INSTITUTE for
CONSTITUTIONAL and
DEMOCRATIC
RESEARCH

VERSION 2

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.

Executive Summary

Public trust in politicians stands at its lowest level since records began. Only 9% trust politicians to tell the truth. Voters believe that the current system for ensuring political honesty have failed. More than two thirds support a law criminalising political lying.

The Senedd rules already require politicians to tell the truth. The proposal is not to impose a new duty but ensure the existing duty is properly enforced. The Welsh Government has publicly undertaken to introduce a new law whereby:

Politicians or candidates who are found guilty of deliberate deception by an independent judicial process will be disqualified from office.

There are three models of enforcement currently in operation in the Senedd and Westminster Parliament. These are the:

- The Privileges Model – Enforcement by a committee of members.
- The Standards Model – Enforcement by a commissioner with appeal to members or an independent (but unaccountable) panel.
- The Pure Politics Model – Enforcement left up to voters.

All these models have proved inadequate.

The ICDR has convened a working group, comprising leading experts across politics, public policy, academia, and law to develop a model regulatory regime.

The new regime must conform to four key principles. It must:

- Represent a decisive break with the failed models;
- Be independent and non-political;
- Provide swift resolutions;
- Differentiate between false and accurate statements and preserve freedom of speech.

We propose a model based on existing regulatory law whereby:

- Where a court finds that a politician has made a false or misleading statement of fact, it can issue a "Correction Notice" requiring the politician to issue a public correction.
- If the politician refuses to comply with the notice within seven days (without reasonable excuse) the court can impose a Disqualification Order which prevents that politician holding office in the Senedd for a specified period of time.

The regime will be similarly effective whether it takes effect in criminal or civil law (although the criminal law is more practicable and makes a stronger statement).

As with other regulatory regimes, such as the Freedom of Information Act 2000, we suggest that any registered voter should be able to apply for a Correction Order but (as with judicial review) the court should be able to dismiss any application which is trivial, vexatious, or stands no reasonable prospect of success without a hearing.

This model removes the ambiguity of previous models because there is no requirement to determine intent and preserves the freedom of expression of politicians because they have an opportunity to correct the misinformation without sanction.

The Institute for Constitutional and Democratic Research

Constitutional and democratic issues are at the forefront of UK politics. Questions of devolution or independence, the role of the justice system, parliament, and individual rights look set to dominate out national debate for decades to come. Yet, as a nation, we often misunderstand our own constitution. This leaves government, legislators, and ordinary people ill equipped to address the challenges we face.

The ICDR aims to improve our constitutional discourse through public education and thought leadership. It will open the legal and academic bubble, bringing the best constitutional minds in the country to legislators, government, and the public at large. The Institute's mission is to:

1. **Advise** – Provide legislators and officials at all levels of government with non-partisan, concise, accessible, and strategic advice on constitutional issues including by acting as secretariat to the APPG on Democracy and the Constitution.

2. **Empower** – Empower citizens to engage in constitutional discourse through public education and providing educational resources for schools.

3. **Lead** – Provide thought leadership on constitutional and democratic issues by offering a platform for the nation's leading constitutional minds to engage with the public and media on our most pressing challenges.

The ICDR is entirely non-partisan. The institute works with legislators through the newly formed All Party Parliamentary Group on Democracy and the Constitution. It engages with select committee and public inquiries as well as officials in Westminster, the devolved legislatures and executives, and local government. The content is provided by a panel of fellows drawn from the leading constitutional experts at the bar, in academia, on the roll, and in other areas of practice. Their work is communicated though engagement with the media, events, conferences, blogs, longer form research, briefings, videos, and educational materials.

Table of Amendments in Version 2

PAGE(S)	AMENDMENT	REASON
9	Clarification of the role of the Working Group.	Ensure greater clarity and transparency.
29 and 34	Clarify the "real possibility" test should refer to the "real prospect" test.	To bring the language of the ICDR Model in line with existing legal terms of art.
Throughout	Replace "lie" with "false or misleading statement" in the analytical paragraphs of the White Paper.	To bring the language of the analysis into line with the language of the proposed legislation.
35 and 38	Provide for a regulatory body to have a power (similar to that of the Attorney General over private prosecutions) to "take over" claims for Correction Notices and Disqualification Notices.	To add an additional safeguard against vexatious claims.
32	Amend sub-clause (1) under "Failure to Comply with a Correction Notice".	To ensure that a Disqualification Notice is a regulatory disqualification, not a criminal sanction.
31	Clarify the process of applying for a correction notice to ensure compliance with Parts 7 and 8 of the Criminal Procedure Rules.	To ensure sufficient safeguards are in place of the "criminal route" version of the ICDR Model is preferred.
29 and 34	Include an explicit reference to Article 10 of the ECHR in the sample clauses.	This is unnecessary from a legal point of view but may seems to be important to various politicians from a presentational perspective.
21, 30, 35	Include an alternate version of the process for applying for a Correction Order which places the burden of proof solely on the applicant.	There appears to be a political objection to politicians having to base their public statements on evidence.

23	Add reference to legal aid.	For completeness.
30	Clarification that the burden for proving the truth of a statement is an evidential not legal burden.	To make it clearer that the ICDR Model does not raise any ECHR issue.
28	Updated table of correction requests to reflect new compliance data from Full Fact	To make clear that compliance rate with full fact requests is less than 11% amongst recent cabinets and 0% amongst current main party leaders.

Introduction

1. This White Paper presents is the culmination of a three-month project to develop a regulatory regime which will ensure that politicians who deliberately misrepresent the truth can be disqualified from office. It encompasses a global review of literature, a series of seminars with leading experts, legal advice, and desk research.

2. In May the Senedd adopted an amendment to the (now) Elections and Elected Bodies (Wales) Act 2024 which would have criminalised politicians who deliberately make (and fail to retract) false statements of fact. The amendment received overwhelming public support. Two thirds of the public backed the proposal in a UK-wide poll.[1] The amendment also had the support of a majority in the Senedd, with at least 31 members indicating that they would vote in favour at Stage 3. The Welsh Government, accordingly, committed to introducing legislation to that effect.

3. The Counsel General made the following commitment on behalf of the government:

> *The Welsh Government will bring forward legislation before 2026 for the disqualification of Members and candidates found guilty of deliberate deception through an independent judicial process and will invite the committee to make proposals to that effect.*

4. Accordingly, the ICDR convened an expert working group comprising leading experts in multiple disciplines to develop a proposal for the Standards Committee.

5. It is important to note, at the outset, that nothing about this project involves imposing a new obligation on politicians. MS are already required to speak truthfully. The proposal will simply:

   (a) Improve the enforcement mechanism for the existing obligation on MS; and

[1] https://inews.co.uk/news/law-to-ban-politicians-from-lying-backed-by-two-thirds-of-public-poll-shows-3029610?srsltid=AfmBOooUXTnwv-3O88xa08I8Nboo9KOhglzYZT6IDe-uPdcu7DYA0zdM

(b) Extend that obligation to candidates so that serving MS and candidates are held to the same standard.

The Working Group

The role of the working group was to generate, exchange, test, and challenge ideas. The substance of the ICDR model is based on the discussions of the working group. This paper was written by the Director of the ICDR.

Professor Andrew Blick - Professor of Political Economy, Kings College London

Jamie Burton KC – Barrister, Doughty Street Chambers

Professor Andrew Chadwick – Professor of Political Communication and Director of the Online Civic Culture Centre, Loughborough University

Sam Fowles – Barrister (Cornerstone Barristers), Director of the ICDR

Professor Emyr Lewis – Emeritus Professor in the Department of Law and Criminology, Aberystwyth University

Rt Hon Elfyn Llwyd – Barrister and former leader of the Plaid Cymru group in the House of Commons

Jennifer Nadel – Director of Compassion in Politics and Co-Director of the Centre for Compassion and Altruism at Stanford University

Adam Price MS – Member of the Senedd for Carmarthen East and Dinefwr and proposer of the "truth law" amendment.

Richard Symons – Strategic Communications (Compass) Political Strategy Professional

Discussions took into account legal advice provided by:
Lord Hendy KC
Matt Hutchings KC
Josef Cannon KC
Sam Fowles

The Need for Change

A Crisis of Trust in Politics and Political Lying

6. Politicians are liars. That, at least, is the overwhelming opinion of the British public. Only 9% of Britons trust politicians to tell the truth.[2] This is the lowest level in the 40 years since records began.[3] According to research by National Centre for Social Research (led by Sir John Curtice), in June 2024, 58% of voters believe that politicians "almost never" tell the truth.[4] Voters believe the political system itself is incapable of ensuring truth-telling. As one (representative) respondent to the BBC "Your Voice Your Vote" survey stated:

> *Repeatedly seeing scandals addressed years after they've happened makes me feel decision makers can dodge accountability…*
>
> *It feels like every time a scandal is uncovered accountability has to be imposed through relentless public pressure, rather than through the rule of law.*[5]

7. The summer of 2024 saw the real-world impacts of political misinformation writ large. Riots broke out across 27 cities in England and Northern Ireland, triggered by a piece of political misinformation: that the alleged perpetrator of a knife attack in Southport was a Muslim immigrant. That misinformation was promoted on social media by at least one member of the Westminster Parliament.[6] Over 1000 people were arrested and more than 700 charged. It was the most significant disorder since 2011.[7] Rioters attacked hotels housing asylum seekers (including children) and mosques with fire-bombs.

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[2] https://www.ipsos.com/en-uk/ipsos-trust-in-professions-veracity-index-2023

[3] https://www.ipsos.com/en-uk/ipsos-trust-in-professions-veracity-index-2023

[4] https://natcen.ac.uk/publications/british-social-attitudes-41-damaged-politics

[5] https://www.bbc.co.uk/news/articles/cv223kzq6r9o

[6] https://www.independent.co.uk/news/uk/politics/nigel-farage-uk-riots-poll-b2598252.html

[7] https://commonslibrary.parliament.uk/policing-response-to-the-2024-summer-riots/

8. In Wales, voters suggested that the events around the resignation of, former First Minister, Vaughan Gething have reduced their trust in politics.[8]

9. This is not to suggest that all politicians are inherently untrustworthy. Many, perhaps the vast majority, are honest people doing their best in a very difficult job. But this is not the public's perception.

10. The falling trust in politics undermines the very essence of political discourse:

    (a) **It devalues public debate** – Politics is based on public discourse. This is only meaningful when participants and voters can have confidence that the participants are doing their best to properly represent the factual basis for their arguments. When every factual statement must either be fact checked or disbelieved (as now), meaningful political discourse becomes increasingly ineffective.

    (b) **It creates a barrier to engagement** – When voters don't trust politicians they don't engage with or believe political arguments (even those which are based on verifiable facts). It makes it more difficult for voters to engage with public debate if they have to fact check everything that is said. The actions of a few dishonest politicians thus undermine political debate as a whole.

    (c) **It increases division** – The voter-perception of dishonesty removes the presumption of truth-telling from public debate. This increases "siloisation" of voters. Voters can't trust that participants are engaging honestly in public debate so retreat to echo chambers which confirm their existing ideas (and, in many cases, prejudices) rather than engaging with new or different perspectives.

    (d) **It increases the risk of violence** – Without trust in politics, voters look for alternative means to achieve their political aims. Rioters in summer 2024 told reporters that they were motivated by a sense of betrayal by politicians and that they could no longer trust the political process.

[8] https://www.theguardian.com/politics/article/2024/jun/03/vaughan-gething-scandals-confidence-vote-cardiff

The Existing System is Inadequate

11. The Leader of the House of Commons, Lucy Powell, recently suggested that the Westminster regime is sufficient to combat political lying. This is transparently incorrect. Ms Powell pointed to the fall of Boris Johnson as evidence for her claim (incorrectly stating that he was forced to leave office because he was "found to have lied" – Johnson resigned as Prime Minister because of a cabinet rebellion more than a year before the Privileges Committee found that he lied to Parliament).

12. According to Full Fact, under the Sunak and Starmer regimes, (Westminster[9]) cabinet ministers have made 46 misleading statements of sufficient seriousness to require public correction (see Appendix 1). Less than 11% of requests resulted in a correction. Amongst the leaders of. The main parties in Westminster, the compliance rate is 0%.[10] None were required to do wo by the Westminster regime. The Full Fact numbers are likely a significant understatement. The organisation makes clear that it does not fact check every statement and spends more time on the most senior cabinet members. The date compiled for this submission was limited to cabinet members. It is likely, therefore, that the real number of false statements is significantly higher.

13. There are three models currently in operation for ensuring political honesty:

    (a) The "Privileges Model";

    (b) The "Standards Model"; and

    (c) The "Pure Politics Model".

14. All three have proved inadequate in that they have failed to arrest the rise in political misrepresentation and associated collapse in public trust.

[9] Unfortunately, Full Fact does not collect equivalent data for the Senedd.

[10] www.fullfact.org

15. **The Privileges Model** – The Westminster Parliament relies on this model to enforce political honesty. Misleading Parliament is considered a "breach of privilege". The potential punishments range from a verbal warning to a recall reference (see below). An MP accused of a breach of privilege can be referred to the Privileges Committee (comprised of other MPs and on which the government holds a majority) by vote of the whole House. The Committee investigates the allegation and makes a recommendation. This must generally be confirmed by the whole House. This model has proved inadequate for the following reasons:

    (a) It relies on politicians "marking their own homework". This creates problems of both perception and operation. It creates the perception that politicians are making decisions about political honesty based on politics rather than facts. In 2022, for example, Nadine Dorries was found by a cross-party investigation to have misled the DCMS Select Committee. She was not referred to the Privileges Committee and received no punishment.

    (b) The model only applies to MPs. This creates a potential imbalance whereby MPs are subject to higher standards of honesty than candidates.

    (c) The Privileges process takes too long. It's two most recent investigations, into Boris Johnson and John Nicolson, both took over a year. This subjects the MPs in question to an unfairly extended period of limbo and means that, by the time the issue is determined, political debate has largely moved on. If misleading statements are to be meaningfully corrected, they must be corrected or exposed as soon as possible after they are made.

16. **The Standards Model** – The Senedd uses this model to enforce, *inter alia*, the exiting rule against political lying. The Westminster Parliament relies on a similar model to enforce rules prohibiting bullying and harassment. Alleged breaches of the rules are investigated by a "commissioner", with the power to impose a range of sanctions. There is an appeal (in Westminster) to an "Independent Expert Panel" (the criteria for appointment to this is not clear). In the Senedd, the decision of the Commissioner must be confirmed by the Senedd. This model has proved inadequate for the following reasons:

(a) **Arbitrariness** - The single commissioner model is a recipe for arbitrariness. The Commissioner is effectively unaccountable. This means that the regulatory scheme is dependent on one person's views. The high success rate of appeals against[11] the Commissioner's decisions in Westminster (40%, compared with 20% of criminal appeals[12]) shows the high risk of error. In the case of the Senedd, the Standards Commissioner has already expressed the (highly political) view that the crisis of political dishonesty "doesn't exist". This puts him at odds with the majority of the electorate and expert opinion. It would be problematic for political honesty rules to be enforced at the discretion of an individual who is on record saying that political dishonesty isn't a problem.

(b) **Accountability** - The system lacks accountability. The IEP is entirely unaccountable. This contrasts with judges, whose decisions on points of law can be appealed to higher courts. The IEP thus lacks a guarantee of consistency in its application of the rules of the kind which gives the public confidence in the courts.

(c) **Independence** - Alternatively, the Senedd version of the Standards Model means that decisions are ultimately dependent on political approval. This raises the same problems as the Privileges Model (above).

(d) **Transparency and Fairness** – The IEP makes decisions solely on the papers and in private. There is no opportunity for debate or to test propositions of evidence of law. This means there is no proper guarantee of the rights of either "defendants" or "complainants". While there is no polling available which specifically deals with public confidence in the IEP (likely because only a vanishingly small percentage of voters would be aware of its existence), the appearance of

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[11] https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/reports/

[12] https://www.scotcourts.gov.uk/media/fybl54px/scts-quarterly-criminal-court-statistics-20-bulletin-2022-23-q4.pdf (This data set is taken from the Scots courts only. An equivalent up to date data set was not available for the English and Welsh system. There is no reason, however, to believe that there would be a significant difference).

"justice behind closed doors" would likely reduce public confidence in any system based on this model.

17. **The Pure Politics Model** – This is the model which appears to be preferred by the Senedd Standards Commissioner. It essentially involves "leaving the matter to voters". This model is *prima facie* attractive but, in reality, does voters a great disservice:

    (a) **It's a "Catch-22"** - Political lying denies voters the opportunity to make an informed decision. Imposing politicians' false or misleading statements on voters is unfair and undermines confidence in the democratic process.

    (b) **It doesn't work if there's no alternative** – Voters distrust all politicians. The unchecked extent of political misrepresentation means that voters do not distinguish between trustworthy and untrustworthy politicians. Telling voters to "just vote for someone else" only works if there's a genuine alternative. At the moment, voters do not see that there is.

    (c) **It doesn't work in practice** – Voters only get the opportunity to vote for politicians in the Senedd every five years. It is very difficult to hold politicians accountable at the ballot box for a false or misleading statement if they are not up for election for another half decade. The possibility of recall, which can take up to a year, does not offer substantial mitigation for this problem.

18. The Westminster Parliament, in 2015, introduced recall petitions as a potential sanction for (*inter alia*) breach of privilege (which can include misleading Parliament). The sanction has not proved effective in respect of political lying:

    (a) Since 2015 trust in politics has declined. The years since 2015 have arguably seen an increase in political dishonesty (and certainly the public perception of political lying).

    (b) The process takes too long (there is often more than a year between the false or misleading statement and the recall petition).

The Incentive to Make a False or Misleading Statement

19. There is an argument that "politicians have always false or misleading statements". This is both inaccurate and misunderstands the reality of modern political discourse:

20. As a result of social media and 24-hour news, information now travels faster than ever before. The impact of political dishonesty is therefore significantly greater. It is now possible (and common) for a false or misleading statement to be communicated to millions of people before it can be corrected. Moreover, the sheer volume of information communicated to voters means corrections are often lost.

21. The combination of the fast pace of modern political discourse and the absence of any significant disincentive for political dishonesty means that unscrupulous politicians can make significant gains from political dishonesty. There is evidence that, on occasion, it has been adopted as a deliberate tactic. In the 2019 general election, for example, 88% of online adverts from one political party, across a three-day period, contained misinformation.[13]

[13] https://www.independent.co.uk/news/uk/politics/conservative-party-disinformation-2019-general-election-a9682566.html

Principles of a New Regime

22. To address the problems set out above the new regime must conform to four key principles:

    (1) **Represent a decisive break with the previous regime -** In line with the Counsel General's statement of 3 July 2024. The existing regimes are widely perceived as a failure, a clear departure sends a signal to the public that the Senedd takes the issue seriously. Going back on the Counsel General's statement will be seen as a betrayal and further damage public trust.

    (2) **Be independent and non-political** - MS must not be seen to be marking their own homework. Questions of whether a MS or candidate has made a misleading statement must be determined by an independent tribunal of fact and law (accountable through the appeals process).

    (3) **Provide swift resolution** – So long as there is a lapse in time between the false statement and any resolution, that false statement will stand and impact on public discourse (consequently, the incentive to make false statements remains). The public must be able to see false statements either corrected quickly or consequences ensuing.

    (4) Clearly differentiate between false and accurate statements while preserving freedom of expression.

23. Taking these into account, the ICDR has developed an "in principle" regime, which can be applied in either the criminal or civil context.

24. The "building blocks" of this regime are all existing legal concepts. It is based on a common model of regulatory regime, whereby subjects are given an opportunity to correct their error and then sanctioned if they fail to do so. Implementing the proposed regime will, therefore, not require courts to do anything that they are not already experienced at doing.

25. The proposed regime works in two parts:

(a) Where a qualifying person makes a false statement and fails to correct the record, a court may issue a "correction notice" requiring them to correct the record.

(b) A qualifying person who fails, without reasonable excuse, to comply with a correction notice may be sanctioned by the court. The sanction will be a period of disqualification from office.

26. This means that no politician would be sanctioned unless:

(a) Their statement has been found, by a court of law, to be a false or misleading statement;

(b) They have been given the opportunity to correct the record (without sanction) and explicitly refused to do so.

27. The model avoids many of the problems associated with similar models in that:

(a) There is no need to prove intent to make a false or misleading statement because no sanction will arise unless the politician has been explicitly informed that their statement is false or misleading and they have nevertheless refused to correct it.

(b) There are no freedom of speech implications because:

(1) It does not impose any obligation that doesn't already exist;

(2) Politicians have the opportunity to demonstrate that the statement is true;

(3) Sanction will only be applied after politicians have refused to correct the record.

(c) The regime is the least restrictive possible because the most that the vast majority of those caught will be required to do is issue a correction.

(d) The regime allows the court to dismiss vexatious claims at an early stage (before the politician is even required to respond).

The ICDR Model

Application

28. The regime must apply to both candidates and MS. Both groups ask the public to place trust in them and seek to exercise power on the public's behalf. Both, therefore, voluntarily take on responsibility and seek power. It is right, therefore, that both are held to the same standards of political honesty. "Member" is defined according to section 1 of the Government of Wales Act 2006 and "Candidate" should be defined according to section 7 of that Act.

29. The regime should only apply to statements which are made when the individual is acting as a MS or candidate or if there is a public interest in the statement (this would include statements about "private" matters, such as whether the individual has had an affair, which are relevant to their suitability for office).

30. The regime should apply to statements which a reasonable person could understand to be statements of fact (this utilises the "reasonable person" term of art common in public law). This ensures that statements of opinion are not caught by the regime.

31. The regime should only apply to statements which are "published". This is a term of art already used in defamation law.

Correction Notice

32. To preserve freedom of expression and ensure that the regime only targets genuinely harmful political deception, qualifying persons must first be given an opportunity to correct the record. We, therefore, propose that the court be given the power to issue a "correction notice" in the following circumstances:

    (a) A qualifying person makes a qualifying statement.

    (b) That statement is not trivial.

(c) That statement is, on the balance of probabilities, false.

33. The "balance of probabilities" test is appropriate at this stage regardless of whether the regime takes effect in the civil or criminal courts. The "beyond reasonable doubt" test tilts the balance in favour of the defence (i.e. the prosecution must prove its case to a higher standard than the defence) because the potential sanction is of particular severity. In this case, the potential sanction is merely an instruction to correct a misleading statement. The "balance of probabilities" test requires the court to determine which version of events is most likely given the evidence. This puts both sides on an even footing.

34. The ICDR Model will function if the burden of proof for establishing that a statement is false lies solely with the applicant. If, however, MS take the view that it is reasonable to assume that politicians should have evidence for statements of fact before they make them then a different procedure may be appropriate. Under such a procedure, if it can be established that there is a "real prospect" that a statement is false or misleading then the burden of proving any statement should lie with the person who made it (as it must be assumed that no politician would make a statement of fact for which they do not have evidence). This avoids the possibility of applicants being forced to prove a negative (such as "there is no evidence for x"). A politician should only be required to prove the truth of a statement where the court first finds that there is a "real prospect" that the statement is false or misleading. Where a party must rely on evidence that is not public, the court should be entitled to use a special advocate procedure.

35. The notice must require the recipient to correct the record in the same forum that they made the original false statement or one of equivalent prominence. The correction should also be published in a public register online and in a Welsh national newspaper. This will ensure that the original false or misleading statement is not allowed to spread uncorrected.

36. The notice, as an instrument, is commonly used in regulatory law (see, for example, planning enforcement notices (requiring removal of unlawful buildings)[14], stop notices

[14] Town and Country Planning Act 1990, s. 172

(requiring a cessation in unlawful development)[15], abatement notices (requiring the recipient to cease committing a statutory nuisance),[16] and community protection notices (requiring cessation of anti-social behaviour).[17] It is normal for failure to comply with a notice to be a criminal offence.

37. It is imperative that an application for a correction notice is heard promptly. It should, therefore, be treated as equivalent to an application for a closure notice (which must be heard by the court within 48 hours).[18] Given that the court system is able to give effect to the closure notice regime (which applies nationally and to every premises), there are unlikely to be significant resource implications to applying the instant regime (which has a far more limited application).

38. The risk of vexatious or trivial applications for a Correction Notice can be dealt with using a mechanism already used in judicial review proceedings. All applications will first be reviewed on the papers by a single judge. They will be required to dismiss any application that is vexatious, trivial, or stands no real prospect of success. An offence of making a vexatious application (or, as appropriate, report) will provide a significant deterrent against such applications. As an additional safeguard, a public authority (such as the Public Services Ombudsman) should have a power, similar to that exercised by the Crown Prosecution Service, under section 6(2) of the Legal Services Act 1985, in respect of private prosecutions) to "take over" applications.

39. It is preferable, as a general principle, for politicians to be directly accountable to voters whenever possible. The best way to empower voters in respect of political lying would be to allow any registered voter to apply for a Correction Notice. This is the model used for judicial review and regulatory regimes like the Freedom of Information Act 2000. It will reduce any resource implications and avoid the necessity of adding new tasks to an existing regulatory body. If legislators do not want voters to have direct involvement in the regime then the ICDR Model would also work in the same way if an

[15] Town and Country Planning Act 1990, s. 171E

[16] Environmental Protection Act 1990, s. 80

[17] Anti-social Behaviour Crime and Policing Act 2014, s. 43

[18] Anti-social Behaviour Crime and Policing Act 2014, s. 80(3)

existing regulatory body (such as the Standards Commissioner or the Public Services Ombudsman).

Failure to comply with a correction notice

40. If a MS or candidate fails to comply with a correction notice within seven days, then they will have demonstrated that:

    (a) They are aware that, on the balance of probabilities and given the best evidence, their statement was false;

    (b) They have been given an opportunity to correct the statement and have not done so.

    (c) They knew they were liable to sanction if they failed to correct the statement and have nevertheless chosen not to correct it.

41. It is, therefore, fair to impose the sanction at this point. It is, therefore, right that the court should have the power to impose sanction (see below) at this point. It is suggested that there may be a defence of "reasonable excuse". This is common for regulatory/failure to comply with a notice offences.

Legal Aid

42. It would be sensible to consider extending the provision of legal aid to cover the defence of (and possibly the application for) Correction Orders and Disqualification Orders.

Sanction

43. A meaningful sanction is one which both offers a genuine deterrent and protects the public against political liars.

44. A fine or administrative penalty (such as reduction in Senedd privileges) are both insufficient. A fine will not offer a genuine deterrent because (as in the case of Michelle Donelan)[19], politicians fund these from state resources of donations. It also creates an imbalance because parties with sufficient funds will, in essence, be able to "price in" fines. The politicians with the biggest donors would be able to, in effect, "pay to make false or misleading statements". This will benefit, in particular, populist parties funded by billionaires.

45. Administrative penalties (such as a reduction in privileges) are in place in Westminster already and do not provide a disincentive.

46. The best way to both protect the public and create a genuine disincentive is to impose a period of disqualification from office. This reflects the severity of the wrong (such a sanction will only be imposed on a politician who has (a) been found to have lied, (b) been given a chance to correct the record, and (c) consciously refused to do so). It also protects the public by removing dishonest politicians and provides a disincentive that politicians cannot buy themselves out of.

47. Any disqualification must last at least until the next Senedd election. A shorter period will mean that the offender retains their Senedd seat but cannot represent their constituents. This will mean that the punishment is imposed on the constituents as well as the offender. A ban that lasts until the next election will trigger a by-election so the offender can be replaced with a new representative.

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[19] https://news.sky.com/story/michelle-donelan-ministers-legal-fees-take-total-cost-of-libel-case-to-34-000-13112850

48. Outside this constraint, the length of the disqualification should, as with any other sanction, reflect the severity and nature of the wrong. Relevant factors will include:

(a) The harm caused by the deceptive statement;

(b) The number of people to whom the statement has been communicated;

(c) Whether the person is a repeat offender.

Criminal or Civil Model

49. The criminal and civil law models both provide the clear break with the past, independence, speed, and protection for freedom of expression. Both have different advantages:

50. The advantages of the criminal model are:

(a) It sends the strongest signal to voters that this matter is taken seriously.

(b) It likely has a greater deterrent effect - impact of swift prosecutions on the summer riots shows that swift prosecutions can have a powerful deterrent effect.

(c) The magistrates' courts are experienced at hearing short notice applications of this kind.

(d) At the prosecution stage, the prosecution can be handled by the CPS, which has trained personnel in place to handle prosecutions.

(e) Additions to criminal law fall clearly within the competence of the Senedd.

(f) The criminal process is relatively accessible to the public and easy to understand.

(g) The criminal model strikes a balance between citizen enforcement and institutional enforcement, with voters able to apply for a Correction Order but the prosecution left to the CPS.

(h) Proceedings in the magistrates' courts are relatively low cost.

51. The advantages of the civil law are as follows:

(a) It may be more palatable to those who believe the criminal law route is "draconian" (although, given that the criminal law is used to regulate things like cutting down trees and parking offences, this critique is not particularly compelling).

(b) The civil model allows greater citizen involvement because it will require an application from a voter for both the Correction Order and the Disqualification Order.

(c) The civil law model shares many of the advantages of the criminal law model set out above.

52. Appendices 2 and 3 contain sample provision for a criminal and civil model respectively.

APPENDIX 1

Number of times that Full Fact has found a cabinet minister has made a false or misleading statement of fact and asked that minister to correct the record (most recent two cabinets)

MEMBER	NUMBER OF REQUESTS TO CORRECT THE RECORD	NUMBER OF CORRECTIONS
Keir Starmer	3	0
Rishi Sunak	11	2
Rachel Reeves	3	0
Jeremy Hunt	1	0
Angela Rayner	3	0
Shabana Mahmood	1	0
Wes Streeting	3	1
Bridget Phillipson	1	0
Liz Kendall	2	1
Jonathan Reynolds	1	0
Peter Kyle	1	0
Steve Reed	1	0
Suella Braverman	4	0
Oliver Dowden	3	0
Steve Barclay	3	1
Kemi Badenoch	2	0
Mel Stride	1	0
Robert Jenrick	2	0

Source: https://fullfact.org

APPENDIX 2: Sample legislation (criminal law)

Power to issue a Correction Notice

(1) This provision applies when a Qualifying Person makes a Qualifying Statement.

(2) A Qualifying Person is a person who is a Member of the Senedd or a candidate for election to the Senedd.

(3) A Qualifying Statement is a statement that:

(a) Is published; and

(b) A reasonable person could understand to be a statement of fact.

(4) Where a court finds that a Qualifying Person:

(a) Has made a Qualifying Statement; and

(b) The statement was made in the course of their conduct as a Qualifying Person or there is a public interest in whether the statement is false or misleading; and

(c) The Qualifying Statement in question is not true or is misleading;

It shall make and issue a Correction Notice to the in respect of that statement.

(5) A Correction Notice is a notice which requires the Qualifying Person named therein to correct the Qualifying Statement specified in the notice in the manner specified in the notice.

(6) The court shall not issue a correction notice if:

(a) The false or misleading aspect of the Qualifying Statement is trivial; or

(b) It was necessary to make the Qualifying Statement including the false or misleading aspect for the purposes of national security or law enforcement.

(7) A person named in a Correction Notice must comply with the notice by publishing the required correction in the same forum as they made the statement specified in the Notice within seven days of the date of the Notice.

(8) If it is not reasonably possible to make the required correction in the same forum as the Qualifying Statement was made then they must make the correction in a forum of equivalent or greater prominence.

(9) The Standards Commissioner shall cause the Correction Notice to be published on a public register which is available online and to be published in hard copy and online in a newspaper which is of national prominence in Wales.

(10) Appeal against a decision to issue a Correction Notice lies to the Crown Court and may only be made on a point of law.

(11) The standard of proof for any matter in this section shall be the balance of probabilities. Where a court finds that there is a real prospect that:

(a) A Qualifying Statement is false or misleading; or

(b) Did not have an evidential basis at the time that it was made

The evidential burden of proving the truth of the Qualifying Statement shall lie with the person who made that statement.

[ALTERNATIVELY: The standard of proof for any matter in this section shall be the balance of probabilities]

(12) A court exercising any power under this section must acknowledge its duty under section 3 of the Human Rights Act 1998.

(13) Definitions

a. A candidate for election to the Senedd has the same meaning as in section 7 of the Government of Wales Act 2006.
b. A statement is "published" if it is a "publication" according to the law of defamation.

Application for a Correction Notice

(1) An application for a Correction Notice may be made by any person who is registered to vote in Wales.

ALTERNATIVELY: An application for a Correction Notice may be made by [INSERT APPROVED AUTHORITIES]

(2) An application under this part must be made by the same process as is used for starting a prosecution.

(3) An application under this part must be served on the respondent within 24 hours of the information being laid.

(4) An application under this part must be heard by a magistrates' court no later than seven days after it is served on the respondent.

(5) A District Judge sitting in the magistrates' court must review an application under this part on the papers within [x] hours of the information being laid.

(6) An application under this part must be dismissed without a hearing if a District Judge determines that it is vexatious or has no real prospect of success.

(7) An application may not be made under this section after:

(a) More than six months have passed since the date on which the relevant Qualifying Statement was made; or

(b) More than six months have passed since the date on which sufficient evidence to establish on the balance of probabilities that the relevant Qualifying Statement was false or misleading or contained false or misleading aspects became available to the public.

Whichever is longer.

(8) Where it is reasonably necessary for a party to an application under this part to rely on information to which one of the exemptions in Part II of the Freedom of Information Act would otherwise apply:

(a) The court may exclude any person before considering that information.
(b) Where the court excludes a party to the application that party may be represented by a special advocate during the parts of the hearing from which they are excluded.

Failure to comply with a correction notice

(1) If a court is satisfied beyond all reasonable doubt that person named in a Correction Notice fails to comply with that notice within the time specified then any person who is registered to vote in Wales may apply for a Disqualification Order in respect of the person named in the notice.

(2) If on an application under sub-section (1) a court finds that a person named in a Correction Notice has not complied with the notice within a specified time then the court must make a Disqualification Order.

(3) An application under subsection (1) must be made according to the same procedure as is used for beginning a prosecution.

(4) A Disqualification Order shall prohibit the subject from being a member of the Senedd until such a time as shall be specified in the order.

(5) The amount of time specified in the order must be at least as long as the maximum period of time before the next Senedd election.

(6) In determining the length of the Disqualification Order the court shall have regard to:
(a) Any harm caused by the Qualifying Statement;
(b) The extent to which the Qualifying Statement was published;
(c) Whether the defendant should reasonably have been aware that the Qualifying Statement was false or misleading or included false or misleading elements;

(d) Whether the defendant has previously been convicted of an offence under this section or has been the subject of a Correction Order.

(7) Schedule 1A of the Government of Wales Act 2006 is amended to add the following words:

"(9) A person who is subject to a Disqualification Order which has not expired."

Offence of making a vexatious application [ALTERNATIVELY: report]

(1) It shall be an offence to make a vexatious application [ALTERNATIVELY: report with the intention that it shall cause or influence an appropriate authority to make an application under this part.

(2) The offence in (1) shall be triable summarily and shall be punishable by a fine.

Power to take over applications

(1) [Insert relevant public authority] may take over an application for a Correction Order or an application for a Disqualification Order at any stage.

APPENDIX 3: Sample legislation (civil law)

Power to issue a Correction Notice

(1) This provision applies when a Qualifying Person makes a Qualifying Statement.

(2) A Qualifying Person is a person who is a Member of the Senedd or a candidate for election to the Senedd.

(3) A Qualifying Statement is a statement that:

(a) Is published; and

(b) A reasonable person could understand to be a statement of fact.

(4) Where a court finds that a Qualifying Person:

(a) Has made a Qualifying Statement; and

(b) The statement was made in the course of their conduct as a Qualifying Person or there is a public interest in whether the statement is false or misleading; and

(c) The Qualifying Statement in question is not true or is misleading;

It shall make and issue a Correction Notice to the in respect of that statement.

(5) A Correction Notice is a notice which requires the Qualifying Person named therein to correct the Qualifying Statement specified in the notice in the manner specified in the notice.

(6) The court shall not issue a correction notice if:

(a) The false or misleading aspect of the Qualifying Statement is trivial; or

(b) It was necessary to make the Qualifying Statement including the false or misleading aspect for the purposes of national security or law enforcement.

(7) A person named in a Correction Notice must comply with the notice by publishing the required correction in the same forum as they made the statement specified in the Notice within seven days of the date of the Notice.

(8) If it is not reasonably possible to make the required correction in the same forum as the Qualifying Statement was made then they must make the correction in a forum of equivalent or greater prominence.

(9) The Standards Commissioner shall cause the Correction Notice to be published on a public register which is available online and to be published in hard copy and online in a newspaper which is of national prominence in Wales.

(10) Appeal against a decision to issue a Correction Notice lies to the Crown Court and may only be made on a point of law.

(11) The standard of proof for any matter in this section shall be the balance of probabilities. Where a court finds that there is a real prospect that:

(a) A Qualifying Statement is false or misleading; or

(b) Did not have an evidential basis at the time that it was made

The burden of proving the truth of the Qualifying Statement shall lie with the person who made that statement.

[ALTERNATIVELY: The standard of proof for any matter in this section shall be the balance of probabilities]

(12) A court exercising any power under this section must acknowledge its duty under section 3 of the Human Rights Act 1998.

(13) Definitions

a. A candidate for election to the Senedd has the same meaning as in section 7 of the Government of Wales Act 2006.
b. A statement is "published" if it is a "publication" according to the law of defamation.

Application for a Correction Notice

(1) An application for a Correction Notice may be made by any person who is registered to vote in Wales.

ALTERNATIVELY: An application for a Correction Notice may be made by [INSERT APPROVED AUTHORITIES]

(2) An application under this part must be made by application notice to the County Court and must be accompanied by a witness statement.

(3) An application under this part must be served on the respondent within seven days of the information being laid.

(4) An application under this part must be heard by the County Court no later than 48 hours after it is served on the respondent.

(5) A District Judge or Deputy District Judge must review an application under this part on the papers within 24 hours of the application being issued.

(6) An application under this part must be dismissed without a hearing if a District Judge determines that it is vexatious or has no real prospect of success.

(7) An application may not be made under this section after:

(a) More than six months have passed since the date on which the relevant Qualifying Statement was made; or

(b) More than six months have passed since the date on which sufficient evidence to establish on the balance of probabilities that the relevant Qualifying Statement was false or misleading or contained false or misleading aspects became available to the public.

Whichever is longer.

(8) Where it is reasonably necessary for a party to an application under this part to rely on information to which one of the exemptions in Part II of the Freedom of Information Act would otherwise apply:

(a) The court may exclude any person before considering that information.

(b) Where the court excludes a party to the application that party may be represented by a special advocate during the parts of the hearing from which they are excluded.

Failure to comply with a correction notice

(1) If a person named in a Correction Notice fails to comply with that notice within the time specified then any person who is registered to vote in Wales may apply for a Disqualification Order in respect of the person named in the notice.

(2) If on an application under sub-section (1) a court finds that a person named in a Correction Notice has not complied with the notice within a specified time then the court must make a disqualification order.

(3) A disqualification order shall prohibit the subject from being a member of the Senedd until such a time as shall be specified in the order.

(4) The amount of time specified in the order must be at least as long as the maximum period of time before the next Senedd election.

(5) In determining the length of the disqualification order the court shall have regard to:

a. Any harm caused by the Qualifying Statement;
b. The extent to which the Qualifying Statement was published;
c. Whether the Qualifying Person should reasonably have been aware that the Qualifying Statement was false or misleading or included false or misleading elements;

(6) Schedule 1A of the Government of Wales Act 2006 is amended to add the following words:

(9) A person who is subject to a Disqualification Order which has not expired.

Offence of making a vexatious application [ALTERNATIVELY: report]

(1) It shall be an offence to make a vexatious application [ALTERNATIVELY: report with the intention that it shall cause or influence an appropriate authority to make an application under this part.

(2) The offence in (1) shall be triable summarily and shall be punishable by a fine.

Power to take over applications

(1) [Insert relevant public authority] may take over an application for a Correction Order or an application for a Disqualification Order at any stage.