinformation.

**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)

This should be a parallel process and should not impinge on any processes the Senedd has in place for its members. Internal disciplinary processes should not be allowed to delay the operation of the law.

**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)

The measure – as it was originally designed when introduced as an amendment earlier this year, created an offence that would apply to only a small number of ‘bad actors’. Indeed, Dr Sam Fowles, the barrister who helped to draft the measure said the number who would be caught by it would be ‘vanishingly small’ in his evidence to the Committee. There are fears that it could lead to a deluge of complaints which would drain police time if it were to be a criminal offence.

The experience of the Scottish Government in relation to hate crime legislation shows that the initial deluge of complaints was deliberately created by those who opposed the legislation and slowed to an entirely manageable level of 60 per week. In addition, the pool of potential miscreants is much smaller. Where hate crimes may be reported against the entire population, this measure would only apply to members of the Senedd and then expand to include candidates during election times.

We do not anticipate a significant number of active investigations. Further, resource implications should not be an argument against preventing harm to public trust in our politicians, democratic institutions and democracy.

We cannot comment on the cost or resources needed to set up a new or separate body save to say that we think they will compare less favourably than any extra resources needed by the Police and CPS if this were to be a criminal offence given the small number of cases and complaints it’s likely to attract once established.

## **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)

**Yes, to be effective the process needs to have real teeth. This will ensure that the public have confidence that serious misconduct can lead to the possibility of ‘dismissal’ as it would in other work arenas, as well as creating an effective sanction.**

### **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)

