

STANDARDS OF CONDUCT COMMITTEE

BILL ON POLITICAL DECEIT

Submission

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Introduction

1. I support this legislation. I believe that it is well-thought out, carefully drafted and addresses a need of immense importance. That need is the urgent imperative of effectively addressing the threat to our system of representative democracy that is posed by the deliberate deployment of deceit by malign political actors.

The Wider Picture

2. Our parliamentary system is based on three assumptions: (i) that those elected to represent constituencies in a democratic assembly will deploy their best efforts (as they see them) to improve the lives of the constituents whose interests they have been elected to represent; (ii) that political decision-making results from rational discussion; and (iii) that all political actors engage in that rational discussion in good faith, and so neither seek to promote hidden agendas nor advance covert external interests. None of these three assumptions can be taken for granted. This has long been accepted with there being rules in place to prevent hidden conflicts of interests or the taking of bribes.
3. The time has now come to act against a new kind of public wrong, the use of deliberate deceit to achieve control of power in democratic systems. There has always been a tendency to lie to achieve political ends. The issue has become acute because changes in technological capacity have made lies easier plausibly to assert and then to maintain, with evidence mustered to show their falsity not being guaranteed to prevail. These lies can and do then play a critical role in influencing voter choice, another effect of recent technological change. Scattered everywhere, they stick to the political ground, changing the nature of political discourse.
4. In Wales as in the rest of the United Kingdom, no malign political actor has as yet achieved power through deployment of lies in the pursuit of power. It has however happened elsewhere and could come to these islands in the nearish future. A type of potential legislator has come to the fore who has shown themselves able and willing to deploy lies to further their political agendas, and

to use technological change to achieve their ends. Such persons are often well-funded and so heavily resourced.

5. The time has come to act against this kind of malign influence before it is too late. Representative democracy has experience of resistance to an 'enemy within', demonstrated by its successful defence of itself against Communist subversion during the middle years of the last century. It is time to dust down the old democratic survival toolbox and find within it what might be relevant to today.

The Proposed Bill

6. The measure being proposed goes some way towards meeting the challenge of deceit identified above. I strongly support it.
7. So far as the detail is concerned, I have the following comments and suggestions.
 - i. The wrong at which the Bill is aimed should be processed through the criminal rather than the civil law. The criminal law has an important symbolic role as a signifier of grievous wrong. The wrong here is not only or even necessarily to individuals; it is to the system as a whole. We need to adjust our thinking to see such wrongs as deeply serious: the deployment of the criminal law will play a part in that.
 - ii. The criminal enforcement of these provisions must involve non-judicial actors, analogous to a jury. A magistrate who determines there is a case to be heard should be able to draw ten residents from the electoral register willing and able to participate in the relevant proceedings and to give judgment. It must be through the judgment of the 'ordinary' citizen that such liars come to be punished.
 - iii. Of course there are issues of speed and efficiency which would point towards judge-only trials. But there is a greater interest, in my view, in engaging the community in the assessment of wrong here, and in doing so hopefully heading off any assertion that such proceedings are merely an elite kind of 'lawfare' (or at least rendering such claims less plausible).
 - iv. These criminal proceedings should be televised, and the authorities should be given special powers to publicise such proceedings in ways that they see fit and which are designed to maximise the impact of such proceedings on the wider public. They should be short, and designed in a way that engages a watching public. The jury should be able to engage the defendant in examination during the trial. Consideration should also be given to televising the deliberations of the judge and jury (with the magistrate acting as a kind of foreman).

- v. Where it culminates in a guilty verdict the process will often be the punishment in itself, but formal punishment should also be available to the sentencing judge, including banishment from public life.
- vi. Consideration should be given to permitting the jury to engage with the judge in consideration of not just guilt but the appropriate sentence as well.
- vii. There should be no prohibition on discussion by these court participants of the process that led to their decision.

Building on this reform

- 8. The Bill is a very good start, but more can be done.
- 9. Each democratic system should have an Office for Democratic Integrity (ODI), responsible for the preservation from attack of our system of representative government. As well as the proposed law on deceit, all the current laws and practices related to the health of the democratic system should be brought under its aegis, and (in the UK context) devolved and local offices of the ODI should also be established.
- 10. Insofar as for example the public service ombudsman and the adjudication board for Wales have such responsibilities then these should be transferred to the ODI.
- 11. As indicated above the ODI should have responsibility for, among other functions, the detection and punishment of deliberate lying in the pursuit or exercise of power, fulfilling a CPS-type role in this area. This is the wider (and it is acknowledged) more ambitious context in which to set this Bill, a trail-blazer for an urgent and altogether much wider engagement in the defence of our system of government. Wales can set the pace here for defence of the parliamentary system of government – before it is too late, not just in Wales but everywhere.

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