

1. Background

Purpose of the consultation

The Standards of Conduct Committee (the Committee) is undertaking an inquiry into Individual Member accountability and the potential for it to be strengthened.

There are several ways that individual Members of the Senedd are held to account:

- Once elected, a Member is accountable to their constituents and ultimately, a Member who stands for re-election is held to account by the public at each election.
- Members can be disqualified and removed during a Senedd term for specified reasons including if convicted of a criminal offence and sentenced to a custodial sentence of 12 months or more.
- Members are also expected to meet the standards of behaviour and rules set out in the Senedd's Code of Conduct, and may face sanctions for breaches of these rules.
- However, there is no provision the Senedd itself to recommend the removal of a Member during the Senedd term.

This consultation is seeking views on potential options for improving the accountability of Members, including in the following areas:

- The introduction of a mechanism for the recall of Members (some form of public poll in the relevant areas between elections that gives electors an option to remove a Member from the Senedd when a complaint of misconduct has been upheld);
- Reasons for which Members may be disqualified during a Senedd term;
- The merits of the introduction of an offence of deception;
- Increasing the available sanctions for breaches of the Code of Conduct.

Providing Written Evidence

The Committee would welcome your views on the questions posed in this consultation by **Friday 27 September 2024**.

You may find it useful to read the consultation document ahead of completing the form.
([link](#))

The Senedd has two official languages, Welsh and English.

In line with the Senedd's Official Languages Scheme

(<https://senedd.wales/commission/senedd-commission-policy/official-languages/>) the

Committee welcomes contributions in both or either of our official languages, and we ask

organisations that are subject to Welsh Language standards or schemes to respond in line with their own obligations. Please inform the Committee when submitting responses if you intend to provide a translation at a later date.

Please see guidance for those providing evidence for committees.

(<https://senedd.wales/senedd-business/committees/getting-involved-with-committees/>)

Disclosure of information

Please ensure that you have considered the Senedd's policy on disclosure of information (<https://senedd.wales/help/privacy/senedd-committee-privacy-notice/>) before submitting information to the Committee.

Drafting Template

A template is available for you to draft your responses should you wish to think about your answers prior to submitting your response. All responses should be submitted via the online consultation form and not be submitted via email.

HYPERLINK

2. Capacity

Are you submitting this resp

onse in a professional or a personal capacity*

Professional

Personal

3A. About you

Before accepting material from individuals under 13 years old, we require authorisation from the young person's parent or guardian, provided in the form of an e-mail to Committees@senedd.wales from the young person's parent or guardian.

If you are responding in a personal capacity, your name will be published along with your contribution, unless you:

- are under 18 years old; or
- ask for your contribution to be anonymised.

Your contact details will not be published.

Age

- I am under 13 years old
- I am aged 13 to 17 (your name will not be published along with your contribution)
- I am aged 18 or over and wish my contribution to be anonymised.
- I am aged 18 or over and happy for my name to be published with my contribution*

Contact information *

Name

*

Full postcode

*

Contact email address

*

Do you wish to receive email updates on the Inquiry's progress? *

- Yes, please*
- No, thank you

To submit a bilingual response please complete a Welsh and English version of this consultation.

In which language(s) are you submitting?

- I am submitting in Welsh only
- I am submitting in English only*
- I am submitting in English and Welsh

Section 3B is only shown to those responding in a PROFESSIONAL capacity

3B. About you / your organisation

If you are **submitting a response on behalf of an organisation** or as a **professional** please enter your details here

(or return to the previous page if you wish to submit in a personal capacity)

If you are responding **on behalf of an organisation**, we will publish the name of the organisation but will not publish your name or contact details.

If you are responding in **another professional capacity**, we will publish your name and your job title/role, if relevant. Your contact details will not be published.

As you are responding in a professional capacity, are you responding on behalf of an organisation? *

Yes

No

Organisation

Reform Political Advertising

Please provide the information below: *

Name

Rae Burdon

Role

Director

Contact email address

[REDACTED]

Contact telephone number

[REDACTED]

Do you wish to receive email updates on the Inquiry's progress? *

Yes, please

No, thank you

In which language(s) are you submitting? *

I am submitting in Welsh only

I am submitting in English only

I am submitting in English and Welsh

To submit a bilingual response please complete a Welsh and English version of this consultation.

4. Your opinion

To assist with our inquiry, the Committee would welcome your views on any or all of the following points:

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.

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)

We regard this issue as beyond our remit and beyond the terms under which we make this and other submissions; see separate note on where we 'fit' in this particular exercise and in the context of the relevant legal framework

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

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)

14. 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.

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)

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)

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 [\[insert link\]](#):

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).

- *First, we should make clear that we confine ourselves to any 'false or deceptive statements' (see later notes on these terms) that are made in electoral advertising. The case for such material to be in scope has been separately made in the context of the Elections and Elected Bodies Bill (now Act), which requires the creation of 'a voter information platform that can host candidate and voter information for Senedd and ordinary principal council elections.' Chapter 4, Section 27 of the Act requires that Welsh Ministers must provide for the platform's establishment and operation 'by regulations'; we therefore assume that the scope and structure of the platform remains subject to input from various parties, ourselves included, we trust.*
- *The reason we do not consider such transgression as has been outlined to be grounds for disqualification (of members; nor should there be serious jeopardy for candidates) is that we regard such a penalty as too severe in this context and not aligned with the sanctions that are generally deployed in the case of breach of regulations in commercial advertising. (For perspective, electoral advertising is unregulated: The U.K. Advertising Standards Authority (ASA) statement, in the context of standing itself down, referenced an October 2013 Report of the All-Party Parliamentary Inquiry Into electoral conduct, which covers the issue of political advertising regulation under Section 4, points 78-83. The Report refers to the work in this context of The Committee for Standards in Public Life (The Neill Committee, sister organisation, we suppose, to that which we write) which recommended that 'the political parties seek to agree a code of best practice in partnership with the advertising industry to apply to the non-broadcast media. in their response to the Committee, the government ... stated its intention to explore whether existing or ad hoc bodies could oversee such a process and offered to broker cross-party agreement. There appears to have been no action taken.'*)

- *If we may labour the point above: there is tacit 'approval' by the Neill Committee of the self-regulatory process we have been advocating for some five years: that a simple advertising code (our own version, signed by several political leaders, is separately supplied) is agreed by political parties and in this case informs the voter information platform. The code would be administered as separately outlined in our earlier submission and consistent with the [House of Lords June 2020 recommendation](#).*
- We address sanctions further under our answer to question 27.

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 potential for considerable confusion when third parties or other campaigners attribute views or statements in electoral advertising to opposing parties or candidates. We anyway regard disqualification as inappropriate.*

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 protection from legal action for 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)

- *No view*

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)

- *There is, in our view, some considerable risk, attached either to criminal offence or to a civil sanction system, that relates to freedom of expression. Though we are, as earlier clarified, confining ourselves to the less potentially sensitive territory of advertising, it remains the case that great caution should be exercised that the right of freedom of expression is not infringed. Article 10 of the ECHR includes 'freedom to*

hold opinions and to receive and impart information (emphasis ours) and ideas without interference by public authority and regardless of frontiers.'

- In that context, we venture to suggest that the terms deployed in this consultation, variously expressed as "false or deceptive statements with the intent to mislead" and "making of false or deceptive statements of fact" might themselves be subject to review as they may be insufficiently precise, for two principal reasons: 1) a 'statement' may not necessarily be factual, but may be an opinion, vis: "the opposing candidate in this election does not understand this community". The subject of that claim may regard it as 'a false or deceptive statement with the intent to mislead' when it is an opinion to which the candidate concerned may well be entitled; 2) the term 'false or deceptive statements of fact' is also difficult for those of us sensitive to the exploitation or interpretation of such terms: how can a statement of fact be false or deceptive? Use of the plural may also be unhelpful. We deploy different language in our own work, which we would be happy to share with the committee, but we feel we may already be well beyond our scope or perceived entitlement to further comment.*
- It seems to ourselves to be crucial, therefore, not only that regulation is applied for highly focused and very specific forms of factual transgression, but that it is simultaneously made clear that there is no intrusion on the lawful (there are already statutory restrictions on free speech) expression of political opinion. For information, this balance is very well found in the regulation of electoral advertising in New Zealand, where the NZ ASA's guidance has applied with the support of all political parties for several decades.*

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)

- It is our view, based on many years of close association with a highly successful self-regulatory system in the commercial world, that in the case of electoral advertising, solutions need be neither complex nor draconian, but simply in line with those proposed in the House of Lords Committee recommendations we referenced earlier. Such solutions should be in the responsible hands of those members who understand that change simply must happen, but not at the expense of free political debate.*

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)

- *We have taken the definition of civil sanctions from the Wales Government paper [here](#) as 'a penalty for non-compliance with the requirements of legislation.' As those requirements are as yet unclear (for an advertising context), and anyway we prefer, per above, to avoid the draconian, then in general our answer to the question is those civil sanctions that are commensurate with the activity and its transgression, which would indicate the likes of Stop and Compliance notices. These would be consistent with the type of enforcement actions taken by the ASA.*
- *For further perspective, sanctions that apply in the case of commercial advertising are broadly described as 'name and shame.' When ASA rulings are made against advertisers, these are widely reported by the print media. There are other, more severe implications: the banning of an advertising execution may mean the loss of many thousands and in some cases hundreds of thousands of pounds in production. In the case of much electoral advertising, however, costs would be far less significant.*

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

- *The process for 'civil sanction' in an electoral advertising context would be that outlined by the House of Lords Committee that we have referenced earlier and that which is also mentioned (above) by The Committee for Standards in Public Life, i.e. the agreement between members of a simple advertising code.*

26. If the making false or deceptive statements is made subject to a civil sanction, what standard of proof would be most appropriate - the civil standard (i.e. "on the balance of probabilities") or the criminal standard (i.e. "beyond reasonable doubt")? Although not common, there have been instances where professional disciplinary bodies have operated to the criminal standard.

Civil standard

Criminal standard

Don't have a view

25. If option 3 were pursued (i.e. strengthening the existing Code of Conduct and sanctions) what are your views on the measures and mechanisms that could address the issue of deception or false statements? For example, through existing standards procedures or potential recall mechanisms. (we would be grateful if you could keep your answer to around 500 words)

- *We believe we have addressed this question in earlier replies above*
-

26. If a disqualification is introduced, what length of disqualification would be appropriate? For example, should there be a fixed period of disqualification, or a period (within a set range) to be determined on a case-by-case basis so that any mitigating circumstances that could reduce the period of disqualification are taken into consideration? (we would be grateful if you could keep your answer to around 500 words)

- *No view*
-

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)

- *We believe we have addressed this question in earlier replies above (Q.24)*
-

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)

- *The question refers specifically to 'deception' versus a false or deceptive etc. In any event, in an electoral advertising context, the advertiser (be it the member, candidate or, most likely, agent) of course has the right to make his/her/their case to the body concerned, either remotely or in person. In other words, the same defence as is available to commercial advertisers.*
-

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)

- *It is our view, having had some experience of the way in which some authorities apply the Codes of Conduct (variously based on the CSPL code), that it is not so much the interaction between any anticipated proceedings and the Senedd Members' Code of Conduct, but the effectiveness of the application of the latter. The code itself seems to ourselves to be clear, comprehensive and actionable. The behaviour of some members leads one (and most of the population) to conclude that they do not appear even to be aware of its existence, let alone respect and observe it.*
 - *In an electoral advertising context, furthermore, we suggest it is fair to say that while the code is admirable in principle, as the CSPL has earlier indicated, it will require more specific measures to be introduced, though 'truthfulness' is very much part of what we hope will become a legal, decent, honest and truthful future for electoral communications in Wales.*
-

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 anticipate, if proposals in line with our own and the House of Lords Committee's recommendations are adopted, that resource – or a 'panel of experts' - will be drawn from existing bodies such as the ASA, the UKSA and the Electoral Commission.*
 - *In line with the existing self-regulatory system in commercial advertising, a levy on advertising cost (to be agreed between parties) would be applied to all electoral ad spend. The commercial levy is 0.1%*
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Sanction of removal of a Member

If a complaint against a Member of the Senedd is upheld, the Committee may recommend one or more sanctions as set out in Standing Orders. These include exclusion from Senedd proceedings for a specified period and/or the withdrawal of certain rights and privileges. The Committee cannot currently recommend the removal of a Member.

The Senedd must debate any reports published by the Committee, and decide whether to give effect to any recommended sanctions. At present, such decisions are taken by simple majority.

31. Should the Committee have the power to recommend sanctions of disqualification or recall of a Member of the Senedd? (we would be grateful if you could keep your answer to around 500 words)

- *No view*
-

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 believe we have addressed this question in earlier replies above*
-

5. Future Inquiries

If you would like to be kept informed of any of the following topics via email, please tick the following that apply:

Standard list of Topic Titles then follows as option boxes for users to select as many as appropriate

6. Thank you message

Thank you for taking the time to respond. Your response was submitted.

For more information about the work of the Standards of Conduct Committee see: <https://senedd.wales/SeneddXYZ>

We are monitoring the diversity of committee evidence to help us understand if this is happening, and what the barriers to participation might be. We invite you to fill in this short, anonymous diversity monitoring form. It should take no more than around five minutes.

<https://senedd.wales/DiversityMonitoringForm>

Introduction and context

This note represents Reform Political Advertising's submission to the Local Government and Housing Committee in the context of the Stage 1 scrutiny of the general principles of the Elections and Elected Bodies (Wales) Bill.

Reform Political Advertising

As our name implies, we are focused on a particular aspect of electoral behaviour: we campaign for factual accuracy in electoral advertising, a position that is supported by nine out of ten voters in Wales; we propose a regulatory solution that we will go on to show is relatively straightforward and eminently manageable.

We are a small non-profit and politically neutral organisation founded by two people from the advertising industry - Alex Tait and Benedict Pringle. We have some seven thousand five hundred followers on Platform X, formerly Twitter; recent posts have been viewed more than one hundred thousand times. Chair of our Electoral Advertising Review Panel is Lord David Puttnam.

Our aims are supported by a few political parties, the Green party among them, and we are known to some senior politicians and cross-party groups such as the Compassion in Politics APPG. We have also exchanged with Liz Saville-Roberts. While we remain in discussion at those senior levels, we have yet to secure the formal agreement to our proposals of either of the two main political parties in Westminster; and the General Election looms.

We know that the issue of accuracy in electoral advertising is important to voters: our 2019 YouGov research found that 87% of UK voters thought that 'it should be a legal requirement that factual claims in political advertising must be accurate.' (Data for Wales showed the same finding). Electoral Commission (EC) Public Opinion Tracker research 2022 found 'just under half of people (46%) say they think political campaigning online is untrue or misleading.' (We don't have access to data for Wales). Additionally, the [EC's report on the 2019 General Election](#) found: 'Voters raised concerns directly with us and other regulators about both printed and digital material that some campaigners were using at the election. They were concerned about the presentation, labelling or layout of campaign material that they thought was misleading, and also about the messaging and content of some campaigns.'

You can find out more about us [here](#); in particular, our reviews of electoral advertising across various elections and by-elections can be found [here](#). Some examples from Wales can be found under p.11 of our May 2021 review of local, mayoral, Scottish and Welsh parliamentary elections.

Political communications in 2023

Veracity in political communication has - at almost this precise point in time - reached an absolutely critical stage. While recognition that the status quo is unacceptable has anyway been building (amongst both politicians and voters), the arrival of three relatively recent influences brings us to this 'tipping point'. Those are:

1. In June of 2020, a House of Lords cross party committee, to which we gave evidence, unanimously [recommended](#) that political advertising should be regulated in its factual content. The government [rejected](#) the proposal, largely on the grounds that it would have 'a chilling effect on free speech'. This despite the proposed regulation being specifically confined to factual accuracy of content.
2. AI. Arguably, the hottest political communication issue of this decade and certainly the hottest of the next. Open AI CEO Sam Altman has urged regulation for electoral disinformation, saying "it is one of my areas of greatest concern" and Professor

Wooldridge, director at the UK's Alan Turing Institute, said AI-powered disinformation was his main concern about the technology "Right now ... it is number one on the list."

While the Bletchley summit laid some important ground, it didn't - and didn't plan to - deal with more urgent and shorter-term matters and there is no evidence that there will be any attention paid to electoral disinformation prior to the next General Election. The Online Safety Act, for example, does not deal with misinformation, and political advertising is specifically exempt from the DCMS Online Advertising Programme. This government has a sorry record for integrity in this and other contexts and it looks like it will stay that way.

3. Other administrations are dealing with the issues we have set out above. On 7th November, i.e. just three days ago at the time of writing, the European Commission 'welcomed the political agreement reached between the European Parliament and the Council on the Regulation on transparency of political advertising.' Under these new rules, political adverts will need to be clearly labelled and the use of sensitive personal data will be banned. All online political ads will be available in an online ad repository. Sponsoring ads from outside the EU will be prohibited three months before elections. More [here](#).

On AI specifically, the EU's Artificial Intelligence Act is expected to be finalised by early next year; the G7 group of countries has (very recently) published The International Guiding Principles on Artificial Intelligence, which include: 'Develop and deploy reliable content authentication and provenance mechanisms, where technically feasible, such as watermarking or other techniques to enable users to identify AI-generated content.' On 29 March 2023, the UK government published its white paper [a pro-innovation approach to AI regulation](#), the UK's proposed regulatory framework for AI. In the US, President Biden on October 20, 2023 signed an [Executive Order](#) on the 'Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.'

Our crucial point is that this Elections and Elected Bodies (Wales) Bill represents probably the last chance before the General Election to address the coming together of AI technology with the long and regrettable tradition of misinformation in electoral advertising. This collision of malign forces will pose unprecedented problems for voters, unless addressed with some technical innovation, some advertising insight and, above all, with some urgency. We set out solutions below.

Specific proposals

- Much of the Terms of Reference are relatively broad and beyond our remit, though we would point to 'any potential barriers to the implementation of the Bill's provisions', when the Bill will 'Create a requirement for a voter information platform that can host candidate and voter information for Senedd and ordinary principal council elections.'
- So, it is this particular aspect of the Bill that we address. The 'voter information platform' should carry the requirement that parties and candidates' and third parties' paid and unpaid publicity material is included and authenticated under a separate but connected 'Register of Political Advertising.'
- Such advertising should also be subject to a simple code of conduct to be agreed by all political parties. Such a code (we have drafted a version for discussion) will address only factual claims and proper identification processes. (In the context of the latter, requirements of the Elections Act 2022 and the Representation of the People Act 1983 for digital and 'hard copy' material respectively should be amended - as part of the code - to require identification of the political party as well as candidate and promoter. This is a bizarre or convenient loophole which has been exploited on a number of occasions).

- Administration of the code should be the remit of an Electoral Advertising Review Panel' or similar, to be staffed by a 'panel of experts' (from the House of Lords recommendation referenced earlier) which might include, for example, representatives from Ofcom, the ASA and of course The Commission.
- In the course of the 2022 local elections, we piloted a process that was able to identify and rule on advertising within 24 hours. In light of progress in AI in particular, we foresee a system whereby advertising that reaches the relatively few channels in which it appears and from relatively few sources might be 'AI checked' for accuracy and, if necessary, blocked from appearing or at least providing an immediate alert system for the administrators. This kind of technological inspection of advertising has been pioneered by the ASA in a number of regulation-sensitive sectors.
- In the event that proposals outlined above have some traction in the context of the Bill, we would like to bring forward additional advertiser certification systems that we believe will also provide important reassurance to voters, most of whom will be exceptionally cautious in the face of dire AI warnings and an already well-established cynicism towards political advertising.

Conclusion

It's time, in fact well beyond time, to clean up the electoral advertising 'act.' We have shown that voters are deeply disappointed and cynical as a result of the morass of misleading political communications, grown steadily worse over the past few years in an environment in which leadership almost seemed to encourage distortion or obfuscation. This Bill represents a very important opportunity to address these failings and to do so in an innovative and professional manner. It may not be the first such system in the world (a number of administrations outside the U.K. have some regulation of political advertising) but if proposals above or close to them are to be followed, it will be the best.

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RPA 10th November, 2023

In our advertising we will:

- Make every effort not to mislead voters
- Ensure that factual claims are accurate
- Hold relevant, reliable evidence for claims
- Acknowledge any mistake & issue correction
- Inform audiences when using generative AI