

Learning from Ball v Johnson (2019)

Proposed Amendments to the **Misleading the
Public** Offence within the Public Office
(Accountability) Bill **2025**

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Synopsis

There is no doubt that lying to the public from a position of official trust has severely damaged public confidence in government. Recent events have left the public frustrated that there appears to be no recourse or accountability when deception occurs. **Those in government appear free and able to outright lie.** The Public Office (Accountability) Bill 2025 presents a vital opportunity to restore trust by creating a statutory offence of Misleading the Public. The offence is much needed. The private prosecution of Boris Johnson, *Ball v Johnson* (2019), was the first attempted prosecution of a senior public official for deceiving the public. The prosecution was based upon the present common law offence of Misconduct in Public Office. The case exposed and brought into sharp focus the sensitive, complex, and unique challenges faced when attempting to hold high profile Public Office Holders to criminal account when they deliberately deceive the public. The amendments proposed and the topics raised in this paper ensure that this excellent new Bill learns from those challenges so that the law it creates is **fully workable in court.**

Publisher

ExecProsec (Stop Lying In Politics Ltd.) is a not-for-profit private prosecution organisation created to address abuse of public trust by senior Public Office Holders in the United Kingdom.

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I am grateful for the assistance of criminal law barristers Colin Witcher, Anthony Eskander, and Lewis Power KC in considering my amendment proposals for this excellent Bill; however, all views expressed are my own.

Those in support

17,000+ Financial Backers

Ball v Johnson (2019) and our campaign to expose and criminalise lying in politics have been crowd funded by more than 17,000 members of the public. Without their incredible support since 2016 this work would not exist.

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Introduction

Public confidence in the United Kingdom's democratic institutions has been eroded to a dangerous degree. Events connected to the Hillsborough Disaster, the Iraq War, the Brexit Referendum, and the Covid-19 era have convinced many citizens that political dishonesty is systemic and unpunished. Large sections of the electorate now believe they were misled, manipulated, and abandoned with impunity. That belief has not only weakened faith in government but has begun to corrode confidence in the rule of law itself. Holding those in high office to the highest standards is a cornerstone of a democratic and just society.

This is not a partisan concern or a matter of scandal; it is a structural legal deficiency. **The Public Office (Accountability) Bill 2025** recognises that deficiency and, with great decency, proposes a remedy that could strengthen British democracy on a history-making level.

In almost every other professional sphere, finance, medicine, advertising, and consumer protection, dishonesty can face clear criminal liability. Yet those entrusted with the highest offices of state have, until now, remained beyond equivalent accountability. This Bill seeks to correct that imbalance. The proposed new criminal offence of Misleading the Public could change the UK forever and inspire the world to follow suit. But this will only happen if this Bill is amended to take full advantage of lessons learned from existing case law concerning prosecutions arising from public officials lying.

Our submission draws on direct experience of confronting that same legal and moral question. In 2016, following the EU referendum campaign, we initiated a citizen-funded legal effort to establish that deliberate deception of the public could already constitute a criminal offence under existing law. In total over 17,000 people have contributed to our work so far; **they want us to set a precedent to protect them from lying in politics.**

After three years of preparation, we brought a private prosecution against Mr Boris Johnson, in his capacities as Member of Parliament and Mayor of London, alleging Misconduct in Public Office for false statements concerning tens of billions of pounds of public spending.

Ball v Johnson (2019) was the first attempt in British history to hold a senior elected representative criminally accountable for deceiving the electorate about public finances during a referendum campaign.

Misconduct in Public Office had previously been used to prosecute lies by

officials, but never against someone of such senior rank. Westminster Magistrates' Court found that there was a prima facie case to answer and ordered that the matter should proceed to a **Crown Court jury trial**. The judgment drew worldwide media attention: for the first time, a serving MP and former Mayor of London was to face a jury over allegations of deceit in public life.

What followed, however, revealed the system's most serious vulnerabilities. A hostile public-relations campaign distorted the purpose of the case and diverted attention from evidence demonstrating that an elected official had used his status, official resources, staff, and platform to facilitate deliberate falsehoods. The case could have provided an important opportunity to clarify the law and to draw upon academic commentary and international Misconduct in Public Office precedent recognising that bringing an office into disrepute can satisfy the requirements of the offence. That opportunity was not taken. Each conflict we encountered illustrates the vulnerabilities that this Bill must now be designed to prevent.

At present the wording of the proposed new offence is largely undefined and will not have the impact needed if the minutiae are not grappled with at the outset. For this reason, we propose amendments to the following language in particular:

- "In their Capacity as such an Authority or Official"
- "Matters of Significant Concern to the Public"
- "The following are excluded bodies (a) a court; (b) either House of Parliament"

Lastly, the **current communications strategy of the Labour Government** appears to be to focus public attention on the Hillsborough campaign and the vital Duty of Candour offence. This approach is an effective means of securing support in the Commons. But the House of Lords will inevitably scrutinise the Misleading the Public offence and the truly historic implications it carries. In time, the press will also recognise the scale of what this reform could achieve. The present PR strategy is therefore astute, but the statute itself must be fortified before the moment arrives when public debate intensifies and entrenched interests react against what they will perceive as a direct challenge to their power. Although the public will overwhelmingly welcome the prospect of criminal liability for serious political deception, powerful interests will seek to resist it. The Bill must be drafted with such clarity and strength that it can endure that inevitable scrutiny and remain capable of achieving its constitutional purpose.

Proposed **Safeguards** for Honest and Free Political Debate

When *Ball v Johnson* first became public, some politicians warned that criminalising deception in politics might endanger established and legitimate political debate. We propose the addition of several clauses to address those concerns directly. These protect open political discourse while affirming that freedom of expression is not a licence to deceive, consistent with Woolas (2010). It also makes it far easier for MPs and Peers to vote for the Bill, especially if it is amended to apply to their conduct as we propose later in this document. For this offence to pass into law, it must fully reassure both Houses that it does not threaten freedom of political expression. These amendments provide that reassurance.

Proposed Clause: Safeguards for Honest and Free Expression

Protection of Honest Expression

(1) Nothing in this Act shall make it an offence for any person to make or publish a statement that **reflects an honestly held belief or claim of fact**, whether or not such statement is later shown to be inaccurate, incomplete, or mistaken.

Exclusion of Broken Promises and Predictions

(2) For the avoidance of doubt, the offence created by this Act does not apply to—

- (a) political promises made honestly but not fulfilled;
- (b) intentions expressed in good faith that could not be carried out as intended; or
- (c) honestly made predictions or forecasts about future events that proved to be incorrect.

Liability for Omission

(3) **Nothing in this section makes it an offence for a person to fail to mention, disclose, or refer to any fact, matter or information, or otherwise to remain silent, unless—**

- (a) the person knew the information in question; and
- (b) the person's omission was made with the specific intention of Misleading the Public.

Meaning of “Misleading the Public”

When Ball v Johnson became an international story, many welcomed it as a route to accountability, while others doubted that political lying could ever be proved. Our case demonstrated that it can. We obtained video evidence of Mr Johnson advancing incompatible figures for the UK’s EU contributions; “£350 million a week,” “£20 billion a year,” “£15 billion a year,” “£12 billion a year,” and even “£10 billion a week”. He clearly did not believe his own claims. This evidential record justified criminal allegations grounded in intentional deception.

However, the Bill’s current formulation: “they act with the intention of Misleading the Public or are reckless as to whether their act will do so”; lacks precision. Current wording does not seemingly require proof that the accused knew their statement was false or that they were consciously indifferent to its truth. **Misleading is not the same as deceiving.**

In that regard, the name of the offence also requires refinement. “Misleading the Public” is a common phrase in everyday discourse, especially within the media. Its use as a statutory label risks confusion and inadvertent accusations of criminal wrongdoing in ordinary debate. The word misleading is typically used in civil and regulatory contexts and is a less direct way to suggest someone may have lied. Deceiving, by contrast, denotes a deliberate and dishonest act: knowingly or recklessly making a false representation intending it to be believed. The distinction is essential. An element akin to dishonesty, i.e knowledge and indifference is required.

Misleading can be accidental; deceiving is inherently culpable. Criminal law concerned with the integrity of public office should target only conduct that is wilful, knowing, and demonstrably false. The title of the offence must reflect that. “Deceiving the Public” is preferable.

Misconduct in Public Office precedent is unequivocal: Public Office Holders can be prosecuted for dishonesty in the exercise of their duties. PC Keith Wallis was imprisoned for lying about witnessing Andrew Mitchell MP use derogatory language during the “Plebgate” incident. Councillor Speechley was jailed for deceiving the public about a road project that would benefit his own property (R v Speechley [2004]). A prison officer was convicted for dishonestly concealing a sexual relationship with an inmate (R v Cosford and Others [2014]). If lower-ranking officials can be held criminally liable for comparatively minor acts of deceit, then those at the highest levels of power must be held to at least the same standard when the consequences are far

graver. In a similar fashion, those who have misspoken or failed to make adequate enquiries before making a deceptive statement should be afforded an opportunity to correct it; this would encourage all holders of Public Office to make meaningful and timely corrections. Such a safeguard could be incorporated as a statutory defence. Equally, to prevent Public Office Holders from shifting blame onto staff, liability should be expressly considered for those who advise and produce material for individuals in public office.

Proposed Clause: Title of “Misleading the Public”

(1) Amendment to Part 2, Chapter 3: Title and Wording of the Offence

Part 2, Chapter 3 (Misleading the Public)

Leave out “Misleading the Public” and substitute “Deceiving the Public”.

Proposed Clause: Offence of Misleading the Public

(2) A person commits the offence of Misleading the Public only where—

(a) the person makes or publishes a statement purporting to be a fact, or a statement of belief, presented as true; and

(b) at the time of making or publishing the statement, the person—

(i) did not believe the statement to be true; or

(ii) was recklessly indifferent as to whether the statement was true or false.

Reckless Indifference

(3) For the purposes of subsection (1)(b)(ii), a person acts with reckless indifference if, at the time of making or publishing the statement they did not know, or did not care, if it was true.

Application to Campaigning

(4) For the purposes of subsection (1), “statement” includes, but is not limited to, any statement, claim, or representation made—

(a) in printed or digital campaign materials, including pamphlets, manifestos, advertisements, and social media posts;

(b) during the course of election, referendum, or other political campaigns intended to influence public opinion or voting behaviour; or

(c) in any medium where the person is communicating with the public.

Defence: Prompt Correction

(5) It is a defence for the accused to show that, upon becoming aware of the inaccuracy of their statement, they **took prompt and reasonable steps to correct it publicly** and appropriately such as—

- (a) a statement made in Parliament;
- (b) a broadcast television interview;
- (c) an official digital media post; or
- (d) a national press publication.

Limitation on the Defence

(6) A correction does not constitute a defence where the false statement has already produced a material impact on any "Matters of Significant Concern to the Public", as that expression is defined in this Act.

Proposed Clause: Responsibility for Misleading Statements

(7) Where a Public Office Holder delivers a statement to the public that is deceitful or reckless, criminal responsibility attaches to—

- (a) that Public Office Holder, if they knew, or were reckless as to whether, the statement was false or misleading; and
- (b) **any person who knowingly drafted, prepared, or supplied the material** with the intention, or reckless disregard, that it was deceptive and would be communicated to the public.

Threshold of Criminality and "Matters of Significant Concern to the Public"

A major misconception about Ball v Johnson was that any dishonest statement by a Public Office Holder would be criminalised by the precedent we aimed to set, which would of course cause chaos. But that was never the objective, and it is not the intent of this Bill. As the Bill states, the offence must apply only to conduct that constitutes being “seriously improper” and concerns "Matters of Significant Concern to the Public". Yet the Bill defines neither term. Our amendment provides that clarity; ensuring trivial or personal matters are excluded; and confirms that proof of harm, personal gain, or public belief is unnecessary. The harm lies in the deliberate attempt to deceive, which alone undermines confidence in democratic institutions.

Proposed Clause: Threshold of Criminality and Matters of Significant Concern to the Public

Offence Limited to Matters of Significant Concern to the Public

- (1) A person commits the offence of Misleading the Public only if—
- (a) the statement made or published concerns a matter of significant concern to the public; and
 - (b) the dishonest conduct is capable of impairing the proper functioning of public offices or institutions by diminishing public trust in them.

Definition of a Matter of Significant Concern to the Public

- (2) For the purposes of subsection (1), a matter of significant concern to the public includes, but is not limited to, statements relating to—
- (a) the exercise of public functions, public powers, or the discharge of official duties;
 - (b) the use, allocation, or management of public funds, property, or resources;
 - (c) matters affecting public safety, national policy, or the integrity, accountability, or independence of public institutions;
 - (d) matters in connection with the making of governmental, electoral, or referendum decisions;
 - (e) claims or representations used to justify or influence—
 - (i) military actions, national security operations, or major public-order measures;

- (ii) election or referendum outcomes, or the conduct of democratic campaigns;
- (iii) decisions concerning public health, medical treatment, or national emergencies;
- (f) conduct, statements, or omissions capable of—
 - (i) influencing a democratic vote;
 - (ii) manipulating the published findings of a parliamentary, judicial, or public inquiry; or
 - (iii) affecting irreversible public decision-making or events of comparable consequence; or
- (g) any other matter possessing an equivalent or greater degree of significant concern to the public.

Absence of Gain, Harm, or Reliance Requirement

(3) It is not necessary to prove that the accused gained or sought any personal, political, or material benefit, that any harm resulted, or that the statement was believed by the public.

Lawful Exceptions

- (4)** Nothing in this Act shall—
- (a) require the disclosure of information lawfully withheld on grounds of national security;
 - (b) make it an offence for an official to provide incomplete information where doing so is necessary to avoid prejudicing an active investigation, trial, or disciplinary process;
 - (c) apply to statements made during lawful diplomatic or international negotiations, including matters of trade, treaty, or national security, where disclosure would compromise the public interest; or
 - (d) make it an offence to withhold information in order to comply with lawful duties of confidentiality, data protection, or the protection of personal privacy.

Meaning of Acting “in Their Capacity as Such”

The central disagreement in *Ball v Johnson* was whether Boris Johnson was “acting as such” in his roles as Mayor and MP when he made the statements that were demonstrably untrue. His defence claimed his campaigning for Leave was purely private and personal. However, Mr Johnson designated his campaigning for Leave as an “official Mayoral policy” which activated his Mayoral Code of Conduct not to bring his office “into disrepute” whenever he carried out said policy. He then directed publicly paid for **Mayoral and Parliamentary staff to campaign with him**.

That single issue dominated three hearings across two courts as the definition of “acting as such” is scattered across numerous precedents in English and Commonwealth law. The Public Office (Accountability) Bill 2025 shares this same problem by not defining when a person acts “in their capacity as such”; whilst at the same time naming it as a required element of the offence. **This is by far the most dangerous problem within the Bill and undermines its reach and aim.**

The problem with relying on a literal or ordinary interpretation of “in their capacity as such” is that it fails to account for the reality of how modern political and administrative power operates. Ministers and senior public officials rarely act within neat, easily separable boundaries between their public and private roles. Their duties, powers, and responsibilities are often exercised through a mix of formal authority, informal influence, delegated decision-making, and public communication. In practice, their words and actions carry the authority of office even when delivered outside a strictly official setting. A literal interpretation invites endless argument in court over whether a statement was made “officially” or “personally,” distracting juries and judges from the substance of misconduct. Without statutory clarification, prosecutions will hinge on artificial distinctions rather than the practical effect of the conduct; undermining the very accountability this Bill seeks to create.

Our amendment aligns with how the public reasonably perceive their representatives: as acting with the authority and influence of their office whenever they speak or act publicly. Just as police officers are considered to be always “on duty” to protect the public, officials should be understood to owe a constant requirement of honesty to those they serve when they communicate with them. If “In Their Capacity as Such” is not defined in this

way; this vital new law will not achieve its well-intended aims. The purpose of the broad definition we invite is to reflect the public’s rightful expectation that Public Office Holders, by virtue of their duties, powers, title, authority, and access to privileged information, must always act under a duty of honesty whenever they communicate with the public. Public Office Holders must be bound by a **continuous duty of truthfulness**, since their words and actions inherently carry the influence and authority of their office.

Proposed Clause: Meaning of Acting “In Their Capacity as Such”

General Presumption

(1) For the purposes of this Act, a Public Office Holder shall be deemed to act “in their capacity as such” whenever they communicate with, or act towards, the public, or engage in any matter of significant concern to the public (as defined in this Act).

Scope of Application

(2) This presumption applies whether the conduct—
(a) occurs in a political, party, campaign, electoral, or referendum context;
(b) is motivated in whole or in part by personal, political, corporate, or electoral considerations; or
(c) is undertaken by an officially selected candidate for elected office during the period of their public campaign.

Definition of “the Public”

(3) References to “the public” shall be interpreted broadly, and include—
(a) any group, body, or assembly consisting of citizens or residents of the United Kingdom, whether gathered in person or connected through digital, broadcast, or written media; and
(b) any individual citizen or resident of the United Kingdom, including any person possessing a United Kingdom passport or lawfully residing within the United Kingdom, whether addressed directly or indirectly, or through intermediaries or media channels.

Exception for Private or Personal Conduct

(4) The circumstances in which a Public Office Holder may properly claim to be acting in a **purely private or personal capacity shall be narrowly construed**, and such a claim shall only succeed where the conduct—

- (a) is wholly private, or personal in nature;
- (b) bears no material connection to any matter of significant concern to the public (as defined in this Act); and
- (c) is incapable of affecting public trust, confidence, or perception in the integrity of public office.

Communications on Matters of Significant Concern to the Public

(5) Any communication or conduct that touches upon, refers to, or comments on Matters of Significant Concern to the Public (as defined in this Act) shall be regarded as undertaken in the Public Office Holder's capacity as such, irrespective of any assertion to the contrary at the material time.

Application of the Offence to Members of Parliament

Ball v Johnson (2019) raised hundreds of thousands of pounds in crowdfunding from over 10,000 people because it sought accountability for deceit by a Member of Parliament and Mayor of London who was widely believed to have lied to the electorate. **The public want a reason to trust their elected representatives.**

Yet, as currently drafted, the Bill excludes both Houses of Parliament, most Mayors, the devolved legislatures, and their members from the definition of a “public authority or public official,” creating an indefensible inconsistency.

Under the leadership of the current Government, Ministers have rightly chosen to lead by example and make themselves criminally accountable for Misleading the Public, yet Members of Parliament would remain exempt.

Imagine a scenario where an MP or Shadow Minister could lie to the public in a national debate, but a government minister could not. It would create a perverse incentive: rewarding dishonesty among backbenchers and opposition figures, while punishing only those in government. Such an imbalance would destabilise democratic debate and the nation itself.

Such a loophole would be indefensible. It would give MPs a licence to lie while binding nearly everyone else to honesty. If Members of Parliament pass a law against Misleading the Public but exempt themselves, it will confirm the public’s worst suspicion: that their MPs are just as untrustworthy as they fear. Exclusive cognisance is not a bar to this offence. Exclusive cognisance only protects Parliament’s internal self-regulation and internal disciplinary jurisdiction. It does not and has never shielded Members of Parliament from the ordinary application of the criminal law. Parliamentarians are already subject to prosecution for bribery, fraud, misconduct in public office, and other criminal offences outside of parliamentary privilege. This proposed offence is properly criminal in nature. As such, it sits squarely outside exclusive cognisance and the courts would remain fully competent to try it, just as they did in Ball v Johnson (2019).

Public confidence in politicians is already critically low; for many citizens, “politician” has become synonymous with “liar.” This Bill offers a rare opportunity to reverse that perception. **Excluding MPs would destroy its credibility and invite justified public and media outrage.**

Proposed Clause: Scope of “Public Authority or Public Official”

(1) For the purposes of this Act, the term “Public Official”, or, “Public Office Holder”, includes any person who holds, or is seeking election to, elected or appointed public office in the United Kingdom, including—

- (a) **Members of Parliament;**
- (b) Ministers of the Crown and Shadow Ministers;
- (c) Members of the House of Lords;
- (d) Members of the devolved legislatures of Scotland, Wales, and Northern Ireland;
- (e) Members of local authorities and combined authorities;
- (f) Elected Police and Crime Commissioners;
- (g) Elected Mayors;
- (h) Members of public bodies or authorities exercising statutory powers; and
- (i) any appointed, or elected person entrusted with duties or powers on behalf of the public.

(2) For the purposes of subsection (1), “seeking election” includes acting as a declared candidate during any election campaign for public office.

Proposed Clause: Political Candidates and Campaign Organisations

(3) This Act applies to any person who is designated, registered, or publicly funded as a referendum campaigner under electoral law.

(4) This Act also applies to—

- (a) officers, employees, agents, and authorised representatives of a registered political party;
- (b) officers, employees, agents, and authorised representatives of any officially designated or publicly funded referendum campaign organisation; and
- (c) any person who produces, publishes, and disseminates campaign material or political advertising funded by public money or by **a registered political party.**

Parliamentary Privilege and Constitutionally Alien Conduct

The proposal to include Members of Parliament and the House of Lords within the scope of the offence of Misleading the Public necessarily requires Parliament to confront an associated constitutional issue: the modern use and limits of Parliamentary Privilege. The constitutional purpose of Parliamentary Privilege has never been to shield intentional deception, nor to place elected representatives above the standards of honesty required of every other public office. Privilege exists to safeguard free debate, scrutiny, and the independence of the legislature. **It was not designed as a barrier against accountability for conduct that gravely endangers the nation.**

Times have changed, and the constitutional framework must evolve with them. In an era where Ministers, MPs, and senior officials communicate instantly and globally, the consequences of deliberate or reckless falsehoods made from positions of public trust are significantly more dangerous than in the Parliament of 1689. With this Bill creating a criminal offence of Misleading the Public, the press and the public will naturally and rightly ask why a Minister or other Public Office Holder may be criminally liable for deception in every context except when speaking in Parliament itself. That contradiction cannot credibly be sustained. The public will not accept a legal regime in which Parliament, of all places, becomes the sole environment where the most harmful falsehoods are immune from the law.

The amendments proposed within this document offer a principled, proportionate solution. They preserve the full breadth of Parliamentary Privilege for all genuine proceedings, debate, argument, scrutiny, and political disagreement. They expressly protect honest mistakes, rhetorical expression, partisan argument, and all the ordinary features of parliamentary life. Nothing in this reform interferes with Members' freedom to speak, vote, challenge, or scrutinise government. That constitutional freedom remains untouched.

However, these clauses recognise a narrow and exceptional category of conduct: **Constitutionally Alien Conduct**. This term refers to deliberate or reckless deception by a Public Office Holder, including Members of either House, which creates or seriously risks creating catastrophic national harm: mass loss of life, war, severe economic damage, corruption of democratic processes, or comparable constitutional injury. Such conduct is fundamentally incompatible with the constitutional role of Parliament. It does

not contribute to parliamentary deliberation; it perverts it. **It is therefore not, and cannot be, a “proceeding in Parliament”** within the meaning of Article 9 of the Bill of Rights 1689.

The proposed clause accordingly designates such conduct as Constitutionally Alien Conduct, placing it outside the protection of Parliamentary Privilege. This ensures that the most extreme forms of public deception cannot be insulated by Article 9, while leaving the essential constitutional freedoms of Parliament fully intact. It is a narrowly tailored clarification, not an encroachment upon parliamentary independence. Its purpose is not to diminish Privilege, but to prevent its distortion.

This amendment restores Parliamentary Privilege to its original constitutional function: to protect truth, scrutiny, and democratic accountability; not to shield deliberate falsehoods capable of inflicting grave national harm. It brings Parliament into alignment with modern expectations of public integrity and closes a loophole that would otherwise fatally undermine the credibility of the new offence. The public will not tolerate a system where a Minister may be prosecuted for deceiving the nation outside Parliament but remains immune when doing so within its chambers. This reform ensures that Parliament cannot be the last remaining refuge for **deceitful conduct that endangers the nation itself**.

Proposed Clause: Parliamentary Privilege

(1) Nothing in this Act affects the operation of Parliamentary Privilege or the protection afforded by Article 9 of the Bill of Rights 1689, except as provided in section 3.

(2) The disapplication of Parliamentary Privilege under this Part may not be relied upon for the purpose of bringing any civil proceedings, including any action for damages, defamation, financial gain, or any civil or pecuniary remedy.

Disapplication of Parliamentary Privilege in Cases of Grave National Harm

(3) Parliamentary Privilege does not apply, for the purposes of this Act, where —

- (a) a Member of either House;
- (b) a Minister of the Crown;
- (c) a Public Office Holder; or
- (d) any person giving evidence or making statements before a Committee of Parliament;

engages in deliberate or reckless deception which creates, or seriously risks creating, any of the following forms of grave national harm—

- (i) mass loss of life;
- (ii) war or armed conflict;
- (iii) severe economic harm;
- (iv) corruption or subversion of national democratic processes; or
- (v) any comparably catastrophic injury to the nation’s security, stability, or constitutional integrity.

(4) Conduct falling within section 3 is designated “Constitutionally Alien Conduct”.

(5) Constitutionally Alien Conduct is conduct so incompatible with the purposes, functions, and constitutional role of Parliament that it cannot be regarded as a Proceeding in Parliament for the purposes of Article 9 of the Bill of Rights 1689.

(6) Constitutionally Alien Conduct is a category of extreme constitutional wrongdoing that operates solely within the domain of the criminal law and has no application within ordinary parliamentary debate.

Threshold and Limits

(7) Constitutionally Alien Conduct may be found only where the conduct would constitute the offence of Misleading the Public under this Act, and the resulting or risked harm meets the threshold set out in section 3.

(8) For the avoidance of doubt, this section has no application to honestly made mistakes, political advocacy, rhetorical or partisan expression, exaggeration, opinion, or any ordinary form of parliamentary or political communication. It applies only in the exceptional and narrowly defined circumstances constituting Constitutionally Alien Conduct.

Effects of the Designation

(9) Where conduct is designated as Constitutionally Alien Conduct—

- (a) Article 9 of the Bill of Rights 1689 does not prevent investigation or prosecution;
- (b) the conduct is not to be treated as a Proceeding in Parliament for the purposes of any privilege or immunity; and
- (c) evidence relating to such conduct is admissible notwithstanding Parliamentary Privilege.

Amendment of the Bill of Rights 1689

(10) Article 9 of the Bill of Rights 1689 is to be read as **subject to this Part**.

(11) This Part constitutes a narrowly tailored constitutional clarification ensuring that Parliamentary Privilege may not be invoked to shield deliberate or reckless deception causing, or risking, **catastrophic national harm**.

Trial by Jury and Mode of Determination

A concern highlighted during *Ball v Johnson* (2019) was that judges, rather than juries, might be placed in the position of **determining politically sensitive questions of truth**. Court of Appeal precedent confirms that such determinations belong to juries. In *R v Chapman* (2015), the Court held that only a jury may decide whether misconduct crosses the criminal threshold. In *R v Cosford* (2014), it held that only a jury can determine whether a Public Office Holder was “acting as such”.

However, as currently drafted, the offence of Misleading the Public is triable either way, allowing cases to be heard in the magistrates’ court. This would enable a single judge to determine core factual issues, such as dishonesty, recklessness, and acting in their capacity as such, in cases involving political figures. To avoid concentrating political fact-finding in the hands of judges, and to preserve public confidence in judicial impartiality, the offence should be made indictable only. Also, as this is a new offence, Parliament must also specify which elements are to be treated as questions of fact, since precedents such as *Cosford* and *Chapman* will not apply.

Proposed Clause: Mode of Trial for the Offence of Misleading the Public

- (1)** The offence of Misleading the Public is triable only on indictment.
- (2)** All of the following can only be decided upon by a jury after careful examination of the evidence

Determination of Issues of Fact

- (3)** In proceedings for the offence of Misleading the Public, **the following are issues of fact** to be determined by the jury—
 - (a) whether the accused made or published a statement concerning Matters of Significant Concern to the Public within the meaning of this Act;
 - (b) whether, when making or publishing the statement, the accused was acting in their capacity as such;
 - (c) whether the accused did not believe the statement to be true, or was recklessly indifferent as to its truth or falsity;
 - (d) whether the conduct amounted to an abuse of public trust or brought public office into disrepute to a criminal level;
 - (e) whether the conduct constituted Constitutionally Alien Conduct.

Application of the Offence to Judicial Office Holders

Judicial Office Holders are currently **not subject to any specific criminal or civil sanction if they were to knowingly mislead the public in their rulings or public statements**; offences such as perverting the course of justice or misconduct in public office are theoretically possible but practically uncertain. The Public Office (Accountability) Bill 2025 preserves this gap by excluding courts and those acting in a judicial capacity from the scope of the new offence.

Concerns that inclusion of judges might threaten judicial independence are understandable but misplaced. Independence protects decision-making from interference; it does not authorise wrongdoing. The offence of Misleading the Public would not penalise judicial reasoning or good faith error, but only deliberate falsehoods or demonstrable recklessness as to the truth.

Excluding the judiciary would create a constitutional imbalance: ministers and officials could be prosecuted for Misleading the Public, but judges, whose rulings carry the greatest authority, could not. Even if judges were to issue rulings or deliver speeches in which they hypothetically falsified evidence or misstated the law, they could not be prosecuted in the manner that Ministers could be. Such an exemption would undermine equality before the law and erode public confidence. Judges, like all Public Office Holders, are human and fallible; their high office demands the same accountability for truth as those they judge. Further to this, judges have recently been attacked by politicians and have been criticised by national media; having an offence if there was actual wrong-doing means that empty rhetoric could not be used against the Judiciary. The Judiciary would therefore no doubt welcome the same level of scrutiny and analysis.

Proposed Clause: Application of the Offence to Judicial Office Holders

(1) The offence of Misleading the Public applies to Judicial Office Holders.

(2) For the purposes of this Act, “Judicial Office Holder” means any person who holds judicial office under the law of England and Wales, including—

- (a) a judge of any court or tribunal;
- (b) a magistrate or justice of the peace; and
- (c) any other person who exercises judicial power or performs judicial functions in a public capacity.

Impact on Referendum and Election Results

This clause ensures that when the offence of Misleading the Public is proven in relation to statements made during an election or referendum campaign, the integrity of the vote can be questioned accordingly.

In Switzerland, electoral law provides that if false or misleading claims were decisive in determining the outcome of a public vote, the result may be annulled and the process repeated. This principle recognises that **democracy depends not only on participation but also on informed consent.**

Where dishonest statements have been shown to be made we propose that the integrity of the result must be referred to the Electoral Commission. This safeguard reinforces democratic legitimacy by ensuring that no election or referendum result obtained through proven deceit is permitted to stand unchallenged.

Proposed Clause: Effect of Conviction on Referendum and Election Results

(1) Where a person is convicted under this Act of Misleading the Public in connection with an election or referendum, **the matter must be referred to the Electoral Commission** for review as to whether the false statement was materially significant to the result.

(2) Upon referral, the Electoral Commission shall review all relevant evidence, including voting data, polling records, and material relied upon during the campaign. Where it concludes that the margin of result was sufficiently close that the misleading statement could reasonably have affected the outcome, the Commission may declare the result void and require that the election or referendum be re-run.

(3) Nothing in this section affects the lawful operation of existing provisions under the Representation of the People Acts or the Political Parties, Elections and Referendums Act 2000, except to the extent necessary to give effect to this clause.

Risk to the Public Purse and Deepfake Misrepresentation

The proposed Misleading the Public offence within the new Public Office (Accountability) Bill 2025 must prevent two major unintended risks: financial exposure of the state, and false evidence created by artificial intelligence.

Firstly, there is a serious risk of Liability to the public purse. As drafted, the Bill allows both public authorities and individuals to be prosecuted for Misleading the Public. This would transfer criminal and financial responsibility from individuals to the state itself. A conviction against a department or public authority could amount to a judicial finding of wrongdoing by the State, enabling civil claims from citizens or foreign victims and burdening taxpayers with vast liabilities. In extreme cases, for example, **a Prime Minister misleading the nation into war, could expose the UK to billions in liability.** Liability must therefore rest solely with individual public officials whose conduct constitutes an abuse of public trust. Institutions must remain administratively accountable but not criminally or financially liable.

Secondly, there is the growing problem of AI generated deepfakes and false evidence. If we are to hold Public Office Holders criminally accountable for Misleading the Public, **they must also be protected from fabricated evidence.** Deepfake audio and video now allow malicious actors to make officials appear to say or do things they never did, eroding trust and confusing the electorate. Existing legislation, including the Representation of the People Act 1983, Online Safety Act 2023, and Communications Act 2003, does not directly address this specific threat.

A narrowly defined offence should therefore criminalise the deliberate creation or dissemination of AI-generated material falsely depicting a Public Office Holder making false statements on Matters of Significant Concern to the Public as defined within this act.

Proposed Clause: Limitation of Liability to Individuals

(1) A public authority may not be convicted of the offence of Misleading the Public.

(2) Liability for that offence attaches only to natural persons acting as public officials.

Proposed Clause: AI-Generated False Depictions of Public Office Holders

(1) A person commits an offence under this section only if the person—

- (a) creates, alters, or otherwise generates, by means of artificial intelligence or digital manipulation, any audio or visual material which **purports to depict a Public Office Holder making a statement or representation which, if genuinely made, would constitute Misleading the Public for the purposes of this Act;**
- (b) publishes, transmits, or otherwise makes such material available to the public as the first act of dissemination; and
- (c) does so knowing, or being reckless as to whether, the material falsely represents that the Public Office Holder made the statement or engaged in the conduct depicted.

(2) A person is liable under subsection (1) only if they are—

- (a) the original creator of the material; or
- (b) the original publisher of the material.

No person shall be liable under this section solely by reason of sharing, forwarding, reposting, or otherwise circulating material created or originally published by another.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that—

- (a) the material was created or published solely for artistic, satirical, journalistic or educational purposes, and was clearly labelled or presented as such; and
- (b) the person took reasonable steps to ensure that the material could not reasonably be taken by recipients to be an authentic recording; or
- (c) the material was accompanied by clear and prominent disclaimers indicating that it had been fabricated or manipulated.

(4) In determining whether material was clearly labelled or presented for the purposes of subsection (3), the court must have regard to—

- (a) the context and platform of publication;
- (b) the **clarity, prominence and sufficiency of any disclaimers;**
- (c) the nature of the audience to whom the material was directed or made available; and
- (d) the likelihood, in all the circumstances, of public misunderstanding or public harm.

(5) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding Level 5 on the standard scale;

(b) on conviction on indictment, to a fine, or, in the most serious and exceptional cases, to imprisonment for a term **not exceeding two years or to both.**

(6) In this section—

“original publisher” means **the person who first makes the material available to the public** on any platform or by any means;

“Public Office Holder” has the same meaning as in the offence of Misleading the Public under this Act;

“material” includes any audio, visual, audiovisual, or digitally-generated representation, whether in still or moving form.

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