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Evidence from: Transparency International - UK

Senedd Cymru | Welsh Parliament

Y Pwyllgor Safonau Ymddygiad | Standards of Conduct Committee

Ymchwiliad i Atebolrwydd Aelodau Unigol | Inquiry into Individual Member Accountability

You do not need to answer every question, only those on which you wish to share information or have a view.

Recall

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.

1. 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

Please outline your reasons for your answer.

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

Recall petitions have the potential to act as a deterrent against impropriety and enable the public to hold elected representatives to account between elections. The Westminster system has shown that in some instances, those who would be subject to a recall petition have resigned before this process has started. However, there are others where a recall petition was triggered yet the Member who committed an egregious breach of parliamentary rules still remains in office. This highlights the tension between seeking a democratic mandate for removing a member from Parliament and providing a firm deterrent against serious misconduct. The Committee may wish to consider whether there are some forms of impropriety that are so egregious that they merit expulsion without recourse to recall.

We would suggest breaches which cause harm to others, which would include bullying or harassment, be among those considered to be in this category.

We would however take issue with the proposal that any vacancy be filled by the next available candidate on the closed party list. We do not believe that a simple replace with the next listed candidate will help restore trust in politics. Nor do we think that the public will accept a 'like for like' party selected replacement as serving justice or accountability. The fact that every contested recall inspired by-election has seen the seat change party hands suggests the public see a link between the behaviour of the individual and the party they represent.

It is also the case that in some instances the behaviour that has led to the recall process being triggered is something which the party has allowed to occur, either through a culture of overlooking impropriety or active support for a Member despite the judgement of the Standards Committee. The Owen Paterson case at Westminster and the Michael Matheson case in Holyrood illustrate this dilemma. It should not therefore be possible for a party to simply parachute in the next available candidate without the public determining if they consider a change of party as important as a change of representative.

If recall is to be introduced in Wales, the choice to select an alternative party as well as a new representative should be possible. We would suggest considering the process used for by-elections in Scottish local government elections as a possible way to ensure accountability to the public. Whilst these elections are not originally undertaken using the same proportional voting system as will be

used for the Senedd elections they do offer a way to hold a by-election in a multi-member ward.

Alternatively, if a recall is initiated and the threshold is met for voters wishing to see the Member disqualified then the seat would remain vacant until the next election.

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 – please take me to the next section of questions

Triggers for a recall process

2. 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 (please specify)

Please outline your reasons for your answer.

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

An examination of recall processes triggered at Westminster, as well as suspensions made in the Senedd and the Scottish Parliament, demonstrates that the type of offences involved vary in substance and seriousness.

We would suggest clarity on which sanctions are available and how they might be applied would provide for natural justice and serve as a deterrent if Members could see what sorts of sanctions would be considered. It seems prudent to not reduce the number of days to less than ten to ensure graduated sanctions are available where the wrongdoing would not warrant a recall petition but is serious enough to justify a suspension.

To avoid partisan decisions, we suggest the Standards of Conduct Committee in the Senedd follow the Westminster Standards Committee and appoint lay members to assist with investigations and recommendations for sanction.

We also suggest plenary votes on recommendations for sanction should be explicitly removed from the party whipping operation and any such whipping itself be subject to investigation.

3. 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

Please outline your reasons for your answer.

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

We see value in a consistent approach across the jurisdictions of the UK.

4. 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)

Whilst Members are elected on a party platform, once they take their seats they serve to represent their constituents to the best of their ability. Should they consider that doing so is best served as an independent or a member of a different party group we do not think this should be grounds for sanction.

However, if they become an independent due to being suspended from their party (or resigning in anticipation of such suspension) for a reason that would also be a breach of the code of conduct then the normal process should apply.

5. At the moment there is no sanction if a Member does not attend or participate in Senedd proceedings without a good reason for an extended period.

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)

We do not consider non-attendance in and of itself to present a corruption risk or a failure of integrity. However, the committee may wish to examine the process in the House of Lords which expels members for non-attendance.

We do think it is reasonable to expect that a Member's duties to the Senedd and constituency are their main priority. When elected officials spend a substantial amount of time on an outside interest, this does not give the impression that their first priority is their public duty. Some responses to the criticisms of second jobs is that citizens can vote them out at the next election. Elections only happen every four to five years, however, and it is unlikely that MSs will explicitly campaign for a mandate to hold these interests during election time. Similarly,

this does not address situations where outside employment is gained shortly after an MS is elected.

We support a rebuttable presumption based on a time limit to provide clarity and reassure the public that their elected representatives primarily work for them. This time limit could be between 5-10 hours a week, across all roles, and could be subject to strict exemptions. Exemptions for exceeding this time limit should only be for:

1) maintaining a professional registration, or

2) political activity or providing an essential public service.

The former would include medical qualifications and the latter would include army reservist duties, jury service or lifeboat duties.

6. 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)

We see value in a consistent approach across the jurisdictions of the UK.

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

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

We see value in a consistent approach across the jurisdictions of the UK.

Signing a petition

8. 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

Please outline your reasons for your answer.

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

We see value in a consistent approach across the jurisdictions of the UK.

Additionally, we consider that providing for an indication of support risks an influx of money and other malign influences to seek to impact the recall campaign.

9. 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)

We agree this presents a challenge, as does the feasibility of running a recall petition in large regional constituencies.

We also consider that simply removing and replacing the recalled Member is insufficient. Introducing a subsequent by-election would at least solve the conundrum of a removal being caused by only 10% of the electorate.

10. 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

☐ Other (please specify)

☐ 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)

We see value in a consistent approach across the jurisdictions of the UK.

Aside from the practical benefits of post and proxy voting in large constituencies, if the electorate are to be able to participate in accountability mechanisms like recall, it is vital that people are not inadvertently excluded from the process because of difficulty in accessing in person signing opportunities.

Any such restriction would risk the process being perceived as set up to benefit the Member who is subject to the recall petition. If fewer people are able to participate it would be less likely the Member would be perceived to have been sufficiently held to account. This would undermine the objective of introducing recall and would instead cause the public to further doubt the effectiveness of accountability mechanisms.

Length of the recall process

11. 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

☐ Other (please specify)

☒ Don't have a view

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)

We see value in a consistent approach across the jurisdictions of the UK.

12. 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 mentioned above, we consider that introducing lay members to the Standards of Conduct Committee would be an appropriate tool to avoid partisan decisions or the perception of partisan decisions. Consideration could be given to inviting a sample of constituents to serve as additional members of the committee.

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.

13. What are your views on these two options

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

The objective of recall is to ensure a robust disciplinary process that involves the public and allows them to input into the decision.

Whilst we see the attraction of a speedy process, accountability cannot be rushed or airbrushed. We consider that for the public to be adequately involved, a by-election is an essential outcome of a successful recall petition (that is the petition is found to support the recall of the Member).

Protecting the proportionality of the last election result would be at the cost of undermining the public's trust in the system and the supposed provision of accountability. Simply replacing the recalled Member with the next candidate from the same party will not serve to ensure that the public see justice being done.

As stated at Question 1, we consider that the party and the individual should be required to respond to failures of integrity. If the only repercussion for the party is a change of personnel, this disincentivises analysis of the possible culture within the party that has enabled the impropriety to occur. It also disincentivises learning lessons from the events that led to the recall, both by the party (who have suffered no consequences) and the parliament as a whole (who also see no discernible impact).

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

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

We would suggest examining how by-elections are undertaken in the Scottish local elections. Whilst not a directly comparable voting system, the need to replace a member of a multi-member ward is comparable. We see no problem in using slightly different proportional voting systems for different aspects of the voting process.

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.

15. 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)

We see value in a consistent approach across the UK.

16. 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)

TI-UK supports the Law Commission's recommendation to introduce a new criminal offense for corruption in public office. We consider that there should be a new, clear statutory offence for corruption in public life that includes abuse of function and trading in influence, to ensure those who commit serious abuses of power for private gain can be held criminally accountable. As a criminal offence this would, if a sentence that meets the requirements is imposed, result in disqualification from membership of the Senedd.

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).

At TI-UK we believe that the declining trust in politics and politicians is directly linked to failures of integrity and a perceived lack of accountability. We support strengthening accountability systems, improving the transparency of how decisions are made and politicians are held to account, and work to expose failures to live up to those standards of integrity in public life. We wholeheartedly support the Nolan Principles and believe that wilful dishonesty undermines political discourse.

TI-UK considers that trying to adjudicate for wilful lying or deception is akin to throwing the baby out with the bath water. A handful of outliers whose lies are regularly fact checked should not trigger a system in which every politician is second guessing every statement they make. Outlawing deception would present practical problems of proving intent, would not succeed in improving trust in politicians, and if justiciable could risk malicious use akin to Strategic Litigation against Public Participation (SLAPPs). We consider outlawing the problem to be an insufficient theory of change in a complex environment where there is more to address than just individual dishonesty.

We are also mindful that bringing the courts into regulating the business of Parliament, including how standards rules are upheld raises issues of the constitutional principle of the autonomy of Parliament. This was recently reaffirmed in the European Court of Human Rights ruling in the Owen Paterson case.

A large part of the problem of declining trust is that people think the system is rigged in favour of some over others, that rules are not applied equally, and that rule-breakers are not held to account. Introducing an offence that would be hard to prove and difficult to prosecute risks simply adding another mechanism where the public see no accountability for the perceived or alleged offence.

We would suggest that ensuring the current MS code of conduct is upheld, with clarity on how sanctions will be applied, and bringing lay members into the investigation and decision-making processes of the Standards of Conduct Committee would be a more proportionate course of action. Indeed, arguably current systems do function, they just need to be more powerful and for existing accountability mechanisms to be utilised more effectively.

What is a lie?

Defining a lie, especially in a political context is challenging.

The truth of the statement 'I did not have sexual relations with that woman' relies entirely on the interpretation of 'sexual relations' which is arguably dependent on individual understanding of the term.

Alleging responsibility for a leaked mobile messaging conversation sits with one person who then denies they would do so suggests someone is lying. Or alternatively, the 'responsibility' is not the act of leaking but that the leak was made possible, so both statements are true.

Politics is built on this sort of wordplay and interpretation of facts. To try and legislate the use of language whilst also providing for different interpretations based on political affiliation seems impossible. It is also open to abuse and could risk creating more public dissatisfaction as people see what they perceive to be lies going unpunished.

Monitoring

Considering the amount of discourse inside the Senedd, let alone in the media, on social media and in other forums, we would suggest that monitoring for potential deception would be impossible. In reality, only situations that were open to political game playing would be monitored and challenged. Those with a private interest in whether a statement was shown to be dishonest would be able to dedicate resource where it would reap benefit. Those without resource to defend against wrongful accusation would be silenced.

Candidates

Access to elected office is already fraught with barriers that prevent a diverse pool of individuals seeking political office. If candidates are at risk of legal action this would present another barrier. We are opposed to any extension of the code of conduct to candidates.

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)

Malicious legal action

The threat of legal action is a tool open to abuse by those with deep pockets who wish to silence discussion for their own benefit. As is demonstrated by the chilling effect of SLAPPs, those who seek to prevent people speaking truth to power will use financial resources to quiet challengers. SLAPP suits often have little chance of succeeding should they make it to trial but winning in court is not the objective. Instead, wealthy individuals employ specialist lawyers to send letters threatening libel action against journalists and civil society who publish legitimate, public interest reporting about them. These legal threats and demands for huge damages are often enough to block publication, but if they're not, the next stage is to further turn the screw by dragging out pre-trial proceedings for as long as possible. It is not difficult to imagine the same tactics being brought to bear using the accusation of statements being false or deceptive.

(For more on SLAPPs see https://fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom/)

The origin of the false statement

In considering the genesis of a dishonest statement, there is a clear risk that people who do not hold political office but do work in politics and policy could find themselves at risk of responsibility for alleged untruths. This could be used maliciously by those seeking to undermine campaigners for policy change. Even without malice, the burden of responsibility of knowing that the accusation of deception was available would be a level of additional stress placed on individuals who are merely employees of politicians, government or stakeholders.

If the alleged dishonest statement is a party-political campaign slogan, who is responsible for the lie? Should everyone who repeats the lie be held accountable or just the person who initially created it? What if that person has no political role?

If the alleged deception comes about because of a civil service briefing, or a stakeholder report, or a parliamentary staffer's research, who is responsible for the untruth?

Equally, how would one provide for policy choices? Is 'we had to keep the two-child cap' a lie or a choice? It seems obviously a policy choice but arguably if you

could justify a different choice then why can't this statement be intended to deceive?

If you start to make these sorts of materials exempt the risk is that the public do not see the legitimacy of the offence. If you leave them open to a charge of deception the waters become so muddied that the aim of improved transparency is not only unmet, but further obfuscation is risked.

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 objective of parliamentary privilege is to allow discussions to be had without fear of legal action. There is a direct conflict between creating a justiciable offence that would include words spoken in parliament and the protection of parliamentary privilege.

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)

The recent European Court of Human Rights decision in Paterson v. the United Kingdom provides some useful guidance in relation to the interaction of the proposal to introduce a criminal or civil sanction for a breach of parliamentary standards rules.

We would also draw the Committee's attention to paragraph 52 of that decision which states:

The Court notes that the rules concerning the internal operation of Parliament are the exemplification of the well-established constitutional principle of the

autonomy of Parliament. … In accordance with this principle, widely recognised in the member States of the Council of Europe, Parliament is entitled, to the exclusion of other powers and within the limits of the constitutional framework, to regulate its own internal affairs, such as, inter alia, its internal organisation, the composition of its bodies and maintaining good order during debates. The autonomy of Parliament evidently extends to Parliament's power to enforce rules aimed at ensuring the orderly conduct of parliamentary business. This is sometimes referred to as 'the jurisdictional autonomy of Parliament'.

This reinforces the constitutional principle of the autonomy of Parliament and that the courts should not be involved in regulating the business of Parliament including how standards rules are upheld.

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)

As well as being counter to the constitutional principle of the autonomy of Parliament, none of the justiciable options (options 1 and 2) would address the core problem of declining public trust in politics and politicians, and indeed risk exacerbating public indifference by creating an unimplementable policy.

If the Committee concludes that making a false or deceptive statement of fact should be an explicit offence, we would strongly caution against either a criminal or civil legal sanction.

We can see merit in strengthening the code of conduct and making available sanctions public, but we would urge against identifying making a false or misleading statement as somehow more egregious than breaches of integrity that involve direct harm.

Therefore, if making an untrue statement of fact or intending to mislead is added to the code of conduct we would suggest that the intent to cause harm in making the statement should be the required standard to prove a breach.

22. 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)

Making a false or deceptive statement of fact should not be made a crime or be made subject to civil sanctions for the reasons outlined above. No public good would be served by doing so. It would not meet the objectives laid out in the proposal and risks increased public dissatisfaction with accountability measures. It would also be open to abuse, further undermining political life and exposing politicians to the whim of the wealthy seeking only to benefit themselves rather than the wider public good.

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)

We do not consider there to be a need to create either a civil sanction or introduce a new investigative body to the process of holding members to account.

However, the current process undertaken by the Senedd Commissioner for Standards, with decisions on sanctions being taken by the Standards of Conduct Committee and debated by the full Senedd could be improved. To avoid political capture of the committee process, we recommend that the Senedd follow the example set by the Committee on Standards at Westminster and appoint lay members. These lay members should always be involved in consideration of complaints and sanctions of Members of the Senedd.

Possible sanctions should be clarified and published. Ad hoc sanctions should be avoided. This will both instil confidence that there are sanctions available which seem proportionate, with the most egregious breaches subject to more serious sanctions. This should also act as a deterrence to wrongdoing and aid any determination process as there would be a clear expected sanction.

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

Deceptive statements should not be made subject to a civil or criminal sanction.

However, TI-UK does support the Law Commission's recommendation to introduce a new criminal offense for corruption in public office. We consider that there should be a new, clear statutory offence for corruption in public life that includes abuse of function and trading in influence, to ensure those who commit serious abuses of power for private gain can be held criminally accountable.

We also consider that a comprehensive lobbying register alongside enhanced Ministerial disclosures would enable public scrutiny of those trying to influence statements made by politicians. As noted above, the deception or misleading statement is usually to cover up or provide advantage. Knowing who MSs have been meeting with and what is being discussed would help identify the source of, or reason for statements which other politicians or the public may perceive to be misleading.

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)

Honesty is already a requirement of the code of conduct. Ensuring the current accountability mechanisms are fit for purpose should be prioritised over introducing a distracting fix that would be hard to implement and is insufficiently evidenced as being able to address the problem it claims to solve.

If the Committee concludes that in addition to requiring honesty, explicitly prohibiting deception or false statements would add value to upholding integrity in public life then we would recommend amending the code of

conduct to provide for this. However, we would continue to be cautious as to how such a provision could actually be implemented in political discourse, and as noted above we would urge caution in somehow identifying an intent to mislead as more egregious than other aspects of the code.

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)

We can see some value in disqualification from the Senedd being an available sanction. Clarity in possible sanctions and their likely application would provide transparency for Members and the public. Identifying the sanctions that could be applied could also act as a deterrent.

However, to avoid these sanctions being decided along party lines, it is recommended that the Senedd introduce lay members to the Standards of Conduct Committee to assist in investigating alleged breaches and recommending sanctions.

We do not agree that making false or deceptive statements of fact should be subject to any separate or additional sanctions than are available should a Member be found to have breached the code of conduct.

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)

Clarity on the range of sanctions available if Members are found to have breached the code of conduct is necessary for natural justice. We do not consider that introducing a separate offence of making false or deceptive statements of fact adds value to the code of conduct. If the Committee conclude that there is value in explicitly referencing making a false or deceptive statement of fact to the code of conduct the sanctions should be commensurate with breaches of other aspects of the code of conduct.

We would suggest that if the code of conduct is extended in this manner, any alleged offence of making a false or deceptive statement of fact should include an investigation into why the false statement was made. We would be concerned that simply punishing the lie avoids discussion and examination of the reasons for the dishonesty (or the accusation thereof).

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)

We do not consider that introducing an offence of making a false or deceptive statement of fact is a useful or workable measure.

However, if an offence of deception is introduced, it should be required to show that the deceit was intended to cause harm. A defence therefore would be that the deception was not intended to harm, or that it failed to cause harm. Retraction of any statement and correction of the record should prevent any further action being taken in respect of the alleged deceptive statement.

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)

We would question if the Senedd Members' Code of Conduct has been found to be an insufficient protection to ensure Members meet the required standards of integrity in public life. If there is definitive proof that Members are failing to abide by the code of conduct, or that it is not serving the purpose of holding Members to account, then the code and its processes should be strengthened as a whole rather than picking out one aspect.

Making one aspect of the code of conduct justiciable or subject to separate or additional sanctions suggests the rest is less important.

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)

We envisage a number of resource implications with costs to the public purse, a distraction from other more important issues, a risk of passing blame to junior staff members, and a chilling effect on advice and briefings from stakeholders.

If making a false or deceptive statement of fact is made a justiciable offence this inevitably has implications for the amount of police time an investigation would incur. It would also tie up court time if the process ran its course. We know that neither of these institutions has time or resource to spare.

We also consider that there would be a risk of a blame culture causing anxiety and fear of error in the production of material to support politicians. This could also extend to stakeholders and campaigners being reticent to provide briefing material to politicians due to fear of being accused of deception themselves.

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)

We can see some value in the Committee have extended powers of recommending stronger sanctions but would repeat that to avoid political capture it would be advisable to include lay members on the Standards of Conduct Committee as currently exists at Westminster.

We would also suggest introducing expected standards of free votes when the Senedd comes to make the plenary vote on the recommended sanction, again to avoid this becoming an overtly politicised issue.

Equally, prohibiting a whipping exercise for these sorts of plenary votes would prevent the Owen Paterson scenario occurring in the Senedd.

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)

We see value in the sanctions applied in situations where integrity standards are not being met being consistent across the UK. Clarity in advance of elections / parliamentary terms as to which sanctions are available and how they might be implemented would be useful for natural justice and would meet transparency standards.

If additional sanctions are introduced, we would urge wide consultation in order to ensure unforeseen consequences were bottomed out.