

Written Evidence to the Senedd Members Standards of Conduct Committee Inquiry into  
Members' Accountability

Further to Evidence Session 14 on 18 November 2024, when Mr Rees KC and Mr Greenwood gave oral evidence before the Standards of Conduct Committee Inquiry into Members' Accountability, WalesOnline 19 November 09:51 published a quotation from Richard Symons of the "Campaign Against Political Deception" ('CAPD')<sup>1</sup> which made misleading and unjustified criticism of both the witnesses and committee members in attendance.

For clarification purposes:

- 1) On 30 October 2024, Mr Rees KC, Mr Edwards KC and Mr Greenwood ('CBA Welsh Representatives') were specifically authorised in writing by the Chair of the Criminal Bar Association of England & Wales ('CBA') to deal with the invitation to give evidence before the Senedd Members Standards of Conduct Committee Inquiry into Members' Accountability ('MSCCI') on behalf of the CBA in Wales.
- 2) On 14 November 2024, the Chair, Vice-Chair, Secretary and Communications Officer of the CBA and the Leader of the Wales & Chester Circuit were collectively provided with copies of the ICDR Report entitled, "A Model for Political Honesty: A White Paper proposing legislation for the disqualification of politicians who are found guilty of deliberate deception by an independent judicial process" ("White Paper") by the CBA Welsh Representatives, together with the terms of reference for the inquiry.
- 3) They were also informed that the view of the CBA Welsh Representatives was that the proposal within the White Paper – the "so-called White Paper" as Mr Lee Waters has since described it<sup>2</sup> - "was littered with difficulties and was in our view a non-starter", and the correspondents were invited to raise any issues.
- 4) On 15 November 2024, the Communications Officer of the CBA provided the CBA Welsh Representatives with a series of emails containing data regarding the backlog in the courts specifically to assist with the evidence session before the MSCCI.

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<sup>1</sup> If the quote itself is inaccurate, Mr Symons is welcome to clarify the same

<sup>2</sup> See the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraph 235

- 5) On 17 November 2024, the Chair, Vice-Chair, Secretary and Communications Officer of the CBA and the Leader of the Wales & Chester Circuit were collectively provided with a copy of the “Briefing Note re Evidence to be provided on 18 November 2024 to the Senedd Members Standards of Conduct Committee Inquiry into Members’ Accountability” (“Briefing Note”) drafted by the Welsh CBA Representatives.
- 6) The CBA routinely delegates the task of responding to legislative proposals to members with the appropriate expertise. In this instance it was decided that the Welsh representatives were best suited to the task.
- 7) On 18 November 2024, the Chair of the CBA responded commending the Briefing Note ahead of Evidence Session 14 and the appearance of Mr Rees KC and Mr Greenwood before the MSCCI (copying the Vice-Chair, Secretary and Communications Officer of the CBA and the Leader of the Wales & Chester Circuit into the email approving the Briefing Note).
- 8) Turning to the specific points of criticism thereafter made by Mr Symons:
  - a. As criminal practitioners representing the Criminal Bar Association, the CBA Welsh Representatives were asked to give evidence in relation to proposals to introduce a *new criminal offence applicable in Wales*. The Criminal Bar Association is a specialist bar association which specialises in criminal practice. It does not profess to be a specialist bar association relating to internal non-criminal disciplinary procedures (such as those relating to the Senedd standards system or the existing code of conduct)<sup>3</sup>. In the Briefing Note, the CBA Welsh Representatives specifically stated that they were: “sympathetic with the aim of providing a more robust system of accountability in the Senedd and are willing, *with colleagues at the Bar in Wales*, to advise and assist in considering proposals for disciplinary proceedings and mechanisms for Senedd members” [emphasis added]. That offer remains open.
  - b. It is misleading to suggest that the courts have already found that similar measures to those proposed in the White Paper do not breach human rights.

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<sup>3</sup> See the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraph 205

There are no similar measures to those proposed in the White Paper (see paragraphs 13-25 of the Briefing Note). The CBA Welsh Representatives did specifically make the point to the MSCCI that the reversal of the burden of proof has in other situations been upheld by the courts, but not in any situation analogous to, or as serious as, the proposal in the White Paper<sup>4</sup>. It is of note that concerns about potential breaches of human rights were shared by the two other expert witnesses who gave evidence earlier on 18 November 2024 in Evidence Sessions 12 and 13<sup>5</sup>.

- c. It is misleading to suggest that “*any citizen can bring a private prosecution (so prosecutions don’t need to be subject to a “reviewing body”)*” to the extent that it implies that any citizen can bring a private prosecution for any offence. In fact, certain prosecutions may not be instituted *without* the sanction of the Attorney-General. Certain other prosecutions may not be instituted *without* the consent of the Director of Public Prosecutions. Moreover, section 6(2) of the Prosecution of Offences Act 1985 makes *all* private prosecutions subject to the jurisdiction of the Director of Public Prosecutions to take over the conduct of any such prosecution and continue or end them as appropriate.
- d. It is correct that the courts already have *some* mechanisms to make sure claims are meritorious before they are heard in full, and the MSCCI had their attention draw to those by the CBA Welsh Representatives<sup>6</sup>. However, the proposal in the White Paper of a leave stage of review by a District Judge or Deputy District Judge within 24 hours of any application being issued is not an existing mechanism known to the magistrates’ court and would, if enacted, create an additional burden upon the already stretched resources of the courts (it is observed that Mr Waters agreed that the courts are already “swamped”<sup>7</sup>).

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<sup>4</sup> See the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraph 164

<sup>5</sup> See the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraph 14, 17, 66, 145, 146

<sup>6</sup> See the Briefing Note at paragraphs 20-22, 26, 28, 29-31 and 42; and the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraphs 181, 190 and 193

<sup>7</sup> See the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraph 174

- e. It is also correct, that *in certain circumstances and subject to specific safeguards*, the courts may already rule on the truth of political statements, as the CBA Welsh Representatives pointed out to the MSCCI<sup>8</sup>. Specifically, the CBA Welsh Representatives observed that the criminal law already caters for politicians who lie, with specific examples raised for the MSCCI to consider of the common law offence of misconduct in a public office, the offence contrary to section 106(1) of the Representation of the People Act 1983 and the offence of fraud by false representation contrary to sections 1 and 2 of the Fraud Act 2006. The evidence of the CBA Welsh Representatives was to urge caution before the Senedd expands the scope of the criminal law in relation to “political statements” beyond its present boundaries and certainly not by diluting the current high safeguards and thresholds in place before the criminal law is engaged<sup>9</sup>.
- 9) It is observed that Mr Symons of the “Campaign Against Political Deception” (a “Strategic Communications Political Strategy Professional” rather than a practising lawyer) was also a member of the working group behind the White Paper.
- 10) It is only to be expected that Mr Symons is disappointed with the evidence provided on behalf of the CBA on Monday 18 November 2024, given that the CBA Welsh Representatives regard the proposals in the White Paper as deeply flawed and stated so. The proposals fail to meet the test of practicability and fairness and are made at a time in which courts in Wales are already overstretched.
- 11) The CBA Welsh Representatives believe that any representative of the “Campaign Against Political Deception” should pay closer regard to accuracy, transparency and completeness when providing soundbite statements to the press, in pursuit of what otherwise would appear such a noble campaign.

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<sup>8</sup> See the Briefing Note at paragraphs 38-39 and 44-45; and the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraphs 158-161, 168, 190, 236 and 242

<sup>9</sup> See the Briefing Note at paragraphs 40-42, 45, 46 and 56; and the Transcript of Standards of Conduct Committee dated 18/11/2024 at paragraphs 161, 176, 177, 179, 181, 184, 186, 190, 192, 218, 237-239, 242-244 and 255

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22 November 2024