

The Rt Hon The Lord Thomas of Cwmgiedd PC, FLSW



Hannah Blythyn MS
Chair
The Standards of Conduct Committee
Senedd.

13 January 2025

Dear Ms Blythyn

In your letter of 18 December you say that the Committee is gathering evidence on the merits of introducing further mechanisms for the disqualification of Members and candidates found to have deliberately deceived the electorate including through an independent judicial process, as part of its inquiry into Individual Member Accountability. You ask me, given my role in presiding over the Woolas case whether I have any particular views on this matter.

My views are as follows:

1. As a member of the court that determined the issues in *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (admin), a judicial review of the decision of the Election Court in *Watkins v Woolas* [201]EWHC 7002 (QB), it is not permissible for me to comment or supplement what was said by the Court in that case.
2. However it is clear from the history of the Election Court and the decisions made on what is now s.106 (1) of the Representation of the People Act (which re-enacted a provision enacted in 1895) that:
 - (1) Parliament had great difficulty in determining disputed elections; it therefore transferred the making of the determination to the High Court – see the history summarised at paragraphs 22-24 of the judgment in Woolas.
 - (2) What is now s.106 was very tightly drawn. It only made an illegal election practice:
 - a. The making of a false statement of **fact** (in contradistinction to a statement of opinion)
 - b. In relation to any candidate’s **“personal character or conduct”** (in contradistinction to statement in relation to the political or public position or action of the candidate)
 - c. which the maker of the statement could not shown he had reasonable grounds for believing and actually believed, was true.
 - (3) There is extensive case law set out in the judgment in Woolas at paragraphs 86-88 and 107-116 which discuss the difference between personal character or conduct political or public conduct or position

(4) The Court in Woolas explained why the legislation had been confined to false statement in relation to personal conduct at paragraphs 110.

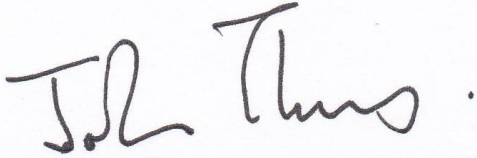
3. An article by Professor Jeremy Horder in the Modern Law Review in 2021 contains a very thorough analysis of the position. He concluded:

“I have been sceptical about the value of employing the criminal law to deter lying about substantive (as opposed to procedural) political matters – viewpoint politics - including lies about the personal reputations of election candidates and referendum campaigners”

4. If the Senedd were to determine that it should legislate in respect of any candidate against whom it is alleged that he or she deceived the public, it would be necessary to:

- a. Determine the nature of the independent judicial process and the composition of the court/tribunal that would determine the allegation of deception
- b. Whether action could be taken only after the conclusion of the election
- c. If action could be taken during the election what the effect would be on the conduct of the election.
- d. Whether action would only be taken in respect of the successful candidate and if so what the sanction would be and which body would determine that sanction.
- e. If action were to be taken against an unsuccessful candidate, what the sanction would be
- f. What the effect would be of widening the deception to include deception in relation to matters that were not confined to the persona character or conduct?

With kindest regards,



J. L. Thomas