

Learning from Ball v Johnson (2019)

Proposed Amendments to **Section 106 of the Representation of the People Act 1983** via the **Representation of the People Bill 2026**

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Introduction:

Since June 2016 I have worked full time to investigate, expose, and criminalise dishonest conduct in British political campaigning. This work has been supported by the financial backing of more than 17,000 members of the public.

In 2019 I brought a private prosecution against Boris Johnson MP alleging the common law offence of Misconduct in Public Office in relation to statements made during the EU Referendum campaign. The case tested whether deliberate deception by a senior elected representative, intended to influence a democratic decision, could meet the criminal threshold under existing law. The court ruled that the case should proceed to the Crown Court for jury trial before the proceedings were subsequently halted.

That case highlighted significant problems within the legal framework governing dishonesty in political campaigning. Section 106 of the Representation of the People Act 1983 currently creates an illegal practice relating only to false statements about a candidate's personal character or conduct. It does not address knowingly false or reckless statements deployed during election or referendum campaigns about matters of policy, public affairs, or the consequences of democratic decisions.

The amendments proposed below seek to modernise and clarify that framework by updating the scope of the section 106 illegal practice so that it can address deliberate or reckless deception in political campaigning. Crucially, these amendments also introduce clear safeguarding provisions designed to ensure that the illegal practice cannot be misused to penalise legitimate political debate. The drafting makes explicit that honest belief, good-faith disagreement, prediction, opinion, and ordinary political argument remain fully protected. The illegal practice is therefore tightly confined to proven cases of deliberate or reckless deception and is not capable of creating a chilling effect on freedom of political expression.

The legal issues tested during the 2019 prosecution, and the lessons drawn from that case, are directly relevant to this area of law. These amendments therefore seek to incorporate those practical lessons while ensuring that appropriate statutory safeguards are placed clearly on the face of the legislation.

In formulating these proposals I have consulted leading barristers, Members of Parliament, Members of the House of Lords, journalists, court precedent, historic analysis, and academic commentary over a period of 9 and a half years.

Expansion of illegal practice of false campaign statements

Section 106 of the Representation of the People Act 1983 (false statements as to candidates) is amended as follows.

1. Expansion of statements covered

In subsection (1), for “false statement of fact in relation to the candidate’s personal character or conduct” substitute—

“false statement of fact, whether relating to—

- (a) the personal character or conduct of a candidate,
- (b) the policies, actions or record of a candidate, political party or campaign organisation, or
- (c) any matter of fact capable of materially influencing the outcome of an election or referendum.”

2. Scope of persons liable

After subsection (1) insert—

(1A) A person shall be guilty of an illegal practice under this section only where the statement is made—

- (a) by a candidate,
- (b) by an election agent or campaign worker,
- (c) on behalf of a political party or campaign organisation, or
- (d) in the course of organised election or referendum campaigning.

(1B) For the purposes of this section, a person is treated as publishing a statement if they—

- (a) authorise,
- (b) approve,
- (c) distribute,
- (d) promote with the intention of influencing voters, or
- (e) otherwise intentionally cause the dissemination of the statement.

3. Knowledge and recklessness safeguard

After subsection (2) insert—

(2A) A person is not guilty of an illegal practice under this section unless it is proved that—

- (a) the person knew the statement was false, or
- (b) the person was aware of a genuine and substantial risk that the statement was false and, having regard to the circumstances known to them at the time, failed to alert the public to that risk.

4. Protection for legitimate political speech

(2B) A person is not guilty of an illegal practice under this section merely because—

- (a) a statement was mistaken,
- (b) a promise was honestly made but later unfulfilled,
- (c) a belief expressed was honestly held but later shown to be incorrect, or
- (d) a statement concerned a prediction or opinion regarding future events.

5. Retraction defence

(2C) It is a defence for a person charged with an illegal practice under this section to show that—

- (a) before the statement had any material effect on public decision-making, they publicly retracted and corrected it, and
- (b) the retraction and correction were given prominence reasonably commensurate with the manner and extent of the original dissemination.

6. Parliamentary privilege safeguard

(2D) Nothing in this section—

- (a) applies to anything said or done in proceedings in Parliament, or
- (b) affects the operation of Article 9 of the Bill of Rights 1689 or any rule of parliamentary privilege.

7. Application to referendums

After subsection (5) insert—

(5A) In this section references to an election include a referendum or recall petition.

Explanatory Statement

These amendments update section 106 of the Representation of the People Act 1983 so that the existing illegal practice of false campaign statements reflects the realities of modern political campaigning,

Thank you for your time and consideration,

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