

**Senedd Cymru**

**Y Pwyllgor Safonau Ymddygiad**

**[Adolygiad o God Ymddygiad Aelodau o'r Senedd](#)**

**RC05**

**Ymateb gan: Dr Alex Barber a Dr Sean Cordell, Y Brifysgol Agored**

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**Welsh Parliament**

**Standards of Conduct Committee**

**[Review of the Code of Conduct for Members of the Senedd](#)**

**RC05**

**Evidence from: Dr Alex Barber and Dr Sean Cordell, The Open University**

# Written evidence to the Standard of Conduct Committee's Review of the Code of Conduct

Dr Alex Barber and Dr Sean Cordell, Open University

## About us

1. We are both Senior Lecturers in Philosophy at the Open University with expertise in the ethics of professional roles and associated codes. We have background expertise in ethics and the philosophy of language, and in particular lying, misleading and dishonesty, the philosophical rationales for free speech protections, and virtues of character in professional contexts.<sup>1</sup> We co-lead the [Role Ethics Research Group](#) at the Open University, and have run collaborative workshops on codes of ethics with non-academic professionals and co-edited an international collection of academic papers.<sup>2</sup>
2. In recent years we have focused on the role of professional politician, and in two submissions to Westminster consultations we made suggestions on how to improve non-statutory guidance to MPs and Lords.<sup>3</sup> We therefore welcome this opportunity to contribute to the Standard of Conduct Committee's Code of Conduct Review. Our working paper on the topic of deliberate deception, 'Legislating against political lying in a democracy' (presented at a University of Stockholm [workshop on the ethics of deception](#) in November 2025) takes the Committee's earlier work on this as a case study. In that paper we take a neutral stance, highlighting unnoticed difficulties while suggesting possible remedies where we can.

## Summary

3. We make three recommendations, all regarding Proposal one, the proposal to replace Rule 2 with two new rules:

*Recommendation A:* That in its deliberations on Proposal one the Committee be clear with itself about the relation of this change to the Member Accountability Bill.

*Recommendation B:* That the second new rule or its associated Guidance be explicit in making space for clarification of the record, not just for correction of the record.

*Recommendation C:* That when drafting guidance on what is to count as 'deliberately misleading' in the first new rule, the Committee be alert to four key distinctions made by linguists and philosophers when discussing lying and its ethics.

### A. Clarity on relation to the Member Accountability Bill

4. The consultation document describes the change to Rule 2 as 'not dependent on the passing of the ... Member Accountability Bill'. At the same time the change springs out of the Committee's February 2025 report on deliberate deception legislation, which is intimately tied to powers that Bill's passing would make possible.

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<sup>1</sup> See e.g. Barber, "[Lying, Misleading, and Dishonesty](#)", *Journal of Ethics*, 2020, 24; Barber, "[Freedom of expression meets deepfakes](#)", *Synthese*, 2023, 202, 40; Cordell, "[Can there be an Ethics for Institutional Agents?](#)", in K Hess, V Ignieski and T Isaacs, eds, *Collectivity: Ontology, Ethics, and Social Justice*, Rowman and Littlefield, 2028; Cordell, "[Virtue Jurisprudence for Jurors](#)", *Netherlands Journal of Philosophy*, 2025, 54.

<sup>2</sup> Barber & Cordell, eds, *The Ethics of Social Roles*, Oxford University Press, 2023.

<sup>3</sup> To the Commons Modernisation Committee's 2024-25 consultation on priorities (and selected for [publication](#)) and the 2024-25 Lords Code of Conduct review (accepted as written evidence).

5. We recommend the Committee adopt a stronger working assumption. Instead of assuming that changes to Rule 2 are ‘not dependent on’ the Bill’s passing, its working assumption should be:

that the revised Code of Conduct, including associated guidance, definitions and processes, will be revisited before it is given any role in legislation made possible by the Bill’s passing.

We stress this because the definition of ‘deliberately misleading’ (discussed in C below) would probably need to be different in the context of strong deliberate deception legislation, if only to take fuller account of free speech considerations than is necessary when considering the Code of Conduct in isolation.

6. In any case, our remaining recommendations relate to Proposal one understood as a change to the Code of Conduct in isolation, not as a ‘dry run’ for future possible deliberate deception legislation, which we mention only where pertinent.

## **B. Sincere clarification of the record**

7. The second new proposed rule would ‘require those who make factually incorrect statements to correct the record at the earliest opportunity’. We recommend that ‘correct’ be loosened to ‘correct or clarify’ the record.
8. Even if an option to clarify is already implicit in practice, our recommendation in 7 is to explicitly acknowledge it. The rationale for this recommendation is that lack of clarity, tied to poor choice of words or context of utterance, often plays as big a role as ignorance or duplicity in misleading communication. This role will become larger still if, as per the proposed first new rule, deliberately or recklessly misleading statements are now to be counted as misconduct.
9. The related guidance might also specify that clarification needs to be sincere. Insincere clarification would itself count as misleading, and Members should correct the record rather than pretend they meant something they did not. This would address the phenomenon whereby someone insinuates a falsehood intending to give themselves plausible deniability if challenged (“but that’s not what I meant”).
10. This recommendation is in keeping with a measure we would recommend if stronger deliberate deception legislation were proposed following the passing of the Member Accountability Bill. Specifically, the Committee’s earlier draft of such legislation allowed that a person would have a defence if they ‘retracted the statement and apologised for its inaccuracy’ within a certain timeframe (4c in Appendix 7 in the February 2025 report). Adding space for sincere clarification and not only for retraction and apology would help to acknowledge the importance of nuance stressed by Full fact among others (February 2025 report, paras. 44-45).

## **C. Be alert to some different types of deliberately misleading statement**

11. We encourage the Committee to be alert to some relevant key distinctions made by linguists and philosophers, especially those evident in 13 below, when drafting guidance on the first new rule. Lying, alongside related notions of dishonesty, misleading, deception, etc., is a traditional topic in philosophy.<sup>4</sup> Perspectives from philosophical ethics, linguistics and political philosophy (as opposed to legal and political perspectives) were largely unrepresented in submissions feeding into the

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<sup>4</sup> Two recent collections of essays: *Lying: Language, Knowledge, Ethics, and Politics*, eds. E Michaelson and A Stokke, Oxford University Press, 2018; *The Oxford Handbook of Lying*, ed. J Meibauer, Oxford University Press, 2018.

Committee's February 2025 deliberate deception report. Philosophical opinions diverge, but we hope that what we say here is of use to the Committee in its present deliberations.

12. Several submissions to the February 2025 review held out hope that a suitable definition of deliberate deception might be culled from other areas of law covering deception (defamation, perjury, fraudulent misrepresentation, etc.). We are somewhat pessimistic about this in view of key differences (e.g. the difficulty of defining the harm done or of showing that the deceit made a material difference; differences in the appropriate standard of proof; special protections rightly accorded to political speech; the sui generis aims of deliberate deception legislation). In any case, we focus here on how the thinking of philosophers and linguists working on the nature and wrongfulness of lying, deception, etc. might prove useful to Proposal one.
13. Philosophical and linguistic debate commonly centres on four types of case:
  - (a) False insinuations: the speaker deliberately misleads, not by stating a falsehood but by insinuating or implying it.
  - (b) Exploiting an audience's false beliefs: the speaker deliberately misleads, but not by either stating or insinuating/implying a falsehood.
  - (c) True lies: the speaker says something they mistakenly think is false, thereby displaying bad character and being misleading as to their beliefs.
  - (d) Unpersuasive lies: the speaker states a falsehood but does not expect to mislead, typically because the utterance is blatantly insincere or part of a performance.

Which of these should count as misconduct in the context of future deliberate deception legislation is not necessarily what should be so counted for the more limited purposes of the Code of Conduct. And to repeat, our focus is on the latter question.

14. Type (a): These are the most challenging cases. One potential advantage of including them as misconduct is that, according to some philosophers at least, insinuating a falsehood is usually ethically indistinguishable from stating it outright.<sup>5</sup> Others disagree, arguing that reading things into what someone says can be disrespectful of their autonomy, and that a person's often careful choice of words should be respected.<sup>6</sup> Perhaps the guidance could strike a compromise: recognise that verbal trickery should not be a shield if the false message is sufficiently evident and precise in the words used, but do not otherwise go after perceived subtexts.
15. A second potential advantage to including type (a) cases as misconduct by default is that doing so would spare the Committee from having to characterise an immensely complicated and potentially unreal distinction. Linguists and philosophers of language have studied and categorized the various ways it is possible to insinuate (or 'implicate' as linguists put it, or 'imply' as it is sometimes put in law) a falsehood rather than to state it outright. These include:
  - being selective in which truths to voice (e.g., only ever mentioning crime if it is committed by an immigrant)
  - exploiting implicit time frames (e.g., uttering 'I haven't had breakfast' would usually have an implicit time frame of 'today'; that is not the case for 'I haven't met the Russian Ambassador')

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<sup>5</sup> J M Saul, *Lying, Misleading, and What is Said*, Oxford, 2015, Ch.4.

<sup>6</sup> S V Shiffrin, *Speech Matters: On Lying, Morality, and the Law*, Princeton, 2015, Ch.1.

- exploiting figurative speech (e.g., using ‘Putin’s friend’ figuratively as a comment on policy might double as a false insinuation of a literal personal connection).

Such linguistic devices are far too varied and complex to distinguish within the present Code of Conduct, and in any case some deny that there is any principled distinction between saying something false and merely insinuating it.<sup>7</sup>

16. There is a clear negative, too, to including type (a) cases as misconduct. Insinuations of falsehoods are far and away more prevalent than outright statements of falsehoods. Trivial cases (e.g. using an impressive-sounding technical term to convey a false impression of competence) might be dealt with in the guidance, which even in the Code’s current version (Guidance, 59-60) sets aside lies that are minor, benign, harmless, or insubstantial in their consequences. Less easy to deal with are type (a) cases involving highly effective but potentially misleading political rhetoric (‘carpet bombing’, ‘blanket 20mph limit’). The best political rhetoric, be it left, right or centrist, is nearly always slightly misleading, if only because hammering home a message usually requires simplifications. To bar all such distortions without qualification would be to stray into unacceptable speech suppression. In the context of the present revisions to the Code of Conduct, one solution might be to include a caveat similar to that found in the current guidance to the Principle of Respect (Guidance, para. 45). It could likewise stress the ‘public interest in a democracy of open discussion of matters of public concern’, adding that free and robust exchange often involves rhetorical simplification, and the interpretation of language used in a debate should, up to a point at least, be left to participants in that open discussion and to the public itself.
17. Type (b): This next category of cases should arguably be exempted in the guidance, perhaps with a clause along the following lines: ‘A Member who makes a true statement will not usually be held responsible for others being misled by a combination of that statement and their own false beliefs’. This would – for better or worse – exempt statements that take advantage of common false beliefs but do not in themselves express (explicitly or by insinuation) a falsehood. As an example, suppose the new Senedd electoral system is poorly understood by a significant number of voters. A Member might use this ignorance to encourage the false belief that a vote for a smaller competitor party is a wasted vote by saying, truly, that ‘only my party has any chance of getting a higher percentage of votes in this constituency than the incumbent party’. This exploits but does not endorse the pre-existing false belief. Similarly, a Member might say things about the environment or immigration that are perfectly correct, but which mislead, perhaps intentionally, thanks to some widespread false belief. Some such utterances will be manipulative, others will simply be an understandable adaptation to the electorate’s mindset. Either way, a rule that makes Members responsible for others’ false beliefs or faulty inferences would seem harsh.
18. Type (c): Such cases are rare and usually trivial. When they do arise, judgements of character are probably best left to the electorate rather than the Committee. If this is right, the use of ‘deliberately misleading’ may need to be qualified (in Guidance or in deliberations on particular cases), if only because the speaker in such cases is at the very least being misleading about her or his beliefs, even if the attempt to mislead about the actual world misfires.
19. Type (d): The public knows and accepts that speaking insincerely now and again is part of the politician’s job, just as it is part of the job of an estate agent to talk up the local area. We have in mind that politicians are expected to express confidence in their party’s leader, voice support for a

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<sup>7</sup> F Recanati. “[What is said](#)”, *Synthese*, 2001, 128.

particular policy position, deny that negative opinion polls are to be trusted, follow the ministerial line on some topic of the day, and so on – not always sincerely. As with ‘puffery’ in advertising (often exempted from false advertising legislation), the public know and accept what they are dealing with when they hear such things. Such cases might be excluded in a catch-all guidance clause about insubstantial consequences (see 16).