

Too Vague for the Courtroom

How Misconduct in Public Office Lets Prosecutors Overreach and Leaves Judges Unable to Direct

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In February 2026, Robert Jenrick MP stood in the House of Commons and declared that Peter Mandelson had “*clearly broken the law.*”^[1] Within days, the Metropolitan Police launched an investigation into alleged misconduct in public office. But Jenrick’s confidence was misplaced — not because Mandelson is necessarily innocent, but because the offence he stands accused of committing is so poorly defined that no one, not even the most senior lawyers in the country, can say with certainty what it requires.

That is the central paradox of misconduct in public office. It is an offence that, in theory, carries a life sentence. Yet, its elements are so vague that prosecutors routinely overcharge, judges struggle to explain it to juries, and convictions are quashed on appeal because no one can agree on what the law actually demands. The Law Commission has called it “*one of the most notoriously difficult offences to define in England and Wales.*”^[2] Sir David Bean, the former Chairman of the Law Commission, described it as “*probably the most difficult project*” during his tenure.^[3]

Parliament is now attempting to replace it. The Public Office (Accountability) Bill, introduced in September 2025, would abolish the common law offence and replace it with two statutory offences with clearer elements and lower maximum sentences.^[4] But even as this reform progresses through the Commons, the old offence continues to be deployed — against Mandelson and others — raising a question that goes to the heart of the rule of law: should the state be permitted to prosecute citizens under a criminal offence so imprecise that the courts themselves cannot consistently apply it?

The strongest case against the offence is not abstract or doctrinal. It is practical. The vagueness of misconduct in public office produces two concrete, measurable harms at opposite ends of the criminal process. Prosecutors, faced with an offence whose boundaries are undefined, cast the net too widely. Then, judges tasked with explaining an incoherent offence to twelve laypeople fail to give directions that survive appellate scrutiny. The result is a system that is simultaneously too broad and too feeble: it catches the wrong people, misses the right ones, and wastes enormous public resources in the process.

An Offence Without a Statute

Misconduct in public office is a common law offence. Unlike almost every other

serious criminal charge in England and Wales, it has never been defined by Parliament. Its elements have been fashioned, piecemeal, by judges over centuries — from Blackstone’s description in 1765 of a “*crime of deep malignity*”^[5] to the Court of Appeal’s modern formulation in *Attorney General’s Reference (No 3 of 2003)*.^[6]

In that 2004 decision, the Court held that the offence is committed when: a public officer, acting as such, wilfully neglects to perform their duty and/or wilfully misconducts themselves, to such a degree as to amount to an abuse of the public’s trust in the office holder, without reasonable excuse or justification. Four elements, each of which is uncertain in its own right. Taken together, they create an offence so elastic that it can be stretched to cover almost anything — or contracted to exclude conduct that the public would plainly regard as criminal.

Consider each element in turn. There is **no statutory definition of “public officer.”** The CPS prosecution guidance concedes that there is “*no simple definition*” and that each case must be assessed individually.^[7] In *Mitchell* [2014], the Court of Appeal held that an ambulance paramedic was *not* a public officer; in *Cosford* [2013], prison nurses were held to be public officers. The boundary between the two is determined by a three-part test from Lord Justice Leveson that turns on whether the role represents “*the fulfilment of one of the responsibilities of government.*”^[8] Bishops of the Church of England have been found to qualify. Where that line falls for any given occupation is, in practice, a gamble.

The case of Bishop Peter Ball illustrates the point with uncomfortable precision. Ball, the former Bishop of Gloucester, pleaded guilty to misconduct in public office in respect of persistent sexual abuse. The trial judge, Wilkie J, held that a bishop of the Church of England held an “office” because of the constitutional position of the established Church.^[8a] But as Professor Alisdair Gillespie of Lancaster University has observed, a bishop in the Roman Catholic Church would not qualify. Nor would an Anglican bishop in Wales or Scotland. It is, as Gillespie puts it, “*difficult to reconcile this purely on the basis of the ancient establishment of the Church of England.*”^[8b] Two clergymen in identical roles, exercising identical pastoral authority over identical congregations, occupy different legal universes for the purposes of this offence — separated by nothing more than a constitutional accident dating back to Henry VIII.

There is a deeper problem still with the second element of the offence. The “wilful misconduct” limb is so capacious that, as Gillespie notes, there is nothing in law requiring the misconduct to be criminal in its own right.^[8c] The offence merely requires wrongful conduct, provided the other elements are met. This means that misconduct in public office does not merely overlap with existing criminal offences — it criminalises conduct that *no other offence* covers, purely because of the status of the person doing it. A police officer who misuses a corporate credit card commits fraud regardless of his occupation. But he can also be charged with misconduct in public office for the same act, on the basis that it constitutes “misconduct” by a person who happens to hold public office. The offence thereby creates a category of criminal liability that exists only for public servants, without Parliament ever having debated

whether it should.

The **fault element** is equally unstable. “Wilfully” means deliberately doing something wrong, or acting with “reckless indifference as to whether it is wrong or not.”^[9] But the Law Commission found that the mental element “appears to vary depending on the circumstances of the case,” creating “additional complexity, and leading to costly appeals.”^[10] Where dishonesty is alleged, it must be proved as the mens rea. Where it is not, the prosecution must prove awareness of the duty and knowledge that the breach was capable of reaching the seriousness threshold — or recklessness as to both. As we shall see, different judges in Operation Elveden trials gave contradictory directions on what precisely the mental element required.

Most problematic of all is the **seriousness threshold**. The jury must decide whether the misconduct was “so far below acceptable standards as to amount to an abuse of the public’s trust in the office holder.”^[11] The Law Commission identified an inherent circularity in this test: the concept of “abuse of the public’s trust” defines both the nature of the conduct and the seriousness threshold for the offence.^[12] In plain English, is the offence criminal because it is serious, or serious because it is criminal? The CPS itself acknowledges that it is “difficult to extract from the case law definitive guidance on when conduct will reach the necessary threshold.”^[13]

Finally, the **fourth element** — “without reasonable excuse or justification” — is, as the Law Commission drily observes, of uncertain status. It is unclear whether this constitutes a standalone defence or is merely “an aspect of the broader consideration of whether the conduct is serious enough to warrant criminal sanction.”^[14] In DL [2011], the Court of Appeal held it meant no more than acting “culpably or in a blameworthy fashion” — which rather begs the question of what independent work this element is doing at all.

The unifying concern, as the Law Commission concluded, is that the offence “fails to provide the certainty and clarity that the criminal law demands.”^[15] This is not merely an affront to legal tidiness. It has consequences. It creates, at the prosecutorial stage, an offence whose boundaries are so wide that almost any abuse of a public role can be shoehorned into it. And at the trial stage, it leaves judges attempting to explain to juries a standard that the appellate courts themselves have struggled to articulate coherently.

None of this means the offence is unnecessary. Something like it has to exist. The Bribery Act catches corrupt payments, but not every abuse of public office involves money changing hands. In *Dytham* [1979], a police officer stood by and watched a man being kicked to death. There was no bribe, no financial gain — only a culpable failure to act. In *Cosford*, a prison nurse entered a sexual relationship with an inmate: technically consensual, involving no corruption, but a fundamental abuse of power within a custodial setting. The disciplinary route — dismissal — may be inadequate, particularly where, as Gillespie notes, the officeholder is an unpaid volunteer who suffers no financial sanction at all.^[8d] Not a single respondent to the Law Commission’s

consultation called for outright abolition of the offence.^[15a] The argument, therefore, is not that misconduct in public office should disappear, but that its present formulation is so imprecise that it catches the wrong conduct and misses the right conduct. The sections that follow demonstrate precisely how.

Prosecutorial Overreach: The Operation Elveden Fiasco

No episode illustrates the dangers of the offence's breadth more vividly than Operation Elveden, the Metropolitan Police investigation into payments by journalists to public officials. Launched in 2011 in the aftermath of the phone-hacking scandal, Elveden consumed nearly £15 million of public money, resulted in 90 arrests, and produced what is perhaps the most expensive demonstration in modern English legal history of what happens when a vague criminal offence meets ambitious prosecutors.^[16]

The core allegation was straightforward: journalists at *The Sun* and other tabloids had been paying police officers, prison officers, and other public officials for stories. The public officials were charged with misconduct in public office. The journalists were charged as accessories — with conspiracy to commit the offence, or aiding and abetting the offence. In total, 34 journalists were arrested or charged.^[17]

The practice of paying public officials for stories had been an open secret in Fleet Street for decades. In March 2003, the editor of *The Sun* had publicly admitted to paying police officers for information while giving evidence before a Commons select committee on culture, media and sport. Neither the police, the CPS, nor the Press Complaints Commission issued any warning afterwards. The PCC's Editors' Code and *McNae's Essential Law for Journalists*, the industry's standard reference, were conspicuously silent on the topic.^[18] Then, after the Leveson Inquiry, the same conduct was suddenly treated as a serious criminal matter.

The results were devastating — for the prosecution. Out of 34 journalists arrested or charged, only **one** conviction survived at trial: that of Anthony France, a reporter at *The Sun*, convicted of aiding and abetting misconduct in public office for paying a police officer more than £22,000 for stories. Even that conviction was quashed by the Court of Appeal in October 2016.^[19] Juries acquitted thirteen journalists. Seven faced retrials because juries could not reach verdicts — struggling, as the legal commentators at 2 Hare Court chambers observed, “to apply a 700-year-old common law offence of conspiracy to modern journalistic practices.”^[20] The CPS eventually discontinued the prosecution of 14 journalists following the Court of Appeal's ruling in *Chapman*.

Geoffrey Cox QC, then a backbench barrister and later Attorney General, captured the problem precisely:

“The jailing of journalists and editors for newsgathering, provided it was information not of a restricted or classified kind, does raise questions as to

proportionality. And if you have a vague law which applies to the newsgathering and editorial decisions, you have the risk that people will not report things that are in the public interest for fear of transgressing a vague law.” ^[21]

The Law Commission, reviewing the wreckage, drew a careful distinction between two forms of misuse. **Overreach:** the offence’s ambiguous terms encouraged law enforcement to pursue it in novel contexts, many of which were considered unjust. **Overuse:** the offence was pursued where the conduct was not sufficiently grave to warrant criminal sanction, and disciplinary proceedings would have been more appropriate.^[22] Elveden exhibited both pathologies simultaneously.

The offence was also being deployed as a lazy substitute for more targeted charges. The Law Commission flagged the case of *W* [2010], in which a police officer was charged with misconduct for misusing a credit card—a simple case of dishonesty. The CPS itself later acknowledged this was the wrong charge: *“There was no breach or failure to perform the duties of a public officer. It was a simple case of dishonesty and ought to have been charged as such.”*^[23] Simon Parsons, writing in the *Journal of Criminal Law*, used the case to illustrate the wider uncertainty, arguing that the offence’s elements are *“so uncertain, it should no longer be prosecuted.”*^[24]

Public sector unions told the Commission that officers were being investigated for matters that were disciplinary at best, with the prospect of prosecution *“hanging over their heads for months or even years”* — even where charges were never brought.^[25] The imprecision of the offence was the direct cause. If you cannot clearly define what is criminal and what is not, every borderline case becomes an investigation.

When Judges Cannot Direct

The prosecutorial overreach is only half the story. The other half plays out in the courtroom, where the vagueness of the offence translates into judicial directions so uncertain that they are repeatedly overturned on appeal.

The seriousness threshold asks the jury to draw a line between conduct that merits disciplinary action and conduct that deserves criminal punishment. It is an inherently difficult exercise. The Law Commission acknowledged that *“views may diverge widely on this question in any given factual scenario,”* noting that while several misconduct convictions had been secured for consensual sexual relationships between prison staff and inmates, *“the view that this should amount to a criminal (rather than disciplinary) issue was not universally shared.”*^[26]

In **Chapman** [2015], the Court of Appeal, presided over by Lord Thomas CJ, found that the trial judge had failed to direct the jury properly on this threshold. The jury had not been told they needed to consider whether the conduct *harmed the public interest* — a critical component of the seriousness assessment.^[27] The convictions were

quashed. This single appeal triggered a CPS review of all Operation Elveden cases and the immediate discontinuation of nine pending prosecutions.^[28]

In **France** [2016], the same problem recurred. The Court of Appeal acknowledged the “*great care*” the trial judge had taken in preparing directions, but held nonetheless that he had not given the jury “*sufficient guidance on how to assess seriousness and harm.*”^[29] The conviction — the sole surviving journalist conviction from the entire Elveden operation — was quashed as unsafe.

Here is the truly damning detail. In different Elveden trials, running concurrently at the Old Bailey, different judges gave contradictory directions on the mental element of the offence. One judge directed that a journalist had to *know* that the public official was misconducting themselves before the journalist could be convicted of conspiracy. Another directed that no such knowledge was necessary, provided the journalist and the official had agreed upon the course of conduct.^[30] Both judges were applying the same offence to near-identical facts, at the same courthouse. If the judges themselves cannot agree on what the offence requires, the notion that ordinary citizens can regulate their conduct around it is a fiction.

Lord Justice Leveson had already flagged this problem in *Cosford* [2013], expressing frustration that it was “*unsatisfactory that each recent decision requires the court to trawl through the authorities*” to ascertain what the offence demanded.^[31] The Law Commission drew a telling comparison with gross negligence manslaughter, where a similar jury-discretion threshold was endorsed as ECHR-compliant in *Misra* [2004]. But even in that context, the practical difficulty was evident in *Sellu* [2016], where the jury had not been:

“assisted sufficiently to understand how to approach their task of identifying the line that separates even serious or very serious mistakes or lapses, from conduct which ... was truly exceptionally bad and was such a departure from that standard that it consequently amounted to being criminal.”^[32]

If this is hard enough in manslaughter — where at least a death provides an anchor of seriousness — it is far harder in misconduct in public office, where the “harm” can be as intangible as damage to public confidence in an institution.

Hitting Down, Not Up

An offence that is overcharged by prosecutors and incoherently directed by judges will not be applied randomly. It will be applied selectively — against those least able to mount a complex legal challenge, in cases where the political cost of prosecution is lowest. The data bears this out.

Research by Dr Tom Frost at Loughborough University found that between 2014 and 2024, 191 people were convicted of misconduct in public office. Of those, 92% were

prison officers or police officers. Ninety-eight per cent were junior to mid-level officials.^[33] Some of this concentration is to be expected: police and prison officers form the bulk of the public-servant population, routinely exercising coercive power. But what is striking is not just who is prosecuted, but what they are prosecuted for. Cases routinely involve conduct — sexual relationships with persons in custody, minor misuse of databases, accepting small gifts — that is serious as a disciplinary matter but of doubtful criminal gravity. The vagueness of the seriousness threshold gives prosecutors a free hand to criminalise what would otherwise be a regulatory failure. In contrast, the same vagueness makes it practically impossible to construct a case against a senior figure whose misconduct is diffuse, systemic, or deniable.

No MP has ever been successfully prosecuted for the offence. The expenses scandal MPs were charged with false accounting under the Theft Act, not misconduct. Keir Starmer, as Director of Public Prosecutions, declined to prosecute the Conservative MP Damian Green in 2009, judging that the case did not meet the threshold. Boris Johnson was not charged for lockdown violations. The offence that, in theory, carries life imprisonment has never been successfully deployed against the class of people the public would most expect it to reach.^[34]

The Law Commission heard directly from public sector unions on this point. They argued that blame, and in some cases criminal responsibility, was *“being directed disproportionately towards the often relatively low-paid, junior officers working at the frontline,”* rather than considering *“the impact of staffing and resourcing decisions further up the management chain.”*^[35] In essence, those with the least power to influence a situation were being held most responsible.

Jeremy Horder, Professor of Criminal Law at the LSE and a former Law Commissioner, has argued that the offence is simultaneously too broad and too vague: broad enough to catch junior officials for conduct that is properly a disciplinary matter, yet too vague to provide the clarity needed to hold senior figures to account.^[36] The Mandelson investigation is the latest demonstration. Jenrick’s parliamentary certainty — *“clearly broken the law”* — runs headlong into the legal reality described by Horder: the seriousness threshold is *“a high bar to surmount,”* and the lapse of time *“may have diminished the public interest in prosecution.”*^[37]

Does the Replacement Fix the Problem?

The Public Office (Accountability) Bill addresses the symptoms of the problem — overcharging, ad hoc judicial definitions, a disproportionate maximum sentence — more successfully than it addresses the cause: the inherent difficulty of subjecting a seriousness threshold to principled, consistent application. The Bill was introduced on 16 September 2025 and is commonly known as the Hillsborough Law. It seeks to replace the common law offence with two statutory offences. The first, seriously improper conduct in public office, carries a maximum of 10 years’ imprisonment. The second, breach of duty to prevent death or serious injury, carries a maximum of 14

years. The Bill also provides a statutory list of positions that may amount to “public office” and requires the consent of the Director of Public Prosecutions before any prosecution may be brought.^[38]

The reduction in maximum sentence — from life imprisonment to 10 or 14 years — is itself an implicit concession that the old offence was disproportionately broad. The DPP consent requirement directly addresses the overcharging problem. The statutory list of qualifying offices would eliminate the ad hoc judicial assessments that produced the paramedic-yes-Bishop-no lottery under the common law.

But concerns remain about the new seriousness threshold. The Bill requires that the conduct amount to a “*seriously improper act*.” The Law Commission itself was cautiously optimistic, concluding that “seriously improper” offered greater certainty than the existing test.^[39a] Not all consultees agreed. The Police Action Lawyers Group warned:

“We would argue that ‘seriously improper’ is no clearer a threshold than the ‘abuse of public trust’ threshold contained in the current offence. ... To substitute one subjective threshold with another would do little more than indicate a departure from the current threshold and the case law that underlies it, which is bound to create more uncertainty rather than less.”^[39]

At Second Reading on 3 November 2025, the shadow justice minister Dr Kieran Mullan questioned the clarity of “public interest” and “seriously improper” in the new formulation.^[40] And there is a further unresolved ambiguity. The Bill requires the office holder to have used their office to “*obtain a benefit ... or to cause another person to suffer a detriment*.” As Joshua Rozenberg has noted, and a commenter on his analysis pressed further: does the offence catch the scenario where a benefit is received *before* the improper act — ingratiation rather than a direct quid pro quo?^[41] This is precisely the factual pattern alleged in the Mandelson case.

There is also the transitional problem. The new offence cannot apply retrospectively. But, as Rozenberg observes, once the replacement enters into force, “*prosecutors may think it would not be in the public interest — not fair — to charge defendants under the old law if the alleged conduct would not be caught by the new statutory offence*.”^[42] This creates an awkward period in which the state is prosecuting under a law that Parliament has effectively acknowledged was too broad.

Compliant in Theory, Unworkable in Practice

Article 7 of the European Convention on Human Rights enshrines the principle of *nullum crimen sine lege* — no punishment without law. A criminal offence must be defined with sufficient precision that individuals can ascertain whether their conduct is liable to criminal sanction. The Law Commission raised the question directly: does misconduct in public office, in its current form, satisfy this standard? Its issues paper

concluded that “public office” and the seriousness test were “ill-defined and vague” and that the law “*may be incompatible with Article 7 of the ECHR.*”^[43]

That question has now been answered. In **Norman v United Kingdom** [2021] ECHR 601, the European Court of Human Rights held that the offence does not violate Article 7.^[43a] The Court emphasised that the common law nature of the offence does not in itself give rise to concerns under Article 7: the Convention does not require a criminal offence to be placed on a statutory footing. It found that the elements of the offence had been clarified in *AG’s Reference (No 3 of 2003)* and *Chapman* with “equivalent precision to statutory offences,” and that the seriousness threshold was “sufficiently clear to enable a person, with appropriate legal advice if necessary, to regulate his or her behaviour.” The Law Commission’s own doubts about Article 7 compatibility were before the Court; they were, in effect, noted and set aside. Norman’s application to the Supreme Court had already been refused. Strasbourg was the end of the road, and the argument is now foreclosed as a matter of law.

But formal legality is a floor, not a ceiling. Article 7 asks whether a citizen *could* foresee the law, with appropriate legal advice. That is a modest threshold, and *Norman* was an easy case on which to satisfy it: a prison officer who sold information over five years for more than £10,000 was, as the Court observed, committing misconduct in public office “on any view.” The harder question — and the one the Convention does not reach — is whether twelve jurors can *consistently apply* the offence across the range of cases in which it is actually charged. That is not a human rights question. It is a rule-of-law question, and the evidence from the past decade decisively answers it.

Operation Elveden cost the public purse at least £15 million and, in the journalist category, produced zero surviving convictions. Judges at the Old Bailey gave contradictory directions on the same offence in concurrent trials. Seven juries were unable to reach a verdict because they could not determine where the law drew its lines. Ninety-two per cent of those convicted are junior officials, while no MP has ever been successfully prosecuted. The offence that Jenrick invoked with such confidence is the same offence whose application to journalists collapsed so comprehensively that the CPS abandoned an entire category of prosecution.

Parliament has implicitly accepted the force of this evidence. By legislating to replace the offence through the Hillsborough Law, it has sided with the Law Commission rather than with Strasbourg. The ECtHR held the offence formally compliant with the Convention; Parliament has concluded it is not fit for purpose regardless. The DPP consent requirement should prevent the worst excesses of overcharging. But so long as the seriousness threshold remains a subjective judgment call dressed up as a legal standard, the core problem will persist. The criminal law must not only be foreseeable in theory; it must be capable of consistent, fair administration in practice. On the evidence of the past decade, misconduct in public office fails that test — and the replacement may not yet pass it.

About the Authors

33 Chancery Lane is a specialist set of barristers ranked Tier 1 for financial crime and fraud by the Legal 500, which named it Financial Crime Set of the Year in 2025. Members defend in the most complex criminal cases in England and Wales, and the set's ability to operate across criminal, civil, and regulatory jurisdictions reflects the reality of modern misconduct cases, where criminal proceedings, disciplinary action, and public law challenges frequently arise from the same underlying facts.

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Notes

[1] HC Deb, 2 February 2026; Robert Jenrick MP, debate on US Department of Justice Release of Files.

[2] Law Commission, Misconduct in Public Office (Law Com No 397, 2020), para 1.1.

[3] Ibid, Foreword.

[4] Public Office (Accountability) Bill 2024–26, introduced 16 September 2025.

[5] W Blackstone, Commentaries on the Laws of England (1765), vol 4, ch 9.

[6] Attorney General's Reference (No 3 of 2003) [2004] EWCA Crim 868; [2005] QB 73.

[7] CPS, 'Misconduct in Public Office: Prosecution Guidance' (updated 7 July 2023).

[8] R v Mitchell [2014] EWCA Crim 318; [2014] 2 Cr App R 2, at [19], per Leveson LJ.

- [8a] *R v Ball* [2015] (unreported); sentencing remarks of Wilkie J, 7 October 2015, at [17].
- [8b] AA Gillespie, 'Reforming Misconduct in Public Office' (Lancaster University, 2017), p 3.
- [8c] *Ibid*, p 2: 'It is worth noting that there is nothing in law that requires the misconduct to be criminal in its own right.'
- [8d] Gillespie (n 8b), pp 3–4, noting that unpaid volunteers such as independent monitoring board members face no financial sanction from dismissal.
- [9] AG's Reference (No 3 of 2003), at [26].
- [10] Law Commission (n 2), para 3.40(2).
- [11] AG's Reference (No 3 of 2003), at [61].
- [12] Law Commission (n 2), para 3.19.
- [13] CPS (n 7), 'Factors that may be relevant to seriousness.'
- [14] Law Commission (n 2), para 3.21.
- [15] *Ibid*, para 3.41.
- [15a] Law Commission (n 2), para 4.2: no consultee 'suggested that the misconduct offence should be abolished without replacement.' See also Gillespie (n 8b), p 1.
- [16] Police Professional, 'Operation Elveden closes with final acquittal' (26 February 2016); MPS confirmed cost of almost £15 million.
- [17] Press Gazette, 'Operation Elveden closed by Met after nearly five years, £15m and arrest of 34 journalists' (26 February 2016).
- [18] 2 Hare Court, 'Operation Elveden: A Sting in the Tail?' (2015).
- [19] *R v France* [2016] EWCA Crim 1588; [2016] 4 WLR 175.
- [20] Corker Binning, 'CPS Shift as Elveden Unravels' (April 2015).
- [21] BBC, 'Sun journalist's lawyer queries use of "vague" law' (21 March 2015), quoting Geoffrey Cox QC.
- [22] Law Commission (n 2), paras 3.25–3.26.
- [23] CPS response to Law Commission consultation, p 5; discussed in Law Commission (n 2), para 3.29.
- [24] S Parsons, 'Misconduct in a Public Office — Should it Still be Prosecuted?' (2012) 76(2) *Journal of Criminal Law* 179.
- [25] Law Commission (n 2), para 3.30.
- [26] *Ibid*, para 3.20.
- [27] *R v Chapman* [2015] EWCA Crim 539; [2015] QB 883, at [36]–[40].
- [28] BBC, 'Operation Elveden: Nine journalists have cases dropped' (17 April 2015).
- [29] *R v France* [2016] EWCA Crim 1588; [2016] 4 WLR 175.
- [30] 2 Hare Court (n 18); see also D Spens QC and T Coke-Smyth, 'Operation Elveden: Beyond Misconduct in Public Office' (2015).
- [31] *R v Cosford* [2013] EWCA Crim 466; [2014] QB 81, at [39].
- [32] *R v Sellu* [2016] EWCA Crim 1716; [2017] 1 Cr App R 24, at [152].

[33] Dr Tom Frost, Loughborough University, cited in Institute for Government, 'Misconduct in Public Office' (5 February 2026).

[34] Institute for Government (n 33).

[35] Law Commission (n 2), para 3.38.

[36] J Horder, *Criminal Misconduct in Office* (OUP, 2018); J Horder, 'What exactly is misconduct in public office and could Peter Mandelson be convicted?', LSE British Politics Blog (6 February 2026).

[37] Horder, LSE British Politics Blog (n 36).

[38] Public Office (Accountability) Bill (n 4), cls 12, 16, sch 4.

[39] Police Action Lawyers Group, response to Law Commission consultation; quoted in Law Commission (n 2), para 5.29.

[39a] Law Commission (n 2), para 5.39: the Commission concluded that 'seriously improper' 'does give rise to a greater degree of certainty' than the existing test.

[40] HC Deb, 3 November 2025, Second Reading of the Public Office (Accountability) Bill.

[41] J Rozenberg, 'Misconduct in Public Office', A Lawyer Writes (Substack), 3 February 2026; comment by Hugh Evans.

[42] Rozenberg (n 41).

[43] Law Commission (n 2), Issues Paper 1 (2016), Appendix C, para C.35, discussing art 7 ECHR and *Kokkinakis v Greece* (1994) 17 EHRR 397.

[43a] *Norman v United Kingdom* (App no 41387/17) [2021] ECHR 601, at [62]–[66]. The Court held that art 7 was not violated; the offence was sufficiently foreseeable. *Norman* is now cited in the ECtHR's own Guide on Article 7 as authority on the compatibility of common law offences with the foreseeability requirement.